

CONTENTS

LIST OF ABBREVIATIONS

XV

Symposium: THE LIBYAN CRISIS AND INTERNATIONAL LAW

NATO'S INTERVENTION IN LIBYA: A GENUINE ACTION TO PROTECT
A CIVILIAN POPULATION IN MORTAL DANGER OR AN INTERVENTION
AIMED AT REGIME CHANGE? 3

Natalino Ronzitti

THE NO-FLY ZONE OVER LIBYA: ENFORCEMENT ISSUES 21

Luisa Vierucci

RECOGNITION OF THE LIBYAN NATIONAL TRANSITIONAL COUNCIL:
WHEN, HOW AND WHY 45

Giuseppe Nesi

THE SECURITY COUNCIL'S ASSET FREEZE AGAINST GADDAFI'S LIBYA
AND ITS IMPLEMENTATION IN ITALY 61

Giorgio Sacerdoti and Pia Acconci

THE DAY AFTER: PROSECUTING INTERNATIONAL CRIMES COMMITTED
IN LIBYA 85

Marina Mancini

BEYOND LIBYA: MORAL NORMS IN INTERNATIONAL LAW AND THE USE
OF FORCE BY STATES 111

Ciaran Burke

Focus: THE ICJ JUDGMENT IN JURISDICTIONAL IMMUNITIES OF THE STATE (GERMANY V. ITALY: GREECE INTERVENING)

THE JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE ON THE
IMMUNITY OF FOREIGN STATES: A MISSED OPPORTUNITY 135

Benedetto Conforti

AN AMERICAN ANOMALY? ON THE ICJ'S SELECTIVE READING OF UNITED
STATES PRACTICE IN *JURISDICTIONAL IMMUNITIES OF THE STATE* 143

Riccardo Pavoni

<i>JUS COGENS</i> AND JURISDICTIONAL IMMUNITIES OF STATES AT THE INTERNATIONAL COURT OF JUSTICE: “A CONFLICT DOES EXIST” <i>Carlos Espósito</i>	161
--	-----

ARE ITALIAN COURTS DIRECTLY BOUND TO GIVE EFFECT TO THE <i>JURISDICTIONAL IMMUNITIES</i> JUDGMENT? <i>Mirko Sossai</i>	175
---	-----

NOTES AND COMMENTS

UNLOCKING AND ADVANCING THE PROTECTION OF RELIGIOUS BELIEFS IN STRASBOURG: TOWARDS SUB-DIVIDING “THE PUBLIC SPHERE” <i>John Morijn</i>	193
---	-----

COLLECTIVE ACTIONS IN ICSID ARBITRATION: THE <i>ARGENTINE BONDS</i> CASE <i>Anna de Luca</i>	211
---	-----

TREATY-BASED INVESTMENT ARBITRATION AND THE MFN CLAUSE: THE POSSIBLE COMMON DENOMINATOR BETWEEN JURISDICTION AND ADMISSIBILITY <i>Eduardo Savarese</i>	241
---	-----

THE ACTIVITY OF THE INTERNATIONAL COURT OF JUSTICE IN 2011 <i>Paolo Palchetti</i>	259
--	-----

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND OTHER LAW OF THE SEA JURISDICTIONS (2011) <i>Tullio Treves</i>	275
---	-----

INTERNATIONAL CRIMINAL JUSTICE (2011) <i>Carlo Focarelli</i>	281
---	-----

THE ARBITRAL PRACTICE OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID) IN 2011 <i>Eduardo Savarese</i>	319
--	-----

ITALIAN PRACTICE RELATING TO INTERNATIONAL LAW

<i>Classification Scheme</i>	349
------------------------------	-----

JUDICIAL DECISIONS (edited by *Giuseppe Cataldi* and *Massimo Iovane*)

V. IMMUNITIES Criminal jurisdiction of the receiving State over an extraordinary rendition	
---	--

committed on its territory by consular and military agents of the sending State – Consular function, grave crime and immunity from the jurisdiction under Articles 5(1), 41(1) and 43(1), respectively, of the Vienna Convention on Consular Relations of 24 April 1963 – Official duty and jurisdiction over military personnel serving overseas under Article VII of the Agreement between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces of 19 June 1951
Corte d'Appello di Milano (Sez. III penale), 15 December 2010, No. 3688
Adler and others v. Tribunale di Milano (the “*Abu Omar case*”) 351

Immunity of foreign States from jurisdiction in civil matters as a customary rule automatically incorporated into the Italian legal order by virtue of Article 10, paragraph 1, of the Italian Constitution – Compensation for victims of gross human rights violations committed during World War II – Human rights exception to immunity from jurisdiction – Tort exception to immunity from jurisdiction – Abuse of sovereignty theory – Normative hierarchy theory – Generally recognised norms of international law protecting the liberty and the dignity of every human being as *jus cogens* – Gross violations of human rights as international crimes – Effects of international judgments within national proceedings
Corte di Cassazione (Sez. I civile), 20 May 2011, No. 11163
Germany v. Prefecture of Voiotia (Greece) 357

XI. TREATMENT OF ALIENS AND NATIONALITY

Right to asylum – Plurality of forms of protection – Subsidiary protection – Humanitarian protection – Easing the burden of proof – Powers of investigation of the judge – Compliance with European Union law
Corte di Cassazione (Sez. VI civile), 24 February 2011, Nos. 6879 and 6880
Mouktar Dabre v. Ministero dell'Interno and Commissione territoriale per il riconoscimento della protezione internazionale
Emmanuel Ngongang v. Ministero dell'Interno and Commissione territoriale per il riconoscimento della protezione internazionale 365

XII. HUMAN RIGHTS

Application of preventive measures (seizure and confiscation of property) – Request for a public hearing before a judge – Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms (ECHR) – Direct application of ECHR rules – Effects of the entry into force of the Lisbon Treaty on the relationship between the ECHR and the legal order of the Member States of the European Union
Corte Costituzionale, 7 March 2011, No. 80
D.P.E. 370

European Convention on Human Rights and Fundamental Freedoms – Right to a fair trial – Binding force of the judgments of the Strasbourg Court – Review of final national judgments – Article 630(a) of the Italian Code of Criminal Procedure – Article 117(1) of the Italian Constitution
Corte Costituzionale, 7 April 2011, No. 113
Paolo Dorigo 375

Non-citizens' right to marry – Marriage of convenience – State measures to control illegal immigration – Article 12 of the European Convention on Human Rights and Fundamental Freedoms – Unreasonable restrictions – Margin of appreciation

Corte Costituzionale, 20 July 2011, No. 245

P.A. and M.A. v. Ministero dell'Interno

379

XV. INTERNATIONAL ECONOMIC LAW

Direct effect of WTO law – “Counter-limits” doctrine – Freedom of economic initiative as a fundamental right – Self-executing character of the European Convention on Human Rights

Consiglio di Stato (Sez. VI), 9 August 2011, No. 4723

382

DIPLOMATIC AND PARLIAMENTARY PRACTICE

(edited by *Pietro Gargiulo* and *Giuseppe Nesi*)

II. INTERNATIONAL CUSTOM, LAW OF TREATIES AND OTHER SOURCES OF INTERNATIONAL LAW

1. EFFECTS OF ARMED CONFLICTS ON TREATIES

387

V. IMMUNITIES

1. THE IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

388

XI. TREATMENT OF ALIENS AND NATIONALITY

1. EXPULSION OF ALIENS

389

XII. HUMAN RIGHTS

1. PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

390

XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS

1. INTERNATIONAL COOPERATION IN THE FIGHT AGAINST ILLEGAL IMMIGRATION

391

XVI. INTERNATIONAL ORGANIZATIONS

1. UNITED NATIONS

A. United Nations Reform

392

XVIII. USE OF FORCE AND PEACE-KEEPING

1. THE SITUATION IN LIBYA AND THE USE OF FORCE

394

2. ITALIAN ANTI-PIRACY MEASURES

398

XX. INTERNATIONAL RESPONSIBILITY

1. RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

398

AGREEMENTS TO WHICH ITALY IS A PARTY AND AGREEMENTS AND UNDERSTANDINGS TO WHICH ITALIAN REGIONS AND AUTONOMOUS PROVINCES ARE PARTIES

(edited by *Chiara Altafin* and *Marina Mancini*)

I

AGREEMENTS TO WHICH ITALY IS A PARTY

A)	AGREEMENTS SIGNED BY ITALY, PUBLISHED IN THE <i>GAZZETTA UFFICIALE</i> IN 2011	
IV.	DIPLOMATIC AND CONSULAR RELATIONS	402
X.	AIR AND SPACE LAW	402
XI.	TREATMENT OF ALIENS AND NATIONALITY	
	1. IMMIGRATION AND EMIGRATION	402
XIV.	CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS	
	1. LEGAL AND JUDICIAL CO-OPERATION	403
	2. MILITARY AND SECURITY MATTERS	403
	3. CULTURAL, EDUCATIONAL, SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION	404
	4. TECHNICAL CO-OPERATION	405
	5. FRIENDSHIP AND CO-OPERATION TREATIES	405
	6. NEIGHBOURLY RELATIONS	406
	7. TRANSPORT	406
XV.	INTERNATIONAL ECONOMIC LAW	
	1. GENERAL ECONOMIC AND FINANCIAL CO-OPERATION	406
	2. TAXATION	407
	3. ECONOMIC DEVELOPMENT AND DEVELOPMENT CO-OPERATION	407
	4. DEBT CONSOLIDATION AND CANCELLATION TREATIES	409
XVI.	INTERNATIONAL ORGANIZATIONS	
	1. HEADQUARTERS AGREEMENTS AND LEGAL STATUS	409
	2. EUROPEAN UNION	410
	3. OTHER INTERNATIONAL ORGANIZATIONS	411
XIX.	ARMED CONFLICT, NEUTRALITY, AND DISARMAMENT	411
B)	AGREEMENTS SIGNED BY ITALY, PUBLISHED BEFORE 2011, THE ENTRY INTO FORCE OF WHICH WAS ANNOUNCED IN THE <i>GAZZETTA UFFICIALE</i> IN 2011	
VI.	TERRITORY	412

VII. LAW OF THE SEA	412
XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS	
1. LEGAL AND JUDICIAL CO-OPERATION	412
2. MILITARY AND SECURITY MATTERS	413
3. CULTURAL, EDUCATIONAL, SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION	413
4. TECHNICAL CO-OPERATION	413
5. NEIGHBOURLY RELATIONS	414
6. TOURISM	414
XV. INTERNATIONAL ECONOMIC LAW	
1. TAXATION	414
2. INVESTMENT	415

II

AGREEMENTS AND UNDERSTANDINGS TO WHICH ITALIAN REGIONS AND AUTONOMOUS PROVINCES ARE PARTIES

A) AGREEMENTS SIGNED BY ITALIAN REGIONS AND AUTONOMOUS PROVINCES IN 2011	
ABRUZZO	417
AUTONOMOUS PROVINCE OF BOLZANO	417
EMILIA-ROMAGNA	417
TOSCANA	418
B) UNDERSTANDINGS SIGNED BY ITALIAN REGIONS AND AUTONOMOUS PROVINCES IN 2011	
AUTONOMOUS PROVINCE OF BOLZANO	418
AUTONOMOUS PROVINCE OF TRENTO	418
FRIULI-VENEZIA GIULIA	419
LOMBARDIA	419
MARCHE	420
PUGLIA	420
SARDEGNA	420
TOSCANA	421
VENETO	421

CONTENTS	XIII
----------	------

LEGISLATION

(edited by *Pia Acconci*)

XI. TREATMENT OF ALIENS AND NATIONALITY	423
XVI. INTERNATIONAL ORGANIZATIONS	427
XVIII. USE OF FORCE AND PEACE-KEEPING	428

BIBLIOGRAPHIES

ITALIAN BIBLIOGRAPHICAL INDEX OF INTERNATIONAL LAW 2011 (edited by <i>Giulio Bartolini</i> and <i>Alessandro Chechi</i>)	433
--	-----

REVIEW OF BOOKS	463
-----------------	-----

RAYMOND PLANT, *The Neo-Liberal State*, Oxford, Oxford University Press, 2009 – ANDREW LANG, *World Trade Law after Neoliberalism: Reimagining the Global Economic Order*, Oxford, Oxford University Press, 2011 (*Carlo Focarelli*); JEAN D'ASPREMONT, *Formalism and the Sources of International Law. A Theory of the Ascertainment of Legal Rules*, Oxford, Oxford University Press, 2011 (*Massimo Iovane*); AUGUST REINISCH (ed.), *Challenging Acts of International Organizations before National Courts*, Oxford/New York, Oxford University Press, 2010 (*Daniele Amoroso*); CLAUDIO DORDI (ed.), *The Absence of Direct Effect of WTO in the EC and in Other Countries*, Torino, Giappichelli, 2010 (*Friedl Weiss*); ULRICH BEYERLIN and THILO MARAUHN, *International Environmental Law*, Oxford, Hart Publishing, 2011 (*Massimiliano Montini*); ALDO LIGUSTRO and GIORGIO SACERDOTI (eds.), *Problemi e tendenze del diritto internazionale dell'economia. Liber amicorum in onore di Paolo Picone*, Napoli, Editoriale Scientifica, 2011 (*Ottavio Quirico*).

BOOKS RECEIVED	491
----------------	-----

INDEX	495
-------	-----