

CONTENTS

LIST OF ABBREVIATIONS

XV

Editorial

FROM DEFERENCE TO DISOBEDIENCE: THE UNCERTAIN FATE OF
CONSTITUTIONAL COURT DECISION NO. 238/2014

1

Francesco Francioni

Focus

*JUDGMENT NO. 238/2014 OF THE ITALIAN CONSTITUTIONAL
COURT ON THE CONSTITUTIONAL LEGALITY OF STATE
IMMUNITY FOR INTERNATIONAL CRIMES*

ACCESS TO JUSTICE IN CONSTITUTIONAL AND INTERNATIONAL LAW:
THE RECENT JUDGMENT OF THE ITALIAN CONSTITUTIONAL COURT

9

Riccardo Pisillo Mazzeschi

THE DECISION OF THE ITALIAN CONSTITUTIONAL COURT CONCERNING
THE JURISDICTIONAL IMMUNITIES OF GERMANY

25

Michael Bothe

A HISTORIC DECISION OF THE ITALIAN CONSTITUTIONAL COURT ON
THE BALANCE BETWEEN THE ITALIAN LEGAL ORDER'S FUNDAMENTAL
VALUES AND CUSTOMARY INTERNATIONAL LAW

37

Giuseppe Cataldi

CAN STATE ACTION ON BEHALF OF VICTIMS BE AN ALTERNATIVE TO
INDIVIDUAL ACCESS TO JUSTICE IN CASE OF GRAVE BREACHES OF
HUMAN RIGHTS?

53

Paolo Palchetti

Symposium

NEW HORIZONS IN INTERNATIONAL ENVIRONMENTAL LAW

NEGOTIATING CONSERVATION AND SUSTAINABLE USE OF MARINE
BIOLOGICAL DIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION:
PROSPECTS AND CHALLENGES

63

Tullio Scovazzi

THE RISE OF “INTERNAL ENVIRONMENTAL CONFLICTS” WITHIN THE GREEN ECONOMY <i>Massimiliano Montini</i>	95
JUSTICE, EQUITY AND BENEFIT-SHARING UNDER THE NAGOYA PROTOCOL TO THE CONVENTION ON BIOLOGICAL DIVERSITY <i>Elisa Morgera</i>	113
CLIMATE GOVERNANCE TOWARDS “PARIS-2015” AND BEYOND: EU AND US PERSPECTIVES <i>Christine Bakker</i>	143
PROTECTION AND PRESERVATION OF THE ARCTIC MARINE ENVIRONMENT <i>Claudia Cinelli</i>	159
THE INTEGRATION OF ENVIRONMENTAL PROTECTION CONSIDERATIONS WITHIN THE HUMAN RIGHTS LAW REGIME: WHICH SOLUTIONS HAVE BEEN PROVIDED BY REGIONAL HUMAN RIGHTS COURTS? <i>Marie-Catherine Petersmann</i>	191
 NOTES AND COMMENTS	
IS THERE A WAY TO ENSURE EFFECTIVE PROTECTION OF CULTURAL IDENTITIES IN THE OLD CITY OF JERUSALEM? <i>Clémentine Bories Fontana-Giusti</i>	221
SOVEREIGN DEFAULT AND LITIGATION: <i>NML CAPITAL V. ARGENTINA</i> <i>Maria Rosaria Mauro</i>	249
THE ITALIAN IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON VIOLENCE AGAINST WOMEN AND VICTIMS’ RIGHTS TO REPARATIONS <i>Fulvia Staiano</i>	269
THE INTERPLAY BETWEEN INTERNATIONAL LAW AND NATIONAL LAW IN THE FIRST ITALIAN PROSECUTION OF PIRACY: THE <i>M/V MONTECRISTO</i> CASE <i>Marta Bo</i>	289
 PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS	
THE JUDICIAL ACTIVITY OF THE INTERNATIONAL COURT OF JUSTICE IN 2014 <i>Daniele Amoroso</i>	317

CONTENTS	IX
THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND OTHER LAW OF THE SEA JURISDICTIONS (2014) <i>Tullio Treves</i>	341
INTERNATIONAL CRIMINAL JUSTICE (2014) <i>Carlo Focarelli</i>	365
THE WTO DISPUTE SETTLEMENT SYSTEM IN 2014 edited by <i>Giorgio Sacerdoti</i>	395
THE ARBITRAL PRACTICE OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID) IN 2014 <i>Eduardo Savarese</i>	431
 ITALIAN PRACTICE RELATING TO INTERNATIONAL LAW	
<i>Classification Scheme</i>	455
 JUDICIAL DECISIONS (edited by <i>Giuseppe Cataldi</i> and <i>Massimo Iovane</i>)	
II. INTERNATIONAL CUSTOM, LAW OF TREATIES AND OTHER SOURCES OF INTERNATIONAL LAW Interpretation of treaties by domestic courts – Articles 31-33 of the 1969 Vi- enna Convention on the Law of Treaties – Interpretation of Article VIII(5) of the London Convention of 19 June 1951 – Unilateral interpretation of the no- tion of “contract” – Contractual claims and medical liability <i>Corte di Cassazione (Sez. III civile)</i> , 4 April 2014, No. 7909 <i>Ministero della Difesa v. United States of America and others</i>	457
III. STATES AND OTHER INTERNATIONAL ENTITIES	460
IV. DIPLOMATIC AND CONSULAR RELATIONS Diplomatic immunity – Article 27 of the 1961 Vienna Convention on Diplo- matic Relations – Inviolability of official correspondence – Admissibility of search and confiscation of diplomatic bags by the receiving State <i>Corte di Cassazione (Sez. III penale)</i> , 15 September 2014, No. 37736 <i>Criminal proceedings against Redroban Quevedo and Loor Loor</i>	460
V. IMMUNITIES Diplomatic immunity – Diplomatic functions under Article 3 of the Vienna Con- vention on Diplomatic Relations of 18 April 1961 – Extraordinary renditions – Invocation of functional immunity by the sending State – Judiciary’s independ- ence from external authorities in the interpretation of international law <i>Corte di Cassazione (Sez. V penale)</i> , 25 September 2014, No. 39788 <i>Criminal proceedings against Medero, Castelli, and Russomando</i>	465

State immunity from employment lawsuits – Correspondence between Article 11 of the UN Convention on Jurisdictional Immunities of States and Their Property and customary international law – Article 10 of the Italian Constitution – Claims for reinstatement in employment – Claims for compensation for wrongful dismissal – Employment contract clauses conferring exclusive jurisdiction to the courts of the employer State – EC Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters

Corte di Cassazione (Sezioni Unite Civili), 18 April 2014, No. 9034 (order)

Embassy of Spain to the Holy See v. De la Grana Gonzales

Corte di Cassazione (Sezioni Unite Civili), 18 September 2014, No. 19674 (order)

Académie de France à Rome v. Galamini di Recanati

Corte di Cassazione (Sezioni Unite Civili), 27 October 2014, No. 22744

Lasaracina v. Embassy of the United Arab Emirates

468

VII. LAW OF THE SEA

Smuggling of migrants to Italy – Italian jurisdiction – Intervention on ships in the high seas and in the contiguous zone – Articles 110 and 111 of the UN Convention on the Law of the Sea – Article 8 of the Protocol No. 4 against the Smuggling of Migrants by Land, Sea and Air supplementing the UN Convention against Transnational Organized Crime – International Convention on Maritime Search and Rescue (SAR) – Articles 6, 7 and 54(3) of the Italian Criminal Code – Article 11(d) of the Law No. 189 of 30 July 2002

Corte di Cassazione (Sez. I penale), 23 January 2015, No. 3345

Criminal proceedings against Radouan Hai Hammouda

Corte di Cassazione (Sez. I penale), 23 May 2014, No. 36052

Criminal proceedings against Harabi Hani Abdal Qadir Saad

Corte di Cassazione (Sez. I penale), 27 March 2014, No. 14510

Criminal proceedings against Haji Hassan

Tribunale di Reggio Calabria (Sez. Gip – Gup), 28 July 2014, No. 223

Criminal proceedings against Hazer Elshat Mohamed Elmokader and others

475

XIII. INTERNATIONAL CRIMINAL LAW

482

XIX. ARMED CONFLICT, NEUTRALITY, AND DISARMAMENT

Definition of international terrorism under customary international law – Convention for the Suppression of the Financing of Terrorism of 9 December 1999 – Relationship between counterterrorism law and international humanitarian law – Distinction between terrorist and armed opposition groups under international law – Tamil Tigers – Non-international armed conflicts – Crime of terrorism in times of armed conflict – Principle of complementarity – Unrecognized State-like entities – Montevideo criteria

Corte di Cassazione (Sez. V penale), 21 January 2014, No. 2843

Criminal proceedings against Legori Junis Antipuro, Thangavelu Suthaharan and Thevasmajampillai Lowrance

482

XVII. RELATIONSHIP BETWEEN MUNICIPAL AND INTERNATIONAL LAW	
State immunity – Domestic implementation of ICJ judgments – Articles 2, 10, 11, and 24 of the Italian Constitution – “Counter-limits” doctrine	
<i>Corte Costituzionale</i> , 22 October 2014, No. 238	
<i>Simoncioni, Alessi and Bergamini v. Federal Republic of Germany and Presidency of the Council of Ministers</i>	488
DIPLOMATIC AND PARLIAMENTARY PRACTICE	
(edited by <i>Pietro Gargiulo</i> and <i>Giuseppe Nesi</i>)	
II. INTERNATIONAL CUSTOM, LAW OF TREATIES AND OTHER SOURCES OF INTERNATIONAL LAW	
1. TREATY LAW	
A. Principles Governing the Coordination of SAR Operations under the Hamburg Convention on Maritime Search and Rescue	489
B. Ratification and Interpretative Declaration to the Protocol on the Implementation of the 1991 Alpine Convention in the Field of Transport	490
C. Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties	491
III. STATES AND OTHER INTERNATIONAL LAW SUBJECTS	
1. ENVIRONMENTAL CONCERNS OVER THE CONSTRUCTION OF A US MILITARY COMMUNICATION SYSTEM IN SICILY (MUOS)	492
2. THE NEGOTIATIONS BETWEEN ISRAELIS AND PALESTINIANS AND THE RECOGNITION OF PALESTINE	493
V. IMMUNITIES	
1. THE IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION	
A. Statement by the Italian Delegate on the Report of the International Law Commission	494
B. Immunity from Criminal Jurisdiction for the Italian Military Personnel Deployed in Training Tasks in Iraq	496
XI. TREATMENT OF ALIENS AND NATIONALITY	
1. THE ROLE OF FRONTEX IN MANAGING THE MIGRATORY FLOWS AND A PROPOSAL TO AMEND THE RECEPTION SYSTEM OF ASYLUM SEEKERS	497
XII. HUMAN RIGHTS	
1. ITALY’S REMARKS ON THE REPORT ON THE SITUATION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION IN ITALY ISSUED BY THE SPECIAL RAPPORTEUR OF THE HUMAN RIGHTS COUNCIL	499
2. ITALY’S PRIORITIES IN THE FIELD OF HUMAN RIGHTS IN THE FRAMEWORK OF THE HUMAN RIGHTS COUNCIL	500
3. CHILD MARRIAGE AS A HUMAN RIGHTS VIOLATION	501

XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS	
1. ITALY'S STRATEGY AND MEASURES TO COUNTER TERRORISM MOTIVATED BY RELIGION	502
2. SECURITY CONCERNS AND COORDINATION OF ACTIONS IN THE UKRAINIAN CASE AND IN AFGHANISTAN	504
XVI. INTERNATIONAL ORGANIZATIONS	
1. NATO	
A. Confidential Storage of Nuclear Devices in Accordance with the NATO Strategy and Compliance with the Nuclear Non-Proliferation Treaty	505
2. UNITED NATIONS	
A. United Nations Security Council Reform	506
XIX. ARMED CONFLICT, NEUTRALITY, AND DISARMAMENT	
1. ITALY'S POSITION ON DISARMAMENT	509
2. PROTECTION OF THE ENVIRONMENT AND CULTURAL PROPERTY IN RELATION TO ARMED CONFLICTS	512

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 2014	
IV. DIPLOMATIC AND CONSULAR RELATIONS	516
VII. LAW OF THE SEA	516
X. AIR AND SPACE LAW	517
XII. HUMAN RIGHTS	517
XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS	
1. LEGAL AND JUDICIAL CO-OPERATION	517
2. MILITARY AND SECURITY MATTERS	518

3. CULTURAL, EDUCATIONAL, SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION	518
4. NEIGHBOURLY RELATIONS	519
5. TRANSPORT	519
6. LABOUR	520
XV. INTERNATIONAL ECONOMIC LAW	
1. GENERAL ECONOMIC AND FINANCIAL CO-OPERATION	520
2. TAXATION	520
3. ECONOMIC DEVELOPMENT AND DEVELOPMENT CO-OPERATION	521
4. ENERGY	523
5. DEBT CONSOLIDATION AND CANCELLATION TREATIES	524
XVI. INTERNATIONAL ORGANIZATIONS	
1. HEADQUARTERS AGREEMENTS AND LEGAL STATUS	524
2. EUROPEAN UNION	525
B) AGREEMENTS SIGNED BY ITALY, PUBLISHED BEFORE 2014, THE ENTRY INTO FORCE OF WHICH WAS ANNOUNCED IN THE <i>GAZZETTA UFFICIALE</i> IN 2014	
XII. HUMAN RIGHTS	525
XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO-ECONOMIC MATTERS	
1. MILITARY AND SECURITY MATTERS	526
XV. INTERNATIONAL ECONOMIC LAW	
1. TAXATION	526
2. INVESTMENT	526
XVI. INTERNATIONAL ORGANIZATIONS	
1. HEADQUARTERS AGREEMENTS AND LEGAL STATUS	527

II

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

A) AGREEMENTS SIGNED BY ITALIAN REGIONS AND AUTONOMOUS PROVINCES IN 2014	
UMBRIA	528

B) UNDERSTANDINGS SIGNED BY ITALIAN REGIONS AND
AUTONOMOUS PROVINCES IN 2014

AUTONOMOUS PROVINCE OF TRENTO	529
LOMBARDIA	529
TOSCANA	529
UMBRIA	530

LEGISLATION

(edited by *Pia Acconci*)

V. IMMUNITIES	531
XI. TREATMENT OF ALIENS AND NATIONALITY	532
XII. HUMAN RIGHTS	534
XIV. CO-OPERATION IN JUDICIAL, LEGAL, SECURITY, AND SOCIO- ECONOMIC MATTERS	535
XVIII. USE OF FORCE AND PEACE-KEEPING	536

BIBLIOGRAPHIES

ITALIAN BIBLIOGRAPHICAL INDEX OF INTERNATIONAL LAW 2014 (edited by <i>Giulio Bartolini</i> and <i>Alessandro Chechi</i>)	541
--	-----

REVIEW OF BOOKS

(edited by *Marco Gestri*)

ERIC A. POSNER and ALAN O. SYKES, *Economic Foundations of International Law*, Cambridge (Mass.), Belknap Press of Harvard University Press, 2013 (*Giorgio Sacerdoti*); ANNE PETERS, EVELYNE LAGRANGE, STEFAN OETER and CHRISTIAN TOMUSCHAT (eds.), *Immunities in the Age of Global Constitutionalism*, Leiden and Boston, Brill Nijhoff, 2014 (*Natalino Ronzitti*); JUAN PABLO BOHOSLAVSKY and JERNEJ LETNAR ČERNIČ (eds.), *Making Sovereign Financing and Human Rights Work*, Oxford and Portland, Hart Publishing, 2014 (*Carlo Focarelli*); FEDERICO LENZERINI and ANA FILIPA VRDOLJAK (eds.), *International Law for Common Goods*, Oxford and Portland, Hart Publishing, 2014 (*James G. Devaney*); MARCO ARNONE and LEONARDO S. BORLINI, *Corruption – Economic Analysis and International Law*, Cheltenham and Northampton, Edward Elgar, 2014 (*Elisa Baroncini*); INGE GOVAERE and SARA POLI (eds.), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises*, Leiden and Boston, Brill Nijhoff, 2014 (*Federico Casolari*).

INDEX