

Delicate and painstaking discussions on key points—definition of the State, commercial transactions, contracts of employment (especially in diplomatic and consular missions), execution of judgments, relationship with other international agreements, the possibility of reservations—led to adoption of a text likely to be acceptable to developing countries and one which because of its enforcement provisions is more effective and complete than the European Convention on State Immunity.

The first part of the Round Table, on immunity and the right of access to justice, begins with Professor Frederic Sudre's account of the jurisprudence of the European Court of Human Rights. He explains how the Court in *Al-Adsani* and related cases established two criteria by which any limitation to Article 6.1 of the European Convention on Human Rights must be justified—that it serves a legitimate purpose and that it is proportional to that purpose. Sudre is critical of the Court for not examining with sufficient rigour whether *domestic* rules according state immunity were required by *international* law and, in the *Al-Adsani* case, for giving insufficient weight to the *ius cogens* character of the prohibition of torture.

Accounts of French practice by Regis de Gouttes, Advocate General at the Cour de Cassation, and of Swiss practice by Judge Dominique Favre while in themselves full of interest do not address this conflict between norms of international law. Hazel Fox however, covering cases in the US, in Canada, and in the UK, sets out the three grounds on which it has been argued that the human right of access to justice should 'trump' immunities—implied waiver by States, *ius cogens* and a requirement of 'universal jurisdiction' over violations of international norms wherever committed. She shows that all these arguments have found limited favour in domestic courts and that they would if accepted lead to discrimination and uncertainty. Her conclusion is that discussion should be directed not only to State immunity but to the provision of alternative remedies and their efficacy.

Leading the accounts of State practice on immunity from execution in the second half of the Round Table is Ronnie Abraham, Director of Legal Affairs in the French Ministry of Foreign Affairs. He explains that in the absence of any internal law French courts apply customary international law and any relevant conventions such as headquarters agreements of international organizations. He does not explain why France never became a party to the European Convention on State Immunity, but encouragingly he states that France could accept the new UN Convention and sees no conflict between its terms and the European Convention on Human Rights.

Paul Lagarde, Professor Emeritus at the University of Paris, had the difficult task of formulating general conclusions at the end of highly stimulating and lively debates. He found no magic formula to reconcile immunities with the individual right of access to justice. He emphasizes that States and international organizations also have commercial and competitive interests in formulating predictable rules which limit immunities to the minimum, and that these interests have little to do with international law, with the preservation of the independence of sovereign States or even with the protection of human rights.

The reader of this entertaining and enlightening publication is left with the belief that the recent emphasis on the right of access to justice will not further demolish or erode the immunities of states and international organizations, but will require such immunities to be rigorously justified in terms of functional necessity when they are first accorded. It is evident that this has been done during the negotiations for the new UN Convention and that the Convention will form a better framework for state immunity than has been provided over the years by the somewhat fragmented and insular efforts of national courts.

EILEEN DENZA

Universal Jurisdiction: International and Municipal Legal Perspectives By LUC REYDAMS [OUP Oxford 2003 xiv + 258pp ISBN 01-99251-62-2]

Some crimes are so odious that committing them makes one *hostis generis humani* (an enemy of

doi:10.1093/iclq/lei035

all mankind). Intuitively, the idea of a universal enemy implies the possibility of universal criminal jurisdiction (UCJ). As Luc Reydams notes, the notion of UCJ originated in the 16th century with Covarruvias, although the idea is better known through Grotius's famous assertion that every state has jurisdiction over 'gross violations of the law of nature and of nations, done to other states and subjects' (*De Jure Belli ac Pacis*, AC Campbell trans., II.20.VII). For many years piracy was the only recognized UCJ crime, not so much because of its moral awfulness, but because it was committed outside the territorial jurisdiction of all states; and the pirate was the original *hostis generis humani*. In the 20th century, a number of multilateral treaties established UCJ over other international crimes such as narcotics trafficking, counterfeiting, and aerial hijacking—crimes whose repression requires the efforts of many nations because they involve conduct that crosses borders. Typically, these treaties require parties (1) to enact domestic legislation criminalizing the conduct in question; (2) either to extradite suspects in their custody or prosecute them themselves (*aut dedere aut prosequi*); and (3) to establish criminal jurisdiction over the conduct regardless of where it is committed. It is the third requirement that creates UCJ—what Reydams calls 'cooperative' UCJ, because the *aut dedere aut prosequi* clause suggests prosecution under UCJ is meant only 'to avoid an impasse which would otherwise result from the impossibility of extraditing a foreign suspect. The ensuing prosecution can be seen as a form of bilateral co-operation in penal criminal matters' (29).

Unilateral UCJ is also possible, and the *Lotus* principle apparently permits states to establish it if they choose to. Notoriously, in 1999 Belgium established UCJ over genocide, crimes against humanity, and certain war crimes. Within two years Belgium had launched investigations of numerous world leaders, including Yasser Arafat, Fidel Castro, Ariel Sharon, several African leaders, and others. In 2002, the ICJ decided a case brought by the Democratic Republic of the Congo against Belgium (the *Arrest Warrant* case), ordering a Belgian arrest warrant for the DCR's former foreign minister quashed. Although the Court decided the case on other grounds, ten judges wrote separately on the UCJ issue. They divided almost evenly on whether unilateral UCJ, exercised over a defendant not yet in custody, violates customary international law. Then, in 2003, Iraqi victims of American bombing in the first Gulf War filed a Belgian case against high US officials. The US responded by threatening to move NATO headquarters out of Brussels, and Belgium quickly caved in to American pressure and rolled back its ambitious UCJ law. UCJ had suffered a crushing defeat. But the validity of UCJ is hardly dead letter: another UCJ case (between the Republic of Congo and France) is currently before the ICJ; and in 2004 American lawyers filed a criminal complaint in Germany against US Secretary of Defense Donald Rumsfeld under Germany's UCJ statute. Given the limited capacity of international tribunals to process cases, scholars continue to promote UCJ as an avenue for prosecuting international criminal cases.

A topic of such great interest cries out for a book-length treatment, but until Reydams's book, none existed in English. Happily, Reydams's book does the job admirably. Reydams begins by succinctly sketching the overall theory of international criminal jurisdiction. He then reviews the history, theory, and doctrine of both co-operative and unilateral UCJ. Reydams's mastery of the arguments and their historical context is enviable. He next explores UCJ in international treaties and other instruments. Reydams's analysis shows that international criminal law treaties fall into three categories: (1) the pre-Second World War treaties under which UCJ is explicitly subsidiary to extradition, because the treaty stipulates that prosecution can occur only when extradition is impossible; (2) the twenty-plus treaties that follow the pattern of the 1970 Hague Hijacking Convention, incorporating *aut dedere aut prosequi* clauses without explicitly indicating that prosecution is subsidiary to extradition; and (3) the Geneva Convention and Convention Against Apartheid, which include UCJ clauses that do not employ the extradite-or-prosecute formula and are therefore arguably 'unilateralist.'

In the second half of the book, Reydams provides an extraordinarily valuable country-by-country survey of the UCJ jurisprudence of fourteen states. The survey is anything but dry, and in places Reydams's language is sharp—as when he describes Belgium's UCJ experiment as 'a veritable juridical soap opera' (109), or points out (in his chapter on Spain) 'the peculiarity of . . . a former colonial power claim[ing] jurisdiction over human rights violations in its erstwhile

colonies, while the crimes of a former repressive regime in the forum State remain covered with the cloak of tolerance' (192).

As these quotations indicate, Reydams is no fan of unilateral UCJ, which he suggests may be 'an aberrant intermezzo between Nuremberg and the ICC' (226). Reydams criticizes the view that treaty-based UCJ leaves states the option of also establishing non-subsiary 'unilateral' UCJ (230). But why? Treaties following the Hague Hijacking Convention include clauses stating that the treaty 'does not exclude any criminal jurisdiction exercised in accordance with international law.' Moreover, Reydams's own typology of treaties shows that at least the Geneva Conventions and the Convention Against Apartheid provide for unilateral UCJ. Here, his argument fails to persuade.

Reydams's postscript endorses Judge Guillaume's view in *Arrest Warrant* that free-wheeling UCJ 'would encourage the arbitrary for the benefit of the powerful' (230, quoting paragraph 15 of Guillaume's opinion). This seems overly pessimistic. To date, there has been nothing 'arbitrary' in states' cautious exercises in UCJ, and the powerful have derived little discernible benefit from it. Guillaume cautions that unilateral UCJ would create 'total judicial chaos' (ibid), but chaos would occur only if States fought over the right to try offenders under UCJ—and to date, shamefully, States have overwhelmingly preferred to look the other way in the face of atrocities. Even without UCJ, multiple States can exercise criminal jurisdiction over the same conduct, but this has never led to chaos. Perhaps, in a world wracked by unpunished atrocities, a small risk of judicial chaos may be a price worth paying.

DAVID LUBAN

Georgetown University Law Center

Fifty Years of the Supreme Court of India: Its Grasp and Reach By SK VERMA AND K KUSUM (eds)
[OUP Press New Delhi 2003 832pp Indian, Rs 955 (P/bk)]

This volume edited by Verma and Kusum presents a wonderful and stimulating set of essays on the role and jurisprudence of the Supreme Court of India. Since the establishment of the independent State of India in 1947, Indian judicial systems have frequently been faced with substantial legal and political idiosyncrasies; the present study captures the responses of the Apex Court to many of the problematic issues that have surfaced over the past 50 years. The volume comprising of 22 chapters, analyses a wide range of areas including fundamental rights, elections laws, Muslim personal laws, gender and environmental justice, taxation laws, civil and criminal procedure, tort law, arbitration, private and public international law. The contributors to the volume are eminent authorities on the aforementioned subjects, and their assessment is mature and thought-provoking. Several papers reflect the ingenious and imaginative approaches adopted by the Court to protect the rights of the socially and economically deprived groups such as scheduled castes, the minorities, children and women—the *Shah Bano* case is a striking illustration of judicial activism where the Supreme Court intervened to protect the rights of Muslim women from the antiquated and unjust application of Muslim personal laws (see pertinent discussion on implications of Muslim personal laws by Latifi, ch 7, 269–89 and by Sivaramayya, ch 8, 290–313).

Perhaps the most remarkable example of the Indian Supreme Court's interpretative activism is in its approach towards the promotion of the most fundamental of human rights, the right to life. The Court has spectacularly expanded the scope of the right of life as contained in Article 21 of the Indian Constitution to include a right to human dignity, a right to livelihood, a right to shelter and clothing, a right to education, and environmental rights which includes 'enjoyment of pollution-free water and for full enjoyment of life' (Jain at 36). The analysis of the Supreme Court's jurisprudence on conflicts of laws, arbitration, civil and criminal law and procedure reflects the ingenuity with which this highest judicial organ has interpreted constitutional and legislative provisions to protect additional fundamental rights. In this regard, an examination of the case law on such controversial and complex issues as: capital punishment (706–8), offences against women

doi:10.1093/iclq/lei036