

| | |
|--|-----|
| D. Uneven composition of Court | 294 |
| (i) Casting votes of Presidents | 294 |
| (ii) Allocation to chambers | 295 |
| E. Deliberation | 296 |
| (i) The International Court of Justice | 296 |
| (ii) The European Courts | 298 |
| (iii) Language | 298 |
| F. Public reading | 299 |
| G. Contents of the judgment | 299 |
| (i) Structure of judgments | 299 |
| (ii) Headnotes | 300 |
| (iii) Identification of judges' votes | 301 |
| H. Date of binding effect | 303 |
| I. Rectification of errors | 304 |
| J. Revision | 305 |
| (i) The nature of revision | 305 |
| (ii) The International Court of Justice | 306 |
| (iii) The European Courts | 307 |
| K. Interpretation | 308 |
| (i) The International Court of Justice | 308 |
| (ii) The European Court of Human Rights | 309 |
| (iii) The Community Courts | 309 |
| L. Supplementary and interim or partial judgments | 311 |
| (i) The Community Courts | 311 |
| (ii) The International Court of Justice | 312 |
| M. Finality | 313 |
| N. Binding force of judgments | 314 |
| (i) Binding force and enforceability | 314 |
| (ii) Scope of binding force | 316 |
| (iii) Value as precedent | 318 |
| (iv) Advisory opinions | 321 |
| O. Enforceability of judgments | 322 |
| (i) Judgments against Member States | 323 |
| (ii) Judgments against institutions | 325 |
| (iii) Pecuniary obligations | 326 |
| (iv) The role of national courts | 327 |
| P. Measures of constraint | 328 |
| (i) Privileges and immunities | 328 |
| (ii) Administrative or legal measures | 328 |
| (iii) Garnishee orders | 329 |
| Q. Special problems relating to judgments against Member States | 329 |
| (i) The effects of a default judgment | 329 |
| (ii) Failure to comply with a judgment | 331 |
| (iii) Penalties | 332 |
| R. Special problems relating to judgments against Community institutions | 332 |
| (i) Amendment | 332 |
| (ii) Absence of injunctive relief | 334 |
| (iii) Time for compliance | 335 |
| S. Publication of reports of cases | 335 |

| | | |
|----------------------------------|--|-----|
| I. | Intervention in State aids cases | 262 |
| (i) | Competitors | 262 |
| (ii) | Member States | 263 |
| (iii) | The appropriate "interest" | 263 |
| J. | Intervention in intellectual property cases | 265 |
| K. | Interim relief | 265 |
| (i) | The relationship between the main action and interim proceedings | 265 |
| (ii) | Confidentiality | 266 |
| (iii) | Timing | 267 |
| L. | Interveners supporting objections to admissibility | 267 |
| (i) | The arguments available | 267 |
| (ii) | Where defendant raises no objection to admissibility | 268 |
| M. | Intervention in proceedings for interpretation of judgments | 269 |
| N. | Intervention in appeals | 270 |
| (i) | Appeals by interveners | 270 |
| (ii) | Intervening States and institutions | 270 |
| (iii) | Automatic admission of interveners | 271 |
| O. | Preliminary rulings | 271 |
| (i) | EC Treaty | 271 |
| (ii) | ECSC and Euratom Treaties and Brussels Convention | 272 |
| (iii) | Other conventions | 273 |
| (iv) | Procedure | 273 |
| P. | Formal rules on intervention: time-limits | 275 |
| (i) | Recent amendments | 275 |
| (ii) | Strict observance | 276 |
| Q. | Formal rules on intervention: contents of application | 276 |
| R. | Confidentiality | 277 |
| (i) | The problem | 277 |
| (ii) | Information confidential to a party | 278 |
| (iii) | Information confidential to an intervener | 279 |
| (iv) | Practical solutions | 279 |
| (v) | The form of order | 280 |
| S. | Costs | 281 |
| (i) | The general rule | 281 |
| (ii) | Exceptions | 281 |
| (iii) | Effect of intervention upon parties' costs | 282 |
| T. | Withdrawal | 283 |
| Chapter VII. Judgments | | 285 |
| A. | Introduction | 285 |
| B. | Collegiate judgments | 285 |
| (i) | The exclusion of separate and dissenting judgments | 285 |
| (ii) | The International Court of Justice | 286 |
| (iii) | The advantages of collegiate judgments | 287 |
| C. | Determination by single judges | 290 |
| (i) | The present position | 290 |
| (ii) | Precedents for use of single judges | 290 |
| (iii) | A proposed solution | 292 |
| (iv) | The Court of Justice | 293 |
| (v) | The EFTA Court | 293 |

| | |
|---|-----|
| (iv) Alternative means of simplifying procedure | 223 |
| (v) Direct actions | 223 |
| (vi) Preliminary rulings | 224 |
| (vii) The exercise of the Court's discretion | 225 |
| (viii) The Court's practice | 227 |
| (ix) The EFTA Court | 228 |
| (x) The Court of First Instance | 229 |
| (xi) The International Court of Justice | 229 |
| (xii) The European Court of Human Rights | 230 |
| (xiii) The World Trade Organization | 231 |
| (xiv) The North American Free Trade Agreement | 232 |
| (xv) Conclusion | 232 |
| Chapter VI. Intervention | 233 |
| A. Definition and character of intervention | 233 |
| (i) Essential features | 233 |
| (ii) Intervention and initiation of proceedings | 235 |
| (iii) The International Court of Justice | 237 |
| (iv) The European Court of Human Rights | 238 |
| B. The intervener's duty to support a party | 239 |
| (i) Purpose of the rule | 239 |
| (ii) Operative part of submissions | 240 |
| (iii) Formal requirements | 240 |
| (iv) ECSC Statute | 241 |
| (v) Opening and reopening issues | 241 |
| (vi) Inadmissibility of main action | 242 |
| C. Competence to intervene: Member States | 243 |
| (i) The EC and Euratom Statutes | 243 |
| (ii) The ECSC Statute | 245 |
| (iii) An interest in the result | 246 |
| D. Competence to intervene: Community institutions | 247 |
| (i) The EC and Euratom Statutes | 247 |
| (ii) The ECSC Statute | 248 |
| E. Competence to intervene: other "persons" | 248 |
| (i) The ECSC Statute | 248 |
| (ii) The EC and Euratom Statutes | 249 |
| F. Competence to intervene: an interest in the result of the case | 252 |
| (i) The International Court of Justice | 252 |
| (ii) The Court of Justice | 252 |
| (iii) The Court of First Instance | 254 |
| (iv) The intervener's legal rights | 254 |
| (v) The intervener's economic interests | 256 |
| (vi) The intervener's moral interests | 257 |
| (vii) Associations | 257 |
| G. Intervention in actions between Member States and Community institutions | 259 |
| (i) The EC and Euratom Statutes | 259 |
| (ii) Related procedures | 259 |
| (iii) The ECSC Statute | 261 |
| H. Intervention in actions for damages | 261 |

| | |
|--|-----|
| H. Joinder of cases | 136 |
| (i) Purpose of joinder | 136 |
| (ii) Preliminary rulings | 138 |
| (iii) Procedure | 139 |
| (iv) Disjoinder | 140 |
| Chapter IV. Evidence and preparatory enquiries | 143 |
| A. The role of evidence | 143 |
| (i) Aversion to technicality | 143 |
| (ii) References for preliminary ruling | 144 |
| (iii) Direct actions | 145 |
| B. Preparatory enquiries | 146 |
| (i) The purpose of preparatory enquiries | 146 |
| (ii) Measures of enquiry | 146 |
| (iii) Measures of organization of procedure | 148 |
| (iv) Preparatory enquiries | 151 |
| C. Experts | 153 |
| (i) The Courts' powers | 153 |
| (ii) Commissioning experts' reports | 154 |
| (iii) Procedure | 155 |
| (iv) Observations on the expert's report | 157 |
| (v) Experience of other courts and tribunals | 159 |
| D. Production of documents | 160 |
| (i) Reliance upon parties | 160 |
| (ii) Article 23 of ECSC Statute | 160 |
| (iii) Experience of other courts and tribunals | 162 |
| (iv) Penalties | 162 |
| (v) Access to documents supplied to court | 163 |
| E. Rules of evidence | 165 |
| (i) Unfettered evaluations | 165 |
| (ii) Documentary evidence | 165 |
| (iii) Competition cases | 166 |
| (iv) Hearsay evidence | 167 |
| (v) Burden of proof | 168 |
| (vi) Standard of proof | 170 |
| F. Grounds upon which production may be resisted or evidence may be excluded | 172 |
| G. Confidentiality | 172 |
| (i) Reconciling conflicting objectives | 172 |
| (ii) Institutional confidences | 175 |
| (iii) Business secrets | 179 |
| (iv) Medical privilege | 181 |
| (v) Legal professional privilege | 182 |
| (vi) National security | 184 |
| Chapter V. The oral procedure | 187 |
| A. Preparation for the hearing | 187 |
| (i) The International Court of Justice | 187 |
| (ii) The European Court of Justice | 188 |
| (iii) The Court of First Instance | 188 |

| | |
|--|-----|
| B. Date of the hearing | 189 |
| (i) The general rule | 189 |
| (ii) Expediting hearings | 189 |
| (iii) Solutions to the problem of delay | 190 |
| C. The Report for the Hearing | 192 |
| (i) The Court of Justice | 192 |
| (ii) The Court of First Instance | 193 |
| D. The conduct of the hearing | 194 |
| (i) The Court of Justice | 194 |
| (ii) The Court of First Instance | 194 |
| (iii) The EFTA Court | 195 |
| (iv) Purpose of speeches | 195 |
| (v) Order of speeches | 195 |
| (vi) Length of speeches | 196 |
| (vii) European Court of Human Rights | 196 |
| (viii) World Trade Organization | 197 |
| (ix) NAFTA Dispute Panel | 198 |
| (x) International Court of Justice | 199 |
| E. Oral testimony | 200 |
| (i) Control of the Court | 200 |
| (ii) Procedure | 201 |
| (iii) The European Court of Human Rights | 203 |
| (iv) The International Court of Justice | 204 |
| (v) The World Trade Organization | 205 |
| F. Written documents adduced at or after the hearing | 206 |
| (i) The Community Courts | 206 |
| (ii) The International Court of Justice | 207 |
| (iii) The European Court of Human Rights | 209 |
| (iv) The Inter-American Court | 209 |
| (v) The World Trade Organization | 209 |
| (vi) The North American Free Trade Association | 211 |
| G. Exclusion of the public | 211 |
| (i) The Community Courts | 211 |
| (ii) The International Court of Justice | 213 |
| (iii) The European Court of Human Rights | 213 |
| (iv) The World Trade Organization | 213 |
| H. Reopening of the oral procedure | 214 |
| (i) The Court of Justice | 214 |
| (ii) The International Court of Justice | 216 |
| (iii) The World Trade Organization | 216 |
| I. Records of hearings | 217 |
| (i) Minutes | 217 |
| (ii) Tape recording | 217 |
| (iii) The International Court of Justice | 218 |
| (iv) The European Court of Human Rights | 219 |
| (v) The World Trade Organization | 219 |
| (vi) The North American Free Trade Agreement | 220 |
| J. Dispensing with oral hearings | 220 |
| (i) The power to dispense with hearings | 220 |
| (ii) Cases where no oral stage is obligatory | 222 |
| (iii) Dispensing with hearings in important cases | 222 |

ACADEMIE DE DROIT INTERNATIONAL
FONDÉE EN 1923 AVEC LE CONCOURS DE LA
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS
COLLECTED COURSES OF THE HAGUE
ACADEMY OF INTERNATIONAL LAW

1997

Tome 267 de la collection



1998

MARTINUS NIJHOFF PUBLISHERS
The Hague/Boston/London

| | |
|---|-----|
| K. The future of the Community's language régime | 97 |
| (i) The disadvantages of present régime | 97 |
| (ii) Other tribunals | 98 |
| (iii) Conclusion | 100 |
| Chapter III. The written procedure | 103 |
| A. Distinct stages | 103 |
| (i) The double exchange | 103 |
| (ii) Confidentiality | 104 |
| B. Written observations: single or double exchange? | 104 |
| (i) Dispensing with replies and rejoinders | 104 |
| (ii) Problems arising in references for preliminary rulings | 105 |
| (iii) A proposed solution | 106 |
| C. Contents of applications | 107 |
| (i) The texts | 107 |
| (ii) Identification of applicant | 108 |
| (iii) Identification of respondent | 108 |
| (iv) Subject of dispute | 109 |
| (v) Summary of pleas in law | 112 |
| (vi) Evidence | 113 |
| (vii) Form of order sought | 114 |
| (viii) Materials that may be supplied later | 116 |
| (ix) Disclosure of documents | 116 |
| (x) Legal persons as applicants | 118 |
| (xi) Arbitration clauses | 119 |
| (xii) Rectifying breaches | 119 |
| (xiii) Form of applications | 119 |
| D. The defence | 120 |
| (i) The texts | 120 |
| (ii) Objections to admissibility and jurisdiction | 121 |
| (iii) Failure to deny allegations | 121 |
| (iv) Form of order sought | 122 |
| (v) Formal requirements | 123 |
| (vi) Default procedure | 123 |
| E. Replies and rejoinders | 124 |
| (i) Facultative nature of replies and rejoinders | 124 |
| (ii) Inadmissibility of new pleas | 125 |
| (iii) Time-limits | 126 |
| F. Service of documents | 126 |
| (i) General rules | 126 |
| (ii) Electronic communications | 127 |
| (iii) Duties of Registrar | 129 |
| G. Further evidence and new pleas in law | 130 |
| (i) Inadmissibility | 130 |
| (ii) Default actions against Member States | 131 |
| (iii) Amplification of pleas | 132 |
| (iv) New facts | 133 |
| (v) Appeals | 134 |
| (vi) New arguments | 135 |
| (vii) Responses to new pleas | 136 |
| (viii) Intervenors | 136 |

| | | |
|---|---|----|
| I. | Advisory jurisdiction, opinions and preliminary rulings | 63 |
| (i) | The distinct power of the Court of Justice | 63 |
| (ii) | Qualified powers of referral | 64 |
| (iii) | Conclusion | 65 |
| J. | Intervention | 66 |
| (i) | Statutes of the International and Community Courts | 66 |
| (ii) | Intervention by States and institutions | 66 |
| (iii) | Intervention by other persons | 67 |
| (iv) | The EFTA Court | 67 |
| (v) | The International Court | 67 |
| K. | The formation and effects of the judgment | 68 |
| (i) | Decisions on conduct of hearings | 68 |
| (ii) | Consultation | 70 |
| (iii) | Presentation of judgments | 71 |
| Chapter II. Representation and language | | 75 |
| A. | Rights of audience | 75 |
| B. | Entitlement and authorization to practise | 76 |
| (i) | The rule | 76 |
| (ii) | Origins of the rule | 77 |
| (iii) | The experience of other tribunals | 77 |
| (iv) | Conclusion | 78 |
| C. | Private litigants | 79 |
| (i) | The obligation to be represented by lawyers | 79 |
| (ii) | Exclusion of lawyers | 80 |
| (iii) | Compliance with rules of home court | 81 |
| (iv) | Preliminary rulings | 82 |
| (v) | Direct actions | 83 |
| D. | Representation by professors | 85 |
| (i) | The rule | 85 |
| (ii) | The requirement as to nationalities | 85 |
| E. | The languages available | 86 |
| (i) | The twelve languages | 86 |
| (ii) | The language of the case | 87 |
| (iii) | Flexibility in use of languages | 87 |
| (iv) | The working language | 89 |
| F. | The language of the case : direct actions | 89 |
| (i) | Proceedings against institutions | 89 |
| (ii) | Proceedings against Member States | 89 |
| (iii) | Proceedings against private parties | 90 |
| (iv) | Dispensing with normal rule | 90 |
| G. | The language of the case : references for preliminary rulings | 91 |
| H. | The language of the case : intellectual property cases | 92 |
| (i) | The problem | 92 |
| (ii) | The solution adopted | 93 |
| I. | Interventions | 95 |
| (i) | Applications made other than in language of case | 95 |
| (ii) | Intervenors as "parties" | 95 |
| J. | Oral hearings | 96 |
| (i) | Simultaneous translation | 96 |
| (ii) | <i>Notes for Guidance of Counsel</i> | 97 |

| | |
|---|-----|
| T. Conclusions | 336 |
| (i) Collegiate judgments and decisions by single judges | 336 |
| (ii) Lessons from the International Court | 337 |
| (iii) Enforcement | 338 |
| Bibliography | 339 |

TABLE OF CONTENTS

| | |
|--|----|
| Chapter I. The Statutes and rules | 31 |
| A. The case for studying the procedural rules | 31 |
| (i) Contrast with national courts | 31 |
| (ii) Intricacy of European Courts' rules | 32 |
| (iii) Recent and imminent amendment | 33 |
| (iv) Substance and form | 34 |
| B. The case for comparison with the International Court of Justice | 34 |
| (i) Common origin | 34 |
| (ii) Community Court Statutes | 34 |
| (iii) Community Court Rules | 35 |
| (iv) EFTA Court Statutes and Rules | 36 |
| C. The functions of the Courts | 37 |
| (i) Separate functions | 37 |
| (ii) The power to lay down Rules of Procedure | 38 |
| (iii) The subjects of Community law | 40 |
| (iv) The EFTA Court | 40 |
| D. Their jurisdiction | 41 |
| (i) The presumption of sovereignty in the ICJ | 41 |
| (ii) The presumption of sovereignty in other international courts | 41 |
| (iii) The European Courts | 43 |
| E. Organization of the Courts | 44 |
| (i) The structure of the texts | 44 |
| (ii) Election of judges | 46 |
| (iii) Nationality of judges | 47 |
| (iv) Chambers | 51 |
| (v) Qualifications of judges | 52 |
| (vi) Recusal and incompatibility | 52 |
| (vii) Privileges and immunities | 53 |
| F. The written and oral procedure | 53 |
| (i) The distinction between the stages | 53 |
| (ii) Selected international courts and tribunals | 55 |
| (iii) The linguistic rules of the Court of Justice | 56 |
| (iv) The initiation of proceedings | 57 |
| G. The written procedure | 58 |
| (i) The object | 58 |
| (ii) The Court of Justice | 58 |
| (iii) The Court of First Instance | 59 |
| H. The oral procedure | 60 |
| (i) The elements of the oral stage | 60 |
| (ii) Report for the hearing | 61 |
| (iii) Oral submissions | 61 |
| (iv) Opinion of Advocate General | 62 |
| (v) The International Court of Justice | 62 |
| (vi) The European Court of Human Rights | 63 |