

F. A. MANN

FOREIGN AFFAIRS
IN ENGLISH COURTS



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Preface

THIS book is the product of more than forty years of interest in that much neglected branch of the law which lies at the borderline of international and municipal law, whether the latter be private international, procedural, or substantive law. Some work on the subject was published in the course of the years; what appeared before 1973 was reproduced in *Studies in International Law* (Clarendon Press). Since then 'The Consequences of an International Wrong in International and National Law', *British Yearbook of International Law* 46 (1976-7) 1, and 'Uniform Statutes in English Law', *Law Quarterly Review* 99 (1983) 316 appeared, apart from some Case Notes and other material which bears upon the problem.

The present work is entirely independent, so that the earlier publications (some of which will from time to time be referred to) are not superseded by it. The purpose now is to discuss in some detail the basic principles, the procedures, and the techniques (as opposed to the substantive international and national law) adopted by the English courts in dealing with such foreign relations as may become material in the course of proceedings.

The selection of topics may to some extent be arbitrary and there may be gaps, but the reader, it is hoped, will accept the book as a sensible opening gambit. As Pliny wrote (*Letters*, Book I.xx), 'Optimus tamen modus est: quis negat? sed non minus non servat modum qui infra rem quam qui supra, qui adstrictius quam qui effusius dicit.' Or in William Melmoth's translation (London, 1747): 'There is a just mean, I own, in every thing; but he equally deviates from that true mark, who falls short of it, as he who goes beyond it; he who confines himself in too narrow a compass, as he who launches out with too great a latitude.'

The emphasis which it was thought right to place on the judicial approach and the relative neglect of literature should not cause surprise. The reason lies in the purpose of the book as indicated in its title; moreover, in very many instances judicial pronouncements, in particular the implications of judicial review, have reduced the significance of earlier writings. Comparative material has almost completely been confined to the United States of America and is

nowhere collected with a view to exhaustive treatment; where reference to the United States is made, the cases which seemed to be particularly significant were selected for the purpose of assisting in the elucidation and development of English law. Continental material could as a rule be ignored, because in many respects continental practice differs from the English and would in any event be unlikely to prove of much value to the English practitioner concerned with foreign affairs; it is also much poorer and, therefore, less instructive.

In writing this book peculiar difficulties were encountered. They arose in the first place from the fact that in the field covered by it the law displays much confusion of thought and lack of precision, about the reasons for which one can only speculate; the doctrine of the act of state, the deplorable influence of 'comity', the lack of familiarity with international law are outstanding examples which have produced decisions, arguments, and phraseology that do not always stand up to scrutiny. Secondly, the legal dissarray pervading many decisions has led to serious problems of classification. Much overlapping and a certain amount of repetition were unavoidable. Yet it is hoped that solutions have been found which are at least intelligible, though they may not always be acceptable to all readers.

The law is stated as at 1 January 1986.

Thanks are due to my friend Mr. Lawrence Collins for making some helpful suggestions; to Mr. Barry Wolfe, LL.B.(Edin.), LL.B.(Cantab.), for preparing the Tables of Cases and the Index; and to my secretary, Mrs. Joyce Finch, for mastering a troublesome manuscript.

January 1986

F. A. MANN

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