Contents

1 General Introduction .................................................. 1
  1.1 Overview .......................................................... 1
  1.2 Current EU Treaties Framework: EU/Member
      State Territories .................................................. 2
      1.2.1 Background ................................................. 2
      1.2.2 Developments Since 1957 ............................... 2
      1.2.3 Lisbon Treaty Changes to Article 299 TEC .......... 4
  1.3 Introduction to Current EU Treaties Framework:
      EU/Member State Territories .......................... 5
      1.3.1 Overview of Current Relevant Lisbon
           Treaty Provisions ........................................ 5
      1.3.2 Background to the Current EU Treaties Framework
           and Developments Since 1957 .......................... 6
  1.4 Scope .............................................................. 6
      1.4.1 Territories Concerned ................................. 6
      1.4.2 Territorial Scope of Treaties ........................ 8
  1.5 Aims ............................................................... 8
  1.6 Methodology ...................................................... 9
References .................................................................... 12

Part I  Background to Article 299 (ex Article 227) at the Time
       the Provision was Drafted in 1957

2 General Introduction to Original Art 227 TEC ................. 15
  2.1 Introduction to Article 227 TEC (1957) ....................... 16
  2.2 Pre 1957: Political and Economic Backdrop ................ 16
  2.3 Relevant Member States and Territories ..................... 17
  2.4 General Aims of Article 227, 1957 TEC ..................... 18
2.5 ECSC and Euratom Treaties ........................................... 19
2.6 Conclusions .......................................................... 20

3 Article 227(1): Territorial Scope of the TEC .................. 23
3.1 Introduction and Background ....................................... 23
3.2 Relevant Member States and Territories ........................ 24
3.3 Conclusions .......................................................... 24
Reference ................................................................. 24

4 Article 227(2): Algeria, French DOMS ......................... 25
4.1 Introduction and Background ....................................... 25
4.2 Relevant Member States and Territories ........................ 26
4.3 Aims and Scope of Article 227(2) ................................. 26
4.4 Conclusions .......................................................... 27
Reference ................................................................. 28

5 Article 227(3): Overseas Countries and Territories (OCTs) . . 29
5.1 Introduction and Background ....................................... 29
5.2 Relevant Member States and Territories ........................ 30
5.3 Aims and Scope of Article 227(3) ................................. 31
5.4 Part Four (Articles 131–136), TEC 1957 ......................... 32
5.5 Implementing Convention ........................................... 34
5.6 Conclusions .......................................................... 36
References ................................................................. 36

6 Article 227(4): European Member State Territories for Whose
External Relations a Member State is Responsible ................ 37
6.1 Introduction and Background ....................................... 37
6.2 Relevant Member States and Territories ........................ 38
6.3 Aims and Scope of Article 227(4) ................................. 38
6.4 Conclusions .......................................................... 39
6.5 General Conclusions to Part I ..................................... 40
Reference ................................................................. 40

Part II Article 299 and Lisbon Treaty Amendments, Comparison
with 1957

7 General Introduction to Article 299 TEC ......................... 43
7.1 Introduction to Article 299 TEC ................................. 45
7.2 Political and Economic Backdrop Today
(Compared with 1957) ................................................. 45
7.3 Article 299 Compared with 1957 Original Version ........... 46
7.4 Conclusions .......................................................... 50
8 Article 299(1): Territorial Scope of the TEC (as Compared with 1957 Version) .......................................................... 51
  8.1 Introduction (Comparison to 1957 Version) ....................... 51
  8.2 Relevant Member States and Territories ............................. 52
    8.2.1 Ceuta and Melilla ............................................. 52
  8.3 Article 299(1): Developments Since 1957, Including
      Treaty Amendments ............................................. 57
    8.3.1 Clarification of the Aims and Scope of
      Article 299(1) .................................................. 57
    8.3.2 Meaning of Territory ......................................... 57
    8.3.3 Application to Member State Territories .................... 58
    8.3.4 The Two Germanys .......................................... 58
    8.3.5 EU Customs Territory ....................................... 59
    8.3.6 Application of Second and Third Pillars to
      Article 299 ................................................... 61
    8.3.7 Member State Accessions .................................... 62
    8.3.8 2007: Lisbon Treaty Amendments to Article 299
      in General ..................................................... 64
    8.3.9 2007: Lisbon Treaty Amendments to Article 299(1)
      Specifically .................................................. 68
  8.4 Conclusions ................................................................ 69
  References ..................................................................... 70

9 Article 299(2): The Outermost Regions ................................. 71
  9.1 Introduction (Comparison with 1957 Version) ..................... 71
  9.2 Applicable Member States and Territories: Present Day ........ 72
  9.3 General Characteristics of Outermost Regions ................... 73
  9.4 Overview of the Outermost Regions ................................ 74
    9.4.1 Constitutional Relations with their Member States ....... 75
  9.5 Article 299(2): Developments Since 1957, Including
      Treaty Amendments ............................................... 79
    9.5.1 Member State Accessions ..................................... 79
    9.5.2 1960s and 1970s: Early Developments and
      Interpretation of Article 227(2) ................................ 80
    9.5.3 1980s: the POSEI Programmes ................................ 81
    9.5.4 1993: Maastricht Treaty ...................................... 82
    9.5.5 1990s: Legros, Lancry Judgments ............................ 83
    9.5.6 1997: Amsterdam Treaty ..................................... 84
    9.5.7 2000: Post Amsterdam Treaty ................................ 85
    9.5.8 2007: Lisbon Treaty Amendments
      to Article 299(2) .............................................. 89
  9.6 Conclusions ................................................................ 90
  Reference ..................................................................... 90
10 Article 299(3): Overseas Countries and Territories .............................. 91
10.1 Introduction (Comparison with 1957 Version) ............................ 91
10.2 Applicable Member States and Territories: Present Day ............... 92
10.3 General Characteristics of the OCTs ........................................ 93
10.4 Overview of the OCTs ....................................................... 93
10.4.1 Constitutional Relations with Their Member State ................. 94
10.5 Article 299(3): Developments Since 1957, Including
Treaty Amendments .......................................................... 96
10.5.1 Member State Accessions and Territories ............................ 96
10.5.2 1958: Emergence of EU/ACP Partnership .......................... 100
10.5.4 1991: Council Decision 91/482/EEC ................................. 105
10.5.5 1993: Maastricht Treaty ................................................ 106
10.5.6 1997: Council Decision 97/803/EC .................................. 106
10.5.7 1997: Amsterdam Treaty ............................................... 106
10.5.8 2001: Council Decision 2001/822/EC ............................... 107
10.5.9 2007: Lisbon Treaty Amendments to Article 299(3) .......... 107
10.5.10 June 2008: Commission Communication .......................... 108
10.6 EU Legal Framework and Policy Governing Relations
Between the OCTs and the EU .............................................. 109
10.6.1 Part Four (Articles 182–188) of the TEC 2009 ....................... 109
10.6.2 Council Decision 2001/822/EC ....................................... 110
10.6.3 Application to OCTs of Other TEC Provisions .................... 112
10.6.4 Areas of EU/OCT Co-operation ...................................... 113
10.6.5 Implementation of the EU/OCT Arrangements .................... 115
10.6.6 EU Financial Assistance ............................................... 115
10.6.7 OCT/ACP Parallelism .................................................. 116
10.7 Conclusions ................................................................. 118
10.8 References ..................................................................... 118

11 Article 299(4): European Member State Territories for
Whose External Relations a Member State is
Responsible: Gibraltar ............................................................. 121
11.1 Introduction (Comparison with 1957 Provision) ......................... 121
11.2 Applicable Member State Territories: Present Day .................... 121
11.3 Overview of Gibraltar ...................................................... 122
11.3.1 Constitutional Relations with the United Kingdom .............. 125
11.4 Article 299(4): Developments Since 1957 in Relation
to Article 299(4) ............................................................... 126
11.4.1 Member State Accessions ............................................. 126
11.4.2 Impact of UK/Spanish Relations ..................................... 127
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.4.3 Lisbon Treaty Amendments to Article 299(4)</td>
<td>129</td>
</tr>
<tr>
<td>11.4.4 EU Legal Framework Governing Relations Between Gibraltar and EU</td>
<td>129</td>
</tr>
<tr>
<td>11.5 Conclusions</td>
<td>130</td>
</tr>
<tr>
<td>12 Art 299(5): Aland Islands</td>
<td>131</td>
</tr>
<tr>
<td>12.1 Introduction</td>
<td>131</td>
</tr>
<tr>
<td>12.2 Background</td>
<td>132</td>
</tr>
<tr>
<td>12.3 Overview of the Aland Islands</td>
<td>133</td>
</tr>
<tr>
<td>12.3.1 Constitutional Relations with Finland</td>
<td>134</td>
</tr>
<tr>
<td>12.4 Article 299(5): Developments Since Finnish Accession</td>
<td>135</td>
</tr>
<tr>
<td>12.5 EU Legal Framework Governing Relations Between the Aland Islands and the EU</td>
<td>136</td>
</tr>
<tr>
<td>12.6 Conclusions</td>
<td>138</td>
</tr>
<tr>
<td>13 Art 299(6): Faroe Islands, Sovereign Base Areas in Cyprus, Channel Islands and the Isle of Man</td>
<td>139</td>
</tr>
<tr>
<td>13.1 Introduction</td>
<td>139</td>
</tr>
<tr>
<td>13.2 Faroe Islands</td>
<td>140</td>
</tr>
<tr>
<td>13.2.1 Introduction and Background</td>
<td>140</td>
</tr>
<tr>
<td>13.2.2 Overview of the Faroe Islands</td>
<td>141</td>
</tr>
<tr>
<td>13.2.3 Constitutional Relations with Denmark</td>
<td>143</td>
</tr>
<tr>
<td>13.2.4 Developments Since Danish Accession</td>
<td>144</td>
</tr>
<tr>
<td>13.2.5 EU Legal Framework Governing Relations Between the Faroe Islands and the EU</td>
<td>145</td>
</tr>
<tr>
<td>13.3 Sovereign Base Areas of the UK in Cyprus</td>
<td>147</td>
</tr>
<tr>
<td>13.3.1 Introduction and Background</td>
<td>147</td>
</tr>
<tr>
<td>13.3.2 Overview of the SBAs</td>
<td>147</td>
</tr>
<tr>
<td>13.3.3 Constitutional Relations with the United Kingdom</td>
<td>149</td>
</tr>
<tr>
<td>13.3.4 Developments Since UK Accession</td>
<td>150</td>
</tr>
<tr>
<td>13.4 Channel Islands, Isle of Man</td>
<td>152</td>
</tr>
<tr>
<td>13.4.1 Introduction and Background</td>
<td>152</td>
</tr>
<tr>
<td>13.4.2 Overview of Channel Islands and Isle of Man</td>
<td>153</td>
</tr>
<tr>
<td>13.4.3 Constitutional Relations with the United Kingdom</td>
<td>155</td>
</tr>
<tr>
<td>13.4.4 EU Legal Framework Governing Relations Between the Channel Islands and the Isle of Man</td>
<td>156</td>
</tr>
<tr>
<td>13.4.5 Developments Since UK Accession</td>
<td>158</td>
</tr>
<tr>
<td>13.5 Conclusions</td>
<td>159</td>
</tr>
</tbody>
</table>
Part III Assessment of Article 299 and Lisbon Treaty Amendments as a Legal Framework for EU/Territories Relations
Proposed New Model EU Treaties Framework

14 General Introduction to Part III ........................................ 163
  14.1 Overview ............................................................... 163

15 Summary of Main Changes to Article 299 TEC Since 1957 .......... 165
  15.1 Introduction .......................................................... 165
  15.2 Structure of Article 299 ............................................ 165
  15.3 Relevant Member States and Territories .......................... 166
  15.4 Outermost Regions and OCTs (Article 299 (2) and (3)) ........ 166
  15.5 Territories for Whose External Relations a Member State is Responsible (Article 299(4)) ......................... 168
  15.6 Aland Islands and Territories not Part of the EU
    (Article 299(5) and (6)) ............................................... 168

16 Adequacy of Article 299 as a Legal Framework for
EU/Member State Territories Relations ................................. 169
  16.1 General Introduction ................................................ 169
  16.2 Article 299(1) .......................................................... 169
    16.2.1 Member State Accessions ...................................... 170
  16.3 Article 299(2) .......................................................... 174
    16.3.1 Member State Accessions ...................................... 174
  16.4 Article 299(3) .......................................................... 175
  16.5 Article 299(4) .......................................................... 176
  16.6 Article 299(5) .......................................................... 177
  16.7 Article 299(6) .......................................................... 177
  16.8 Conclusions ........................................................... 178

Reference ................................................................. 178

17 The Lisbon Treaty and the European Constitution
on Article 299: A Comparison ............................................. 179
  17.1 Introduction .......................................................... 179
  17.2 Lisbon Treaty .......................................................... 179
  17.3 European Constitution ............................................... 181
  17.4 Conclusions ........................................................... 189

18 Proposed New Model EU Treaties Framework for
Relations Between the EU and Member State Territories
and Final Observations ..................................................... 191
  18.1 Introduction .......................................................... 191
  18.2 Model Article 355(1) ................................................ 192
  18.3 Model Article 355(2) ................................................ 194
Annexes

Annex I Lisbon Treaty Provisions Governing EU/Member State Territories ........................................ 215

Annex II Article 227 TEC 1957. ........................................ 219

Annex III Article 226 TEC 1957. ........................................ 221

Annex IV Part Four (Articles 131–136) TEC 1957 .......... 223

Annex V Implementing Convention on the Association of Overseas Countries and Territories of the Community 1957 .................................................. 227

Annex VI Article 299 TEC 2009. ........................................ 233


Annex VIII Protocol No. 2 Spanish Act of Accession 1985 (Ceuta and Melilla) ...................................... 237

Annex IX Joint Declaration on the Azores and Madeira, Portuguese Act of Accession 1985 .................... 243

Annex X Declaration on the Outermost Regions, Maastricht Treaty 1992 ................................................ 245

Annex XI Declaration on the Overseas Countries and Territories, Maastricht Treaty 1992 ....................... 247

Annex XII Declaration No. 36 on the Overseas Countries and Territories, Amsterdam Treaty 1997 ........... 249

Annex XIII Part Four (Articles 182–188) TEC 2009 ........ 251
Annex XIV  Article 28 UK Act of Accession 1972 (Gibraltar) . . . . 255
           (Aland Islands) . . . . . . . . . . . . . . . . . . . . . . . . . 257
Annex XVI  Article 25(a) Danish Act of Accession 1972
           (Faroe Islands) . . . . . . . . . . . . . . . . . . . . . . . . . . 259
Annex XVII Protocol No. 2 Danish Act of Accession 1972
           (Faroe Islands) . . . . . . . . . . . . . . . . . . . . . . . . . . 261
Annex XVIII Protocol No. 3 Cyprus Act of Accession 2004
           (UK Sovereign Base Areas) . . . . . . . . . . . . . . . . . . . . 263
Annex XIX   Protocol No. 10 Cyprus Act of Accession 2004
           (UK Sovereign Base Areas) . . . . . . . . . . . . . . . . . . . . 269
Annex XX    Protocol No. 3 UK Act of Accession 1972
           (Channel Islands and Isle of Man) . . . . . . . . . . . . . . . 271
Source Materials . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 273
Selected Bibliography . . . . . . . . . . . . . . . . . . . . . . . . . . . . 273
Table of Treaties . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 274
Table of Legislation . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 276
EU Papers . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 279
Table of Written Questions . . . . . . . . . . . . . . . . . . . . . . . . . . . . 280
Table of Selected Cases . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 280
Index . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 283
The European Union and Member State Territories: A New Legal Framework Under the EU Treaties
Murray, F.
2012, XX, 285 p., Hardcover
A product of T.M.C. Asser Press