

INDEX

Abbreviations used in the index

- ACHPR (African Charter on Human and Peoples' Rights (1981) (Banjul Charter))
ACHPRP (Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998))
ACtHPR (African Court on Human and Peoples' Rights)
ARC (Autonomous Republic of Crimea)
CERD (UN Committee/Convention on the Elimination of Racial Discrimination (1965))
CIL (Customary International Law)
CMM (Conservation and Management Measures)
CPLR (Civil Practice Law and Rules of New York)
ECHR (European Convention on Human Rights (1950))
FRCP (Federal Rules of Civil Procedure (US))
FSIA (Foreign Sovereign Immunities Act (1976) (US))
I-USTA (Iran-US Treaty of Amity, Economic Relations, and Consular Rights (1955))
ICJ (International Court of Justice)
ICSFT (International Convention for the Suppression of the Financing of Terrorism (1999))
ILC (International Law Commission)
ILC(DP) (ILC [Draft] Articles of Diplomatic Protection (2006/2009))
ILC(SR) (ILC Draft Articles on the Responsibility for States for Internationally Wrongful Acts (2001))
ITRSHRA (Iran Threat Reduction and Syria Human Rights Act (2012) (US))
JCOA (Joint Comprehensive Plan of Action)
PIL (public international law)
SIA (State Immunity Act (1978) (UK))
SPRFMO Commission (Commission of the South Pacific Regional Fisheries Management Organisation)
SPRFMO Convention (Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (2012))
SPRFO (South Pacific Regional Fisheries Organisation)
TRIA (Terrorism Risk Insurance Act (2002) (US))
UNCLOS (UN Convention on the Law of the Sea (1982))
UNGA (UN General Assembly)
UNSCR (UN Security Council Resolutions)
VCDR (Vienna Convention on Diplomatic Relations (1961))
VCLT (Vienna Convention on the Law of Treaties (1969))

abuse of process

- abuse of rights, relationship with 209-13
conduct amounting to abuse of process 193-4
exceptional circumstances basis for rejection of claim 193, 195-6
importance in international law 209-15
interpretation difficulties 216-17
risk of illegitimate advantage 193, 195-6

ACHPR (1981), by article

- 1 (recognition of rights) 261-4, 267-8
4 (right to life) 261-6, 272-3, 288-91
5 (right to dignity) 266-7

ACHPR (1981), by article (cont.)

- 7(1)(a) (right to be heard by competent court) 260-1
- 7(1)(d) (right to be tried within reasonable time) 255-7
- 26 (duty to guarantee judicial independence) 264

ACHPRP (1998), by article

- 3(1) (jurisdiction) 229-30

ACtHPR

- jurisdiction of court
 - admissibility 229-32
 - appellate jurisdiction, as 230-1
 - exhaustion of local remedies 232-4
 - failure to file within reasonable time 234-7

ACtHPR, Rules of Court, by rule

- 26 (jurisdiction) 229-31
- 39(1) (preliminary examination of jurisdiction and admissibility) 229, 232, 250-1
- 40 (admissibility of application) 232-4, 250-1
- 63 (reparations) 268-9

ACtHR, Rules of the Court (2010), by rule

- 26 (jurisdiction) 229-31
- 30 (legal costs) 237, 276
- 39 (preliminary examination of competence of the Court) 229-30, 232, 247, 250, 281
- 40 (admissibility of applications) 229, 232-6, 246, 250, 254, 279, 281
- 60 (Court deliberations) 278
- 63 (judgment on reparations) 268-9

***Anthony and Kisite v. United Republic of Tanzania* (jurisdiction and admissibility) 225-37**

- background and facts
 - alleged violations 228
 - application subject matter 227-8
 - overview 225-6
 - parties 227
 - submissions of the parties 229
 - violation of Constitutional rights 228

costs 237

Court ruling 226, 237

jurisdiction of ACtHPR

- admissibility 231-2
- appellate jurisdiction 230-1
- limitations of 230-1
- objections, basis for
 - failure to file application within reasonable time 234-7
 - non-exhaustion of local remedies 232-4
- preliminary investigations 231-2
- scope of 229-31

jurisdiction of ACtHPR—jurisprudence

- African Commission on Human and Peoples' Rights v. Kenya* 234
- Amiri Ramadhani v. Tanzania* 236
- Norbert Zongo v. Burkina Faso* 235-6
- Werema Wangoko v. Tanzania* 236

burden of proof

- barriers to admissibility 429
- general principles 428-30
- jurisdictional issues 432-3

central banks

assets

immunity from attachment in execution of damages for state-sponsored terrorism
591-2, 613-14

ownership of blocked assets 609-12

state immunity 588-9, 594, 613-14, 620, 626

Chambers v. United States (jurisdiction of employment tribunal)

background and facts

claims of parties 553-4

conclusions 551

facts 555-8

overview 551

conditions of employment

overview 556-8

role and responsibilities 558-63

whether performing sovereign functions 571-2

state immunity, applicable law 557, 563-4

CIL 568-70

excluded matters 564-7

general provisions 563-4

Sengupta v. India 568-9

training 558-63

Court conclusions 571-2

jurisdiction of employment tribunal

importance of employment functions to mission of US air base 571-2

investigation of US policies relating to sovereign functions performed within
employment duties 571

sovereign functions performed within employment duties 571-2

state immunity, applicable law

CIL 568-70

common law principles 567-8

Benkharbouche v. Secretary of State for Foreign and Commonwealth Affairs 568,
571

I Congreso del Partido 567-9

Littrell v. USA 567

contracts of employment, application to 568-70

I Congreso del Partido 568-9

Sengupta v. India 568-9

SIA 1978

1(1) (general immunity) 563, 564

4 (contracts of employment) 564

16(2) (excluded matters) 564-7

Harrington v. USA 566-7

Hicks v. USA EAT 566, 571

Holland v. Lampen-Wolfe 564-5, 571

Littrell v. USA (No 2) 565-6

Webster & Wright v. USA 567

CIL

conventional and customary standards, relationship between 291

Commission of the South Pacific Regional Fisheries Organisation

objection by Ecuador to decision of: see *Objection by the Republic of Ecuador to a
Decision of the Commission of the South Pacific Regional Fisheries
Organisation*

Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, 2012
interests of developing states 527

death penalty (municipal law/general)

mandatory death penalty

ACHPR 4, interpretative conflicts with 288-91

arbitrariness assessment criteria 262-5

moral prejudice and psychological suffering, compensation for 240, 272-3

non-material losses relating to 272-3

reparations for 286-7

right to dignity, and 267

status in international law, conflicts with compulsory sentences 283-7

violation of right to life, as 239, 240, 261-8

whether constitutes torture and inhuman and degrading treatment 240, 266-7

right to life, and

mandatory death penalty as violation of 239, 240, 261-7

death penalty, abolition

ICCPR 6(1) 263, 284-6, 289

mandatory death penalty as violation of right to life 239, 240, 261-8

death penalty, jurisprudence

Eddie Johnson Dexter case 284

Eversley Thompson v. St. Vincent & the Grenadines 263, 286-7

Forum of Conscience v. Sierra Leone 263

Hilaire, Constantine & Benjamin v. Trinidad & Tobago 263-4

Interights (on behalf of Bosch) v. Botswana 262

International Pen (Ken Saro-Wiwa) v. Nigeria 262-3

differential treatment, justification/requirements (ECHR 14)

administrative practice as violation 499-501

dignity, right to

mandatory death penalty 267

diplomatic premises, designation

criteria

actual or effective assignment 25-6

choice, discretion over 26, 28, 30-1

mutual consent 27

presumption of validity 28

prior consent requirement 24-5, 32, 46

transfer of premises 24-5, 36-7, 42, 45

verification procedures 41-2

objection to designation

actual and effective use 40-1, 44-6

criminal proceedings, involvement in 45-6

imposition of choice, amounting to 42-3

non-arbitrary and non-discriminatory nature of 39-48

premises as private domain 20, 35, 40, 42, 44-5

prior dealings, consistency 42-4, 47

scope of restrictions on 33-4

timeliness 38-9, 48

validity 33-8

diplomatic premises, inviolability (including VCDR 22)

disputed status of premises 33-8

“premises of the mission” 23, 26-7, 45-6

whether breach of 27, 35, 49

scope of inviolability 83, 95-6, 98-9, 108-12, 117-18, 120, 124-5, 125-6, 140-1

searches, legality of 65-71, 79-80, 145-6, 148-9

state responsibility (ILC (DP)) 148-9

diplomatic relations

rights and duties of states regarding 104-5, 107

ECHR (1950), applicability within their jurisdiction (ECHR 1)

effective control test 326-42, 364-7, 431-58

administrative practice, meaning 430-1

official tolerance 431

repetition of acts 431

state agent authority and control 448-9

extraterritorial jurisdiction

exceptional circumstances, standard of proof 451

sovereign entitlement to 437

recognition of change to territorial integrity 460-1

state military presence, conduct and strength of 452-7

state’s jurisdictional competence under PIL 460-1

territorial principle 446

ECtHR

jurisdiction

applicability to ARC: *see Ukraine v. Russia (Re Crimea)*

ECtHR, Rules of Court (2023), by rule

28 (inability to sit, withdrawal or exemption) 316, 317

39 (interim measures) 294, 296, 315, 501

42(1) (joinder of applications) 486, 503

44(3) (third-party intervention) 315

51 (assignment of applications) 314, 316-17, 486, 502-3

58(1) (inter-state applications) 486, 503

71(1) (applicability of procedural provisions) 316, 317, 486, 503

72 (relinquishment of jurisdiction) 316

education, right to (ECHR Protocol 1:2)

native language, in

administrative practice in violation 495-7

evidence (ICJ)

burden/standard of proof

assessment of evidence, principles for 428-30

jurisdictional issues 432-3

exhaustion of local remedies

ACtHPR jurisdiction 232-4, 239-40, 250-2, 278-80

exhaustion of local remedies (ECHR 35(1))

applicability of rules 431, 464-5

evidentiary threshold 431-2, 465-6

expropriation/nationalization

act of genocide, as 666-8, 670-4

expropriation/nationalization (cont.)

applicable law

general principles of international law 668

domestic takings rule

property belonging to country's own nationals, applicability to 670, 675

statutory intention 665, 668-70, 675

whether violation of human rights law 664-5, 670-4

whether violation of international law 664, 667-70

whether violation of international law of expropriation 667, 671, 676

domestic takings rule—jurisprudence

Banco Nacional de Cuba v. Farr 670*Banco Nacional de Cuba v. Sabbatino* 668-70*F. Palicio y Compañía v. Brush* 670*Gudmundsson v. Iceland* 669*Jurisdictional Immunities of the State* case 664*Republic of Austria v. Altmann* 670**expropriation/nationalization, compensation**

Holocaust victims' restitution mechanisms 675

fair and public hearing, entitlement (ECHR 6)

administrative practice in violation 481-2

fair hearing (right to be heard) (ACHPR 7)

competent court, by 260-1

duty to guarantee judicial independence 264

right to hearing within reasonable time (ACHPR 7(1)(d)) 255-7

family/private life, respect for/freedom from interference (ECHR 8(1))

enforced citizenship 483-5

Federal Republic of Germany and Others v. Philipp and Others

background and facts

Court conclusions (summary) 664-5

overview 663-4

Court ruling

expropriation of property

act of genocide, as 666-8, 670-4

commercial property exception 672, 674-5

domestic takings rule 668-70

exception for property taken in violation of international law 667-8

general principles of international law 668

Holocaust victims' restitution mechanisms 675

property belonging to country's own nationals 670

violation of human rights 666-8, 670-4

whether "art exhibition activities" constitute commercial activity 674-5

factual background

claims and suits 666-8

"foreign state", meaning 667

sale of relics 665-6

FSIA, by section

1604 (jurisdiction over foreign state) 667

1605A (terrorism exception) 673

1605(a)(2) (commercial activity exception) 672, 674-5

1605(a)(3) (expropriation exception) 664-5, 667-8, 671-5

- human rights
 - expropriation of property as act of genocide 666-8, 670-4
 - whether domestic takings rule as violation of 664-5, 670-4
- human rights—jurisprudence
 - Permanent Mission of India to United Nations v. City of New York* 671
 - Taggart v. Lorenzen* 671
- international law
 - general principles of 668
 - international law of expropriation 667, 671, 676
 - state immunity, applicability to 667-8
 - whether domestic takings rule as violation of 664, 667-70
 - Banco Nacional de Cuba v. Sabbatino* 668-70
- state immunity
 - applicable international law 667-8
 - domestic takings rule
 - property belonging to country's own nationals, applicability to 670, 675
 - statutory intention 665, 668-70, 675
 - whether violation of human rights law 664-5, 670-4
 - whether violation of international law 664, 667-70, 676
 - whether violation of international law of expropriation 667, 671, 676
 - domestic takings rule—jurisprudence
 - Banco Nacional de Cuba v. Farr* 670
 - Banco Nacional de Cuba v. Sabbatino* 668-70, 673
 - F. Palicio y Compañía v. Brush* 670
 - Gudmundsson v. Iceland* 669
 - Malewicz v. Amsterdam* 674-5
 - Republic of Austria v. Altmann* 670, 672, 675
 - exceptions
 - commercial activities 672, 674-5
 - general 664-5
 - human rights, relationship with 673-4
 - Nazi-era claims 675
 - non-commercial tort 673
 - restrictive theory 672-3
 - terrorism 673
 - Nelson* 674
 - jurisdiction over foreign state 667-8
 - Argentine Republic v. Amerada Hess Shipping* 667
 - Saudi Arabia v. Nelson* 667
 - presumption of immunity 667
- state immunity—jurisprudence
 - Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling* 668, 673-4
 - Jurisdictional Immunities of the State* case 664, 672
- US law interpretation
 - foreign policy consequences 673-4
 - international law and human rights law, relationship with 673-4
- US law interpretation—jurisprudence
 - Kiobel v. Royal Dutch Petroleum Co.* 674
 - RJR Nabisco v. European Community* 674
- fisheries, conservation and management measures (general)**
 - fishery resources allocation, whether decision unjustifiably discriminatory: *see* *Objection by the Republic of Ecuador to a Decision of the Commission of the South Pacific Regional Fisheries Organisation*

freedom of assembly/association (ECHR 11)

administrative practice as violation 492-4

freedom of expression/freedom of the press (ECHR 10)

administrative practice as violation 490-2

apprehension/intimidation of journalists 490-2

suppression of media 490-1

freedom of movement (ECHR Protocol 4:2)

administrative practice as violation 497-9

FSIA 1976 (USA), by section

1603 (definition of foreign state) 588-9

1604 (jurisdiction over foreign state) 667

1605A (terrorism exception) 588-9, 673

1605(a)(2) (commercial activity exception) 672, 674-5

1605(a)(3) (expropriation exception) 664-5, 667-8, 671-5

1610 (exceptions to immunity relevant to fulfilment of judgment) 588-9

1611 (central banks) 588, 594

General Assembly Resolutions in number/date order

217A (III) of 10 December 1948 on the Universal Declaration of Human Rights 266, 289, 303, 484, 669

2625 (XXV) of 24 October 1970 on the Principles of International Law concerning Friendly Relations and Co-operation among States 105

61/295 of 13 September 2007 on the Rights of Indigenous Peoples 354

68/262 of 27 March 2014 on the territorial integrity of Ukraine 381

71/205 of 19 December 2016 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) 381-2

genocide

whether expropriation of property as act of 666-8, 670-4

ICCPR, by article

6(1) (right to life)

death penalty, abolition of 263, 284-6, 289

ICJ

jurisdiction *ratione materiae*: see *Islamic Republic of Iran v. United States of America* (Alleged violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights) (Preliminary Objections)

ICJ Rules of Court (1978 as amended), by rule

79 (admissibility of jurisdiction) 174, 196, 198, 200

***Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Merits)* (principal ruling) 1-50**

background and facts

chronology of proceedings 11-14

overview 2-4, 19-22

submissions of the Parties

Equatorial Guinea 15-19

France 18-19

ruling

background and facts 2-4, 19-22

consideration of submissions 49

Court conclusions 4-6, 48, 50

- jurisdiction 13-14
- “premises of the mission”
 - a contrario* interpretation 27, 31
 - circumstances in which property acquires status as under VCDR 23-34
 - actual or effective use 28, 40-1
 - agreement versus notification 32-3
 - date of occupancy 35-8
 - implicit consent 27
 - imposition of choice by receiving state 30-1, 42-3
 - prior State practice 25, 32
 - definition 23-4, 28
 - designation as
 - actual or effective assignment 25-6
 - choice, discretion over 26, 28, 30-1
 - mutual consent 27
 - presumption of validity 28
 - prior consent requirement 24-5, 32, 46
 - transfer of premises 24-5, 36-7, 42, 45
 - verification procedures 41-2
 - inviolability of premises 23, 26-7, 45-6
 - whether breach of 27, 35, 49
 - object and purpose of VCDR 24-5, 27-9
 - objection to designation
 - actual and effective use 40-1, 44-6
 - criminal proceedings, involvement in 45-6
 - imposition of choice, amounting to 42-3
 - non-arbitrary and non-discriminatory nature of 39-48
 - premises as private domain 20, 35, 40, 42, 44-5
 - prior dealings, consistency 42-4, 47
 - scope of restrictions on 33-4
 - timeliness 38-9, 48
 - validity 33-8
- separate and dissenting opinions: *see Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Merits)* (separate opinions)
- VCDR, interpretation of
 - balance of obligations to avoid abuse 30-1
 - circumstances in which property may acquire “premises of the mission” status 32-3
 - customary international law 28
 - diplomatic immunity, terms of applicability 29-30
 - diplomatic staff as *personae non gratae* 24, 30
 - discretionary power, exercise in good faith requirement 33
 - mutual consent requirement for diplomatic relations 29-31
 - object and purpose 24-5, 27-9, 30-1
 - prior practice, consistency with 32
 - Nicaragua v. Colombia* 31
- VCLT
 - agreement of parties, conduct amounting to 32
- Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Merits)***
(separate opinions)
 - Bhandari, J (dissenting opinion)
 - Conclusions 118-25
 - diplomatic privileges, law of, generally

Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Merits)
(separate opinions) (cont.)

- customary international law interpretation 108-9, 112
- historical development 100-2
- ILC (DP) 102-3, 107-8, 118
- principles of 101-2
- VCDR, background 100-4
- overview 8-9
- “premises of the mission”
 - actual use requirement 113-14, 118-22, 124-5
 - agreement of parties 108-11
 - consent requirement 99-100, 108, 110-11, 114, 123
 - customary law interpretation 112, 116-18
 - definition 112
 - designation procedures 110-11
 - inviolability 108-12, 117-18, 120, 124-5
 - notification of designation 110
 - objection criteria 114, 122-3
 - objections, validity of 121-4
 - ownership, relevance of 113
 - recognition 120
 - subsequent practice 116-17
- sovereign equality and mutual consent principles
 - applicability to VCDR 104-5
 - historical basis for 105-6
 - importance of 106-7
 - United States Diplomatic and Consular Staff in Tehran* 106
- treaty interpretation
 - ILC (DP) 118
 - North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* 117
 - VCLT general rules, applicability 116-18
- VCDR, commentary on
 - historical background 100-4
 - objects and purpose 104-6, 114-15, 123
 - sovereign equality principle 104-5
- Gaja, J (dissenting opinion)
 - overview 7-8
 - “premises of the mission”
 - abuse of right 85
 - consent requirement, whether need for 82-5
 - customary law 83-4
 - definition 82-3
 - inviolability, scope of 83
 - objections, implications of passing tests 83
 - right of refusal, examples of 83-4
- Kateka, Judge ad hoc (separate opinion)
 - conclusions 164
 - diplomatic relations
 - mutuality and reciprocity of obligations 154-5
 - majority ruling, criticism of
 - consent requirement 156-60
 - diplomatic obligations, importance of 154-5

- inconsistency of practice 159-60
- personae non gratae* analogy 158
- preliminary issues 153-6
- status of premises of mission 161-4
- VCDR preamble, interpretation of 155-6
- overview 10, 152-3
- “premises of the mission”
 - actual or effective use 160-4
 - alleged abuse of rights 162-3
 - attachment of building 159-61
 - commencement date of diplomatic status 163-4
 - consent or non-objection requirement 156-60
 - objections, tests for 162-3
- Robinson, J (dissenting opinion)
 - alleged violations of VCDR
 - abuse of rights 148-9
 - attachment of building 145-6
 - confiscation of building 146
 - dignity of building 146
 - remedies for 147-8
 - searches, legality of 145-6
 - United States Diplomatic and Consular Staff in Tehran* 148
- conclusions 149-52
 - France v. United States of America* 150
- diplomatic relations, generally
 - declarations of *personae non gratae* 131
 - mutual consent principle 126, 131
 - sovereign equality principle, interpretation in light of 132
 - VCDR preamble, interpretation of 131-4
- majority ruling, criticism of
 - object and purpose of VCDR, interpretation of 131-4, 151-2
 - power of objection, conflicts with prior consent requirement 126-30, 134, 149-50
 - state practice, interpretation 134-7
 - “used for the purposes of the mission”, interpretation 137-45
- overview 9-10
- “premises of the mission”
 - attachment status 145-6
 - consent requirement, *a contrario* interpretation 136-7
 - customary practice, relevance of 134-7, 144
 - definition 125-6, 137
 - denial of status conflicts with purpose 125-6
 - inviolability of 125-6, 140-1
 - majority interpretation, criticism of 125-9, 150-1
 - mutual consent principle, consistency with 131
 - objection to designation, scope of power 126-31, 134, 136, 150
 - prior consent requirement 127-30
- remedies for alleged violations of VCDR
 - assurances and guarantees of non-repetition 147-8
 - cessation 147
 - compensation 148
 - satisfaction 148

Immunities and Criminal Proceedings (Equatorial Guinea v. France) (Merits)
(separate opinions) (cont.)

“used for the purposes of the mission”

actual use 139-45

definitions 137-8

intention to use 141-4

jurisprudence

Bennett and Ball v. Hungary 142

Cassirer and Geheeb v. Japan 142

Democratic Republic of the Congo v. Segrim 140-2

Greece v. B 143

Tietz v. Bulgaria 142

Weinmann v. Latvia 142

object and purpose of VCDR, and 137-8, 145

private residences 140-2

subsequent practice 144

VCDR, interpretation

conflicts of interests and obligations between States 133-4, 151-2

mutual consent principle, consistency with 131

object and purpose 131-4, 151-2

power to object, scope of 135-6

preamble 131-4

treaty interpretation rules, and 136

Sebutinde, J (separate opinion)

abuse of rights by Equatorial Guinea 96-9

United States Diplomatic and Consular Staff in Tehran 98-9

abuse of VCDR obligations by France 95-6

Court jurisdiction 86, 95-6

overview 8

“premises of the mission”

actual use requirement 87-9

confiscation of premises, legality of 95-6

criteria for designation, VCDR provisions 85-7, 93

inviolability of 95-6, 98-9

ownership distinguished from assignment and use 86-8, 92-3, 98

prior consent requirement 93-4, 93-6

transfer of diplomatic premises 89-93

Xue, Vice-President (dissenting opinion)

objection to designation of “premises of the mission”

non-arbitrariness 79-80

non-discrimination 81

timeliness 79

overview 7

scope of dispute

acceptance of diplomatic representations 74-5

criminal investigation searches, validity of 79-80

customary law, relevance of 75-6

interpretation of 73-6, 78

“premises of the mission”, ownership of 73-6

VCDR provisions

designation of premises, right of choice 77-8

mutual consent principle 76-8

- Yusuf, President (separate opinion)
 conclusion 71-2
United States Diplomatic and Consular Staff in Tehran 72
 diplomatic immunity of “premises of the mission”
 scope of 70-1
 whether searches constituted breach 65-71
 overview 6-7
 “premises of the mission”, criteria for designation
 inviolability of diplomatic premises 55
 jurisprudence
Bennett and Ball v. Hungary 54
Cassirer and Gebeeb v. Japan 54
Certain Iranian Assets 58
Croatia v. Ru-Ko 55-6
Echref v. Fanner 53-4
Jurisdiction over Yugoslav Military Mission (Germany) Case 54-5
Manoilescu and Dobrescu v. Romania and Russia 56
Nicaragua v. Colombia 58-9
North Sea Continental Shelf cases 58
Qatar v. Bahrain 58-9
R v. Secretary of State for Foreign and Commonwealth Affairs (ex parte Samuel) 55
Suède v. Petrochino 53
Tietz v. Bulgaria 54
Tunisia/Libya and Libya/Malta 58
Ukraine v. Russia 57-8
 ownership of building, relevance of 53
 prior consent or power to object requirement
 CIL basis for, whether 51, 62-4
USA v. Iran 61-2
 VCDR provisions, whether basis in 60-5
 treaty operative provisions, customary law interpretation 57-9
 use, interpretation of 51-9
- indigenous peoples**
 UN Declaration 354
- Iran-US Treaty of Amity, Economic Relations, and Consular Rights 1955**
 Article XXI, alleged violations: see *Islamic Republic of Iran v. United States of America*
 (Alleged violations of the 1955 Treaty of Amity, Economic Relations and
 Consular Rights) (Preliminary Objections)
- Islamic Republic of Iran v. United States of America* (Alleged violations of the
 1955 Treaty of Amity, Economic Relations and Consular Rights)
 (Preliminary Objections) 166-224**
- background and facts
 chronology of proceedings 171-6
 overview 166-8, 177-81
 submissions of the parties 176-7
- Court ruling
 admissibility of claims and whether abuse of process 193-6
 conduct amounting to abuse of process 193-4
 exceptional circumstances basis for rejection of claim 193, 195-6
 jurisprudence
Border and Transborder Armed Actions (Nicaragua v. Honduras) 196
Certain Iranian Assets 169, 170, 195
Immunities and Criminal Proceedings (Equatorial Guinea v. France) 195
Jadhav (India v. Pakistan) 195

Islamic Republic of Iran v. United States of America (Alleged violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights) (Preliminary Objections) (cont.)

- risk of illegitimate advantage 193, 195-6
- conclusions 186, 193, 196, 201-2
- jurisdiction of court on basis of I-USTA XXI(1)(b)/XXI(1)(d) 196-201
 - applicability of preliminary objections at merits stage 198-9
 - “fissionable materials”, measures relating to 197-201
 - jurisprudence
 - Certain Iranian Assets* 200
 - Military and Paramilitary Activities in and against Nicaragua* 201
 - Oil Platforms* case 199-200
 - protection of essential security interests 197-201
- jurisdiction of court *ratione materiae* 181-93
 - overview 181-2
 - subject-matter of dispute 182-6
 - third country measures 186-93
- overview 168-70
- subject-matter of dispute 182-6
 - claims overview 182-4
 - jurisprudence
 - Fisheries Jurisdiction (Spain v. Canada)* 184-5
 - Nuclear Tests (Australia v. France)* 184
 - Nuclear Tests (New Zealand v. France)* 184
 - Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* 184-5
 - Oil Platforms* case 169, 170, 185
 - United States Diplomatic and Consular Staff in Tehran* 185
 - whether dispute concerned interpretation and application of I-USTA 184-5
 - whether dispute concerned interpretation and application of JCPOA 185-6
- third country measures 186-93
 - categorization of measures 187-8
 - compromissory clause impact on JCPOA dispute settlement mechanism 184, 190, 195-6
 - jurisprudence
 - Immunities and Criminal Proceedings (Equatorial Guinea v. France)* 190
 - Oil Platforms* case 190
 - Ukraine v. Russian Federation* 193
 - sanctions, reimposition of 187-8
 - whether measures were breaches of I-USTA 188-93
- separate declarations and opinions
 - Brower, J (separate, partly dissenting opinion) 206-24
 - abuse of process
 - abuse of rights, concept development from 209-13
 - admissibility due to 207-17
 - importance in international law 209-15
 - interpretation difficulties 216-17
 - risk of illegitimate advantage 215-16
 - disincentive effects of ruling on state agreement to non-legally binding dispute settlement 215-16
 - I-USTA XXI(1), interpretation of
 - distinctions between paragraphs (a)-(d) 217-19
 - “nuclear-related” and “fissionable material” 219-21, 223-4

- object and purpose of I-USTA 222-4
- “relating” 219-20
- sanctions, alleged violation of treaty by reimposition of 221-2
- VCLT 31, and 222-4
- issues for consideration at merits stage 217-24
- jurisprudence
 - August Aerial Incident of 10 1999 (Pakistan v. India)* 212
 - Ambatielos* case 210
 - Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case 212
 - July Arbitral Award of 31 1989 (Guinea-Bissau v. Senegal)* 211
 - Avena and Other Mexican Nationals* 212-13
 - Certain German Interests* 209
 - Certain Iranian Assets* 214-15, 217-18, 223
 - Certain Phosphate Lands in Nauru* 211-12, 215
 - Certain Questions of Mutual Assistance in Criminal Matters* 213
 - Competence of the General Assembly for the Admission of a State to the United Nations (Advisory Opinion)* 210
 - Fisheries Jurisdiction (Spain v. Canada)* 210
 - Free Zones* case 209
 - Immunities and Criminal Proceedings (Equatorial Guinea v. France)* 209, 213-15
 - Military and Paramilitary Activities in and against Nicaragua* 217, 222
 - Oil Platforms* case 217-18
 - South West Africa* cases 210-11
- nuclear-related sanctions
 - alleged violation of treaty by reimposition of 221-2
 - statements against as form of admission 222
- overview 170-1, 206
- Tomka, J (declaration) 202-6
 - jurisdiction *ratione materiae* 204-6
 - matters to be decided at merits stage 203-4, 206
 - object and purpose of I-USTA 205
 - overview 170
 - third country measures, interpretation of 202-3

Joint Comprehensive Plan of Action 2015 118, 166-7, 170, 179-88, 193-6, 216, 220-1

judicial impartiality

duty to guarantee judicial independence (ACHPR 26) 264

liberty and security of person, right to (ECHR 5)

administrative practice as violation 478-81

life, right to (ECHR 2/ACHPR 4)

administrative practice as violation 474-5, 474-8

alleged killing and shooting 475-6

alleged disappearances 476-7

mandatory death penalty

abolition, international law trend 266, 289-91

arbitrariness assessment criteria 262-4

non-material losses related to 272-3

nationality, right to

enforced citizenship 395-8, 411-12, 483-5

nuclear equipment

fissionable materials, interpretation under I-USTA XX1(1) 197-201, 219-21, 223-4

Objection by the Republic of Ecuador to a Decision of the Commission of the South Pacific Regional Fisheries Organisation

background and facts

arguments of the parties

alternative measures 533-7

failure to address special requirements of developing coastal states 526-7

inconsistency of CMM with international conventions 526-30

procedural validity of the objection 525-6

“reserve” treatment in alternative measures 533-4

TAC (Resources), differences from TAC (Applicable Areas) 533-7

unjustifiable discrimination in CMM 530-3

CMM for Chilean Jack mackerel stocks (*Trachurus murphyi*)

CMM 01-2018 520-4

Ecuador’s objection to CMM 01-2018 524

history and development, general 514-20

Interim Measures 516

“reserve” stocks, alternative measures 533-7

Review Panel on 515-17

Russian Federation objection 515, 517

sustainability, perceptions of 535-6

Vanuatu objection 523-4, 536, 549

conclusion 505-7

international instruments

SPRFMO Commission 514, 537

SPRFMO Convention 513-14, 537

Straddling Fish Stocks Agreement, 1995 513

UNCLOS 513

overview 505

written submissions of the parties 510-13

Court ruling

alternative measures

obligation to assess whether alternative measures are equivalent in effect 544-7

one-off transfers, validity of 549

“reserve” stocks, interpretation of 546-7

whether measures equivalent in effect to objected measures should be accepted 544

conclusions and recommendations 549-50

costs 550

defined terms 508-9

inconsistency of CMM with international conventions 539-41

guidance on allocation in 1995 Agreement 539-40

incorrect application of SPRFMO Convention 539-40

possible solutions for 548-9

whether exceeding margin of discretion 539-41

procedural history of case 509-13

procedural validity of objections 538-9

- SPRFO (South Pacific Regional Fisheries Organisation)
 - allocation of fishery resources outside margin of discretion 539-41
 - extraordinary meetings, power of Reserve Panel to convene 547-8
 - Reserve Panel competence, scope and limitations of 547-8
- unjustifiable discrimination
 - allocations to developing states as 544
 - good faith presumption 543
 - procedural discrimination 541-4
 - rejection of proposal in absence as 543-4
 - substantive discrimination 544

- peaceful enjoyment of possessions (ECHR Protocol 1:1), deprivation/interference with**
 - administrative practice 494-5
 - Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen***: see *Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen* (background and facts); *Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen* (Court rulings)
 - Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen* (background and facts)**
 - case overview 574-5, 580-2
 - factual background 582-8
 - judgment summaries in date order
 - District Court (13 March 2013) 575-7
 - Court of Appeals (9 July 2014) 577-8
 - Supreme Court (20 April 2016) 578-80
 - laws relevant to all motions
 - Executive Order 13599 (2012) 590-2, 613
 - Foreign Sovereign Immunities Act 1976 (FSIA), by section 588-9
 - 1603 (definition of foreign state) 588-9
 - 1605A (terrorism exception) 588-9
 - 1610 (exceptions to immunity relevant to fulfilment of judgment) 588-9
 - 1611 (central banks) 588, 594
 - International Emergency Economic Powers Act 1977 (IEEPA) 590
 - Terrorism Risk Insurance Act 2002 (TRIA)
 - Section 201(a) (terrorist party, definition) 590
 - Threat Reduction and Syria Human Rights Act 2012 Section 502 (interests in blocked assets) 592-4
 - parties 582
 - Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen* (Court rulings)**
 - District Court ruling
 - blocked assets
 - central banks 591-2, 609-12
 - location 612-13
 - ownership 609-12, 619-21, 626
 - subject to execution or attachment relevant to fulfilment of judgment 590-2
 - terrorist parties 590, 610
 - Central Bank of Iran
 - blocked assets
 - ownership of 609-12
 - subject to execution or attachment 591-2, 613-14
 - state immunity 588-9, 594, 613-14

***Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen* (Court rulings)** (cont.)

- constitutional conflicts 621-5
 - bills of attainder and *ex post facto* law 622-3
 - separation of powers 621-2
 - unconstitutional taking of protected property 623-5
- Court conclusions 627-8
- definitions
 - financial assets 593
 - foreign state 589
 - Iran 593
- Foreign Sovereign Immunities Act 1976 (FSIA)
 - central banks immunity 588, 594, 606, 613-14, 620, 626
 - conflict of laws 613
 - definition of foreign state 588-9
 - exceptions to immunity relevant to fulfilment of judgment 588-9, 626-7
 - interests in blocked assets 622-3
 - location of blocked assets 612
 - terrorism exception 588-9
- I-USTA obligations
 - subject matter jurisdiction 613
- Iran Threat Reduction and Syria Human Rights Act 2012 (22 USC 8772)
 - interests in blocked assets 592-4, 613
 - unconstitutional taking of assets 624-5
- jurisdiction due process requirements
 - minimum contacts 599-600, 603, 605
 - Burger King v. Rudzewicz* 599
 - Eskofot v. E.I. Du Pont De Nemours* 599-600
 - International Shoe Co. v. Washington* 599, 603
 - Worldwide Volkswagen v. Woodson* 599
 - reasonableness 600, 603, 605
 - Asahi Metal Indus. Co. v. Superior Court* 600, 603, 605
 - Chloe v. Queen Bee of Beverly Hills* 600
 - Kernan v. Kurz-Hastings* 600
 - MacDermid v. Deiter* 600
- motions of parties: Bland Group motion for execution 626-7
 - Estate of Steven Bland v. Islamic Republic of Iran* 626-7
 - Ferrostaal Metals v. S.S. Lash Pacifico* 627
 - Gadsby & Hannah v. Romania* 627
- motions of parties: Defendants' motions to dismiss
 - Bank Markazi
 - ownership of blocked assets 609-12
 - political question, judicial authority to decide on 607-9
 - standard of review for personal jurisdiction 606
 - subject matter jurisdiction 606-7
 - Clearstream and UBAE
 - due process factors 599-600, 603-5
 - general jurisdiction under CPLR 301 595, 604-5
 - minimum contacts necessary for domestic law jurisdiction 599-600
 - reasonableness 600
 - specific jurisdiction under CPLR 302(a)(1) 595-8, 600-2, 605
 - standard of review for personal jurisdiction 594-5
 - statutory jurisdiction under FRCP 4(k)(1)(A) 595
 - statutory jurisdiction under FRCP 4(k)(2) 598-600, 602-4

- motions of parties: Defendant's motion to vacate restraints
 - background and procedural history 614-16
 - political question argument 616-17
 - motions of parties: Plaintiff's motion for partial summary judgment
 - arguments against turnover 625-6
 - constitutional arguments 621-5
 - bills of attainder and *ex post facto* law 622-3
 - separation of powers 621-2
 - unconstitutional taking of protected property 623-5
 - constitutional arguments—jurisprudence
 - Axel Johnson v. Arthur Andersen* 622
 - City of Cleburne v. Cleburne Living Center* 625
 - Consol. Edison v. Pataki* 622
 - Hausler II* 624
 - In re 650 Fifth Ave. and Related Props* 625
 - Kelo v. City of New London* 624
 - Lucas v. S.C. Coastal Council* 623, 624
 - Nixon v. Adm'r of Gen. Svs* 622
 - Penn Central Transport Co. v. NY* 624
 - legal standard for summary judgment 618-19
 - Anderson v. Liberty Lobby* 618-19
 - Celotex Corp. v. Catrett* 618
 - Gallo v. Prudential Residential Servs., Ltd* 619
 - Grady v. Affiliated Cent., Inc.* 619
 - Jaramillo v. Weyerhaeuser* 619
 - Libraire v. Kaplan* 619
 - W. World Ins. Co. v. Stack Oil* 619
 - overview 617-18
 - ownership of blocked assets 619-21, 626
 - Exp.-Imp. Bank of US v. Asia Pulp & Paper Co.* 620
 - Lippe v. Genlyte Group* 620
 - personal jurisdiction
 - general jurisdiction under CPLR 301 595, 604-5
 - "continuous, permanent, and substantial activity" 595
 - "doing business" 595, 604-5
 - general jurisdiction under CPLR 301—jurisprudence
 - Gallelli v. Crown Imports* 595
 - Gelfand v. Tanner Motor Tours* 604
 - Hoffritz for Cutlery v. Amajac* 595, 605
 - United Mobile Technologies v. Pegaso PCS* 595
 - specific jurisdiction under CPLR 302(a)(1) 595-8, 600-2, 605
 - correspondent bank accounts 596-8
 - "transacting business" 595-7, 601-2, 605
 - specific jurisdiction under CPLR 302(a)(1)—jurisprudence
 - Amigo Foods v. Marine Midland Bank* 597
 - Banco Ambrosiano v. Artoc Bank & Trust* 597
 - Best Van Lines v. Walker* 596, 597
 - Burger King v. Rudzewicz* 596
 - Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.* 596
 - Ehrlich-Bober & Co. v. Univ. of Houston* 597
 - Indosuez International Finance v. National Reserve Bank* 597
 - Kreutter v. McFadden Oil Corp.* 602
 - Licci ex rel. Licci v. Lebanese Canadian Bank* 596-8, 605

Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen (Court rulings) (cont.)

- standard of review 594-5, 606
 - burden of proof 594, 606
 - legal or factual sufficiency challenges 606
- standard of review—jurisprudence
 - APWU v. Potter* 606
 - Arar v. Ashcroft* 606
 - Chloe v. Queen Bee of Beverly Hills* 595
 - Flores v. Southern Peru Copper Corp.* 606
 - Grand Rivers Enters. Six Nations, Ltd. v. Pryor* 595
 - Klinghoffer v. S.N.C. Achille Lauro* 594
 - Lujan v. Defenders of Wildlife* 606
 - MacDermid Inc. v. Deiter* 594
 - Makarova v. USA* 606
 - Nat. Union Fire Ins. Co. of Pittsburgh v. BP Amoco* 606
- statutory jurisdiction under FRCP 4(k)(1)(A) 595
- statutory jurisdiction under FRCP 4(k)(2) 598-600, 602-4
 - Catlin Ins. Co. (UK) Ltd. v. Bernuth Lines* 599
 - Porina v. Marward Shipping Co.* 599
- subject matter jurisdiction 606-7
 - applicability of EO 13599 609, 614
 - applicability of TRIA and FSIA 610-11
 - central bank immunity 613-14
 - EU blocking regime, implications of 607-8
 - extraterritoriality argument 612-13
 - I-USTA treaty obligations, and 613
 - location of blocked assets 612-13
 - “notwithstanding” clause 592-3, 613-14
 - ownership of blocked assets 609-12
 - political questions, judicial authority to decide on 607-9, 616-17
- subject matter jurisdiction—jurisprudence
 - 767 Third Ave. Assocs. v. Consulate Gen. of Socialist Fed. Republic of Yugoslavia* 608
 - Aurelius Capital Partners, LP v. Republic of Argentina* 613
 - Baker v. Carr* 608
 - Bank of Tokyo-Mitsubishi, UFJ, Ltd. New York Branch v. Peterson* 612
 - Calderon-Cardona v. JPMorgan Chase Bank* 611
 - Cisneros v. Alpine Ridge Group* 614
 - Hausler I* 611-12
 - Hausler II* 611-12
 - Levin v. Bank of NY* 611-12
 - Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.* 611
 - Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer* 614
 - Weinstein v. Islamic Republic of Iran* 613
 - Zivotofsky ex rel. Zivotofsky v. Clinton* 607
- political question argument
 - judgments in relation to acts of terrorism 609
 - jurisdiction to decide on 607-9, 616-17
 - statutory intention 609
- state immunity
 - central banks 588-9, 594, 613-14
 - exceptions to immunity 588-9
 - “foreign state” 589

- Iranian assets subject to blocking orders 591-2
 - legal proceedings seeking attachment to fulfil judgment 588
- state immunity—jurisprudence
 - First Nat'l City Bank v. Banco Para el Comercio Exterior de Cuba* 588
 - Hercaire Intl, Inc. v. Argentina* 588
 - Hester Int'l Corp v. Federal Republic of Nigeria* 588
 - NML Capital, Ltd. v. Banco Central de la República Argentina* 589
 - Verlinden B.V. v. Cent. Bank of Nigeria* 588
 - summary 575-7
- terrorism
 - blocked assets
 - ownership 610
 - subject to execution or attachment 590
 - exception to state immunity 588-9
 - “terrorist party” 590
- Terrorist Risk Immunity Act (TRIA)
 - central banks immunity 613
 - interests in blocked assets 623-4
 - terrorist exception to immunity 590, 613
- Court of Appeals ruling
 - background 628-30
 - blocked assets
 - central banks immunity 630
 - fair and equitable treatment 631-2
 - ownership 630
 - whether taking in violation of treaty obligations 631-2
 - constitutionality of statute
 - conflicts with I-USTA 630-2
 - separation of powers 632-4
- I-USTA violations
 - anti-suit injunction 634-5
 - Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara* 635
 - Kraebel v. N.Y. City Dep't of Hous. Pres. & Dev.* 635
 - Peterson v. Islamic Republic of Iran* 635
 - separation of powers 632-4
 - Axel Johnson v. Arthur Andersen* 632-4
 - Robertson v. Seattle Audubon Society* 632-4
 - United States v. Klein* 632-3
 - takings clause 634
 - E. Enters v. Apfel* 634
 - Weinstein v. Islamic Republic of Iran* 634
 - treatment of Iranian companies 631-2
 - turnover of assets provisions 630-2
 - McKesson Corp. v. Islamic Republic of Iran* 631
 - Sumitomo Shoji America, Inc. v. Avagliano* 631
 - United States v. Yousef* 631
 - Weinstein v. Islamic Republic of Iran* 631
 - Whitney v. Robertson* 631
- subject matter jurisdiction 630
 - Padilla v. Maersk Line, Ltd.* 630
 - Swarna v. Al-Awadi* 630
 - United States v. Stewart* 630

***Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen* (Court rulings)** (cont.)

- Supreme Court, principal ruling
 - post-judgment execution of assets provisions
 - blocking regimes 637-8
 - central bank immunity 637
 - determination of status of assets 638-9
 - overview 635-6
 - ownership of blocked assets 642
 - purpose 637-8
 - terrorism exception 636-7
 - whether violation of separation of powers doctrine 636-7
 - respondent enforcement proceedings 639-43
 - separation of powers doctrine 643-5
 - congressional authority regarding foreign affairs 650-1
 - congressional authority to impose on judicial power 644-8
 - general applicability of laws to single or small groups of subjects 649
 - overview 643
 - retroactive application of legislation, restrictions on 632, 643, 645-7
 - state immunity, recognition of case-specific determinations 650-1
 - whether claims were independent of original actions 648
 - whether retroactive statutory provisions were unfair 645-7
 - separation of powers doctrine—jurisprudence
 - The Clinton Bridge* 649
 - Dames & Moore v. Regan* 650
 - Ex parte Peru* 650
 - Landgraf v. USI Film Products* 645-6
 - Mackey v. Lanier Collection Agency & Service* 648
 - Marbury v. Madison* 643
 - Miller v. French* 651
 - National Coalition To Save Our Mall v. Norton* 649
 - Nixon v. Administrator of General Services* 649
 - Pennsylvania v. Wheeling & Belmont Bridge* 649
 - Plaut v. Spendthrift Farm* 643, 646, 649
 - Pope v. United States* 647, 649
 - Regional Rail Reorganization Act Cases* 649
 - Republic of Austria v. Altmann* 650
 - Republic of Iraq v. Beatty* 650-1
 - Republic of Mexico v. Hoffman* 650
 - Robertson v. Seattle Audubon Society* 644-5, 647, 648
 - SeaRiver Maritime Financial Holdings, Inc. v. Mineta* 649
 - United States v. Klein* 644-5
 - United States v. Padelford* 644
 - United States v. Schooner Peggy* 645, 647
 - Verlinden B.V. v. Central Bank of Nigeria* 650
 - Zivotofsky v. Kerry* 650
- Supreme Court, dissenting opinion of Roberts, J and Sotomayor, J
 - separation of powers doctrine
 - constitutional principle, development 652-5
 - judicial powers 655
 - legislative retroactivity, restrictions on 655, 658
 - whether statutory provisions an unconstitutional interference in judicial function 655-60

- whether statutory provisions in violation of state immunity 660-2
- separation of powers doctrine—jurisprudence
 - American Ins. Assn. v. Garamendi* 661
 - Bond v. US* 652
 - Chicago & Southern Air Lines v. Waterman S.S. Corp* 655
 - Commodity Futures Trading Comm'n v. Schor* 652
 - Dames & Moore v. Regan* 661-2
 - First Nat. City Bank v. Banco Para el Comercio Exterior de Cuba* 656
 - Free Enterprise Fund v. Public Company Accounting Oversight* 657
 - INS v. Chadha* 658-9
 - McCulloch v. Maryland* 660
 - Medellín v. Texas* 662
 - Plaut v. Spendthrift Farm* 652-5, 657, 658
 - Robertson v. Seattle Audubon Society* 660
 - Smith v. Allwright* 661
 - Stern v. Marshall* 651
 - United States v. Klein* 657-8, 662
 - United States v. Padelford* 657
 - United States v. Schooner Peggy* 658-9
 - Verlinden B.V. v. Central Bank of Nigeria* 661
 - Youngstown Sheet & Tube Co v. Sawyer* 660
- Rajabu and Others v. United Republic of Tanzania (Merits and Reparations)* 238-91**
 - background and facts
 - allegations 238-9, 244-6
 - conclusion 239-341
 - jurisdiction and admissibility claims 246-7
 - overview 238-9, 243-4
 - parties 243
 - separate opinions 241
 - subject of application 243-4
 - submission of the parties
 - Applicants 245-6
 - Respondent State 246-7
 - summary of procedure before the Court 244-5
 - Court ruling
 - admissibility of application
 - compliance conditions, general 250-1
 - conditions not in contention between parties 254
 - failure to file application within reasonable time 240, 250, 252-4
 - non-exhaustion of local remedies 239-40, 250-2
 - admissibility of application—jurisprudence
 - Alex Thomas v. Tanzania* 251
 - Michael Majuru v. Zimbabwe* 252-3
 - alleged violation of rights
 - failure to abolish death penalty as violation of Charter 267-8
 - failure to recognize rights 239, 267-8
 - mandatory death penalty as violation of right to life 239, 240, 261-7
 - mandatory death penalty constituting torture and inhuman and degrading treatment 240, 266-7
 - non-exhaustion of local remedies 250

Rajabu and Others v. United Republic of Tanzania (Merits and Reparations) (cont.)

- right to be heard 257-60
- right to be heard by competent court 239-40, 260-1
- right to be tried within reasonable time 240, 250, 255-7
- right to dignity 239, 265-6
- right to fair trial 239-40, 254-61
- right to life 239, 240, 261-7
- conclusions 276-8
- costs 276
- jurisdiction of Court 239
 - claims of Respondent State 246-7
 - general aspects 250
 - material jurisdiction, Rules of Court 247
 - objection on basis of appellate jurisdiction 247-9
 - objection on basis that Court is acting as court of first instance 249
 - protection of rights, international law obligations 248-9
- jurisdiction of Court—jurisprudence
 - Alex Thomas v. Tanzania* 248
 - Ernest Francis Mtingwi v. Malawi* 248
- mandatory death penalty
 - domestic provisions, arbitrariness assessment criteria 262-5
 - failure to abolish as violation of Charter 267-8
 - moral prejudice and psychological suffering, compensation for 240, 272-3
 - non-material losses relating to 272-3
 - right to dignity, and 267
 - violation of right to life, as 216-67, 239, 240
 - whether constitutes torture and inhuman and degrading treatment 240, 266-7
- mandatory death penalty—jurisprudence
 - Eversley Thompson v. St. Vincent & the Grenadines* 263
 - Forum of Conscience v. Sierra Leone* 263
 - Hilaire, Constantine & Benjamin v. Trinidad & Tobago* 263-4
 - Interights (on behalf of Bosch) v. Botswana* 262
 - International Pen (Ken Saro-Wiwa) v. Nigeria* 262-3
- overview 239-41
- reparations
 - basis for 268-9
 - costs of domestic proceeding 271
 - death penalty, non-material losses relating to 272-3
 - loss of income 271
 - losses incurred by family members 273
 - non-pecuniary reparations 273-6
 - non-repetition 275-6
 - pecuniary reparations 270-3
 - publication of judgment 275-6
 - purpose of 270
 - responsibility and causation, establishment of 269-70
 - restitution 273-5
- reparations—jurisprudence
 - Lucien Ikili Rashidi v. Tanzania* 275
 - Soering v. UK* 272-3
- right to dignity 239, 265-6
- right to fair trial 239-40, 254-61
 - evidence used in domestic proceedings 258-60
 - preliminary hearings and trial, whether heard before same judge or magistrate 260-1

- right to be heard 240, 257-60
- right to be heard by competent court 239-40, 260-1
- right to be tried within reasonable time 240, 250, 255-7
- visual identification 258-60
- right to life 239, 240, 261-6
 - mandatory death penalty as violation of 239, 240, 261-7
- separate opinion (Bensaoula, J)
 - objections, admissibility of
 - failure to file application within reasonable time 281-2
 - jurisdiction of appellate judges before national courts 280-1
 - non-exhaustion of local remedies 278-80
 - overview 241, 278
- separate opinion (Tchikaya, J)
 - mandatory death penalty
 - ACHPR 4, interpretative conflicts with 288-91
 - criticism of principal ruling on 282-3, 287, 290
 - reparations for 286-7
 - status of death penalty in international law, conflicts with compulsory sentences 283-7
 - mandatory death penalty—jurisprudence
 - Eddie Johnson Dexter* case 284
 - Eversley Thompson v. St. Vincent and the Grenadines* 286-7
 - overview 241
- religious freedom (ECHR 9)**
 - administrative practice as violation 488-90
- Security Council Resolutions (UNSCRs) by number and year**
 - 1696 (2006) (Iran's nuclear programme) 178-9
 - 1737 (2006) (Iran sanctions) 178-9
 - 2231 (2015) (Iran nuclear issue) 179
- separation of powers: see also judicial impartiality**
 - domestic authority to make laws relating to foreign affairs: *see Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen*
- US doctrine
 - constitutional principle, development 652-5
 - judicial powers 655
 - legislative retroactivity, restrictions on 655, 658
 - whether statutory provisions an unconstitutional interference in judicial function 655-60
 - whether statutory provisions in violation of state immunity 660-2
- standard of proof**
 - assessment of evidence, principles for 428-30
 - extraterritorial jurisdiction (ECHR 1), exceptional circumstances 451
 - jurisdictional issues 432-3
- state immunity**
 - central banks: *see Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen*
 - expropriation of property
 - domestic takings rule
 - property belonging to country's own nationals, applicability to 670, 675
 - statutory intention 665, 668-70, 675
 - whether violation of human rights law 664-5, 670-4
 - whether violation of international law 664, 667-70, 676
 - whether violation of international law of expropriation 667, 671, 676

state immunity (cont.)

domestic takings rule—jurisprudence

Banco Nacional de Cuba v. Farr 670

Banco Nacional de Cuba v. Sabbatino 668-70, 673

F. Palicio y Compañía, S.A. v. Brush 670

Gudmundsson v. Iceland 669

Malewicz v. Amsterdam 674-5

Republic of Austria v. Altmann 670, 672, 675

sovereign functions performed within employment duties at US air base 571-2

terrorism as exception to: see *Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen*

State Immunity Act 1978 (UK) (SIA) by section

1(1) (general immunity from jurisdiction) 563, 564

4 (contracts of employment) 564

16(2) (excluded matters) 564-7

state immunity, applicable law

conditions of employment 557, 563-4

CIL, and 568-70

excluded matters 564-7

general provisions 563-4

unfair dismissal, jurisdiction of employment tribunal: see *Chambers v. United States*
(jurisdiction of employment tribunal)

state responsibility for acts of private persons or groups directed or controlled by State
(ILC(SR) 8) 438**state responsibility for compensation for internationally wrongful acts** (ILC(SR) 36)
148**state responsibility for satisfaction for injury caused by internationally wrongful acts**
(ILC(SR) 37) 148**Straddling Fish Stocks Agreement, 1995**

inconsistency of SPRFMO CMM stock allocation measures with 539-40

terrorism

blocked assets

ownership 610

subject to execution or attachment 590

damages awarded to victims of state-sponsored terrorism: see *Petersen v. Islamic Republic of Iran/Bank Markazi v. Petersen*

state immunity exception 588-9

“terrorist party” 590

torture or cruel, inhuman or degrading treatment (ECHR 3/ACHPR 5)

administrative practice as violation 478-81

mandatory death penalty as 240, 266-7

treaty interpretation

diplomatic status of premises of the mission: see *Immunities and Criminal Proceedings*
(*Equatorial Guinea v. France*) (Merits)

Ukraine v. Russia (Re Crimea): see *Ukraine v. Russia (Re Crimea)* (Court ruling); *Ukraine v. Russia (Re Crimea)* (background and facts)

***Ukraine v. Russia (Re Crimea)* (background and facts)**

applications and procedure 314-17

case law of the ICJ

Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons 385

Application of the ICSFT and CERD (Ukraine v. Russian Federation) 386-7

- Corfu Channel case* 384
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* 385
- Military and Paramilitary Activities in and against Nicaragua* 384, 385-6
- Office of the Prosecutor, ICJ, Report on Preliminary Examination Activities 2019 387-8
- United States Diplomatic and Consular Staff in Tebran* 384-5, 386
- complaints (summary) 420-2
- overview of facts 293-6
- relevant legal framework
- bilateral agreements
 - Agreement between Russian Federation and Ukraine on the parameters of the division of the Black Sea Fleet of 28 May 1997 378-9
 - Agreement between Russian Federation and Ukraine on the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine of 21 April 2010 379
 - Agreement between Russian Federation and Ukraine on the status and conditions of the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine of 28 May 1997 376-8
 - Treaty between the Russian Federation and the Republic of Crimea on the accession of the ARC to the Russian Federation and the formation of new constituent entities of the Federation 2014 (Accession Treaty) 379-80
 - Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation 1997 374-6
 - domestic law
 - Constitution of Ukraine 370-3
 - Federal Law of the Russian Federation terminating the Agreements on the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine (No 38-FZ) 374
 - Resolution on the use of the Armed Forces of the Russian Federation on the territory of Ukraine (No 48-SF) 374
 - multilateral texts
 - Committee of Ministers of the Council of Europe Decision regarding the situation in Ukraine of 2 April 2014 (CM/Del/Dec(2014)1196/1.8) 383
 - Council of Europe Resolution 1988 (2014) on recent developments in Ukraine: threats to the functioning of democratic institutions 382-3
 - Council of Europe Resolution 2133 (2016) on legal remedies for human rights violations on the Ukrainian territories outside the control of Ukrainian authorities 383
 - Council of the European Union Decision concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine of 17 March 2014 (2014/145/CFSP) 384
 - Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, 5 December 1994 380-1
 - UNGA Resolution 68/262 on the territorial integrity of Ukraine 381
 - UNGA Resolution 71/205 on the situation of human rights on the Autonomous Republic of Crimea and the city of Sevastopol 381-2
 - other materials: reports of intergovernmental organizations
 - Commissioner for Human Rights of the Council of Europe: Report following the Commissioner's Mission in Kyiv, Moscow and Crimea (2014) 408-13
 - access to international humanitarian and human rights organizations 412-13
 - citizenship-related issues 411-12
 - overview 408
 - "self-defence" forces, status of 410-11

Ukraine v. Russia (Re Crimea) (background and facts) (cont.)

- situation of minorities 408-10
- suppression of the media 410
- Office of the UN High Commissioner for Human Rights: Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea (2017) 391-407
 - conclusion and recommendations 407-8
 - freedom of movement 402
 - freedom of opinion, expression and media 404-5
 - freedom of peaceful assembly 403-4
 - freedom of thought, conscience and religion 402-3
 - general summary 392-4
 - HRMMU mission mandate and activities 394-5
 - population data and movements 395
 - property rights 405-6
 - right to education in native language 406-7
 - right to life 398-9
 - right to nationality 395-8
 - right to physical and mental integrity 399-400
 - right to private and family life 400-1
 - rights of detainees and transfer of prisoners 401-2
- OSCE Office for Democratic Institutions and Human Rights/OSCE High Commissioner on National Minorities: Human Rights Assessment in Ukraine (12 May 2014) 413-14
- OSCE Office for Democratic Institutions and Human Rights/OSCE High Commissioner on National Minorities: Report on Human Rights Assessment Mission on Crimea (17 September 2015) 414-15
- UN Committee against Torture (28 August 2018) 390-1
- UN Human Rights Committee (28 April 2015) 389-90
- other materials: reports of non-governmental organizations
 - Amnesty International: "One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea" (2015)
 - abductions and impunity 417-18
 - freedom of assembly 418-19
 - freedom of expression and suppression of the media 418
 - harassment and detention of activists 419
 - summary 416-17
 - suppression of religious freedom 420
 - Human Rights Watch: "Rights in Retreat: Abuses in Crimea" (November 2014) 415-16
- submissions of parties
 - applicant Government
 - alleged violation of the Convention
 - acts of suppression and repression 342, 346
 - automatic imposition of Russian citizenship 350-1
 - disappearances 342-3, 347-8
 - first phase (17 February-21 March 2014) 342-8
 - freedom of movement restrictions 353-4
 - illegal searches of private property 352, 353
 - religious suppression 346, 352
 - second phase (after 21 March 2014) 348-55
 - seizure and nationalization of private property 353

- suppression of education 354-5
- suppression of the media 346-9, 352-3, 355
- torture and unlawful detention 342-50
- transfer of convicts to Russian territory 350
- evidence of effective control
 - annexation of Crimea and referendum 335-6
 - background 326-8
 - chronological list of troop movements and deployment of military equipment in Crimea 336-42
 - consolidation of control over Crimea (1-16 March 2014) 333-5
 - immediate aftermath of invasion 331-3
 - seizure of control over Crimea (26-27 February 2014) 328-31
- evidentiary material
 - CCTV footage and other visual materials 326
 - official documents from Ukrainian national authorities 320-3
 - other documents 323-6
 - witness statements 318-20
- respondent Government
 - alleged incidents, responses to 367-70
 - effective control, evidence of 364-7
 - evidentiary material
 - Crimean documents 357-8
 - international materials 357
 - media articles and videos 358-9
 - official documents from Russian national authorities 356
 - official documents from Ukrainian national authorities 357
 - factual background 359-62
 - investigations and other measures undertaken to comply with Convention obligations 367-8
 - referendum, developments leading up to and aftermath 362-7
- Ukraine v. Russia (Re Crimea) (Court ruling)***
 - administrative practice, admissibility of complaints
 - general remarks regarding evidence
 - applicant Government submissions 468-9
 - Court's assessment 469-73
 - jurisprudence
 - El-Masri* 470
 - Hirsi Jamaa v. Italy* 470
 - Ireland v. UK* 470
 - JK v. Sweden* 471
 - Military and Paramilitary Activities in and against Nicaragua* 471-2
 - MSS v. Belgium and Greece* 470
 - NA v. UK* 470
 - Saadi v. Italy* 470
 - Sufi and Emli v. UK* 471
 - respondent Government submissions 466-8
 - administrative practice, general
 - meaning of "administrative practice" 430-1
 - official tolerance 431
 - repetition of acts 431
 - rule on exhaustion of domestic remedies, applicability 431
 - standard of proof 430-2

Ukraine v. Russia (Re Crimea) (Court ruling) (cont.)

- administrative practice, prima facie evidence of alleged violations
 - alleged lack of effective investigation
 - Court's assessment 477-8
 - parties' submissions 477
 - freedom from discrimination (ECHR 14) 499
 - Court's assessment 499-501
 - parties' submissions 499
 - freedom from torture and inhuman or degrading treatment (ECHR 3)
 - applicant Government's submissions 478-9
 - Court's assessment 480-1
 - respondent Government's submissions 479
 - freedom of expression (ECHR 10) 490
 - apprehension and intimidation of, and seizure of material from international journalists
 - Court's assessment 492
 - parties' submissions 491-2
 - suppression of non-Russian media
 - Court's assessment 491
 - parties' submissions 490-1
 - freedom of movement (ECHR Protocol No 4(2)) 497-8
 - Court's assessment 498-9
 - parties' submissions 498
 - freedom of religion (ECHR 9) 488-9
 - Court's assessment 488-90
 - parties' submissions 488
 - right to education in native language (ECHR Protocol No 1(2)) 495
 - Court's assessment 496-7
 - parties' submissions 495-6
 - right to fair trial (ECHR 6)
 - Court's assessment 481-2
 - parties' submissions 481
 - right to liberty (ECHR 5)
 - applicant Government's submissions 478-9
 - Court's assessment 480-1
 - respondent Government's submissions 479
 - right to peaceful assembly (ECHR 11) 492-3
 - Court's assessment 493-4
 - parties' submissions 493
 - right to peaceful enjoyment of possessions (ECHR Protocol No 1(1)) 494
 - Court's assessment 494-5
 - jurisprudence
 - Everest Estate v. Russian Federation* 495
 - Public Joint Stock Company "State Savings Bank of Ukraine" (JSC Oschadbank) v. Russian Federation* 495
 - parties' submissions 494
 - right to respect for private and family life (ECHR 8)
 - overview 482-3
 - arbitrary raids of private dwelling houses
 - Court's assessment 487
 - parties' submissions 486-7

- transfer of convicts to the territory of the Russian Federation
 - Court's assessment 485-6
 - parties' submissions 485
- unlawful automatic imposition of Russian citizenship
 - Court's assessment 484-5
 - parties' submissions 483
- unlawful automatic imposition of Russian citizenship—jurisprudence
 - Alpeyeva and Dzhalogoniya v. Russia* 484
 - Genovese v. Malta* 484
 - K2 v. UK* 484
 - Karassev v. Finland* 484
 - Riener v. Bulgaria* 484
 - Slivenko v. Latvia* 484
- right to life (ECHR 2) 474-8
 - alleged substantive violations
 - Court's assessment as to alleged disappearances 476-7
 - Court's assessment as to alleged killing and shooting 475-6
 - parties' submissions 474-5
- alleged lack of genuine application
 - Court's assessment 435-7
 - jurisprudence
 - Advisory Opinion in Legality of the Threat or Use of Nuclear Weapons* 436
 - Cyprus v. Turkey* 434, 435
 - Greek case 434, 435
 - Military and Paramilitary Activities in and against Nicaragua* 436
 - Turkish case 435
 - parties' submissions 434
 - relevance of political implications of claims to Court jurisdiction 435-6
- Court conclusions 501-3
- evidence
 - burden of proof: jurisprudence
 - Al Nashiri v. Romania* 429
 - Baka v. Hungary* 428-9
 - Creangă v. Romania* 429
 - El-Masri v. former Yugoslav Republic of Macedonia* 429
 - Georgia v. Russia* 429, 430
 - Hassan v. UK* 429
 - Ireland v. UK* 429
 - Nolan and K. v. Russia* 428
 - jurisdiction of Court 423-6
 - jurisprudence
 - Application of the ICSFT and CERD (Ukraine v. Russian Federation)* 425
 - Preliminary Objections of the Russian Federation in respect of the Dispute concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait between Ukraine and the Russian Federation* 425-6
- object of case before Court 423-6
- overview of ruling 296-305
- principles of assessment of evidence
 - burden of proof 428-30
 - Court's assessment 428-33
 - exhaustion of domestic remedies, evidentiary threshold 431-2

Ukraine v. Russia (Re Crimea) (Court ruling) (cont.)

- parties' submissions 427-8
- standard of proof as to alleged existence of administrative practice 430-2
- standard of proof as to jurisdictional issues 432-3
- scope of complaint before Court 426-7
- standard of proof: jurisprudence
 - Al-Skeini v. UK* 433
 - Cyprus v. Turkey* 431, 433
 - Georgia v. Russia* 430-1, 432
 - Greek case* 430
 - Ilaşcu and Others v. Moldova and Russia* 433
 - Ireland v. UK* 430-1
 - Loizidou v. Turkey* 433
 - Turkish case* 430-1
- types of evidence examined 427
- exhaustion of domestic remedies
 - Court's assessment
 - applicability of exhaustion rule 431, 464-5
 - evidentiary threshold 431-2, 465-6
 - jurisprudence
 - Application of the ICSFT and CERD (Ukraine v. Russia)* 464-5
 - Cyprus v. Turkey* 464
 - Georgia v. Russia* 464
 - Ireland v. UK* 464
 - parties' submissions
 - applicant Government 463-4
 - respondent Government 462-3
- jurisdiction of the respondent State regarding events complained of by applicant
 - Government (ECHR 1)
 - Court's assessment
 - application to present case
 - conclusion 461
 - Court competence—jurisprudence
 - Al-Skeini* 460
 - Application of the ICSFT and CERD (Ukraine v. Russian Federation)* 458
 - Assanidze v. Georgia* 460
 - Banković and Others* 460
 - Everest Estate v. Russian Federation* 458
 - Gentilhomme and Others v. France* 459-60
 - Loizidou v. Turkey* 461
 - Public Joint Stock Company "State Savings Bank of Ukraine" (JSC Oschadbank) v. Russian Federation* 458-9
- effective control of Crimea
 - Black Sea Fleet Agreement provisions for military presence 451-2, 454-5
 - conduct of respondent state military presence 455-7
 - strength of respondent state military presence 452-5
- effective control—jurisprudence
 - Al-Skeini* 450, 457
 - Cyprus v. Turkey* 450
 - Georgia v. Russia* 450-1
 - Jaloud v. Netherlands* 450
 - Military and Paramilitary Activities in and against Nicaragua* 457

- period between 27 February and 18 March 2014 449-58
 - compatibility *ratione loci* with Convention provisions 449-51
 - effective control 450-8
 - standard of proof for exceptional circumstances for exercise of extraterritorial jurisdiction 451
 - test for 450-1
- period following 18 March 2014 449, 458-61
 - applicable domestic law 459-61
 - Court competence 458-60
 - effective control 458, 461
 - recognition of change to territorial integrity of Ukraine 460-1
 - responsibility for actions within jurisdiction 461
 - state's jurisdictional competence under PIL 460-1
 - "state agent authority" principle 461
- general principles relevant to 446
 - effective control over an area 448-9
 - state agent authority and control 446-8
 - territorial principle 446
- general principles relevant to: jurisprudence
 - Assanidze v. Georgia* 446
 - Banković and Others* 446-8
 - Cyprus v. Turkey* 448
 - Drozd and Janousek v. France and Spain* 447
 - Gentilhomme and Others v. France* 447
 - Ilaşcu and Others v. Moldova and Russia* 446, 448-9
 - Issa v. Turkey* 447
 - Loizidou v. Turkey* 447, 448-9
 - M. v. Denmark* 447
 - Medvedyev v. France* 448
 - Öcalan v. Turkey* 447
 - Soering v. UK* 446
 - X. v. Germany* 447
 - X. v. UK* 447
 - X. and Y. v. Switzerland* 447
- parties' submissions
 - applicant government 441-4
 - jurisprudence
 - Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* 438
 - Banković and Others v. Belgium and Others* 445
 - Military and Paramilitary Activities in and against Nicaragua* 438
 - respondent government
 - effective control 437-41
 - sovereign entitlement to extend jurisdiction beyond national territory 437
 - third-party intervener submissions (McGill Centre for Human Rights and Legal Pluralism) 444-5
- scope of case 422
 - background events, relevance of 423-4
 - Court conclusions 501-3
- UNCLOS (1982) and related agreements, interpretation**
 - inconsistency of SPRFMO CMM 539-41
 - guidance on allocation in 1995 Agreement 539-40
 - incorrect application of SPRFMO Convention 539-40

UNCLOS (1982) and related agreements, interpretation (cont.)possible solutions for [548-9](#)whether exceeding margin of discretion [539-41](#)**Vienna Convention on Diplomatic Relations 1961**historical background [100-4](#)**Vienna Convention on the Law of Treaties 1969**Article 31(3)(b) (general interpretation) [223-4](#)