DIGEST OF CASES **REPORTED IN VOLUME 203**

Arbitration

Contract of insurance — Arbitration clause — Whether arbitration clause in contract of insurance binds third party State seeking compensation for loss and damage - England, High Court (Commercial Court)

UK P&I N.V. v. República Bolivariana de Venezuela

Claims

Inter-State cases — Claims for just satisfaction — Whether Article 41 of European Convention on Human Rights, 1950 applicable to inter-State cases — Judgment in Cyprus v. Turkey — Whether Article 41 of Convention applicable to present case - Whether present case fulfilling three criteria set out in Cyprus v. Turkey — Whether award of just satisfaction justified — Determination of sufficiently precise and objectively identifiable group of people — Criteria for award of just satisfaction for non-pecuniary damage - Requirement for distribution of damages to members of group

Comity

Respect for courts and tribunals of other jurisdictions — Contract of insurance — Exclusive jurisdiction clause — Arbitration clause — Third party State seeking to enforce contract of insurance — Requirement of comity — England, High Court (Commercial Court)

UK P&I N.V. v. República Bolivariana de Venezuela

Diplomatic Relations

Whether United Kingdom Government's continued diplomatic relations with Mr Maduro's representatives in England constituting implied recognition of Mr Maduro as de facto President — Whether Court of Appeal erred in introducing concept of implied *de facto* recognition — Whether scope for

xix

- European Court of Human Rights (Grand Chamber)

Georgia v. Russia (No 1) (Just Satisfaction)

685

Diplomatic Relations (cont.)

application of any notion of implied recognition by English courts — United Kingdom, Supreme Court

Maduro Board of the Central Bank of Venezuela v. Guaidó Board of the Central Bank of Venezuela

General Principles of International Law

Estoppel — Whether part of international law — Conditions — Clear and unequivocal statement — Reliance to detriment — Maritime boundaries — Whether capable of being established by estoppel — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire)

376

612

612

Governments

Recognition — Rival governments — Venezuela — Disputed 2018 Venezuelan presidential election — Whether Mr Maduro or Mr Guaidó President of Venezuela — Whether Maduro Board or Guaidó Board entitled to give instructions on behalf of Central Bank of Venezuela concerning its assets in England — United Kingdom, Supreme Court

Maduro Board of the Central Bank of Venezuela v. Guaidó Board of the Central Bank of Venezuela

Human Rights

European Convention on Human Rights, 1950 — Article 41 — Inter-State case — Claims for just satisfaction for breach of human rights — Non-pecuniary damage — Whether victims identifiable — Determination of sufficiently precise and objectively identifiable group of people — Whether claim could be submitted under Article 41 of Convention — Whether award of just satisfaction justified — Criteria to be applied — European Court of Human Rights (Grand Chamber)

Georgia v. Russia (No 1) (Just Satisfaction)

349

Freedom of expression — Right of access to information — Freedom of opinion — Legitimate limitations — Proportionality — Requirement of precise definition — Criminal defamation — African Commission on Human and Peoples' Rights' Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019 — African Commission on Human and Peoples' Rights

Uwimana-Nkusi and Mukakibibi v. Rwanda

International Convention on the Elimination of Racial Discrimination, 1965 — Article 1(1) — Meaning of "national origin" — Whether including current nationality — Whether discrimination based on nationality prohibited by CERD — Whether Qatar's claim of discriminatory measures by United Arab Emirates falling within scope of CERD — International Court of Justice

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)

Right to equality and non-discrimination — African Charter on Human and Peoples' Rights, 1981, Articles 2 and 3 — Whether Tanzania's exercise of presidential pardons arbitrary and discriminatory — Right to a fair trial — Article 7 — Whether Tanzania's sentencing of first and seventh applicants exceeding prescribed legal limits — African Court on Human and Peoples' Rights

Mango and Others v. United Republic of Tanzania

Right to fair trial — Right of access to court — European Convention on Human Rights, 1950, Article 6 — State immunity — State Immunity Act 1978 — Section 13 — Immunity from injunction — Whether State immunity from injunction engages Article 6 rights — Whether State immunity from injunctive relief pursues legitimate objective — Whether State immunity from injunctive relief provided for in customary international law — Whether proportionate — Human Rights Act 1998, Section 3 — Whether Section 13 of the State Immunity Act 1978 capable of being read down — England, High Court (Commercial Court)

UK P&I N.V. v. República Bolivariana de Venezuela

Rights to non-discrimination — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — International law — Whether fight against terrorism justifying discrimination — Discrimination on ground of national or ethnic 254

1

Human Rights (cont.)

origin — Applicant State enforcing coercive measures against Respondent State in 2017 — Whether respondent State failing to enact measures to prohibit racial discrimination — Whether respondent State promoting racial discrimination — Whether respondent State violating international law — Whether respondent State violating Articles 2, 4, 5 and 6 of International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Whether Committee having jurisdiction — Admissibility of communication — United Nations Committee on the Elimination of Racial Discrimination

Qatar v. United Arab Emirates

International Court of Justice

https://doi.org/10.1017/ilr.2023.34 Published online by Cambridge University Press

Preliminary objections — Whether Court having jurisdiction under Article 22 of International Convention on the Elimination of Racial Discrimination, 1965 — Whether discrimination based on nationality prohibited by CERD — Whether Qatar's claim of discriminatory measures by United Arab Emirates falling within scope of CERD Treaties — Interpretation — Scope — International Convention on the Elimination of Racial Discrimination, 1965 — Article 1(1) — Meaning of "national origin" — Whether including current nationality — Object and purpose of treaty — *Travaux préparatoires* — Whether CERD intending to prohibit discrimination based on nationality — Whether Qatar's claim of discriminatory measures by United Arab Emirates falling within scope of CERD — International Court of Justice

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)

Provisional measures — *Prima facie* jurisdiction — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 ("CERD") — Article 22 — Whether the Court having *prima facie* jurisdiction *ratione materiae* — Distinction between "national origin" and "nationality" under CERD — Whether procedural preconditions to the Court's jurisdiction met — Prior negotiation — Exhaustion of CERDbased procedures — Plausibility — Whether the acts of which Qatar complained were plausibly acts of racial discrimination — Irreparable prejudice — Urgency — Whether evidence submitted

by Qatar proving that the rights claimed were under a real and imminent risk of irreparable prejudice — Reports of international organizations as evidence — Unilateral undertaking — Statement of 5 July 2018 by UAE — International Court of Justice

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)

Provisional measures requested by respondent State — Whether extending to protection of procedural rights — Procedural rights arising under Article 22 of CERD — Right to obtain compliance with provisional measures indicated earlier — *Prima facie* jurisdiction — Provisional measures for non-aggravation and non-extension of the dispute — Whether capable of being indicated only if provisional measures for protection of rights also indicated — International Court of Justice

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)

International Tribunals

African Court on Human and Peoples' Rights — Jurisdiction — Material jurisdiction — Whether Court having jurisdiction to hear application — Admissibility — Whether application admissible — Exhaustion of local remedies — Whether applicants obliged to exhaust remedies despite claims of judicial bias — African Court on Human and Peoples' Rights

Mango and Others v. United Republic of Tanzania

European Court of Human Rights — Damages — Nonpecuniary damages — Inter-State case — Damages awarded for distribution to group of nationals — Supervision of distribution — Role of Council of Ministers — European Court of Human Rights (Grand Chamber)

Georgia v. Russia (No 1) (Just Satisfaction)

Jurisdiction — African Commission on Human and Peoples' Rights — Admissibility decisions — Contesting admissibility of Communication based on Article 56(7) of African Charter on Human and Peoples' Rights, 1981 — *Res judicata* — African Commission on Human and Peoples' Rights

Uwimana-Nkusi and Mukakibibi v. Rwanda

1

1

349

International Tribunals (cont.)

Jurisdiction — Special agreement — Admissibility of request for delimitation of continental shelf beyond 200 nautical miles — Commission on the Limits of the Continental Shelf — *Forum prorogatum* — International responsibility — Whether ITLOS having jurisdiction to decide on international responsibility of a State in accordance with UNCLOS — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire)

Jurisdiction and admissibility — United Nations Committee on the Elimination of Racial Discrimination — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Discrimination on ground of national or ethnic origin — Inter-State communication — Whether Committee lacking jurisdiction — Scope of Article 11 of Convention — Nationality issue — Whether exception to jurisdiction — Interpretation of concept of racial discrimination prohibited by Convention — Whether raising preliminary issue of competence ratione materiae — Issue to be examined at same time as admissibility — Whether jurisdiction extending only to current ongoing violations of Convention and Whether communication admissible — Non-exhaustion of domestic remedies — Issue to be examined jointly with merits — Concurrent proceedings - Nationality - Appointment of ad hoc Conciliation Commission — International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Articles 11(2) and 12(1) — United Nations Committee on the Elimination of Racial Discrimination

Qatar v. United Arab Emirates

Provisional measures — Preservation of rights of Parties — Protection of marine environment — Protection of confidentiality of information relating to exploration and exploitation of natural resources of continental shelf — *Prima facie* jurisdiction — Agreement that Special Chamber having *prima facie* jurisdiction — Plausibility of rights — Côte d'Ivoire's claimed rights being plausibly based on United Nations Convention on the Law of the Sea, 1982 — Whether Ghana's activities in disputed area could cause irreparable prejudice to rights of Côte d'Ivoire — Problems of prescribing suspension of all oil exploration and exploitation —

Possibility for compensation of financially assessable damage — Report on compliance with provisional measures — Power of President of Special Chamber to request further information concerning compliance — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire)

Special Chamber of the International Tribunal for the Law of the Sea — United Nations Convention on the Law of the Sea, 1982 — Constitution of the Special Chamber — Transfer of proceedings from an Annex VII arbitral tribunal to the Special Chamber — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire)

United Nations Committee on the Elimination of Racial Discrimination — International Court of Justice — Concurrent proceedings — Article 22 of International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Whether principle of *lis pendens* or *electa via* applicable — Admissibility of communication — United Nations Committee on the Elimination of Racial Discrimination

Qatar v. United Arab Emirates

United Nations Committee on the Elimination of Racial Discrimination — Weight to be given to practice of Committee — Jurisprudence of regional human rights courts — Relevance — Whether discrimination based on nationality prohibited by CERD — International Court of Justice

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)

Nationality

Distinction between citizens and non-citizens — United Nations Committee on the Elimination of Racial Discrimination — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Article 1 — Prohibition of racial discrimination — Interpretation of concept of racial 376

376

Nationality (cont.)

discrimination — Discrimination on ground of national or ethnic origin — General Recommendation No 30 (2004) on discrimination against non-citizens — Differences of treatment based on nationality — Whether constituting discrimination as prohibited by Convention — Allegations in communication concerning racial discrimination — Whether Committee having competence *ratione materiae* — Admissibility of communication — United Nations Committee on the Elimination of Racial Discrimination

Qatar v. United Arab Emirates

Nature of citizenship — Bond between State and citizen — Whether distinct from "national origin" — International Convention on the Elimination of all Forms of Racial Discrimination, 1965, Article 1 — International Court of Justice

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)

Recognition

Whom United Kingdom Government recognizing as Head of State and Head of Government of Venezuela — Whether United Kingdom Foreign Secretary's statement constituting unequivocal recognition of Mr Guaidó as Interim President — Whether United Kingdom Government's recognition of Mr Guaidó *de facto* or *de jure* — "One voice" doctrine — Whether English courts obliged to accept United Kingdom Government's recognition of Mr Guaidó as conclusive — Foreign act of State doctrine — Whether challenges to validity, under Venezuelan law, of the Transition Statute 2019 and Mr Guaidó's appointments justiciable in English courts — Whether English courts should recognize judgments of the Supreme Tribunal of Justice of Venezuela nullifying the Transition Statute 2019 — Whether such recognition contravening UK public policy — United Kingdom, Supreme Court

Maduro Board of the Central Bank of Venezuela v. Guaidó Board of the Central Bank of Venezuela

612

Sea

Maritime boundary delimitation — Single maritime boundary — Territorial sea — Exclusive Economic Zone — Continental shelf — Continental shelf beyond 200 nautical miles — United Nations Convention on the Law of the Sea, 1982 — Article 15 — Articles

74 and 83 — Equidistance/relevant circumstances — Angle bisector — Whether location of base points justified using a methodology other than equidistance/relevant circumstances — Whether coastal instability justified using a methodology other than equidistance/ relevant circumstances — Whether same methodology applied to delimitation of all maritime zones — Relevant coast — Relevant area — Provisional equidistance line — Appropriate base points — Relevant circumstances — Concavity of coast — Cut-off effect — Location of natural resources — Conduct — Methodology for delimiting the continental shelf beyond 200 nautical miles — Entitlement to a continental shelf beyond 200 nautical miles — Disproportionality test — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire)

State Immunity

State Immunity Act 1978 — Section 1 — Section 3 — Section 9 — Section 13 — Adjudicative immunity — Jure imperii — Jure gestionis — Whether initiating proceedings against insurers regarding sunken naval vessel a sovereign or commercial act — Enforcement immunity — State immunity from injunctive relief — Whether State immunity from injunctive relief engages human rights — England, High Court of Justice

UK P&I N.V. v. República Bolivariana de Venezuela

State Responsibility

Alleged responsibility for violation of sovereign rights — Alleged responsibility for violation of Article 83(1) of United Nations Convention on the Law of the Sea, 1982 — Whether Ghana's oil activities violating its obligations under Article 83(3) — Alleged responsibility for violating order on provisional measures of 25 April 2015 — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire)

Obligation on State responsible for internationally wrongful act to make reparations — Just-satisfaction rule deriving from public international law principles relating to State liability — Duty of States to co-operate under European Convention on Human 376

376

State Responsibility (cont.)

Rights, 1950 — Obligation on State to abide by final judgment of European Court of Human Rights — European Court of Human Rights (Grand Chamber)

Georgia v. Russia (No 1) (Just Satisfaction)

Treaties

Human rights treaties — African Charter on Human and Peoples' Rights, 1981 — Compliance of Rwanda's Penal Code 1977 with African Charter on Human and Peoples' Rights, 1981 — Human rights obligations under regional and international human rights treaties — African Commission on Human and Peoples' Rights

Uwimana-Nkusi and Mukakibibi v. Rwanda

Interpretation - International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Article 1 — Prohibition of racial discrimination — Interpretation of concept of racial discrimination — Discrimination on ground of national or ethnic origin — Meaning of national origin — "Nationality" excluded from definition - Distinction between citizens and noncitizens — United Nations Committee on the Elimination of Racial Discrimination — General Recommendation No 30 (2004) on discrimination against non-citizens — Differences of treatment based on nationality — Whether constituting discrimination as prohibited by Convention — Applicant State's allegations against respondent State in communication concerning violations of Convention — Whether allegations concerning ongoing and current violations of Convention - Issue relating to essential facts and to be examined at merits stage — Whether Committee having competence *ratione materiae* — Admissibility of communication — United Nations Committee on the Elimination of Racial Discrimination

Qatar v. United Arab Emirates

Tacit agreement — Oil practice — Maps — Seismic surveys — Drilling activities — National legislation — Representations to international organizations — Bilateral exchanges and negotiations — Standard of proof — Whether Côte d'Ivoire estopped from objecting to customary equidistance boundary claimed by Ghana — International Tribunal for the Law of the Sea (Special Chamber)

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire) 562

254