

The Law of International Responsibility

Edited by

JAMES CRAWFORD
ALAIN PELLET
SIMON OLLESON

Assistant Editor

KATE PARLETT

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© The several contributors, 2010

The moral rights of the author have been asserted

First published 2010
Reprinted 2013

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data
Data available

ISBN 978-0-19-929697-2

Preface

When the International Law Commission was established in 1948, to 'encourage the progressive development of international law and its codification',¹ one of the first 14 topics selected by the Commission for codification was 'State responsibility'.² At the time it was not surprising that an examination of the law of responsibility would be limited to States: although there had been some suggestion in the inter-war period that the League of Nations could be a *sui generis* international person,³ the opening of the international legal system to inter-governmental organizations was not definitely affirmed until the 1949 Advisory Opinion of the International Court of Justice in the *Reparations* case,⁴ and later still in respect of other natural and legal persons. Hersch Lauterpacht, one of the first and most fervent advocates for recognition of individuals as subjects of international law,⁵ was still able to write in 1947 that '[a]s a rule, the subjects of the rights and duties arising from the Law of Nations are States solely and exclusively.'⁶ On this prevailing view, codification of the law of State responsibility would cover the field of international responsibility entirely.

At the start of the 21st century a rather different picture has emerged. The international legal system, although principally controlled by States, now encompasses a broad range of actors and may directly regulate not only relations between States, but relations between States and individuals, between inter-governmental organizations and individuals, between States and corporations, between inter-governmental organizations and non-governmental organizations. It seems that there is no natural or legal person beyond the reach of international law, if only to be the subject of a single right or injunction. When the ILC brought its codification of the law of State responsibility to a close in 2001, it had already commenced work on diplomatic protection, concerned with the invocation of responsibility in respect of injury to nationals. A year later it commenced work on responsibility of international organizations. Other projects have dealt with other aspects of international responsibility, including its two projects on 'liability' in respect of trans-boundary harm. To speak of international responsibility is to speak of all such relations.

This collection seeks to cover this field of international responsibility; it serves not only as a critique of the ILC's Articles on State responsibility (2001), on diplomatic protection (2006) and on responsibility of international organizations (adopted in 2009 on first reading), but it examines many aspects of international responsibility which may arise in a multifaceted international legal system. It also includes a review of the rules applying to liability for activities which are not as such prohibited under international law but which may entail special consequences both on the ground of prevention and of

¹ Art 1(3), United Nations Charter.

² *ILC Yearbook 1949*, 281.

³ A McNair, *Oppenheim's International Law, Volume I* (4th edn, London, Longmans, 1928), 133–134.

⁴ *Reparations for Injuries Suffered in the Services of the United Nations, Advisory Opinion, ICJ Reports 1949*, p 174.

⁵ See eg H Lauterpacht, *An International Bill of the Rights of Man* (New York, Columbia University Press, 1945).

⁶ H Lauterpacht (ed), *International Law: A Treatise, by L. Oppenheim* (6th edn, London, Longmans, 1947), 19 (§13).

compensation. These rules have also been progressively developed by the ILC under the English rubric of 'liability'; in all other official languages of the United Nations they are covered under the same wording as the consequences for wrongful acts (eg *responsabilité*, *responsabilidad*).

Part I of this book provides an introduction to the topic, covering issues relating to the definition of responsibility, the system of responsibility and the distinction between primary and secondary rules. Part II examines the development of the law on international responsibility and its relationship with other areas of law, including emerging areas of soft law, and municipal legal systems. Part III sets out the sources of international responsibility: the concept of an internationally wrongful act and the notion of responsibility in the absence of an internationally wrongful act. Part IV examines the content of international responsibility, from the general regime to the regime for grave breaches of obligations arising under peremptory norms, to specific regimes in respect of human rights, the WTO, environmental law, European community law and others. It also covers regimes of liability in the absence of an internationally wrongful act, including treaty-based regimes and environmental regimes as well as circumstances precluding wrongfulness. Part V deals with implementation of responsibility by States, international organizations and other entities. It covers modalities for the implementation of international responsibility and countermeasures.

These subjects are evidently wide in scope, and many of them remain controversial. Different contributors to this volume take different approaches to responsibility and to the ILC's work; thus what appears here is a range of views, sometimes conflicting. Within the confines of a single house-style, the individual authors of course speak for themselves. The book aims for a relatively comprehensive coverage, and in consequence an overall critique of the current international law and practice of responsibility; it does not present an overall conclusion.

* * *

The publication of this volume marks the end of a long bilingual project which was first envisioned in the immediate aftermath of the ILC's adoption of the Articles on State Responsibility in 2001 (here abbreviated as ARSIWA). Parallel versions of the book are being published in French by Pedone and in English by OUP; the French version under the care of the Centre for International Law at the University of Paris X (Nanterre) under the directorship of Alain Pellet; the English version under the care of the Lauterpacht Centre for International Law (Director: James Crawford). Due to differences in editorial style and linguistic tradition, the two versions differ in detail.

Concerning the English version, editorial assistance has been provided by a number of research associates of the Lauterpacht Centre, including in particular Merel Alstein, Stephanie Ierino, Jonathan Ketcheson, Dr Tom Grant, Kylie Evans, and Federica Paddeu. Mr Arnoldo Brenes, Dr Douglas Guilfoyle, and Dr Monique Sasson kindly provided expert assistance in the editing of specialized chapters. But thanks are due above all to Dr Kate Parlett for her meticulous attention to detail and perseverance over the course of the work; and to Affef Ben Mansour of CEDIN for her patience and skill in coordinating the French end of the joint project. The editors would also like to thank John Louth of Oxford University Press for his commitment to the project, and to Merel Alstein, Ceri Warner, Beth Cousins and Benjamin Roberts for their assistance in the final stages of the process.

About two-thirds of the contributions were originally written in French; a mountainous task of translation ensued. Thanks are due to Dr Sonia Rolland, Alex Campbell, Melissa

Thibault, Mark Power, Paul Davies, Julian Fell, Andria Robertson, Kelisiana Thynne, David McKeever, Dr Solène Rowan, Freya Baetens, Eva Nanopoulos, Francesca Galli, Mushtaq Namdarkhan, Merel Alstein, and Stephanie Ierino. But the major burden was born—with great good cheer and expedition—by Federica Paddeu and Olivia Dhein, without whom this work would never have been completed.

James Crawford
Lauterpacht Centre for International Law
University of Cambridge

Alain Pellet
Centre de droit international (CEDIN)
Université de Paris Ouest Nanterre La Défense

Simon Olleson
13 Old Square
London
26 October 2009

List of Contributors

- DENIS ALLAND Professeur de droit public, Université de Panthéon-Assas (Paris II)
- FIorentina AZIZI Judicial Training Officer, OSCE Office in Baku
- SANDRINE BARBIER Legal Officer, Legal Department of the French Ministry of Foreign Affairs
- JOHN BARKER Fellow, Lauterpacht Centre for International Law, University of Cambridge
- MYRIAM BENLOLO CARABOT Professeur de droit international et européen, Université de Valenciennes
- AFFEF BEN MANSOUR Doctorante, Université de Paris Ouest, Nanterre-La Défense
- LAURENCE BOISSON DE CHAZOURNES Professeur de droit international, Université de Genève
- SILVIA BORELLI Research Fellow, Faculty of Laws, University College London
- CLÉMENTINE BORIES Maître de Conférences, Université de Paris Ouest, Nanterre-La Défense
- ALAN BOYLE Professor of Public International Law, University of Edinburgh
- ISABELLE BUFFARD Post-doctoral Researcher; Lecturer in International Law, Faculty of Law, University of Vienna
- GÉRARD CAHIN Professeur de droit public, Université de Rennes 1
- ANTONIO CASSESE President, Special Tribunal for Lebanon
- REGIS CHEMAIN Maître de Conférences, Université de Paris Ouest, Nanterre-La Défense
- LUIGI CONDORELLI Professor of International Law, University of Florence
- OLIVIER CORTEN Professeur de droit international, Université libre de Bruxelles
- JEAN-PAUL COSTA President of the European Court of Human Rights
- GILLES COTTEREAU Professeur de droit international, Université du Maine
- EGLANTINE CUJO Legal Service, European Commission
- JAMES CRAWFORD Whewell Professor of International Law, Director, Lauterpacht Centre for International Law, University of Cambridge; former ILC Special Rapporteur on State Responsibility
- PATRICK DAILLIER Professeur de droit international, Université de Paris Ouest, Nanterre-La Défense
- ERIC DAVID Professeur ordinaire de droit international, Université libre de Bruxelles
- MARTIN DAWIDOWICZ Legal Consultant, Codification Division, United Nations Office of Legal Affairs
- OLIVIER DE FROUVILLE Professeur de droit public, Université de Montpellier 1

- CHRISTIAN DOMINICÉ Professeur honoraire, Institut de Hautes Etudes Internationales et du Développement, Genève
- ZACHARY DOUGLAS University Lecturer in Law, Fellow of Jesus College, University of Cambridge
- JOHN DUGARD Centre for Human Rights, Pretoria University; Member, International Law Commission
- PIERRE-MARIE DUPUY Professeur de droit international, Institut de Hautes Etudes Internationales et du Développement, Genève
- CONSTANTIN ECONOMIDÈS Emeritus Professor of International Law, University of Athens
- MATHIAS FORTEAU Professeur de droit international, Université de Paris Ouest, Nanterre-La Défense
- PAOLA GAETA Professeur de droit criminel international, Université de Genève
- GIORGIO GAJA Professor of International Law, University of Florence; ILC Special Rapporteur on the Responsibility of International Organizations
- HABIB GHERARI Professeur de droit international, Université Paul Cézanne Aix-Marseille III
- JOANNA GOMULA Fellow, Lauterpacht Centre for International Law, University of Cambridge
- VERA GOWLLAND-DEBBAS Professeur honoraire de droit international, Institut de Hautes Etudes et du Développement, Genève
- CHRISTINE GRAY Professor of International Law, University of Cambridge
- GILBERT GUILLAUME former President of the International Court of Justice
- PHILIPPE GUTTINGER Maître de Conférences, Université de Paris Ouest, Nanterre-La Défense
- GERHARD HAFNER Professor Emeritus of International Law, University of Vienna
- SARAH HEATHCOTE Senior Lecturer, Australian National University College of Law
- ROSALYN HIGGINS former President of the International Court of Justice
- ROSARIO HUESA VINAIXA Professor of International Law, University of Balearic Islands
- YUJI IWASAWA Professor of International Law, University of Tokyo; Chair, UN Human Rights Committee
- NAOKI IWATSUKI Associate Professor of International Law, Rikkyo University
- NINA HB JØRGENSEN Senior Appeals Counsel, Special Court for Sierra Leone
- MAURICE KAMTO Professor of International Law, University of Yaoundé II; Member, International Law Commission
- YANN KERBRAT Professeur de droit international, Université Paul Cézanne - Aix-Marseille III
- PIERRE KLEIN Professeur de droit international; Directeur, Centre de droit international, Université libre de Bruxelles
- MARTTI KOSKENNIEMI Academy Professor, University of Helsinki

- CLAUS KRESS Professor of Law, University of Cologne
- LUCIE LAITHIER Doctorante, Université de Paris Ouest, Nanterre-La Défense
- FRANCK LATTY Professeur de droit international, Université d'Auvergne
- SIR ELIHU LAUTERPACHT Honorary Professor of International Law, Emeritus
Director of the Lauterpacht Centre for International Law, University of Cambridge
- CHARLES LEBEN Professeur de droit international, Université Panthéon-Assas
- HUBERT LESAFFRE Docteur en droit public, Centre de droit international de Nanterre (CEDIN)
- ANNA-KARIN LINDBLOM Deputy Director, Ministry of Integration and Gender Equality, Sweden
- VAUGHAN LOWE Chichele Professor of Public International Law; Fellow of All Souls College, University of Oxford
- SUSAN MARKS Professor of International Law, London School of Economics
- MAJA MÉNARD Associate, Cleary Gottlieb Steen & Hamilton LLP
- VÁCLAV MIKULKA Director, Codification Division, Office of Legal Affairs, United Nations
- DJAMCHID MOMTAZ Professor of International Law, Tehran University
- MICHEL MONTJOIE Docteur en droit public, Centre de droit international de Nanterre (CEDIN)
- ANAÏS MOUTIER-LOPET Doctorante, Université de Paris Ouest, Nanterre-La Défense
- DANIEL MÜLLER Doctorante, Université de Paris Ouest, Nanterre-La Défense
- GABRIEL NAKHLEH Officer of the French navy—maritime administration
- CÉLINE NÈGRE Chercheur associé, Centre d'études et de recherches internationales et communautaires (CERIC)
- PENELOPE NEVILL Fellow and College Lecturer, Downing College, University of Cambridge
- YUMI NISHIMURA Associate Professor of International Law, University of Tokyo
- ROGER O'KEEFE University Senior Lecturer in Law, University of Cambridge; Deputy Director, Lauterpacht Centre for International Law
- SIMON OLLESON Barrister, 13 Old Square Chambers, London
- ANTOINE OLLIVIER Doctorante, Centre de droit international de Nanterre (CEDIN)
- ALEXANDER ORAKHELASHVILI Lecturer in Law, University of Birmingham
- ALAIN PAPAUX Professeur de philosophie du droit, Université de Lausanne
- JACQUELINE PEEL Associate Professor of Law, Melbourne Law School
- ALAIN PELLET Professeur de droit international; Directeur, Centre de droit international de Nanterre (CEDIN); Member of the International Law Commission
- DRAŽEN PETROVIĆ Principal Legal Officer, ILO, Geneva
- DIRK PULKOWSKI Legal Counsel, Permanent Court of Arbitration
- MIKAEL QUIMBERT Officer of the French Navy, Maritime Administration
- RAPHAËLE RIVIER Professeur de droit public, Université de Rouen (France)

- JEAN SALMON Professeur émérite de droit international de l'Université libre de Bruxelles
- LINOS-ALEXANDER SICILIANOS Associate Professor of International Law, University of Athens
- BRUNO SIMMA Judge, International Court of Justice
- JEAN-MARC SOREL Professeur de droit international, Université Paris 1 Panthéon-Sorbonne
- BRIGITTE STERN Professeur de droit international, Université de Paris 1 Panthéon-Sorbonne
- NADINE SUSANI Docteur en droit public, Centre de droit international de Nanterre (CEDIN)
- SANDRA SZUREK Professeur de droit international, Université de Paris Ouest, Nanterre-La Défense
- CHRISTIAN TAMS Professor of International Law, University of Glasgow
- PAUL TAVERNIER Professeur de droit international, Université de Paris Sud
- JEAN-MARC THOUVENIN Professeur de droit international, Université de Paris Ouest, Nanterre-La Défense
- CHRISTIAN TOMUSCHAT Emertius Professor, Humboldt University Berlin, Faculty of Law
- MURIEL UBÉDA-SAILLARD Doctorante, Université de Paris Ouest, Nanterre-La Défense
- ANNE-LAURE VAURS CHAUMETTE Maître de Conférences, Université de Paris Ouest, Nanterre-La Défense
- JOE VERHOEVEN Professeur de droit international, Université de Panthéon-Assas
- MICHAEL WAIBEL British Academy Postdoctoral Fellow, Lauterpacht Centre for International Law, University of Cambridge
- STEPHAN WITTICH Assistant Professor of International Law, University of Vienna
- ERIC WYLER Professeur associé de droit international, Sciences Po, Paris

Table of Cases

44213 Ontario Ltd v Krispus Kiyonga (1992) 11 Kampala LR 14 (High Court, Uganda), 20; 103 ILR 259	249n
In re A (Children) (Conjoined Twins: Surgical Separation) [2001] Fam 147 (Court of Appeal, England and Wales)	494
A v France (App No 14838/89), Merits and Just Satisfaction) ECHR, Series A, No 277-B.	267
A and Others v United Kingdom (App No 3455/05), ECHR, Judgement of 19 February 2009 [GC]	772
A v United Kingdom (App No 25599/94), ECHR Reports 1998-VI.	278n, 730
Abbasi <i>see</i> R (Abbasi)	
Abudakar v Ghana, African Commission on Human and Peoples' Rights, Communication No 103/93	787
Acar v Turkey (App No 24940/94), ECHR, Judgment, 18 December 2001	1103n
Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi, African Commission on Human and Peoples' Rights, Communications 64/92, 68/92 and 78/92	786–7nn
Adali v Turkey (App No 38187/97), ECHR, Decision on Admissibility of 31 January 2002	267
ADC Affiliate Limited and ADC & ADMC Management Limited v Republic of Hungary (ICSID Case No ARB/03/16), Award of 2 October 2006	565n, 601n, 606, 609n
ADF Group Inc v United States of America, ICSID Additional Facility Case No ARB(AF)/00/1, Award of 9 January 2003	203n
ADM <i>see</i> Archer Daniels Midland Company	
Aegean Sea Continental Shelf, Judgment, ICJ Reports 1978, p 3	1094–5, 1094n
Aerial Incident (Israel v Bulgaria), ICJ Reports 1959, p 127.	1065
Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States), Order of 22 February 1996, ICJ Reports 1996, p 9	576, 1095n
Affaire Borrel <i>see</i> Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France)	
Affaire relative a la concession des phares de l'Empire Ottoman, 24 July 1956, 12 RIAA 155; 23 ILR 81	275, 293, 389n, 1046n, 1048
Affaire relative a l'acquisition de la nationalité polonaise (Germany v Poland), 24 July 1924, 1 RIAA 401	355
Agrotexim and others v Greece (App No 14807/89), ECHR, Series A, No 330-A (1995)	388, 1058, 1059
Aguas del Tunari SA v Republic of Bolivia, Decision on Jurisdiction of 21 October 2005, (2005) 20 ICSID Review 450	1019n
Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (Preliminary Objections), Judgment, 24 May 2007	596, 1005n, 1006–7, 1010, 1012, 1014, 1060, 1124
Ahmed v Austria (App No 25964/94), ECHR Reports 1996-VI	766
AIG <i>see</i> American International Group	
Aigbe v Nigeria, African Commission on Human and Peoples' Rights, Communication 252/2002 ..	783n
Air Service Agreement of 27 March 1946 (United States of America v France) (1978) 18 RIAA 417	472, 1128, 1129, 1133, 1153, 1154, 1157n, 1160, 1161, 1165–6, 1170n, 1171, 1174
Airey v Ireland (App No 6289/73), ECHR, Series A, No 32 (1979), 14.	357n
Akdivar and others v Turkey (App No 21893/93), ECHR Reports 1996-IV [GC]	769
Aksoy v Turkey (App No 21987/93), ECHR Reports 1996-IV	772n
Aktien-Zuckerfabrik Schöppenstedt v Council of the European Communities (Case 5/71) [1971] ECR 975 (ECJ)).	868n, 869
Al-Adsani v United Kingdom (App No 35763/97), ECHR Reports 2001-XI [GC]	772
Al-Jedda <i>see</i> R (Al-Jedda)	
Alabama Arbitration (US v UK), Tribunal of Arbitration, London/Geneva 1872.	177–8, 400
Alex Genin, Eastern Credit Limited, Inc and AS Baltoil v Estonia (ICSID Case No ARB/99/2)), Final Award of 25 June 2001, 6 ICSID Reports 236.	1016n

Alliance, (1903–1905) 9 RIAA 140	485
Aloeboetoe v Suriname, Reparations and Costs, Inter-Am Ct HR, Series C, No 15 (1993)	605 <i>n</i> , 748, 749–50, 751, 757–8
Ambatielos (1956) 12 RIAA 91; 23 ILR 314	140, 1047 <i>n</i> , 1062
Amco Asia Corporation and others v Indonesia (ICSID Case No ARB/81/1): Decision on Annulment of 16 May 1986, 1 ICSID Reports 509	839
Resubmitted Case: Award of 5 June 1990, 1 ICSID Rep 569	607 <i>n</i> , 831
American International Group Capital Partners v Republic of Kazakhstan [2005] EWHC 2239 (Comm) (Commercial Court, England and Wales); 11 ICSID Reports 118	841
American International Group Inc and American Life Insurance Company v Iran and Central Insurance of Iran (1983) 4 Iran-US CTR 96	606, 608 <i>n</i> , 620 <i>n</i>
American Manufacturing and Trading Inc v Zaire (Democratic Republic of the Congo), (ICSID Case No ARB/93/1), Award of 21 February 1997, 5 ICSID Reports 11	178, 1016 <i>n</i>
American Security and Trust Company (1958) 26 ILR 322	823 <i>n</i>
Amnesty International v Zambia, African Commission on Human and Peoples' Rights, Communication 212/98	783 <i>n</i>
Amoco International Finance Corporation v Iran (1987) 15 Iran-US CTR 222	137 <i>n</i> , 583, 586 <i>n</i> , 601 <i>n</i> , 608 <i>n</i> , 848
Amoco Iran Oil Company v Iran (1982) 1 Iran-US CTR 493	844 <i>n</i>
An v Cyprus (App No 18270/91), E Com HR, Decision on Admissibility, 8 October 1991; 13 HRLJ 44	659–60
Anaconda-Iran Inc v Government of the Islamic Republic of Iran et al (1986), 13 Iran-US CTR 199	478–9
Andresen (Germany/Mexico), 1930, Whiteman, Damages in International Law, Vol I, 217	476 <i>n</i>
Anglo-Iranian Oil Company case (United Kingdom v Iran), ICJ Reports 1952, p 93	1008 <i>n</i>
Apostolidi and others v Turkey (App No 45628/99), ECHR, Judgment of 27 March 2007	1184 <i>n</i>
Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, ICJ Reports 1989, p 177	1077 <i>n</i> , 1079
Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case Concerning the Continental Shelf (Tunisia v Libyan Arab Republic), Judgment, ICJ Reports 1985, p 192	1094 <i>n</i>
Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia), Preliminary Objections (Yugoslavia v Bosnia and Herzegovina), ICJ Reports 2003, p 7	215 <i>n</i>
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia) - Provisional Measures, Order of 18 April 1993, ICJ Reports 1993, p 3	1122
- Provisional Measures, Order of 13 September 1993, ICJ Reports 1993, p 325	137, 1122
- Preliminary Objections, ICJ Reports 1996, p 595	627, 699, 996, 1122, 1185 <i>n</i>
- Counter-claims, Order of 17 December 1997, ICJ Reports 1997, p 243	452 <i>n</i>
- Merits, Judgment, 26 February 2007	22, 203, 204, 205–6, 208, 215, 227, 230, 234–5, 243, 246, 257, 268–9, 277, 279, 284 <i>n</i> , 286, 333, 359, 413–14, 554, 558, 565 <i>n</i> , 578 <i>n</i> , 582, 601 <i>n</i> , 624 <i>n</i> , 631 <i>n</i> , 632, 713, 996 <i>n</i> , 1185 <i>n</i>
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia), Preliminary Objections, Judgment, 18 November 2008	215–16
Arbitral Award made by the King of Spain on 23 December 1906 (Honduras v Nicaragua), ICJ Reports 1960, p 192	1045, 1111
Archer Daniels Midland Company and Tate & Lyle Ingredients Americas Inc v United Mexican States (ICSID Case No ARB(AF)/04/05), Award of 21 November 2007	473, 620 <i>n</i> , 1157 <i>n</i> , 1158 <i>n</i> , 1161–2, 1165
Argentina—Measures Affecting the Export of Bovine Hides and the Import of Finished Leather (WT/DS155), WTO Panel Report, 16 February 2001	796
Arges Sequeira Mangas v Nicaragua (Case 11.218), Inter-Am Com HR, Report No 52/97 of 18 February 1998	747, 756 <i>n</i>
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Burundi), Order of 30 January 2001, ICJ Reports 2001, p. 3	779 <i>n</i>

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), Order of 30 January 2001, ICJ Reports 2001, p. 6	779n
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), Judgment, ICJ Reports 2005, p 168 . . . 39, 203n, 204, 228, 334, 359, 439–40, 441–2, 444–5, 462–3, 463n, 464, 554, 556, 559, 565n, 567n, 574, 579, 595–6, 601n, 671, 779n, 960	
Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda), ICJ Reports 2006, p 6	451, 779n, 960, 1185n
Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v Belgium), Judgment, ICJ Reports 2002, p 3, 77	19–20, 177, 327, 357, 363, 539–40, 565n, 583–4, 592, 601n, 721–2, 723, 939n
Arthur Young & Co v Islamic Republic of Iran, 17 Iran-US CTR 245	255
Asian Agricultural Products Ltd v Sri Lanka (ICSID Case No ARB/87/3), Award of 27 June 1990, 4 ICSID Reports 250	834, 1016n
Assanidze v Georgia (App No 71503/01), ECHR Reports 2004-II [GC]	584–5
Association des fonctionnaires de l'administration centrale des Postes, Conseil d'Etat, 2 November 1923, Recueil Lebon, p 699 (France)	272n
Association Ekin v France (App No 39288/98), ECHR Reports 2001-VIII	769
Association pour la défense des droits de l'Homme et des libertés v Djibouti, African Commission on Human and Peoples' Rights, Communication 133/94	786n
Atlantic Triton v Guinea (ICSID Case No ARB/84/1) (1986) 3 ICSID Reports 13	620n
Attorney-General v Eichmann, 29 May 1962 (Supreme Court of Israel), (1968) 36 ILR 310	718
Attorney-General v Mobil Oil NZ Ltd (1987) 118 ILR 620 (High Court, New Zealand)	841–2
Attorney-General v Nissan [1970] AC 179; 44 ILR 360 (House of Lords, United Kingdom)	661
Auditing of accounts between the Kingdom of the Netherlands and the French Republic pursuant to the Additional Protocol of 25 September 1976 of the Protection of the Rhine against Pollution by Chlorides, Award of 12 March 2004 (Permanent Court of Arbitration)	613
Australia—Measures Affecting Importation of Salmon—Recourse to Art. 21.5 by Canada (WT/DS18), WTO Panel Report of, 20 March 2000	795
Australia—Subsidies Provided to Producers and Exporters of Automotive Leather, WTO Panel Report of 21 January 2000, WTO Doc WT/DS126/RW	158, 798n
Austria v Italy ('Pfunders') (App No 788/60), (1961) 4 Yearbook ECHR 116	1183
Austrian Citizen's Compensation (1966) 32 ILR 153	1039n
Autopista Concesionada de Venezuela CA v Bolivarian Republic of Venezuela (ICSID Case No ARB/00/5), Award of 23 September 2003, 6 ICSID Reports 417	480n, 932n
Autosalone Ispra dei Fratelli Rossi Snc v European Atomic Energy Community (Case C-136/01) [2002] ECR I-6565 (ECJ)	874n
Avena and Other Mexican Nationals (Mexico v United States of America): - Provisional Measures, Order of 5 February 2003, ICJ Reports 2003, p 77	1125n
- Judgment, ICJ Reports 2004, p 12	179n, 539–40, 541–2, 554, 556, 559, 560, 565n, 584, 592–3, 595, 601n, 944n, 1125n
Azurix Corp v Argentina (ICSID Case No ARB/01/12), - Decision on Jurisdiction of 8 December 2003, 10 ICSID Reports 412	1016n
- Award of 23 June 2006, 14 ICSID Reports 215	620n
Bakalian v Ottoman Bank, (1965) Clunet 1966, 118; 47 ILR 216	1008n, 1009n, 1013n
Banković v Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and United Kingdom (App No 52207/99), Decision on admissibility, ECHR Reports 2001-XII [GC]	649n, 659–60, 733, 734, 767–8, 769, 1184n
Banro American Resources, Inc and Société Aurifère du Kivu et du Maniema SARL v Democratic Republic of the Congo (ICSID Case No ARB/98/7), Award of 1 September 2000, (2002) 17 ICSID Review 3	1020
Barbera, Messegue and Jabardo v Spain (App Nos 10588/83; 10589/83; 10590/83), ECHR, Series A, No 285-C	605n
Barberie, Moore, International Arbitrations IV, 4199	1047, 1048
Barcelona Traction, Light & Power Company, Limited, Second Phase, ICJ Reports 1970, p 3, 32	24, 78, 196, 451, 568, 576, 641, 825, 844n, 855, 910n, 957–8, 977, 980–1, 1001–2, 1006, 1007–9, 1010–11, 1013, 1014n, 1016–17, 1018, 1018n, 1019n, 1020n, 1023, 1025, 1039n, 1054, 1057–60, 1067–8, 1181, 1185

BB v United Kingdom (App No 53760/00), ECHR, Judgment of 10 February 2004	671 <i>n</i>
Beamglow Ltd v European Parliament, Council of the European Union and Commission of the European Communities (Case T-383/00) [2005] ECR II-5459 (CFI)	872, 872 <i>n</i>
Beck, Copp and Bazeley v United Kingdom (App Nos 48535/99; 48536/99; 48537/99), ECHR, Judgment of 22 October 2002	604 <i>n</i>
Behrami and Behrami v France and Saramati v France, Germany and Norway (App Nos 71412/01 and 78166/01), ECHR, Decision on Admissibility of 2 May 2007 [GC]	303, 768
Belilos v Switzerland (App No 10328/83), ECHR, Series A, No 132 (1988) [GC]	771
Belov case (1972)	1082
Bergaderm and Goupil <i>see</i> Laboratoires pharmaceutiques Bergaderm SA and Jean-Jacques Goupil v Commission	
Beyeler v Italy (Just Satisfaction) (App No 33202/96), ECHR, Judgment of 28 May 2002 [GC]	582, 616 <i>nn</i>
BG Group Plc v Argentina, Award of 24 December 2007	620 <i>n</i>
Biovilac <i>see</i> SA Biovilac NV	
Birgnone, Ralston, Venezuelan Arbitrations of 1903, 710	1056 <i>n</i>
Birra Wührer SpA and others v Council and Commission of the European Communities, (Case 256/80) [1982] ECR 85 (ECJ)	871
Blake v Guatemala, Merits, Inter-Am Ct HR, Series C, No 36 (1998)	389, 727–8, 743–4
Blazek et al v Czech Republic, Human Rights Committee, Communication No 857/1999, 12 July 2001, CCPR/C/72/D/857/1999	559 <i>n</i>
Blumenthal, Recueil des décisions des tribunaux mixtes, Vol 3 (1924), 616	1056 <i>n</i>
Bolivar Railway (Merits), 1903, 9 RIAA 445	249 <i>n</i>
Booker plc v Co-operative Republic of Guyana (ICSID Case No ARB/01/9)	436
Bosnia-Herzegovina v UK (1994) 43 ICLQ 714	308
Bosnian Genocide case <i>see</i> Application of the Convention on the Prevention and Punishment of the Crime of Genocide	
Bosphorus Hava Yollari Turizm ve Ticaret AS v Minister for Transport, Energy and Communications and others (Case C-84/95) [1996] ECR I-3953 (ECJ)	873
Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v Ireland (App No 45036/98), ECHR Reports 2005-VI	312, 663
Boues rouges case, Tribunal de Grand Instance, Bastia (France), 4 July 1985, No 123/76, Judgment 422	808 <i>n</i>
BP America Production Company, Pan American Sur SRL, Pan American Fueguina, SRL and Pan American Continental SRL v Argentina, (ICSID Case No ARB/04/8), Decision on Preliminary Objections of 27 July 2006	1016 <i>n</i>
BP Exploration Co v Government of the Libyan Arab Republic (1973) 53 ILR 297, (1974) 53 ILR 375	583, 585, 595, 600 <i>nn</i>
Brannigan and McBride v United Kingdom (App Nos 14553/89 and 14554/89), ECHR, Series A, No 258-B (1993) [GC]	772 <i>n</i>
Brasserie du Pêcheur v Germany and Factortame v UK (Joined Cases C-46/93 and C-48/93), [1996] ECR I-1029 (ECJ)	153, 356 <i>n</i> , 865, 868, 869, 870
Brazil–Export Financing Programme for Aircraft—Recourse to Arbitration by Brazil under Art. 22.6 of the DSU and Art. 4.11 of the SCM Agreement (WT/DS46/ARB), Decision by the Arbitrators, 28 August 2000	800, 1167 <i>n</i>
Brazilian Loans, 1929, PCIJ, Series A, No 21, p 93	479
Breard <i>see</i> Vienna Convention on Consular Relations (Paraguay v United States of America)	
British Claims in the Spanish Zone of Morocco (Great Britain v Spain), 1 May 1925, 2 RIAA 615	253, 584, 590, 642
Brown (United States) v Great Britain, 23 November 1923, 6 RIAA 120	293, 294
Brumărescu v Romania (App No 28342/95), ECHR Reports 2001-I [GC]	582, 987
Burden v United Kingdom (App No 13378/05), ECHR, Judgment of 29 April 2008 [GC]	770 <i>n</i>
Caballero Delgado and Santana v Colombia, Reparations and Costs, Inter Am-Ct HR, Series C, No 31 (1997)	749–50 <i>n</i>
Caire (France) v United Mexican States, 7 June 1929, 5 RIAA 175	181 <i>n</i>
Calcerrada Fornieles and Cabeza Mato v Spain (App No 17512/90), E Com HR, Decision on Admissibility, 6 July 1992	769
Cambridge Water v Eastern Counties Leather [1994] 1 All ER 53 (House of Lords, United Kingdom)	101

Cameroon v Nigeria <i>see</i> Land and Maritime Boundary between Cameroon and Nigeria	
Campbell, 10 June 1931, 2 RIAA 1145	751n
Camuzzi International SA v Argentina (ICSID Case No ARB/03/7):	
- Decision on Jurisdiction, 11 May 2005	1016–17n
- Award of 18 September 2007	620n
Canada/United States—Continued Suspension of Obligations in the <i>EC–Hormones</i> Dispute (WT/DS320, WT/DS321), Panel Report, 14 November 2008	799–800
Canada—Certain Measures Affecting the Automotive Industry (WT/DS 139, DS/142), Panel Report, 19 June 2000	796, 796n
Canada—Certain Measures Concerning Periodicals (WT/DS31), Panel/Appellate Body Reports, 30 July 1997	797
Canada—Continued Suspension of Obligations in the <i>EC–Hormones</i> Dispute, WTO Appellate Body, Panel report, 31 March 2008, WTO doc WT/DS321/R	806
Canada—Export Credits and Loan Guarantees for Regional Aircraft—Recourse to Arbitration by Canada under art 22.6 of the DSU and art 4.11 of the SCM Agreement—Decision by the Arbitrator, WTO doc WT/DS222/ARB, 17 February 2003	1167n
Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products (WT/DS103, DS113), Panel Report, 27 October 1999	796–7
Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products—Second Recourse to Art. 21.5 of the DSU by New Zealand and the United States (WT/DS103, DS113), Appellate Body report, 17 January 2003	797n
Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain (WT/DS276), Panel/Appellate Body Reports, 27 September 2004	797n
Cargill Inc v United Mexican States, Award (ICSID Case No ARB(AF)/05/02), Award of 18 September 2009	473
Carnevaro (1912), Scott, 1 Hague Court Reports 284 (Permanent Court of Arbitration)	1056n
Castillo-Páez v Peru, Reparations and Costs, Inter-Am-Ct HR, Series C, No 43 (1998)	751, 755n, 755nn, 758
Castillo Petrucci et al v Peru:	
- Merits, Reparations and Costs, Inter-Am-Ct HR, Series C, No 52 (1999)	543, 559n
- Compliance with Judgment, Inter-Am Ct HR, Series C, No 59 (1999)	759–60
Cayuga Indians (1926) 6 RIAA 189	1046–7, 1048
Cecere v Italy (App No 68344/01), ECHR, Judgment of 24 December 2005	1103n
Centros Ltd v Danish Commercial Register, (Case C-212/97) [1999] ECR I-1459 (ECJ)	1007n
Certain Attributes of the Inter-American Commission of Human Rights (Advisory Opinion OC-13/93), Inter-Am Ct HR, Series A, No 13 (1993)	744
Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962, p 151	305, 662
Certain German Interests in Polish Upper Silesia, 1926, PCIJ, Series A, No 7, p 4	240, 832
Certain Phosphate Lands in Nauru (Nauru v Australia), Preliminary Objections, ICJ Reports 1992, p 240	43, 282, 283, 399, 657, 663, 1030–1, 1038, 1046, 1047n, 1096, 1096n
Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France), Judgment, 4 June 2008	228, 555, 632n, 1122
Československá Obchodní Banka, AS v Slovak Republic (ICSID Case No ARB/97/4), Decision on Objections to Jurisdiction of 24 May 1999, 5 ICSID Reports 330	823, 840n
Cesti Hurtado v Peru, Merits, Inter-Am Ct HR, Series C, No 56 (1999)	758
CFDT v European Communities (Application No 8030/77), E Com HR, (1978) 13 DR 240	312n
Chattanooga, Whiteman, Damages in International Law I, 221	476n
Chevreau (France v United Kingdom), 9 June 1931, 2 RIAA 1113	182, 357
Chile—Price Band System and Safeguard Measures Relating to Certain Agricultural Products (WT/DS207), Appellate Body report, 23 October 2002	795n
Chorherr v Austria (App No 13308/87), ECHR, Series A, No 226-B (1993)	771n
Chorzów Factory <i>see</i> Factory at Chorzów	
Christern & Co, Becker & Co, Max Fischbach, Richard Friedericy, Otto Kummerow and A Dauman claims, German-Venezuelan Commission, 1903, 10 RIAA 363	613n
Chrysostomos v Turkey (App No 15299/89), E Com HR, (1991) 68 DR 216	1184n
Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v Nigeria, African Commission on Human and Peoples' Rights, Communication No 218/98	778n, 786n, 787
Civil Liberties Organisation (pour le compte de l'Association des barreaux) v Nigeria, African Commission on Human and Peoples' Rights, Communication No 101/93	787

Civil Liberties Organisation v Nigeria, African Commission on Human and Peoples' Rights, Communication No 67/92	786n
Civil Liberties Organisation v Nigeria, African Commission on Human and Peoples' Rights, Communication No 151/96	787
Claude Sayag and SA Zurich v Jean-Pierre Leduc, Denise Thonnon and SA La Concorde (Case 9-69) [1969] ECR 329 (ECJ)	868
CME Czech Republic BV v Czech Republic, Partial Award of 13 September 2001, 9 ICSID Reports 113	356n, 565n, 601n, 608n, 1018n, 1019n
CMS Gas Transmission Company v Argentina (ICSID Case No ARB/01/8), - Decision on Objections to Jurisdiction, 17 July 2003	1017n
- Award of 12 May 2005, 14 ICSID Reports 152	436, 452, 493, 500, 621n, 834, 889-90
- Decision on application for annulment, 25 September 2007, 14 ICSID Reports 251	493n, 888n
Coard et al. v United States (Case 10.951), Inter-Am Com HR, Report No 109/99 of 29 September 1999	753-4n, 756n
Cocchiarella v Italy (App No 64886/01), ECHR Judgment of 29 March 2006	671-2
Comité culturel pour la démocratie au Bénin, Hilaire Badjogoume, El Hadj Boubacare Diwara v Bénin, African Commission on Human and Peoples' Rights, Joint Communications 16/88 and 17/88	780, 786n
Commission of the European Communities v Federal Republic of Germany (Case C-297/95) [1996] ECR, I-6739 (ECJ)	179n
Commission of the European Communities v French Republic ('Mutton and Lamb') (Case 232/78), [1979] ECR 2729 (ECJ)	153
Commission of the European Communities v French Republic (Case C-304/02), [2005] ECR I-6263 (ECJ)	866
Commission of the European Communities v Ireland ('MOX Plant') (Case C-459/03), ECR 2006 I-4635 (ECJ)	147
Commission of the European Communities v Italian Republic (Case 39/72), [1973] ECR 101 (ECJ)	358n
Commission of the European Communities v Italian Republic (Case 199/85), [1987] ECR 1055-1060	179n
Commission of the European Communities v Luxembourg and Belgium (Joined Cases 90/63 and 91/63), [1964] ECR 625 (ECJ)	152-3
Commonwealth of Puerto Rico et al v The SS 'Zoe Colocotroni' et al, 628 F 2d 652 (1st Cir, 1980), cert den 450 US 912 (1981)	808n
Compagnie d'approvisionnement, de transport et de crédit SA and Grands Moulins de Paris SA v Commission of the European Communities, (Joined Cases 9/71 and 11/71) [1972] ECR 391 (ECJ)	872
Compagnie des Hauts Fourneaux de Chasse v High Authority of the European Coal and Steel Community, (Case 33/59), [1962] ECR 719 (ECJ)	872
Compañía de Aguas del Aconquija and Vivendi Universal v Argentina (ICSID Case No ARB/97/3), Decision on Annulment of 3 July 2002, 41 ILM 1135	20n
Compañía del Desarrollo de Santa Elena SA v Republic of Costa Rica (ICSID Case No ARB/96/1), Award of 17 February 2000, 5 ICSID Reports 157	618, 839n
Company General of the Orinoco (1905) 10 RIAA 184	889
Comptoir national technique agricole (CNTA) SA v Commission of the European Communities (Case 74/74) [1975] ECR 533 (ECJ)	871
Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v European Community), (ITLOS, Case No 7)	1119, 1122, 1124
Consorts Hovelague, Conseil d'État (France), 13 January 1984	251
Constitutional Court v Peru, Competence, Inter-Am Ct HR, Series C, No 55 (1999)	753n
Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria, African Commission on Human and Peoples' Rights, Communications 140/94, 141/94 and 145/95	787n
Constitutional Rights Project (on behalf of Lekwot and others) v Nigeria, African Commission on Human and Peoples' Rights, Communication 64/93	787
Constitutional Rights Project (on behalf of Lekwot and others) v Nigeria, African Commission on Human and Peoples' Rights, Communication 87/93	788
Continental Casualty Company v Argentina (ICSID Case No ARB/03/9), Award of 5 September 2008	620n

Cordis Obst und Gemüse Großhandel GmbH v Commission of the European Communities and French Republic (Case T-18/1999) [2001] ECR II-913 (CFI)	869–70
Cordova v Italy (No 1) (App No 40877/98), ECHR Reports 2003-I	772n
Cordova v Italy (No 2) (App No 45649/99), ECHR Reports 2003-I	772n
Corfu Channel (United Kingdom v Albania):	
- Preliminary Objections, ICJ Reports 1948, p 15	1122
- Merits, ICJ Reports 1949, p 1	43, 98, 98n, 261, 283–4, 355, 357, 358–9, 450, 499n, 507, 578, 604, 624n, 632, 636, 658, 671, 888
- Assessment of the Amount of Compensation, ICJ Reports 1949, p 244.	658
Corn Products International Inc v United Mexican States, Decision on Responsibility (ICSID Case No ARB(AF)/04/01), Award of 15 January 2008	473
Corus UK Ltd v Commission of the European Communities (Case T-171/99) [2001] ECR II-2967 (CFI)	614n
Costa Rica v Nicaragua <i>see</i> Dispute Regarding Navigational and Related Rights	
Costa v ENEL (Case 6/64) [1964] ECR 585 (ECJ)	147, 152
Cotesworth and Powell (Great Britain v Colombia), 5 November 1875, Moore, International Arbitrations II, 2050	273, 274
Cour de cassation (Belgium), section française, 2me Chambre, 12 février 2003	723
Cour de cassation (France), Chambre criminelle, arrêt du 13 mars 2001	723
Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others (Case C-453/99) [2001] ECR I-6297 (ECJ)	864
De Courcy v United Kingdom (App No 2749/66), E Com HR, Decision on admissibility, 16 December 1966	387
Cowper (United States/Great Britain) (1822), de Lapradelle & Politis, Recueil des arbitrages internationaux I, 348.	642
Cruz Varas and others v Sweden (App No 15576/89), ECHR, Series A, No 201 (1991) [GC]	766
CSOB <i>see</i> Československá Obchodní Banka	
Cumaraswamy Advisory Opinion, <i>see</i> Difference Relating to Immunity from Legal Process	
Cyprus v Turkey (App Nos 6780/74 & 6950/75), E Com HR, (1975) 2 DR 125	660
Cyprus v Turkey (App No 8077/77), E Com HR, (1978) 13 DR 145	660
Cyprus v Turkey, Merits (App No 25781/94), ECHR Reports 2001-IV [GC]	267, 660, 677n, 764, 767, 1184n
'Cysne' <i>see</i> Responsibility of Germany for acts committed subsequent to 31 July 1914	
Dames and Moore v Islamic Republic of Iran (1983) 4 Iran-US CTR 212.	846
De Becker v Belgium (App No 214/56), E Com HR, Decision on admissibility, 9 June 1956.	387, 769
de Montfort, 10 July 1926, 3 ILR 279.	1056n
De Wilde, Ooms et Versyp v Belgium (App Nos 2832/66, 2835/66, 2899/66), ECHR Series A, No 15 (1972)	357n
Delagoa Bay Railway (1900), in GF de Martens, Nouveau recueil général de traités, 2e serie, Vol XXX, 329.	643, 1059
Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v United States of America), Judgment, ICJ Reports 1984, p 246	169n, 1043, 1045, 1045n, 1092
Democratic Republic of the Congo against Burundi, Rwanda and Uganda, African Commission on Human and Peoples' Rights, Communication No 227/99	779
Denkavit België NV v Belgium (Case No 145/85) [1987] ECR 565 (ECJ)	475
Denmark v Turkey (App No 34382/97), ECHR Reports 2000-IV.	555n
Desert Line Projects LLC v Republic of Yemen (ICSID Case No ARB/05/17), Award of 6 February 2008	620n, 672
Diallo <i>see</i> Ahmadou Sadio Diallo	
Dickson Car Wheel Co (USA) v United Mexican States, July 1931, 4 RIAA 669.	210, 628n
Difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the <i>Rainbow Warrior</i> Affair, 30 April 1990, 20 RIAA 215.	21, 43–4, 105, 212, 358n, 359, 362, 367, 388–9, 399, 434, 486–7, 547, 548, 576, 577–8, 580–1, 590, 630–1, 632, 633n, 635n, 672, 674, 949–50, 1133–4, 1163