



Rosalyn Higgins

PROBLEMS & PROCESS

International Law and
How We Use it

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

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 in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece
Guatemala Hungary Italy Japan South Korea Poland Portugal
Singapore Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

Published in the United States
by Oxford University Press Inc., New York

© Rosalyn Higgins 1994

The moral rights of the author have been asserted

Database right Oxford University Press (maker)

Reprinted 2010

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, 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 book in any other binding or cover
And you must impose this same condition on any acquirer

ISBN 978-0-19-876410-6

Printed in the United Kingdom by
Lightning Source UK Ltd., Milton Keynes

PREFACE

To every international lawyer, an invitation from the Curatorium of the Hague Academy to deliver the General Course in International Law is the greatest possible honour. The last Briton to give the General Course was James Fawcett in 1971. I express my appreciation for the invitation to offer my views on international law in fifteen lectures—and the firm indication from the Curatorium that what was sought was a personal statement.

But it is hard to describe the magnitude of the task that this honour bestows; or the difficulties that it presents. Can there really be anything new or interesting still to say, or is not all wisdom and scholarship already gathered in the Collected General Courses? The problem was accentuated by the fact that in recent years there had been some exceptionally admired General Courses: I may particularly mention those of Professor Michel Virally, Professor Oscar Schachter, and Professor Lou Henkin.

There were further problems. Would not a *tour d'horizon* of the corpus of international law in fifteen lectures necessarily result in dealing with any given subject in a shallow way? After all, on any topic that one might choose for a single lecture, there would exist a vast literature in a variety of languages, and often a very substantial jurisprudence as well. How could one conceivably begin to do justice to any one of these topics?

For several months these seemed insoluble, and indeed overwhelming, problems. But then a beam of light was shown to me by Judge Sir Robert Jennings QC, President of the International Court. He offered the wise advice that one should never lose sight of the fact that one was not writing the definitive treatise on the entirety of international law, but rather lecturing to students about the ideas underlying international law.

From that moment the task seemed marginally less daunting. Of course, it would still be necessary to immerse oneself in as much as possible of the vast literature on each topic. But my job would not be to summarize or synthesize all that had ever been said on a given theme, but rather to offer my own perspectives and ideas. The learned writings, the state practice, the judicial and arbitral decisions would assist in helping me decide what seemed the key issues on which I wished to comment.

That decision, together with the insistence with which it had been put to me that the General Course is intended as a vehicle for one's personal views and philosophy, led rapidly to another decision. My course would not follow the traditional chapter headings of the textbooks; nor would it endeavour to deal with every matter that should properly be covered in a textbook, or in a university course. Our tasks were different.

But, if the lectures were not to follow the textbook headings, what should their theme be? A colleague suggested to me that I might focus on international law and the settlement of disputes. But international law in the settlement of disputes is only part of the story. International law, properly understood, is about avoiding disputes, or containing them, as much as about settling them. And indeed, the perception that international law is primarily about dispute settlement entails certain philosophical assumptions that should usefully be explored.

This General Course is neither a treatise nor a textbook. It is a series of lectures in which I endeavour to do two main things. First, I try to show that there is an essential and unavoidable choice to be made between the perception of international law as a system of neutral rules, and international law as a system of decision-making directed towards the attainment of certain declared values. Secondly, instead of recounting all the well-agreed principles of international law, I have deliberately written about many of the difficult and unanswered issues in international law today. And I have tried to show how the acceptance of international law as process leads to certain preferred solutions so far as these great unresolved problems are concerned.

I have had two further subsidiary objectives. One is to show that the process we call international law is not just about dispute resolution. I have also been very keen to show the students how things fit together. The traditional structuring of textbooks makes it hard to see how concepts apply in unexpected circumstances and locations. But this discovery—how one legal concept bears on another apparently unrelated matter—is one of the great excitements of international law. I wanted to show the students how the jigsaw fits together, how one matter bears on another, how there is always a new interrelationship to be discovered.

These are the objectives of this General Course. In my endeavours to realize them I owe a debt of gratitude to many people. First, to Professor Daniel Bardonnet, the Secretary General of the Curatorium, for his endless guidance, support, and encouragement, for his practical suggestions and personal friendship. Secondly, several students of mine at the University of London have enthusiastically helped with bibliographical research, harvesting the literature, assembling the evidences of practice, and chasing recalcitrant footnotes. My warm thanks go to Deborah Strachan, Greg Maggio, Charles Gottlieb, and Chanaka Wickremasinghe. My very great thanks go to Danesh Sarooshi, who engaged in this and assisted greatly on work on the typescript at the editing stage. Thirdly, the publication of these lectures affords me the opportunity of publicly recording my great appreciation to my secretary, Susan Hunt. Her unflappable assistance, in the face of chaotic piles of books and papers, illegible instructions, lengthy overnight faxes, wandering footnotes, and

impossible deadlines, has been invaluable. Finally, my husband Terence has, as always, not only tolerated what others would surely have found intolerable, he has given every moral and practical support.

R. H.

London

January 1993

ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
<i>AJIL</i>	<i>American Journal of International Law</i>
AOI	Arab Organization for Industrialization
BFSP	British Foreign and State Papers
<i>BYIL</i>	<i>British Year Book of International Law</i>
<i>Canadian YBIL</i>	<i>Canadian Year Book of International Law</i>
CAT	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CPC	Committee on Programme and Co-ordination
CSCE	Conference on Security and Co-operation in Europe
EC	European Community
EEZ	exclusive economic zone
<i>EJIL</i>	<i>European Journal of International Law</i>
GAOR	General Assembly Official Records
<i>German YBIL</i>	<i>German Year Book of International Law</i>
<i>HRLJ</i>	<i>Human Rights Law Journal</i>
<i>HRQ</i>	<i>Human Rights Quarterly</i>
<i>HRJ</i>	<i>Human Rights Journal</i>
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
IFC	International Finance Corporation
ILC	International Law Commission
<i>ILM</i>	<i>International Legal Materials</i>
ILO	International Labour Organization
ILR	International Law Reports
IMCO	Intergovernmental Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
Iran-USCTR	Iran-US Claims Tribunal Reports

ITC	International Tin Council
LNOJ	League of Nations Official Journal
LNTS	League of Nations Treaty Series
NYIL	Netherlands Yearbook of International Law
OAU	Organization of African Unity
ONUC	Opération des Nations Unies au Congo
Parl. Deb.	Parliamentary Debates
PCIJ	Permanent Court of International Justice
PLO	Palestinian Liberation Organization
<i>Proc. ASIL</i>	<i>Proceedings of the American Society of International Law</i>
<i>RGDIP</i>	<i>Revue général de droit internationale privé</i>
<i>RIAA</i>	<i>Reports of International Arbitral Awards</i>
UDI	Unilateral Declaration of Independence
UNCIO	United Nations Conference on International Organization
UNCLOS	United Nations Convention on the Law of the Sea
UNEF	United Nations Emergency Force
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNFICYP	United Nations Peace-Keeping Force in Cyprus
UNIFIL	United Nations Interim Force in the Lebanon
UNOGIL	United Nations Observer Group in the Lebanon
UNOSOM	United Nations Operations in Somalia
UNPROFOR	United Nations Peace-keeping Forces
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
WHO	World Health Organization

CONTENTS

<i>Abbreviations</i>	xi
<i>Table of Cases</i>	xiii
<i>Table of National Legislation</i>	xxii
<i>Table of International Conventions</i>	xxiv
1. The Nature and Function of International Law	I
2. Sources of International Law: Provenance and Problems	17
3. Participants in the International Legal System	39
4. Allocating Competence: Jurisdiction	56
5. Exceptions to Jurisdictional Competence: Immunities from Suit and Enforcement	78
6. Responding to Individual Needs: Human Rights	95
7. Self-Determination	111
8. Natural Resources and International Norms	129
9. Accountability and Liability: The Law of State Responsibility	146
10. The United Nations	169
11. Dispute Settlement and the International Court of Justice	186
12. The Role of National Courts in the International Legal Process	205
13. Oiling the Wheels of International Law: Equity and Proportionality	219
14. The Individual Use of Force in International Law	238
15. The Use of Force by the United Nations	254
<i>Conclusion</i>	267
<i>Index</i>	269

TABLE OF CASES

CANADA

Rose v. King [1947] 3 DLR 617.	87-8
--	------

COMMITTEE ON HUMAN RIGHTS, ICCPR

HMCA v. Netherlands Communication 213/1986 GAOR 4455, Supp. 4a.	158
--	-----

EUROPEAN COMMISSION ON HUMAN RIGHTS

Denmark, Sweden, Norway and Netherlands v. Greece Application No. 4448/70; 12 Yrbook of the European Convention on Human Rights (1969), 12	58
France, Norway, Denmark, Sweden and Netherlands v. Turkey Application No. 9940/82; 26 Yrbook of the European Convention on Human Rights (1983), Pt. III, 1	58

EUROPEAN COURT OF HUMAN RIGHTS

Airey v. Ireland Ser. A, No. 32 (1979)	100
Handyside Case Ser. A, No. 24 (1976)	235
Ireland v. United Kingdom Ser. A, No. 25 (1987)	158
Johnson v. Ireland Ser. A, No. 112 (1986)	100
Lawless Case Ser. A, No. 3 (1961)	234
Marckx v. Belgium Ser. A, No. 31 (1979).	100
Sporrong and Lonnroth Case Ser. A, No. 52 (1982)	235
Sunday Times v. United Kingdom Ser. A, No. 30 (1979)	234

EUROPEAN COURT OF JUSTICE

Ahlström (A.) Osaakeyhtio and Others v. Commission (Cases 89, 104, 114, 116, 117, 125-129/85) [1988] ECR 5193; [1988] 4 CMLR 901	75
--	----

Balkan Import-Export Case (Case 5/73) [1973] ECR 1091	236
Beguelin Import Co v. G L Import Export SA (Case 22/71) [1971] ECR 949; [1972] CMLR 81	75
Dyestuff Cases. See ICI Ltd. v. Commission (Cases 48, 49 & 51-7/69)	
ICI Ltd. v. Commission (Cases 48, 49 & 51-7/69) [1972] ECR 619; [1972] CMLR 557; Commission Decision 69/243 [1969] CMLR D23	75
International Handelsgesellschaft GmbH v. Einfuhr-und- Vorratsstelle für Getreide und Futtermittel (Case 11/70) [1970] ECR 1125; [1972] CMLR 255	236

FRANCE

Beldjoudi Case Conseil d'Etat, Recueil des Decisions (1991), 10 . . .	215
Belgacom and Babas Conseil d'Etat, Recueil des Decisions (1991) 152	215
Nicolo Case Conseil d'Etat, Recueil des Decisions (1985) 169	215
Vabré Case Cour de Cassation, Bulletin (1975)	215

GERMANY

Claims against the Empire of Iran (1963) BVerfGE 16; 45 ILR 57	83
--	----

INTERNATIONAL COURT OF JUSTICE

Admissions Case (Condition of Admission of a State to Membership the United Nations) ICJ Reports (1948) 57	195, 203
Aerial Incident of 3 July 1988 Case (Order of 13 December 1989) ICJ Reports (1989) 132	192, 196
Anglo-Norwegian Fisheries Case. ICJ Reports (1951) 139	191
Barcelona Traction, Light and Power Company Case (Second Phase) ICJ Reports (1970) 3	52, 57, 166, 167
Burkina Faso v. Mali Frontier Dispute ICJ Reports (1986) 554	36, 115, 123, 187, 191
Certain Expenses of the UN Case ICJ Reports (1962) 151	200, 203, 265
Continental Shelf (Libyan Arab Jamahiriya v. Malta) ICJ Reports (1985) 13	31, 191

Continental Shelf (Libyan Arab Jamahiriya v. Malta) (Application by Italy to Intervene) ICJ Reports (1984) 3	199
Corfu Channel Case (UK v. Albania) ICJ Reports (1949) 4 ECR 949	157, 159, 191, 202, 240
East Timor Case (Portugal v. Australia)	199
ELSI (Elettronica Sicula) Case ICJ Reports (1989) 15	187, 188, 223
Fisheries Jurisdiction Case ICJ Reports (1974) 1	191, 224, 225
Guinea-Bissau v. Senegal (Arbitral Award) (1990) RGDIP 240; 83 ILR 1.	115, 123
Gulf of Maine Case (Delimitation of the Maritime Boundary in the Gulf of Maine Area) ICJ Reports (1984) 246.	187, 191, 224, 225, 227, 228, 230
Interpretation of and Agreement between the WHO and Egypt ICJ Reports (1980) 73	203
Jan Mayen Maritime Delimitation Case (See Maritime Delimitation in the Area between Greenland and Jan Mayen)	
Land, Island and Maritime Frontier Dispute ICJ Reports (1992) 351	191
Land, Island and Maritime Frontier Dispute (Nicaragua Intervening) ICJ Reports (1990) 92	199
Libya-Malta Continental Shelf Case ICJ Reports (1985) 13, 29	221, 225, 227, 228
Maritime Delimitation in the Area between Greenland and Jan Mayen, ICJ Reports (1993)	188
Mazilu Case ICJ Reports (1989) 314	91, 203
Military and Paramilitary Activities in and against Nicaragua (Declaration of Intervention by El Salvador) ICJ Reports (1984) 215.	199
Military and Paramilitary Activities in and against Nicaragua (Merits) ICJ Reports (1986) 3	20, 35, 37, 155, 192, 231, 250, 251
Minquiers and Ecrehos Islands Case ICJ Reports (1953) 47	191
Monetary Gold Case ICJ Reports (1954) 19	198, 199
Namibia Case (Legal Consequences for States of the Continued Presence of South Africa in Namibia) (South West Africa) (Advisory Opinion) ICJ Reports (1971) 16	24, 25, 113, 115, 200
Nauru v. Australia (Certain Phosphate Lands in Nauru) ICJ Reports (1992) 240	191, 198
Nicaragua v. Honduras; Nicaragua v. Costa Rica (Border and Transborder Armed Actions) (Admissibility) ICJ Reports (1988) 69	192
Nicaragua v. United States (Jurisdiction and Admissibility) ICJ Reports (1984) 392	190, 191, 193, 195, 199, 223, 248

Nicaragua <i>v.</i> United States (Merits) See Military and Paramilitary Activities in and Against Nicaragua	
North Sea Continental Shelf (Anglo-Norwegian Fisheries) Cases	
ICJ Reports (1969) 1	15, 23, 29, 30, 36, 191, 223, 224, 228, 229
Norwegian Loans Case ICJ Reports (1957) 9	35, 194
Nottebohm Case ICJ Reports (1959) 4	205
Nuclear Tests Case ICJ Reports (1974) 253	35, 36, 189
Nuclear Tests Case (Application by Fiji to Intervene) ICJ Reports (1973) 334	199
Oil Platforms Case ICJ Reports (1992) 763	196
Passage through the Great Belt (Finland <i>v.</i> Denmark) (Provisional Measures) ICJ Reports (1991) 12	188
Passage through the Green Belt Case (Order of 10 September 1992) ICJ Reports (1992) 348	191
Phosphates Case (Certain Phosphate Lands in Nauru) See Nauru <i>v.</i> Australia	
Preah Vihear Temple Case ICJ Reports (1962) 6	35, 36
Reparation for Injuries Suffered in the Service of the United Nations Case (Advisory Opinion) ICJ Reports (1949) 174	47, 57, 204
Reservations to the Genocide Convention Case ICJ Reports (1951) 15	188, 203
Rights of Passage Case (Preliminary Objections) ICJ Reports (1957) 125	193, 194
South West Africa Cases (Preliminary Objections) ICJ Reports (1962) 319	4, 191
South West Africa Cases (Second Phase) ICJ Reports (1966) 3	5, 20, 23, 190, 191, 195
Sovereignty over Certain Frontier Lands Case (Belgium <i>v.</i> Netherlands) ICJ Reports (1959) 225	191
Tehran Hostages Case. See United States Diplomatic and Consular Staff in Tehran (United States <i>v.</i> Iran)	
Tunisia–Libya Continental Shelf Case ICJ Reports (1982) 1	191, 220, 221, 225, 228, 230
Tunisia–Libya Continental Shelf Case. Application for Revision and Interpretation of the Judgment of 24 February 1982 ICJ Reports (1985) 192	188
UN Headquarters Case (Applicability of the Obligation to Arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947) (Advisory Opinion) ICJ Reports (1988) 12	197, 214
United States Diplomatic and Consular Staff in Tehran (United States <i>v.</i> Iran) ICJ Reports (1980) 3	154, 155, 156, 157, 208, 246

United States Nationals in Morocco ICJ Reports (1952)	
176	12
US Hostages Case. See United States Diplomatic and Consular Staff in Tehran (United States v. Iran)	
Western Sahara Case (Advisory Opinion) ICJ Reports (1975) 12	115, 119, 127, 200, 201

INTERNATIONAL CASES

Aminoil Case. See Kuwait v. Aminoil	
Anglo-French Continental Shelf Arbitration (1979) 18 ILM 397.	228, 229
BP v. Libyan Arab Republic 53 ILR 297	27, 132, 142
Branno v. Ministry of War 22 ILR 756	93
British Claims in the Spanish Zone of Morocco (1925) 2 RIAA 615.	152
Caire (Estate of Jean-Baptiste) v. United Mexican States (1929) 5 RIAA 516	150
Caroline Case (1842); 30 British and Foreign State Papers 195	231, 242, 248
Diggs v. Dent (1975) 14 ILM 795	45, 210
Egoth Case. See SPP (Middle East) Ltd v. Arab Republic of Egypt	
Guinea v. Guinea-Bissau Maritime Delimitation Case 77 ILR 636	123, 224
James Case (US v. Mexico) (1925) 4 UNRIAA 82	158
Khemco Case. See Amoco International Finance Corp v. Islamic Republic of Iran	
Kuwait v. Aminoil 66 ILR 518	141, 142
Lake Lanoux Arbitration (France v. Spain) 24 ILR 101; (1958) 62 RGDIP 79.	133, 135, 157
Liamco v. Libyan Arab Republic 62 ILR 140	141, 142
Lubicon Lake Band v. Canada UN Doc A/42/40 (1984)	127
Montijo Case (US v. Colombia) (1874); Moore ii, Arbitrations 1421.	156
Naulilaa Arbitration (Germany v. Portugal) 2 RIAA 1011	240
Petroleum Development Ltd v. Sheikh of Abu Dhabi 18 ILR 37	141
Rainbow Warrior, The 74 ILR 241	150
SPP (Middle East) Ltd v. Arab Republic of Egypt (1983) 22 ILM 752.	140, 141
Sapphire International Petroleum Ltd v. NIOC 35 ILR 136	141

Saudi Arabia <i>v.</i> Aramco 47 ILR 117	141
Texaco Overseas Petroleum Co <i>v.</i> Libyan Arab Republic 53 ILR 389	27, 30, 132, 140, 141, 142
Trail Smelter Arbitration (US <i>v.</i> Canada) 33 AJIL 182-212 (1939); 3 UNRIAA 1905	133, 157, 163
Youmans (Thomas H) (USA) <i>v.</i> United Mexican States (1926) 4 RIAA 110.	149, 151

BELGIUM

Société Despa et Fils <i>v.</i> USSR (1931-2) 6 Annual Digest of Public International Law Cases, No. 28	45
--	----

ITALY

International Institute of Agriculture and Profit Court of Cassation, 1931	92
Branno <i>v.</i> Ministry of War 222 ILR 756	96

ISRAEL

Attorney-General of Israel <i>v.</i> Eichmann 36 ILR 277	59, 69, 70, 72
--	----------------

PERMANENT COURT OF INTERNATIONAL JUSTICE

Chorzow Factory Case (Jurisdiction) PCIJ, Ser. A, No. 9 (1927)	148
Chorzow Factory Case (Indemnity) PCIJ, Ser. A, No. 17 (1928).	144, 148, 162, 163
Diversion of the Waters of the River Meuse Case PCIJ, Ser. A/B, No. 70 (1937)	133, 157
Eastern Carelia Case PCIJ, Ser. B, No. 5 (1923)	199, 200, 201
Free Zones Case PCIJ, Ser. A/B, No. 46 (1932)	195
German Interests in Polish Upper Silesia Case PCIJ, Ser. A, No. 17 (1926)	140
Legal Status of Eastern Greenland Case PCIJ, Ser. A/B, No. 53 (1933)	35, 36
Mavrommatis Case PCIJ, Ser. A, No. 2 (1924).	196, 197
Minority Schools in Albania PCIJ, Ser. A/B, No. 64	125

Serbian and Brazilian Loans Case PCIJ, Ser. A, Nos. 20–1 (1929)	205
Settlers in Poland Case PCIJ, Ser. B, No. 6 (1923)	149
SS Lotus, The, PCIJ Ser. A, No. 10 (1927)	65, 66, 68, 77
SS Wimbledon, The, PCIJ, Ser. A, No. 1 (1923)	162, 163, 205

SOUTH AFRICA

State v. Ebrahim Supreme Ct. Appellate Div., 16 February 1991; (1992) 31 ILM 888.	72
--	----

UNITED KINGDOM

Alcom v. Republic of Columbia [1984] AC 580.	82
Arab Monetary Fund v. Hashim (No. 3) [1991] 2 WLR 729.	48, 207
Arantzazu Mendi [1939] AC 256	45
Associated Provincial Picture Houses v. Wednesbury Corporation [1948] 1 KB 223; [1948] LJR 190; 177 LT 641; 63 TLR 623; 112 JP 55; 92 SJ 26; [1947] 2 All ER 680; 45 LGR 635, CA; affirming [1947] LJR 678	236
Brind Case. See R v. Secretary of State for the Home Department, ex parte Brind	
Buttes Gas v. Hammer (Nos. 2 & 3) [1981] 3 All ER 616	212
Carl Zeiss Stiftung v. Rayner and Keeler [1967] AC 853	45, 46
City of Berne v. Bank of England (1804) 9 Ves Jun 347	45
Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 375, CA	236
Derbyshire County Council v. Times Newspapers [1992] 3 WLR 49	216
Frankfurter v. Exner [1947] Ch 629.	218
Gouriet v. Union of Post Office Workers [1977] 2 WLR 696	53
GUR Corporation v. Trust Bank of Africa Limited [1986] 3 All ER 449	45
Hesperides Hotels v. Aegean Holidays Ltd [1979] AC 508	46
International Tin Council, Re [1988] 3 WLR 1159	47
Iº Congreso del Partido [1981] 2 All ER 1064; [1978] 1 QB 500	83, 84, 210
Kuwait Airways Corporation v. Iraqi Airways Company and Another Financial Times, 17 July 1992	84–5
Luthor v. Sagor [1921] 3 KB 532	45

Maclaine Watson and Co Ltd v. International Tin Council [1988]	
3 WLR 1169	47, 211
Oppenheimer v. Cattermole [1976] AC 249	218
Parlement Belge, The (1880) 5 PD 197	79
Post Office v. Estuary Radio Ltd [1968] 2 QB 740	208
R v. Kent Justices, ex parte Lye [1967] 2 QB 153	208
R v. Secretary of State for the Home Department, ex parte Brind	
[1991] 2 AC 696; [1991] 1 All ER 720	214, 216, 236
R v. Secretary of State for the Home Department, ex parte	
Fernandez Unreported, 21 November 1980	216
R v. Secretary of State for Transport, ex parte Iberia Lineas	
Aereas de Espana Unreported, 5 July 1985	216
Rayner (J H) v. Department of Trade and Industry [1989]	
3 WLR 969	47, 48, 213
Rose Mary, The [1944] 1 WLR 246	218
Saloman v. Commissioner of Customs and Excise [1967]	
2 QB 143	214
Secretary of State in Council of India v. Kamachee Boye	
Sahaba (1859) 13 Moo PCC 22.	213
Sengupta v. Republic of India 64 ILR 352	82
Settebello Ltd v. Banco Totta and Acoves [1985] 2 All ER	
1025.	140, 141
Shearson Lehman Brothers Inc. v. Maclaine Watson & Co Ltd	
(No. 2) [1988] 1 All ER 116, HL	88, 94
Standard Chartered Bank v. International Tin Council [1987]	
1 WLR 641	91
Trendtex Trading Corp v. Central Bank of Nigeria [1977]	
1 QB 529; [1977] 2 WLR 356.	82, 210
Wednesbury Case. See Associated Provincial Picture Houses v.	
Wednesbury Corporation	
Williams and Humbert v. W & H Trademarks (Jersey) Ltd	
[1986] 1 All ER 129.	218
Ysmael (Juan) and Co Inc v. Indonesian Government [1954] 3	
WLR 531	79

UNITED STATES

Banco Nacional de Cuba v. Sabbatino 376 US 398; 84 S. Ct.	
923; 11 L Ed 2d 804 (1964).	211, 217
Cutting Case For. Rel. 751 (1888); 2 JM Moore, International	
Law Digest (1906), 232-40	66

Demjanyuk, In the matter of 603 F. Supp. 1468 (ND Ohio; aff'd 776 F 2d 571 (6th Cir. 1985); cert denied 457 US 1016; 106 S. Ct. 1198; 89 L Ed 2d 312 (1986)	59
Diggs v. Dent (1975) 14 ILM 795	45, 210
Filartiga v. Pena-Irala 630 F 2d 876 (2nd Cir. 1980)	20, 211
Forti v. Suarez-Mason 672 F Supp. 1531 (ND Cal 1987), 694 F Supp. 707 (ND Cal 1988).	212
International Tin Council v. Almagamet Inc 524 NYS 2d 971 (1988)	92
Islamic Republic of Iran v. Boeing Co (1986) 80 AJIL 347	210
Ker v. Illinois 119 US 436 (1886)	71
Mannington Mills v. Congoleum Corp. 595 F 2d 1287 (1979)	76
Oetjen v. Central Leather Co 246 US 297 (1918)	217
Russian Socialist Republic v. Cibario 235 NY 255 (1923)	45
Sabbatino Case. See Banco Nacional de Cuba v. Sabbatino	
Shamsee v. Shamsee 102 S. Ct. 389; 70 L 2d 207 (1981)	92
Timberlane Lumber Co v. Bank of America 549 F 2d 597 (1976)	76
Underhill v. Hernandez 168 US 250 (1897)	217
United States v. Aluminum Co of America 148 F 2d 416 (1945)	74
United States v. Alvarez-Machain (1992) 31 ILM 901	70, 71
United States v. Palestine Liberation Organisation (1988) 27 ILM 1055	215
United States v. Rauscher 119 US 407 (1886)	71
United States v. Yunis 681 F Supp. 909 (DCC 1988), 924 F 2d 1086 (DC Cir. 1991).	68, 69
Weidner v. International Telecommunications Satellite Organisation 392 A 2d 508 (DC App 1978)	92
Wulfsohn v. Russian Socialist Republic 234 NY 372 (1923); 138 NE 24	45