

OXFORD

TREATY INTERPRETATION

SECOND EDITION

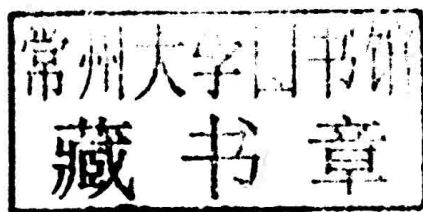
RICHARD GARDINER

THE OXFORD INTERNATIONAL LAW LIBRARY

Treaty Interpretation

Second Edition

RICHARD K GARDINER



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

© Richard K Gardiner 2015

The moral rights of the author have been asserted

First Edition published in 2008

Second Edition published in 2015

Impression: 1

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

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

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 Control Number: 2014959429

ISBN 978-0-19-966923-3

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

THE OXFORD INTERNATIONAL LAW LIBRARY

THE OXFORD INTERNATIONAL LAW LIBRARY

General Editor: SIR FRANK BERMAN KCMG QC

This series features works on substantial topics in international law which provide authoritative statements of the chosen areas. Taken together they map out the whole of international law in a set of scholarly reference works and treatises intended to be of use to scholars, practitioners, and students.

Foreword to the First Edition

This is a book I should like to have written. The subject of treaty interpretation is one of great fascination and of great practical importance. I first heard of it in the pre-Vienna days when studying international law with Professor Clive Parry. My interest was further stimulated upon reading Yasseen's masterful (if brief, and now somewhat dated) introduction to articles 31–33 of the Vienna Convention on the Law of Treaties.

With the huge expansion of the volume and importance of treaties in recent times, an understanding of the rules for the interpretation of treaties becomes ever more important. Indeed, a proper understanding of the rules and processes of treaty interpretation is an essential tool for any international lawyer, whether in government, in private practice, or in the academic world. But it is not only public international lawyers who need to understand treaty interpretation, which is so different from interpretation of national laws and contracts. Questions of treaty interpretation arise more and more frequently in national courts, including in the UK.

On one level, it might be thought that there is not so much to be said on the subject. Interpretation is an art, not a science, and aside from the text of the rules set out in the Vienna Convention itself there is not much one needs beyond good sense and experience. Yet this is a mistaken approach. In the 40 years that have passed since the adoption of the Vienna Convention in 1969 a wealth of practice has developed, and it is chiefly through studying the practice that one learns the art.

There are different 'levels' of treaty interpretation. When a question of interpretation comes up in litigation, whether before an international court or a domestic one, it is usually examined in great depth, with full study by the parties—if not the court—of *travaux préparatoires* and context. When, on the other hand, a question of treaty interpretation has to be answered on the spot—often the case in the day-to-day work of a foreign ministry—it will, of necessity, be dealt with swiftly and even superficially. And there will be many situations between these two extremes.

The importance of treaty interpretation in modern international relations can be seen from the fact that almost all cases that have come before the International Court of Justice (and its predecessor the Permanent Court of International Justice), and most public international law arbitrations (including all investment treaty arbitrations) turn on the interpretation of treaties. All modern courts and tribunals take as their starting point (either expressly or implicitly) the rules set forth in articles 31–33 of the Vienna Convention on the Law of Treaties (the 'Vienna rules'), which are well established as rules of customary international law and are nowadays applied to treaties old and new.

Richard Gardiner was for a number of years a legal adviser in the UK's Foreign and Commonwealth Office and with the Attorney General's Office. He has been a private practitioner as well as an academic, and is the author of a recent text-book

on international law. He has a particular interest in international aviation law, a field of international law dominated by bilateral and multilateral treaties and their interpretation. He is very well placed to write the present book analysing the Vienna rules, which is likely to become a classic in its field.

The merits of the book are manifold. Gardiner systematically analyses each element of the Vienna rules in detail, yet never loses sight of the overall approach to interpretation that is embodied in the Convention. It contains a meticulous, thorough, and sometimes critical study of the extensive case law that has developed on the Vienna rules. It contains enough theory to place the rules in context (explaining, for example, the heated debates in the International Law Commission and at the Vienna Conference), while remaining essentially a practical guide. And it contains a host of useful examples taken from real-life situations.

This book will be particularly useful for the practitioner, especially the practitioner involved in litigation or contemplating litigation. It will be consulted by judges and arbitrators, who may be moved to apply the Vienna rules more systematically as a result. And even (perhaps especially) the hurried interpreter, who needs to understand instinctively the process of treaty interpretation if he or she is to give good advice on the spot, will benefit greatly from Gardiner's exposition of the rules.

Sir Michael Wood, KCMG.
London, February 2008

Preface to the Second Edition

The need for a user's guide to the rules of treaty interpretation has not greatly diminished in the years since the first edition of this book. The book's message remains the same: the rules on treaty interpretation in the 1969 Vienna Convention on the Law of Treaties are a starting point and guide for treaty interpretation and to use them properly requires being aware of their entirety. In the most visible instances of reasoned interpretation – the decisions of courts and tribunals – increased reference to these rules has nevertheless shown some continuing and quite widespread misunderstanding and misuse of them. The two most prominent misconceptions are that the opening reference in the Vienna Convention to the ordinary meaning of terms in a treaty constitutes the whole of the general rule and that in all cases any consideration of a treaty's preparatory work is subject to the same restrictive preconditions. There is, however, also much more in the rules which needs explanation and illustration.

The focus of the changes in this second edition is expansion of examples and of the explanations of practicalities of treaty interpretation. The number of cases in which specific mention is made of the Vienna rules on treaty interpretation has grown greatly. Likewise, there has been growth in the number of cases in which treaties have been interpreted without specific reference to the rules but which nevertheless illuminate understanding of them. Those included here are cases which illustrate particular points, but there are now countless others. Since the first edition there has also been much investigation of treaty interpretation, both of a general nature and in relation to particular areas. On topics such as the law of international trade, human rights, investment agreements, and international tax issues, valuable studies have been published making far more extensive analysis of cases in those particular areas than is possible here, but providing great assistance in illustrating the rules by extensive examples.

Further, there is the work of the International Law Commission which has completed its Guide to Practice on Reservations to Treaties. This includes guidelines and commentaries on interpretative declarations, a topic inadequately addressed in the Vienna rules. Some notice has also been taken in this edition of the Commission's work on subsequent agreements and subsequent practice in relation to interpretation of treaties; but the Commission's conclusions remain in draft and those seeking more detail on these topics would do well to consult the extensive reports and draft commentaries already produced and, in due course, the completed work.

In response to the helpful suggestions of reviewers, concluding summaries have been added to each of the analytical chapters in Part II and a new chapter has been added to give some pointers to particular trends and issues in treaty interpretation, and to provide some conclusion to the whole work.

Thanks are due to those who have provided ideas, indications of material, and other aid and assistance for this and the previous edition. These include Rukhsana Ali,

Julian Arato, Anthony Aust, Danai Azaria, Craig Barker, Frank Berman, Eirik Bjorge, Eileen Denza, Christian Djefal, Jörg Fedtke, Shireen Fisher, Malgosia Fitzmaurice, Douglas Guilfoyle, Duncan Hollis, David Hutchinson, Tomoko Ishikawa, John Avery Jones, Kenneth Keith, Rahim Moloo, Gemma Pountney, Anneliese Quast, Catherine Redgwell, Sam Ricketson, Philippe Sands, Dan Sarooshi, Antonios Tzanakopoulos, Ingo Venzke, Michael Waibel, John Walters, Colin Warbrick, Christopher Whomersley, Ralph Wilde, Elizabeth Wilmshurst, Michael Wood, all those involved in the Nottingham Treaty Project directed by Michael Bowman and Dino Kritsiotis, as well as many others who have offered comments and suggestions. Responsibility remains entirely with the author.

Richard Gardiner
28 February 2015

Acknowledgements

The case study of *Hitchcock v Outhwaite* in Chapter 1 is adapted from text by R K Gardiner, 'Interpreting Treaties in the United Kingdom' in M Freeman (ed), *Legislation and the Courts* (Aldershot: Dartmouth Publishing Company Limited, 1997), by permission of Michael Freeman.

Abbreviations

AJIL	<i>American Journal of International Law</i>
ATNIF	Australian Treaties not in Force
ATS	Australian Treaty Series
B C Int'l & Comp L	<i>Boston College International and Comparative Law Review</i>
BITs	Bilateral Investment Treaties
BYBIL	<i>British Year Book of International Law</i>
CJEU	Court of Justice of the European Union
DSB	Dispute Settlement Body of the WTO
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECT	Energy Charter Treaty
EJIL	<i>European Journal of International Law</i>
EL Rev	<i>European Law Review</i>
EPC	European Patent Convention
GATS	General Agreement on Trade in Services 1994
GATT	General Agreement on Tariffs and Trade
ICC	International Criminal Court
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
ICSID	International Centre for Settlement of Investment Disputes
ILC	International Law Commission
ILDC	International Law in Domestic Courts
IMCO	Inter-Governmental Maritime Consultative Organization
J Church & St	<i>Journal of Church and State</i>
LDA	London Debt Agreement
MFN	Most Favoured Nation
Mich J Int'l L	<i>Michigan Journal of International Law</i>
MOU	Memorandum of Understanding
NAFTA	North American Free Trade Association/Agreement
NILR	<i>Netherlands International Law Review</i>
OECD	Organization for Economic Co-Operation and Development
OED	<i>Oxford English Dictionary</i>
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic
PCIJ	Permanent Court of International Justice
TRIPS	Trade-Related Aspects of Intellectual Property Right
UKTS	UK Treaty Series
UNHCR	UN High Commissioner for Refugees
UNTS	UN Treaty Series

Va J Int'l L	<i>Virginia Journal of International Law</i>
VCLT	Vienna Convention on the Law of Treaties, 1969
WHO	World Health Organization
WTO	World Trade Organization

Note on Citations

Citations follow OSCOLA (*Oxford Standard for Citation of Legal Authorities*) (4th Edn, 2012), with modifications, at: <http://www.law.ox.ac.uk/publications/oscola.php>.

Where the same work is cited in an uninterrupted succession of footnotes on the same page only the name of the author is repeated.

Where recent cases are cited, these may be available only (or most conveniently) via the Internet, but with the caution that web addresses (URLs) often change. The URLs for common websites are not repeated in the footnotes where sufficient particulars are given to enable location of reports at the appropriate URL. The following are URLs of websites providing reports of many of the cases cited:

International Court of Justice:

www.icj-cij.org

European Court of Human Rights:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>

World Trade Organisation Dispute Settlement Body:

http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

International Centre for Settlement of Investment Disputes:

<https://icsid.worldbank.org/>

North American Free Trade Agreement:

<http://www.state.gov/s/l/c3439.htm>

Treaties are accessible in the UN's electronic collection: <https://treaties.un.org/>.

This is very cumbersome to search. Preference is therefore given here to citation in the Australian Treaty Series (ATS) or Australian Treaties not in Force (ATNIF):

<http://www.austlii.edu.au/au/other/dfat/>

Table of Cases

A and others v Secretary of State for the Home Department [2004] UKHL 56; [2005] 2 AC 68	403
A and others v Secretary of State for the Home Department (No 2) [2005] 3 WLR 1249	308
A Holding ApS v Federal Tax Administration (Swiss Federal Court) 8 ITLR 536	144
AAPL v Sri Lanka <i>see</i> Asian Agricultural Products Ltd (AAPL) v Sri Lanka	
ADF Group Inc v United States, ICSID Case no ARB (AF)/00/1 (Final Award)	492
AG v Germany (Spanish Supreme Court) 88 ILR 79	144
AWG Group Ltd v The Argentine Republic, UNCITRAL arbitration (Decision on Jurisdiction, 3 August 2006)	494
Abbott v Abbott, 130 S Ct 1983 (2010)	152, 155–157, 403
Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Reports 404	128, 286
Acquisition of Polish Nationality (Advisory Opinion) (1923) PCIJ Series B no 7	393
Adams v Secretary of State for Justice [2011] UKSC 18	149
Aegean Sea Continental Shelf (Greece v Turkey) [1978] ICJ Reports 3 ...	192, 207, 221, 318, 469
Aerotel Ltd v Telco Holdings Ltd and others [2007] 1 All ER 225	385
Aguas del Tunari v Bolivia, ICSID Case No ARB/02/03 (Decision on Respondent's Objections to Jurisdiction, 21 October 2005)	62, 161, 485
Air France v Saks, 470 US 392 (1985)	431
Air Services Agreement of 27 March 1946, Case concerning the (United States v France) 54 ILR 304 (1978)	166
Air Transport Agreement (United States v Italy) (1965) 4 ILM 974	324
Air Transport Arbitration (United States v France) (Award of 22 December 1963) 38 ILR 182	276
Al-Adsani v United Kingdom, ECtHR Application no 35763/97 (2001)	314, 331, 332
Al-Jedda, <i>see</i> R v Secretary of State for Defence, ex parte Al-Jedda	
Al-Saadoon and Mufdhi v United Kingdom, ECHR Application no 61498/08 (Judgment of 2 March 2010)	277
Alabama claims of the United States of America against Great Britain. Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871	286
Ambatielos case (Greece v United Kingdom) (Preliminary Objection) [1952] ICJ Reports 43	94
Ambatielos case (Greece v United Kingdom) (Judgment) [1953] ICJ Reports 10	286
Ambiente Ufficio SpA and others v Argentine Republic, ICSID Case no ARB/08/9 (Decision on Jurisdiction and Admissibility) (2013)	489, 491
Amco Asia et al v Indonesia, ICSID Case no ARB/81/8 (Decision on Jurisdiction) (1984) 23 ILM 359	49
Amoco International Finance, 15 Iran-US Claims Tribunal Reports 189	330
Anastasiou <i>see</i> R v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd	
Anglo-Iranian Oil Company case (Preliminary Objections) [1952] ICJ Reports 93 ...	95, 120, 208
Anglo-Norwegian Fisheries case [1951] ICJ Reports 142	179
Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Advisory Opinion) [1988] ICJ Reports 57	30
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) [2007] ICJ Reports 43	17, 210

Application of the Interim Accord of 13 September 1995 (Former Yugoslav Republic of Macedonia v Greece) [2011] ICJ Reports 644	180
Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) (Preliminary Objections) [2011] ICJ Reports 70	180, 338, 364, 366, 425
Arbitral Award in the Dispute Concerning Certain Boundary Pillars between the Arab Republic of Egypt and the State of Israel (Egypt-Israel Arbitration Tribunal, 1988) (Taba Award) 80 ILR 226	422
Arbitral Award made by the King of Spain on 23 December 1906 (Judgment) [1960] ICJ Reports 206	254
Arbitral Award of 31 July 1989, Case concerning the (Guinea-Bissau v Senegal) (Judgment) [1991] ICJ Reports 53	15, 185, 217, 218, 338
Arbitral Tribunal for the Agreement on German External Debt (Belgium, France, Switzerland, United Kingdom and United States v Federal Republic of Germany) (Young Loan case) (1980) 59 ILR 495	18, 42, 428, 443
Arbitration before a Tribunal constituted in accordance with Article 26 of the Energy Charter Treaty and the 1976 UNCITRAL Arbitration Rules, Hulley Enterprises Limited (Cyprus) v The Russian Federation, In The Matter of an (Final Award of 18 July 2014)	391
Arbitration regarding the Iron Rhine ('IJzeren Rijn') Railway (Belgium v Netherlands) (Award of 24 May 2005)	13, 70, 113, 293–294, 308, 310, 318–319, 333, 470
Arbitration under Chapter Eleven of NAFTA, Pope & Talbot v Canada (Interim Award) 26 June 2000	306
Arbitration under Chapter Eleven of NAFTA, Pope & Talbot v Canada (Merits Phase 2) (2000) 122 ILR 352	380
Arbitration under Chapter Eleven of NAFTA, Pope & Talbot v Canada (Award in Respect of Damages) (NAFTA) (2002) 41 ILM 1347	112, 124, 126, 226, 236, 275, 306, 324, 325, 375, 380
Argentina — Safeguard Measures on Imports of Footwear, AB-1999–7, WT/DS121/AB/R	181
Arrest Warrant of 11 April 2000, Case concerning the (Congo v Belgium) [2002] ICJ Reports 63	363
Article 55 of the American Convention on Human Rights, Advisory Opinion OC-20/09, IACHR, Series A no 20 (29 September 2009)	465
Arton (No 2), Re [1896] 1 QB 509	193
Asian Agricultural Products Ltd (AAPL) v Sri Lanka (1991) 30 ILM 580; 106 ILR 417	135, 407
Assange v The Swedish Prosecution Authority [2012] UKSC 22	147, 265, 266, 272
Asylum (Colombia v Peru) [1950] ICJ Reports 266	217
Atasoy and Sarkut v Turkey, CCPR/C/104/D/1853-1854/2008	274
Attorney-General v Ward, Re, 104 ILR 222	389
Attorney-General v Zaoui [2006] 1 NZLR 289	150, 404
Auditing of Accounts between the Kingdom of the Netherlands and the French Republic pursuant to the Additional Protocol of 25 September 1991 to the Convention on the Protection of the Rhine against Pollution by Chlorides of 3 December 1976, Case concerning the (Netherlands v France), Arbitral Award of 12 March 2004, 144 ILR 259 < http://www.pca-cpa.org/ > (2005) 25 RIAA 267	13, 44–47, 174, 209, 380, 437
Avena and other Mexican Nationals, Case concerning (Mexico v United States) [2004] ICJ Reports 37	16, 17, 35, 189, 221, 350, 361, 378
Aziz v Aziz and others [2007] EWCA Civ 712	269
Azpetrol v Azerbaijan, ICSID Case no ARB/06/15 (Award of 8 September 2009)	224
B (FC) (Appellant) (2002), <i>see</i> R v Special Adjudicator, ex parte Hoxha	
BG Group plc v Argentina (Slip Opinion No. 12–138 of 5 March 2014) (US Supreme Court)	157, 360
BS and KG v AR and AR (Labour Court of Appeals, Brussels, 5th chamber) ILDC 50 (BE 2002)	144

Banković and others v Belgium and others, ECHR Application no 52207/99 (Decision on Admissibility) (2001)	115, 194, 263, 332, 365
Bangladesh/Myanmar (ITLOS, 2012) <i>see</i> Dispute Concerning Delimitation of the Maritime Boundary	
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)	395
Barcelona Traction case [1970] ICJ Reports 304	14
Barcelona Traction, Light and Power Company Ltd (New Application: 1962), Case Concerning the (Belgium v Spain) [1964] ICJ Reports 6	210
Bayerische Motoren Werke AG v Round & Metal Ltd [2012] EWHC 2099 (Pat)	384
Beagle Channel, Dispute between Argentina and Chile concerning the (Award of 18 February 1977), (1978) 17 ILM 634; XXI (Pt II) UNRIIAA 53	217, 265
Behrami v France, ECHR Application no 71412/01 (2007)	314
Belgium v GW and VR-M (Belgian Cour de Cassation) 7 ITLR 442	144
Belilos v Switzerland, ECHR Case no 20–1986/118/167 (Judgment of 23 March 1988)	97, 99, 119, 120
Ben Nevis (Holdings) Ltd v Revenue and Customs Commissioners [2013] EWCA Civ 578; 15 ITLR 1003	147–148
Biotech case <i>see</i> European Communities—Measures Affecting the Approval and Marketing of Biotech Products	
Border and Transborder Armed Actions (Nicaragua v Honduras) (Jurisdiction and Admissibility) [1988] ICJ Reports 69	176, 179, 205, 375, 395, 435
Bosshard Partners Intertrading AG v Sunlight AG (Swiss Federal Supreme Court) [1980] 3 CMLR 664	370
Brooke v Mitchell (1840) 6 M & W 473	53
Brown v Stott [2003] 1 AC 681	167
Burton Marks and Harry Umann v Iran, 8 Iran–US Claims Tribunal Reports 290	260
Busby v State of Alaska, 40 P 3d 807 (Alaska Ct app, 2002)	152, 436
CMA CGM SA v Classica Shipping Co Ltd (The ‘CMA Djakarta’) [2004] EWCA Civ 114 ...	148
Canada — Measures Affecting the Export of Civilian Aircraft, Decision AB-1999–2 of 2 August 1999, WT/DS70/AB/R	186, 202
Canada — Term of Patent Protection, WT/DS170/AC/R (2000)	165, 206
Canadian Cattlemen for Fair Trade v United States, UNCITRAL (NAFTA) (Award on Jurisdiction, 28 January 2008)	287
Casado v Chile, ICSID Case no ARB/98/2 (Award of 25 September 2001)	391
Certain Aspects of the Laws on the Use of Languages in Education in Belgium, Case Relating to (Merits), ECHR Application no 2126/64 and others (Judgment of 23 July 1968)	478
Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter) (Advisory Opinion) [1962] ICJ Reports 151	166, 254
Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France) [2008] ICJ Reports 177	205, 326, 328
Ceskoslovenska Obchodni Banka, AS v The Slovak Republic (Jurisdiction), ICSID Case No ARB/97/4 (Decision of the Tribunal on Objections to Jurisdiction, 29 May 1999)	47–51
Champion Trading Co, J T Wahba & Others v Egypt, ICSID Case no ARB/02/9 (Decision on Jurisdiction, 21 October 2003)	381
Chan Yee Kin v Minister for Immigration, 90 ILR 138 (Australia High Court, 1989)	402
Chile — Price Band System and Safeguard Measures relating to certain Agricultural Products, WT/DS207/R, 3 May 2002	116–117, 200, 218, 256, 315, 400–401, 443
Chloride Industrial Batteries v F & W Freight [1989] 1 WLR 823	87, 238
Christina Kik v OHIM (Trade Marks and Designs), Case T-120/99, [2001] All ER (D) 161 (Jul)	139
Chubb & Son, Inc v Asiana Airlines, 214 F3d 301 (2d Cir 2000)	151

Churchill Mining PLC and Planet Mining Pty Ltd v Republic of Indonesia, ICSID Case No ARB/12/14 and 12/40 (Decision on Jurisdiction, 24 February 2014) . . .	90, 121, 195, 324, 404
CIGNA Insurance Co of Europe NVEA v Transport NIJS BVBA (Belgian Cour de Cassation), C.97.0176.n (30 March 2000) . . .	144
Coblentz v Canada Federal Court of Appeal [1997] 1 FC 368; (1996) CanLII 4091 . . .	228
Commission of the European Communities v Council of the European Union, Case C-29/99, [2002] ECR I-11221 . . .	137, 140
Commission v Germany (International Dairy Arrangement), Case C-61/94, [1996] ECR I-3989 . . .	140
Commissioner of Internal Revenue v National Carbide Corp, 167 F 2d 304 (US Court of Appeals, 2nd Circuit, 1948) . . .	198
Commissioner of Taxation v SNF (Australia) Pty Ltd [2011] FCAFC 74 (Federal Court of Australia) . . .	403
Commonwealth v Tasmania (The Tasmanian Dam) (1983) 158 CLR 1 (High Court of Australia) . . .	149
Compañía de Aguas del Aconquija SA and Vivendi Universal v Argentine Republic, ICSID Case no ARB/97/3 (2001) . . .	389–390
Competence of the General Assembly for the Admission of a State to the United Nations (Advisory Opinion) [1950] ICJ Reports 8 . . .	185
Conditions of Admission of a State to Membership in the United Nations (Advisory Opinion) [1948] ICJ Reports 57 . . .	94, 335, 407
Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (IMCO Maritime Safety Committee case) [1960] ICJ Reports 150 . . .	261
Corfu Channel case (Merits, Judgment) [1949] ICJ Reports 25 . . .	254
Corocraft v Pan American Airways [1969] 1 QB 616 . . .	113, 413, 440
Costa Rica v Nicaragua (2009) <i>see</i> Dispute Regarding Navigational and Related Rights	
Council Regulation (EEC) 1768/92 and Council Regulation (EC) 1901/2006, re Application No. SPC/GB/95/010 by E I du Pont Nemours & Co for an extension of an SPC, Re [2009] EWHC 1112 . . .	384
Cox v Canada 114 ILR 347 (UN Human Rights Committee) (1994) . . .	175
Crown Forest Industries Ltd v Canada [1995] 2 SCR 802 . . .	150
Czech Republic v European Media Ventures SA [2007] EWHC 2851 (Comm) . . .	197
Daimler v Argentina, ICSID Case no ARB/05/1 (Award of 22 August 2012) . . .	226
Danube Dams case <i>see</i> Case concerning the Gabčíkovo-Nagymaros Project	
Decision of 7 May 2012 on Article VII.2 of the Turkey–Turkmenistan Bilateral Investment Treaty, 1997 (Kiliç v Turkmenistan) ICSID Case No ARB/10/1 . . .	438–439
Deep Vein Thrombosis and Air Travel Group Litigation [2005] UKHL 72, [2006] 1 Lloyd's Rep 231 . . .	146
Delimitation of the Maritime Boundary in the Gulf of Maine Area, Case concerning (Canada v United States) [1984] ICJ Reports 246 . . .	287
Delimitation of the Polish-Czechoslovakian Frontier (Question of Jaworzina) (Advisory Opinion) (1923) PCIJ Series B no 8 . . .	107, 123
Demir and Baykara v Turkey, ECHR Application no 34503/97 (Judgment of 12 November 2008) . . .	308, 309
Device and method for sampling of substances using alternating polarity/CYGNUS, INC European Patent Office, Technical Board of Appeal, Case no T0964/99, 29 June 2001 . . .	193
Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v United Kingdom) (PCA) (2003) 42 ILM 1118 . . .	194–195, 201
Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, ITLOS case no 16 (Judgment of 14 March 2012) . . .	85
Dispute Concerning Filleting within the Gulf of St Lawrence (The 'Bretagne') (Canada v France) (1986) 82 ILR 591 . . .	187, 192, 202