INDEX

Abbreviations used in the index
ACHR (American Convention on Human Rights (1969))
CLCS (Commission on the Limits of the Continental Shelf)
CSC (Continental Shelf Convention (1958))
ECHR (European Convention on Human Rights (1950))
ECtHR (European Court of Human Rights)
EEZ (Exclusive Economic Zone)
HRC GC (UN Human Rights Committee General Comment)
HRC (UN Human Rights Committee; UN Human Rights Council)
IACHHR (Inter-American Court of Human Rights)
ICCPPR (International Covenant on Civil and Political Rights (1966))
ICJ (International Court of Justice)/(Statute of the International Court of Justice)
ILC (International Law Commission/ILC Articles and Draft Articles)
ITLOS (International Tribunal for the Law of the Sea/ITLOS Statute)
ROC (Rules of Court)
TSC (Territorial Sea and Contiguous Zone Convention (1958))
UNCLOS (UN Law of the Sea Convention (1982))
VCCR (Vienna Convention on Consular Relations (1963))

ACHPR (1981)
interpretation
  consistency with other human rights treaties, desirability 113-14
  responsibility for 113-14

admissibility (ICJ)
  Diallo 101-8
  failure to include in application 101-8

arbitrariness in international human rights law, overview by reference to the jurisprudence (Diallo (Cançado Trindade J)) 212-27
  A v. Australia 289-90
  Achathan 215-16
  Acosta Calderón 218
  Al-Nashif 225
  Aminu 215-16
  Amnesty International et al. v. Sudan 218
  Amuur 222-3
  Baban 289-90
  Bakhtiari 289-90
  Bámaca Velásquez 219
  Baranowski 224
  Bashir 225
  Berrehab 225
  Boudjif 224-5
  Brothers Gómez Paquiyauri 219
  Bulacio 219-20
  C v. Australia 289-90
arbitrariness in international human rights law, overview by reference to the jurisprudence (Diallo (Cançado Trindade J)) (cont.)

CG 225
Constitutional Rights Project 215-16
Diallo (Keith and Greenwood JJ) 161-72
Diallo (Mampuya, Judge ad hoc) 288-91
Gangaram Pandey 218
Ghazi Suleiman 215-16
Good 217-18
Hammel 215
Institute for Human Rights and Development in Africa v. Angola 217-18
Jawara 215-16
Juan Humberto Sánchez 219
Lupsa 225-6
Maritza Urrutia 219
Maroufdaou 215
Marques de Morais 214-15, 289-90
Maslov 224-5
Media Rights Agenda 215-16
Modise 217-18
Mojica 215
Mukong 214, 289-90
Musa 225
Ouko 215-16
Palamara Iribarne 218
Rajapakse 215
Rencontre africaine pour la défense des droits de l’homme v. Zambia 217-18
Saadi 223-4
Street Children 218
Suárez Rosero 218
Tesfila Casafianca de Gómez 289-90
Tibi 220-2
Tshishimbi 215
Uner 224-5
van Alphen 289-90
West African nationals expelled from Angola in 1996 217
Winterwerp 223
World Organization against Torture 166-7, 216-17
Zegveld and Ephrem 215-16

arbitration procedure

burden/standard of proof (Chevreau) 388-9, 393-6

Bangladesh: see Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar)

basepoints (general)

jurisprudence

Bay of Bengal 525-30
Black Sea 529

Tribunal’s right to choose 529

Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar)

applicable law (UNCLOS and other rules of compatible international law (UNCLOS 293(1))) 485-6
INDEX 725

continental margin (UNCLOS 76(3))
criteria for determining outer edge (UNCLOS 76(4)) 563-4
determination of entitlement to continental shelf beyond 200 miles and 563-5
natural prolongation and 563-5
origin of sedimentary rocks, relevance 567
thickness of sedimentary rocks (UNCLOS 76(4)(a)(i))/unique nature of the Bay of Bengal 566-7
continental shelf beyond 200 nautical miles (delimitation by Tribunal) 567-9
delimitation line 569
equidistance/special circumstances rule (UNCLOS 15), applicability 568, 618-21
special circumstance, natural prolongation as 568-9, 663-5
relevant area/proportionality test 573-6
parties’ arguments (Bangladesh) 573
parties’ arguments (Myanmar) 574
Tribunal’s analysis and conclusion 575-6
Wolfrum J 585-6
continental shelf beyond 200 nautical miles delimitation (entitlement) 555-73
natural prolongation (UNCLOS 76(1)) 562-5, 569, 594-5
Gao J 662-5
Lucky J 704-6
overlapping areas, limitation to 516, 556-7, 559-61, 569, 571
parties’ claims (Bangladesh) 559-61
parties’ claims (Myanmar) 561-2
Tribunal’s right to determine
parties’ arguments (Bangladesh) 557-8
parties’ arguments (Myanmar) 558
continental shelf beyond 200 nautical miles delimitation (exercise of jurisdiction) 549-55
absence of established outer limits/agreed baselines, effect on 550, 558-9
CLCS, functions (UNCLOS 76(8))
CLCS ROP 46 (consideration of submissions to CLCS in case of an UNCLOS 83 delimitation dispute) 553-5
Lucky J 715-20
Ndiaye J 607-18, 621-5
relationship with role of international courts and tribunals 552-3, 559, 715-20
continental shelf rights as inherent right/“do not depend on . . .” (UNCLOS 77(3)) 558-9
delimitation and entitlement distinguished 556-7
delimitation (Gao J) 665-6
delimitation method (Ndiaye J) 618-21
delimitation method (Nelson, Chandrasekhar Rao and Cot JJ) 581-2
delineation of outer limits (UNCLOS 76) and delimitation (UNCLOS 83) distinguished 551-2, 558-9
UNCLOS 76(1)/UNCLOS Annex II:9 552
determination of entitlements 565-7
Ndiaye J 607-25
third parties, potential effect on 550
continental shelf beyond 200 nautical miles delimitation (jurisdiction to delimit continental shelf in its entirety) 545-55
Cot J 631-2
Mensah and Oxman, Judges ad hoc 592-3
parties’ arguments (Bangladesh) 547-9
Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar) (cont.)

parties’ arguments (Myanmar) 545-7
Tribunal’s decision 549
continental shelf as single entity 549, 568
continental shelf beyond 200 nautical miles (grey area) 569-73
Lucky J 715-20
parties’ arguments (Myanmar) 570
parties’ arguments (Myanmar) 570-1
Tribunal’s analysis and conclusion 571-3
bilateral agreements/cooperative arrangements, desirability 572-3
rights to superjacent waters/water column and sedentary species distinguished
(UNCLOS 56(1)(a)/UNCLOS 68/UNCLOS 77) 571-3
declarations and separate opinions
Cot J (separate opinion) 625-37
Gao J (separate opinion) 637-67
Lucky J (dissenting opinion) 673-722
Mensah and Oxman, Judges ad hoc (declaration) 592-5
Ndiaye J (separate opinion) 596-607
Nelson, Chandrasekhara Rao and Cot JJ (declaration) 581-2
Treves J (declaration) 587-92
Wolfrum J (declaration) 582-7
delimitation line (Tribunal’s decision) 577-8
map 578
dispositif/operative clause 578-81
EEZ and continental shelf within 200 nautical miles delimitation (UNCLOS 74 and 83) 512-45
applicable law 513-14
customary international law 513-14
decisions of international courts and tribunals (ICJ 38(1)(d)) 514, 582-4
“international law as referred to [in ICJ 38]” 513-14
basepoints, determination 525-30
Cot J on 627-8
parties’ claims/arguments (Bangladesh) 527-8
parties’ claims/arguments (Myanmar) 525-8
Tribunal’s choice 528-30
Tribunal’s right to determine 529
delimitation line 544-5
delimitation method (parties’ submissions)
Bangladesh 519-20
Myanmar 520-1
delimitation method (separate/dissenting opinions)
Gao J 637-8
Lucky J 701-7
Mensah and Oxman, Judges ad hoc 593-5
delimitation method (Tribunal’s analysis and decision) 522-5
bisector of angle 524
review of the jurisprudence 522-4
three-stage approach as preferred method 524-5
equitable result requirement
Cot J 627
Tribunal’s analysis and decision 522-5
Wolfrum J 586
INDEX

provisional equidistance line, adjustment (relevant/special circumstances) 533
adjustment by Tribunal 541-3
Bengal depositional system 540-1, 637-8
concave/convex coastline 628-9, 637-8, 647-55
concave/convex coastline (Tribunal’s analysis and conclusion) 535-7
Cot J on 632-3, 635-6
Gao J on 645-55
islands/St Martin’s Island 537-40
islands/St Martin’s Island (Cot J) 629-30
islands/St Martin’s Island (Gao J) 637-8, 659-62
islands/St Martin’s Island (Lucky J) 706-7
islands/St Martin’s Island (Tribunal’s assessment) 540
islands/St Martin’s Island (Wolfrum J) 584-5
non-encroachment principle/avoidance of cut-off 534-7
parties’ claims/arguments (Bangladesh) 534-5, 537-9
parties’ claims/arguments (Myanmar) 535, 537-9
provisional equidistance line as starting point 525-33
bisector of angle alternative 524, 626-7
bisector of angle alternative (Cot J) 630-1, 636
bisector of angle alternative (Gao J) 638-40, 655-9
bisector of angle alternative (Lucky J) 711-15
Cot J on 626-7, 633-4
parties’ claims/arguments (Bangladesh) 530-1
parties’ claims/arguments (Myanmar) 530
relevant coasts 514-17
“land dominates the sea” principle 514
parties’ claims/arguments (general) 533
parties’ disagreements 516
parties’ submissions (Bangladesh) 514-15
parties’ submissions (Myanmar) 514-16
Tribunal’s decision (ratio between coastal lengths) 517
Tribunal’s views (Bangladesh’s relevant coast) 516-17
Tribunal’s views (Myanmar’s relevant coast) 517
single maritime boundary option 512-13, 707-10
Tribunal’s construction of 531-3
factual background
negotiations between the parties 482-3
regional geography 482
map 483
jurisdiction
alternatives/freedom of choice (UNCLOS 287) 587-8
continental shelf beyond 200 nautical miles delimitation 545-55
parties’ arguments
Bangladesh 484
Myanmar 484
Tribunal’s decision 485
unilateral application as basis
Ndiaye J 596-607
Treves J 589-92
maps
0. Overview sketch map 483
1. Territorial sea: delimitation lines proposed by parties in their final submissions 509
Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar) (cont.)

2. Territorial sea: Tribunal’s delimitation 511
3. EEZ/CS: Tribunal’s measurement of the relevant coasts 518
4. EEZ/CS: delimitation lines proposed by the parties 531
5. EEZ/CS: provisional equidistance line 532
6. EEZ/CS: adjusted equidistance line 544
7. EEZ/CS: grey area 572
8. EEZ/CS: Tribunal’s measurement of the relevant area 576
9. Tribunal’s delimitation line 577

maps (Gao J)
1. Delimitation lines proposed by the parties 668
2. Effects of St Martin’s Island 669
3. Provisional equidistance line and cut-off effect 670
4. Adjusted equidistance line 671
5. Bisector method 672

maps (Lucky J), Equidistance cut-off effect on Bangladesh 714

procedural background 474-80
appointment of ad hoc judges 477
consultations with parties on procedure 477
Bangladesh (4 November 2009) 474-5, 588-9
Bangladesh (4 November 2009), withdrawal (14 January 2010) 476
declarations (UNCLOS 287(1)), Myanmar (12 December 2009) 474-5, 588-9
evidence
burden of proof 679
expert 680-4
institution of proceedings 476
issues to be addressed by the parties (ROC 76(1)) 478
Myanmar’s change of name 477
Notification and Statement of Claim (ITLOS 24) 474-5
oral proceedings 478-9
parties’ submissions
Bangladesh 480-2
Myanmar 480-1
timetable 476-7
right of passage of ships of Myanmar, guarantee by Bangladesh 510-12
binding effect 512

Mensah and Oxman, Judges ad hoc 592
subject matter of the dispute 483-4
territorial sea (1974 and 2008 Agreed Minutes) 486-97, 685-90: see also treaties,
definition/form/classification as (VCLT 2(1)(a))
Lucky J 685-700
parties’ arguments (Bangladesh) 489-90
“agreement” (UNCLOS 15) 491
full powers 493-4
registration 495
terms of Agreed Minutes 491-2
parties’ arguments (Myanmar) 490-1
“agreement” (UNCLOS 15) 491
full powers 494
registration 494-5
text
1974 Agreed Minutes 486-7
2008 Agreed Minutes 487-9
causation/causal link as requirement for finding of breach of State responsibility/ liability for reparation (ILC 31) 389-93
burden/standard of proof 389-93
jurisprudence
   Application of the Genocide Convention 306
   Diallo 364
   Diallo 306, 362-5, 389-93: see also Diallo (compensation)
   Goiburú 390
   La Cantuta 390
   Stafford 364
coasts (for purposes of maritime delimitation)
   relevant coasts
      Bangladesh–Myanmar 514-17
      overlapping claims and 516
      Romania–Ukraine 514
collective/mass deportation/expulsion
   ACHPR 12(5) 162
   ICCPR 13/HRC General Comment 15 162
compensation for breach of ACHR: see reparation for breach of treaty (ACHR 63(1))
   (compensation)
compensation for breach of ECHR (just satisfaction obligation (ECHR 41 [50])),
   right/to/measure
   equitable basis 350-1, 364-5, 389
jurisprudence
   Assanidze 350, 364
   Bilgin 389
   Diallo 350-1, 364
   Lupsa 350, 369-70
   Lustig-Prean 350-1
   Orhan 350-1, 389
compensation for breach of ECHR (just satisfaction obligation (ECHR 41 [50])),
right to/measure (cont.)
Selçuk 350-1
Teixeira de Castro 314-15
compensation for damage caused by internationally wrongful act as alternative to
restitution (including ILC 36/Chorzów Factory principle)
determination of form and amount, responsibility for, negotiation/agreement between
parties 143
Diallo 142-3
Congo, Democratic Republic of (DRC) (Congo (Kinshasa))
compulsory jurisdiction (Optional Clause) (ICJ 36(2)), acceptance 37
Constitution 1994 by article, 80(2) (Prime Minister’s regulatory power) 114
corporations, law relating to: see Diallo (merits), protection of Diallo’s direct rights as
associé, Diallo (preliminary objections) (diplomatic protection)
immigration law: see Diallo (merits)
consular access (VCCR 36)
individual’s right, whether 238-40, 293-7
jurisprudence
Avena 122-4, 236-8, 243-4, 292-3, 295-7
Diallo 122-3, 186-7, 232-44, 291-7
IACtHR Advisory Opinion 16/99 (Consular Assistance) 232-3, 236-40, 243-4
IACtHR Advisory Opinion 18/03 (Juridical Condition and Rights of Undocumented
Migrants) 234-6
LaGrand 236-8, 292-7
travaux préparatoires 240-3, 294-5
continental margin (UNCLOS 76(3))
criteria for determining outer edge (UNCLOS 76(4)) 563-4
origin of sedimentary rocks, relevance 567
thickness of sedimentary rocks (UNCLOS 76(4)(a)(i)) 566-7
jurisprudence, Bay of Bengal 563-7
limits of continental shelf and 563-5
natural prolongation and 563-5
continental shelf, coastal state rights (including CSC 2/UNCLOS 77)
applicable law, UNCLOS 56 (EEZ rights as extended by UNCLOS 56(3)) 571-3
as inherent right “do not depend on . . .” (CSC 2(3)/UNCLOS 77(3)) 558-9
superjacent waters/water column and sedentary species distinguished (UNCLOS 56(1)
(a)/UNCLOS 68/UNCLOS 77) 571-3, 715-20
Continental Shelf, Commission on the Limits of (UNCLOS Annex II) (CLCS)
coastal State’s right to establish final and binding continental shelf limits (UNCLOS 76
(8)), dependence on submission of information to Commission 551, 558-9
composition (Annex II:2) 551
functions (Annex II:3) 551
functions (UNCLOS 76(1)/Annex II:9 (delineation of outer limits (UNCLOS 76) and
delimitation (UNCLOS 83) distinguished)) 552
functions (UNCLOS 76(8)) 621-5
relationship with role of international courts and tribunals 552-3, 559, 607-18,
715-20
Rules of Procedure by Rule, 46 (consideration of submissions to CLCS in case of an
UNCLOS 83 delimitation dispute) 553-5
Scientific and Technical Guidelines on the Limits of the Continental Shelf 564-5
continental shelf (definitions/concept): see also Bay of Bengal Maritime Boundary
Delimitation (Bangladesh/Myanmar)
INDEX
731

coastal state’s right of delineation (UNCLOS 76(7)), CLCS role (UNCLOS 76(8)) 558-9
continental margin (UNCLOS 76(3)): see continental margin (UNCLOS 76(3))
natural prolongation: see natural prolongation (maritime delimitation/boundaries)
outer continental shelf/area beyond 200 miles (UNCLOS 76(4))
distinguishability from inner continental shelf/continental shelf as single entity 549, 568, 631-2
jurisprudence
Barbados/Trinidad and Tobago 549
Bay of Bengal 549-55, 607-25
continental shelf delimitation (CSC 6/UNCLOS 83): see also equidistance
(median line)/special circumstances rule (TSC 12(1)/CSC 6/UNCLOS 15);
special circumstances/relevant factors (maritime delimitation)
(including CSC 6/TSC 12/UNCLOS 15), eligibility for consideration as beyond 200 miles, CLCS, functions (UNCLOS 76(8)) 559
delimitation and entitlement distinguished 556-7
delineation of outer limits (UNCLOS 76) and delimitation (UNCLOS 83)
distinguished 551-2, 558-9
principles and rules applicable to, “land dominates the sea” principle 514
corporations
applicable law, structure and status 46-7, 125-6
SPRLs (sociétés privées à responsabilité limitée), characteristics 124, 126
direct rights of associés, basis 125
costs (ICJ 64), parties to pay own 319, 377
damages for
non-pecuniary loss including moral injury/intangible loss
definition/scope 307-8
equitable considerations 309-10, 348
proportionality 384
non-pecuniary loss including moral injury/intangible loss, jurisprudence
A v. Australia 309-10
Al-Fedda 309-10, 369-70
Cantoral Benavides 309-10
Diallo 307-10, 351-4, 368-70, 373-5, 379-84
Gutiérrez-Soler 307-8, 369-70
Kenneth Good 309-10
Lupsa 369-70
Lusitania 307-10, 368-9
Saiga 369-70
deportation/expulsion of alien (ACHPR 12(4) and 12(5))
“in accordance with the law” requirement (ACHPR 12(4)) 113-17, 162, 168-71
arbitrariness, relevance/absence from text 162-3, 288-91
ordinary meaning of text in context and in the light of its purpose 163, 167
jurisprudence
Diallo 113-17, 161-72
Kenneth Good 166-7
World Organization against Torture 166-7, 216-17
mass expulsion (ACHPR 12(5)) 162
procedural nature of provision 161-72
deportation/expulsion of alien (ICCPR 13)

“in accordance with the law” requirement
compliance of municipal law with international norms requirement 113-14
law of expelling State 113-17, 162, 168-71
arbitrariness, relevance/absence from text 162-6, 288-91
ordinary meaning of text in context and in the light of its purpose 163, 167
jurisprudence
Diallo 113-17, 161-72, 229-30
Maroufïdou 113-14, 165-6, 215
mass expulsion (HRC General Comment 15) 162
procedural nature of provision 161-72
right to submit reasons against expulsion/review of case 162
except where “compelling reasons of national security” require otherwise 116-17
travaux préparatoires 163-5
departation/expulsion of alien, procedural safeguards (ECHR Protocol 7:1), ACHPR 12 and ICCPR 13 compared 167-8
departation/expulsion/refusal of admission of alien, procedure/requirements including due process/fair hearing, reasons for decision 115-16
detainees’ rights (ICCPR 10), humane treatment and respect for inherent dignity (ICCPR 10(1)), as customary international law 121-2
Diallo (compensation)
claim for material loss 310-18
Court’s decision 318
claim for material loss (alleged loss of personal property (including assets in bank accounts)) 310-13
Court’s analysis/evaluation of the evidence 311-13
equitable considerations 312-13, 389-93
Mampuya, Judge ad hoc 384-96
parties’ claims
DRC 311
Guinea 310-11
sufficiency of the evidence 311-13, 366-8, 375-6, 384-9
claim for material loss (alleged loss of potential earnings), Court’s decision 317-18
claim for material loss (alleged lost earnings during unlawful detentions and following unlawful expulsion) 313-17
Court’s analysis/evaluation of the evidence 314-17
sufficiency of the evidence 315-16, 376-7
claim for non-pecuniary loss including moral injury/intangible loss 307-10
burden/standard of proof 308-9
INDEX

Cançado Trindade J 351-4
Court’s conclusion 310
Greenwood J 368-70
Mahiou, Judge ad hoc 373-5
Mampuya, Judge ad hoc 379-84
parties’ claims (DRC) 308
parties’ claims (Guinea) 308
relevant factors
course of 309
equitable considerations 309-10, 348
compensation awarded and post-judgment interest 318-19
costs 319, 377
Court’s decision 320-1
declarations and separate opinions
declarations
Greenwood J 365-70
Yusuf J 360-5
separate opinions
Cançado Trindade J 321-60
Mahiou, Judge ad hoc 371-96
individual losses arising from breach of human rights as measure/individual’s right to reparation
Cançado Trindade J 321-60
classical/founding fathers’ approach to 327-9
development of State responsibility principle/restitution/restitutio in integrum/Chorzów Factory principle 330-7, 371-3
forms of reparation 341-6, 348-50
international human rights tribunals, effect 337-60
procedural history 301-5
expiry of six-month time limit for parties to reach agreement on compensation 303-4
parties’ submissions (DRC) 304-5
parties’ submissions (Guinea) 304
summary of principles governing amount of compensation 305-7
burden/standard of proof 306-7, 384-9, 393-6
causal link between act and damage, need for 306, 364-5, 389-93
heads of damage 306
jurisprudence 305-6
scope of proceedings (determination by previous decisions of the Court on the substance) 307
Diallo (merits)
applicable law (Cançado Trindade J)
ACHPR 184-6
human rights treaties, principles of interpretation 204-8
humanity principle 209-12
ICCRCPR 181-4
VCCR 186-7
background and procedural history 93-9
Application (Part Two) (text) 95-6
factual background 99-100
parties’ submissions
DRC 97-9
**Diallo (merits) (cont.)**

**Guinea 96-9**

Court’s decision 143-5

declarations, separate and dissenting opinions

declarations
- Al-Khasawneh, Simma, Bennouna, Cançado Trindade and Yusuf JJ 145-9
- Keith and Greenwood JJ 161-72

opinions (dissenting)
- Al-Khasawneh and Yusuf JJ 149-60
- Bennouna J 172-6
- Mahiou, Judge ad hoc 263-82

opinions (separate)
- Cançado Trindade J 177-262: see also arbitrariness in international human rights law, overview by reference to the jurisprudence (Diallo (Cançado Trindade J))
- Mampuya, Judge ad hoc 283-301

protection of Diallo’s direct rights as as socié 124-42, 172-6, 298-9

alleged violation of Diallo’s right to property/expropriation of parts sociales 139-42

Bennouna J 176

desirability of bringing customary international law into line with investment treaties/contemporary treatment of foreign investors 151, 155, 158-60

joint dissenting opinion (Al-Khasawneh and Yusuf JJ) 149-60

Mahiou, Judge ad hoc 278-82

Mampuya, Judge ad hoc 298-9

parties’ arguments (DRC) 140

parties’ arguments (Guinea) 139-40

rights of corporation and of its shareholders distinguished 140-2, 365-6

alleged violation of right to oversee and monitor the management (Articles 71 and 75 of 1887 Decree/Articles of Incorporation) 137-9

Bennouna J 176

Court’s conclusion 138-9

Mahiou, Judge ad hoc 271-8

parties’ arguments (DRC) 138

parties’ arguments (Guinea) 137-8

relevant law (texts) 138

alleged violation of right to take part and vote in general meetings (Article 79 of 1887 Decree/Articles of Incorporation) 130-3

Bennouna J 174-5

exercise of right through a proxy or representative 132-3

parties’ arguments (DRC) 131

parties’ arguments (Guinea) 130-1

as right belonging to as sociés 131

right to request or convene a general meeting, absence of evidence of action relating to 131-2

alleged violation of rights relating to the gérance (Articles 64, 65 and 69 of 1887 Decree/Articles of Incorporation) 133-7

parties’ arguments (DRC) 134

parties’ arguments (Guinea) 133-4

summary of law relating to 134-5

alleged violation of rights relating to the gérance (Articles 64, 65 and 69 of 1887 Decree/Articles of Incorporation), Court’s conclusions

alleged appointment of N’Kanza as gérant 135

alleged violation of right to appoint a gérant 135
INDEX 735

alleged violation of right to be appointed gérant 135-6
alleged violation of right to exercise functions as gérant 136
alleged violation of right not to be removed as gérant 137
overall conclusion 137

background
Africom-Zaïre, status/Diallo’s role 126-8, 267-71, 298-9
Africontainers-Zaïre, status/Diallo’s role 126-9, 267-71, 298-9
alleged infringements of rights of SPRLs and direct rights of Diallo as associé distinguished 130, 156-8, 295-7
corporation structure and status, determination by municipal law 125-6
direct rights of associés, basis 125
SPRLs (sociétés privées à responsabilité limitée), characteristics 124, 126
protection of Diallo’s rights as an individual
alleged violation of VCCR 36(1)(b) (notification of detention obligation) 122-3
Cançado Trindade J (separate opinion) 202-4, 232-44
individual’s right, whether 238-40, 293-7
Mampuya, Judge ad hoc 291-7
arrest and detention measures (1988-9), objections to admissibility as new claim 101-8
Al-Khasawneh, Simma, Bennouna, Cançado Trindade and Yusuf JJ (joint declaration) 145-9
Cançado Trindade J (separate opinion) 188-94
claim arising directly out of the question which is the subject matter of the Application 106, 108, 146
claim formulated in the course of proceedings which would transform the subject of the dispute 105-6, 146-7
claim implicit in Application 106, 265-7
continuity of events of 1988-9 and 1995-6 146-9, 244-7, 265-7
Court’s conclusion 108
date of claim 102-4
formalism, need to avoid 145-6, 149
jurisprudence 105-6
Mahiou, Judge ad hoc (dissenting) 263-7
arrest and detention measures (1995-6) as alleged violation of ICCPR 9(1) and (2) and ACHPR 6 (liberty of person) 117-21
allegations 118
alleged non-compliance with DRC law 118-19
applicability to any form of public detention 118
“arbitrary arrest or detention” 119-20, 288-91
Cançado Trindade J (separate opinion) 194-6, 227-8
prompt notification of charges (ICCPR 9(2)) 120
prompt notification of reasons for arrest (ICCPR 9(2)) 120-1, 190-1
right to submit reasons against expulsion except where “compelling reasons of national security” require otherwise 116-17
arrest and detention measures (1995-6) as alleged violation of ICCPR 10(1) (humane treatment of detainees) 121-2
Cançado Trindade J (separate opinion) 199-202
arrest and detention measures (1995-6) as alleged violation of ICCPR 13 and ACHPR 12(4) (expulsion) 113-17
“in accordance with the law” requirement (law of expelling State) 113-17, 162
arbitrariness, relevance/absence from text 162-6, 288-91
Cançado Trindade J (separate opinion) 196-9, 229-30
Diallo (merits) (cont.)
compliance with DRC law (Court’s evaluation) 114-17
compliance with DRC law (Keith and Greenwood JJ) 168-71
consistency of interpretation between treaties, desirability 113-14
consultation with National Immigration Board, need for 115-16
interpretation of municipal law as responsibility of national authorities 115
Keith and Greenwood JJ 161-72
Mampuya, Judge ad hoc 286-7
ordinary meaning of text in context and in the light of its purpose 163, 167
procedural nature of provision 161-72
reasons for expulsion, need for 115-16, 162
travaux préparatoires (ICCPR 13) 163-5
arrest and detention measures (1995-6), facts including court’s evaluation 108-24
agreed facts 108-9
alleged date of release 111
alleged dates of detention 111-12
alleged death threats 112
burden/standard of proof (onus probandi actori incumbit) including obligation to
prove a negative 110-11
reparation (Chorzów Factory principle)/compensation 142-3
agreement between parties as preferred solution 143
Cançado Trindade J (separate opinion) 247-52
determination by Court in case of failure of parties to agree within six months 143
Mahiou, Judge ad hoc 282
Mampuya, Judge ad hoc 287-8
Diallo (preliminary objections) (diplomatic protection)
background and procedural history
agreed facts 30-1
disputed facts 31-5
Application (Part Two) (text) 28
appointment of ad hoc judges 27
compulsory jurisdiction (Optional Clause) (ICJ 36(2)), acceptance by both parties 37
dispute, parties’ changing emphases/Guinea’s focus on its exercise of diplomatic
protection 35-7
Mampuya, Judge ad hoc 66-78
filing of application 25-6
parties’ submissions
DRC 29-30
Guinea 28-30
status of Africom-Zaire and Africontainers-Zaire/associés as preferred terminology 35
Court’s decision 58
declaration (Mahiou, Judge ad hoc) 60-6
separate opinion, Mampuya, Judge ad hoc 66-78
exhaustion of local remedies requirement (injury to direct rights of shareholder)
Court’s analysis 50-1
conclusion 51
ILC 11 (statement of customary international law rule) 62-6
parties’ argument
DRC 48-9
Guinea 49-50
exhaustion of local remedies requirement (protection of rights as an individual)
Court’s analysis 39-42
INDEX 737

effective remedy, need for (ILC 44(b)) 40-2
parties’ arguments
DRC 38
Guinea 39
existence of a dispute (Mampuya, Judge ad hoc) 78-87, 283-6

diplomatic protection, concept and basis, development in response to changing commercial
and economic environment, as declining/residual concept, development of
international law of human rights and rights of the individual 252-5

Diplomatic Protection, ILC Articles on (2000/2006) by article
1 (definition), injury to natural or legal person 47
11 (diplomatic protection of shareholders of company having nationality of State
causing injury, exclusion/exceptions) 62-6
11(a) (disappearance of corporation for reason unrelated to injury) 65-6
11(b) (incorporation in State allegedly causing injury as precondition for doing business
there) 54-5, 57-8, 63-5
12 (direct injury to shareholders) 44-5, 60-3
Mahiou, Judge ad hoc 60-3
Mampuya, Judge ad hoc 87-92
parties’ arguments, DRC 42-4

Diplomatic protection, jurisprudence
Barcelona Traction 42-8, 66-78, 278-82
Diallo 252-5
Diallo: see Diallo (preliminary objections) (diplomatic protection)
ELSI 41, 61-2

EEZ (UNCLOS 55-75 (Part V)), rights, jurisdiction and duties of coastal State
(UNCLOS 56), superjacent waters/water column, limitation to (UNCLOS
56(1)(a)) 571-3, 715-20
effective remedy before national authority, need for (diplomatic protection/ILC 44(b)), jurisprudence, Diallo 40-2

equidistance (median line)/special circumstances rule (TSC 12(1)/CSC 6/UNCLOS 15): see also special circumstances/relevant factors (maritime delimitation) (including CSC 6/TSC 12/UNCLOS 15), eligibility for consideration as “agreement” 495-7; see also treaties, definition/form/classification as (VCLT 2(1)(a)) applicability, continental shelf beyond 200 miles 568
bisector of angle as alternative 626-7, 630-1, 636, 638-40, 655-9, 711-15

equidistance/median line, adjustment/correction to achieve equitable result 535-7
“adjustment” 632-3

equidistance/median line as starting point 525-33, 626-7

jurisprudence
Barbados/Trinidad and Tobago (2001) 542
Bay of Bengal 507-10, 533, 581-2, 593-5, 618-21, 626-7, 632-6, 638-43, 645-55
Black Sea 542
Guinea/Guinea–Bissau 536-7
Liberia/Malta 542
North Sea cases 536

legal status of “rule”, rule of law, whether 640-3
single maritime boundary and 707-10
three-stage approach as preferred method 524-5, 581-2

equitable result requirement (UNCLOS 74(1) and 83(1)): see also equidistance (median line)/special circumstances rule (TSC 12(1)/CSC 6/UNCLOS 15); equidistance (median line)/special circumstances rule (TSC 12(1)/CSC 6/UNCLOS 15), equidistance/median line, adjustment/correction to achieve equitable result; maritime delimitation/boundaries, methods; special circumstances/relevant factors (maritime delimitation) (including CSC 6/TSC 12/UNCLOS 15), eligibility for consideration as applicable law
customary international law 513-14
decisions of international courts and tribunals (ICJ 38(1)(d)) 514
“international law as referred to [in ICJ 38]” 513-14
basepoints, choice 525-30
distance and, guidelines 654-5
jurisprudence
Barbados/Trinidad and Tobago 514, 581-2
Bay of Bengal 522-5, 586
single maritime boundary and 512-13, 707-10

estoppel, jurisprudence
Bay of Bengal 501-2, 701
Gulf of Maine 501-2
North Sea Continental Shelf 501-2

evidence (ECtHR)
burden/standard of proof
jurisprudence
Ahmed v. Romania 392
Airey 391-2
Akdivar 386-7
Borisenko 391-2
HLR 386-7
McCann 386-7
Papamichalopoulos 386-7
Ribitsch 386-7
Susanna Brunnhofer 386-7
Timishev 386-7
Somogyi 392-3
evidence (IAChR)
burden/standard of proof 390-1
jurisprudence
Gómez-Paquiyauri Brothers 390-1
Velásquez-Rodríguez 390-1
evidence (ICJ/PCIJ)
burden/standard of proof (onus probandi actori incumbit), obligation to prove a negative 110-11
burden/standard of proof (onus probandi actori incumbit), jurisprudence
Diallo 110-11, 306-9, 368, 375-6, 384-9, 393-6
Macedonia v. Greece 306-7
Pulp Mills 110, 306-7
evidence (ITLOS)
ammissibility of affidavit 690-700
burden/standard of proof 679
expert evidence 680-4
exhaustion of local remedies other than ECHR 35(1)/ACHR 46(1)(a), jurisprudence,
Diallo 40-2, 48-51: see also Diallo (preliminary objections) (diplomatic protection)
expropriation/nationalization of corporation assets, assets of shareholders distinguished 140-2
family/private life, respect for (ECHR 8(1)), justified restrictions/interference by public authority, grounds/requirements (ECHR 8(2))
“accordance with the law” 432
national security 432
pressing social need 432
family/private life, respect for, justified restrictions/interference by public authority (ACHR 17, ECHR 8(2), ICCPR 17), jurisprudence
Messina 431-2
Ocàlan 431-3
Trosin 433
forum prorogatum (ICJ) (ROC 38(5)), consensual basis 70

General Assembly resolutions in number/date order, 60/147 (remedies for victims of violations of human rights and humanitarian law) 343, 361, 372-3

General Comments (HRC)
8 (ICCPR 9 (right to liberty and security of persons)), applicability to any form of detention by public authority 118
15 (position of aliens) 113-14
ICCPR 13 as procedural provision 165, 229
mass expulsion, exclusion 162
Guinea, compulsory jurisdiction (Optional Clause) (ICJ 36(2)), acceptance 37
human rights treaties (general)
  consistency of interpretation between treaties, desirability 113-14
  interpretation
  autonomous meaning of terms 205-7
  effectiveness/effet utile principle 206-7
  practical and effective promotion of object and purpose of treaties 204-6
humanity principle 209-12

ICCPPR (1966)
  interrelationship between protected rights 230-2
  violations, preceding entry into force of Covenant/continuing violation 244-7
ICCPPR (1966), interpretation, travaux préparatoires (VCLT 32), deportation/expulsion of alien (ICCPR 13) 163-5

ICJ Rules of Court (1978 as variously amended) by rule
  38(2) (application: legal basis for jurisdiction and precise nature of claim) 69
  new claims 105-8
  39(1) (notification of special agreement by one or both parties), 49(1) (memorial requirements: statement of relevant facts, law and submissions) 105-8
  53(2) (availability of documents to the public) 27, 95
  61(4) (Court’s indication of points to be addressed by parties: timing of replies) 28, 95
  62(1) (Court’s right to call on parties for evidence/explanations) (disclosure) 28
  79(1) (time-limits for lodging objection to jurisdiction/admissibility) 27, 107-8
  79(3) (time-limits for pleadings on jurisdiction and admissibility) 103
  79(5) (suspension of proceedings on the merits and time limits for written observations) 103
  79(9) (time limits for further proceedings) 58

ICJ/PCIJ procedural issues
  formalism, need to avoid
  Diallo 145-6, 149
  Mavrommatis Palestine Concessions 145-6, 149
  pleadings, availability to the public (ROC 53(2)) 27

ICJ/PCIJ status and functions (ICJ 36(1) and PCIJ 36(1) and PCIJ 38), as principal judicial organ of UN (UNC 92) 260-2

individual in international law
  individuals as subjects of international law, changes over time
  classical/founding fathers’ approach to 327-9
  development of State responsibility principle/restitution/restitutio in integrum
  Chorzów Factory principle 330-7
  human rights tribunals/human rights law, effect 252-8, 337-60
  ECtHR 350-1
  IACtHR 347-50
  ICJ approach to 258-62, 323-6
  Jurisdictional Immunities of the State 347

inhuman or degrading treatment (ECHR 3/ICCPR 7)
  burden/standard of proof, “beyond reasonable doubt” 418-19
  detention conditions as
  deprivation of access to information 423
  inadequacy of communication with prison staff/medical authorities 424
  inadequate recreation and outdoor exercise facilities in prison 424-5
  obstacles to communication with family members 425-6
  obstacles to communication with lawyers 426-7
INDEX

social isolation/solitary confinement 420-9
factors of possible relevance
cumulative effects 420
degrading nature of treatment 419
duration of impugned treatment 418-19, 427-9
effect on personality 419
intention to humiliate 419
premeditation 419
sex, age and state of health 418-19

inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence
(non-derogation principle)
Assenov 418-19
Chahal 418
El Mari 418
Indelicato 418
Labita 418
Öcalan 418
Ramirez Sanchez 418-19
Selmouni 418-19

inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence relating
in particular to detention/detention conditions
Dougoz 420
Ireland v. UK 418-19
Kalashnikov 419-20
Messina 420-1
Ramirez Sanchez 419-20, 427-9

inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence relating
in particular to qualification as/threshold
Dougoz 420
Iliec 419-21
Indelicato 419
Ireland v. UK 418-19
Kalashnikov 419-20
Kudla 419-20
Loré 419
Messina 420-1
Öcalan 418-21
Ramirez Sanchez 419-20
Raninen 419
Rohde 420-1
V. v. UK 419
Van der Ven 419

interest
jurisprudence
Diallo 318-19
Lordos 318-19
Saïger 318-19

international law (including customary international law), European character 252-5
Iran–US Claims Tribunal including Iran–US Claims Settlement Declaration
provisions
burden/standard of proof
Iran–US Claims Tribunal including Iran–US Claims Settlement Declaration
provisions (cont.)
  Daley 387-8, 393
  Rankin 387, 393
  Yeager 387, 393

islands (TSC 10/UNCLOS 121) (including role in maritime delimitation)
  Bay of Bengal 506-7, 537-40, 584-5, 629-30, 659-62, 706-7
  relevant/special circumstances (equidistance) and 506-7, 537-40, 584-5, 629-30, 659-62

ITLOS judgment, binding effect (ITLOS 59), “except between the parties in respect of that particular dispute” (ITLOS 33(2))/third parties 550

ITLOS procedure
  judge ad hoc, appointment (ITLOS 17/ROC 8) 477
  Notification and Statement of Claim (ITLOS 24), Bay of Bengal 474-5

ITLOS Rules
  9 (judges ad hoc: declaration under ITLOS 11) 477-8
  16(2) (continuity of presidency until completion of present phase of the case) 479-80
  17 (continuity of members’ participation following expiration of term of office) 479-80
  45 (consultation with parties on procedure) 477
  59 (written proceedings: fixing of time limits) 476-7
  61 (number and order of proceedings) 476-7
  67(1) (availability of pleadings and documents to parties entitled to take part in the proceedings) 477
  67(2) (public availability of pleadings and documents) 479
  68 (initial deliberations) 478
  75(2) (final submissions) 481-2
  76(1) (issues to be addressed by parties) 478
  86 (record of proceedings) 479

ITLOS Statute: see the Table of Treaties, UN Convention on the Law of the Sea (UNCLOS), Annex VI

judge ad hoc (ICJ 31(2) and (3))/PCIJ 31 and ROC 71, appointment (examples), Diallo 27

just satisfaction obligation (ECHR 41 [50]), jurisprudence
  Elci 314-15
  Khamidov 317

legal dispute, need for/classification as/requirements (including PCIJ 36, ICJ 36): see also “subject of the dispute”, obligation to indicate in application (ICJ 40(1)/ROC 38(2))

legal dispute, need for/existence of/obligation to indicate subject matter, jurisprudence
  Certain Phosphate Lands in Nauru 105-6
  Diallo 101-8, 283-6
  Georgia v. Russia 283-6
  Mavrommatis 145-6
  Nicaragua–Honduras Territorial Dispute 105-6
  Prince von Pless Administration 105-6
  Temple of Preah Vihear 106
Index

**legislation, interpretation**
- municipal law as applicable law in international tribunals, interpretation and application by national court as determinant
  - Brazilian Loans 115
  - Diallo 115
  - Serbian Loans 115

**liberty and security of person, right to (ACHPR 6)**
- applicability to any form of detention by public authority 118
- arbitrary arrest or detention 119-20, 288-91
- failure to comply with the law 118-19
- *Diallo* 117-21

**liberty and security of person/freedom from arbitrary arrest (ICCPR 9)**
- applicability to any form of detention by public authority 118
- “arbitrary” 119-20, 288-91
- *Diallo* 117-21, 227-8, 288-91
- failure to comply with the law 118-19
- prompt notification of charges/reasons for arrest (ICCPR 9(2))
- notification of charges 120
- notification of reasons for arrest (*Diallo*) 120-1, 190-1
- review of lawfulness of detention (habeas corpus) (ICCPR 9(4)) 193-4

**life/long-term imprisonment (including ECHR 3/ICCPR 7 provisions)**
- “life imprisonment”/reducibility
- possibility of amnesty 443-4
- possibility of release on humanitarian grounds 443-4
- State practice, Turkey 442-4

**life/long-term imprisonment (including ECHR 3/ICCPR 7 provisions), jurisprudence:** see also *Ocalan* (ECtHR) (2007), alleged violation of ECHR 3 (torture, inhuman or degrading treatment: life sentence without possibility of release on parole)
- Kafkaris 439
- Nivette 440
- Ocalan 439-44
- Vintner 439-44
- Wynne 440

**maritime area (for purposes of maritime delimitation)**
- Bay of Bengal 573-6
- overlapping area
- limitation of delimitation to 516, 556-7, 559-61, 569, 571
- relevant area and 516-17, 573-6
- “relevant area”, proportionality and 573-6, 585-6

**maritime delimitation/boundaries (general)**
- acquiescence/estoppel/tacit agreement/evidence of jurisprudence
- Bay of Bengal 497-502, 699-701
- Nicaragua–Honduras 499-500
- adjacency, land dominates the sea principle 514
- delimitation in absence of established outer limits or agreed baselines 550

**maritime delimitation/boundaries, methods**
- bisector of angle method 524, 630-1, 636, 638-40, 655-9, 711-15
maritime delimitation/boundaries, methods (cont.)
equidistance: see equidistance (median line)/special circumstances rule (TSC 12(1)/CSC 6/UNCLOS 15)
jurisprudence
Barbados/Trinidad 523
Bay of Bengal 522-5
Black Sea 523
Guinea/Guinea–Bissau 524
Gulf of Maine 524
Guyana/Suriname 523
Jan Mayen 522
Land and Maritime Boundary (Cameroon/Nigeria) 522-3
Nicaragua/Honduras 524
North Sea Continental Shelf cases 522
Qatar/Bahrain 522-3
Tunisia/Libya 524
maritime jurisdiction[s]
overlapping/concurrent jurisdictions
bilateral agreements/cooperative arrangements, desirability 572-3
obligation to exercise rights with due regard to rights of others (UNCLOS 56(2), 58(3), 78(2) and 79(5)) 572-3
measure of damages/compensation including valuation of company/property/assets:
see also Diallo (compensation); restitution/restitutio in integrum/measure of compensation (including ILC 35 and 36/Chorzów Factory principle), jurisprudence
burden/standard of proof 306-7, 308-9, 368, 375-6, 384-9
causal link between act and damage, need for: see causation/causal link as requirement for finding of breach of State responsibility/liability for reparation (ILC 31)
lost earnings 366-8
as result of unlawful detention 314-16, 360-5, 376-7
as result of unlawful expulsion 316, 364
non-pecuniary loss: see damages for, non-pecuniary loss including moral injury/intangible loss
relevant factors
context 309
equitable considerations 309-10, 364, 366-8, 389
Myanmar (Burma): see Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar)
natural prolongation (maritime delimitation/boundaries)
continental margin and 563-5
as criterion for delimitation 564, 663-5
definition[s] (including UNCLOS 76(1)) 562-5, 704-6
jurisprudence, Bay of Bengal 562-5, 568-9, 594-5, 662-5, 704-6
non-encroachment principle/avoidance of cut-off (maritime delimitation), jurisprudence, Bay of Bengal 534-7
nullum crimen nulla poena sine lege/non-retroactivity (ECHR 7)
applicability of the more lenient criminal law 436
construction of law to accused’s detriment, avoidance 435
derogation (ECHR 15), exclusion 435

“law” 436

legal certainty/foreseeability and 435-6

nullum crimen nulla poena sine lege/non-retroactivity (ECHR 7/ICCPR 15/UDHR 11(2)), jurisprudence: see also Öcalan (ECtHR) (2007), alleged violation of ECHR 7 (nullum crimen nulla poena sine lege/non-retroactivity)

Achour 435-6
Cantoni 436
Coëme 435-6
CR v. UK 435
EK v. Turkey 436
Hummatov 436
Kafkaris 435-6
Kokkinakis 435-6
Scoppola 435-6
SW v. UK 435

Öcalan (ECtHR) (2007)

alleged violation of ECHR 3 (conditions of detention on the island of İmralı)

Court’s assessment 417-31

period of detention for consideration (12 May 2005–8 March 2012) 417-18

Court’s conclusions

dissenting opinion (Raimondi, Karakas and Lorenzen JJ) 445-6

period before 17 November 2009 429-30

period post 17 November 2009 430-1
dissenting opinion (Pinto de Albuquerque J) 458-60
general principles 418-21

benchmark/threshold 418-21

fundamental/non-derogable nature of right 418
general principles, application 421-31

continuity of 2005 situation 421-2

physical conditions of detention 422-3

parties’ submissions

applicant 415

Government 415-17

social isolation

Court’s conclusions 427
duration 427-9

nature of 423-7

alleged violation of ECHR 3 (torture, inhuman or degrading treatment: life sentence without possibility of release on parole) 439-44

Court’s assessment 439-44

possibility of amnesty 443-4

possibility of release on humanitarian grounds 443-4

Court’s conclusion 444
dissenting opinion (Pinto de Albuquerque J) 447-58

Government 439

parties’ submissions, applicant 439

alleged violation of ECHR 7 (nullum crimen nulla poena sine lege/non-retroactivity)

Court’s assessment 435-9
Öcalan (ECtHR) (2007) (cont.)

Court’s conclusion 439

general principles 435-6
  applicability of the more lenient criminal law 436
  construction of law to accused’s detriment, avoidance 435
  derogation (ECHR 15), exclusion 435
  “law” 436
  legal certainty/foreseeability and 435-6

general principles, application 436-9

parties’ submissions

applicant 434

Government 434-5

alleged violation of ECHR 8 (restrictions on family visits and communication)
  431-3

Court’s assessment 431-3

Court’s assessment, “accordance with the law” 432

Court’s assessment
  pressing social need 432
  public order and safety/security 432

Court’s conclusion 432-3

dissenting opinion (access to lawyers) (Pinto de Albuquerque J) 460-2

dissenting opinion (Sajó and Keller JJ) 446-7

parties’ submissions

applicant 431

Government 431

Court’s decision 444-5

dissenting opinions

Pinto de Albuquerque J 447-63
Raimondi, Karakaş and Lorenzen JJ 445-6
Sajó and Keller JJ 446-7

factual background

abolition of death penalty in Turkey/ratification of ECHR Protocol 13
  405-6

conditions of detention after 12 May 2005

alleged poisoning of applicant 414

İmralı prison before 17 November 2009 406-7

İmralı prison post-17 November 2009 407-8

proceedings against applicant’s lawyers (ban) 413-14

proceedings against applicant’s lawyers (prosecution for acting as
  messengers) 414

visit frequency 408-10

visits by family members 413

visits by lawyers (disciplinary sanctions following) 412-13

visits by lawyers (exchanges between applicant and his lawyer) 411-12

visits by lawyers (procedure) 410-11

facts leading to the case 404

trial (Ankara National Security Court)/death sentence (1999) 404-5

procedural history 403-4

preliminary objections (ICJ/PCIJ) (ICJ ROC 79 [ROC 62]), suspension of proceedings
  on the merits (ROC 79(3) [ROC 62(3)]) 27

prompt hearing (ICCPR 9(3) and 14(3)(e)), “reasonable time”/“prompt” 191-3

proportionality (maritime delimitation), determination of relevant areas 573-6
remedies, UNGA resolution 60/147 (remedies for victims of violations of human rights and humanitarian law) 343, 361

reparation for breach of treaty (ACHR 63(1)) (compensation)
jurisprudence
Cantoral Benavides 348
Chaparro Álvarez 317
El Caracazo 348
Gutiérrez-Soler 307-8, 369-70
Street Children 314-15
Suárez-Rosero 314-15
for moral injury 307-8
equitable considerations 348
requirements, proportionality 381

reparation for breach of treaty (ACHR 63(1)) (other than compensation), examples of possible measures 341-6, 348-50

restitution/restitutio in integrum (including ILC 35 and 36/Chorzów Factory principle)
examples of restitution 341-6
rehabilitation of victim as key objective 354-5

restitution/restitutio in integrum/measure of compensation (including ILC 35 and 36/Chorzów Factory principle), jurisprudence
Application of the Genocide Convention 306
Cantoral Benavides 348
Chaparro Álvarez 317
Diallo 142-3, 247-52, 330-7, 371-3: see also Diallo (compensation)
E3 Claims 314-15
El Caracazo 348
Els 314-15
Gutiérrez-Soler 307-8, 369-70
Khamidov 317
Pulp Mills 142-3
Saiga 369-70
Street Children 314-15
Suárez-Rosero 314-15
Teixeira de Castro 314-15

single maritime boundary
Bay of Bengal 512-13, 707-10
equitable result requirement (UNCLOS 74(1) and 83(1)) 707-10

solitary confinement/detention incommunicado as cruel, inhuman or degrading treatment (including ACHR 5, ICCPR 7 and ICCPR 10), Messina 420-1

special circumstances/relevant factors (maritime delimitation) (including CSC 6/TSC 12/UNCLOS 15), eligibility for consideration as: see also Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar)
coastal configuration, concave/convex coastline 534-7, 628-9, 637-8, 647-55
geographical context 701-7
islands 506-7, 584-5

standard of treatment of alien (with particular reference to foreign investment), [customary] international law, applicability, desirability of bringing customary international law into line with investment treaties/contemporary treatment of foreign investors 151, 155, 158-60
“subject of the dispute”, obligation to indicate in application (ICJ 40(1)/ROC 38(2))
Navigational and Related Rights 266
new claim/claim introduced during proceedings (ICJ 40(1) and ROC 38(2), 49(1) and 79), 101-8
claim arising directly out of the question which is the subject matter of the Application 106, 108, 146
claim formulated in the course of proceedings which would transform the subject of the dispute 105-6, 146-7
claim implicit in Application 106, 265-7
new claim/claim introduced during proceedings (ICJ 40(1) and ROC 38(2), 49(1) and 79), jurisprudence
Certain Phosphate Lands in Nauru 105-6, 146, 263-7
Diallo 101-8, 263-7, 283-301
Nicaragua–Honduras Territorial Dispute 105-6, 146-7, 263-4, 266
Prince von Pless Administration 105-6
Société Commerciale de Belgique 146, 264
Temple of Preah Vihear 106

territorial sea, definitions and delimitation (TSC 3-13/UNCLOS 3-16)
historic title (including TSC 12/UNCLOS 15) 503
jurisprudence, Bay of Bengal: see Bay of Bengal Maritime Boundary Delimitation (Bangladesh/Myanmar), territorial sea (delimitation) (UNCLOS 15)
travaux préparatoires as supplementary means of interpretation (VCLT 32), in respect of, VCCR 36(1)(b) (consular notification) 240-3, 294-5
treaties, conclusion (VCLT 6-18)
full powers, relevance (VCLT 7), as evidence of authority to sign 496-7, 698-9
jurisprudence, Bay of Bengal 496-7
persons considered as representing State without need to produce full powers (VCLT 7(2)), government ministers other than head of State, head of Government or foreign minister 698-9
treaties, definition/form/classification as (VCLT 2(1)(a))
agreed minute, Bay of Bengal 495-7, 690-700
implicit agreement, requirements 497-501
intention to conclude treaty, need for, counter-indications 496
jurisprudence
Bay of Bengal 495-501
Hoshinmaru 495
Qatar/Bahrain 495
treaty interpretation (general), autonomous meaning of terms 205-7
treaty interpretation (VCLT 31(1)) [(natural and] ordinary meaning)
ACHPR 12 163, 167
ICCPR 13 163, 167
treaty interpretation (VCLT 31(1)) (object and purpose/spirit and purpose) (teleological approach), effectiveness (ut res magis valeat quam pereat) (effet utile), human rights treaties 206-7
treaty interpretation (VCLT 31(2)) (context), holistic approach 230-2
Turkey
Constitution 1982 by article, 38 (limitation of death penalty other than in time of war or imminent threat of war or terrorist acts) 405
Criminal Code by article, 68 (statute of limitations: exceptions) 443
death penalty, abolition 405, 436-9: see also Öcalan (ECtHR) (2007)
life/long-term imprisonment 442-4
INDEX

UNCLOS dispute settlement (Part XV: Section 2 (compulsory procedures entailing binding decisions: jurisdiction (UNCLOS 288))
applicable law (UNCLOS 293), UNCLOS and other rules of compatible international law (UNCLOS 293(1)) 485-6
choice of procedure (UNCLOS 287)
declarations (UNCLOS 287(1))
  Bangladesh (4 November 2009) 474-5
  Bangladesh (4 November 2009), withdrawal (14 January 2010) 476
  as basis for agreement to jurisdiction in specific case 590-1, 597-607
  Myanmar (12 December 2009) 474-5
multiplicity of options/freedom of choice 587-8
dispute concerning the interpretation or application of the Convention (UNCLOS 288(1)) 485
jurisdiction
  Bay of Bengal 589-92, 595-625
  Saiga 589-90, 598
  Swordfish 590, 598
  Virginia G 590
unilateral request (UNCLOS 286) 589-92, 596-607
unilateral declaration/undertaking (including validity and legal effects)
  binding effect 512
  examples, statements of State Agents before international tribunals 510-12
jurisprudence, Bay of Bengal 510-12

Vienna Convention on the Law of Treaties (1969) (VCLT) (procedural aspects), customary international law and, jurisprudence, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area 551