

## HABEAS CORPUS IN INTERNATIONAL LAW

*Habeas Corpus in International Law* is the first comprehensive examination of this subject. It looks at the location, scope, and significance of the right to a judicial determination of the legality of one's detention as guaranteed by international and regional human rights instruments. First, it examines the history of habeas corpus and its place in human rights treaties, providing a useful resource for understanding the status and application of this internationally protected right. The book continues by identifying and analyzing the primary challenges to habeas corpus, in particular, its applicability during armed conflict, the possibility of derogation, its extraterritorial application, and procedural shortcomings. The book next addresses the significance of habeas corpus guarantees not just in protecting personal liberty, but in promoting the international rule of law by serving as a unique check on executive action. Finally, it offers suggestions on how this right might be strengthened.

DR. BRIAN FARRELL is a Lecturer in Law and Human Rights and Associate Director of the Center for Human Rights at the University of Iowa College of Law. He is the author of over twenty publications on international law, human rights, criminal law, and legal education.

Cambridge University Press  
978-1-107-15177-2 — Habeas Corpus in International Law  
Brian R. Farrell  
Frontmatter  
[More Information](#)

---

# Habeas Corpus in International Law

**BRIAN R. FARRELL**

University of Iowa



**CAMBRIDGE**  
**UNIVERSITY PRESS**

Cambridge University Press  
978-1-107-15177-2 — Habeas Corpus in International Law  
Brian R. Farrell  
Frontmatter  
[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

One Liberty Plaza, 20th Floor, New York NY 10006, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107151772](http://www.cambridge.org/9781107151772)

© Brian R. Farrell 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

Names: Farrell, Brian R. (Brian Richard), author.

Title: Habeas corpus in international law / Brian R. Farrell, University of Iowa.

Description: New York NY : Cambridge University Press, 2016.

Identifiers: LCCN 2016015287 | ISBN 9781107151772 (Hardback)

Subjects: LCSH: Due process of law. | Habeas corpus. | International law.  
| Civil rights. | Human rights.

Classification: LCC K3251 .F37 2016 | DDC 345/.056-dc23 LC record available at  
<https://lccn.loc.gov/2016015287>

ISBN 978-1-107-15177-2 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

## Contents

|   |                |
|---|----------------|
| <i>Foreword</i>   | <i>page</i> ix |
| <i>Acknowledgements</i>                                   | xiii           |
| <i>Table of Cases</i>                                     | xv             |
| <b>Introduction</b>                                       | 1              |
| Defining Habeas Corpus                                    | 3              |
| Objectives  | 6              |
| Overview  | 10             |
| <b>1 The Development of Habeas Corpus in Domestic Law</b> | 14             |
| 1.1 Origins of Habeas Corpus in English Law               | 15             |
| 1.1.1 Judicial Rivalry as an Impetus for Development      | 15             |
| 1.1.2 Habeas Corpus and Judicial Review                   | 18             |
| 1.1.3 The Habeas Corpus Acts                              | 20             |
| 1.2 A Right of Universal Importance                       | 24             |
| 1.2.1 Habeas Corpus Goes Global                           | 25             |
| 1.2.2 The Status of Habeas Corpus in 1945                 | 28             |
| <b>2 The Universal Declaration of Human Rights</b>        | 30             |
| 2.1 The Post-war Development of International Law         | 31             |
| 2.2 Drafting the Universal Declaration                    | 32             |
| 2.2.1 Habeas Corpus from the Start                        | 34             |
| 2.2.2 The Removal of Habeas Corpus                        | 38             |
| 2.2.3 <i>Amparo</i> to the Rescue                         | 39             |

|          |   |            |
|----------|---|------------|
| 2.3      | The Broad Guarantee of Habeas Corpus  | 42         |
| 2.3.1    | Context for Removal of a Distinct Article                                   | 43         |
| 2.3.2    | Interpreting Article 8  | 45         |
|          | Conclusion  | 47         |
| <b>3</b> | <b>The International Covenant on Civil and Political Rights</b>             | <b>48</b>  |
| 3.1      | The <i>Travaux Préparatoire</i> of Article 9(4)                             | 49         |
| 3.1.1    | The Work of the Commission on Human Rights                                  | 49         |
| 3.1.2    | Article 9(4) in the General Assembly  | 55         |
| 3.2      | Interpreting Article 9(4)   | 58         |
|          | Conclusion  | 67         |
| <b>4</b> | <b>Habeas Corpus and Regional Human Rights Systems</b>                      | <b>68</b>  |
| 4.1      | European Human Rights System  | 70         |
| 4.1.1    | Drafting History of the European Convention                                 | 71         |
| 4.1.2    | Interpreting Article 5(4) of the European Convention                        | 74         |
| 4.2      | Inter-American Human Rights System  | 95         |
| 4.2.1    | Drafting History of the American Declaration                                | 98         |
| 4.2.2    | Interpreting Article XXV of the American Declaration                        | 99         |
| 4.2.3    | Drafting History of the American Convention                                 | 102        |
| 4.2.4    | Interpreting Article 7(6) of the American Convention                        | 106        |
|          | Conclusion  | 115        |
| <b>5</b> | <b>Challenges to the Effectiveness of Habeas Corpus</b>                     | <b>116</b> |
| 5.1      | Detention Review during Armed Conflict                                      | 117        |
| 5.1.1    | Relationship between Legal Regimes  | 118        |
| 5.1.2    | Humanitarian Law Provisions Related to Detention Review                     | 125        |
| 5.1.3    | Interplay of Detention Review Provisions in International<br>Armed Conflict | 128        |
| 5.1.4    | Detention Review during Non-International Armed Conflict                    | 132        |
| 5.1.5    | Summary   | 137        |
| 5.2      | Derogation from Human Rights Obligations                                    | 138        |
| 5.2.1    | Development   | 139        |
| 5.2.2    | Derogation Provisions and Habeas Corpus                                     | 140        |
| 5.2.3    | Summary   | 146        |
| 5.3      | Territorial Limits of Habeas Corpus Guarantees                              | 148        |
| 5.3.1    | The Dilemma of Extraterritorial Detention                                   | 149        |

*Contents*

vii

|   |            |
|---|------------|
| 5.3.2 Extraterritorial Application of Human Rights Law                        | 150        |
| 5.3.3 Availability of Habeas Corpus Extraterritorially                        | 164        |
| 5.3.4 Summary   | 167        |
| 5.4 Procedural Concerns   | 168        |
| 5.4.1 Parameters of Existing Procedural Rules                                 | 169        |
| 5.4.2 Procedural Issues Arising in the “War on Terror”                        | 172        |
| 5.4.3 Summary   | 175        |
| Conclusion  | 176        |
| <br>  |            |
| <b>6 The Importance of Effective International Habeas Corpus Guarantees</b>   | <b>177</b> |
| 6.1 The Role of Habeas Corpus in Protection of the Individual Detainee        | 178        |
| 6.1.1 Protecting Personal Liberty   | 178        |
| 6.1.2 Protecting Other Substantive Rights                                     | 180        |
| 6.1.3 Importance of International Law Guarantee                               | 183        |
| 6.2 Habeas Corpus and the Rule of Law   | 184        |
| 6.2.1 Understanding the Rule of Law and the Role of Habeas Corpus             | 185        |
| 6.2.2 The State of Exception  | 190        |
| 6.2.3 Habeas Corpus as a Reflection of Policy Choices                         | 199        |
| Conclusion  | 200        |
| <br>  |            |
| <b>7 Strengthening Habeas Corpus in International Law</b>                     | <b>202</b> |
| 7.1 The Location for Advancement  | 203        |
| 7.1.1 Existing Provisions   | 203        |
| 7.1.2 New Treaty  | 210        |
| 7.1.3 International Institutions  | 212        |
| 7.1.4 Assessment of Options   | 217        |
| 7.2 Fundamental Considerations: An Adaptable Remedy Available to Every Person | 220        |
| 7.3 Asserting the Proper Scope and Application of Habeas Corpus               | 224        |
| 7.3.1 Armed Conflict  | 225        |
| 7.3.2 Non-Derogability  | 227        |
| 7.3.3 Extraterritorial Application  | 229        |
| 7.3.4 Minimum Procedural Standards  | 230        |
| Conclusion  | 236        |
| <br>  |            |
| <b>Conclusion</b>   | <b>237</b> |
| <br>  |            |
| <i>Bibliography</i>   | 243        |
| <i>Index</i>  | 251        |

Cambridge University Press  
978-1-107-15177-2 — Habeas Corpus in International Law  
Brian R. Farrell  
Frontmatter  
[More Information](#)

---



## Foreword

My first book, entitled *Habeas Corpus*, was published in 1990. The book was issued by one of Quebec's leading legal publishing houses. It was part of a series of modestly priced booklets aimed at the practitioner market. It began with a short theoretical essay, but it was mainly meant as a manual on how to proceed before the local courts. There were model forms so that a lawyer without any previous experience in filing an application for a writ of habeas corpus could do the paperwork. It has been many years since I received a royalty statement from the publisher, if indeed I ever received one! The book is most certainly out of print, but I would not think that it is out of date because not much changes in terms of the law and procedure of habeas corpus.

Although the title of the book doesn't make this entirely clear, the book was written in French. The French expression for habeas corpus is *habeas corpus*. The same is true for many other languages. When lawyers from different parts of the world meet they do not always find it easy to communicate. But if there is one expression with which they are all familiar, from Japan to Argentina to Estonia, it would be *habeas corpus*.

My interest in the subject of habeas corpus had been kindled by the naive and inexperienced attempts of a novice lawyer with a bent for human rights to launch proceedings using the "great writ." One of them was stunningly successful. I had been contacted by a man who had been detained for several months in a notoriously miserable remand centre in the heart of Montreal. He was brought there from a federal penitentiary where he had served a full term of several years for importing narcotic drugs into Canada from the United States. Because the man had no legal status in the country, once his prison sentence was completed he was to be returned south of the border. But when the Canadian authorities attempted to send him home, the United States challenged whether he was in fact an American citizen. They refused to let him enter the country. The man claimed he was from New York City, that he did not know his parents, and that he had been raised by a well-

meaning adult in some sort of makeshift housing, an abandoned tenement building, if I recall correctly. He certainly sounded and looked like an African American man from an urban ghetto. Canadian police went to New York looking for the records. They could find traces of him at public schools in Harlem, but there was no sign of a birth certificate.

The Canadian authorities said that until such time as the Americans would take him back, they would have to hold him in detention. My view was that he had done his time and was entitled to be released. And if Canada couldn't send him back to New York, then they had to release him, even if he had no lawful entitlement to live and work in Canada. After all, they had let him into the country in the first place.

The legal mechanism was a writ of habeas corpus. And what a thrill it was when, after a week-long hearing in the Montreal Courthouse, a judge of the Superior Court of Quebec named Henry Steinberg agreed with me. The government lawyers argued that his story about growing up in the slums of Harlem was implausible. But I knew New York City better than they did, and it all made sense to me, as it did to Justice Steinberg.

The government appealed, but I prevailed once again in the Court of Appeal. My client was released from custody. A few days later, he telephoned me from New York. It seemed that he was able to accomplish in little more than a heartbeat what the Canadian authorities had been unable to do over many months. I'm not sure how he crossed the border and I never asked. He continued to travel to and from Canada from time to time without apparent impediment.

I bumped into Judge Steinberg one day outside the courthouse and told him about the fate of the man he had freed. He did not seem surprised, and said something like, "I always knew that man had to have the pavement of New York under his feet."

One of the impressive features of the "great writ" was a custom – I don't believe it was ever codified – by which it took precedence over all other proceedings. I can recall filing an application for habeas corpus late one afternoon and walking into motions court the following morning to find myself at "the top of the rôle," as we said. Well-heeled lawyers for banks and insurance companies had to sit around patiently while I made my case for a person whose liberty had been deprived. I don't recall that there was any grumbling about such jumping of the queue. Everyone seemed to honour the nobility of the "great writ." They were happy for me to proceed first even if some of my fellow lawyers may have thought that the guy must have been in detention for a good reason. It was a way of paying tribute to the rule of law.

Other procedural rules were also greatly relaxed in order to facilitate habeas corpus proceedings. The time limits for filing of applications and their service on the authorities were more informal, or at least they were not strictly applied. The written application did not need to be typewritten, or on paper of regulation size. Once I was contacted by a person detained in the cells of the courthouse itself who

thought he was being held unlawfully. I wrote out a motion on a piece of paper in the courthouse cafeteria, made a few photocopies, and found myself before a judge in a matter of an hour or two.

Presenting a motion for a writ of habeas corpus was quite exhilarating. The words themselves had a profound and fundamental ring to them. It was a reminder that, in its heart and soul, lawyering was not about settling mere disputes over land and money but about protecting the individual from arbitrary action of the state. To apply for habeas corpus was to affirm our fraternity with lawyers around the world who were using this historic remedy to do battle with regimes that were far more oppressive and brutal than our own.

Habeas corpus also provoked a strange and rather unfamiliar complicity between judges and lawyers. We filed the motion, of course, but it could go nowhere without the willingness of the judge to call the authorities to account. Most of the time, judges are merely neutral arbiters in disputes between landlords and tenants, wives and husbands, merchants and suppliers. In proceedings for habeas corpus, they become the allies of the lawyer in the battle against arbitrary detention.

The ancient roots of habeas corpus in the protection of freedom and liberty has assured its place in the modern codifications of fundamental rights at the international level. Brian Farrell's splendid study offers us a meticulous account of how this process took place. He begins with the curious absence of the expression habeas corpus in the seminal text, the Universal Declaration of Human Rights. Of course, this was no oversight, and the core principle can be found in Article 8 of the Declaration: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." This right to a remedy has echoed through the subsequent human rights treaties, both general and specialized. It has left its mark in the case law of the European Court of Human Rights, the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, and the United Nations Human Rights Committee. The book goes on to examine why these international guarantees are so important to personal liberty and maintenance of the rule of law

Habeas corpus remains very central to some of the great human rights issues of our time. Guantánamo is a word that recurs frequently in Brian Farrell's study. He conducted his research and wrote this book while dedicated lawyers in his own country used the great writ, enshrined in the United States Constitution, in order to challenge indefinite detention without trial. While the research on this book was underway, a President was elected who promised to close the Guantánamo detention site and with it, presumably, bring an end to the practice of arbitrary detention. But with President Obama's second term at its end, there are still scores of men being held on that stolen corner of Cuba in what amounts to a zone of international lawlessness. At the same time, to the extent that there's even minimal judicial oversight, it's been because of habeas corpus.

It is a bit of a cliché to say that a book is timely, especially when it deals with a rather ancient procedural mechanism that is still known by its archaic Latin moniker. To be sure, Guantánamo is not the only place on our planet where human freedom is being abused. The great writ of habeas corpus, now repackaged in the instruments of modern international human rights law, has never been so important.

Professor William Schabas

## Acknowledgements

First and foremost, thank you to my doctoral advisor, Dr. Kathleen Cavanaugh, for her encouragement, expertise, and persistence as I wrote this manuscript. Thanks also to Professor Bill Schabas and to Professor John Jackson for their thoughtful contributions. I am indebted to all of my mentors and friends from the Irish Centre for Human Rights for their inspiration and advice throughout this process, in particular, Dr. Shane Darcy, Dr. Edel Hughes, and Dr. Michael Kearney. I am grateful for the tremendous support I have received from Dean Gail Agrawal, Associate Dean Adrien Wing, and my colleagues at the University of Iowa College of Law and its Center for Human Rights, and the assistance I received from Nilza Molina and Katelynn McCollough in particular. Much work on the latter portions of this book was completed during time spent as a Fulbright Senior Lecturer at Sofia University, and I am obliged to the Bulgarian-American Commission for Educational Exchange for that opportunity. Finally, I must thank my family and friends – above all, my wife, Dr. Sara Farrell, and my children, Eleanor and Rowan – for their love, inspiration, and patience.

Cambridge University Press  
978-1-107-15177-2 — Habeas Corpus in International Law  
Brian R. Farrell  
Frontmatter  
[More Information](#)

---

## Table of Cases

### UNITED NATIONS HUMAN RIGHTS COMMITTEE

- A. v. Australia*, No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (Apr. 3, 1997)  
*Ahani v. Canada*, No. 1051/2002, U.N. Doc. CCPR/C/80/D/1051/2002 (Mar. 29, 2004)  
*Baban v. Australia*, No. 1014/2001, U.N. Doc. CCPR/C/78/D/1014/2001 (Sept. 18, 2003)  
*Baritussio v. Uruguay*, R.6/25, in U.N. Doc. A/37/40 (1982)  
*Berry v. Jamaica*, No. 330/1988, U.N. Doc. CCPR/C/50/D/330/1988 (Apr. 6, 1994)  
*Bleier v. Uruguay*, No. 7/30 (Mar. 29, 1982), in U.N. Doc. A/37/40 (1982)  
*Celiberti v. Uruguay*, No. 13/56 (July 29, 1981), in U.N. Doc. A/36/40 (1981)  
*Essono Mika Miha v. Equatorial Guinea*, No. 414/1990, U.N. Doc. CCPR/C/51/D/414/1990 (Aug. 10, 1994)  
*Hammel v. Madagascar*, No. 155/1983 (Apr. 3, 1987), in U.N. Doc. CCPR/C/OP/2 at 179 (1990)  
*Inés Torres v. Finland*, No. 291/1988 U.N. Doc. CCPR/C/38/D/291/1988 (Apr. 5, 1990)  
*Kelly v. Jamaica*, No. 253/1987, U.N. Doc. CCPR/C/41/D/253/1987 (Apr. 8, 1991)  
*Lopez Burgos v. Uruguay*, No. 12/52 (July 29, 1981), in U.N. Doc. A/36/40 (1981)  
*Monja Jaona v. Madagascar*, No. 132/1982, U.N. Doc. CCPR/C/24/D/132/1982 (Apr. 1, 1985)  
*Quinteros v. Uruguay*, No. 107/1981 (July 21, 1983), in U.N. Doc. CCPR/C/OP/2 (1990)  
*Perez v. Colombia*, No. 181/1984, U.N. Doc. CCPR/C/37/D/181/1984 (Nov. 3, 1989)  
*Rameka v. New Zealand*, No. 1090/2002, U.N. Doc. CCPR/C/79/D/1090/2002 (Nov. 6, 2003)  
*Shafiq v. Australia*, No. 1324/2004, U.N. Doc. CCPR/C/88/D/1324/204 (Oct. 31, 2006)  
*Smirnova v. Russia*, No. 712/1996, U.N. Doc. CCPR/C/81/D/712/1996 (Aug. 18, 2004)  
*Stephens v. Jamaica*, No. 373/1989, U.N. Doc. CCPR/C/55/D/373/1989 (Oct. 25, 1995)  
*van Alphen v. the Netherlands*, No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988 (July 23, 1990)  
*Voulanne v. Finland*, No. 265/1987 (Apr. 7, 1989), in U.N. Doc. A/44/40 (Sept. 29, 1989)  
*Yklymova v. Turkmenistan*, No. 1460/2006, U.N. Doc. CCPR/C/96/D/1460/2006 (July 20, 2009).

## AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Achutan v. Malawi*, Comm. No. 64/92 (7th & 8th ann. rpt.) (1995)  
*Const. Rts. Proj. & Civil Lib. Org. v. Nigeria*, Comm. No.143/95 (13th ann. rpt.)  
 (Nov. 15, 1999)  
*Int'l Pen v. Nigeria*, Comm. No. 137/94 (12th ann. rpt.) (Oct. 31, 1998)

## EUROPEAN COURT OF HUMAN RIGHTS

- A. and Others v. United Kingdom*, 2009 Eur. Ct. H.R.  
*Abdolkhani and Karimnia v. Turkey*, App. No. 30471/08 (Jan. 3, 2009)  
*Aksoy v. Turkey*, 1996-VI Eur. Ct. H.R.  
*Al-Jedda v. United Kingdom*, App. No. 27021/08 (July 7, 2011)  
*Al-Saadoon and Mufdhi v. United Kingdom*, App. No. 61498/08 (June 30, 2009)  
 (admissibility decision)  
*Al-Skeini and Others v. United Kingdom*, App. No. 55721/07 (July 7, 2011)  
*Andreou v. Turkey*, App. No. 45653/99 (June 3, 2008) (admissibility decision)  
*Artico v. Italy*, 37 Eur. Ct. H.R. (ser. A) (1980)  
*Aşan and Others v. Turkey*, App. No. 56003/00 (July 31, 2007)  
*Banković v. Belgium*, 2001-XII Eur. Ct. H.R. (admissibility decision)  
*Baranowski v. Poland*, 2000-III Eur. Ct. H.R. 241  
*Batayev and Others v. Russia*, App. Nos. 11354/05 & 32952/06 (June 17, 2010)  
*Baysayeva v. Russia*, App. No. 74237/01 (Apr. 5, 2007)  
*Behrami v. France*, App. No. 71412/01, 356 Eur. Ct. H.R. (2007) (admissibility  
 decision)  
*Belozorov v. Russia and Ukraine*, App. No. 43611/02 (Oct. 15, 2015)  
*Benham v. United Kingdom*, 1996-III Eur. Ct. H.R. 738  
*Bezicheri v. Italy*, 164 Eur. Ct. H.R. (ser. A) (1989)  
*Bochev v. Bulgaria*, App. No. 73481/01 (Nov. 13, 2008)  
*Bouamar v. Belgium*, 129 Eur. Ct. H.R. (ser. A) (1988)  
*Brannigan and McBride v. United Kingdom*, 258 Eur. Ct. H.R. (ser. A) 29 (1993)  
*Brogan and Others v. United Kingdom*, 145 Eur. Ct. H.R. (ser. A) (1988)  
*Çakici v. Turkey*, 1999-IV Eur. Ct. H.R. 583  
*Castravet v. Moldova*, App. No. 23393/05 (Mar. 13, 2007)  
*Černák v. Slovakia*, App. No. 36997/08 (Dec. 17, 2013).  
*Çetinkaya and Çağlayan v. Turkey*, App. No. 3921/02, 35003/02, & 17261/03 (Jan. 23,  
 2007)  
*Chahal v. United Kingdom*, 1996-V Eur. Ct. H.R. 1831  
*Chitayev v. Russia*, App. No. 59334/00 (Jan. 18, 2007)  
*Chrusciński v. Poland*, App. No. 22755/04 (Nov. 6, 2007)  
*Cyprus v. Turkey*, 2001-IV Eur. Ct. H.R.  
*De Jong, Baljet and Van den Brink v. the Netherlands*, 77 Eur. Ct. H.R. (ser. A)  
 (1984)  
*De Wilde, Ooms and Versyp v. Belgium*, 12 Eur. Ct. H.R. (ser. A) (1971)  
*Douiyeb v. the Netherlands*, App. No. 31464/96 (Aug. 4, 1999)  
*D.N. v. Switzerland*, 2001-III Eur. Ct. H.R.  
*E. v. Norway*, 181-A Eur. Ct. H.R. (ser. A) (1990)  
*Engel and Others v. the Netherlands*, 22 Eur. Ct. H.R. (ser. A) (1976)



## Table of Cases

xvii

- Eyrim Çiftçi v. Turkey*, App. No. 39449/98 (Apr. 26, 2007)  
*Galliani v. Romania*, App. No. 69273/01 (June 10, 2008)  
*Garabeyev v. Russia*, App. No. 38411/02 (Jan. 3, 2008)  
*Garcia Alva v. Germany*, App. No. 23541/94 (Feb. 13, 2001)  
*Giorgi Nikolaishvili v. Georgia*, App. No. 37048/04 (Jan. 13, 2009)  
*Gorshkov v. Ukraine*, App. No. 67531/01 (Nov. 8, 2005)  
*Grabowski v. Poland*, App. No. 57722/12 (June 30, 2015)  
*Guzzardi v. Italy*, 39 Eur. Ct. H.R. (ser. A) (1980)  
*Herczegfalvy v. Austria*, 244 Eur. Ct. H.R. (1992)  
*Hussain v. United Kingdom*, 1996-I Eur. Ct. H.R. 252  
*Ilascu and Others v. Moldova & Russia*, 2004-VII Eur. Ct. H.R.  
*Ilijkov v. Bulgaria*, App. No. 33977/96 (July 26, 2001)  
*Howiecki v. Poland*, App. No. 27504/95 (Oct. 4, 2001)  
*Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) (1978)  
*Isaak v. Turkey*, App. No. 44587/98 (Sept. 28, 2006) (admissibility decision)  
*Isayeva v. Russia*, App. No. 57950/00 (Feb. 24, 2005)  
*Isayeva and Others v. Russia*, App. Nos. 57947/00, 57948/00 & 57949/00 (Feb. 24, 2005)  
*Ismoilov and Others v. Russia*, App. No. 2947/06 (Apr. 24, 2008)  
*Issa and Others v. Turkey*, App. No. 31821/96 (Nov. 16, 2004)  
*Istratii and Others v. Moldova*, App. No. 8721/05, 8705/05, & 8742/05 (Mar. 27, 2007)  
*Ječius v. Lithuania*, 2000-IX Eur. Ct. H.R. 235  
*Jović v. Croatia*, App. No. 45593/13 31 (Oct. 13, 2015)  
*Kadem v. Malta*, App. No. 55263/00 (Jan. 9, 2003)  
*Kampanis v. Greece*, 318 Eur. Ct. H.R. (1995)  
*Kawka v. Poland*, App. No. 2587/94 (Jan. 9, 2001)  
*Kharchenko v. Ukraine*, App. No. 40107/02 (Feb. 10, 2011)  
*Khudoyorov v. Russia*, App. No. 6847/02 (Nov. 8, 2005)  
*Khudyakova v. Russia*, App. No. 13476/04 (Jan. 8, 2009)  
*Koendjibiharie v. the Netherlands*, 185 Eur. Ct. H.R. (ser. A) 31 (1990)  
*Kostadinov v. Bulgaria*, App. No. 55712/00 (Feb. 7, 2008)  
*Kremzow v. Austria*, 268 Eur. Ct. H.R. (ser. A) 27 (1993)  
*Kucheruk v. Ukraine*, App. No. 2570/04 (Sept. 6, 2007)  
*Lamy v. Belgium*, 151 Eur. Ct. H.R. (ser. A) (1989)  
*Lanz v. Austria*, App. No. 24430/94 (Jan. 31, 2002)  
*Łaszkiwicz v. Poland*, App. No. 28481/03 (Jan. 15, 2008)  
*Lawless v. Ireland*, 3 Eur. Ct. H.R. (ser. A) (1961)  
*Letellier v. France*, 207 Eur. Ct. H.R. (ser. A) (1991)  
*L.M. and Others v. Russia*, App. No. 40081/14 (Oct. 15, 2015)  
*Loizidou v. Turkey*, 1996-VI Eur. Ct. H.R.  
*Luberti v. Italy*, 75 Eur. Ct. H.R. (ser. A) (1984)  
*M.A. v. Cyprus*, App. No. 41872/10 (July 23, 2013)  
*Mamedova v. Russia*, App. No. 7064/05 (June 1, 2006)  
*McGoff v. Sweden*, 83 Eur. Ct. H.R. (ser. A) (1984)  
*Megyeri v. Germany*, 237 Eur. Ct. H.R. (ser. A) 1 (1992)  
*Migoń v. Poland*, App. No. 24244/94 (June 25, 2002)  
*Musiał v. Poland*, 1999-II Eur. Ct. H.R. 155  
*Nabid Abdullayev v. Russia*, App. No. 8474/14 (Oct. 15, 2015).  
*Nart v. Turkey*, App. No. 20817/04 (May 6, 2008)

- Nasrulloev v. Russia*, App. No. 656/06 (Oct. 11, 2007)  
*Nassr Allah v. Latvia*, App. No. 66166/13 (July 21, 2015)  
*Neumeister v. Austria*, 8 Eur. Ct. H.R. (ser. A) (1968)  
*Niedbala v. Poland*, App. No. 27915/95 (July 4, 2000)  
*Nielsen v. Denmark*, 144 Eur. Ct. H.R. (ser. A) (1988)  
*Nikolova v. Bulgaria*, 1999-II Eur. Ct. H.R.  
*Öcalan v. Turkey*, 2005-IV Eur. Ct. H.R. 985  
*Oldham v. United Kingdom*, 2000-X Eur. Ct. H.R.  
*Open Door and Dublin Well Women v. Ireland*, 246-A Eur. Ct. H.R. (ser. A) (1992)  
*Osmanoglu v. Turkey*, App. No. 48804/99 (Jan. 24, 2008)  
*Rehbock v. Slovenia*, 2000-XII Eur. Ct. H.R.  
*Reinprecht v. Austria*, 2005-XII Eur. Ct. H.R.  
*R.M.D. v. Switzerland*, 1997-VI Eur. Ct. H.R. 2003  
*Ruslan Yakovenko v. Ukraine*, App. No. 5425/11 (June 4, 2015)  
*Ryabikin v. Russia*, App. No. 8320/04 (June 19, 2008)  
*Sabeur Ben Ali v. Malta*, App. No. 35892/97 (June 29, 2000)  
*Sadaykov v. Bulgaria*, App. No. 75157/01 (May 22, 2008)  
*Sakik and Others v. Turkey*, 1997-VII Eur. Ct. H.R. 2609  
*Sanchez-Reisse v. Switzerland*, 107 Eur. Ct. H.R. (ser. A) (1986)  
*Sarban v. Moldova*, App. No. 3456/05 (Oct. 4, 2005)  
*Shamayev and Others v. Georgia and Russia*, 2005-III Eur. Ct. H.R. 1  
*Sher and Others v. United Kingdom*, App. No. 5201/11 (Oct. 20, 2015)  
*Shtukaturov v. Russia*, App. No. 44009/05 (June 27, 2008)  
*Singh v. United Kingdom*, 1996-I Eur. Ct. H.R. 280  
*Soldatenko v. Ukraine*, App. No. 2440/07 (Oct. 23, 2008)  
*Solomou v. Turkey*, App. No. 36832/97 (June 24, 2008) (admissibility decision)  
*Stanev v. Bulgaria*, App. No. 36750/06 (Jan. 17, 2012)  
*Starokadomskiy v. Russia*, App. No. 42239/02 (July 31, 2008)  
*Steel and Others v. United Kingdom*, 1998-VII Eur. Ct. H.R. 2719  
*Stephens v. Malta*, App. No. 11956/07 (Sept. 14, 2009)  
*Svershov v. Ukraine*, App. No. 35231/02 (Nov. 27, 2008)  
*Svetoslav Dimitrov v. Bulgaria*, App. No. 55861/00 (Feb. 7, 2008)  
*Svipsta v. Latvia*, App. No. 66820/01 (Mar. 9, 2006)  
*T. v. United Kingdom*, App. No. 24724/94 (Dec. 16, 1999)  
*Taş v. Turkey*, App. No. 24396/94 (Nov. 14, 2000)  
*Thynne, Wilson and Gunnell v. United Kingdom*, 190 Eur. Ct. H.R. (ser. A) 3, (1990)  
*Toth v. Austria*, 224 Eur. Ct. H.R. (ser. A) (1991)  
*Van der Leer v. the Netherlands*, 170 Eur. Ct. H.R. (ser. A) (1990)  
*Vodeničarov v. Slovakia*, App. No. 24530/94 (Dec. 21, 2000)  
*Vrenčev v. Serbia*, App. No. 2361/05 (Sept. 23, 2008)  
*Weeks v. United Kingdom*, 114 Eur. Ct. H.R. (ser. A) (1987)  
*Winterwerp v. the Netherlands*, 33 Eur. Ct. H.R. (ser. A) (1979)  
*X. v. United Kingdom*, 46 Eur. Ct. H.R. (ser. A) (1981)

## EUROPEAN COMMISSION ON HUMAN RIGHTS

- Cyprus v. Turkey*, App. No. 25781/94, 23 Eur. H.R. Rep. 244 (1997)  
*Cyprus v. Turkey*, App. No. 8007/77, 15 Eur. H.R. Rep. 509 (1993)

- Cyprus v. Turkey*, App. Nos. 6780/74 & 6950/75, 4 Eur. H.R. Rep. 482 (1992)  
*Cyprus v. Turkey*, 2 Eur. Comm'n H.R. Dec. & Rep. 125(1975)  
*The Greek Case*, 12 Y.B. of Eur. Comm'n on Hum. Rts. (1969)  
*Krocher and Moller v. Switzerland*, App. No. 8463/78, 26 Eur. Comm'n Dec. & Rep. 24 (1981)  
*Reinette v. France*, 63 Eur. Comm'n H.R. Dec. & Rep. 189 (1989)  
*Mrs. W. v. Ireland*, 13 Eur. Comm'n H.R. Dec. & Rep. 211(1983)  
*Woukam Moudefou v. France*, App. No. 10868/84, 51 Eur. Comm'n Dec. & Rep. 73 (1987)

## INTER-AMERICAN COURT OF HUMAN RIGHTS

- Acosta Calderón Case*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 129 (June 24, 2005)  
*Bámaca Velásquez Case*, 2000 Inter-Am. Ct. H.R. (ser. C) No. 70 (Nov. 25, 2000)  
*Caballero Delgado and Santana Case*, 1995 Inter-Am. Ct. H.R. (ser. C) No. 22 (Dec. 8, 1995)  
*Cantoral Benavides Case*, 2000 Inter-Am. Ct. H.R. (ser. C) No. 69 (Aug. 18, 2000)  
*Castillo-Petruzzi Case*, 1999 Inter-Am. Ct. H.R. (ser. C) No. 52 (May 30, 1999)  
*Cesti Hurtado Case*, 1999 Inter-Am. Ct. H.R. (ser. C) No. 56 (Sept. 29, 1999)  
*Durand and Ugarte Case*, 2000 Inter-Am. Ct. H.R. (ser. C) No. 68, (Aug. 16, 2000)  
*Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion, 1990 Inter-Am. Ct. H.R. (ser. A) No. 11 (Aug. 10, 1990)  
*Farién Garbi and Solís Corrales Case*, 1989 Inter-Am. Ct. H.R. (ser. C) No. 6 (Mar. 15, 1989)  
*Genie Lacayo Case*, 1997 Inter-Am. Ct. H.R. (ser. C) No. 30 (Jan. 29, 1997)  
*Godínez Cruz Case*, 1989 Inter-Am. Ct. H.R. (ser. C) No. 5 (Jan. 20, 1989)  
*Habeas Corpus in Emergency Situations*, Advisory Opinion, 1987 Inter-Am. Ct. H.R. (ser. A) No. 8 (Jan. 30, 1987)  
*Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion, 1989 Inter-Am. Ct. H.R. (ser. A) No. 10 (July 14, 1989)  
*Juan Humberto Sánchez Case*, 2003 Inter-Am. Ct. H.R. (ser. C) No. 99 (June 7, 2003)  
*Judicial Guarantees in States of Emergency*, Advisory Opinion, 1987 Inter-Am. Ct. H.R. (ser. A) No. 9  
*Las Palmeras Case*, Inter-Am. Ct. H.R. (ser. C) No. 67 (Feb. 4, 2000)  
*Loayza-Tamayo Case*, 1997 Inter-Am. Ct. H.R. (ser. C) No. 33 (Sept. 17, 1997)  
*Maritza Urrutia Case*, 2003 Inter-Am. Ct. H.R. (ser. C) No. 103 (Nov. 27, 2003)  
*Nadege Dorzema v. Dominican Republic*, 2012 Inter-Am. Ct. H.R. (ser. C) No. 251 (Oct. 24, 2012)  
*Neira-Alegria Case*, 1995 Inter-Am. Ct. H.R. (ser. C) No. 21 (Jan. 19, 1995)  
*Neptune v. Haiti, Merits, Reparations, and Costs*, 2008 Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008)  
*Suárez Rosero Case*, 1997 Inter-Am. Ct. H.R. (ser. C) No. 35 (Nov. 12, 1997)  
*Tibi v. Ecuador*, 2007 Inter-Am. Ct. H.R. (ser. C) No. 114 (Sept. 7, 2007)  
*Velásquez Rodríguez Case*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988)  
*Vélez Loor v. Panama*, 2010 Inter-Am. Ct. H.R. (ser. C) No. 218 (Nov. 23, 2010)  
*The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion, 1986 Inter-Am. Ct. H.R. (ser. A) No. 6 (May 9, 1986)

## INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

- Abella v. Argentina*, Case 11.137, Inter-Am. Comm'n H.R., Report No. 55/97, OEA/Ser.L.V/II.95, doc. 7 rev. 271 (1997)  
*Alejandro v. Cuba*, Case 11.589, Inter-Am. Comm'n H.R., Report No. 86/99, OEA/Ser.L.V/II.106, doc. 3 rev. (1999)  
*Biscet v. Cuba*, Case 12.476, Inter-Am. Comm'n H.R., Report No. 67/06, OEA/Ser.L.V/II.127, doc. 4 rev. 1 (2007)  
*Castillo Pezo v. Peru*, Case 10.471, Inter-Am. Comm'n H.R., Report No. 51/99, OEA/Ser.L.V/II.102, doc. 6 rev. (1999)  
*Coard v. United States*, Case 10.951, Inter-Am. Comm'n H.R., Report No. 109/99, OEA/Ser.L.V/II.106, doc. 6 rev. (1999)  
*Decision on Request for Precautionary Measures*, Mar. 12, 2002, reprinted in 41 I.L.M. 532, 533 (2002)  
*Ferrer-Mazorra v. United States*, Case 9903, Inter-Am. Comm'n H.R., Report No. 51/01, OEA/Ser.L.V/II.111, doc. 20 rev. (2001)  
*Haitian Centre for Human Rights v. United States*, Case 10.675, Inter-Am. Comm'n H.R., Report No. 51/96, OEA/Ser.L.V/II.95, doc. 7 rev. (1997)  
*Levoyer Jiménez v. Ecuador*, Case 11.992, Inter-Am. Comm'n H.R., Report No. 66/01, OEA/Ser.L.V/II.114, doc. 5 rev. (2001)  
*Manuel García Franco v. Ecuador*, Case 10.258, Inter-Am. Comm'n H.R., Report No. 1/97, OEA/Ser.L.V/II.98, doc. 6 rev. (1997)  
*Mignone v. Argentina*, Case 2209, Inter-Am. Comm'n H.R., Report No. 21/78, OEA/Ser.L.V/II.50, doc. 13 rev. 1 (1980)  
*Nativí and Martínez v. Honduras*, Case No. 7864, Inter-Am. Comm'n H.R., Report No. 4/87, OEA/Ser.L.V/II.71 Doc. 9 rev. 1 (1987)  
*Saldaño v. Argentina*, Inter-Am. Comm'n H.R., Report No. 38/99, OEA/Ser.L.V/II.95, doc. 7 rev. (1999)

## INTERNATIONAL COURT OF JUSTICE

- Case Concerning Armed Activities on the Territory of the Congo* (DRC v. Uganda), 2005 I.C.J. 116 (Dec. 19)  
*Legal Consequences of the Construction of a Wall in the Occupied Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9)  
*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (July 8)

## INTERNATIONAL CRIMINAL TRIBUNALS

- Barayagwiza v. Prosecutor*, Case No. ICTR-99-54, Decision (Nov. 3, 1999)  
*Prosecutor v. Simic*, Case No. IT-95-9, Separate Opinion of Judge Robinson (Oct. 18, 2000)

## Table of Cases

xxi

## DOMESTIC COURTS

## INDIA

*A.D.M. Jabalpur v. Shukla*, A.I.R. 1976 S.C. 1207

## UNITED KINGDOM

*Addis' Case*, 79 Eng. Rep. 190 (K.B. 1610)  
*Al-Skeini v. Secretary of State for Defense*, [2007] UKHL 26  
*Barkham's Case*, 79 Eng. Rep. 1037 (K.B. 1638)  
*Blankard v. Galty*, 91 Eng. Rep. 356, 357 (1694)  
*Bushell's Case*, 124 Eng. Rep. 1006 (C.P. 1670)  
*Chambers' Case*, 79 Eng. Rep. 717 (K.B. 1629)  
*Chancey's Case*, 77 Eng. Rep. 1360 (K.B. 1612)  
*Cony's Case*, 5 St. Tr. 935 (1655)  
*Danby's Case*, 11 St. Tr. 831 (K.B. 1682)  
*Darnell's Case*, 3 St. Tr. 1 (1627)  
*Earl of Clarendon's Case*, 6 St. Tr. 291 (1667)  
*Freeman's Case*, 79 Eng. Rep. 1096 (K.B. 1640)  
*Glanville v. Courtney*, 80 Eng. Rep. 1139 (K.B. 1610)  
*Hawkeridge's Case*, 77 Eng. Rep. 1404 (C.P. 1617)  
*Hellyard's Case*, 74 Eng. Rep. 455 (C.P. 1587)  
*Hinde's Case*, 74 Eng. Rep. 701 (C.P. 1577)  
*Howel's Case*, 74 Eng. Rep. 66 (C.P. 1588)  
*Jenkes's Case*, 6 St. Tr. 1190 (1676)  
*King v. Dr. Gouge*, 81 Eng. Rep. 98 (K.B. 1615)  
*Lawson's Case*, 79 Eng. Rep. 1038 (K.B. 1638)  
*Lilburne's Case*, 5 St. Tr. 371 (1653)  
*Peter's Case*, 74 Eng. Rep. 628 (C.P. 1587)  
*Regina v. Paty*, 91 Eng. Rep. 431 (K.B. 1704)  
*Search's Case*, 74 Eng. Rep. 65 (C.P. 1588)  
*Shipmoney's Case*, 3 St. Tr. 825 (1637)  
*Six Members' Case*, 3 St. Tr. 235 (1629)  
*Streater's Case*, 5 St. Tr. 366 (1653)  
*Thomlinson's Case*, 77 Eng. Rep. 1379 (C.P. 1605)  
 Y.B. 14 Edw. 3, Trin. 12 (1340)  
 Y.B. 22 Edw. 4, Mich. 21 (1483)

## UNITED STATES OF AMERICA

*Al Adahi v. Obama*, 613 F.3d 1102 (D.C. Cir. 2010)  
*Al-Qurashi v. Obama*, 733 F. Supp. 2d 69 (D.D.C. Aug. 3, 2010)  
*Boumediene v. Bush*, 553 U.S. 723 (2008)  
*Boumediene v. Bush*, 579 F. Supp. 2d 191 (D.D.C. 2008)  
*Ex Parte Bollman*, 8 U.S. (4 Cranch) 75 (1807)  
*Ex Parte Yerger*, 75 U.S. (8 Wall.) 85 (1869)

- Flowers v. Haugh*, 207 N.W.2d 766 (Iowa 1973)  
*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)  
*Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)  
*Harris v. Nelson*, 394 U.S. 286 (1969)  
*Hirota v. MacArthur*, 338 U.S. 197 (1948)  
*In re Burrus*, 136 U.S. 586 (1890)  
*In re Guantánamo Bay Detainee Litig.*, 577 F. Supp. 2d 143 (D.D.C. 2008)  
*In re Guantánamo Bay Detainee Litig.*, 634 F. Supp. 2d 17 (D.D.C. 2008)  
*In re Jackson*, 15 Mich. 417 (1867)  
*Jones v. Cunningham*, 371 U.S. 236 (1963)  
*Montgomery v. Regan*, 86 F. Supp. 382 (N.D. Ill. 1949)  
*Preiser v. Rodriguez*, 411 U.S. 475 (1973)  
*Rasul v. Bush*, 542 U.S. 466 (2004)  
*Seminole Tribe v. Florida*, 517 U.S. 44 (1996)