

## INDEX

### Abbreviations used in the index

AA (Aliens Act)  
 AA (Association Agreement)  
 ACtHPR (African Court on Human and Peoples' Rights)  
 ASIO (Australian Security Intelligence Organisation)  
 ATA (Air Transport Association of America)  
 CFR (European Charter of Fundamental Rights) (2000)  
 CJEU (Court of Justice of the European Union)/CJEU Statute  
 Comader (Moroccan Confederation for Agriculture and Rural Development)  
 DOJ (Department of Justice)  
 EAC (East African Community)  
 EACT CM Protocol (EACT Common Market Protocol (2009))  
 ECHR (European Convention on Human Rights (1950))  
 ECOWAS (Economic Community of West African States/ECOWAS Treaty (1993))  
 ECtHR (European Court of Human Rights)  
 EPBCA (Environment Protection and Biodiversity Conservation Act 1999 (Cth))  
 FSIA (US Foreign Sovereign Immunities Act)  
 HRA (Human Rights Act (UK) 1998)  
 ICJ (International Court of Justice)/(Statute of the International Court of Justice)  
 ILC(DP) (International Law Commission Articles on Diplomatic Protection)  
 ITLOS (International Tribunal for the Law of the Sea/ITLOS Statute)  
 MBDHP (Burkinabè Movement on Human and Peoples' Rights)  
 NIOC (National Iranian Oil Company)  
 OFAC (Office of Foreign Assets Control)  
 PALU (Pan African Lawyers' Union)  
 ROP (Rules of Procedure)  
 SHC (Saudi High Commission for Relief of Bosnia & Herzegovina)  
 STS (ship-to-ship)  
 TRIA (Terrorism Risk Insurance Act 2000)  
 UDHR (Universal Declaration of Human Rights (1948))  
 UNCLOS (UN Law of the Sea Convention (1982))  
 UNGA (UN General Assembly)  
 UNPIC (UN Privileges and Immunities Convention (1946))  
 VCLTSIO (Vienna Convention on the Law of Treaties between States and International Organizations (1986))

### *Abubakari* (ACtHPR) (admissibility and jurisdiction)

admissibility (ACHPR 56 requirements) 309-20  
     areas of agreement 310  
 admissibility (ACHPR 56 requirements) (compatibility with ACHPR and OAU Charter/AU Constitutive Act (ACHPR 56(2))) 311-12  
     Court's analysis and decision 311-12  
     parties' arguments (applicant) 311  
     parties' arguments (respondent) 311

- admissibility (ACHPR 56 requirements) (exhaustion of local remedies (ACHPR 56(5)/Protocol 6(2))) 312-17
  - Court's analysis and decision 314-17
    - alleged failure to pursue all applicant's claims in national courts 316-17
  - remedies to be exhausted (ordinary remedies) 314-16
  - parties' arguments (applicant) 313-14
  - parties' arguments (respondent) 312-13
- admissibility (ACHPR 56 requirements) (timeliness of application (ACHPR 56(6)/ROC 40(6))) 317-20
  - Court's analysis and ruling 318-20
    - deposit of ACHPR 34(6) declaration as date *ab quo* 318-19
    - "reasonable period of time" 319-20
  - parties' arguments (applicant) 318
  - parties' arguments (respondent) 317-18
- jurisdiction 304-9
  - ACtHPR as appeal court, exclusion 305-7
  - Court's analysis and decision 308-9
  - determination of consistency of national courts' procedures with international standards 305-7
  - ex proprio motu* consideration by Court (ROC 39) 308
  - individual applications (ACHPR Protocol 5(3)/34(6)) 307-9
  - jurisdiction *ratione materiae* (ACHPR Protocol 3(1)) 308-9
    - parties' arguments (applicant) 307-8
    - parties' arguments (respondent) 307
  - ratione loci* (act on territory of Member State) 309
  - ratione personae* (continuing wrong) 309
  - ratione personae* (Protocol 34(6) declaration) 309
  - re-examination of the evidence 305-7
- Abubakari* (ACtHPR) (factual and procedural background)**
  - alleged violations 299-300
  - facts 299
  - parties 298-9
  - procedural history 300-1
    - PALU's agreement to provide legal assistance 301
    - parties' requests (applicants) 301-2
    - parties' requests (respondent) 302-3
    - production of new evidence 304
    - public hearings 301
- Abubakari* (ACtHPR) (merits) (alleged violation of ACHPR 7)**
  - alleged conflict of interest/partiality of Prosecutor 322-3
    - Court's analysis and decision 323
    - parties' arguments (applicant) 322
    - parties' arguments (respondent) 322-3
  - alleged conviction without recovery of crime weapons or stolen items 339-40
    - Court's analysis and decision 339-40
    - parties' arguments (applicant) 339
    - parties' arguments (respondent) 339
  - alleged defectiveness of charge against applicant (ACHPR 7(2)) 332-7
    - Court's analysis and conclusion ("punishment is personal") 322
    - Court's analysis and decision (evaluation of evidence "in accordance with the principles of the Charter and any other relevant human rights instruments" (ACHPR Protocol 7)) 335-7

- Abubakari* (ACtHPR) (merits) (alleged violation of ACHPR 7) (cont.)**
- parties' arguments (applicant) 321
  - parties' arguments (respondent) 321, 334
  - alleged dependence on inadequate evidence, parties' arguments (applicant) 332-4
  - alleged detention at police post lacking basic facilities
    - Court's dismissal for failure to meet burden of proof 320
    - parties' arguments (applicant) 320
    - parties' arguments (respondent) 320
  - alleged discrimination in terms of legal assistance (ACHPR 3(1))
    - Court's analysis and decision 330
    - parties' arguments (applicant) 329
    - parties' arguments (respondent) 330
  - alleged failure of national courts to address issue of alibi 337-9
    - Court's analysis and decision (obligation to evaluate evidence "in accordance with the principles of the Charter and any other relevant human rights instruments") 338-9
    - equality of parties 338-9
    - Court's analysis and decision (omission from ACHR 7/ICCPR 14(1) alternative) 343-4
    - parties' arguments (applicant) 337
    - parties' arguments (respondent) 337-8
  - alleged failure to pronounce sentence in open court 342-4
    - dissenting opinions
      - Ben Achour J 353-4
      - Thompson VP 348-50
    - parties' arguments (applicant) 342
    - parties' arguments (respondent) 342-3
  - alleged violation of *nullum crimen nulla poena sine lege*/non-retroactivity principle (ACHPR 7(2)) 340-2
    - parties' arguments (applicant) 340
    - parties' arguments (respondent) 340-1
    - Court's analysis and decision 341-2
  - alleged violation of obligation to provide legal assistance (ACHPR 7/ICCPR 14(3)(d))
    - Court's analysis and decision 327-9
    - parties' arguments (applicant) 325-6
    - parties' arguments (respondent) 326-7
  - alleged violation of right to defence/counsel of choice (ACHPR 7(1)(c)) 323-5
    - Court's analysis and conclusion 324-5
    - parties' arguments (applicant) 323-4
    - parties' arguments (respondent) 324
  - alleged violation of right to timely communication of charge and witnesses' statements (ACHPR 7(1)(c)/ICCPR 14(3)) 331-2
    - Court's analysis and decision 331-2
    - parties' arguments (applicant) 331
    - parties' arguments (respondent) 331
    - Court's decision 346-7
- Abubakari* (ACtHPR) (merits) (alleged violation of ACHPR 7) (dissenting opinions)**
- Ben Achour J 352-5
    - alleged failure to pronounce sentence in open court (ACHPR 7/ICCPR 14(1)) 354-5
    - release of applicant 353-4
  - Thompson VP 348-52

- alleged failure to pronounce sentence in open court (ACHPR 7/ICCPR 14(1)) 348-50
- release of applicant 350-2
- Abubakari (reparations) (ACHPR Protocol 27)** 344-6
  - Court's analysis and decision 345-6
  - matters postponed 346
  - request for release in "special and compelling" circumstances 345
  - retrial vs measures to remedy violations 345
  - ruling as part of judgment or as separate decision (ROC 39) 345
  - dissenting opinion (Ben Achour J) 353-4
  - dissenting opinion (Thompson VP) 350-2
  - parties' arguments (applicant) 344-5
  - parties' arguments (respondent) 345
- abuse of rights/process (UNCLOS 294/UNCLOS 300):** *see* good faith and abuse of rights/*pacta sunt servanda* (UNCLOS 300); *Duzgit Integrity* (merits), alleged violation of UNCLOS 300 (good faith and abuse of rights)
- ACHPR (1981)**
  - interpretation, "in accordance with the principles of the Charter and any other relevant human rights instruments" (ACHPR Protocol 7) 328
  - obligation to recognize Charter rights and adopt implementing legislation/measures (ACHPR 1), jurisprudence, *Zongo* 261-3
- ACtHPR**
  - access to the Court/standing (ACHPR Protocol 5/ROP 33), NGOs (ACHPR 5(3)) 233-4
  - individual applications (ACHPR Protocol 5(3)/34(6))
    - jurisprudence
      - Abubakari* 307-9
      - Zongo* 233-4
    - "shall make a declaration"/optional nature of declaration 233-4, 309
  - jurisdiction/admissibility
    - ACtHPR as appeal court, exclusion 305-7
    - determination of consistency of national courts' procedures with international standards 305-7
    - disputes concerning the interpretation of the Charter, the Protocol and other relevant human rights treaties (Protocol 3(1)) 233
      - as jurisdiction *ratione materiae* (ACHPR Protocol 3(1)) 308-9
    - disputes concerning the interpretation of the Charter, the Protocol and other relevant human rights treaties (Protocol 3(1)) (jurisprudence)
      - Abubakari* 309
      - Chacha* 309
      - Omary* 309
    - ex proprio motu* consideration by Court (ROC 39) 308
    - ratione loci* (act on territory of Member State) 309
    - ratione personae* (continuing wrong) 234, 309
    - re-examination of the evidence 305-7
  - ACtHPR Rules of Court by rule**
    - 35(2)(a) (transfer of application to State party) 300
    - 35(3) (notification of application to chair of AU Commission) 300
    - 35(4)(a) (names and addresses of representatives) 227
    - 37 (time-limit for reply to application) 227
    - 39 (preliminary examination of competence) 234-5
    - 39(1) (preliminary examination of competence: Court's right to request information/documentation) 233, 304, 308-9

**ACtHPR Rules of Court by rule** (*cont.*)

- 40 (admissibility: as matter for the Court) 234-5, 310
- 40(5) (exhaustion of local remedies) 235-6, 314-17
- 40(6) (filing within a reasonable time) 235, 317-20
- 50 (filing of additional evidence: leave of court) 304
- 60(5) (separate opinions) 264, 348
- 63 (ruling on request for reparation) 345

**admissibility (ACHPR 56 requirements)**

- compatibility with ACHPR and OAU Charter/AU Constitutive Act (ACHPR 56(2)) 311-12
- jurisprudence
  - Abubakari* 309-20
  - Zongo* 234-5
- timeliness of application (ACHPR 56(6)/ROC 40(6)) 235, 317-20
  - deposit of ACHPR 34(6) declaration as date *ab quo* 318-19
  - jurisprudence
    - Abubakari* 317-20
    - Darfur Relief and Documentation Centre* 319
    - Thomas* 319
    - Zongo* 228-9, 318-20
  - “reasonable period of time” 319-20

**admissibility (ICJ), jurisdiction distinguished** 76

- archipelagic States (UNCLOS 46-53):** *see also Duzgit Integrity* (merits), alleged violation of UNCLOS 49(3) (exercise of sovereignty over archipelagic waters)
- archipelagic waters, sovereignty over, exercise in conformity with UNCLOS Part IV (UNCLOS 49(3)) 166-84
- innocent passage in internal waters (TSC 14-23/UNCLOS 17-25), applicability 194
- obligation to obtain authorization for STS operations 171-2, 207-10
- proportionality of penalties for alleged breach of law of archipelagic State, 172-80, 205-12

**Australia**

- compulsory jurisdiction (Optional Clause) (ICJ 36(2)), reservation 76-7
- Constitution by section, 51(xxxi) (acquisition of property on just terms), “property” for purposes of international law distinguished 634-5
- Environment Protection and Biodiversity Conservation Act 1999 (EPBCA) 628
- extradition: *see also Griffiths* (alleged breach of ICCPR 9(1) (arbitrary arrest), 9(3) (prompt hearing) and 9(4) (review of lawfulness of detention))
  - detention during the proceedings
    - obligation to review lawfulness (ICCPR 8(4)) 591-2
    - risk of arbitrariness/absence of time-limit 590-1
  - Extradition Act 1988, non-compliance with ICCPR obligations/need for revision 592-4
  - Extradition Act 1988 by section, 15(6) (remand on bail), text 576-7
  - judicial review/justiciability (foreign relations decisions/prerogative power of forum State), theory and development including non-justiciability principle: *see also Ure* (acquisition by individual of sovereignty over *terra nullius*) (appeal)
  - liberty and security of person/freedom from arbitrary arrest or detention, detention during extradition proceedings 590-1
  - National Parks and Wildlife Conservation Act 1975 (as amended 1987), proclamation of Elizabeth and Middleton Reefs Marine National Nature Reserve 628
  - terra nullius*, property/proprietary rights of individual: *see Ure* (acquisition by individual of sovereignty over *terra nullius*) (appeal)

**Burkina Faso:** *see also Zongo*

- Constitution 1991 as amended by article
  - 129 (independence of the judiciary) 249
  - 130 (magistrates: security of tenure) 249
- Court of Cassation, Law governing the constitution and mode of functioning (Organic Law No 013-2000/AN of 9 May 2000) by article
  - 18 (compliance obligation of lower court) 238
  - 19 (Court's reversal of decision: termination of litigation) 238
- Criminal Procedure Code by article
  - 2 (civil action for damages caused by a crime) 246
  - 111 (adversarial proceedings) 251-2
  - 118 (adversarial proceedings) 251-2
  - 188 (*non bis in idem*) 291
  - 189 (*non bis in idem*: new charges) 291
  - 567 (Court of Cassation appeals: annulment of final judgment) 237
  - 575 (appeal to Court of Cassation) 237-9
  - 605 (annulment of judgment: referral back to court of same level as the one hearing the appeal) 236, 238

**causation/causal link as requirement for finding of breach of State responsibility/liability for reparation (ILC(SR) 31(2))**

- jurisprudence
  - Duzgit Integrity* 200-1
  - Ticona Estrada* 272
  - Zongo* 272

**CJEU/ECJ/CJEC judgments**

- appeal (CJEU 56)
  - "by any party which has been unsuccessful, in whole or in part, in its submissions" 425-6, 496
  - EU institutions' right of appeal, interest, relevance in cases other than those involving staff disputes or substitution of grounds 496
  - event subsequent to judgment removing prejudicial effect 426
  - referral back to CFI for final judgment/Court's right to give (CJEU 61) 509-10
  - substitution of grounds in case of finding of infringement not capable of annulment of judgment 426, 474, 479
- appeal (CJEU 56), jurisprudence
  - Iride* 426
  - max.mobil* 426, 496
  - People's Mojahedin Organization of Iran* 496
  - Zhejiang Xinan Chemical Industrial Group* 426
- appeal, jurisprudence, *Front Polisario*: *see Front Polisario* (A-G's opinion (Wathelet))

**CJEU/ECJ/CJEC, procedural matters**

- Advocate General (TFEU 252), functions 494-5
- standing, in relation to an act which is of direct and individual concern to them/does not entail implementing measures: *see also Front Polisario* entries
- common commercial policy (EU)**, competence (TFEU 207) 448
- compétence de la compétence (including ICJ 36(6))**, *ex proprio motu* authorization of provisional measures (ICJ ROC 75(1)) 87-91
- compulsory jurisdiction (Optional Clause) (ICJ 36(2)/PCIJ 36)**, **reservations**
  - agreement to have resort to some other method 77
  - jurisprudence, *Whaling in the Antarctic* 76-7

- costs (EACJ)** 566-7  
**costs (IACtHR) (ROC 55(1))**  
 jurisprudence  
*Caballero-Delgado* 286  
*Chaparro Alvarez* 287  
*Garrido* 286  
*Goiburú* 286  
*Hurtado* 286  
*Loayza Tomayo* 286  
*Sabin* 287  
 as part of the concept of reparations 286  
**customary international law, formation/requirements**  
 constant and uniform practice 636-7  
 “appreciable section of the community” 639-40  
 minor discrepancies, relevance 636-7  
 single instance, sufficiency 639-40, 676-7  
 “as evidence of general practice accepted as law” (ICJ 38(1)(b)) 635-41  
 evidence of  
 general principles of law (ICJ 38(1)(c)), value 641  
 teachings of publicists (ICJ 38(1)(d)), value 641  
 jurisprudence  
*Lübeck v. Mecklenburg-Schwerin* 639-40  
*Military and Paramilitary Activities (Nicaragua v. USA)* 636-8  
*North Sea Continental Shelf* cases 636-8, 639, 641  
*Polyukhovich* 631  
*Ure* 635-41  
 treaties reflecting (examples)  
 Svalbard (Spitsbergen) Treaty (1920) 641-5  
 treaty provision as evidence of customary international law 637-8  
 UNC 638
- damages for**  
 cost of organizing demonstrations 283-5  
 jurisprudence  
*Cantoral Benavides* 272-3  
*Zongo* 274-83  
 non-pecuniary loss including moral injury/intangible loss  
 legal entity, entitlement to 282-3  
 presumption of in breach of human rights cases 280
- Denmark**  
 Aliens Act 2003/2013 by section  
 7 (residence permit) 602  
 22(1)(iv) (expulsion: conviction of offence punishable by imprisonment) 608  
 23(1)(i) (expulsion after lawful residence of five years) 608  
 26 (expulsion: special factors militating against) 601  
 30(1) (enforcement of expulsion order: obligation of expelled person to depart)  
 612  
 30(2) (expulsion: arrangements for departure in case of non-voluntary departure)  
 612  
 32(2)(iv) (re-entry ban: imprisonment sentences) 608  
 35(1)(1) (detention in custody pending expulsion) 603

- 42a(11)(ii) (maintenance allowance schemes) 603
- 49(1) (conviction of alien: expulsion or suspended expulsion) 608
- 50 (request for revocation of expulsion order) 602, 609, 611, 613-14, 615, 617, 621-2
- 50(1) (revocation of expulsion order: new circumstances) 611
- deportation/expulsion/refusal of admission of alien, State's right of**
  - jurisprudence, *Mobochi* 543-50
  - as sovereign right, treaty freedom of movement obligations, effect 543-50
- diplomatic premises, inviolability (including VCDR 22)**
  - consent to entry (VCDR 22(1)) 739-40
  - service of process and 725-6, 738-41
  - territory of sending State, whether part of 740
- Diplomatic Protection, ILC Articles on (2000/2006) by article**, 14(3) (claim brought preponderantly on the basis of an injury to a national) 148-9
- diplomatic protection, jurisprudence**
  - Duzgit Integrity* 148-9
  - Virginia G* case 148
- disclosure obligation**
  - jurisdictional discovery 714-15
  - non-disclosure, professional privilege 79-80
  - Terrorist Attacks* 714-15
- due process/procedural fairness**
  - definition 553
  - immigration controls/procedures 553-5
- Duzgit Integrity***: see *Duzgit Integrity* (admissibility and jurisdiction); *Duzgit Integrity* (merits); *Duzgit Integrity* (procedural and factual background); *Duzgit Integrity* (reparation and costs)
- Duzgit Integrity* (admissibility and jurisdiction)**
  - exhaustion of local remedies (UNCLOS 295)
  - parties' positions (Malta) 146-7
  - parties' positions (São Tomé) 145-6
  - Tribunal's decision 147-9
    - claim brought preponderantly on the basis of an injury to a national (ILC(DP) 14(3)) 148-9
    - good faith and abuse of rights/*pacta sunt servanda* (UNCLOS 300) 147
  - jurisdiction (UNCLOS 286, 287(3), and 288)
    - parties' positions (Malta) 142-4
    - parties' positions (São Tomé) 141-2
    - Tribunal's decision (dispute as one relating to the interpretation and application of UNCLOS (UNCLOS 288(1))) 144
  - obligation to exchange views (UNCLOS 283(1)) 156-61
    - parties' positions (Malta) 157-9
    - parties' positions (São Tomé) 156-7
    - Tribunal's decision 159-61
  - settlement agreement, effect 151-6
    - parties' positions (Malta) 151, 153-5
    - parties' positions (São Tomé) 151-3
    - Tribunal's decision 155-6
  - specificity of legal bases (ITLOS 24(1) and ITLOS Rule 54) 149-51
    - parties' positions (Malta) 150-1
    - parties' positions (São Tomé) 149-50
    - Tribunal's decision 151



***Duzgit Integrity (admissibility and jurisdiction) (cont.)***

- standing (Malta) (Tribunal's decision)
  - "inclusion of every person involved or interested in" ship's operation as part of unit of the ship 148
- invocation of State responsibility by injured State (ILC(SR) 42) 147-8

***Duzgit Integrity (merits)***

- alleged violation of UNCLOS 2(3) (obligation to respect UNCLOS and other rules of international law) 191-2
  - parties' positions (Malta) 191-2
  - parties' positions (São Tomé) 192
  - Tribunal's decision (relevant rules) 192
- alleged violation of UNCLOS 25(1) (coastal State's right to take measures for enforcement of innocent passage) 193-4
  - parties' positions (Malta) 193
  - parties' positions (São Tomé) 193-4
  - Tribunal's decision
    - applicability of UNCLOS 25(1) to archipelagic waters 194
    - "passage" 194
- alleged violation of UNCLOS 49(3) (exercise of sovereignty over archipelagic waters) 166-84
  - alleged differential treatment 181-4
    - applicants' positions (Malta) 181-3
    - applicants' positions (São Tomé) 183
    - Tribunal's decision 183-4
  - dissenting opinion (Kateka J) 205-12
  - obligation to obtain authority for STS operations/whether explicit authorization during the Coast Guard's first visit
    - dissenting opinion (Kateka J) 207-10
    - parties' positions (Malta) 167-8
    - parties' positions (São Tomé) 169-71
    - Tribunal's decision 171-2
  - proportionality of penalties 172-80
    - customs fines 174-5
    - detention of Master 175-8
    - dissenting opinion (Kateka J) 205-12
    - IMAP fines (parties' positions) 172-3
    - Tribunal's decision (detention and IMAP fines) 178
  - settlement negotiations, alleged coercion 180-1
- alleged violation of UNCLOS 94 (duties of flag State)/notification of actions taken by São Tomé 181
- alleged violation of UNCLOS 192 and UNCLOS 194 (protection of the marine environment) and UNCLOS 225 (adverse enforcement consequences) in combination with UNCLOS 300 (good faith/abuse of rights) 184-91
  - parties' positions (Malta) 185-6
  - parties' positions (São Tomé) 187-9
  - Tribunal's decision 189-91
    - test of exposure to unreasonable risk 191
- alleged violation of UNCLOS 300 (good faith and abuse of rights) 167-72
  - ancillary nature of provision 166
  - customary international law and 166
  - dissenting opinion (Kateka J) 204-5
  - evidence of/standard of proof 204-5

- legal test, absence of jurisprudence 180
- parties' arguments (Malta) 164-5
- parties' arguments (São Tomé) 165
- Tribunal's decision 166
- Duzgit Integrity* (procedural and factual background)**
  - applicable law
    - Convention and compatible international law rules (UNCLOS 293(1)) 161-4
    - parties' positions (Malta) 161-2
    - parties' positions (São Tomé) 162
    - Tribunal's decision 163-4
  - dissenting opinion (Kateka J) 203-13
  - factual background 111-15
    - 15 March 2013, events before 118-19
    - 15 March 2013, events on 119-25
      - Coast Guard's first visit 120-3
      - Coast Guard's second visit 123-5
    - 15 March events: institution of legal proceedings and imposition of penalties 125-30
      - criminal proceedings against the masters 127-30
      - Customs Directorate General administrative fine 126-7
      - Port and Maritime Institute administrative penalty 125-6
  - appointment of arbitrators 111-12
  - Bifurcation Request (São Tomé) 112
  - Confirmatory Report on damages (Malta) 113
  - discharge of oil cargo from *Duzgit Integrity* (procedural and factual background) 133-5
  - dispute settlement agreement (23 November 2013)
    - Malta's challenge to 137
    - release of the *Duzgit Integrity* (procedural and factual background) 137
    - text 136-7
  - dispute settlement discussions (summer 2013) 130-2
  - document production 112-13
  - examination of witness, procedure (ROP 20(5)) 113-14
  - maritime context
    - Duzgit Integrity's* owner and charterer 116
    - Maltese registration requirements/exercise of UNCLOS 94 duties 116
    - São Tomé and Príncipe's geographic location and maritime limits 116-17
    - ship-to-ship transfers along the West African shipping route 117-18
  - Notification and Statement of Claim (ITLOS 24) (Malta) 111
  - pardon of Masters 132
  - parties' final submissions
    - Malta 137-9
    - São Tomé 139
  - post-hearing submissions 115
  - Radar Screen-Shot (Procedural Order No 7) 114-15
  - Rules of Procedure (ROP) and timetable 112
- Duzgit Integrity* (reparation and costs)**
  - costs (UNCLOS Annex VII:7/ROP 29) 201-3
    - Tribunal's decision 202-3
  - reparation
    - dissenting opinion (Kateka J) 212-13
    - parties' positions (Malta) 195-8
    - parties' positions (São Tomé) 198-200

***Duzgit Integrity (reparation and costs)* (cont.)**

- Tribunal's decision 200-1
- nexus/causality requirement 200-1
- sufficiency of finding of international wrongfulness 200

**EAC Customs Union/EAC Common Market**, redress for breach (EACT CM 54(2)) 553-4

**EAC Secretary General/Secretariat, functions**

- investigation, collection of information or verification of matters relating to the EAC (EACT 71(1)(d)): 519-21 *see also* *Katabazi* (EACJ)
- need for knowledge in order to conduct investigation 526-7
- submission of findings on perceived breaches of the EACT to Partner State (EACT 29(1)) 526
- importance of vigilance on the part of the Secretary General 527

**EACJ**

- admissibility
  - res judicata* 520-1
  - res judicata* considerations 520-1
- costs 566-7
- jurisdiction (EACT 27)
  - human rights issues as aspect of interpretation of EACT objectives and principles 521-2, 536-43
  - human rights issues per se 521, 538-40
  - protocol operationalizing extended jurisdiction (EACT 27(2))
    - failure to conclude 521, 538
    - as intention to widen jurisdiction of EACJ/non-exclusive effect 540
- jurisdiction (jurisprudence)
  - Centre for Health Human Rights and Development* 543
  - IMLU* 537-40, 542
  - Katabazi* 521-2
  - Mohochi* 536-43
  - Omar Awadh* 538-9
  - Plaxeda Rugumba* 538, 540

**EACT (1999) as amended 2006 and 2007**

- annexes and protocols (EACT 151), as integral part of the Treaty (EACT 151(4)) 539
- freedom of movement: *see* freedom of movement (EACT 104 and EACT CM 7)
- fundamental and operational principles of EAC (EACT 6/EACT 7), good governance (EACT 6(d)/EACT 7(2)), rule of law (EACT 6(d)): *see* fundamental and operational principles of EAC (EACT 6/EACT 7)
- human rights and: *see* EACJ, jurisdiction (EACT 27)
- interpretation, "treaty" (EACT 1) 539
- object and scope, reflection in titles and subtitles 539

**ECOWAS Treaty (1993)**, respect for the rights of journalists (ECOWAS 66(2)(c)) 258-61, 264-7

**ECtHR, individual applications ("victim") (ECHR 34 [25(1)])**

- ECtHR as independent court/non-applicability of domestic principles 689-90
- pressure to discourage application, exclusion 690-1
- Sisojeva* 690-1

**effective remedy before national authority, need for/examples (ICCPR 2(3))**

- measures to ensure non-repetition (ICCPR 2(3)(a)) 592-3, 620
- review of decision in breach of State's ICCPR obligations 620

- effective remedy for human rights breaches**, *Zongo* 236-9, 266-94
- environmental protection obligations**, TFEU 11 398-9
- equality before the law (ACHPR 3)** 256-7, 329-30
  - burden of proof 330
- erga omnes* obligations**
  - Armed Activities (Congo v. Rwanda)* 470-1
  - Barcelona Traction* 470-1
  - Construction of a Wall* 470-1
  - East Timor* 470-1
  - Front Polisario* 470-5
- EU law**
  - breach, remedy for, Council decision, partial annulment, severability requirement 480-1
  - direct effect
    - ATA* 453
    - Front Polisario* 452-6
  - legitimate expectation 400
- EU law/Member State law**, *Costa v. ENEL* 550
- EU legal order**
  - international law, compliance obligation, human rights/*erga omnes* obligations before concluding third party treaty 470-5
  - jurisprudence
    - ATA* 469-70, 475
    - European Ombudsman's decision of 26 February 2016 (1409/2014/MHZ) 472
    - Front Polisario* 400-2, 469-75
    - Kadi* 470
    - Parliament v. Council* (C-263/14, EU:C:2016:435) 469-70
    - Poulsen and Diva Navigation* 470
    - Racke* 470
- EU legislative acts**
  - Council Decision approving the EU–Morocco Liberalization Treaty (2010), status as 379-80, 448-50
  - definition (TFEU 289(3)) 379, 448
  - special legislative procedure
    - definition (TFEU 289(2)) 379, 449
    - right to be heard (CFR 41) and 392
  - statement of reasons (TFEU 296), requirements 389-91
- EU treaties with third parties (TFEU 218 [TEC 300])**
  - applicable law, “any relevant rules of international law applicable in the relations between the parties” (VCLT 31(3)(c)) 502
  - direct effect
    - clear, precise and unconditional obligation requirement 386-7
    - EC–Morocco Association Agreement (1996) 386-7
  - extraterritorial effect/effect outside EU territory 429, 503-4
  - jurisprudence
    - ATA* 401
    - Commune de Champagne* 429
  - procedure, Council adoption of decision concluding the agreement (TFEU 218(6)) 448-50
- European Charter of Fundamental Rights (CFR) (2000)**, territorial/extraterritorial applicability 473-4

**evidence (ACtHR)**

- admissibility (ACHPR Protocol 26(2)) 279-80
- burden/standard of proof 279-80
- evaluation “in accordance with the principles of the Charter and any other relevant human rights instruments” (ACHPR Protocol 7) 335-9

**evidence (ECtHR)**

- determination of State party’s ECHR 38 obligations as matter for ECtHR 691-5
- disclosure of confidential/secret documents, refusal 690-5
- obligation to facilitate procedures (ECHR 38)
  - Al Nashiri* 692-5
  - Janowiec* 692-3, 694-5
  - Yam* 691-5: *see also Yam* (judicial review of denial of ECHR 34 application) (UK Supreme Court)

**exhaustion of local remedies (ACHPR 56(5)/Protocol 6(2))**

- effective remedy requirement 236-9
  - “effective remedy” 238
  - “if any” 246-7
- jurisprudence
  - Abubakari* 312-17
  - Zongo* 235-47
- remedies to be exhausted
  - judicial remedies 314-16
  - ordinary remedies 314-16
- “unless it is obvious that this procedure is unduly prolonged” 239-46
  - “remedy procedure” 242-3
  - “unduly prolonged”/relevant factors 243-6

**exhaustion of local remedies (diplomatic protection) (including ILC(SR) 44), direct injury to State/inter-State disputes distinguished 28, 30-1**

- exhaustion of local remedies (ICCPR OP 1:5(2)(b)), dismissal of identical/similar case in national courts 587**
  - jurisprudence
    - Gomarić Valera* 587
    - Griffiths* 587
    - Länsman* 587
    - Ondracka* 587
    - Tillman* 587

**exhaustion of local remedies (UNCLOS 295), *Duzgit Integrity* 145-9****extradition procedure**

- detention during the proceedings
  - arbitrariness 590-1
  - time limits 590-1

**fair hearing (right to be heard) (ACHPR 7)**

- evidence, evaluation “in accordance with the principles of the Charter and any other relevant human rights instruments” (ACHPR Protocol 7) 335-7
- judicial impartiality 322-3
- judicial independence 248-9
- jurisprudence
  - Abubakari* 320-48: *see also Abubakari* (ACtHRP) (merits) (alleged violation of ACHPR 7)
  - Zongo* 247-55

- legal assistance, omission from ACHPR/ICCPR 14(3)(d) as alternative 327-9
- prompt investigation and prosecution of alleged offenders requirement 252-5
- pronouncement of sentence in open court, omission from ACHPR/ICCPR 14(1) as alternative 343-4, 348-50, 354-5
- public prosecutor, role 248-9
- “punishment is personal” (ACHPR 7(2)) 322
- right of appeal to competent national organs (ACHPR 7(1)(a)) 248-9
- right to defence including counsel of choice (ACHPR 7(1)(c)) 323-5
- trial within a reasonable time (ACHPR 7(1)(d)) 248
- fair hearing/rights of the accused (ICCPR 14)**
  - admissibility of claim of breach 588-9
  - extradition cases, applicability to 588-9
  - prompt notification of charges (ICCPR 14(3)(a)) 331-2
- flag State**, notification to flag State of measures taken against ship of, absence of UNCLOS provision for 181
- Freedom and Justice Party case (immunity of member of a special mission)***, expulsion proceedings 603-4
- freedom of movement (EACT 104 and EACT CM 7)**
  - declaration as a prohibited immigrant, detention and deportation as breach 564
  - effect on sovereignty of Partner States 562-6: *see also Mohochi* (EACJ), sovereignty of Uganda, effect of EACT 104 and EACT CM 7 freedom of movement provisions
  - limitations on grounds of public policy, public security or public health (EACT CM 7(5)), obligation to verify seriousness of the threat 564-5
  - obligation to notify Partner States of limitations on movement under EACT CM 7(5) (EACT CM 7(6)) 564
  - burden of proof of notification 564
  - relevant treaty provisions (text)
    - EACT 104 provisions 546, 562-3
    - EACT CM 7 provisions 546-7, 562-3
    - Regulations 2 and 5(1) 547
  - State’s sovereign right to control entry and 543-50
- Front Polisario (A-G’s opinion (Wathelet))*** 415-83
  - costs of appeal 481-2
  - overview (key issues) 417-19
    - EU Courts’ judicial review competence in areas of Council discretion 418-19
    - Front Polisario’s standing/applicability of Association and Liberalization Agreements to Western Sahara 417-18
    - scope of the appeal 417-18
- Front Polisario (A-G’s opinion (Wathelet))*, grounds of appeal (fifth, part 1 (obligation to examine respect for human rights/CFR))** 467-75
  - A-G’s assessment
    - admissibility of application for annulment alleging infringement of fundamental rights 469
    - alleged misinterpretation and misapplication of CFR 469-75
    - applicability of CFR 473-4
    - human rights/*erga omnes* obligations, obligation to examine before concluding third party treaty 470-5
    - substitution of grounds in case of finding of infringement not capable of annulment of judgment 474
  - A-G’s conclusions 474-5

***Front Polisario* (A-G's opinion (Wathelet)), grounds of appeal (fifth, part 1 (obligation to examine respect for human rights/CFR)) (cont.)**

- parties' arguments
- Council/Commission 467-8
- Front Polisario 468-9

***Front Polisario* (A-G's opinion (Wathelet)), grounds of appeal (fifth, part 2 (Council's obligation to take UNC 73 and sovereignty over natural resources principle into account)) 475-9**

- A-G's assessment 477-9
  - erga omnes/jus cogens* obligations and 478-9
  - EU liability in respect of 479
  - substitution of grounds in case of finding of infringement not capable of annulment of judgment 479
- AG's conclusion 479
- parties' arguments
  - Council/Commission 475-6
  - Front Polisario 476

***Front Polisario* (A-G's opinion (Wathelet)), grounds of appeal (first (Front Polisario's capacity as a "legal person" under TFEU 263)) 442-8**

- A-G's assessment 443-8
  - recognition of Front Polisario as national liberation movement, relevance 447-8
- A-G's conclusion 447
  - rejection of appeal 448
- parties' arguments
  - Council/Commission 442-3
  - Front Polisario 443

***Front Polisario* (A-G's opinion (Wathelet)), grounds of appeal (fourth (alleged *ultra petita* ruling)) 465-7**

- A-G's assessment 466-7
- A-G's conclusion 467
- parties' arguments
  - Council/Commission 465-6
  - Front Polisario 466

***Front Polisario* (A-G's opinion (Wathelet)), grounds of appeal (second, part 1(a) (application of the Association and Liberalization Agreements to Western Sahara)) 427-42**

- A-G's assessment
  - alleged extraterritorial application of the Liberalization Agreement 429
  - applicable law (VCLT as customary international law vs VCLTSIO) 427-8
  - "applies to the territory of the Kingdom of Morocco" (AA 94)
    - as determining factor 430
    - "a treaty is binding upon each party in respect of its entire territory" (VCLT 29) 430
  - challengeable act and standing to bring proceedings distinguished 429, 451
  - successful appeal as finding of an error of law, consequences 427-8
- A-G's conclusions (Western Sahara's status as part of the territory of Morocco for the purposes of AA 94/excluding factors)
  - absence of express extension 433-5
  - "determined" nature of Morocco's status 432
  - Morocco's interpretation, relevance 431-2
  - non-recognition by EU and Member States of Morocco's sovereignty over Western Sahara 435-6

- pacta tertiis nec nocent nec prosunt* (VCLT 34) 440-2
  - EC–Israel Association Agreement compared 439-40
  - status as non-self-governing territory (UNC 73) 431-5
  - sufficiency of de facto application to Western Sahara as “subsequent practice” (VCLT 31(3)(b)) 436-9
- parties’ arguments
  - Commission 427-8, 431
  - Council 427, 431
  - Council/Morocco 431
  - Front Polisario 428
  - Front Polisario and Commission 430
- Front Polisario (A-G’s opinion (Wathelet)), grounds of appeal (second, part 1(b) (contested decision as legislative act))** 448-50
  - A-G’s assessment 448-50
    - rejection of appeal 449-50
  - parties’ arguments
    - Council 448
    - Front Polisario 448
- Front Polisario (A-G’s opinion (Wathelet)), grounds of appeal (second, part 2 (“of direct concern”) (TFEU 263(4)))** 450-7
  - A-G’s assessment
    - automaticity of implementation requirement 456-7
    - direct effect/direct concern, interrelationship 452-6
    - EU Courts’ judicial review competence in areas of Council discretion 452
    - non-privileged applicants 451-2
  - A-G’s conclusion 456-7
  - parties’ arguments
    - Council/Commission 450-1
    - Front Polisario 451
- Front Polisario (A-G’s opinion (Wathelet)), grounds of appeal (second, part 3 (“of individual concern”) (TFEU 263(4)))** 458-60
  - A-G’s assessment 458-60
  - A-G’s conclusion 459-60
  - parties’ arguments
    - Council/Commission 458
    - Front Polisario 458
- Front Polisario (A-G’s opinion (Wathelet)), grounds of appeal (sixth (partial annulment of the contested decision))** 480-1
  - A-G’s assessment (severability of decision considerations) 480-1
  - A-G’s conclusion 481
  - parties’ arguments
    - Council/Commission 480
    - Front Polisario 480
- Front Polisario (A-G’s opinion (Wathelet)), grounds of appeal (third (judicial review in area of external relations/EU institutions’ discretion))** 460-5
  - A-G’s assessment (Council obligation to investigate all relevant facts) 461-5
  - A-G’s conclusions (manifest error of assessment) 464-5
  - parties’ arguments 461
    - Council/Commission 460-1
- Front Polisario (A-G’s opinion (Wathelet)), procedural and general background including admissibility of appeal**
  - admissibility of appeal



***Front Polisario* (A-G's opinion (Wathelet)), procedural and general background including admissibility of appeal (cont.)**

A-G's assessment 425-7

A-G's decision 426-7

parties' arguments

Council/Commission 425

Front Polisario 425

Council's appeal to the CJEU (procedure)

Council's requests 424

Member State intervention 424

parties' arguments (Commission) 424

parties' arguments (Front Polisario) 424

General Court's judgment, summary

admissibility arguments ("legal person"/"direct or individual concern") 422

annulment of contested decision/conclusion of treaty applicable to territory over which non-Member State has no recognized authority 422-4

Council's failure to examine all the relevant facts 423-4

parties' arguments

Council 422

Front Polisario 422

***Front Polisario*, background and procedure**

establishment and status 419

legal background: *see also* Western Sahara, history and status

1996 (EC–Morocco Association Agreement) 365-70

international status of Western Sahara 365-8

procedure and forms of order 370-1

***Front Polisario* (General Court), admissibility (Front Polisario's capacity as a legal person under TFEU 263) 371-8**

Court's analysis

factors relevant to Front Polisario's status

constituting documents and internal structure giving it independence to act in legal matters 376

Council and Commission's recognition of specificities 377

"currently undetermined" nature of status 376-7

law applicable to 377

participation in UN negotiations 376-7

limited nature of issue before the Court 374

TFEU 263 "legal person" test/CJEU jurisprudence 374-6

Court's conclusion 377-8

Court's measure of organization of procedure 370, 372-3

parties' positions

Commission 373

Council 373

Front Polisario

claim to status as subject of international law 372-3

failure to comply with ROP 44(5) 372

proof of status as (ROP 44(5)) 372

non-compliance with ROP 44(3)-(5) (ROP 44(6)) 372

***Front Polisario* (General Court), admissibility (Front Polisario's direct and individual concern (TFEU 263) in the application of the Liberalization Agreement to the Western Sahara)**

Court's analysis 378-87

- “applies to the territory of the Kingdom of Morocco” (AA 94) 385
- contested decision as legislative act 379-80
- “legislative act” 379
- pacta tertiis nec nocent nec prosunt* (VCLT 34) 384
  - direct effect (clear, precise and unconditional obligation requirement) 386-7
- “regulatory act” 379
- parties’ arguments
  - Commission 382
  - Council 381
  - Council/Commission 378, 380, 382
  - Front Polisario 378, 380-1
- Front Polisario (General Court), substance** 388-414
  - alleged breach of consistency obligation (TFEU 7) 394-6
  - alleged breach of fundamental values governing external action (TEU 2, TEU 3(5), TFEU 205) (fifth plea) 396-8
  - alleged breach of legitimate expectation (eighth plea) 400-2
    - expectation of EU compliance with international law 400-2
  - alleged breach of responsibility of international organizations for internationally wrongful acts (eleventh plea) 407
  - alleged breach of self-determination principle (tenth plea) 404-6
  - alleged breach of sustainable development obligation (TFEU 11) (sixth plea) 398-9
  - alleged incompatibility of decision with principles and objectives of external action in the field of development cooperation (TFEU 208(2)) (seventh plea) 399-400
  - alleged incompatibility with treaties binding on the EU (ninth plea) 402
  - alleged insufficiency of reasons (TFEU 296) (first plea) 389-91
  - conclusion of treaty capable of being applied by Morocco to Western Sahara as breach of fundamental rights (third plea) 393-4
  - costs 414
  - Court’s findings on the existence of an absolute prohibition on the conclusion of international agreements applicable on a disputed territory 407-13
    - Council’s discretion/manifest error of assessment as test 409-11
    - Council’s failure to examine all the relevant facts 409-11
    - Council’s obligation to ensure that exploitation of Western Sahara’s natural resources was not to the detriment of the inhabitants 410-13
  - Odigitria* 407-8
  - dispositif* 414
  - overview 388-9
  - right to be heard principle (CFR 41(2)(a)) (second plea) 391-2
    - decision adopted as result of a special legislative act 392
    - general measures as part of CFSP 392
    - limitation of right to individual measures 391-2
- Front Polisario (Grand Chamber)** 484-511
  - admissibility
    - Court’s findings 496
    - parties’ arguments (Council/Commission) 496
    - parties’ arguments (Front Polisario) 496
  - costs 510
  - Court’s conclusions 506-7, 509
  - Court’s judgment replacing annulled judgment (CJEU 61) 509-10
  - dispositif* 511
  - historical background: *see* Western Sahara, history and status

**Front Polisario (Grand Chamber)** (*cont.*)

- legal context (EU law)
  - EC–Morocco Association Agreement (1996) 486-7
  - Liberalization Agreement (2010) 487-8
- legal context (international law)
  - UNC 2(1) (sovereign equality of States) 484
  - UNC 73 (non-self-governing territories) 484-5
  - VCLT preamble (continuing applicability of customary international law) 485
  - VCLT 3(b) (application of VCLT rules to treaties not covered by the VCLT) 485
  - VCLT 26 (*pacta sunt servanda*) 485
  - VCLT 29 (territorial scope of treaties) 485
  - VCLT 30(2) (successive treaties dealing with the same subject matter, primacy) 485, 506-7
  - VCLT 31 (general rule of interpretation) 486
  - VCLT 34 (general rule regarding third States) 486
- procedural background
  - admissibility pleas 492-3
  - expedited procedure (ROP 133-6) 493-4
  - leave to intervene (Belgium, France, Germany, Spain and Portugal) 494
  - leave to intervene (Comader) 494
  - object of appeal 484
  - parties' claims (Commission) 494
  - parties' claims (Council) 494
  - parties' claims (Front Polisario) 494
  - parties' claims (intervening parties) 494
  - procedure before the General Court and the judgment under appeal 492-3
  - requests to reopen oral proceedings following delivery of A-G's opinion 494-5
- substance
  - grounds of appeal 497
  - parties' arguments
    - Commission 500
    - Council 499
    - Front Polisario 500
  - summary of General Court's position 497-9
- substance (Court's findings)
  - "any relevant rules of international law applicable in the relations between the parties" (VCLT 31(3)(c)), applicability 502
  - self-determination as *erga omnes* principle 502-3
  - General Court's reasoning 500-2
  - pacta tertiis nec nocent nec prosunt* (VCLT 34) 504-6
  - sufficiency of de facto application to Western Sahara as "subsequent practice" (VCLT 31(3)(b)) 507-9
  - "a treaty is binding . . . in respect of its entire territory unless a different intention appears" (VCLT 29) 503-4
  - extraterritorial application, dependence on specific provision 503-4
- Frontier Dispute (Benin/Niger)**, procedure, status of Front Polisario 370
- FSIA 1976 (USA) by section**
  - 28 USC 1605A (terrorism exception to the jurisdictional immunity of a foreign State) jurisprudence
    - Calderon-Cardona* 727-8, 742
    - Harrison* 727-30, 741-3

- 28 USC 1605(a)(5) (territorial tort exception/non-commercial tort exception)  
 (“injury . . . occurring in the US and caused by the tortious act or omission of the foreign State”)  
 “or of any official or employee of that foreign State” 707-8  
 burden/standard of proof 703, 707, 710, 712, 713-14  
 entire tort rule 705, 707-9, 713-14  
 jurisprudence  
   *Joseph* 709-10  
   *Robinson* 709-10  
   *Terrorist Attacks: see Terrorist Attacks on 11 September 2001 (State immunity)*  
   scope of employment, *respondeat superior* 709-10  
 28 USC 1605(a)(5)(a) (tortious acts: act or omission in case of discretionary function) 705-6  
 28 USC 1608(a)(3) (service: in case of failure of other prescribed methods)  
 “to the head of the ministry of foreign affairs”, acceptability of service through diplomatic channels 723-6  
 inviolability of diplomatic premises (VCDR 22) and 725-6, 738-41  
 plain language 726, 733-6  
 protection of diplomatic communications considerations (VCDR 27) 726, 734 n. 3  
 service on an embassy and service on a foreign minister via an embassy distinguished 725-6, 738-41  
 jurisprudence  
   *Alberti* 725  
   *Harrison* 719-43: *see also Harrison* (FSIA 1608(a)(3)/FSIA 1605A) (23 September 2015 Opinion); *Harrison* (FSIA 1608(a)(3)/FSIA 1605A) (22 September 2016 Opinion)  
   *Magness* 725  
   *Rux* 724, 725, 726, 734 n. 3  
   *Transaero* 725  
   *Wye Oak Technology* 724  
 legislative history 724-6  
 requirements/conditions 722-3  
 28 USC 1608(e) (default judgment)  
 jurisprudence  
   *Autotech Techs* 726-7  
   *Harrison* 726-7  
   *Peterson v. Iran* 726-7  
 service “in the manner prescribed for service in this section” 726-7  
   FSIA 1608(a) requirements distinguished 727  
 28 USC 1610(g) (attachment of property of foreign State subject of an FSIA 1605A judgment), need for an OFAC licence in absence of reference to TRIA 201(a) 729-30, 741-3  
**fundamental and operational principles of EAC (EACT 6/EACT 7): *see also* EACJ,**  
   jurisdiction (EACT 27); rule of law  
 good governance (EACT 6(d)/EACT 7(2))  
   definition 542  
   immigration controls/procedures: *see* immigration controls/procedures; *Mohochi* (EACJ), immigration controls/procedures, conformity with EACT 6(d) and 7(2)  
 as indispensable to the integration of the EAC 539-43  
 jurisprudence  
   *Katabazi* 522-6: *see also Katabazi* (EACJ)

**fundamental and operational principles of EAC (EACT 6/EACT 7):** (*cont.*)

*Mohochi* 536-43, 550-62: *see also Mohochi* (EACJ)

justiciability/obligatory nature of EACT 6(d) and 7(2) 541-3

“principle” as binding rule 541

redress for breach, right to (EACT CM 54(2)) 553-4

**fundamental principles of law**, “principle” as binding rule 541

**General Assembly resolutions 2229 (XXI)** (IFNI and the Spanish Sahara) 365, 488-9

**General Comments (HRC)**, 13 (ICCPR 14 (Administration of Justice)), public judgment 349

**general principles of law [recognized by civilized nations] (ICJ 38(1)(c))**

as autonomous “source” 641

jurisprudence

*British Honduras v. Bristowe* 668

*East Timor* 502

*Fullard-Leo* 669-70

*Jacobsen* 645-61, 664, 668, 670

*Johnson v. McIntosh* 668-9

*Ure* 664-71

municipal law, focus on 665-7

natural law, role 667, 674

Roman law as source 671, 674, 677

*travaux préparatoires*, Advisory Committee of Jurists/PCIJ 665-7

**good faith and abuse of rights/pacta sunt servanda (UNCLOS 300)** 164-6, 204-5

ancillary nature 166, 204-5

as customary international law rule 166

evidence of/standard of proof 204-5

legal test, absence of jurisprudence 180

**Griffiths (alleged breach of ICCPR 9(1) (arbitrary arrest), 9(3) (prompt hearing) and 9(4) (review of lawfulness of detention))**

admissibility (Committee’s analysis and conclusions)

admissible claims 590

complaint of violation of ICCPR 2(2) (implementation obligation) 587-8

exhaustion of local remedies (OP 1:5(2)(b)) 587

expulsion of alien (ICCPR 13) 588-9

fair trial (ICCPR 14), applicability to extradition proceedings 588-9

prompt hearing (ICCPR 9(3)) 589

complaint 1 (alleged violation of ICCPR 9(1) (arbitrary arrest))

admissibility (State party’s observations) 578-9

author’s comments on (arbitrary detention) 585-6

author’s comments on (exhaustion of local remedies) 584-5

author’s complaint 575-6

merits (Committee’s analysis and conclusion) 590-1

merits (State party’s observations) 579-80

complaint 2 (alleged violation of ICCPR 9(3) (prompt hearing)), author’s complaint 576

complaint 2 (alleged violation of ICCPR 9(4) (review of lawfulness of detention))

together with ICCPR 2(3) (effective remedy))

author’s complaint 576-7

Committee’s analysis and conclusion 591-2

State party’s observations 580-1

- complaint 4 (expulsion of alien (ICCPR 13))
  - author's complaint 577
  - State party's observations 581-3
    - author's comments on 586
- complaint 5 (fair hearing (ICCPR 14))
  - author's complaint 577
  - State party's observations 581
- complaint 6 (effective remedy (ICCPR 2(3))), author's complaint 578
- complaint 7 (measures to give effect to Convention (ICCPR 2(2))) 578
- facts as submitted by the author 573-5
- individual opinions
  - Rodríguez-Rescia and Salvio (concurring) 593-4
  - Seetulsingh (concurring) 594
  - Shany (concurring) 595-6
- obligation to provide author with effective remedy (ICCPR 2(3)(a)) 592-3
  - compensation 592-3
  - legislative changes to ensure conformity with obligations 592-4
  - measures to ensure non-repetition 592-3
  - request for information on measures taken to give effect to Committee's Views 593

***Harrison* (FSIA 1608(a)(3)/FSIA 1605A) (23 September 2015 Opinion)**

- Court's analysis (attachment of assets without OFAC licence, FSIA 1605/TRIA 201(a)) 727-30
  - DOJ statements of interest, effect 728
  - FSIA 1610(g), distinguishability 729-30, 741-3
  - review of the jurisprudence 727-30
- Court's analysis (service of default judgment (FSIA 1608(e))/FSIA 1605A) 726-7
- Court's analysis (service of process on the Minister of Foreign Affairs (FSIA 1608(a)(3))) 722-7
  - compliance with FSIA 1608(a)(3) requirements 723-6
  - Court's conclusion 726
  - "to the head of the ministry of foreign affairs", acceptability of service through
    - diplomatic channels 723-6
    - inviolability of diplomatic premises and (VCDR 22) 725-6
    - jurisprudence 724-5
    - legislative history 724-6
    - "plain language" 726, 733-6
    - protection of diplomatic communications considerations (VCDR 27) 726
    - service on an embassy and service on a foreign minister via an embassy
      - distinguished 725-6
    - summary of FSIA provisions on service of process 722-3
    - FSIA 1608(a)(3), reasons for choosing 723
  - procedural history 719
  - statement of the case 719-21

***Harrison* (FSIA 1608(a)(3)/FSIA 1605A) (22 September 2016 Opinion)**

- Court's analysis (attachment of assets without OFAC licence, FSIA 1605/TRIA 201(a)), FSIA 1610(g), distinguishability 741-3
- Court's analysis (service of process on the Minister of Foreign Affairs (FSIA 1608(a)(3))) 733-8
  - factual challenge 741

- Harrison (FSIA 1608(a)(3)/FSIA 1605A) (22 September 2016 Opinion)** (*cont.*)  
 “to the head of the ministry of foreign affairs”, acceptability of service through diplomatic channels  
 consent to entry/acceptance of document 739-40  
 inviolability of diplomatic premises and (VCDR 22) 738-41  
 plain language 733-6  
 protection of diplomatic communications considerations (VCDR 27) 734 n. 3  
 service on an embassy and service on a foreign minister via an embassy distinguished 735-6, 738-41  
 Court’s conclusion 743  
 procedural history 731-3
- HRC (UN Human Rights Committee)**  
 Rules of Procedure (ROP)  
 90(a) (non-participation of Committee member in case involving home State) 569  
 92 (interim measures of protection) 601, 606-7  
 93(1) (admissibility) 586-7
- Human Rights Act 1998 (HRA)**, ECHR, relationship with, dualist theory 695-6
- Hussein (alleged breaches of ICCPR 2(1), 13, 23 and 24)**  
 admissibility (Committee’s analysis)  
 alleged breach of ICCPR 2 (compliance obligation), exclusion as autonomous claim 617-18  
 alleged breach of ICCPR 7 (inhuman or degrading treatment) 617  
 “being examined under another procedure of international investigation or settlement” (OP 1:5(2)(a)) 617  
 exhaustion of local remedies (OP 1:5) 617  
 sufficiency of substantiation of claim 618  
 alleged breach of ICCPR 13 (right to effective remedy), Committee’s exercise of judicial economy 620  
 alleged breach of ICCPR 23(1) (family rights) (Committee’s analysis) 618-21  
 Committee’s finding  
 failure to consider effect of expulsion on the right of children to protection (ICCPR 24) 619-20  
 failure to review expulsion decision in light of new circumstances 619-20  
 complaint (author) 604-6  
 State party’s observations on admissibility and merits 607-13  
 author’s comments on 613-14  
 enforcement of expulsion decision 612-13  
 expulsion decision 607-10  
 revocation of expulsion decision 611-12  
 State party’s additional comments 614-17  
 factual background (author’s account, State party’s submission and court documents) 601-4  
 Aliens Act: *see* Denmark, Aliens Act 2003/2013 by section  
 criminal convictions (2002, 2005 and 2010) 601, 603  
 expulsion order/attempts to have it revoked 601-2  
 personal matters 601  
 obligation to provide author with effective remedy (ICCPR 2(3)(a))  
 measures to ensure non-repetition 620  
 review of offending decision 620  
 procedural matters  
 author of the communication 600-1

interim measures (request to State party to refrain from deportation) (ROP 92) 601  
 State party's request to review/refusal 606-7  
 separate opinion (Shany and Seetulsingh (dissenting) (effective remedy)) 621-2

**ICCPR (1966), obligation to ensure the rights recognized in the Covenant (ICCPR 2 (1)), measures to give effect to Convention (ICCPR 2(2)), alleged failure, admissibility as complaint** 587-8

**ICJ**, concurrent jurisdiction, choice of more appropriate forum 28-31

**ICJ Rules of Court (1978 as variously amended) by rule**

42 (transmission of copies of application) 9

74(3) (interim protection: date for oral hearing) 9

74(4) (request to parties to "act in such a way" pending meeting of Court) 8-9, 9, 58-9

75(1) (examination of circumstances requiring provisional measures *ex proprio motu*) 87-91

76(1) (modification or revocation of provisional measures) 82-91

"some change in the situation justifies such revocation or modification" 84-6

**immigration controls/procedures**

detention pending improper deportation 561-2

discrimination and 555-6

due process requirement (EACT 6(d)) 553-5

fundamental and operational principles of EAC (EACT 6(d)/EACT 7(2)), compliance with 550-62

*Mohochi* 550-62

**innocent passage in territorial sea (TSC 14-23/UNCLOS 17-25)**

archipelagic waters, applicability to 194

coastal State's right to take enforcement measures (UNCLOS 25(1)) 193-4

"passage", continuous and expeditious navigation without stops 194

**ITLOS procedure**, Notification and Statement of Claim (ITLOS 24), jurisprudence, *Duzgit Integrity* (procedural and factual background) 111

**Jan Mayen**, as *terra nullius*, acquisition by individual of sovereignty over (*Ure/Jacobsen*) 645-61, 664

**journalism**: see ECOWAS Treaty (1993), respect for the rights of journalists (ECOWAS 66(2)(c)); *Zongo* (Merits)

**judge ad hoc (ICJ 31(2) and (3))/PCIJ 31 and ROC 71**, appointment (examples), *Timor-Leste* case 9

**judicial review/justiciability (EU law) (CJEU/ECJ/CJEC) (TFEU 263 [EC 230] [173])**

any act intended to have binding effect 452

external relations/EU institutions' discretion/obligation to investigate all relevant facts 418-19, 452, 460-5

external relations/EU institutions' discretion/obligation to investigate all relevant facts, jurisprudence

*Afton Chemical* 462-3

*Arcelor Atlantique and Lorraine* 461-3

*Commission v. Estonia* (C-505/09 P, EU:C:2012:179) 462

*Front Polisario* 460-5

*Germany v. Council* (C-122/95, EU:C:1998:94) 462

*Gowan Comércio Internacional* 409, 462-3



**judicial review/justiciability (EU law) (CJEU/ECJ/CJEC) (TFEU 263 [EC 230] [173])**  
 (*cont.*)

*Holcim (Romania)* 462

*IATA and ELFAA* 461

*Kadi* 462

*Kala Naft* 461

*NIOC* 461-3

*Odigitria* 398, 407-8, 462

*Parliament v. Council* (C-658/11, EU:C:2014:2025) 463

*Schaible* 461-3

*Sison* 461

*Spain v. Council* (C-310/04, EU:C:2006:521) 462-3

*Technische Universität München* 409, 462-3

*Vodafone* 461

manifest error of assessment as test 404, 407-8, 409, 461, 464-5

standing (an act of direct and individual concern/not entailing implementing measures requirement) 371-87

continuing interest at time of bringing proceedings 452

individual concern 458-60

“legislative act” 379

non-privileged applicants 451-2

“regulatory act” 379

standing (an act of direct and individual concern/not entailing implementing measures requirement), jurisprudence

*Front Polisario* 377-88, 448-60

*Inuit Tapiriit Kantami* 379

*Spain and Italy v. Council* (C-274/11 and C-295/11, EU:C:2013:240) 463

*Stichting Woonlinie* 378-9

*Telefónica* 378-9

standing (“[a]ny . . . legal person”)

distinguishability from legal concept in Member States 374

relevant factors

constitutive document 376

internal structure giving it independence to act in legal matters 376

standing (“[a]ny . . . legal person”), jurisprudence

*Bensider* 374

*Front Polisario* 371-8, 442-8

*Groupement des Agences de voyages* 374-5, 445

*Landtag Schleswig-Holstein* 444

*Lassalle* 375, 376

*PKK and KNK* 375, 444-5

*Union syndicale—Service public européen* 374-5, 445

***jus cogens*/peremptory norm**

*erga omnes* obligations, coincidence with 470-1: *see also erga omnes* obligations

**justice**, exhaustion of local remedies and 28, 30-1

***Katabazi* (EACJ)**

admissibility/jurisdiction (Court’s analysis and findings)

human rights issues 521-2

*res judicata* principle 520-1

role of Secretariat (EACT 72(1)(d)) 520

- Court's decision 527
- issues agreed at scheduling conference 518
- issue 1 (rule of law (EACT 6(d))): *see also* rule of law
- issue 1 (rule of law (EACT 6(d))/human rights issues)
  - Court's analysis 522-6
    - applicability to *Katabazi* facts 524-6
    - definition 523-4
    - jurisprudence 523-4
  - Court's decision 526
  - parties' arguments (2nd respondent) 519-20
  - parties' arguments (claimant) 518-19
- issue 2 (Secretariat's obligation to investigate (EACT 71(1)(d)))
  - admissibility 520-1
  - Court's analysis
    - EACT 29 obligations, importance of vigilance on the part of the Secretary General 527
    - need for knowledge in order to conduct investigation 526-7
    - Secretary General's obligation to submit findings on perceived breaches of the EACT to Partner State (EACT 29(1)) 526-7
  - parties' arguments (1st respondent) 519
  - parties' arguments (claimant) 519
- preliminary objection, rejection as on a matter going to the facts 516-18
- procedural history
  - Constitutional Court challenge 515
  - Court Martial (unlawful possession of firearms and terrorism) 515
  - parties 514
  - parties' positions
    - 1st respondent 515-16
    - 2nd respondent 516
  - claimants 515
  - treason charge, remand in custody, grant of bail, immediate re-arrest 514
- legal assistance/legal aid (ACHPR)**, jurisprudence, *Abubakari* 327-9
- legal assistance/legal aid (ICCPR 14(3)(d))**, jurisprudence, *Abubakari* 327-9
- legitimate expectation**
  - jurisprudence, *Front Polisario* 400-2
  - requirements, clear and unambiguous promise 400
- liberty and security of person/freedom from arbitrary arrest (ICCPR 9)**, review of lawfulness of detention (*habeas corpus*) (ICCPR 9(4)) 591-2
- Lisbon Treaty (2007) (TEU/TFEU)**
  - consistency obligation (TFEU 7) 394-6
  - legislative acts (scope and procedures), ordinary legislative procedure (as norm/examples of application) (TFEU 289), definition (TFEU 294) 379, 449, 463
- marine environment, protection and preservation (UNCLOS Part XII: Section 1: general provisions)**, measures to prevent pollution (UNCLOS 194), test of exposure to unreasonable risk 191
- marine environment, protection and preservation (UNCLOS Part XII), jurisprudence, *Duzgit Integrity*** 184-91

**measure of damages/compensation including valuation of company/property/assets**

- costs incurred, actually, necessarily and reasonably incurred 287-8
- full and complete 281-2
- symbolic reparation 282-3

***Mohochi* (EACJ)**

- admissibility/jurisdiction (Court's analysis and findings), human rights issues 536-43
- background
  - basis for Reference (EACT 7(2), 27, 30, 38 and 105, EACT CM 7 and ROP (2010) (1(2) and 24)) 531
  - factual background 531-2
  - parties 531
- costs (as a public interest case) (ROP 11) 566-7
- Court's conclusion 567-8
- freedom of movement (EACT 104 and EACT CM 7), Court's analysis 562-6
  - compliance of Uganda Citizenship and Immigration Control Act 1999, s 52 565-6
  - Court's finding 566
  - declaration as a prohibited immigrant, detention and deportation as breach 559-60, 564
  - obligation to notify Partner States of limitations on movement under EACT CM 7(5) (EACT CM 7(6)) 564
    - burden of proof of notification 564
    - obligation to verify EACT CM 7(5) threat 564-5
- human rights issues/EACJ jurisdiction
  - Court's analysis 538-43
    - justiciability/obligatory nature of EACT 6(d) and 7(2) 541-3
  - Court's finding 543
  - parties' submissions (applicant) 537-8
  - parties' submissions (respondent) 536-7
- immigration controls/procedures, conformity with EACT 6(d) and 7(2) 550-62
  - Court's finding 562
  - parties' submissions (applicant) 550-2
  - parties' submissions (respondent) 552
- immigration controls/procedures, conformity with EACT 6(d) and 7(2), Court's analysis 553-62
  - declaration of prohibited immigrant (Uganda Citizenship and Immigration Control Act, s 52) 556-60
    - need for reasons 557-60
    - uncertainty as to nature of decision/Notice to Return or Convey Prohibited Immigrant alternative 558-9
  - denial of entry/due process 553-5
  - detention pending improper deportation 561-2
  - "due process" 553
  - non-discrimination obligation (EACT CM 7(2)) 555-6
  - right to redress (EACT CM 54(2)) 553-4
- issue agreed at scheduling conference 535
- parties' cases (applicant) 532-4
  - requested orders 533-4
- parties' cases (respondent) 534-5
- sovereignty of Uganda, effect of EACT 104 and EACT CM 7 freedom of movement provisions
  - Court's analysis 546-50
  - Court's finding 550

- parties' submissions (applicant) 543-4
- parties' submissions (respondent) 544-5, 547
- Morocco**, Western Sahara and: *see* Western Sahara, history and status; Western Sahara, history and status in date order
- national liberation movements**: *see also* *Front Polisario* entries
  - recognition
    - evidence of 447-8
    - Front Polisario 447-8
    - status within UNGA, relevance 447
- nationals**, claim against own State, *LaGrand* 20
- native title** (**Australia**), jurisprudence, *Mabo (No 2)* 663-4
- natural law**, source of international law, whether: *see* general principles of law [recognized by civilized nations] (ICJ 38(1)(c)), natural law, role
- natural resources**
  - non-self-governing territory's rights 475-9
  - sovereignty over, peremptory norm of international law, whether 478-9
- natural resources, UNGA resolutions relating to**, 1803 (XVII) (Permanent Sovereignty over Natural Resources) 475-9
- NGOs (general)**, access to ACtHPR (ACHPR Protocol 5(3)) 233-4
- non ultra petita rule** (CJEU) 465-7
- non-disclosure/use of "closed material" (national security considerations)**, *Timor-Leste* case (Cançado Trindade J dissenting) 38-43
- non-discrimination obligation** (EACT CM 7(2)) 555-6
- non-self-governing territories** (UNC 73-4): *see also* *Front Polisario* entries
  - administering power
    - obligations, promotion of the well-being of the inhabitants 477
    - power to conclude treaties on behalf of administered territory 430
    - termination, requirements 455-6
  - erga omnes/jus cogens* obligations and 478-9
  - EU liability in respect of 479
  - jurisprudence
    - East Timor* 430, 502
    - Front Polisario* 430, 475-9
  - status, independence of administering power 433
  - treaties, extension of treaty to, State practice 433-5
  - treaty-making power 430
    - administering power 430
- nullum crimen nulla poena sine lege/non-retroactivity** (ACHPR 7/ECHR 7/ICCPR 15/UDHR 11(2)), jurisprudence, *Abubakari* 340-2
- opinio juris**
  - jurisprudence
    - North Sea Continental Shelf* 636
    - Ure* 644-5
  - as requirement for formation of customary international law 636
- pacta sunt servanda/good faith observance of treaties** (VCLT 26), as general principle of international law 166

- Pitcairn Island**, status issues, *terra nullius* 663-4
- provisional measures (ICJ 41/PCIJ 41)**  
 as autonomous regime 49-50  
 binding force/compliance obligation  
   jurisprudence  
     *LaGrand* 53-6  
     *Timor-Leste* case 20, 24-5, 53  
*compétence de la compétence* (ROC 75) 87-91  
 Court's power to act "if it considers that circumstances so require" (ICJ 41(1))  
   (inherent power/discretionary nature), relevant factors 55-6, 76, 78-9  
 as "incidental proceedings" 54-5  
 measures requested/ordered  
   maintenance of confidential material under seal 19-21, 46-7, 67-70  
   non-divulgence of confidential material 19-20, 21, 67-70  
     maintenance under seal distinguished 24  
   non-interference with communications between State and legal advisers 20-1, 58,  
     65-6, 71-2  
 prima facie jurisdiction/admissibility on the merits 11, 54, 76  
 threshold 77-8
- provisional measures (including ICJ 41/PCIJ 41), jurisprudence:** *see also Timor-Leste*  
 case (provisional measures (ICJ 41) (Order of 3 March 2014))  
*Armed Activities on the Territory of the Congo* 53-6  
*Certain Activities Carried Out by Nicaragua in the Border Area* 11, 54-5, 67-8  
*LaGrand* 20
- provisional measures, purpose/requirements**  
 balance of parties' rights/respect for 48, 55-6, 64-5, 70-1  
 consent of parties, relevance 53-4  
 link to real subject matter of dispute/merits 11, 13, 54, 67  
 non-anticipation of decision on merits 56-7, 66  
 plausibility of requested rights 11-13, 24-5, 44-5, 54-8, 64-5, 69-70, 76  
 preservation of rights in dispute  
   likelihood of action affecting, Court's obligation to consider 68  
   "pending the final decision" 11  
 prevention of irreparable damage or prejudice 13-19, 54, 76  
   Court's obligation to take vulnerable documents and data into its custody 46-7  
   "irreparable damage" 79  
   risk from breach of confidentiality 17, 19-20, 45-9, 58, 62-5  
   serious/imminent risk as test 67-8  
 urgency 13-19, 76
- remedies**, need for/*ubi jus ibi remedium*, EACT CM 54(2) 553-4
- reparations**  
 as absolute obligation/exclusion of municipal law as protection against obligation 279-80  
 applicable law/international human rights law 279-80  
 definition  
   "restitution, compensation and satisfaction, either singly or in combination" (ILC (SR) 34) 273  
 definition, jurisprudence  
   *Ali Ben Salem* 273

- Barrios Altos* 273
- Caracazo* 273
- Castillo Paez* 273
- Kepra Urria Guridi* 273
- Zongo* 273
- “victim” for purposes of entitlement to, jurisprudence
  - Aslakhanova* 277
  - Bulacio* 278
  - Chitay Nech* 278
  - Gonzalez Medina* 278
  - Ituango Massacres* 278
  - Loayza Tomayo* 278
  - Myrna Mack* 278
  - Shirin Aumeeruddy-Cziffra* 277
  - Zongo* 276-9
- “victim” for purposes of entitlement to, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UNGA Resolution 60/147) 277
- reparation for breach of treaty (ACHPR Protocol 27(1))**
  - applicability of
    - Chorzów Factory* principle 271-2
    - ILC(SR) 31(1) 271-2
  - compensation for non-pecuniary damage 274-83
  - costs and expenses
    - as part of the concept of reparations 286-7
    - transport and subsistence costs (seat of Court) 288-9
  - jurisprudence
    - Abubakari* 344-6
    - Mtikila* 286-7
    - Zongo* 173481.1111: *see also Zongo* (reparations) (ACHPR Protocol 27)
  - measures to ensure non-repetition, need for/compliance obligation (ACHPR Protocol 30) 291-2
    - re-opening of investigation 291-2
  - measures of satisfaction
    - finding of international wrongfulness 283
    - publication and dissemination of judgment 289-90
  - request for release in “special and compelling” circumstances 345, 350-4
  - retrial 345
  - ruling as part of judgment or as separate decision (ROC 39) 345
- reparation for breach of treaty (ACHR 63(1)) (compensation), jurisprudence, Caracazo** 279-80
- reparation for breach of treaty (UNCLOS)**
  - Duzgit Integrity* 194-201
  - finding of international wrongfulness, sufficiency 200
  - pecuniary damage, nexus/causal connection, need for 200-1
- reparation for breach of treaty/internationally wrongful act other than compensation, jurisprudence**
  - guarantees of non-repetition, *Zongo* 291-2
  - publication and dissemination of judgment
    - Heliodoro Portugal* 290

**reparation for breach of treaty/internationally wrongful act other than compensation, jurisprudence** (*cont.*)

*Massacre du Plan de Sanchez* 290

*Mtikila* 290

*Zongo* 289-90

renewal of investigations

*Doebbler* 292

*EIPR and Interights* 292

*Malawi Africa Association et al.* 292

*M'Boissona* 291

*Purohit* 292

*Shumba* 292

*Sudan Human Rights Organization and COHRE* 292

*Zongo* 291-2

***res judicata/non bis in idem* principle (including double jeopardy rule)**

identity of subject matter and parties requirement 520-1

*Katabazi* 520-1

**restitution/*restitutio in integrum*/measure of compensation (including ILC(SR) 31(1), 35 and 36/*Chorzów Factory* principle), *Caracazo* 279**

**Roman law**

general principles of law (ICJ 38(1)(c)) and 671, 674

*occupatio* 671, 674

**rule of law:** *see also* fundamental and operational principles of EAC (EACT 6/EACT 7)

definition 523-4

EACT 6(d) 522-6

jurisprudence, *Katabazi* 522-6

**São Tomé and Príncipe:** *see Duzgit Integrity*

**self-determination, right of**

doctrine and practice, *erga omnes* obligation 502-3

jurisprudence

*East Timor* 502

*Western Sahara* 454

UNGA Resolution 1514 (XV) (Declaration on the Granting of Independence to Colonial Countries and Peoples) 365

UNGA Resolution 2625 (XXV) (Declaration concerning Principles of Friendly Relations and Cooperation among States) 489

**service of process on diplomatic agent/consular officer (inviolability of person (VCDR 29/VCCR 41)), jurisprudence, *Tachiona* 737, 738-9**

**service of process on foreign State or State agency [out of the jurisdiction] (including State immunity issues):** *see also* FSIA 1976 (USA) by section, 28 USC 1608 *entries*

**ships, definitions/classification as**

“inclusion of every person involved or interested in” ship’s operation as part of unit of the ship

*Arctic Sunrise* 148

*Duzgit Integrity* (procedural and factual background) 148

nationality of persons on board, relevance 148

*Saiga (No 2)* 148

*Virginia G* 148

**sources/evidence of [customary] international law (ICJ 38)**

- ICJ 38(1) as complete statement of the sources of international law 631
- natural law, whether 667, 674
- teachings of publicists (ICJ 38(1)(d))
  - customary international law distinguished 641
  - jurisprudence, *Ure* 641, 664-5, 672-6
  - subsidiary nature 664-5

**sovereign equality of States (UNC 2(1)) (*par in parem non habet jurisdictionem*),**  
equality of parties in dispute settlement/negotiation 43-4, 58**sovereignty**

- transfer to international organization, EAC 543-50
- transfer to international organization, jurisprudence
  - Costa v. ENEL* 550
  - Mohochi* 543-50
- treaties, effect, EACT (1999) 543-50

**standing (ITLOS) 149-51**

- exhaustion of local remedies (State-to-State claims and diplomatic protection distinguished) 147-9
- “inclusion of every person involved or interested in” ship’s operation as part of unit of the ship 148

**State agency/State entity, classification as (in particular for purposes of State responsibility and State immunity), separate entity test**

- alter ego* theory 707-8
- control, State control, sufficiency to establish status as State organ 707-8

**State agency/State entity, separate entity test, *Bancec* 707-8****State immunity**

- burden/standard of proof 703, 707, 710, 712, 713-14
- Terrorist Attacks on 11 September 2001* 699-715

**State practice as evidence/source of customary international law: see also general**  
principles of law [recognized by civilized nations] (ICJ 38(1)(c))

- Jacobsen* 664
- North Sea Continental Shelf* cases 636

**State responsibility, invocation (ILC(SR) 42-8)**

- invocation by injured State (ILC(SR) 42)
  - in case of obligation owed to that State individually 147-8
  - jurisprudence, *Duzgit Integrity* (procedural and factual background) 147-8

**State responsibility for legal consequences of internationally wrongful act/obligations (including ILC(SR) 28-33), *ex injuria jus non oritur* 35-6****Svalbard (Spitsbergen) Treaty (1920)**

- acquired rights/claims prior to signature of the treaty, handling of (Art. 6 and Annex) 642-5
  - applicability of “applicable rules of international law”, whether evidence of a customary international law rule/*opinio juris* 644-5
- equal treatment obligation (Arts. 2 and 3), customary international law and 641-5
- summary of provisions 642

**Tanzania: see also *Abubakari* (ACtHPR) entries**

- Basic Rights and Duties Enforcement Act by section, 8(2) (non-exercise of High Court powers if other adequate means of address are available or if application frivolous or vexatious) 315



**Tanzania:** (*cont.*)

- Court of Appeal Rules of Procedure, s 66 (judicial review: requirements) 315-16
- Criminal Procedure Act by section, 311 (pronouncement of sentence in public) 342-4, 349

**terra nullius**

- definition/classification as
  - Pitcairn Island 663-4
  - Tristan da Cunha 663-4
- jurisprudence
  - British Honduras v. Bristowe* 662-3
  - Jacobsen* 664
- property/proprietary rights of individual: *see also Ure* (acquisition by individual of sovereignty over *terra nullius*) (appeal)
  - applicable law (international vs municipal law) 662-4
  - Legal Status of Middleton and Elizabeth Reefs in International Law [post-UNCLOS]* 630-2

**territorial sea, Duzgit Integrity** 191-2**Terrorist Attacks on 11 September 2001 (State immunity)** 699-715

- Court's analysis
  - "or of any official or employee of that foreign state" 707-8
  - burden/standard of proof 703, 707, 710
  - discretionary function exclusion (FSIA 1605(a)(5)(a)) 705-6
  - entire tort rule 705, 707-9, 713-14
  - non-commercial tort exception (FSIA 1605(a)(5)) 704-6
  - respondeat superior* 709-10
  - State control, sufficiency to establish status as State organ 707-8
- Court's decision 700, 715
  - allegations as to Saudi Arabia 710-14
  - allegations as to the SHC 710
- jurisdictional discovery 714-15
- parties' arguments
  - defendants 700
  - plaintiffs 699-700
- procedural history 700-2

**Timor-Leste case:** *see Timor-Leste case* (factual and procedural background); *Timor-Leste case* (provisional measures (ICJ 41) (Order of 3 March 2014)); *Timor-Leste case* (request for modification of provisional measures Order (ROC 76(1)) (Order of 22 April 2015)); *Timor-Leste case* (settlement of case) (Order of 11 June 2015)

factual background 72-6

**Timor-Leste case (factual and procedural background)** 7-10

- Application 7-8, 22
- appointment of ad hoc judges 9
- Australia's request for stay of proceedings 10
- basis of jurisdiction (ICJ 36(2) declarations) 8, 11
- request for provisional measures, request for measures pending decision on (ROC 74(4)) 8-9

**Timor-Leste case (provisional measures (ICJ 41) (Order of 3 March 2014))**

- Australian undertakings in relation to ASIO in date order
  - Ministerial Statement to Parliament of 4 December 2013 15
  - Undertaking to Timor-Leste Arbitral Tribunal of 19 December 2013 15
  - Letter to ASIO Director-General of 23 December 2013 15
  - Undertaking to Court of 21 January 2014 (including text) 16, 17-19, 58-65, 67-70

- Solicitor-General's statement at oral proceedings 16
- binding effect 24-5, 31-5
- Court's analysis 15-19
- Court's decision 19
- good faith obligation to act in accordance with commitment 18, 25, 62, 69-70
- inviolability of Member States' papers and documents (UNPIC IV (11)(b)) as
  - sufficient basis for responsibility 47-8
- parties' arguments (Timor-Leste) 17
- separate/dissenting opinions
  - Donoghue J 67-70
  - Greenwood J 58-66
  - Keith J 22-6
- binding force/compliance obligation 20
- equality of parties (UNC 2(3)) 58
- as "incidental proceedings" 54-5
- measures ordered/Court's decision
  - maintenance of confidential material under seal 19-21, 67-71
  - non-divulgence of confidential material 19-20, 21, 67-70
    - maintenance under seal distinguished 24
  - non-interference with communications between State and legal advisers 20-1, 58, 65-6, 71-2
- parties' arguments (Australia) 14-16
- parties' arguments (Timor-Leste) 12, 14
- purpose/requirements (ICJ 41(1))
  - balance of parties' rights 48, 55-6, 70-1
  - consent of the parties, relevance 53-4
  - link with subject of merits 11, 13, 54, 67
  - plausibility of requested rights 11-13, 24-5, 44-5, 54-8, 69-70, 76
  - prima facie jurisdiction 11, 54, 67, 76
  - urgency 13-19, 76
- requirements, risk of irreparable prejudice: *see* risk of irreparable prejudice *below*
- risk of irreparable prejudice 13-19, 54
  - Australian undertakings in relation to ASIO 15-19, 77-8: *see also* Australian undertakings in relation to ASIO in date order *above*
  - Court's analysis 17-19
  - Court's decision 19
  - Court's obligation to take vulnerable documents and data into its custody 46-7
  - damage already suffered, relevance 45-9
  - parties' arguments (Australia) 14-16
  - parties' arguments (Timor-Leste) 14
  - risk from breach of confidentiality 17, 19-20, 45-9, 58, 62-5
- separate/dissenting opinions (Callinan, Judge ad hoc (dissenting)) 72-82
  - Australian undertakings in relation to ASIO/binding effect 81-2
  - Court's jurisdiction
    - compulsory jurisdiction (Optional Clause) (ICJ 36(2)), Australian reservation 76-7
    - jurisdiction and admissibility distinguished 76
    - threshold 77-8
  - factual background 72-6
  - national security issues 72, 79-80
  - ownership of documents and data 80
  - professional privilege 79-80
  - provisional measures, Court's discretionary power/relevant factors 76, 78-9

***Timor-Leste case (provisional measures (ICJ 41) (Order of 3 March 2014)) (cont.)***

- purpose/requirements (ICC 41(1))
  - “irreparable” 79
  - plausibility of requested rights 76
  - prima facie jurisdiction 76
  - risk of irreparable prejudice 76
  - urgency 76
- separate/dissenting opinions (Cançado Trindade J (dissenting)) 26-52
  - Australian undertakings in relation to ASIO 67-70
    - binding effect 31-5
    - binding effect/good faith obligation to act in accordance with 69-70, 81-2
    - justification for application of rule in provisional measures cases 44-9
  - concurrent jurisdiction 28-30, 31
  - Court’s jurisdiction
    - background to request for provisional measures 66
    - matters falling within the jurisdiction of other tribunals 66
  - equality of States (UNC 2(1)) 43-4
  - ex injuria jus non oritur* 35-6
  - exhaustion of local remedies
    - direct injury to State/inter-State disputes distinguished 28, 30-1
    - justice and 28, 30-1
  - introduction 26-7
  - inviolability of Member States’ papers and documents (UNPIC IV (11)(b)) as
    - sufficient basis for responsibility 47-8
  - justice, importance of 27-31
  - measures ordered
    - maintenance of confidential material under seal 70-1
    - non-divulgence of confidential material 67-70
    - non-interference with communications between State and legal advisers 71-2
  - ownership of documents and data 36-7
  - plausibility of requested rights 44-5, 69-70
  - provisional measures as autonomous regime 49-50
  - purpose/requirements (ICC 41(1))
    - balance of parties’ rights 70-1
    - likelihood of action affecting rights, Court’s obligation to consider 68
    - link 67
    - prima facie jurisdiction 67
    - serious/imminent risk as test 67-8
  - risk of irreparable prejudice 45-9
    - Court’s obligation to take vulnerable documents and data into its custody 46-7
    - summary 50-2
- separate/dissenting opinions (Donoghue J (separate opinion)) 66-72
- separate/dissenting opinions (Greenwood J (dissenting)) 52-66
  - Australian undertakings in relation to ASIO 58-65
    - binding effect/good faith obligation to act in accordance with 62
  - Court’s jurisdiction
    - background to request for provisional measures 56
    - matters falling within the jurisdiction of other tribunals 56-7
  - measures ordered
    - non-divulgence of confidential material/relevance of UNC 2(1) and 2(5) 58
    - non-interference with communications between State and legal advisers 65-6
  - national security issues 57

- provisional measures
  - binding effect 53
  - Court's discretionary power/relevant factors 55-6, 78-9
  - as "incidental proceedings" 54-5
- purpose/requirements (ICC 41(1)) 53-6
  - balance of parties' rights 64-5
  - link 54
  - non-anticipation of decision on merits 56-7, 66
  - plausibility of requested rights 54-8, 64-5
  - risk of irreparable prejudice 57-8, 62-5
- separate/dissenting opinions (Keith J (dissenting)) 22-6
  - Application, summary 22
  - Australian undertakings in relation to ASIO 22-6
    - binding effect/good faith obligation to act in accordance with 24-5
  - non-divulgence of confidential material 22-6
  - plausibility of requested rights 24-5
- Timor-Leste case (request for modification of provisional measures Order (ROC 76(1)) (Order of 22 April 2015))*** 82-7
  - Court's decision 86-7
  - procedural history 82-4
  - requested modification 84
    - limitation to second measure 86
  - Timor-Leste's non obstat 84
  - separate opinion/declaration, Trindade Cançado J (right of Court to decide on provisional measures *ex proprio motu* (ROC 75(1))) 87-91
  - "some change in the situation justifies such revocation or modification" 84-6
- Timor-Leste case (settlement of case) (Order of 11 June 2015)*** 91-4
- travaux préparatoires as supplementary means of interpretation (VCLT 32)***, in respect of, PCIJ 38 665-7
- treaties, successive treaties relating to same subject matter (VCLT 30)**, primacy in case of provision that treaty is subject to/not incompatible with another treaty (VCLT 30(2)) 485, 506-7
- treaties, territorial scope (VCLT 29)**
  - extension to colonial/dependent territory: *see also Front Polisario* entries
  - State practice 433-5
  - extraterritorial application, presumption against/dependence on specific provision 429, 503-4
  - "unless a different intention appears" 503-4
- treaties, third parties and (VCLT 34-8)**
  - Construction of a Wall* 440
  - pacta tertiis nec nocent nec prosunt* (VCLT 34) 384, 428, 440-2, 504-6
- treaty interpretation by/responsibility for**, executive, "great weight" due to 740-1
- treaty interpretation (VCLT 31(1)) (object and purpose, title/subtitles as guide to)** 539
- treaty interpretation (VCLT 31(3)) (points to be taken into account together with context)**
  - "any relevant rules of international law applicable in the relations between the parties" (VCLT 31(3)(c)), EU treaties with third parties 502
- subsequent practice in application of treaty establishing agreement between the parties regarding its interpretation (VCLT 31(3)(b))
  - common practice of parties, need for 436-9
    - long-term practice 438-9
    - "practice" 438-9

**treaty interpretation (VCLT 31(3)) (points to be taken into account together with context)** (*cont.*)

- practice contrary to the ordinary meaning and 438
- EC–Morocco Association and Liberalization Agreements 436-9
- jurisprudence
  - ATSA Arbitration* 436
  - Front Polisario* 427-8, 436-9, 507-9
  - Oberto and O'Leary* 437
  - Temple of Preah Vihear* 437-8

**Tristan da Cunha**, as *terra nullius* 663-4

**Uganda**

- Citizenship and Immigration Control Act 2009 547, 554-5
- Citizenship and Immigration Control Act 2009 by section
  - 52 (prohibited immigrants) 556-60
    - compliance with EACT and EACT CM 565-6
    - declaration as, need for reasons 557-60
    - text 556-7
  - 66(4) (Notice to Return or Convey Prohibited Immigrant) 558-9
- East African Community Act, 2002 by section
  - 2 ("Treaty") 547-8
  - 3(1) (EACT: force of law) 547-8
- East African Community (EAC), relationship with
  - binding effect of EACT/compliance obligation 554-5
  - EACT as part of the law of/direct enforceability 548-50
  - Mohochi* (EACJ), Citizenship and Immigration Control Act 543-50

**UN Privileges and Immunities Convention (1946) (UNPIC)**, inviolability of Member States' papers and documents (UNPIC IV (11)(b)) 47-8

**UNCLOS dispute settlement (Part XV: Section 1 (general provisions))**

- obligation to exchange views (UNCLOS 283(1))
  - jurisprudence
    - Arctic Sunrise* 159-60
    - Chagos* 159
    - Duzgit Integrity* (procedural and factual background) 156-61

**UNCLOS dispute settlement (Part XV: Section 2 (compulsory procedures entailing binding decisions: jurisdiction (UNCLOS 288)))**

- applicable law (UNCLOS 293)
  - jurisprudence
    - Arctic Sunrise* 163-4
    - Duzgit Integrity* (procedural and factual background) 161-4
    - Saiga (No 2)* 163
  - other rules of international law compatible with UNCLOS (UNCLOS 293(1)) 161-4
    - reasonableness and proportionality 164
- unilateral declaration/undertaking (including validity and legal effects)**
  - Australian undertakings in relation to *Timor-Leste* case 24-5, 31-5, 44-9, 81-2
  - binding effect/good faith obligation to act in accordance with commitment 18, 24-5, 62, 69-70, 81-2
  - jurisprudence
    - Obligation to Prosecute or Extradite (Belgium v. Senegal)* 32, 48-9, 62, 67
    - Orhman* 34

- Timor-Leste* case 24-5, 31-5, 44-9, 81-2
- justification for using the rule in provisional measures cases 44-9
- United Kingdom**, ECtHR as independent court/non-applicability of domestic principles 689-90: *see also* *Yam* (judicial review of denial of ECHR 34 application) (UK Supreme Court)
- United States of America (USA)**
  - diplomatic premises, inviolability (including VCDR 22)
  - duty to protect (VCDR 22(2))
    - consent to entry 739-40
    - service of process and 725-6, 738-41
  - territory of sending State, whether part of 740
  - terrorism, legislation relating to: *see also* FSIA 1976 (USA) by section, 28 USC 1605A (terrorism exception to the jurisdictional immunity of a foreign State)
  - Justice against Sponsors of Terrorism Act 2016 715-16
  - Terrorism Risk Insurance Act 2002 (TRIA) 727-30
    - attachment of blocked assets in satisfaction of a judgment against a terrorist party (TRIA 201(a))
      - determination of applicability of TRIA as trigger for distribution of funds without an OFAC licence 730
    - OFAC licensure requirement 727-8, 741-3
    - text 728, 742
  - jurisprudence
    - Bank of Tokyo* 729-30
    - Harrison* 727-30
    - Heiser* 729-30
    - Rubin* 730
    - Weininger* 728-30
  - treaty interpretation, “great weight” due to executive’s opinions 740-1
- Ure (acquisition by individual of sovereignty over terra nullius) (appeal)***
  - applicable law/international law
    - customary international law (ICJ 38(c)) vs general principles of law recognized by civilized nations (ICJ 38(c))
    - appeal court proceedings 632
    - trial court proceedings 631-2
  - ICJ 38(1) as complete statement of the sources of international law 631
  - teachings of publicists (ICJ 38(1)(d)) 632
  - Court’s conclusion 676-7
  - factual and procedural background
    - amended statement of claim (extracts) 628-30
    - appellant’s challenge to the validity of the National Parks Act and the EPBC 628
    - Elizabeth and Middleton Reefs
      - act of alleged appropriation (March 1970) 627
      - Elizabeth and Middleton Reefs Marine National Nature Reserve, proclamation of (23 December 1987) 628
      - inclusion in the Lord Howe Commonwealth Marine Reserve (November 2012) 628
    - international law distinctions between seawaters, seabeds, land and littoral areas, exclusion from the argument 630
  - parties 627
  - issue 1 (meaning of Question 2 (entitlement of private individual to acquire proprietary rights over islands/*terra nullius*)) 633, 635-64
  - “proprietary rights” 634-5

***Ure (acquisition by individual of sovereignty over terra nullius) (appeal) (cont.)***

- text 630
- issue 2 (customary international law (ICJ 38(1)(b))) 633, 635-64
  - appellant's supporting material 641-64
  - Jan Mayen Island (Ekerold claim) 661-2
  - Jan Mayen Island (*Jacobsen v. Norwegian Government*) 645-61
  - Spitsbergen Treaty 641-5
- formation/requirements 635-41
  - "as evidence of a general practice" 635-7
  - general practice/"appreciable section of the community" 639-40
  - opinio juris* 636
  - single instance, sufficiency 639-40, 676-7
  - State practice 636
  - treaty provision as evidence of customary international law 637-8
- law applicable to determination of proprietary rights over *terra nullius* (international vs municipal law) 662-4
  - British Honduras v. Bristowe* 662-3
  - Pitcairn Islands/Tristan da Cunha 663-4
- issue 3 (general principles of law (ICJ 38(1)(c))) 633
  - Court's conclusion: failure to demonstrate existence of relevant municipal law principle 670
  - municipal law, focus on 665-7
  - natural law, role 667, 674
  - Roman law as source 671, 674, 677
  - travaux préparatoires* 665-7
- issue 4 (teachings of highly qualified publicists) (ICJ 38(1)(d)) 633, 672-6

**Vienna Convention on the Law of Treaties between States and International Organizations (1986) (VCLT/SIO)**

- as customary international law 427-8
- Brita* 427-8
- Front Polisario* 383, 427-8
- Helm Döngemittel* 427-8

**Western Sahara, history and status:** *see also* *Front Polisario* entries

- applicable law 377
- as non-self-governing territory (UNC 73(e)) 365, 376-7, 380, 418-19, 430, 440-2, 475-9, 500
- Spain's status as administering power post-1976 455-6

**Western Sahara, history and status in date order** 365-8, 488-91

- 1884 (colonization by Spain) 365, 488
- 1960 (UNGA Resolution 1514 (XV)) 365, 488-9
- 1963 (inclusion on list of non-self-governing territories (UNC 73(e))) 365, 488
- 1966 (UNGA Resolution 2229 (XXI) (IFNI and the Spanish Sahara)) 365, 419, 489
- 1970 (UNGA Resolution 2625 (XXV) (Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States)) 489
- 1973 (creation of Front Polisario) 365, 419
- 1974 (proposed referendum) 365, 420, 489
  - continuing failure to hold 421, 491
- 1975 (King Hassan's call for a "peaceful march") 366, 420, 490

- 1975 (Madrid Accords) 367, 420
- 1975 (UNSCR 377 (2975), UNSCR 379 (1975) and UNSCR 380 (1975)) 366-7, 420-1, 490
- 1975 (*Western Sahara*) 365-6, 420, 453-4, 489-90, 502, 505
- 1976 (Mauritania–Morocco border agreement) 367, 421, 491
- 1976 (Spanish withdrawal/relinquishment of administering power status) 367, 421, 490
- 1979 (UNGA Resolution 34/37 (right to self-determination)) 367-8, 421, 491
- 1996 (EC–Morocco Association Agreement) 365-70
- 2011 (Front Polisario constituting document: Art. 1 (status)) 365
- 2015 (Front Polisario/Morocco division) 368, 421

***Yam* (judicial review of denial of ECHR 34 application) (UK Supreme Court) 680-97**

- Court's analysis
  - determination of State party's ECHR 38 obligations as matter for ECtHR 691-5
  - dualist nature of relationship between ECHR and HRA 695-6
  - ECtHR as independent court/non-applicability of domestic principles 689-90
  - ECtHR, pressure to discourage ECHR application, exclusion 690-1
- Court's conclusions 697
- factual and procedural background
  - appeal against conviction 682-3
  - appellant's conviction 681-2
  - application to Ouseley J 684-7
  - Divisional Court proceedings 687-8
  - ECHR application/referral to in camera material 683-4
  - issue before the Court (disclosure of in camera evidence to EHCR) 680-1
- parties' arguments 688-9

***Zongo***: see *Zongo* (ACtHPR) (admissibility and jurisdiction); *Zongo* (ACtHPR) (procedural background); *Zongo* (Merits); *Zongo* (Reparations) (ACHPR Protocol 27)

***Zongo* (ACtHPR) (admissibility and jurisdiction)**

- admissibility (exhaustion of local remedies (ACHPR 56(5)/Protocol 6(2))) 235-47
  - effectiveness of remedy/appeal to Court of Cassation 236-9
    - Court's analysis and decision 237-9
    - "effective" 238
    - parties' arguments (applicants) 237
    - parties' arguments (respondent) 236-7
    - "unduly prolonged"/relevant factors 243-6
    - "if any" 246-7
  - MBDHP and 246-7
  - "unless it is obvious that this procedure is unduly prolonged" 239-46
    - Court's analysis and decision 242-6
    - parties' arguments (applicants) 241-2
    - parties' arguments (respondent) 239-41
    - "remedy procedure" 242-3
- admissibility (requirements not canvassed by parties) 235
- jurisdiction
  - access of NGOs to Court (Protocol 5(3)) 233-4
  - ratione materiae* (ACHPR Protocol 3(1)) 233



- Zongo (ACtHPR) (admissibility and jurisdiction) (cont.)**  
     *ratione personae* (Protocol 34(6) declaration) 227-9, 233-4  
     *ratione temporis* (continuing wrong) 234  
     summary 227-9  
     Court's ruling (21 June 2013) 228-9
- Zongo (ACtHPR) (procedural background)**  
     dissenting declaration (Niyungeko, Ouguergouz, Guissé and Aba JJ) 264-6  
     procedural history (ACtHPR) 227-33  
         Application  
             alleged violations 222-3  
             facts 221-2  
         parties' written submissions confirmed at oral hearing  
             applicants 231-2  
             respondent 232-3  
         Public Hearing/follow-up 230-1  
         timetable 229-30  
     procedural history (national level) 223-6
- Zongo (merits)**  
     alleged violation of ACHPR 1 (obligation to recognize Charter rights and adopt implementing legislation/measures) 261-3  
     Court's analysis and decision  
         direct link to alleged violation of ACHPR 7 requirement 262  
         legislative measures 262-3  
         measures other than legislative measures 263  
     parties' arguments (applicants) 261-2  
     parties' arguments (respondent) 261-2  
     alleged violation of ACHPR 3(1) and ICCPR 14 (equality before the law) 256-7  
     judicial economy with respect to ICCPR 14 257  
     alleged violation of ACHPR 7(1), ICCPR 2(3) and 14, and UDHR 8 (right to have cause heard) 247-55  
         alleged non-appearance of witness 250-1  
         alleged withdrawal of investigating magistrate 250  
         civil party involvement, relevance 251-2  
         "competent national organs" (ACHPR 7(1)(a))/role of Prosecutor 248-9  
         dissenting declaration (Niyungeko, Ouguergouz, Guissé and Aba JJ) 264-6  
         judicial economy with respect to ACHPR 9 and ICCPR 19(2) 261  
         judicial economy with respect to ICCPR 2(3) and 14, and UDHR 8 255  
         prompt investigation and prosecution of alleged offenders requirement 252-5  
         trial within a reasonable time (ACHPR 7(1)(d)) 248  
     alleged violation of ECOWAS 66(2)(c) (respect for the rights of journalists), and ACHPR 9/ICCPR 19(2) (freedom of expression) 258-61, 264-7  
     Court's decision 264
- Zongo (reparations) (ACHPR Protocol 27) 266-94**  
     background  
         ACtHPR proceedings 268-9  
         procedural history 267-8  
     claim for reparation for material prejudice (cost of organizing demonstrations) 283-5  
         Court's decision 284-5  
         parties' arguments 283-5  
     claim for reparation for moral prejudice 274-83  
         causation/causal link requirement (ILC(SR) 31(2)), proof of 280  
         Court's summary of issues in discussion 276

- entitlement of legal entity/MBDHP 282-3
- measure of damages (full reparation/*Chorzów Factory* principle) 281-2
- parties' positions (applicants) 274-5
- parties' positions (respondent) 275-6
- reparation as absolute obligation/exclusion of municipal law as protection against obligation 279-80
- symbolic reparation 282-3
- "victim" 276-9
  - persons qualifying as 278-9
  - victim status, proof (ACHPR Protocol 26(2))/flexibility 279-80
- Court's decision 293-4
  - applicability of *Chorzów Factory* principle 271-2
  - applicability of reparations obligation to any damage whether material or moral (ILC 31(2)) 272-3
  - causation/causal link requirement (ILC(SR) 31(2)) 272
- Court's preliminary observations, "reparation" (ILC(SR) 34) 273
- expenses and costs of applicants 285-9
  - lawyers' fees
    - actually, necessarily and reasonably incurred 264-7
    - Court's analysis and decision 286-8
    - parties' arguments (applicants) 285
    - parties' arguments (respondent) 286
  - transport and subsistence costs (seat of Court) 288-9
- finding of international wrongfulness, sufficiency as reparation for breach of ACHPR 283
- measures to ensure non-repetition, need for/compliance obligation (ACHPR Protocol 30) 291-2
- measures of satisfaction/publication and dissemination of judgment 289-90
- parties' requests
  - applicants 269-70
    - Court's summary of 271
  - respondent 270-1
- reservation to later stage 263-4