

INDEX

Abbreviations used in the index

- AAFES (Army and Air Force Exchange Services)
 ACHPR (African Charter on Human and Peoples' Rights (1981) (Banjul Charter))
 ACHR (American Convention on Human Rights (1969))
 AEK (Akavan Erityisalojen Keskusliitto)
 AIA (Acts Interpretation Act)
 ALRC Report (Australian Law Reform Commission Report on Foreign State Immunity (1984))
 ASVG (Austrian Social Security Act 1955)
 ATC (European Convention on Action against Trafficking in Human Beings (2005))
 ATS (Alien Tort Statute 1789 (28 USC 1350))
 BEinstG (Disabled Persons (Employment) Act) (Austria)
 Brussels Convention (1926) (Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships (1926))
 Bucher Report (Rapporteur Bucher's Report on the IIL/IDI Resolution on universal civil jurisdiction with regard to reparation for international crimes (Tallinn 2015))
 CAT (UN Committee against Torture)
 CCP (Civil/Criminal Procedure Code)
 CFR (Charter of Fundamental Rights)
 CIL (customary international law)
 CJEC (Court of Justice of the European Communities)
 CJEU (Court of Justice of the European Union)
 CoE (Council of Europe/Council of Europe Statute)
 CO/OR (Code of Obligations (Switzerland))
 CPA (Civil Procedure Act)
 DPA (Diplomatic Privileges Act)
 DPRK (Democratic People's Republic of Korea (North Korea))
 ECA (European Communities Act (1972))
 ECHR (European Convention on Human Rights)
 ECJ (European Court of Justice)
 ECSI (European Convention on State Immunity (1972))
 ECtHR (European Court of Human Rights)
 EEX (Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters) (EEX Convention)
 FJA (Australian Foreign Judgments Act 1991 (Cth))
 FSA (Foreign Service Act)
 FSIA (Foreign Sovereign Immunities Act 1976 (US)/Foreign States Immunities Act 1985 (Australia)/Foreign States Immunities Act 1981 (South Africa))
 FTCA (Federal Tort Claims Act)
 GG (Basic Law (FRG))
 GVG (Courts Constitution Act (FRG))
 HRA (Human Rights Act (UK) 1998)
 ICCPR ((International Covenant on Civil and Political Rights (1966))
 ICJ (International Commission of Jurists)

- IHL (international humanitarian law)
 IHRL (international human rights law)
 IIL (Institute of International Law/*Institut de droit international*)
 ILA (International Law Association)
 ILC (International Law Commission/ILC Articles and Draft Articles)
 ILC(CIL) (ILC Draft Conclusions on Identification of Customary International Law (2016))
 ILC(SI) (International Law Commission Draft Articles on State Immunity)
 ILO (International Labour Organization)
 JISP (UN Convention on the Jurisdictional Immunities of States and their Property (2004))
 JR/Judgments Regulation (Judgments Regulation (Council Regulation (EC) No 44/2001))
 LDIP (Federal Law on Private International Law (Switzerland))
 Lugano Convention (Lugano Convention on Jurisdiction and Enforcement of Civil Judgments (1988))
 OMCT (World Organisation against Torture)
 Palermo Protocol/Palermo (Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000))
 RC (Convention Relating to the Status of Refugees (1951))
 ROC (Rules of Court)
 ROP (Rules of Procedure)
 SIA (State Immunity Act)
 SOFA (NATO Status of Forces Agreement) (1951)
 TDC (Truth and Dignity Commission (Switzerland))
 TEC (Treaty establishing the European Community)
 TFEU (Lisbon Treaty on the Functioning of the European Union (2007))
 TULRCA (Trade Union and Labour Relations (Consolidation) Act 1992)
 TVPA (Torture Victim Protection Act 1991; Trafficking Victims Protection Act 2000)
 UAE (United Arab Emirates)
 UDHR (Universal Declaration of Human Rights (1948))
 UNC (United Nations Charter (1945))
 UNCAT (UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984))
 UNGA (United Nations General Assembly)
 UNGA Resolution 60/147 (UNGA Resolution 60/147 on 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 (16 December 2005))
 VCCR (Vienna Convention on Consular Relations (1963))
 VCDR (Vienna Convention on Diplomatic Relations (1961))
 VCLT (Vienna Convention on the Law of Treaties (1969))
 ZPO (Civil Procedure Code)
 ZPP (Civil Procedure Law (Montenegro))
ZustG (Service of Documents Act (Austria))
- A v. Republic of B (employment contracts: State immunity)**
 affirmation of Court of Appeal's decision (entitlement to immunity) 439
 Appeal Committee's decision

- acts in the exercise of governmental authority [JISP 11] 439
- applicability of customary international law in absence of a treaty (CPA 36a) 437-8
- costs (CPA 180(1)) 439-40
- CPA 25/Lugano Convention 5, relevance 437
- FSA 20(3) (embassy administrative personnel/locally engaged staff: legal venue) 438-9
- reinstatement, applicability of immunity 438-9
- restrictive theory as developing concept 437-8
- background
 - District Court/Court of Appeal proceedings 435
 - facts 435
 - parties' arguments (A)
 - applicability of customary international law (FSA *travaux préparatoires*) 436
 - choice of forum (CPA 25/Lugano Convention 5) 435-6
 - difficulty of bringing case in the Republic of B 436
 - parties' arguments (Republic of B)
 - applicability of CPA 25/CPA 36a/Lugano Convention 5 436
 - applicability of customary international law (FSA *travaux préparatoires*) 436-7
 - parties' claims (A), costs including default interest 436
 - parties' claims (Republic of B)
 - costs including default interest 437
 - dismissal of appeal 437
- Abusabib* (employment contracts: diplomatic immunity) (England, Employment Appeal Tribunal)**
 - Court's discussion/decision (applicability of VCDR 39(2) to acts of domestic staff) 450-3
 - parties' arguments (claimant), acts in respect of domestic staff, applicability to 450
 - parties' arguments (respondent)
 - acceptance that immunity did not extend to wife of claimant under VCDR 37/VCDR 39 448
 - "acts performed . . . in the exercise of his functions as a member of the mission" (VCDR 39(2)) 448
 - acts in respect of domestic staff, applicability to 448
 - termination of mission/residual immunity (VCDR 39(2)) 447-50
 - waiver, absence of 447-8
 - procedural history
 - appeal against decision on claim
 - grounds (diplomatic immunity) (DPA 2/VCDR 1, VCDR 31 and VCDR 37) 444-5
 - hearing arrangements 444
 - parties' movements 445
 - parties' status 445
 - Employment Judge
 - appeal/re-appeal on review decision, rejection on grounds of timeliness 444
 - decision 444
 - London Central Employment Tribunal (claim) 443
 - Regional Employment Judge (service of process) 443
 - absence of appeal 444
 - relevant law
 - DPA 2(1) (application of VCDR: "shall have the force of law") 446
 - VCDR 3 (diplomatic functions) 447
 - VCDR 31 (immunity of diplomatic agent subject to exceptions) 446
 - VCDR 32 (waiver of immunity) 447

***Abusabib* (employment contracts: diplomatic immunity) (England, Employment Appeal Tribunal) (cont.)**

VCDR 37 (entitlement of family members to VCDR 29 and VCDR 26 protections) 446

VCDR 39 (duration of immunity/residual immunity) 446-7

immunity as result of posting in another country, relevance 447

**access to the courts/effective remedy in case of act of State/State immunity/
 international organization immunity (including ECHR 6(1), ICCPR
 14 and UDHR 8), jurisprudence 21-2**

Note: Many of the cases listed here include the formula “any relevant rules of international law applicable in the relations between the parties” [including those relating to State immunity] (VCLT 31(3)(c)). Where a case has its own index entry (now standard ILR practice), this will indicate in more detail where this and other principles are discussed.

Al-Adsani 46, 105-6, 595-6, 642-3, 651-2

Benkharbouche: see *Benkharbouche*

Cudak 604, 644-7: see also *Cudak* (access to a court (ECHR 6(1)/State immunity))

Fogarty 596, 601-2, 651-2

Golder 266-7, 592-3

Holland v. Lampen-Wolfe 593-5

Jones (Saudi Arabia cases) 641-2

McElbinney 596, 599, 643

Nait-Liman: see *Nait-Liman* (access to a court (ECHR 6(1)/State immunity))

Naku: see *Naku* (access to a court (ECHR 6(1)/State immunity)/trade union activities (ECHR 11))

Neulinger and Shuruk 266-7

Oleynikov 596, 603-4: see also *Oleynikov* (access to a court (ECHR 6(1)/State immunity))

Radunović: see *Radunović* (access to a court (ECHR 6(1)/State immunity))

Sabeh El Leil 46, 105-6, 596, 602-3, 647, 651-2: see also *Sabeh El Leil* (access to a court (ECHR 6(1)/State immunity))

Wallishauser (No 1) 596, 603-4: see also *Wallishauser (No 1)* (access to a court (ECHR 6(1)/State immunity))

admissibility (ECtHR)

complaint against non-party to ECHR 104, 110

“genuine and serious” dispute 104, 251

jurisprudence

Cudak 16-18

Nait-Liman 250-2

Sabeh El Leil 42-4

Wallishauser (No 1) 72-3

Alien Tort Statute 1789 (28 USC 1350) (ATS) (federal jurisdiction in cases of suit by alien for tort in violation of international law or treaty), jurisprudence

Filartiga 242

Kiobel 269

Arab Charter on Human Rights (2004), trafficking in human persons 570

Australia

Acts Interpretation Act 1901 (AIA) by section, 15AA (interpretation best achieving Act’s purpose or object) 362-3

Foreign Judgments Act 1991 (Cth) (FJA) by section

Part 2 (Reciprocal enforcement of judgments)

6(1) (application to register foreign judgment) 350

6(1) (application for registration) 355, 383-4

- 6(1) (application for registration), compatibility with FSIA 36 365-7
- 6(3) (registration order) 350
- 6(4) (deadline for s. 7 registration application) 350, 384, 401-2
- 6(6) (application for registration: reasons for refusal) 384
- 6(7) (effect of registered judgment) 351, 355
- 7 (application for and effects of registration) 384
- 7(1) (application to set aside registration) 351
- 7(2) (jurisdiction of foreign courts) 401-2
- 7(2)(a)(iv) (application to set aside registration: grounds: original court's lack of jurisdiction) 351
- 7(4)(c) (immunity of foreign State under international law) 397
- 12(1) (recognition of judgment as conclusive between the parties) 350
- Part 3 (Miscellaneous), 17(1) (rules of court necessary to give effect to FJA) 350, 384
- legislation, interpretation
 - conformity with international obligations including customary international law 355-6
 - FSIA and 365, 376-7
 - implied repeal, requirements 366-7, 398-400
 - same language in same statute, need for consistency 393-4
- recognition/enforcement of foreign judgment (including State immunity considerations)
 - registration of foreign judgment, judicial nature 354-6
 - registration of judgment, jurisprudence
 - BP Exploration* 354-5, 367, 401-2
 - TCL Air Conditioner (Zhongshan)* 354
 - Totani* 354
- State immunity: *see also* FSIA 1985 (Australia)
 - Garuda* 353
- Austria (1955- (Second Republic))**
 - Civil Procedure Code (*ZPO*) (Amended) 1983 by section
 - 116 (service on court-appointed representative (*curator*)) 60-3
 - text 64-5
 - 121 (service outside the jurisdiction), text 64-5
 - 121(2) (service by means of publication) 60-3: *see also Wallishauser (No 1)* (access to a court (ECHR 6(1)/State immunity))
 - employment contracts (locally engaged staff in diplomatic mission), reciprocity requirement 621
 - forum of necessity 244-5
 - Service of Documents Act (*ZustG*) by section, 11 (exceptions) (text) 64
 - service of process on foreign State or State agency
 - diplomatic channels as only method (*ZustG* 11(2)) 62-3
 - refusal to accept service and refusal to provide legal assistance distinguished 60-2, 65-6
 - Social Security Act 1955 (*ASVG*): *see Wallishauser (No 2)* (employment contract obligations/State immunity)
- Belgium**
 - Criminal Procedure Code by article, 12 *bis* (2001 amendment) (treaty-based jurisdiction over offences outside Belgium) 243-4
 - forum of necessity 244-5
 - universal jurisdiction 243-4
- Benkharbouche**: *see Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (background); *Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (Court of Appeal); *Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (Supreme Court)

***Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (background)**

- issue (consistency of SIA 4(2)(b) and SIA 16(1)(a) with ECHR and CFR) 632-3
- procedural history
 - Court of Appeal proceedings 634
 - Employment Appeal Tribunal proceedings (*Benkharbouche/Janah*) (joinder of cases) 589, 634
 - Employment Tribunal proceedings
 - Benkharbouche* 587-8
 - Janah* 588
- parties' status/entitlement of defendant State to immunity
 - Benkharbouche* (SIA 16(1)/SIA 4(1) exception to immunity) 592
 - Janah* (SIA 16(1)/SIA 4(2) exclusion from SIA 4(1) exception) 592, 633-4
- Supreme Court proceedings (participants) 634
- relevant UK law
 - DPA/VCDR 1 (definitions) 592, 637
 - SIA
 - Brussels Convention (1926)/EC SI and 635-6
 - common law developments prior to 635-6
 - text (extracts) 589-91, 636-7

***Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (Court of Appeal)**

- background: *see Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (background)
- CFR 47(1) (effective remedy/fair trial) 627-31
 - acts in implementation of EU law, limitation to (CFR 52(5)/horizontal direct effect) 628-31
 - as general principle of EU law 630-1
 - identity with ECHR 6(1)/finding of violation 627-8
- ECHR 6(1), applicability/justified restrictions 592-600
 - existence of jurisdiction as prerequisite/preliminary question 593-7
 - ECtHR/UK jurisprudence distinguished 596-7, 648
 - ILC(SI) 11/JISP 11, whether authoritative statement of the law 600-4
 - third parties (VCLT 34) and 603-4
 - margin of appreciation 599-600
 - "proportionate to the legitimate aim" requirement 597-600
 - measures in accordance with generally recognized principles of international law 597-600
 - promotion of comity and justice 597
- ECHR 6(1), applicability/justified restrictions, jurisprudence
 - Al-Adsani* 595-7, 599
 - Arrest Warrant Case* 599
 - Cudak* 597, 601-2, 604
 - Fogarty* 596-7, 599-602
 - Golder* 592-3
 - Holland v. Lampen-Wolfe* 593-4, 599
 - Jones* (Saudi Arabia cases) 594-5, 597-600
 - McElhinney* 596, 599
 - Oleynikov* 596-7, 603-4
 - Sabeh El Leil* 596-7, 602-3
 - Wallishauser (No 1)* 596-7, 603-4
- remedies (disapplication of SIA 4(2)(b) and SIA 16(1)(a) on grounds of incompatibility with EU law right) (*Chester*) 631

- remedies (violation of ECHR), declaration of incompatibility 626-7
- SIA 4(2)(b) (employment contract: employee neither a national nor habitual resident of the UK) 619-26: *see also* employment contracts between a State and an individual for work in third State, exclusion of immunity (ECSI 5); employment contracts between a State and an individual for work in third State, exclusion of immunity (ILC(SI) 11)
 - Court's conclusion 626
 - discriminatory nature/legitimate purpose 624-6
 - enforcement of employment law, whether 624-5
 - non-discrimination as general principle of international law 624
 - ECSI 5(2)(b) and 620-1
 - ILC(SI) 11(2)(c) and 621-6
 - State practice 620
- SIA 16(1)(a) immunity/compatibility with/requirement of international law 604-19
 - Court's conclusion 619
 - JISP 3(1)(b) ("persons connected with them") 611-12
 - JISP 11(2)(b)(iv) ("any other person enjoying diplomatic immunity") 609-10
 - applicability to administrative and technical staff (VCDR 37(3)) 610-11
 - VCDR 38(2)/VCCR 71 (avoidance of undue interference with functions) and 612
 - relevant treaty provisions
 - ECSI 5 (employment contract exception) 606-8
 - ECSI 32 (immunities relating to the exercise of diplomatic and consular functions) 607-8
 - Senguptal/Sengupta* guidelines 605-6
 - "service staff" (VCDR 1(c)) 604-5
 - State practice 612-19
 - diversity of practice/alternative models 612-13, 616-17
 - legislative practice 615-16
 - UK as exception 616-17
 - VCDR 7 ("may freely appoint") 608-9
- Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (Supreme Court)**
 - CFR 47(1) (effective remedy/fair trial), identity with ECHR 6(1)/finding of violation 677
 - Court's conclusions
 - alleged violation of ECHR 14 (non-discrimination) 676-7
 - compatibility of SIA 4(2)(b) and SIA 16(1)(a) with ECHR 6 676-7
 - customary international law
 - JISP 11/ILC(SI) 11 as authoritative statement of 646-50
 - requirements 649-50
 - treaties reflecting, applicability to third parties/non-signatories 649-50
 - ECHR 6(1) (access to a court)
 - access to court as integral part of right to fair trial/"not absolute" 638-9
 - judicial procedures vs substantive law as object of provision 639-40, 648
 - employment contracts, immunity
 - dependence on classification of employment as *jure imperii* 664-7
 - ECtHR/CJEU jurisprudence 665-6
 - VCDR categorization of staff as guide 664-5
 - JISP 11(2) exceptions 666
 - territorial connections of employee (nationality/residence) 667
 - SIA 4(2)(b) (employment contract: employee neither a national nor habitual resident of the UK) 668-71
 - absence of clear customary international law rule (JISP 11(2)(b) *travaux préparatoires*) 668-9

***Benkharbouche* (access to a court (ECHR 6(1)/CFR 47(1)): State immunity) (Supreme Court) (cont.)**

- Court's conclusion 671
- territorial principle vs *jure imperii/jure gestionis* distinction 669-71
- SIA 16(1)(a) immunity/compatibility with/requirement of international law 671-6
 - Court's conclusion 676
 - JISP 11(2)(b)(iv) ("any other person enjoying diplomatic immunity") 672-6
 - travaux préparatoires* 673-4
 - jurisprudence
 - A v. B* 674-6
 - Canadian Embassy Case (Burke)* 674-6
 - Heusala* 674-6
 - Senguptal Sengupta* guidelines 674-6
 - VCDR 7 ("may freely appoint") 672
- State immunity
 - "any relevant rules of international law applicable in the relations between the parties"/immunity (VCLT 31(3)(c)), applicability 642-8
 - "current international standards", sufficiency in absence of customary international law rule 650-3
 - "any relevant rules of international law applicable in the relations between the parties"/immunity (VCLT 31(3)(c)), applicability, jurisprudence
 - Al-Adsani* 642-3, 651-2
 - Cudak* 644-7
 - Fogarty* 643-4, 651-2
 - Sabeh El Leil* 647, 651-2
 - Waite and Kennedy* 642
 - development of doctrine/review of the jurisprudence 655-64
 - existence of jurisdiction as prerequisite/preliminary question 641-2, 648
 - ILC(SI) 11 (employment contracts), authoritative statement of the law, whether 646-8
 - immunity as procedural bar and liability distinguished 641
 - immunity subject to exceptions (absolute theory) vs immunity only if specific provision for (restrictive theory) 653-64
 - SIA 5/JISP 5 approach 653-6
 - par in parem non habet jurisdictionem* basis 640-1
 - diplomatic immunity distinguished 640-1, 655-6

Canada

- forum of necessity 244-5
- universal jurisdiction (limitation to terrorist offences) 241-2
- consular immunity from jurisdiction (VCCR 43)**, exceptions (contract which "he did not contract expressly or impliedly as an agent of the sending State") 420-1
- consular privileges and immunities**, duration (VCCR 53) 420
- Cudak* (access to a court (ECHR 6(1)/State immunity))**
 - admissibility (failure to exhaust local remedies (ECHR 35(1))/possibility of proceedings in Polish courts)
 - Court's decision
 - effectiveness (*ut res magis valeat quam pereat*) principle 15-16
 - limitation of ECHR 35(1) to remedies in respondent State 15
 - Lithuania's position 15
 - Lithuanian law as applicable law for dispute settlement, effect 15-16

- alleged violation of ECHR 6(1) (right of access to a court) (admissibility) 16-18
 - Court's decision
 - "civil dispute" 17-18
 - civil servants' entitlement (*Vilho Eskelinen*) 16-18
 - express exclusion of a category [in State's interests] 17
 - parties' positions (applicant) 17
 - parties' positions (Lithuania) 16-17
- alleged violation of ECHR 6(1) (right of access to a court) (compliance)
 - Court's assessment (interpretation of ECHR, principles)
 - accordance with VCLT 31(3)(c) (any relevant rules of international law applicable between the parties) 20
 - effectiveness (*ut res magis valeat quam pereat*) 21
 - as human rights treaty 20
 - Court's assessment (justified restrictions)
 - applicability of ILC(SI) 11 exceptions to removal of immunity 22-3
 - application to *Cudak* 21-4
 - erosion of absolute State immunity (ILC/CIL) 22-3
 - Fogarty* distinguished 21-2
 - immunity as inherent restriction 20
 - JISP 11 as customary international law 22-3
 - JISP 11(2)(a) ("exercise of governmental authority") 23
 - JISP 11(2)(d) ("security interests") 14, 24
 - limitation of immunity to staff engaged in *jure imperii* functions 23-4
 - margin of appreciation 20, 24
 - nature of functions of employee as test 23-4
 - promotion of comity and justice as legitimate aim 21
 - "proportionate to the legitimate aim" requirement 20, 24
 - as rule of law principle 19-20
 - very essence of right, obligation not to impair 20, 24
 - parties' positions (applicant) 18
 - parties' positions (Lithuania) 18-19
 - background (factual) 6-9
 - applicant's civil claim for unlawful dismissal/Supreme Court's decision 8-9
 - applicant's complaint to Equal Opportunities Ombudsman of sexual harassment 7
 - applicant's sick leave and dismissal 7-8
 - employment contract by article
 - 1 (responsibilities and tasks/scope of duties) 7
 - 6 (compliance with Lithuanian law/liability for failure to fulfil obligations) 7
 - 8 (dispute settlement) 7
 - Schedule, Art. 1 (duties) 7
 - concurring opinion (Cabral Barreto J joined by Popović J), treaties reflecting customary international law as source of non-signatory State's obligations 22-3, 27
 - concurring opinion (Malinverni J joined by Casadevall, Cabral Barreto, Zagrebelsky and Popović JJ)
 - just satisfaction (ECHR 41) (retrial or reopening of the case as preferred option) 27-9
 - just satisfaction (ECHR 41) (supervision of compliance (ECHR 46(2))) 28
 - operative provisions, importance of repeating key points from judgment 28
 - Court's decision 26
 - just satisfaction (ECHR 41)
 - compensation as preferred option 25
 - costs and expenses (dismissal for lack of supporting evidence) 25-6
 - default interest 26

***Cudak* (access to a court (ECHR 6(1)/State immunity)) (cont.)**

- pecuniary/non-pecuniary damages 25
- retrial/reopening of case option 25
- relevant law and practice (domestic)
 - Lithuania Code of Civil Procedure 1964, Art. 479(1) (absolute State immunity) 10-11
 - Supreme Court Decisions
 - Decision of 5 January 1998 (*Stukonis*) 10
 - Decision of 21 December 2000 (“Judicial Practice in the Republic of Lithuania in Applying Rules of Private International Law”) 10-11
 - Decision of 6 April 2007 (*SN v. Swedish Embassy*) 11
- relevant law and practice (international)
 - ECSI 5 (employment contract exception relating to work to be performed in the forum State) 11-12
 - JISP 11 (employment contracts: removal of immunity subject to exceptions) 12-14
 - VCDR 1 (definitions) 14-15

customary international law (formation/requirements)

- constant and uniform practice, “substantial uniformity” 649
- ILC(CIL) Conclusions (2016) 649
- jurisprudence
 - Benkharbouche* 649-50
 - Fisheries Jurisdiction (UK v. Norway)* 649
 - Military and Paramilitary Activities (Nicaragua v. USA)* 649

customary international law (relationship with treaties and other international instruments reflecting)

- applicability of treaty rule to third party/non-signatory 649-50
 - ILC(CIL) Conclusion 11(1) 649-50
- codification of principles of international law not yet in force, application to non-signatories 22-3, 27, 47, 77, 79, 107-8, 133-4, 154-5, 603
- declaratory and constitutive treaties distinguished 649-50

differential treatment, justification/requirements (ACHR 30/CFR 1 and CFR 20 and CFR 21/ECHR 14/ICCPR 26/UDHR 1 and UDHR 2)

- James* 639-40
- legitimate aim, enforcement of employment law 624-5
- naturalization, CFR 21(2) (limitation to situations within the scope of EU law) 500-2

diplomatic agent, appointment (including VCDR 7)

- diplomatic immunity, relationship with 608-9, 672
- “may freely appoint”, right of dismissal and 608-9, 672

diplomatic functions/“diplomatic activity” (VCDR 3(1)), academic studies 686

diplomatic immunity from jurisdiction (VCDR 31)

- constitutional violations (USA), applicability to 711
- immunity in sending State, exclusion (VCDR 31(4)) 430-1
- ius cogens* and 560-1, 711-12
- legality of entry into country, relevance 687
- object and purpose 426-7, 429-31, 708-9
- procedural bar to prosecution and liability distinguished 541, 560-1
- reciprocity, relevance 544-5
- seriousness of allegations, relevance/serious violation of the law requirement 427-9
- State immunity and
 - distinction 553-7

- distinction, jurisprudence
 - Baccus* 553-4
 - Benkharbouche* 640-1, 655-6
 - Fogarty/Reyes* 21-2
 - Propend* 553-4
 - Reyes* 553-7
- waiver (VCDR 32)
 - authority of sending State, need for 428-9
 - security considerations 428
- diplomatic immunity from jurisdiction in action relating to professional or commercial activity outside official function (VCDR 31(1)(c))**
 - academic studies 686
 - “commercial activity” (FSIA) distinguished 684-5, 709-10, 719-20
 - “consular activity” (VCCR) distinguished 709-10
 - employment of domestic staff 417-21, 684-6, 708-11
 - trafficking in human persons, whether 539, 559-65, 568-74
- diplomatic immunity from jurisdiction in action relating to professional or commercial activity outside official function (VCDR 31(1)(c)), jurisprudence**
 - Fonseca* 556-7
 - Fun* 723-7
 - Gonzalez Paredes* 553, 565, 680-8, 708-13, 717-19
 - Mohamed X* 421
 - Montuya* 718-20
 - Park v. Shin* 555-6, 665-6
 - Reyes* 547-8
 - Sabbithi* 553, 705-13, 717-19: *see also Sabbithi*
 - Tabion* 450, 552, 565, 574, 681-8, 709-10, 713, 719-20, 724, 727
- diplomatic mission**, “members of the mission” (VCDR 1(b)), “service staff”/domestic staff 604-5
- diplomatic privileges and immunities**
 - entitlement of family members (VCDR 37(1)), limitation of protection to VCDR 29 and VCDR 36 448
 - entitlement of nationals of receiving State (VCDR 38)
 - administrative staff and private servants (VCDR 38(2)) 612
 - diplomatic agents “in respect of official acts performed in the exercise of his functions” (VCDR 38(1)) 448
 - history and development 539-41
 - termination of mission (VCDR 39(2)) (including residual immunity): *see also Abusabib* (employment contracts: diplomatic immunity) (England, Employment Appeal Tribunal)
 - action commenced prior to termination of mission 726-7
 - “acts performed . . . in the exercise of his functions as a member of the mission”, limitation to
 - acts in respect of domestic staff, applicability to 448-53, 565-7, 712-13
 - immunity as result of posting in another country, relevance 447
 - VCDR 38(1) compared 448
 - jurisprudence
 - Abusabib* 446-7, 450-3
 - Baoanon* 451-3
 - De Luca* 451-3
 - Pfarr* 426-7, 430-1

diplomatic privileges and immunities (*cont.*)

- Reyes* 539, 566-7
- Sabbithi* 712-13
- Swarna* 451-3
- Tabion* 447-50
- Wokuri v. Kassam* 448-53

diplomatic status, evidence of/requirements

- executive certificate/statement 725-6
- forum State embassy 724
- sending State's views, conclusiveness 684

ECHR (1950), interpretation

- “any relevant rules of international law applicable in the relations between the parties” [including those relating to State immunity] (VCLT 31(3)(c)), applicability 20, 266-7
- “current international standards”, sufficiency in absence of customary international law rule 599-600, 643-4, 650-3
- general principles of international law 20
- jurisprudence
 - Al-Adsani* 46, 105-6, 651-2
 - Benkharbouche* 642-8
 - Cudak* 20, 46, 105-6, 644-7
 - Fayed* 21, 46
 - Fogarty* 20, 46, 105-6, 153, 600-1, 643-4, 651-2
 - Kalogeropoulou* 46
 - Loizidou* 46
 - Magyar Helsinki Bizottság* 266-7
 - Nada* 266-7, 651-2
 - Naït-Liman* 266-7
 - Oleynikov* 105-6
 - Perinçek* 651-2
 - Radunović* 153
 - Sabeh El Leil* 46, 105-6, 647, 651-2
 - Wallishauser (No 1)* 105-6, 604
- human rights treaty status and, jurisprudence
 - Cudak* 20, 46, 105-6
 - Fogarty* 20, 46, 105-6, 153
 - Loizidou* 46
 - Naït-Liman* 266-7
 - Oleynikov* 105-6
 - Radunović* 153
 - Sabeh El Leil* 46, 105-6, 153
- object and purpose/spirit and purpose (teleological approach) (VCLT 31(1))
 - effectiveness (*ut res magis valeat quam pereat*) (*effet utile*) 15-16, 21
 - effectiveness (*ut res magis valeat quam pereat*) (*effet utile*), jurisprudence
 - Aït-Mouhoub* 46-7, 106, 153-4
 - Fayed* 46-7, 106, 153-4
 - Naku* 192-3
 - Oleynikov* 106
 - Radunović* 153-4
 - Sabeh El Leil* 46-7
 - United Communist Party of Turkey* 15-16

subsequent changes, need to reflect (“living-tree” principle) (VCLT 31(3)(c)),
 “European consensus” 266-7

ECtHR

individual applications (“victim” (ECHR 34 [25(1)]))
 prejudice/damage/significant disadvantage, relevance 128
Wallishauser (No 2) 127-9
 judgments, binding force and execution (ECHR 46 [53 and 54])
 choice of means, Court’s indication of appropriate measures 28
 Committee of Ministers’ supervisory responsibility (ECHR 46(2)) 28
 Court’s supervisory powers 28
Cudak 28
 indication of specific measures by court, desirability 209
 jurisdiction/role and powers (including ECHR 19 and ECHR 32)
 interpretation of municipal law/determination of compliance with ECHR, exclusion/
 as matter for national authorities 132, 253, 274
 municipal courts and, primacy of municipal courts’ role in determining compliance
 with Convention/subsidiarity principle 253

Rules of Court (1998 *et seq.*)

24 (composition of Chamber) 6, 33-4
 29(1) (ad hoc judges) 6
 52(1) (allocation of cases) 33-4
 59(1) (individual applications: parties’ observations) 34
 59(3) (individual applications: public hearing) 6
 72 (relinquishment to Grand Chamber) 5-6, 33-4
 74(2) (separate opinions) 26

Rules of Court (2014)

42(1) (joinder of applications) 150
 59(3) (individual applications: public hearing) 215
 74(2) (separate opinions) 277

Rules of Court (2016)

24 (composition of the Grand Chamber) 214
 44(3)(a) (third-party intervention: participation in written/oral hearing) 214-15
 52(1) (allocation of cases) 214
 59(1) (individual applications: parties’ observations) 214
 71(1) (applicability of provisions governing chambers to the Grand Chamber) 214
 74(2) (separate opinions) 202

effective remedy before national authority

ECHR 13 (effective remedy)/ECHR 6 (fair trial), interrelationship 41-2
 need for (CFR 47(1))
 acts in implementation of EU law, limitation to (CFR 52(5))/horizontal direct effect
 628-31
Benkharbouche 627-31
 breach of ECHR rights as breach of EU rights 627-8
 as general principle of EU law 630-1
 need for (ECHR 13)
 applicable law issues 192-3, 209-10
 “effective remedy”, jurisprudence
Akdivar 41-2
Cardot 41-2
Cudak 15-16
Handyside 41-2
Naku 192-3

effective remedy before national authority (*cont.*)

Selmouni 41-2

United Communist Party of Turkey 192-3

need for/examples (ICCPR 2(3)), UNGA resolutions, 60/147 (remedies for victims of violations of human rights and humanitarian law) 233-5

***El-Hadad* (State immunity (FSIA 1605(a)(2)) (commercial activity exception))**

applicability of FSIA 1605(a)(2) (“based upon”) 693-4

background

claimant’s career

1976-95 691

1995 dismissal 691-2

1996-present (failure to find new employment) 692

District Court proceedings 692

civil servant status as determining factor 690-1, 693-9

burden of proof 696, 699

Court’s conclusion 690-1, 699

jurisprudence/diversity of approach

Crum 693-4

El-Hadad II 693-6

Holden 693-4

Janini 693-4

Kato 693-4

relevant principles (*El-Hadad II*) 696

nationality of claimant, relevance 696, 698

nature of claimant’s employment relationship 695-7

nature of claimant’s employment relationship in the UAE/US 696-7

nature of claimant’s work 696-8

UAE’s definition/absence of concept 695-6

damages, part reversal of District Court’s judgment for failure to discount future lost earnings to present value 701-2

development of restrictive theory of State immunity/FSIA 1605 exceptions 693

employment contracts: *see* employment contracts between a State and an individual for work in third State, exclusion of immunity (ECSI 5); employment contracts between a State and an individual for work in third State, exclusion of immunity (ILC(SI) 11); employment contracts between a State and an individual for work in third State, exclusion of immunity (JISP 11); employment contracts (locally engaged staff in diplomatic or consular mission), jurisprudence; employment contracts (locally engaged staff in diplomatic mission); employment contracts (locally engaged staff, military/naval base), State immunity from jurisdiction (SIA 16(2))

employment contracts between a State and an individual for work in third State, exclusion of immunity (ECSI 5)

exceptions (ECSI 5(2))

ECSI 5(2)(a) (employee as national of employing State at time of institution of proceedings) 625-6

ECSI 5(2)(b) (national/habitual resident of forum State) 620-1

binding principle of international law, whether 669-71

reciprocity requirement 621

State practice 620-1

territorial principle vs *jure imperii/jure gestionis* distinction 669-71

justification for different approach to employment contracts 620

X v. Saudi Arabia 670-1

employment contracts between a State and an individual for work in third State, exclusion of immunity (ILC(SI) 11) 22-3, 38-9, 69

- authoritative statement of the law, whether 600-4, 646-8
- discretionary power of States (appointment and dismissal) (ILC(SI) 11(2)(b)) 38-9
- national/habitual resident of forum State (ILC(SI) 11(2)(c)) 619-26
 - justification for (ILC Commentary) 622-3
 - UNGA Ad Hoc Committee on JISP/deletion of ILC(SI) 11(2)(c) 624
 - UNGA Sixth Committee Working Group discussion 623-4

employment contracts between a State and an individual for work in third State, exclusion of immunity (JISP 11)

- conflict with JISP 3(1) (“privileges and immunities not affected by the present Convention”) 611-12
- as customary international law 13, 22-3, 47, 48, 77, 79, 107-8, 133-4, 154-5
 - authoritative statement of the law, whether 600-4, 610-11, 649-50
- exceptions (JISP 11(2)) 155-6
 - as exhaustive list 47, 48, 81, 154-5, 194, 666
 - ILC commentary 67-71
 - JISP 11(2)(a) (“exercise of governmental authority”) 23, 39-40, 48-9, 155, 195-6, 202-5, 439
 - classification as 174-5, 196
 - JISP 11(2)(b)(iv) (“any other person enjoying diplomatic immunity”) 609-10, 672-6
 - JISP 11(2)(c) (recruitment, renewal of employment or reinstatement), reinstatement 438-9
 - JISP 11(2)(d) (“security interests”) 14, 24, 48-9, 156, 194
 - JISP 11(2)(e) (employee as national of employing State at time of institution of proceedings) 155, 621-6, 667
 - JISP 11(2)(f) (agreement conferring exclusive jurisdiction on forum State courts) 156

employment contracts (locally engaged staff in diplomatic or consular mission), jurisprudence: *see also* diplomatic immunity from jurisdiction in action relating to professional or commercial activity outside official function (VCDR 31(1)(c)), jurisprudence

- A v. B* 614, 670-1, 674-6
- Barrandon* 665-6
- Benkharbouche* 470-1, 500, 606-8, 619-26: *see also* *Benkharbouche*
- British Embassy Driver Case* 616
- Canada Labour Code* 468-9, 555-6, 572, 665-6
- Canadian Embassy Case (Burke)* 613-14, 674-6
- Coco* 665-6
- Conrades* 614
- Cudak* 11-12, 601-2, 604, 665-6: *see also* *Cudak* (access to a court (ECHR 6(1)/State immunity))
- De Queiroz* 621, 670-1
- De Vianna Dos Campos Riscado* 614-15
- El-Hadad* 555-6, 615, 665-6
- Emilio BM* 615-16
- Fogarty* 21-2, 600-2
- French Consular Employee Claim* 621, 670-1
- Fun:* *see* *Fun* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)
- Gonzalez Paredes:* *see* *Gonzalez Paredes* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)

employment contracts (locally engaged staff in diplomatic or consular mission), jurisprudence (*cont.*)

- Heusala* 614, 674-6
Holden 665-6, 693-4
Kenyan Embassy Case 613-14
M v. Egypt 607-8, 615-16, 670-1
Mahamdia (CJEU) 617-19, 665-6, 677
Mahamdia (German courts) 607-8, 612-14, 616
MK 607-8
Montuya: *see Montuya* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)
Morocco v. HA 670-1
Muller 614, 670-1
Nait-Liman: *see Nait-Liman* (access to a court (ECHR 6(1)/State immunity))
Naku 180-1: *see also Naku* (access to a court (ECHR 6(1)/State immunity)/trade union activities (ECHR 11))
Nelson 665-6
Oleynikov 603: *see also Oleynikov* (access to a court (ECHR 6(1)/State immunity))
Park v. Shin 555-6, 665-6
Radunović 665-6: *see also Radunović* (access to a court (ECHR 6(1)/State immunity))
Rousseau 607-8, 616
Sabeh El Leil 77, 596-7, 602-3, 665-6: *see also Sabeh El Leil* (access to a court (ECHR 6(1)/State immunity))
Saignie 616, 665-6
Segni 665-6, 693-4
Seidenschmidt 607-8
Sendanayake 615-16
Sengupta/Sengupta guidelines 605-6, 674-6
Sutton 615, 664-5
Toglia 670-1
Wallishauser (No 1) 66-7, 603-4, 665-6: *see also Wallishauser (No 1)* (access to a court (ECHR 6(1)/State immunity))
Wallishauser (No 2) 123: *see also Wallishauser (No 2)* (employment contract obligations/State immunity)
X v. Argentina 614
X v. Saudi Arabia 670-1

employment contracts (locally engaged staff in diplomatic mission)

- applicable law
 public international law, relevance 427
 customary international law 437
 as civil right (ECHR 6(1)) 17-18
 classification of employment as *jure imperii* or *jure gestionis*
 civil servants (FSIA 1605(2)(a)) 690-1, 693-9
 nature of functions of employee as test 23-4, 664-7
 VCDR categorization of staff as guide 664-5
 diplomatic immunity from jurisdiction (VCDR 31) 680-8
 jurisprudence: *see* employment contracts (locally engaged staff in diplomatic or consular mission), jurisprudence
 State immunity from jurisdiction
 customary international law 13, 22-3
 enforcement difficulties, relevance 24

- limitation to staff engaged in *jure imperii* functions 23-4
 - nationality of employee, relevance 667, 696, 698
 - State practice 612-19
 - diversity/alternative models 612-13, 616-17
 - legislative practice 615-16
- employment contracts (locally engaged staff, military/naval base), State immunity from jurisdiction (SIA 16(2))**; *see also* *Harrington* (employment contracts (locally engaged staff, military/naval base)); NATO Status of Forces Agreement (1951) (SOFA), employment contracts (“local civilian labour”) (SOFA IX(4)); State Immunity Act 1978 (UK) (SIA) by section (Part I (proceedings in the UK by or against other States))
 - Hicks* 465-6
 - restrictive theory 460-4
 - private person test 468
- Estonia (1991-)**, forum of necessity 244-5
- EU Directives**, 98/59/EC (Collective Redundancies) (previously Directive 77/187/EEC): *see Nolan* (State immunity: locally engaged staff at military base)
- EU law, direct effect**
 - horizontal direct effect 628-31
 - Association de médiation sociale* 500-1
 - Küçükdeveci* 500-1, 629-30
 - Mangold* 500-1, 629
 - Nolan* 500-2
- EU law/Member State law**
 - interpretation of national law, responsibility for 522
 - jurisprudence
 - Marleasing* 488-9
 - Risk Management* 488-93
 - Swift v. Robertson* 488-9
 - Teckal* 488-90
 - Vodafone 2* 488-9
 - presumption of consistency between, “without going against the grain” of domestic legislation 488-93
- EU Regulations in date/number order**
 - 4/2009 (Maintenance Regulation), Art. 7 (*forum necessitatis*) 247
 - 650/2012 (Succession Regulation), Art. 11 (*forum necessitatis*) 246-7
 - 1215/2012 (Brussels I-bis) 246
 - 2016/1103 (matrimonial property) 247
- European Charter of Fundamental Rights (CFR) (2000) (horizontal direct effect)**
 - AMS* 630
 - Benkharbouche* 628-31
 - Borelli* 630
 - Heylens* 630
 - Johnston* 630
 - Küçükdeveci* 500-1, 629-30
 - Mangold* 500-1, 629
 - Nolan* 500-2
 - Rugby Football Union* 629
- European citizenship (TFEU 18-25 [TEC 17-22])**
 - jurisprudence
 - Association de médiation sociale* 502
 - Nolan* 500-2

- European citizenship (TFEU 18-25 [TEC 17-22])** (*cont.*)
 nationality, non-discrimination (TFEU 18 [TEC 12])
 limitation to situations within the scope of EU law 500-2
 non-applicability to non-EU Member States 502
- European Convention on State Immunity (and Protocol) (Basle) (1972) (ECSI)**
 customary international law and 181
 employment contracts: *see* employment contracts between a State and an individual for
 work in third State, exclusion of immunity (ECSI 5)
 restrictive immunity/reversal of absolute immunity rule 606-7
 social security, exclusion (ECSI 29) 123, 133-4
- executive certificate/statement, conclusiveness in relation to diplomatic status** 684,
 726
- exhaustion of local remedies (ECHR 35(1) [26/27(3)])**
 failure to exhaust remedies in another State 15-16
 limitation of ECHR 35(1) to remedies in respondent State 15, 192
 purpose, opportunity for State party to rectify situation 41-2
- exhaustion of local remedies (ECHR 35(1)) (including effectiveness of remedy),
 jurisprudence**
Cudak 15-16, 21
Hentrich 41-2
Naku 192-3, 198-9
Remli 41-2
Selmouni 41-2
- fair and public hearing, entitlement “[i]n the determination of civil rights
 and obligations or of any criminal charge by a court of law”
 (ECHR 6(1))**
 access to court as integral part of right to fair trial 19-20, 45, 105, 152-3, 252, 300,
 638-9
 “not absolute”/limitations on 20, 45-6, 105, 153, 252-3, 638-9: *see also* fair and
 public hearing/access to the courts (ECHR 6), justified restrictions/interference,
 requirements (ECHR 6(1))
 “civil rights and obligations”
 autonomy of right 250-1
 debt repayment 104
 dispute/*contestation*, need for 250-1
 employment contracts (locally engaged staff in diplomatic mission) 17-18, 43
 relevant factors
 recognition under domestic law 17-18, 43
 scope and exercise of right 17-18, 43
 right recognized by forum State, need for 251-2
 victim’s right of reparation for violation of IHRL/IHL 251-2
- civil servants, applicability to, jurisprudence
Cudak 16-18
Sabah El Leil 43
Vilho Eskelinen 16-18, 43, 72-3
Wallishausser (No 1) 72-3
- judicial procedures vs substantive law as object of provision 639-40, 648
 as rule of law principle, jurisprudence
Ait-Mouhoub 21, 75-7

- Al-Dulimi* 252
Béleš 19-20, 45, 75-7, 105, 152-3, 252
Cudak 19-20, 75-7
Eşim 252
Golder 19-20, 45, 75-7, 105, 152-3, 252, 592-3, 638-9
Howald Moor 252
Nait-Liman 252
Oleynikov 105
Pfarr 429-31
Prince Hans-Adam II 19-20, 45, 105, 152-3
Radunović 152-3
Sabeh El Leil 45
Waite and Kennedy 75-7
- scope and manner of exercise, relevance 251
- fair and public hearing/access to the courts (ECHR 6), justified restrictions/interference, requirements (ECHR 6(1))**
- balance of interests of individual and community as a whole 430-1
- compliance with international law obligation 651-2
- “legitimate aim”
- diplomatic difficulties, avoidance of 255, 334, 430-1
 - enforcement problems, relevance 254, 332
 - exclusion in State’s interests 17, 43, 72-3
 - forum shopping, avoidance of 254, 332-3
 - immunity as inherent restriction 20, 46, 78-9, 105-6, 153, 531-2
 - judicial overload, avoidance 255, 333
 - measures in accordance with generally recognized principles of international law 20, 46, 531-2, 597-600
 - uncertainty of international law 599
 - problems of collecting and assessing the evidence, relevance 254, 332
 - promotion of comity and good relations 21, 47, 78-9, 106-7, 154, 193-4, 206, 255, 597
 - protection of proper administration of justice/effectiveness of domestic judicial decisions 254-5, 333-4
 - public interest requirement 17
- margin of appreciation 20, 24, 45-6, 105, 153, 252-3, 266, 284-5: *see also* margin of appreciation, jurisprudence
- overview (jurisprudence)
- Ait-Mouboub* 21
 - Al-Dulimi* 252-3
 - Ashingdane* 638-9
 - Baka* 252-3
 - Benkharbouche* 592-3
 - Cudak* 17, 20-4, 45-6, 75-7, 107, 153, 604
 - Fayed* 21, 639
 - Fogarty* 20, 45-6, 639
 - Kalogeropoulou* 20
 - Pfarr* 430-1
- “proportionate to the legitimate aim”, jurisprudence
- Al-Adsani* 47, 597, 599
 - Al-Dulimi* 253
 - Baka* 253
 - Benkharbouche* 531-2, 597-600

**fair and public hearing/access to the courts (ECHR 6), justified restrictions/
 interference, requirements (ECHR 6(1)) (cont.)**

- Cudak* 20, 22-4, 45-8, 75-7, 79-80, 153-4, 597
- Fogarty* 20, 45-6, 597
- Howald Moor* 253
- Jones* (Saudi Arabia cases) 597-9
- Nait-Liman* 253, 266-77, 284-5, 295-6, 299, 318, 335-42
- Naku* 196, 205-6
- Ogelegbanwei* 531-2
- Oleynikov* 105, 107, 109
- Radunović* 153-4, 156-7
- Sabeh El Leil* 45-6, 79-80, 154, 597
- Stagno* 253
- Stanev* 253
- Stubbings* 253
- TP and KM* 20, 45-6
- Waite and Kennedy* 20, 45-6
- Wallisbauser (No 1)* 78-81, 597, 603-4
- Wallisbauser (No 2)* 131-6

very essence of right, obligation not to impair, jurisprudence

- Al-Dulimi* 252-3
- Ashingdane* 299
- Cudak* 20, 24
- Howald Moor* 252-3
- Nait-Liman* 252-3, 256-70, 284-5, 295-6, 299, 335, 342
- Naku* 196, 205-6
- Oleynikov* 105, 109
- Radunović* 153, 156-7
- Sabeh El Leil* 24, 45-6
- Stanev* 252-3
- Wallisbauser (No 1)* 75-7, 81, 117

Firebird (State Immunity) (Australian High Court)

- Court's conclusion and orders 375-6, 415
- issue 1 (immunity from jurisdiction) (FSIA 9 ("jurisdiction . . . in a proceeding")) 351, 353-7, 388
 - cause of action pleadings, whether required 354
 - "jurisdiction" 353, 392
 - State practice 356-7
- issue 2 (proceeding for registration as a commercial transaction (FSIA 11(1))) 351, 357-65
 - "commercial transaction" 359-63
 - "concerns" 359-63, 392-400
 - development of restrictive doctrine 357-8, 385-7
 - FSIA 9 (general immunity), applicability to enforcement of foreign judgment proceedings 362-3
 - conformity with international law obligations 365
 - FSIA 17(2)(a) (enforcement of arbitral award where State has contracted out of FSIA 11(1) commercial transactions exception) 360-1, 394, 397-8
 - "in so far as" 388-9
 - "interpretation best achieving Act's purpose or object" (AIA 15AA) 362-3
 - interrelationship with FSIA 17(2) (enforcement of arbitral awards) 359-62

- jurisprudence considered by the Court
 - Jurisdictional Immunities* 365, 376-7
 - NML Capital* 363-4, 376-7, 389-90, 392
 - SCNSW Appeal Court (Bathurst CJ) 359-60
 - “proceeding”, registration of foreign judgment as 353-7, 362-5, 376-81
 - territorial nexus, relevance 348, 361-2, 394-7
- issue 3 (implied repeal of FSIA 38 by FJA) 351-2, 365-7
 - FJA 7(4)(c), limitation to foreign proceedings 366-7
 - implied repeal, requirements 366-7, 398-400
- issue 4 (compliance with requirements for service (FSIA 23-5 and FSIA 27)) 352, 367-9
 - FSIA 27(1), limitation to judgments in default of appearance 368
 - Gageler J (dissenting) 376-81
 - parties’ arguments (Nauru) 368
 - service prior to registration of judgment, need for/desirability 367, 400-2
- issue 5 (immunity from execution (commercial exception) (FSIA 30/FSIA 32(3))) 352, 369-75
 - Australian, Canadian, UK and US approaches compared 404-5
 - background/jurisprudence 369-70
 - burden/standard of proof 370-2
 - certificate as to use by head of diplomatic mission (FSIA 41) 349, 352-3, 370-4, 403-4, 406, 408-14
 - “commercial” for purposes of jurisdictional and execution distinguished 370, 373
 - “for commercial purposes” 372-5
 - “intended use”, deliberate exclusion 372
 - purpose of accounts
 - airline leasing accounts 406-8
 - fuel accounts 374-5, 409-10
 - loan account 375, 411-12
 - phosphate compensation account 375, 408
 - residual accounts 412-13
 - term deposit account 373-4, 413-14
 - utilities account 410-11
 - “set aside”/“not in use” (FSIA 32(3)(b)) 371-2
 - “in use” (FSIA 32(3)(a)) 371-2
- procedural history
 - issues raised by Nauru 346
 - Nauru’s failure to file application to set aside foreign judgment order in time 346
 - NSWCA order for registration (FJA Pt 2) 346
 - primary Judge/SCNSW proceedings 352-3, 382-3, 391-2
 - Tokyo District Court judgment (“foreign judgment”) 345-6
- relevant law
 - Foreign Judgments Act 1991 (Cth) (FJA) 350-1, 383-5: *see also* Australia, Foreign Judgments Act 1991 (Cth) (FJA) by section
 - FSIA 1985 346-50, 388-9: *see also* FSIA 1985 (Australia)
- separate opinions
 - French CJ and Kiefel J 345-76
 - Gageler J (partly dissenting) 376-81
 - Nettle and Gordon JJ 381-415
- forum of necessity**
 - applicability, examples 245
 - discretion of courts in applying forum of necessity legislative provisions 274-6
 - EU law 274

forum of necessity (*cont.*)

EU Regulations

- 4/2009 (Maintenance Regulation), Art. 7 (*forum necessitatis*) 247
- 650/2012 (Succession Regulation), Art. 11 (*forum necessitatis*) 246-7
- 1215/2012 (Brussels I-bis) 246
- 2016/1103 (matrimonial property), Art. 11 (*forum necessitatis*) 247

forum non conveniens distinguished 246

III//IDI Resolution on universal civil jurisdiction with regard to reparation for international crimes (Tallinn 2015) 238

ILA Resolution 2/2012 (international civil litigation and the interests of the public) 238-9

jurisprudence

Kiobel 242-3

Nait-Liman 244-6, 268, 273-4, 280-1, 338-41

as private international law tool 280-1

requirements

impossibility *de facto* or *de jure* of bringing the dispute before the courts of another State 245, 268, 274, 280-1

nexus/connecting factors 245, 268, 274

State practice/customary international law 244-6, 273-4

treaty practice 273

universal jurisdiction distinguished 268

forum [non] conveniens

forum of necessity distinguished: *see* forum of necessity

Spiliada 246

France

Civil Procedure Code (New) 1975 by article, 455 (judgment: summary of parties' claims and reasons for decision) 35-7, 40

consular immunity from jurisdiction (VCCR 43): *see also* *Mohamed X* (immunity from jurisdiction (VCCR 43))

"acts performed in the exercise of consular functions" (VCCR 43(1)) (contracts concluded "expressly or implicitly as agent of the sending State") 420-1

Criminal Procedure Code 1958 (including amendments up to January 2006) by article, 689-1 (jurisdiction in application of international conventions) 243-4

employment contracts (locally engaged staff in diplomatic mission): *see also* *Sabeh El Leil* (access to a court (ECHR 6(1)/State immunity))

State immunity from jurisdiction, JISP 11(2)(a) ("exercise of governmental authority") 48

forum of necessity 244-5

Judicial Organization Code by article, L131-6 (appeal on points of law) 37

State immunity from jurisdiction, applicability, Court of Cassation jurisprudence 39-40, 48

universal jurisdiction: *see also* Criminal Procedure Code 1958 (including amendments up to January 2006) by article, 689-1 *above*

requirements, nexus 243-4

FSIA 1976 (USA) by section

28 USC 1351 (jurisdiction in suits against members of a diplomatic or consular mission) 682, 707, 716, 721, 723-4

28 USC 1605(a)(2) (commercial activity exception to State immunity): *see also*

El-Hadad

"based upon" 693-4

"civil servant" 690-1, 693-9: *see also* *El-Hadad*

- jurisprudence
 - Nelson* 693
 - Weltover* 693
- FSIA 1976 (USA), purpose (28 USC 1602)**, codification of restrictive immunity doctrine (Tate Letter) 693
- FSIA 1981 (South Africa), s. 5(1)(b) (employment contracts)** 613, 620
- FSIA 1985 (Australia): see also *Firebird*** (State Immunity) (Australian High Court)
 - ALRC Report
 - as aid to interpretation of FSIA 387-8
 - “commercial” for purposes of jurisdiction and execution distinguished 370, 373, 403
 - erosion of absolute immunity 346-7
 - exceptions, recommendations for 347, 358
 - immunity from jurisdiction and execution distinguished 348
 - Canadian, UK and US approaches compared 404-5
 - conformity with international law 365
 - “procedural immunities” 379-80
 - territorial nexus requirement (FSIA 12-16 and FSIA 20) vs FSIA 11(1) 348, 361-2, 394-7
- FSIA 1985 (Australia) by section**
 - 9 (general immunity)
 - cause of action pleadings, whether required 354
 - ex parte* proceedings, applicability to 354-6
 - “except as provided by or under this Act” 347
 - “jurisdiction” 353, 392
 - “proceeding”, registration of foreign judgment, whether 353-7, 362-5, 376-81, 392
 - 11(1) (commercial transactions exception) 347
 - “concerns” 359-63, 392-400
 - territorial nexus, relevance 348, 361-2, 394-7
 - text 347, 388-9
 - 11(3) (“commercial transaction”) 359-63
 - text 347
 - 17 (supervisory jurisdiction over arbitrations exception) 348, 394
 - 17(2) (agreement to arbitrate: recognition/enforcement of arbitration award), interrelationship with FSIA 11(1) (commercial transactions exception) 359-62
 - 17(2)(a) (enforcement of arbitral award where State has contracted out of FSIA 11(1) commercial transactions exception) 360-1, 394, 397-8
 - 21 (proceeding relating to proceedings in ss 10-20) 398-400
 - 23 (service of initiating process by agreement) 349, 368, 378-9
 - 24 (service through the diplomatic channel) 349, 368, 378-9
 - 27(1)(a) (default judgment: service of process) 349, 378-9, 400-2
 - 27(1)(b) (default judgment: Court’s determination of non-immunity) 349
 - 30 (immunity from execution) 403
 - text 348
 - 32 (execution against commercial property), text 348
 - 32(1) (general exception to FSIA 30 in relation to “commercial property”) 403
 - 32(3) (execution against commercial property: “commercial property”) 370-5
 - burden/standard of proof 370-2
 - “for commercial purposes” 372-5
 - text 403
 - 32(3)(a) (execution against commercial property: “in use”) 371-2
 - “intended use”, deliberate exclusion 372

FSIA 1985 (Australia) by section (*cont.*)

32(3)(b) (execution against commercial property: “set aside”/“not in use”) 371-2

38 (power to set aside process) 349-50
 consistency with FJA 6/7(4)(c) 365-7

41 (certificate as to use by head of diplomatic mission) 349, 352-3, 370-4, 403-4, 406, 408-14
 text 349

FSIA 2008 (Israel), s. 4(a)(3) (State immunity: employment contracts exception) 620
***Fun* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)**

background

jurisdiction (28 USC 1351) 721, 723-4

parties' positions (claimant), initiation of proceedings 724

relevant law (VCLT 31(1)(3)/22 USC 254(d)) 725

summary of complaint and Court's conclusion 723

Court's conclusion 727

Court's discussion

“commercial activity” (VCDR 31(1)(c)), applicability to employment of plaintiff 726-7

diplomatic immunity in respect of actions commenced prior to termination of mission (VCDR 39(2)) 726-7

diplomatic status of defendants, evidence of
 executive certificate, conclusiveness 11, 726

letter from US Mission to the UN 724

recognition and certification by State Department 725-6

General Comments (CAT), 3 (implementation of UNCAT 14 by States parties) 230**Germany, Federal Republic (FRG)**

Basic Law (*GG*) (including 2009 amendments) by article

14(1) (property and inheritance: guarantee)

immunity from jurisdiction (*GVG* 18), compatibility 429
 text 423

20(3) (legislature, executive and judiciary: rule of law)

diplomatic immunity (*GVG* 18) 429-31

ECHR obligations and 429-31

100(1) (constitutionality of laws) 431-2

Constitution of the Courts Law (*GVG*), s. 18 (diplomatic immunity) 423

compatibility with *GG* 14(1) (property guarantee) 429

compatibility with *GG* 20(3) (rule of law) 429-31

constitutionality 431-2

diplomatic immunity from jurisdiction (VCDR 31), international human rights law, relevance 427

diplomatic privileges and immunities, duration/termination of mission (VCDR 39(2)) 426-7, 430-1

fair and public hearing, entitlement “[i]n the determination of civil rights and obligations or of any criminal charge by a court of law” (ECHR 6(1)), justified restrictions 430-1

forum of necessity 244-5

***Gonzalez Paredes* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)**

- background
 - jurisdiction (28 USC 1351) 682
 - parties' positions (claimant) 680-1
 - parties' positions (defendant) 681-2
 - relevant law
 - 22 USC 254(d) 682-3
 - VCDR 31(1), VCDR 37 and VCDR 42 682
 - summary of complaint and Court's conclusion 680
- discussion
 - "commercial activity" (VCDR 31(1)(c)), applicability to employment of plaintiff 684-6
 - academic studies, whether 686
 - "commercial activity" (FSIA) distinguished 684-5
 - diplomatic status, views of sending State as persuasive evidence 684-5
 - legality of entry into country, relevance 687
 - treaty interpretation
 - executive's responsibility for/great deference due to 685-6
 - VCLT 31(1) (context/object and purpose) 683

***Harrington* (employment contracts (locally engaged staff, military/naval base))**

- background
 - AAFES, status/USA as proper respondent 456, 467-8
 - claim (discrimination under the Equality Act 2010) 456
 - claimant's duties 466-7
 - claimant's status (SOFA IX(4)) ("local civilian labour") 458, 464-8
 - default judgment (Employment Tribunals ROP 21) 456-7
 - late change of basis of State immunity claims 457
 - service of process (SIA 12) 456-7
- common law position (as adopted by SIA 16(2)) (restrictive theory) 460-4
- jurisprudence
 - I Congreso del Partido* 462-3
 - Holland v. Lampen-Wolfe* 460-1, 463-4
 - Littrell* (2) 461-4
 - Sengupta/Sengupta* guidelines 462-4
 - nature or purpose of transaction as determining factor 461-4
- issue 1 (*Sengupta* guidelines) (*jure imperii* nature of acts of both parties, need for) (private person test) 468
- issue 2 (*Sengupta* guidelines) (*jure imperii* nature of acts of both parties, need for) 468-74
 - acts of complainant (changing nature of concept/"not fixed in stone") 470-2, 474-5
- jurisprudence
 - Benkharbouche* 470-1
 - Canada Labour Code* 468-9
 - Hicks* 469, 473
 - Holland v. Lampen-Wolfe* 469
 - Littrell* 468-9
 - Sengupta* 470
 - USA maintenance of AAFES store 468-9

- Harrington (employment contracts (locally engaged staff, military/naval base))** (*cont.*)
 issue 3 (*Sengupta* guidelines) (nature of breach of contract/act giving rise to the proceedings) 472-3
 issue 4 (*Sengupta* guidelines) (risk of investigation into the public or sovereign acts of the foreign State) 473-4
 Visiting Forces Act 1952, s. 6 (restrictions on UK proceedings) 474-5
 justiciability/judicial restraint considerations 475-6
 SIA 16(2) (acts by or relating to members of visiting armed forces), applicability to acts of AAFES 457-60
 Equality Act 39 discrimination claim as “proceedings relating to a contract of employment” 460
 Holland v. Lampen-Wolfe 458-60
 nature of duties of person[s] responsible for claimant’s contract as key factor in determining applicability of SIA 16(2) 460
 Tribunal’s conclusion 474-5
- head of State immunity from jurisdiction**, *Duke of Brunswick v. King of Hanover* 656-7
- Human Rights Act 1998 (HRA)**, ECHR, relationship with, declaration of incompatibility (HRA 4(2)), *Ogeleghanwei* 529-31
- Human Rights Act 1998 (HRA) by section**
 3(1) (interpretation of legislation: “in a way compatible with the Convention rights”), immunity exception (SIA 4(2)/SIA 16(1)) 626-7
 4(2) (primary legislation: declaration of incompatibility) 532-4
 4(6)(a) (declaration of incompatibility: absence of effect on relevant provision) 532-4
- Institute of International Law/Institut de droit international (IIL/IDI)**
 universal civil jurisdiction with regard to reparation for international crimes (Tallinn 2015)
 Bucher report 237-8, 268
 forum of necessity 238
 text 235-7
- International Law Association (ILA)**, Resolution 2/2012 (international civil litigation and the interests of the public) 238-9
- Ireland, Republic of**, universal jurisdiction (torture and crimes against humanity) 243-4
 civil claims for compensation by victims 243-4
- Italy**, universal jurisdiction (civil claims in cases of torture and crimes against humanity) 240-1
- jurisdiction, definitions/theories of**
Naït-Liman 267
Naït-Liman (Wojtyczek J partly dissenting) 277-97
- Jurisdictional Immunities of States and their Property Convention (2004) (JISP)**
 customary international law and 13, 22-3, 47, 67-8, 77, 79, 107-8, 123, 133-4, 154-5, 609
 continuing applicability to States not party to JISP 107-8
 third parties (VCLT 34) and 603-4
 employment contracts: removal of immunity subject to exceptions (JISP 11): *see* employment contracts between a State and an individual for work in third State, exclusion of immunity (JISP 11)
 immunity from execution and jurisdiction distinguished (JISP 18-21/ILC(SI) 18-19/ILC commentary) 133-4

- privileges and immunities not affected by JISP (JISP 3), “persons connected with them” (JISP 3(1)(b), relationship with JISP 11) 611-12
- ratifications/entry into force 603-4, 638
- travaux préparatoires*: see State immunity (ILC Draft Articles/Reports, 1991/2003); *travaux préparatoires* as supplementary means of interpretation (VCLT 32), in respect of, JISP
- jus cogens*/peremptory norm (VCLT 53) including torture/inhumane treatment (State/head of State/diplomatic immunity considerations)**
- diplomatic immunity from jurisdiction and 711-12
- jurisprudence
- Al-Adsani* 282
 - Jones* (Saudi Arabia cases) 560-1, 711-12
 - Jurisdictional Immunities* 560-1
 - Reyes* 560-1
- just satisfaction obligation (ECHR 41 [50])**
- binding force of ECtHR judgment (ECHR 46) and: see ECtHR, judgments, binding force and execution (ECHR 46 [53 and 54])
 - costs and expenses, “actually, necessarily and reasonably incurred”, evidence of, need for 26, 51
 - instruments of
 - national court’s declaration of incompatibility 626-7
 - retrial/reopening of case option 25, 27-9, 200-1
 - restitutio in integrum* principle 27-8
- legislation, interpretation**
- conformity with international obligations including customary international law, “so far as its language permits” 355-6
 - conformity with international obligations including customary international law, jurisprudence
 - Alcom* 494
 - Assange* 494
 - Firebird* 365, 376-7
 - Nolan* 494-503
 - Salomon* 494
 - effectiveness 307-11
 - “interpretation best achieving Act’s purpose or object” 362-3
 - implied repeal by subsequent inconsistent legislation
 - clear intention of legislature/impossibility of reconciling provisions, need for 366-7, 398-400
 - FSIA (Australia)/FJA 365-7, 398-400
 - multilingual texts 219-22
 - same or similar phrases in same statute, relevance 393-4
- Lithuania (1990-) (Republic of):** see also *Cudak* (access to a court (ECHR 6(1)/State immunity))
- Civil Procedure Code 1964 (in force until 1 January 2003) by section
 - 16 8-9
 - 479(1) (absolute State immunity) 8-11, 22-3
 - Civil Procedure Code 2002 by section
 - 135(1) (statement of claim requirements: factual circumstances) 178-9
 - 135(4) (statement of claim requirements: plaintiff’s claim) 178-9
 - 141(1) (modification of claim: time limits) 178-9

Lithuania (1990-) (Republic of) (cont.)

Constitution 1992 by section, 30 (access to a court in case of breach of fundamental/constitutional rights) 176

Diplomatic Privileges Act 1964 14-15

employment contracts (locally engaged staff in diplomatic mission): *see also* Labour Code 2002 as amended by section *below*; *Cudak*; *Naku*

JISP 11(2)(a) (“exercise of governmental authority”), classification as 174-5, 196

Labour Code 1991 by section

Note: more correctly known as the Law on Employment Contract.

42(3) (impossibility of reinstatement in case of unlawful termination of contract: compensation) 177

Labour Code 2002 as amended by section: *see also* employment contracts (locally engaged staff in diplomatic mission) *above*

35(2) (trade unions) 177-8

131(1) (termination of contract/dismissal during temporary absence for incapacity/leave) 177-8

133(2) (temporary loss of functional capacity due to sickness) 177-8

136(3)(2) (dismissal for gross misconduct) 177-8

140(1)(5) (severance pay) 178

297(3) (unlawful termination of contract: reinstatement and payment of salary) 178

297(4) (impossibility of reinstatement in case of unlawful termination of contract: compensation) 178, 195

State immunity from jurisdiction

absolute immunity (CCP 479)/restrictive immunity (Supreme Court’s position on) 10-11, 22-3, 173-6

ECSI as customary international law 8, 181

Luxembourg, forum of necessity 244-5

margin of appreciation (including ACHR, EC, ECHR, ICCPR and municipal law practice), consensus/common standard and, changing nature of international law/uncertainties as basis for 599-600

margin of appreciation, jurisprudence

Al-Dulimi 252-3

Baka 252-3

Benkharbouche 599-600, 650-3

Cudak 20, 24, 45-6, 75-7, 105, 153

Fogarty 20, 45-6, 105, 599-600

Howald Moor 252-3

Jones (Saudi Arabia cases) 600

Nait-Liman 252-3, 284-5, 294-5

Oleynikov 105

Radunović 153

Sabeh El Leil 45-6

Stanev 252-3

TP and KM 20, 45-6, 105

Waite and Kennedy 20, 45-6, 105

Wallishauser (No 1) 105

Wallishauser (No 2) 132

Yabansu 252-3

Mohamed X (immunity from jurisdiction (VCCR 43))

background (facts relating to employment/termination) 417-18

background (procedural history) 421

- Appeal Court
 - parties' arguments (appellants) 418
 - parties' arguments (public prosecutor) 419
 - parties' arguments (respondent) 418
- Court's discussion, "professional or commercial activity exercised outside his official functions" (VCDR 31(1)(c)) 421
- Employment Tribunal of Béziers 418
- Court's decision (finding of immunity), VCCR 43 (contract "expressly or implicitly as agent of the sending State") 420-1
- Court's discussion
 - nature of relationship, Mohamed X (Bensaïd B) 419
 - VCDR 30, VCDR 31, VCDR 37(1) and VCDR 37(4) 419-20
 - VCCR 53 (duration of privileges) 420
- Montenegro (2006-)**
 - Civil Procedure Law 2004 (*ZPP*)
 - 29 (individuals, States and international organizations enjoying immunity: applicability of international law) 146
 - 367 (breach of civil procedure) 146
 - 415 (binding effect on lower courts of Supreme Court decision quashing decision on points of law) 146
 - Constitution 2007 by article
 - 32 (fair trial) 145
 - 149 (Constitutional Court: human rights appeal) 145
 - Constitutional Court Act 2008 by article
 - 48-59 (constitutional appeals) 145
 - 56 (human rights appeal: action in case of finding of violation) 145
 - Constitutional Court Act 2015 by article
 - 38 (human rights appeal: deadline for court's decision) 145-6
 - 68 (constitutional appeals: scope) 145-6
 - 69 (human rights appeal: timing) 145-6
 - 76 (human rights appeal: action in case of finding of violation) 145-6
 - Courts Act by section, 16(1)(3) (employment contracts, jurisdiction: Court of First Instance) 147
 - fair trial, right to: *see Radunović* (access to a court (ECHR 6(1)/State immunity))
 - Labour Law 2010, s. 2(1) (applicability to employees working for employers operating in Montenegro) 146
 - Obligations Act 2008, provisions relating to compensation for pecuniary/non-pecuniary damage 147
 - Private International Law Act 1982 by section
 - 20(19) (employment contracts: law of State in which work performed as applicable law) 147
 - 35 (forum State jurisdiction, residence/seat in Montenegro requirement) 147
 - 47 (jurisdiction: express legislative provision for) 147
- Montuya (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)**
 - background 721
 - jurisdiction (28 USC 1351) 716
 - parties' position (defendants) 716
 - parties' position (plaintiffs) 716
 - relevant law
 - 22 USC 254(d) 717
 - VCDR 31(1), VCDR 37 and VCDR 42 717

***Montuya* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff) (cont.)**

- Court's conclusion 721
- discussion
 - "commercial activity" (VCDR 31(1)(c)), applicability to employment of plaintiff 718-20
 - "commercial activity" (FSIA) distinguished 719-20
 - diplomatic status, evidence of 717-18

***Nait-Liman* (access to a court (ECHR 6(1)/State immunity))**

- alleged violation of ECHR 6(1) (right of access to a court) (admissibility) 250-2
- autonomy of right 250-1
- "civil rights and obligations" 250-1
- Court's decision 252
- existence of dispute/*contestation* requirement 250-1
- "genuine and serious" dispute 251
- scope and manner of exercise, relevance 251
- alleged violation of ECHR 6(1) (right of access to a court) (Court's analysis of nature and scope of dispute) 247-50
- acts by third State or persons under their jurisdiction, responsibility of forum State 248
- alleged lack of diligence by prosecuting authorities 249
- existence of jurisdiction as prerequisite 248
- TDC proceedings, relevance 223-4
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions), Court's assessment (general principles)
- access to a court as rule of law principle 252
- interpretation of domestic law/compliance with ECHR as matter primarily for domestic courts 253, 274
- interpretation of ECHR
 - in accordance with VCLT 31(3)(c) (any relevant rules of international law applicable between the parties) 266-8
 - "European consensus" 266-7
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions), "legitimate aim"
 - Chamber's judgment 253
 - parties' arguments (applicant) 254
 - very essence of right, obligation not to impair 256-60
 - parties' arguments (Switzerland) 254
 - very essence of right, obligation not to impair 256-60
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions), "legitimate aim" (Court's assessment)
 - enforcement problems, relevance 254
 - forum shopping, avoidance of 254
 - judicial overload, avoidance 255
 - problems of collecting and assessing the evidence, relevance 254
 - protection of proper administration of justice/effectiveness of domestic judicial decisions 254-5
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions) (margin of appreciation)
 - Court's conclusion 276-7

- LDIP* 3 (forum of necessity), acceptability
 - discretion of domestic courts in applying 274-6
 - LDIP* criteria 274
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions),
 - “proportionate to the legitimate aim” requirement
 - Chamber’s judgment 255-6
 - Court’s conclusion 273
 - parties’ arguments
 - applicant 256-60
 - Switzerland 260-3
 - third-party observations
 - Amnesty International/International Commission of Jurists (ICJ) 264-5
 - Citizens’ Watch 266
 - Redress Trust/OMCT 265-6
 - UK 263-4
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions),
 - “proportionate to the legitimate aim” requirement/whether forum of necessity jurisdiction obligatory (Court’s assessment) 273
 - State practice/customary international law 273
 - treaty practice 273
- alleged violation of ECHR 6(1) (right of access to a court) (justified restrictions),
 - “proportionate to the legitimate aim” requirement/whether universal civil jurisdiction obligatory (Court’s assessment) 253, 266-77, 284-5, 295-6, 299
- margin of appreciation 252-3, 266
- universal jurisdiction for civil actions for torture-related damage 267-72
 - civil matters, limited applicability to 267-8
 - forum of necessity distinguished 268
 - joining criminal proceedings as civil party distinguished 269
 - nexus/connecting factors, relevance 268
- universal jurisdiction for civil actions for torture-related damage (customary international law/State practice) 268-70
- universal jurisdiction for civil actions for torture-related damage (non-binding instruments) 271-2
 - Bucher Report 272
 - IIL/IDI Resolution on universal civil jurisdiction 272
- universal jurisdiction for civil actions for torture-related damage (treaty law (RC 16 (access to courts))) 272
- universal jurisdiction for civil actions for torture-related damage (treaty law (UNCAT)) 270-3, 281-2
 - absence of reservations, relevance 271
 - ambiguity of UNCAT 14 267-8, 270
 - Amnesty International/ICJ arguments 270-1
 - CAT General Comment No 3 270
 - CAT jurisprudence 270
 - travaux préparatoires* 271
 - very essence of right, obligation not to impair 250-60
- applicant’s arrest in Italy/transfer to Tunisia and alleged torture 215-16
- asylum in Switzerland 216
- applicant’s civil proceedings against Tunisian Minister of the Interior 217-22
 - Court of First Instance, dismissal
 - forum of necessity/nexus grounds (*LDIP* 3) 217-18
 - for want of territorial jurisdiction (*LDIP* 2 and *LDIP* 129) 217

- Nait-Liman* (access to a court (ECHR 6(1)/State immunity)) (cont.)**
 Court of Justice, dismissal on grounds of State immunity for acts of torture perpetrated in exercise of sovereign authority 218
 Federal Supreme Court
 applicant's arguments 218-19
 forum of necessity/nexus grounds (*LDIP* 3) 219-22, 224-5
 judgment (extracts) 219-22
 applicant's criminal complaint against Tunisian Minister of the Interior/discontinuation of proceedings following failure to arrest 216-17
 Court's decision 277
 procedure 214-15
 Chamber findings/referral to the Grand Chamber 214
 complaint 247
 developments in Tunisia post-January 2011 (Switzerland) 222-4
 relevant law and practice (domestic)
 CO/OR 41 (reparation for an unlawful act) 225
 LDIP 2 (jurisdiction (general): defendant's domicile), text 224-5
 LDIP 3 (jurisdiction: forum of necessity) 224-5
 jurisprudence 226-7
 legislative history 225-6
 LDIP 129 (torts jurisdiction: domicile of respondent/effects doctrine) 224-5
 LDIP 133(2) (torts: applicable law where claimant and respondent reside in different States: *lex loci delicti*/effects doctrine) 224-5
 relevant law and practice (international)
 alleged violation of ECHR 6(1) (right of access to a court) (compliance), (*travaux préparatoires* (omission of limitation to acts committed within its jurisdiction)/US declarations on signature) 229
 III/*IDI* Resolution on universal civil jurisdiction
 Rapporteur's report 237-8
 text 235-7
 ILA Resolution 2/2012 (international civil litigation and the interests of the public) 238-9
 RC 16 (access to courts) 233
 UNCAT 1 ("torture") 227
 UNCAT 5 (jurisdiction) 227-8
 UNCAT 6 (obligation to take into custody) 228
 UNCAT 7 (*aut dedere aut punire* obligation) 228
 UNCAT 14 (civil remedy obligation)
 CAT General Comment 3 on the implementation of UNCAT 14 230
 CAT jurisprudence 55, 230-1
 forum of necessity 238
 writings of publicists 232
 UNGA Resolution 60/147 233-5
 relevant law and practice (State practice/comparative law), Court's analysis 239-46
 EU law 246-7
 forum of necessity: *see also* forum of necessity
 applicability, examples 245
 forum non conveniens distinguished 246
 requirements 245
 State practice 244-5
 universal civil jurisdiction for torture-related damage
 CoE member States 240-1

- joining criminal proceedings as civil party distinguished 243-4
 - non-CoE Member States 241-3
 - universal criminal jurisdiction 243-4
- separate opinion (Dedov J) (dissenting)
 - access to a court (ECHR 6(1), justified restrictions) 295-7
 - margin of appreciation/consensus approach 294-5
 - natural law approach 286-7
 - positive law, disadvantages 292-3
 - “proportionate to the legitimate aim” requirement 295-6
 - very essence of right, obligation not to impair 295-6
- separate opinion (Serghides J) (dissenting) 297-342
 - access to the courts (RC 16) 329
 - effectiveness (*ut res magis valeat quam pereat*) (*effet utile*) principle 307-11
 - Federal Supreme Court’s arbitrary and manifestly unreasonable interpretation of *LDIP* 3 and *LDIP* 129 300-30
 - forum of necessity, definition/requirements 268, 338-41
 - “proportionate to the legitimate aim” requirement 299, 335-42
 - “legitimate aim” 331-5
 - very essence of right, obligation not to impair 299, 312-35, 342
 - “within their jurisdiction” (ECHR 1) 325-8
- separate opinion (Wojtyczek) (partly dissenting)
 - applicability of ECHR 6(1) 282-6
 - forum of necessity 280-2
 - “jurisdiction” 277-97
 - “proportionate to the legitimate aim” requirement 284-5, 318-31
- torture, civil remedy obligation, universal jurisdiction 281-2
 - jus cogens* considerations 282
- very essence of right, obligation not to impair 284-5
- TDC proceedings, relevance 249
- Naku* (access to a court (ECHR 6(1)/State immunity)/trade union activities (ECHR 11))**
 - alleged violation of ECHR 6(1) (right of access to a court)
 - Court’s assessment (justified restrictions), compliance
 - erosion of absolute State immunity (ILC/CIL) 194
 - Fogarty* distinguished 195
 - JISP 11(2) exceptions as exhaustive list 194
 - JISP 11(2)(a) (“exercise of governmental authority”) 195-6
 - JISP 11(2)(d) (“security interests”) 194
 - promotion of comity and good relations 193-4, 206
 - very essence of right, obligation not to impair 196, 205-6
 - Court’s conclusion 196
 - effectiveness (*ut res magis valeat quam pereat*) (*effet utile*) principle 192-3
 - parties’ arguments
 - applicant 190-1
 - Lithuanian Government 187-8
 - Swedish Government 188-90
 - alleged violation of ECHR 6(1) (right of access to a court) (admissibility)
 - complaint against Lithuania
 - effective remedy requirement/applicable law issues 192-3
 - exhaustion of local remedies 192-3
 - joinder of applicability of ECHR 6(1) to merits 193
 - limitation of ECHR 35(1) to remedies in respondent State 192
 - complaint against Sweden (inadmissibility) 192
 - Court’s conclusion 193

***Naku* (access to a court (ECHR 6(1)/State immunity)/trade union activities (ECHR 11))**
 (*cont.*)

- alleged violation of ECHR 11 (trade union rights) (exhaustion of local remedies)
 - Court's assessment/dismissal of claim 198-9
 - parties' arguments (applicant) 197
 - parties' arguments (Lithuanian Government) 198
 - parties' arguments (Swedish Government) 198
- background (factual)
 - applicant's dismissal for gross misconduct 169-70
 - International Confederation of Free Trade Unions website report 170
 - applicant's duties/complaints about treatment of locally engaged staff 164-8
 - applicant's sick leave/union protest 168-9
 - court proceedings in Lithuania (reinstatement and damages)
 - Court of Appeal (confirmation of Regional Court's decision) 172-3
 - Supreme Court's confirmation of lower courts' decisions/rejection of request for ECJ preliminary ruling 173-6
 - Vilnius Regional Court (immunity on grounds of the public-law nature of relationship) 170-1
 - letter of caution/request for resignation 168
- Court's decision 201-2
- just satisfaction (ECHR 41)
 - costs and expenses (actually and necessarily incurred/supporting evidence) 201
 - default interest 201
 - effective remedy, obligation to provide 291-2
 - non-pecuniary damage
 - Court's assessment 200-1
 - parties' arguments (applicant) 200
 - parties' arguments (Lithuania) 200
 - retrial/reopening of case option 200-1
 - review of the jurisprudence 289-91
- procedure 163-4
- relevant law (European)
 - Judgments Regulation (EC Regulation No 44/2001) by article
 - preamble 13 ("weaker" party rule) 186
 - 19 (individual contracts of employment: right of suit against employer domiciled in Member State) 186
- relevant law (international)
 - ECSI 4 (exclusion of immunity in case of obligation to be discharged in the forum State) 180-1
 - ECSI 5 (employment contract exception relating to work to be performed in the forum State) 180-1
 - ECSI 32 (immunities relating to the exercise of diplomatic and consular functions) 181
 - ILC(SI) 11 (employment contracts) 181-2
 - commentary 182-4
 - JISP 5 (State immunity) 184-6
 - JISP 6 (modalities for giving effect to State immunity) 184-6
 - JISP 11 (employment contracts) 184-6
 - VCDR 1 (definitions) 179-80
 - VCDR 3(1) (functions of a diplomatic mission) 179-80
 - VCDR 38 (nationals of receiving State) 179-80
- relevant law and practice (Lithuania)

- Civil Procedure Code 2002 by section
 - 135(1) (statement of claim requirements: factual circumstances) 178-9
 - 135(4) (statement of claim requirements: plaintiff's claim) 178-9
 - 141(1) (modification of claim: time limits) 178-9
- Constitution 30 (access to a court) 176
 - 35(2) (trade unions) 177-8
 - 131(1) (termination of contract/dismissal during temporary absence for incapacity/leave) 177-8
 - 133(2) (temporary loss of functional capacity due to sickness) 177-8
 - 136(3)(2) (dismissal for gross misconduct) 177-8
 - 140(1)(5) (severance pay) 178
 - 297(3) (unlawful termination of contract: reinstatement and payment of salary) 178
- domestic court proceedings following ECtHR decision in *Cudak* 176-7
- Labour Code 2002 as amended by section, 297(4) (impossibility of reinstatement in case of unlawful termination of contract: compensation) 178, 195
- State immunity, determination on case-by-case basis with reference to bilateral and multilateral treaties 176
- relevant law (Sweden), Public Employment Act (1994:260) by section 179
- separate opinions (concurring)
 - Küris J ("exercise of governmental authority" (JISP 11(2)(a))) 202-5
 - Motoc J 205-10
 - customary international law, role 207-8
 - effective remedy requirement/applicable law issues 209-10
 - indication of specific measures by court, desirability 209
 - interrelationship between ECHR 6(1), jurisdiction and immunity 206-7
- NATO Status of Forces Agreement (1951) (SOFA)**
 - employment contracts ("local civilian labour") (SOFA IX(4)): *see also* employment contracts (locally engaged staff, military/naval base), State immunity from jurisdiction (SIA 16(2))
 - "civil component" distinguished 458, 464-8
 - State immunity from jurisdiction 458
- natural law**, access to a court (ECHR 6(1)), as means of determining 286-7
- Netherlands**
 - forum of necessity 244-5
 - universal jurisdiction, requirements 240
- Nolan (State immunity: locally engaged staff at military base)**
 - Court's conclusion 513
 - dissenting opinion (Lord Carnwath) 513-23
 - conclusion 523
 - discussion 520-2
 - procedural history 514-17
 - vires* issue (ECA 2(2)(b) ("related")) 518-23
 - arguments 518-20
 - issues (appellant's arguments)
 - extended protection under 1995 Regulations as *ultra vires* 487
 - interpretation of TULRCA in relation to *acta jure imperii*
 - conformity with CJEU judgment 487
 - conformity with principles of international law as part of domestic law 487
 - relationship between 487-8
 - issues (Court's analysis) (interpretation of TULRCA in conformity with principles of international law) 494-503

- Nolan (State immunity: locally engaged staff at military base)** (*cont.*)
- discriminatory nature of TULRCA 273 and 280 499-503
 - implied exception for *acta jure imperii* 499
 - non-discrimination as general principle of international law 500
 - non-applicability of ECHR, UDHR, ICCPR and similar provisions to States 499-503
 - non-discrimination on nationality grounds (TFEU 18/CFR 21(2))
 - limitation to situations within the scope of EU law 500-2
 - non-applicability to non-EC nationals 502-3
 - summary of appellant's arguments 494
 - territorial principle
 - Brownlie* 495
 - Hoffmann-La Roche*/Restatement of Foreign Relations Law (Third) 495-8
 - jurisdiction/immunity, interrelationship 498-9
 - Lotus* 494-5
 - TFEU 18/CFR 21(2), applicability of horizontal direct effect doctrine 500-2
 - issues (Court's analysis) (interpretation of TULRCA (presumption of consistency with EU law "without going against the grain")) 488-93
 - TULRCA 188(7) (special circumstances), relevance 493
 - issues (Court's analysis) (*vires* of the 1995 Regulations) (ECA 2(2)(b) ("related")) 503-13: *see also* United Kingdom, European Communities Act 1972 (including amendments) (ECA) by section, 2 (implementation of treaties) (as part of UK law)
 - ECA 2 (implementation of treaties) (as part of UK law) 503-4
 - ECA 2(1) (implementation of treaties: direct effect) 505
 - ECA, Schedule 2 (subordinate legislation) 504
 - procedural history in date order
 - Employment Tribunal (17 March 2008) 481-2, 485-6
 - Employment Appeal Tribunal (15 May 2009) 485-6, 515-16
 - Court of Appeal's request for a preliminary ruling (26 November 2010) 485-6, 516
 - CJEU judgment (18 October 2012) (decline of jurisdiction) 486, 516-18
 - Court of Appeal (*USA v. Nolan* (2)) 486-7, 516-17, 519-20
 - relevant law
 - common law 482
 - Council Directive 98/59/EC (Collective Redundancies Directive)/TULRCA, Part IV, Chapter II as implementation of
 - extracts 484-5
 - laws more favourable to workers than required by Directive 489
 - pre-1995 Regulations failure to comply 483-4
 - pre-1995 Regulations, TULRCA provisions exceeding requirement 485
 - SIA 16(2) 482
 - TULRCA 188 (duty of employer to consult representatives) (State immunity and), text 482-3
 - TULRCA 188 (duty of employer to consult representatives) (State immunity and), jurisprudence
 - Commission v. UK*, Case C-383/92 [1994] ECR I-2479 findings 483-4, 516
 - Fujitsu* 482, 486-7, 521
 - UK Coal* 482, 485-7, 514-17
 - TULRCA 273 (Crown employment) 483
 - TULRCA 274 (armed forces) 483
 - TULRCA 275 (national security exemption) 483
 - TULRCA 277 (House of Lords staff) 483

- TULRCA 278 (House of Commons staff) 483
- TULRCA 280 (police service) 483
- TULRCA 286(2) (further provision as to excluded classes of employment) 483
- non-discrimination obligation/equality before the law (municipal law/general)**
 - as fundamental/general principle of law 500, 624
 - non-applicability of ECHR, UDHR, ICCPR and similar provisions to States 499-503
- Norway**
 - Civil Procedure Act (CPA) by section
 - 36a (applicability of CPA in accordance with public international law) 437
 - 404(1) (Appeal Committee's jurisdiction: decisions relating to lack of jurisdiction or *res judicata*) 437
 - employment contracts (locally engaged staff in diplomatic mission): *see also A v. Republic of B* (employment contracts: State immunity)
 - acts in the exercise of governmental authority (JISP 11) 439
 - customary international law as applicable law in absence of a treaty 437
 - Foreign Service Act (FSA) by section
 - 20(3) (embassy administrative personnel/locally engaged staff: legal venue) 438-9
 - 25 (venue rules) 436-7
 - forum of necessity 244-5
 - State immunity, restrictive theory, development of/continuing applicability of
 - customary international law 437-8
- Ogelebanwei (State immunity: human rights breaches)**
 - Court's Order 534
 - merits (SIA 5 (territorial tort exception)) 529-34
 - claimants' arguments
 - alleged breach of ACHPR 530
 - alleged incompatibility with ECHR 6/CFR 47 of limitation of SIA 5(b) to acts committed within the UK 530-1
 - ECHR 6(1), applicability/justified restrictions
 - declaration of incompatibility (HRA 4(2)/effect (HRA 4(6))) 532-4
 - immunity as inherent restriction 531-2
 - measures in accordance with generally recognized principles of international law 531-2
 - "proportionate to the legitimate aim" requirement 531-2
 - third defendant (absence of State immunity) 529
 - procedural history
 - application for registration of judgment
 - Administration of Justice Act 1920, 9 (enforcement of judgments obtained in superior courts in other British dominions) 527-9
 - Foreign Judgments (Reciprocal Enforcement) Act 1933 526-7
 - failure to pay judgment debt 526
 - judgment of the Federal High Court of Nigeria 525-6
 - Oleynikov (access to a court (ECHR 6(1)/State immunity)**
 - admissibility
 - Court's assessment
 - complaint against DPRK as non-party to Convention 104
 - complaint against Russia ("genuine and serious dispute" over "civil right") 104
 - parties' arguments (applicant) 103
 - parties' arguments (Russian Federation) 102-3
 - alleged violation of ECHR 6(1) (right of access to a court) (compliance)

***Oleynikov* (access to a court (ECHR 6(1)/State immunity)) (cont.)**

- Court's assessment (interpretation of ECHR), accordance with VCLT 31(3)(c) (any relevant rules of international law applicable between the parties) 105-6
- Court's assessment (interpretation of ECHR, principles)
 - effectiveness (*ut res magis valeat quam pereat*) (*effet utile*) 106
 - human rights treaty 105-6
- Court's assessment (justified restrictions)
 - domestic courts' failure to explore limitations on absolute immunity theory 108-9
 - erosion of absolute State immunity (ILC/CIL) 107
 - immunity as inherent restriction 105-6
 - JISP 11 as customary international law 107-8
 - margin of appreciation 105
 - promotion of comity and good relations as legitimate aim 106-7
 - "proportionate to the legitimate aim" requirement 105, 107, 109
 - as rule of law principle 105
 - very essence of right, obligation not to impair 105, 109
- alleged violation of ECHR Protocol 1:1 (right to peaceful enjoyment of property) 109-10
- background (factual)
 - applicant's loan to DPRK Trade Counsellor 91
 - District Court proceedings/refusal to consider claim on State immunity grounds 92-3
 - failure to repay debt 91
- Court's decision 111
- just satisfaction (ECHR 41)
 - costs and expenses 111
 - pecuniary/non-pecuniary damages 110-11
- procedural history, joinder of admissibility and merits (ECHR 29(1)) 90-1
- relevant law and practice (domestic)
 - Civil Code, Art. 127 (reference to State Immunity Act) (not yet adopted) 92-3
 - Civil Procedure Code 1964, Art. 435 (absolute immunity) 93
 - Constitutional Court ruling on (*Kalashnikova*) 95-6
 - Civil Procedure Code 2002, Art. 401(1) (absolute immunity) 93-4
 - Commercial Procedure Code 1995, Art. 213(1) (absolute immunity) 94
 - Commercial Procedure Code 2002, Art. 251 (restrictive immunity) 94
 - Constitution 15(4) (generally recognized principles and norms of international law including treaties as part of the law of/primacy) 94-5
 - Information Letter of the Presidium of the Supreme Commercial Court (18 January 2001) 96-7
 - President's position on 97-8
- relevant law and practice (international)
 - ECSI 4 (exclusion of immunity in case of obligation to be discharged in the forum State) 99-100
 - ILC(SI) 2(1)(c) ("commercial transaction") 100-1
 - ILC(SI) 10 (commercial transactions) 100-1
 - JISP 2(1)(c) ("commercial transaction") 101-2
 - JISP 10 (commercial transactions) 101-2
- relevant law and practice (USSR–DPRK Treaty on Trade and Navigation (1960)) (extracts) 98-9

Pakistan

- State Immunity Ordinance 1981 by section
 - 5(1)(b) (State immunity: employment contracts exception) 620
 - 6 (State immunity: employment claims (diplomatic or consular mission)) 613

- 17(1)(a) (State immunity: employment claims (diplomatic or consular mission)) 613
- peaceful enjoyment of possessions (ECHR Protocol 1:1)**
 deprivation/interference with, classification as
 existing claims, limitation to 81-2
 tax measures/social security obligations 127-36
 deprivation/interference with, justification/requirements (ECHR Protocol 1:1(2))
 balance of interests of individual and community as a whole 131-2
 Wallishauser (No 2) 131-2
 legitimate aim, good functioning of social security system 132-3
 property rights of displaced persons, *Wallishauser (No 2)* 127-36
- Pfarr* (diplomatic immunity (VCDR 31(1)/GVG 18))**
 background/procedural history
 Labour Court (Berlin) decision (non-admissibility on immunity grounds) 425
 appeal to Regional Labour Court 426
 parties' arguments (defendant) 425-6
 parties' arguments (plaintiff) 425, 426
 Court's decision
 basic legal grounds, rejection of appeal 425
 costs 432
 Court's decision, grounds
 applicability of international human rights law 427
 constitutionality of *GVG* 18 429-32
 compatibility with *GG* 14(1) (property guarantee) 429
 compatibility with *GG* 20(3) (rule of law) 429-31
 defendant's status as "diplomatic agent" (VCDR 1(e)) 426-7
 duration of immunity/termination (VCDR 39(2)) 426-7, 430-1
 entitlement to immunity from civil, criminal and administrative jurisdiction
 (including labour jurisdiction) (VCDR 31(1)) 426-7
 immunity of defendant in sending State, exclusion (VCDR 31(4)) 430-1
 object and purpose 426-7, 429-31
 seriousness of allegations, relevance/serious violation of the law requirement 427-9
 waiver of immunity (VCDR 32)
 authority of sending State, need for 428-9
 on grounds of security 428
- Poland (1989-) (Republic of)**, forum of necessity 244-5
- Portugal**, forum of necessity 244-5
- positive law**, applicability, disadvantages of 292-3
- preliminary ruling (CJEU/ECJ/CJEC) (TFEU 267 [234] [177])**, referral, discretionary nature 136-7
- private life/privacy, definitions/scope, jurisprudence**
Cudak 17-18
Vilho Eskelinen 17-18
- Queensland**, Reciprocal Enforcement of Judgments Act 1959 (Q) 354-5
- Radunović* (access to a court (ECHR 6(1)/State immunity))**
 alleged violation of ECHR 6(1) (right of access to a court) (admissibility)
 Court's assessment/finding of admissibility 151-2
 parties' arguments (applicants) 151
 parties' arguments (Montenegro) 151

- Radunović (access to a court (ECHR 6(1)/State immunity))** (*cont.*)
- alleged violation of ECHR 6(1) (right of access to a court) (compliance)
 - Court's assessment (general principles)
 - immunity as inherent restriction 153
 - margin of appreciation 153
 - promotion of comity and good relations 154
 - Court's assessment (interpretation of ECHR, principles)
 - accordance with VCLT 31(3)(c) (any relevant rules of international law applicable between the parties [including those relating to State immunity]) 153
 - effectiveness (*ut res magis valeat quam pereat*) (*effèt utile*) 153-4
 - Court's assessment (justified restrictions)
 - interpretation of ECHR as human rights treaty 153
 - JISP 11 as customary international law 154-5
 - JISP 11(2)(a) ("exercise of governmental authority") 155
 - JISP 11(2)(b) (diplomatic/consular status) 155
 - JISP 11(2)(c) (reinstatement, non-applicability of JISP) 156
 - JISP 11(2)(d) ("security interests") 156
 - JISP 11(2)(e) (nationality) 155
 - JISP 11(2)(f) (agreement conferring exclusive jurisdiction on forum State courts) 156
 - "legitimate aim" 155
 - "proportionate to the legitimate aim" requirement 153-4, 156-7
 - as rule of law principle 152-3
 - very essence of right, obligation not to impair 153, 156-7
 - parties' arguments (applicants) 152
 - parties' arguments (Montenegro) 152
 - background (factual)
 - applicants' dismissal 142
 - applicants' duties 142
 - judicial proceedings
 - Constitutional Court 144-5
 - Court of First Instance (Podgorica) 142-3
 - High Court 143-4
 - Supreme Court 143-4
 - Court's decision 158-9
 - just satisfaction (ECHR 41)
 - costs and expenses 158
 - default interest 158
 - pecuniary/non-pecuniary damage (loss of real opportunities) 157
 - procedure
 - applicants' complaint 150-1
 - history 141
 - joinder of applications (ROC 42(1)) 150
 - relevant jurisprudence (domestic) 147-8
 - relevant law (domestic)
 - Civil Procedure Law 2004 (*ZPP*)
 - 29 (individuals, States and international organizations enjoying immunity: applicability of international law) 146
 - 367 (breach of civil procedure) 146
 - 415 (binding effect on lower courts of Supreme Court decision quashing decision on points of law) 146

- Constitution 2007 by article
 - 32 (fair trial) 145
 - 149 (Constitutional Court: human rights appeal) 145
- Constitutional Court Act 2008 by article
 - 48 (human rights appeal: scope) 145
 - 56 (human rights appeal: action in case of finding of violation) 145
- Constitutional Court Act 2015 by article
 - 38 (human rights appeal: deadline for court's decision) 145-6
 - 68 (constitutional appeals: scope) 145-6
 - 69 (human rights appeal: timing) 145-6
 - 76 (human rights appeal: action in case of finding of violation) 145-6
- Courts Act, s. 16(1)(3) (employment contracts, jurisdiction: Court of First Instance) 147
- Labour Law 2010, s. 2(1) (applicability to employees working for employers operating in Montenegro) 146
- Obligations Act 2008, provisions relating to compensation for pecuniary/non-pecuniary damage 147
- Private International Law Act 1982 by section
 - 20(19) (employment contracts: law of State in which work performed as applicable law) 147
 - 35 (forum State jurisdiction, residence/seat in Montenegro requirement) 147
 - 47 (jurisdiction: express legislative provision for) 147
- relevant law (international)
 - ILC(SI) 11 (employment contracts) 149
 - commentary 149-50
 - ILO Convention on Termination of Employment (No 158), Art. 8 (termination of contract: right to appeal to impartial tribunal) 150
 - JISP 11 (employment contracts) 148-9
 - VCDR 3 (functions of diplomatic mission) 150
- recognition/enforcement of foreign judgment or arbitral award against State (including State immunity considerations), jurisprudence**
 - Firebird*: see *Firebird* (State Immunity) (Australian High Court)
 - Garuda* 353
 - NML Capital* 363-4, 376-7, 389-90, 392
 - TCL Air Conditioner (Zhongshan)* 354
- recognition/enforcement of foreign judgment (including State immunity considerations)**
 - judicial proceeding, whether 353-7
 - State practice 356-7
 - State immunity, determination by reference to entitlement had enforcing court been seised of the original proceedings
 - Firebird* 365, 376-7
 - Jurisdictional Immunities* 365, 376-7
 - Kuwait Airways* (Canadian Supreme Court) 376-7
 - NML Capital* 376-7
- recognition/enforcement of judgments in civil and commercial matters (Council Regulation (EC) No 44/2001 (Judgments Regulation) by article, 19**
 - (individual contracts of employment: right of suit against employer domiciled in Member State), text 186
- recognition/enforcement of judgments in civil and commercial matters (Council Regulation (EU) No 44/1215/2012) (Brussels I-bis) 246**
- refugees, access to courts (RC 16)**, applicability to proceedings against a foreign State for torture committed abroad 272

- reparation for violation of IHRL/IHL, victim's right to**
 acts by third State or persons under their jurisdiction, responsibility of forum State 248
 as "civil right or obligation" (ECHR 6(1)) 251-2
 general principle of international law 248
 IIL Resolution of 30 August 2015 on universal civil jurisdiction with regard to reparation for international crimes 235-8
 UNGA Resolution 60/147 233-5
 extracts 233-5
- Restatement of Foreign Relations Law (Third) (1987)**
 403 (extraterritorial jurisdiction; reasonableness) 495-8
 464 (immunities: commercial or professional activity) 551-2
- Reyes (diplomatic immunity) (VCDR 31(1)(c): employment of domestic staff) (Supreme Court)**
 Court's conclusion 539
 applicability of VCDR 31(3)(c) exception to domestic employment 539, 565
 residual immunity (VCDR 39(2)) (limitation to acts performed in exercise of functions) 539, 566-7
 Court's orders 568
 diplomatic immunity (employment of domestic staff (VCDR 31(1)(c))) 547-65, 568
 diplomatic immunity (general)
 development of principle pre-VCDR 539-40
 DPA 2(1) (application of VCDR: "shall have the force of law") 543
 early codification attempts 540-1
 immunity as procedural bar and liability distinguished 541, 560-1
 reasons for 544-5
 VCDR 31(1) and VCDR 42 (*travaux préparatoires*) 557-9
 VCDR, adoption 540-1
 VCDR, text of relevant articles 541-3
 facts and procedural history 538-9
 issue (VCDR 31(3)(c)/slave trafficking) 539
 separate opinions
 Lady Hale and Lord Clarke, agreeing with Lord Wilson (trafficking) 574
 Lord Wilson (partly dissenting, Lady Hale and Lord Clarke agreeing) (trafficking) 568-74
 service of process (inviolability of person (VCDR 29)/inviolability of residence of diplomatic agent (VCDR 30(1))) 546-7
 trafficking in persons 559-65
 as "commercial activity" under VCDR 31(1)(c) 561-5
 Palermo 3 (definition) 559-60
 Palermo 5 (obligation to establish criminal offence) 559-60
 treaty interpretation
 applicability of rules to VCDR 544-5
 applicable/relevant principles of international law (VCLT 31(3)(c)) 543-4, 561-5
 general rule of interpretation (VCLT 31(1)/parties' intention) 544
 "living-tree" principle (VCLT 31(3)(c)) 562-3
- Romania, forum of necessity** 244-5
- Russian Federation (1991-)**
 Civil Code (1996) by article, 127 (State immunity) 92-3
 Civil Procedure Code (1964) by article, 435 (State immunity: absolute theory) 91-3
 Civil Procedure Code (2002) by article, 401(1) (State immunity: absolute theory) 92-4
 Commercial Procedure Code 1995 by article, 213(1) (absolute immunity) 94

- Commercial Procedure Code 2002 by article, 251 (restrictive immunity) 94
- Constitution 1993 (including 1999 amendments) by article, 15(4) (generally recognized principles and norms of international law including treaties as part of the law of primacy), text 90 n. 11, 94-5
- State immunity: *see also Oleynikov* (access to a court (ECHR 6(1)/State immunity)) restrictive theory
 - Commercial Procedure Code 2002, Art. 251 94
 - Information Letter of the Presidium of the Supreme Commercial Court (18 January 2001) 96-7
 - President's position on 97-8
 - as principle of customary international law 108

***Sabbithi* (diplomatic immunity (28 USC 254(d)/VCDR 31(1)(c)): employment of domestic staff)**

- background
 - amici curiae* memorandum of law/State Department's views 706-7
 - criminal proceedings/Kuwait's refusal to waive immunity 706
 - jurisdiction (28 USC 1351) 707
 - Kuwait as "foreign State" (28 USC 1602) 705
 - parties' positions (plaintiffs) 705-7
 - relevant law
 - 22 USC 254(d) 707-8
 - VCDR 31(1), VCDR 32(3), VCDR 37 and VCDR 42 707
 - summary of complaint and Court's conclusion 705
 - Court's conclusion 713
 - discussion
 - "commercial activity" (VCDR 31(1)(c)), applicability to employment of plaintiff 708-11
 - "commercial activity" (FSIA) distinguished 709-10
 - "commercial activity" (VCCR) distinguished 709-10
 - diplomatic immunity, possible exceptions other than under VCDR 31(1)(c) residual immunity (VCDR 39(2)) (limitation to acts performed in exercise of functions) 712-13
 - TVPA as override of VCDR 712
 - violation of *jus cogens* norms (human trafficking) 711-12
 - violation of Thirteenth Amendment to the US Constitution (prohibition of slavery) 711
 - diplomatic status
 - evidence of 707-8
 - views of sending State as persuasive evidence 708
 - exceptions to immunity (summary) 708
- Sabeh El Leil* (access to a court (ECHR 6(1)/State immunity))**
- admissibility (failure to exhaust local remedies (ECHR 35(1)))
 - Chamber's findings 41
 - Court's assessment
 - effective remedy (ECHR 13), need for 41-2
 - opportunity for State party to rectify situation as objective 41-2
 - parties' submissions (France) 41
 - Court's decision 42
 - parties' submissions (applicant) 41
 - alleged violation of ECHR 6(1) (right of access to a court) (admissibility) 42-4

***Sabeh El Leil* (access to a court (ECHR 6(1)/State immunity)) (cont.)**

- Court's decision 43
 - civil servants' entitlement (*Vilho Eskelinen*) 43
 - exclusion on objective grounds of State's interests 43
 - express exclusion of a category (in State's interests) 43
 - parties' positions 42-3
- alleged violation of ECHR 6(1) (right of access to a court) (compliance)
 - Court's assessment (interpretation of ECHR, principles)
 - effectiveness (*ut res magis valeat quam pereat*) 46-7
 - as human rights treaty 46
 - interpretation of ECHR in accordance with VCLT 31(3)(c) (any relevant rules of international law applicable between the parties) 46
 - Court's assessment (justified restrictions) 46
 - erosion of absolute State immunity (ILC/CIL) 47
 - immunity as inherent restriction 46
 - JISP 11 as customary international law 47, 57-8
 - JISP 11(2)(a) ("exercise of governmental authority") 48-9, 62-4
 - JISP 11(2)(d) ("security interests") 48-9
 - margin of appreciation 45-6
 - promotion of comity and good relations as legitimate aim 47
 - "proportionate to the legitimate aim" requirement 45-6, 50
 - as rule of law principle 45
 - very essence of right, obligation not to impair 24, 45-6
 - Court's decision 50
 - parties' arguments (applicant) 44
 - parties' arguments (France) 44-5
- background (factual) 34-7
 - contract of employment/applicant's duties 34
 - termination of contract/grounds 34-5
 - Court of Cassation proceedings 36
 - Employment Tribunal proceedings
 - admissibility 35
 - merits 35-6
 - Paris Court of Appeal proceedings 36
- background (procedural) 33-4
- Court's decision 52
 - just satisfaction (ECHR 41)
 - costs and expenses (actually and necessarily incurred/supporting evidence) 51
 - default interest 51
 - pecuniary/non-pecuniary damage (loss of real opportunities) 50-1
 - relevant law and practice (international)
 - CIL/JISP 11 37-9
 - ILC(SI) 11 38-9
 - relevant law and practice (national)
 - Civil Procedure Code, Art. 455 (reasons for judgment) 36, 40
 - Court of Cassation jurisprudence 39-40
- separation of powers**, *Corner House* 652
- service of process on diplomatic agent/consular officer (inviolability of person (VCDR 29/VCCR 41))**
 - inviolability of premises of mission (VCDR 22(1)) and 546-7
 - Reyes* 546-7

- service of process on foreign State or State agency (out of the jurisdiction) (including State immunity issues)**
- jurisprudence
 - Firebird* 352, 367-9, 376-81
 - Wallisbauser (No 1)* 59-63, 80-1
 - method
 - appointment of agent to accept (*curator*) 60-5
 - diplomatic channels
 - in absence of international convention or special arrangement (JISP 22(1)(c)) 68-9, 80-1
 - as sole method 62-3
 - service and request for legal assistance distinguished 60-2, 65-6
 - treaties relevant to, JISP 22(1) and (2) 546-7
 - slavery or forced labour, prohibition (including UDHR 4/ECHR 4/ICCPR 8)**, “slave”/“slavery”, US Constitution, Thirteenth Amendment 711
 - sovereign equality of States (UNC 2(1)) (*par in parem non habet jurisdictionem*)**
 - comity (with particular reference to extraterritorial jurisdiction/forcible abduction) 21, 47, 77, 106-7, 154, 640-1
 - State immunity, as basis for, diplomatic immunity distinguished 640-1, 655-6
 - Spain**
 - Criminal Procedure Code by article, 112 (right of victims of crimes to join criminal proceedings as civil party) 243-4
 - universal jurisdiction, applicability 243-4
 - State immunity:** *see also* diplomatic immunity; employment contracts; State Immunity Act
 - entries*
 - classification of act as *jure imperii* or *jure gestionis*
 - Arrest Warrant Case* 599
 - changing nature of concept/“not fixed in stone”
 - Benkharbouche* 470-1
 - Harrington* 470-2
 - employment contract (locally engaged staff): *see* employment contract
 - military base (commissariat (US PX)) 468-72
 - acts of employees 470-2
 - government’s maintenance of base 468-70
 - nature of breach of contract/act giving rise to the proceedings 472-3
 - private person test 468
 - shooting by British soldier in Republic of Ireland (*McElbinney*) 599
 - customary international law, uncertainty of 660-4
 - entitlement of individual/official acting in official capacity, *Holland v. Lampen-Wolfe* 458-60
 - ILC Draft Articles/Reports, 1991/2003
 - ILC(SI) 18 (State immunity from measures of constraint) (1991), text 125-6
 - ILC(SI) 20 (service of process)/commentary on 80-1
 - customary international law, whether 80-1
 - procedural aspects
 - burden/standard of proof, executive certificate, conclusiveness: *see* FSIA 1985 (Australia) by section, 41 (certificate as to use by head of diplomatic mission)
 - as preliminary issue/desirability of determination at early stage 641-2
 - theory/doctrine including the basis/reasons for
 - absolute theory, erosion of doctrine 22-3, 47, 78-80, 107, 154, 357-8
 - absolute theory/exceptions, relationship 653-64

State immunity (*cont.*)

- ALRC report: *see* FSIA 1985 (Australia), ALRC Report
 development of doctrine, ongoing development 437-8
 immunity as procedural bar and liability distinguished 641
 jurisdiction/immunity, interrelationship 498-9
 ECtHR/UK jurisprudence distinguished 596-7, 648
 existence of jurisdiction as prerequisite/preliminary question 248, 593-7, 641-2, 648
 restrictive theory: *see also* employment contracts between a State and an individual for work in third State, exclusion of immunity (JISP 11)
 development of/arguments (*Benkharbouche*) 655-64
 uncertainty regarding 437-8
 as right of State/obligation to accord 651-2
 State practice, lack of consensus 660-4
 Tate Letter, as turning point 660, 662-3
 theory/doctrine including the basis/reasons for, jurisprudence (in particular cases where discussed or cited at length)
 I Congreso del Partido 358, 462-3, 635
 Arrest Warrant Case 641
 Canada Labour Code 468-9, 555-6
 The Charkieh 657-8
 Chemins de Fer Liégeois-Luxembourgeois 661-2
 Claim against the Empire of Iran 660
 Cristina 357-8, 635
 De Haber v Queen of Portugal 656-7
 Duke of Brunswick v. King of Hanover 656-7
 Firebird 357-8, 385-7
 Fogarty 20, 21-2
 Harrington 460-4
 Holland v. Lampen-Wolfe 460-1, 463-4, 599, 641-2
 Jurisdictional Immunities 641-2, 651-2
 Kalogeropoulou 20
 Lambège et Pujol 661-2
 Littrell (2) 461-4
 Parlement Belge 657-61
 Pesaro 660-1
 Philippine Admiral 635
 Porto Alexandre 658-61
 Schooner Exchange 656, 660
 Senguptal Sengupta guidelines 462-4, 605-6, 674-6
 Sultan of Johore v. Abubakar 659-60
 Trendtex 635
- State Immunity Act 1978 (UK) (SIA)**
 Diplomatic Privileges Act 1964 (DPA) and 608-9
 ECSI (1972) and 589-90
 immunity subject to exceptions approach as drafting technique 653-4
- State Immunity Act 1978 (UK) (SIA) by section (Part I (proceedings in the UK by or against other States))** 590-1
- 3(1) (exceptions to immunity) 571-2
 applicability to common law foreign judgment debt proceedings (*NML Capital*) 363-4
- 3(1)(a) (commercial transaction exception) 554-5

- 3(3)(c) (transaction or activity entered into other than in exercise of sovereign authority) 554-5
- 4 (employment contracts) 555, 571-2, 590-1
- 4(1) (employment contracts: exceptions to immunity) 592
- 4(2)(a) (employment contracts: national of State concerned) 668-71
 ECSI 5(2)(a)/JISP 11(2)(e) (nationality of employing State at time of institution of proceedings) 625-6
- 4(2)(b) (employment contract: employee neither a national nor habitual resident of the UK) 619-26, 668-76
 binding principle of international law, whether 669-71
 compatibility with ECHR 6(1)/CFR 47 (access to the courts) 677
 discriminatory nature/legitimate purpose 624-6
 ECSI 5(2)(b) and 620-1
 State practice 620
 territorial principle vs *jure imperii/jure gestionis* distinction 669-71
- 5 (territorial tort exception) (proceedings in respect of personal injuries and damage to property caused by an act or omission in the UK), limitation to acts connected with the UK 529-34
- 16(1) (Diplomatic Privileges Act and Consular Relations Act 1968, effect on) 554, 590-1
- 16(1)(a) (excluded matters: members of a mission or consular post)
 compatibility with ECHR 6(1)/CFR 47 (access to the courts) 571-2, 677
 international law requirement, whether 604-19: *see also Benkharbouche*
 UK practice as exception 616-17
 VCDR 7 (appointment of diplomatic agent), relationship with 608-9, 672
- 16(2) (excluded matters: acts by or relating to members of visiting armed forces) 457-60:
see also Harrington (employment contracts (locally engaged staff, military/naval base))
 as customary international law (restrictive theory) 460-1
 Equality Act 39 discrimination claim as “proceedings relating to a contract of employment” 460
- State Immunity Act 1979 (Singapore) by section**, 6(2)(b) (State immunity: employment contracts exception) 620
- State Immunity Act 1980 (Canada) by section**
 3(2) (Court’s duty to raise *ex proprio motu*), “in any proceedings” 356
 5 (commercial activity exception) 572
- State immunity from execution/attachment, purpose/use of funds/assets**
 commercial purposes 369-70
 “commercial” for purposes of jurisdiction and execution distinguished 370, 403
 “deposit account”, significance of term 373-4
 jurisprudence
Alcom 369-70
Firebird 352, 369-75, 402-14
Jurisdictional Immunities 369
Philippine Embassy Bank Account Case 369
- State immunity from jurisdiction, indirect pleading/risk of affecting foreign State’s interests**
 jurisprudence
Belhaj 609
Harrington 473-4
 risk of investigation in the public or sovereign acts of foreign State
 473-4

State-owned ships, immunity from jurisdiction/arrest/attachment, jurisprudence,

Porto Alexandre 658-9

succession (EU Regulation No 650/2012 (Succession Regulation)) 246-7

Sweden

employment contracts (non-Swedish employees engaged locally abroad)
179

Public Employment Act (1994:260) by section, 3 (non-applicability to non-Swedish employees engaged locally abroad) 179

succession including testamentary disposition, jurisdiction over property within the forum State of deceased person resident abroad, text 224-5

Switzerland

Code of Obligations (*CO/OR*) 1911 by article, 41 (reparation for an unlawful act) 225, 251-2. *Note:* The Code of Obligations is Part Five of the Civil Code.

legislation, interpretation (multilingual texts) 219-22

Private International Law Act 1987 (*LDIP*) by section: *see also Nait-Liman* (access to a court (ECHR 6(1)/State immunity))

1(1)(a) (scope: jurisdiction of Swiss authorities) 219-22

1(2) (scope: international treaties) 219-22

2 (jurisdiction: defendant's domicile) 217, 224-5

3 (jurisdiction: forum of necessity) 217-22, 224-5, 244-5, 273, 300-30

domestic courts' discretion in applying 274-6

ECHR 6(1) (access to courts)/margin of appreciation and, conformity of *LDIP*
criteria 274

jurisprudence 226-7

legislative history 225-6

text 224-5, 300-1

129 (torts jurisdiction: domicile of respondent/effects doctrine) 217, 219-22, 300-30
text 224-5, 300-1

133(2) (torts: applicable law where claimant and respondent reside in different States:
lex loci delicti/effects doctrine) 217, 224-5

refugees, access to courts (RC 16) 233

reparation for violation of IHRL/IHL, victim's right to 225, 251-2: *see also Nait-Liman*
(access to a court (ECHR 6(1)/State immunity))

Tate Letter, as turning point in the move towards restrictive doctrine of immunity 660,
662-3

torture, civil remedy obligation (with particular reference to UNCAT 14(1))

act outside the jurisdiction of the forum State, applicability to

CAT General Comment 3 on the implementation of UNCAT 14 230

effective remedy in place where act committed, relevance 291-2

writings of publicists 232

omission as oversight/mistake 229

jurisprudence

Marcos Roitmann Rosenmann 230-1

Nait-Liman 240-4, 267-72

Z v. Australia 231-2

jus cogens/peremptory norm considerations 282

universal/extraterritorial jurisdiction (including omission from UNCAT 14), whether
obligatory 267-72, 281-2

customary international law/State practice 268-70

non-binding international instruments 271-2

- Bucher Report 272
- III//IDI Resolution on universal civil jurisdiction 272
- travaux préparatoires* 228-30, 271
- treaty law (UNCAT 14) 270-2
 - absence of reservations, relevance 271
 - ambiguity of UNCAT 14 267-8, 270
 - CAT General Comment No 3 270
 - CAT jurisprudence 270
 - travaux préparatoires* 271
 - universal civil jurisdiction for torture-related damage (treaty law (RC 16 (access to courts))) 272
- torture, criminal jurisdiction (including UNCAT obligations)**, universal/extraterritorial jurisdiction, civil jurisdiction distinguished 237-8
- Torture Victim Protection Act 1991 (TVPA)**
 - applicability to acts outside forum State
 - presence of respondent within the jurisdiction at the time of action, need for 242-3
 - presumption against extraterritoriality 242-3
 - diplomatic immunity (VCDR 31), relationship with 712
 - Kiobel* 242-3
- trade union (right to form and join) (ECHR 11(1))**, *Naku* 196-9: *see also* *Naku* (access to a court (ECHR 6(1)/State immunity)/trade union activities (ECHR 11))
- trafficking in persons**
 - Arab Charter on Human Rights (2004) 570
 - commercial activity, whether 561-5
 - definition (Palermo 3(b)/ATC 4(a)) 559-60
 - diplomatic immunity and (VCDR 31), trafficking as “commercial activity” for purposes of (VCDR 31(1)(c)) 539
 - Palermo Protocol (2000)
 - criminalization obligation (Palermo 5) 559-60
 - possibility of compensation for victims (Palermo 6(6)) 570
- trafficking in persons, jurisprudence**
 - Gonzalez Paredes* 565
 - Mohamed X* 565
 - Montuya* 565
 - Pfarr* 565
 - Reyes* 539, 559-65, 568-74
 - Sabbithi* 565
 - Tabion* 565
- travaux préparatoires* as supplementary means of interpretation (VCLT 32)**
 - in respect of
 - JISP 5 653-5
 - JISP 11 12-14, 612, 668-9
 - JISP 11(2)(b) 668-9, 673-4
 - JISP 11(2)(e) 621-6
 - UNCAT 14 229, 271
 - VCDR 31(1)(c) 557-9
 - VCDR 42 558-9
 - value/limitations, absence of relevant evidence 271
- treaties**
 - municipal law (including implementing legislation/incorporation/unincorporated treaties) and, subsequent legislation, effect/“subsequent in time rule” 712
 - third parties and (VCLT 34-8) (*Benkharbouche*) 603-4

treaty interpretation

- “any relevant rules of international law applicable in the relations between the parties” (VCLT 31(3)(c)), ECHR (1950) and: *see* ECHR (1950), interpretation, “any relevant rules of international law applicable in the relations between the parties” (including those relating to State immunity) (VCLT 31(3)(c)), applicability executive’s responsibility/“great weight” due to 684-6
- general rule: good faith, ordinary meaning of terms of treaty in their context and in the light of its object and purpose (VCLT 31(1))
 - Gonzalez Paredes* 683, 709-10
 - Tabion* 683
- (natural and) ordinary meaning (VCLT 31(1)) 709-10
- parties’ intention at time of conclusion (contemporaneity) vs intertemporal law (evolutionary/“living-tree” principle), jurisprudence
 - Oil Platforms* 562-3
 - Reyes* 562-3
 - South West Africa* cases 562-3
- subsequent agreement between the parties regarding interpretation or application of treaty (VCLT 31(3)(a)) 562-3

Tunisia (1956-)

- Constitution 2014 by section, 148(9) (transitional justice) (text) 222-3
- Transitional Justice Law 2013 (Organic Law No 2013-53 of 24 December 2013) 223

United Arab Emirates (UAE), civil service, absence of concept 696: *see also El-Hadad***United Kingdom**

- diplomatic immunity from jurisdiction (VCDR 31), procedural bar to prosecution and liability distinguished 541, 560-1
- Diplomatic Privileges Act 1964 (DPA), VCDR provisions not included in DPA, binding effect on UK under international law 608-9
- Diplomatic Privileges Act 1964 (DPA) by section (Schedule 1)
 - 1 (definitions) 591-2
 - 2(1) (application of VCDR: “shall have the force of law”) 446
 - 31 (immunity from jurisdiction subject to exceptions) 446
 - 39 (duration of privileges and immunities) 446-7
- diplomatic privileges and immunities
 - basis, reciprocity 544-5
 - history and development of 539-40
 - termination of mission (VCDR 39(2)) (including residual immunity)
 - “acts performed . . . in the exercise of his functions as a member of the mission” (VCDR 39(2)) 450-3
 - applicability of residual immunity to acts in relation to domestic staff 450-3, 566-7
- employment contracts (locally engaged staff)
 - in diplomatic mission, State practice
 - review of (*Benkharbouche*) 612-19
 - UK as exception 616-17
 - military/naval base 456-76: *see also Harrington*
- Employment Tribunal Rules 2013 by Rule, 21(1)(a) (absence/rejection of response or absence of contest) 456-7
- Equality Act 2010 by section, 39 (employees and applicants) 460
- EU law/Member State law including implementation measures
 - disapplication of UK law on grounds of incompatibility with EU law right (*Chester*) 631-2
 - jurisprudence: *see* EU law/Member State law

- presumption of consistency between, “without going against the grain” of domestic legislation 488-93
- European Communities Act 1972 (including amendments) (ECA) by section
 - 2 (implementation of treaties) (as part of UK law) 503-4
 - 2(1) (implementation of treaties: direct effect) 505
 - 2(2) (power to implement EU obligation into UK law) 503-13
 - 2(2) (power to implement EU obligation into UK law), jurisprudence
 - Cukurova* 503-13
 - Nolan* 518-23
 - Oakley* 505-9, 518-19, 521
 - Risk Management* 505-11, 520-1
 - Schedule 2 (subordinate legislation) 504
- Human Rights Act 1998 (HRA): *see* Human Rights Act 1998 (HRA)
- legislation, interpretation
 - conformity with customary international law/generally recognized principles of international law 494-503
 - consistency between related legislation 494-503
- recognition/enforcement of foreign judgment (including State immunity considerations), legislation relating to
 - Administration of Justice Act 1920 (Part II: reciprocal enforcement of judgments) by section, 9 (enforcement of judgments obtained in superior courts in other British dominions) 527-9
 - Foreign Judgments (Reciprocal Enforcement) Act 1933 526-7
- State immunity
 - classification of act as *jure imperii* or *jure gestionis*, nature or purpose of transaction as determining factor 461-4
 - development of doctrine (*Benkharbouche*) 635-6
 - fair and public hearing/access to the courts (ECHR 6(1)) and, jurisprudence: *see* access to the courts/effective remedy in case of act of State/State immunity/international organization immunity (including ECHR 6(1), ICCPR 14 and UDHR 8), jurisprudence
 - jurisdiction as prerequisite/preliminary question 593-7, 648
- Trade Union and Labour Relations (Consolidation) Act 1992 (with amendments) (TULRCA) by section, Part IV Chapter II 481-2
 - 188 (duty of employer to consult representatives) (State immunity and) 482
 - public employment exceptions 483
 - text 482-3
 - 188(7) (special circumstances) 493
- as implementation of Council Directive 98/59/EC (Collective Redundancies Directive) 483-4
 - Commission v. UK*, Case C-383/92 [1994] ECR I-2479 findings 483-4
 - pre-1995 Regulations, failure to comply 483-4
 - pre-1995 Regulations, TULRCA provisions exceeding requirement 485
- Trade Union and Labour Relations (Consolidation) Act 1992 (with amendments) (TULRCA) by section, Part VII: *see also Nolan* (State immunity: locally engaged staff at military base)
 - 273 (Crown employment) 483
 - 274 (armed forces) 483
 - 275 (national security exemption) 483
 - 277 (House of Lords staff) 483
 - 278 (House of Commons staff) 483
 - 280 (police service) 483
 - 286(2) (further provision as to excluded classes of employment) 483

United Kingdom (*cont.*)

- treaty interpretation, applicable/relevant principles of international law 543-4
- universal jurisdiction, civil claims for torture 241
- visiting forces, legislating relating to
 - Visiting Forces Act 1952 458
 - Visiting Forces Act 1952 by section
 - 6 (restrictions on UK proceedings) 465-6, 474-5
 - 11(1) (certificate in regard to person's status as a member of a visiting force) 464

United States of America (USA)

- Constitution, Amendments, Thirteenth (abolition of slavery), diplomatic immunity in respect of 711
- diplomatic immunity from jurisdiction (VCDR 31)
 - constitutional violations, applicability to 711
 - employment of domestic staff (VCDR 31(1)(c)), "commercial activity" (VCDR 31(1)(c)) and "commercial activity" (FSIA) distinguished 684-5, 709-10, 719-20
 - legality of entry into the country, relevance 687
 - TVPA, whether overriding 712
- diplomatic privileges and immunities, duration (VCDR 39), termination of mission (VCDR 39(2)) (including residual immunity), acts performed in exercise of functions (VCDR 39(2)), limitation to 712-13
- Diplomatic Relations Act 1978 (22 USC 254) (repealing Diplomatic Relations Act 1790 and incorporating VCDR (1961)) by section, 22 USC 254(d) (diplomatic immunity (VCDR 31)) 680-8, 707-8, 717, 725
- diplomatic status, evidence of/requirements
 - "authorized and received as such by the President" (Diplomatic Relations Act 1790) 725-6
 - executive certificate, conclusiveness 726
- employment contracts (locally engaged staff in diplomatic mission) (immunity): *see also* *Fun; Gonzalez Paredes; Montuya; Sabbithi*
 - diplomatic immunity (VCDR 31/22 USC 254(d)) 680-8
- extraterritorial jurisdiction including extraterritorial enforcement of legislation by legislating State, jurisprudence, *Hoffmann-La Roche* 495-8
- torture, civil remedy obligation (UNCAT 14(1)), limitation to acts within the jurisdiction 229
- treaties and municipal law (including implementing legislation/incorporation), subsequent legislation, effect/"subsequent in time rule" 712
- treaty interpretation
 - clear language rule 709-10
 - executive's responsibility/"great weight" due to 685-6
- universal jurisdiction, civil claims 242-3, 269

universal jurisdiction

- civil matters, limited applicability to 267-8, 281-2: *see also* torture, civil remedy obligation (with particular reference to UNCAT 14(1))
- forum of necessity: *see* forum of necessity
- joining criminal proceedings as civil party and universal civil jurisdiction distinguished 243-4, 269
- jurisprudence
 - Aksan* 240, 268-9
 - Belhaj* 241
 - Bouzari* 241-2
 - El-Hojouj v. Amer Derbas* 240, 268-9
 - Ferrini* 240-1
 - Jones* (Saudi Arabia cases) 241

Jurisdictional Immunities 240-1
Kazemi 241-2
Nait-Liman 240-4, 267-72
Pinochet (No 3) 241
 nexus/connecting factors, need for, *ratione personae/ratione loci* (Bucher Report) 268

Wallisbauser (No 1) (access to a court (ECHR 6(1)/State immunity))

admissibility (six-month rule)
 Court's decision 72
 parties' arguments (applicant) 71-2
 parties' arguments (Austria) 71
 alleged violation of ECHR 6(1) (right of access to a court) (admissibility)
 Court's decision
 civil servants' entitlement (*Vilho Eskelinen*) 72-3
 exclusion on objective grounds of State's interests 72-3
 express exclusion of a category (in State's interests) 72-3
 alleged violation of ECHR 6(1) (right of access to a court) (compliance)
 Court's assessment (justified restrictions)
 Cudak 75-7
 erosion of absolute State immunity (ILC/CIL) 79-80
 immunity as inherent restriction 78-9
 JISP 11 as customary international law 77, 79
 margin of appreciation 75-7, 105
 promotion of comity and good relations as legitimate aim 78-9
 "proportionate to the legitimate aim" requirement 78-81
 Sabeh El Leil 77
 very essence of right, obligation not to impair 75-7, 81
 Court's conclusion 81
 issue for determination (Austrian courts' acceptance of US refusal to serve summons on DOJ) 78
 ILC(SI) 20 (service of process)/customary international law status 80-1
 parties' arguments (applicant) 73-4
 parties' arguments (Austria) 74-5
 alleged violation of ECHR 14 (differential treatment) 82
 alleged violation of ECHR Protocol 1:1 (right to peaceful enjoyment of property) 81-2
 background (factual)
 applicant's disabled person status 57
 applicant's dismissal 57
 request for prospective approval of dismissal/Administrative Court's refusal 58
 request for retroactive approval of dismissal/refusal 58
 Vienna Labour and Social Court/Supreme Court proceedings (voidness of dismissal) 57-8
 proceedings for payment of salary to June 1995/US "ex gratia" payment 58
 proceedings for payment of salary subsequent to June 1995/US default 58
 proceedings for payment of salary subsequent to September 1996/attempts to serve summons 59-63
 application for service by publication (*ZPO* 121(2))/*ZPO* 116 (service on court-appointed representative (*curator*)) 60-3
 JISP, relevance 63-4
 service and request for legal assistance distinguished 60-2
 service through diplomatic channels as sole method (*ZustG* 11(2)) 62-3
 US rejection of attempted *ZustG* 11(2) service/courts' refusal of judgment in default 59, 63-4

- Wallishauser (No 1) (access to a court (ECHR 6(1)/State immunity))** (*cont.*)
 proceedings for reimbursement of social security contributions/dismissal of request for judgment in default 58-9
 Court's decision 84-5
 just satisfaction (ECHR 41)
 costs and expenses (excessive claim including costs and expenses prior to proceedings at issue) 83-4
 default interest 84
 non-pecuniary damage 82-3
 procedural history
 joinder of admissibility and merits (ECHR 29(1)) 56-7
 postponement pending *Cudak* and *Sabeh El Leil* decisions 56-7
 relevant law and practice (domestic)
 Civil Procedure Code (*ZPO*)
 s. 116 (service on court-appointed representative (*curator*)) 64-5
 s. 121 (service outside the jurisdiction) 64-5
 refusal to accept service and refusal to provide legal assistance distinguished 65-6
 Service Act (*ZustG*) s. 11 (service of process outside the jurisdiction/on foreign nationals/international organizations which enjoy privileges and immunities) (text) 64
 relevant law and practice (international)
 ECSI 5 (employment contract exception relating to work to be performed in the forum State) 66-7
 ECSI 16 (service of process) 66-7
 ILC(SI) 11/commentary 69
 ILC(SI) 20 (service of process)/commentary 69-71
 JISP 11 (employment contracts: removal of immunity subject to exceptions) 67-8, 124
 JISP 22 (service of process) 68-9
 JISP (overview) 67-71
- Wallishauser (No 2) (employment contract obligations/State immunity)**
 alleged violation of ECHR 6 (Constitutional Court's refusal to seek ECJ preliminary ruling (TFEU 267)) 136-7
 applicant's complaint 127
 Court's assessment (relevance of prejudice) 128
 Court's decision 129
 parties' arguments (applicant) 128
 parties' arguments (Austria) 127-8
 alleged violation of ECHR 14 (non-discrimination) 136
 alleged violation of ECHR Protocol 1:1 (peaceful enjoyment of possessions) (merits)
 Court's assessment (justified restrictions)
 balance of interests of individual and community as a whole 131-2
 exclusion of social security from entitlement to State immunity (ECSI 29) 133-4
 immunity from execution and jurisdiction distinguished (JISP 18-21/ILC(SI) 18-19/ILC commentary)/validity of *ASVG* 53(3)(a) 133-4
 interpretation of domestic law/compliance with ECHR as matter primarily for domestic courts 132
 JISP 11 as customary international law 133-4
 legitimate aim (good functioning of social security system) 132-3
 margin of appreciation 132
 "proportionate to the legitimate aim" (excessive burden argument) 133-6

- Court's conclusion 135-6
- parties' arguments (applicant) 129-30
- parties' arguments (Austria) 130-1
- background (factual)
 - applicant's disabled person status 116
 - applicant's dismissal 116
 - Vienna Labour and Social Court/Supreme Court proceedings (voidness of dismissal) 116
 - applicant's registration under the *ASVG*/reimbursement of contributions 116
 - applicant's retirement (2002)/pension claim 121
 - proceedings against the US for reimbursement of applicant's social security payments 121
 - proceedings giving rise to application
 - applicant's constitutional complaint 120-1
 - declaration of applicant's status as employee 118
 - proceedings relating to applicant's obligation to pay employer/employee social security insurance 118-20
 - proceedings for payment of salary to June 1995/US "ex gratia" payment 117
 - proceedings for payment of salary subsequent to September 1996/*Wallishauer No 1* 117
- Court's decision 137
- procedural history 115
- relevant law (domestic) (*ASVG* by section)
 - 4(1)(1) (compulsory affiliation to health and accident insurance/pension schemes) 121-2
 - 4(2) ("employee") 121-2
 - 33 (employer's obligation to register employees) 122
 - 35(4) (exceptions to s. 33, employees' obligations) (text) 122
 - 51(3) (employer/employee responsibility for compulsory contributions) 122
 - 53(3) (employee's obligation to pay full amount of contributions) 122
 - 58(2) (employer's responsibility for entire amount of social security contributions) 122
- relevant law (international)
 - ECSI 5 (employment contract exception relating to work to be performed in the forum State) 123
 - ECSI 29 (excluded proceedings) 123
 - ILC(SI) 18 (State immunity from measures of constraint) (1991)/commentary 125-6
 - ILC(SI) 19 (specific categories of property) 126-7
 - JISP 18 (State immunity from pre-judgment measures of constraint) 124
 - JISP 19 (State immunity from post-judgment measures of constraint) 124-5
 - JISP 20 (effect of consent to jurisdiction to measures of constraint) 125
 - JISP (overview) 123-7