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*Lauterpacht Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
181

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CONTENTS

	<i>Page</i>
PREFACE	vii
EDITORIAL NOTE	ix
TABLE OF CASES (alphabetical)	xiii
TABLE OF CASES (according to courts and countries)	xv
DIGEST (main headings)	xvii
DIGEST OF CASES REPORTED IN VOLUME 181	xix
TABLE OF TREATIES	xxxiii
REPORTS OF CASES	1
INDEX	705

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Frontmatter
[More Information](#)

PREFACE

The present volume contains the 2017 order on provisional measures of the International Court of Justice in the *Jadhav Case*. International jurisprudence is further reflected in the 2018 Grand Chamber judgments of the Court of Justice of the European Union in *Achmea BV* (together with the 2012 final arbitration award to which it relates) and in *Western Sahara Campaign UK* (which is included with the 2015 judgment of the English High Court, which referred the case to the Court of Justice), the judgment of the European Court of Human Rights in *AB and Others v. France* (together with the Norwegian case *Huseini* which draws upon it) and the reports of the World Trade Organization in *Mexico – Soft Drinks*. As well as judgments from England and Norway, national jurisprudence is reflected in decisions from Germany (*Gaza Flotilla Incident Case*) and the Netherlands (“*Kouwenhoven*” Case).

The Editors wish to thank the many people whose work has made this volume possible. Dr Paschalis Paschalidis summarized both cases from the Court of Justice of the European Union. Mr Michael Becker summarized *Kouwenhoven*, Mr Massimo Lando wrote the summary of the *Jadhav Case* and Mr Max Dowbenko summarized English *Western Sahara*. Dr Lorand Bartels and Ms Eleni Methymaki selected, summarized and edited the text of the WTO case. Professor Claus Kreß supplied and summarized the German decision. Dr Eirik Bjorge supplied and translated the decision from Norway. Ms Karen Lee prepared the summary of the case from the European Court of Human Rights and saw the volume through the press. Ms Maria Netchaeva, the ILR Editorial Assistant, prepared the Tables of Cases and Digest. Miss Maureen MacGlashan, CMG, compiled the Table of Treaties and Index. Mrs Diane Ilott checked the copy and Mr Jack Webb read the proofs.

The Editors are very grateful to the Federal Prosecutor General for permission to reproduce the translation of the German decision not to instigate investigations in the *Gaza Flotilla Incident Case*, and to the Netherlands Court of Appeal for permission to reproduce its official

translation of *Kouwenhoven* posted on the official website. The Editors also extend their thanks to the International Court of Justice, the Permanent Court of Arbitration, the Court of Justice of the European Union (which owns the copyright in its material), the European Court of Human Rights and the World Trade Organization (which owns the copyright in its material) for kindly permitting these *Reports* to use the electronic files posted on their official websites. The decision from England published in this volume carries Crown copyright and contains public sector information licensed under the Open Government Licence v.3.0; the electronic file was sourced from the British and Irish Legal Information Institute website.

Finally, our thanks go to all the others who have worked to complete this volume, particularly our publishers, Cambridge University Press, and typesetters, SPi, and their staff.

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September 2018

EDITORIAL NOTE

The *International Law Reports* endeavour to provide within a single series of volumes comprehensive access in English to judicial materials bearing on public international law. On certain topics it is not always easy to draw a clear line between cases which are essentially ones of public international law interest and those which are primarily applications of special domestic rules. For example, in relation to extradition, the *Reports* will include cases which bear on the exception of “political offences” or the rule of double criminality, but will restrict the number of cases dealing with purely procedural aspects of extradition. Similarly, while the general rules relating to the admission and exclusion of aliens, especially of refugees, are of international legal interest, cases on the procedure of admission usually are not. In such borderline areas, and sometimes also where there is a series of domestic decisions all dealing with a single point in essentially the same manner, only one illustrative decision will be printed and references to the remainder will be given in an accompanying note.

DECISIONS OF INTERNATIONAL TRIBUNALS

The *Reports* seek to include so far as possible the available decisions of every international tribunal, for example the International Court of Justice, or ad hoc arbitrations between States. There are, however, some jurisdictions to which full coverage cannot be given, either because of the large number of decisions (e.g. the Administrative Tribunal of the United Nations) or because not all the decisions bear on questions of public international law (e.g. the Court of Justice of the European Union). In these instances, those decisions are selected which appear to have the greatest long-term value.

Human rights cases. The number of decisions on questions of international protection of human rights has increased considerably in recent years and it is now impossible for the *Reports* to cover them all. As far as decisions of international jurisdictions are concerned, the *Reports* will continue to publish decisions of the European Court of Human Rights and of the Inter-American Court of Human Rights, as well as “views” of the United Nations Human Rights Committee. Decisions of national courts on the application of conventions on human rights will not be published unless they deal with a major point

of substantive human rights law or a matter of wider interest to public international lawyers such as the relationship of international law and national law, the extent of the right of derogation or the principles of the interpretation of treaties.

International arbitrations. The *Reports* of course include arbitral awards rendered in cases between States which involve an application of public international law. Beyond this, however, the selection of arbitral decisions is more open to debate. As these *Reports* are principally concerned with matters of public international law, they will not include purely private law commercial arbitrations even if they are international in the sense that they arise between parties of different nationality and even if one of them is a State. (For reports of a number of such awards, see *Yearbook Commercial Arbitration* (ed. Albert Jan van den Berg, under the auspices of the International Council for Commercial Arbitration).) But where there is a sufficient point of contact with public international law then the relevant parts of the award will be reported. Examples of such points of contact are cases in which the character of a State as a party has some relevance (e.g. State immunity, stabilization clauses, *force majeure*) or where there is a choice of law problem involving discussion of international law or general principles of law as possible applicable laws. The same criteria will determine the selection of decisions of national courts regarding the enforcement of arbitral awards.

DECISIONS OF NATIONAL TRIBUNALS

A systematic effort is made to collect from all national jurisdictions those judicial decisions which have some bearing on international law.

EDITORIAL TREATMENT OF MATERIALS

The basic policy of the Editors is, so far as possible, to present the material in its original form. It is no part of the editorial function to impose on the decisions printed in these volumes a uniformity of approach or style which they do not possess. Editorial intervention is limited to the introduction of the summary and of the bold-letter rubric at the head of each case. This is followed by the full text of the original decision or of its translation. Normally, the only passages which will be omitted are those which contain either statements of fact having no bearing on the points of international law involved in the case or discussion of matters of domestic law unrelated to the points of international legal interest. The omission of material is usually indicated either by a series of dots or by the insertion of a sentence in square brackets noting the passages which have been left out.

PRESENTATION OF MATERIALS

For reproduction of material in this volume, electronic files have been used wherever possible and their source acknowledged in the Preface. Citations of the reports in which the case may be found are listed in the “Report” section in square brackets at the end of the case; the language of the original decision is also mentioned there. The bold figures in square brackets in the body of the text indicate the pagination of the original report where included.

NOTES

Footnotes. Footnotes enclosed in square brackets are editorial insertions. All other footnotes are part of the original report.

Other notes. References to cases deemed not to be sufficiently substantial to warrant reporting will occasionally be found in editorial notes either at the end of a report of a case on a similar point or under an independent heading.

DIGEST OF CASES

With effect from Volume 75 the decisions contained in the *Reports* are no longer arranged according to the traditional classification scheme. Instead a Digest of Cases is published at the beginning of each volume. The main headings of the Digest are arranged alphabetically. Under each heading brief details are given of those cases reported in that volume which contain points covered by that heading. Each entry in the Digest gives the name of the case concerned and the page reference, the name of the tribunal which gave the decision and an indication of the main points raised in the case which relate to that particular heading of the Digest. Where a case raises points which concern several different areas of international law, entries relating to that case will appear under each of the relevant headings in the Digest. A list of the main headings used in the Digest is set out at p. xvii.

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and a Consolidated Tables of Cases and Treaties for volumes 1-80 were published in two volumes in 1990 and 1991. A further volume containing the Consolidated Index and Consolidated Tables of Cases and Treaties for volumes 81-100 was published in 1996. A Consolidated Index, a Consolidated Tables of Cases and a Consolidated Table of Treaties for volumes 1-125 were published in 2004. A Consolidated Index and a Consolidated Table of Treaties for volumes 1-160 were published in 2017. Volume 180 contains Consolidated Tables of Cases for volumes 126-180.

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Frontmatter
[More Information](#)

TABLE OF CASES REPORTED

ALPHABETICAL

(Cases which are reported only in a note are distinguished from cases which are reported in full by the insertion of the word “note” in parentheses after the page number of the report.)

AB and Others <i>v.</i> France (Application No 11593/12) 404	The “Kouwenhoven” Case 568
Achmea BV (formerly known as Eureko BV) <i>v.</i> Slovak Republic (PCA Case No 2008-13) (Final Award) 50	Mexico – Tax Measures on Soft Drinks and Other Beverages 436
Achmea Case [Court of Justice of the European Union] 175	
Complaint Regarding the Israeli Actions against the Maritime Flotilla for the Gaza Strip (Case No 3 ARP 77/10-4) 488	R (Western Sahara Campaign UK) <i>v.</i> Commissioners for Her Majesty’s Revenue and Customs and Another [United Kingdom] 263
	R (Western Sahara Campaign UK) <i>v.</i> Commissioners for Her Majesty’s Revenue and Customs and Another (Case C-266/16) 288
Eureko BV (Achmea BV) <i>v.</i> Slovak Republic (PCA Case No 2008-13) (Final Award) 50	Slowakische Republik (Slovak Republic) <i>v.</i> Achmea BV (Case C-284/16) 175
Gaza Flotilla Incident Case 488	Soft Drinks and Other Beverages (Mexico – Tax Measures on) 436
Huseini <i>v.</i> Ministry of Justice and Public Security 419	Tax Measures on Soft Drinks and Other Beverages (Mexico) 436
Jadhav Case (India <i>v.</i> Pakistan) (Provisional Measures) 1	

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TABLE OF CASES REPORTED

ARRANGED ACCORDING TO COURTS AND
 TRIBUNALS (INTERNATIONAL CASES) AND
 COUNTRIES (MUNICIPAL CASES)

(Cases which are reported only in a note are distinguished from cases which are reported in full by the insertion of the word “note” in parentheses after the page number of the report.)

I. DECISIONS OF INTERNATIONAL TRIBUNALS

<p style="text-align: center;"><i>Arbitration Tribunal</i></p> <p style="text-align: center;">2012</p> <p>Achmea BV (formerly known as Eureko BV) <i>v.</i> Slovak Republic (PCA Case No 2008-13) (Final Award) 50</p> <p style="text-align: center;"><i>Court of Justice of the European Union</i></p> <p style="text-align: center;">2018</p> <p>R (Western Sahara Campaign UK) <i>v.</i> Commissioners for Her Majesty’s Revenue and Customs and Another (Case C-266/16) 288</p> <p>Slovakische Republik (Slovak Republic) <i>v.</i> Achmea BV (Case C-284/16) 175</p> <p style="text-align: center;"><i>European Court of Human Rights</i></p> <p style="text-align: center;">2016</p> <p>AB and Others <i>v.</i> France (Application No 11593/12) 404</p>	<p style="text-align: center;"><i>International Court of Justice</i></p> <p style="text-align: center;">2017</p> <p>Jadhav Case (India <i>v.</i> Pakistan) (Provisional Measures) 1</p> <p style="text-align: center;"><i>World Trade Organization</i></p> <p style="text-align: center;">2006</p> <p>Mexico – Tax Measures on Soft Drinks and Other Beverages (Panel Report) (WT/DS308/R) 436, 443</p> <p>Mexico – Tax Measures on Soft Drinks and Other Beverages (Appellate Body Report) (WT/DS308/AB/R) 436, 463</p>
--	--

II. DECISIONS OF MUNICIPAL COURTS

<p style="text-align: center;"><i>Germany, Federal Republic of</i></p> <p style="text-align: center;">2014</p> <p>Complaint Regarding the Israeli Actions against the Maritime Flotilla for the Gaza Strip (Case No 3 ARP 77/10-4) 488</p> <p style="text-align: center;"><i>The Netherlands</i></p> <p style="text-align: center;">2017</p> <p>The “Kouwenhoven” Case 568</p>	<p style="text-align: center;"><i>Norway</i></p> <p style="text-align: center;">2017</p> <p>Huseini <i>v.</i> Ministry of Justice and Public Security 419</p> <p style="text-align: center;"><i>United Kingdom, England</i></p> <p style="text-align: center;">2015</p> <p>R (Western Sahara Campaign UK) <i>v.</i> Commissioners for Her Majesty’s Revenue and Customs and Another 263</p>
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[More Information](#)

DIGEST OF CASES

List of Main Headings

(Those headings for which there are entries in the present volume are printed in italics. For a guide to the Digest, see the Editorial Note at p. xi.)

Air	International Organizations
<i>Aliens</i>	<i>International Tribunals</i>
<i>Arbitration</i>	<i>Jurisdiction</i>
Canals	Lakes and Landlocked Seas
Claims	Nationality
Comity	<i>Recognition</i>
Conciliation	<i>Relationship of International Law and Municipal Law</i>
<i>Consular Relations</i>	<i>Reprisals and Countermeasures</i>
<i>Damages</i>	Rivers
Diplomatic Relations	<i>Sea</i>
<i>Economics, Trade and Finance</i>	Sources of International Law
Environment	Space
Evidence before International Courts and Tribunals	State Immunity
<i>Expropriation</i>	<i>State Responsibility</i>
Extradition	State Succession
General Principles of International Law	<i>States</i>
Governments	<i>Territory</i>
<i>Human Rights</i>	<i>Terrorism</i>
<i>International Court of Justice</i>	<i>Treaties</i>
<i>International Criminal Law</i>	<i>War and Armed Conflict</i>

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Edited by Christopher Greenwood , Karen Lee
Frontmatter
[More Information](#)

DIGEST OF CASES REPORTED IN VOLUME 181

	<i>Page</i>
Aliens	
Asylum seekers — Detention of migrant children — Family detained in detention centre — Conditions in detention centre — European Convention on Human Rights, 1950, Articles 3, 5 and 8 — Jurisprudence of European Court of Human Rights — Convention on the Rights of the Child, 1989, Articles 3 and 37 — Whether detention of migrant children and their parents illegal — Whether Norway violating international obligations and Constitution of Norway — Whether damages appropriate — Norway, Borgarting Court of Appeal	
<i>Huseini v. Ministry of Justice and Public Security</i>	419
Arbitration	
Applicable law — Investment arbitration — Proceedings instituted by investor incorporated in one European Union State against another European Union State — Bilateral investment treaty between two European Union States — Whether compatible with European Union law — Whether European Union law forming part of the law to be applied by the tribunal — Seat of arbitration in a third European Union State — Jurisdiction of the arbitration tribunal — Costs — UNCITRAL Rules, Article 40(1) — Arbitration Tribunal	
<i>Achmea BV (formerly known as Eureko BV) v. Slovak Republic (PCA Case No 2008-13) (Final Award)</i>	50
Jurisdiction — Bilateral investment treaty — Treaty between two Member States of the European Union — Whether provision for investor–State arbitration compatible with European Union law — Applicable law — Whether including European Union law — Nature of arbitration tribunal — Relationship with national courts and with Court of Justice of the European Union — Court of Justice of the European Union (Grand Chamber)	
<i>Slovakische Republik (Slovak Republic) v. Achmea BV (Case C-284/16)</i>	175

Consular Relations

Right of access to consul for person arrested — Indian national sentenced to death by court in Pakistan — Vienna Convention on Consular Relations, 1963 — Article 36(1) — Failure of arresting authorities to provide consular access — Whether Article 36(1) of Vienna Convention applying to persons suspected of espionage or terrorism — International Court of Justice

Jadhav Case (India v. Pakistan) (Order on Provisional Measures) 1

Damages

Principle of full compensation for loss — *Chorzów Factory* principle — Causation — Cost of suspension of activities of investment — Valuation — Cost of borrowing — Interest — Arbitration Tribunal

Achmea BV (formerly known as Eureko BV) v. Slovak Republic (PCA Case No 2008-13) (Final Award) 50

Economics, Trade and Finance

Economic sanctions — Liberia — UN Security Council Resolutions 1343 (2001) and 1408 (2002) — Implementation of arms embargo under Dutch law — Whether sanctions regime violated — The Netherlands, Court of Appeal in 's-Hertogenbosch

The “Kouwenhoven” Case 568

Investment — Bilateral investment treaty — Fair and equitable treatment — Health insurance business — Ban on profits and prohibition of sale of portfolio — Full protection and security — Free transfers — Arbitration Tribunal

Achmea BV (formerly known as Eureko BV) v. Slovak Republic (PCA Case No 2008-13) (Final Award) 50

Investment — Bilateral investment treaty — Treaty between two Member States of the European Union — Arbitration provision — Whether provision for arbitration of investor–State dispute compatible with European Union law — Court of Justice of the European Union (Grand Chamber)

Slowakische Republik (Slovak Republic) v. Achmea BV (Case C-284/16) 175

World Trade Organization — General Agreement on Tariffs and Trade — Relationship with other international — North American Free Trade Agreement — Measures allegedly taken contrary to GATT said to be countermeasures responding to violation of NAFTA — WTO dispute settlement mechanism — World Trade Organization, Panel, Appellate Body

Mexico – Tax Measures on Soft Drinks and Other Beverages 436

Expropriation

Investment — Bilateral investment treaty — Protection against expropriation — Requirement of deprivation of investment — Measures subsequently reversed — Whether amounting to deprivation of property — Arbitration Tribunal

Achmea BV (formerly known as Eureko BV) v. Slovak Republic (PCA Case No 2008-13) (Final Award) 50

Human rights

Prohibition of torture and inhuman or degrading treatment or punishment — Aliens — Detention of family in detention centre — Child accompanying parents — Foreign child — Relevance of illegal immigrant status — Age of child — Length and conditions of confinement — Whether treatment exceeding permissible threshold — Whether violation of Article 3 of European Convention on Human Rights, 1950 in respect of child — European Court of Human Rights (Fifth Section)

AB and Others v. France (Application No 11593/12) 404

Prohibition of torture and inhuman or degrading treatment or punishment — Whether detention of children and their parents illegal — Jurisprudence of European Court of Human Rights — Age of children — Length and conditions of detention — Whether violation of Article 3 of European Convention on Human Rights, 1950 — Norway, Borgarting Court of Appeal

Huseini v. Ministry of Justice and Public Security 419

Right to freedom and security — Whether detention of children and their parents illegal — Jurisprudence of European Court of Human Rights — Whether detention of family measure of last resort with no possible alternative — Whether violation of Article 5(1) of European Convention on Human Rights, 1950 — Norway, Borgarting Court of Appeal

Huseini v. Ministry of Justice and Public Security 419

Human rights (*cont.*)

Right to liberty and security — Whether procedure prescribed by law and lawful — Deprivation of liberty in case of child — Whether detention measure of last resort with no possible alternative — Whether violation of Article 5 of European Convention on Human Rights, 1950 in respect of child — European Court of Human Rights (Fifth Section)
AB and Others v. France (Application No 11593/12) 404

Right to respect for private and family life — Whether detention of children and their parents illegal — Jurisprudence of European Court of Human Rights — Whether detention justified — Whether compelling societal needs — Whether proportionate — Whether violation of Article 8 of European Convention on Human Rights, 1950 — Norway, Borgarting Court of Appeal
Huseini v. Ministry of Justice and Public Security 419

Rights of the child — Whether detention of children illegal — Convention on the Rights of the Child, 1989, Articles 3 and 37 — Interpretation of Article 3 — Best interests of the child — Prohibition of torture and inhuman or degrading treatment or punishment — Whether measure strictly necessary — Whether violation of Articles 3 and 37 of Convention on the Rights of the Child, 1989 — Norway, Borgarting Court of Appeal
Huseini v. Ministry of Justice and Public Security 419

Self-determination — Obligation *erga omnes* — Non-self-governing territories — Western Sahara — Whether inclusion of territory of Western Sahara and of waters adjacent thereto within scope of EU–Morocco Fisheries Partnership Agreement, 2006 constituting breach of right of people of Western Sahara to self-determination — Court of Justice of the European Union (Grand Chamber)
R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

International Court of Justice

Provisional measures of protection — Consular relations — Death penalty — Prima facie jurisdiction — Prima facie existence of a

dispute — Prima facie jurisdiction *ratione materiae* — Vienna Convention on Consular Relations, 1963 (“Vienna Convention”) — Optional Protocol to Vienna Convention concerning Compulsory Settlement of Disputes, 1963 — Whether Agreement on Consular Access of 21 May 2008 excluding application of Vienna Convention — Plausibility — Article 36(1) of Vienna Convention — Right to consular access — Right to be informed of one’s consular rights — Irreparable prejudice — Urgency — Whether existence of appeals procedure against death sentence removing real and imminent risk of irreparable prejudice — Link between provisional measures requested and rights sought to be protected — International Court of Justice

Jadhav Case (India v. Pakistan) (Order on Provisional Measures) 1

International Criminal Law

Circumstances excusing unlawful conduct — National emergency — Whether violations of arms embargo and laws and customs of war justified by right to self-defence under international law — The Netherlands, Court of Appeal in ’s-Hertogenbosch

The “Kouwenhoven” Case 568

Difference between perpetrator and accomplice liability — Complicity in war crimes — Requirement that defendant promoted or facilitated the commission of war crimes — Conditional intent — Whether defendant consciously accepted the probability that war crimes would be committed in connection with his material support — Risk of doing business with a government engaged in international criminal activity — The Netherlands, Court of Appeal in ’s-Hertogenbosch

The “Kouwenhoven” Case 568

Evidence — Admissibility and weight of witness statements — Factors relevant to assessing witness statements obtained in post-conflict environment — Coercion of witnesses — Whether inconsistencies in witness statements requiring acquittal — The Netherlands, Court of Appeal in ’s-Hertogenbosch

The “Kouwenhoven” Case 568

War crimes — Crimes against humanity — Law of armed conflict — Armed conflict at sea — Humanitarian assistance and peacekeeping missions — Wilfully causing great suffering

International Criminal Law (*cont.*)

and serious injury to body or health — Deportation and forcible transfer — Humiliating and degrading treatment — Unjustifiably delaying return home of a person detained after enforcement of naval blockade — Pillaging and unlawfully destroying, appropriating or seizing property — Crimes against humanity — Contextual element of widespread or systematic attack against any civilian population — Person *hors de combat* — Whether criminal investigation to be instigated — Whether sufficient reason to believe crime committed to detriment of German and non-German nationals — Germany, Federal Prosecutor General

Complaint Regarding the Israeli Actions against the Maritime Flotilla for the Gaza Strip (Case No 3 ARP 77/10-4) 488

International Tribunals

Jurisdiction — Discretion not to exercise jurisdiction — Whether inherent power — WTO dispute settlement system — Whether Panel empowered to decline to exercise jurisdiction — Whether dispute between two States parties to NAFTA should be heard by arbitral tribunal under NAFTA rather than by panel under the WTO Dispute Settlement Understanding — World Trade Organization, Panel, Appellate Body

Mexico – Tax Measures on Soft Drinks and Other Beverages 436

Jurisdiction

European Court of Justice — Competence to review legality of international agreements concluded by European Union with third countries — EU–Morocco Fisheries Partnership Agreement, 2006 — Whether *Monetary Gold* principle applicable — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

Universal jurisdiction — Extraterritorial jurisdiction in case of attack on marine traffic — Passive personality principle — Law of Germany including discretion not to exercise universal jurisdiction — Immunity from foreign criminal jurisdiction — Germany, Federal Prosecutor General

Complaint Regarding the Israeli Actions against the Maritime Flotilla for the Gaza Strip (Case No 3 ARP 77/10-4) 488

Universal jurisdiction — War crimes — Prosecution of a Dutch national for offences committed abroad — Whether conduct of investigation by Dutch authorities making prosecution inadmissible — Whether amnesty scheme in Liberia barrier to prosecution — No violation of fair trial rights — The Netherlands, Court of Appeal in 's-Hertogenbosch

The “Kouwenhoven” Case 568

Recognition

Obligation not to recognize an illegal situation resulting from a breach of right to self-determination and not to render aid or assistance in maintaining that situation — Whether European Union breaching this obligation by concluding EU–Morocco Fisheries Partnership Agreement, 2006, in as far as it applies to Western Sahara and waters adjacent thereto — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty’s Revenue and Customs and Another (Case C-266/16) 288

Relationship of International Law and Municipal Law

European Union law — Double nature of European Union law as part of the law in force in every Member State and as deriving from an international agreement between the Member States — Relationship between rights accorded to investors under bilateral investment treaty and principles of European Union law — Court of Justice of the European Union (Grand Chamber)

Slowakische Republik (Slovak Republic) v. Achmea BV (Case C-284/16) 175

Treaties — Custom — Judicial review of international agreements concluded by European Union — Whether rules of international law can be invoked in judicial review — Conditions that must be met in order to invoke rules of international law in judicial review — Whether right to self-determination, principle of permanent sovereignty over natural resources and rules of international humanitarian law applicable to conclusion of international agreements concerning exploitation of natural resources of occupied territory can be invoked — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty’s Revenue and Customs and Another (Case C-266/16) 288

Relationship of International Law and Municipal Law (*cont.*)

Treaties — European Convention on Human Rights, 1950, Articles 3, 5 and 8 — Convention on the Rights of the Child, 1989, Articles 3 and 37 — Constitution of Norway — Jurisprudence of European Court of Human Rights — 2015 report by UN Special Rapporteur on Torture — Whether detention of migrant children and their parents illegal — Whether damages appropriate — Norway, Borgarting Court of Appeal

Huseini v. Ministry of Justice and Public Security

419

Treaties — United Nations Charter, 1945 — Principles of international law — Customary international law — European Union law — Judicial review — Defendants applying EU law provisions — Whether defendants acting unlawfully — International agreements concluded by European Union — Failure to distinguish between sovereign territories of Morocco and Western Sahara — Morocco's occupation of Western Sahara — Right of people of Western Sahara to self-determination — Validity of actions of European Union in reaching agreements — Whether European Commission able to make agreements and remain in conformity with international law and UN Charter without consultation and consent of Saharawi people and recognized representatives having been obtained — Whether claimant's claims justiciable — Whether EU measures arguably unlawful — Whether arguable case of manifest error by European Commission in understanding and applying international law — Whether appropriate for English court to request preliminary reference from Court of Justice of the European Union — England, High Court, Queen's Bench Division (Administrative Court)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another

263

Reprisals and Countermeasures

Nature and scope — Relationship between countermeasures under international law and measures to secure compliance with laws and regulations within the WTO — Whether falling under GATT Article XX(d) — World Trade Organization, Panel, Appellate Body

Mexico – Tax Measures on Soft Drinks and Other Beverages

436

Sea

Armed conflict at sea — Treaties — Customary international law — Right to a naval blockade — Legal prerequisites — Status of merchant vessel breaching naval blockade — Status of goods on merchant vessel breaching naval blockade — Contraband — Enforcement of naval blockade on high seas — Naval blockade in law of armed conflict — Whether power to impose a naval blockade applicable — Whether criminal investigation to be instigated — Whether sufficient reason to believe crime committed to detriment of German and non-German nationals — Germany, Federal Prosecutor General

Complaint Regarding the Israeli Actions against the Maritime Flotilla for the Gaza Strip (Case No 3 ARP 77/10-4) 488

Maritime zones — Territorial sea — Exclusive economic zone — Rights and jurisdiction of coastal State — Fisheries — Whether waters adjacent to territory of Western Sahara forming part of Moroccan fishing zone under EU–Morocco Fisheries Partnership Agreement, 2006 — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

State Responsibility

International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, 2001 — Duty of States to cooperate to end serious breaches of peremptory norm of international law — Customary international law — Whether failure by administering power to promote self-determination constituting a breach — Whether arguable case of manifest error by European Commission in understanding and applying international law — Whether appropriate for English court to request preliminary reference from Court of Justice of the European Union — England, High Court, Queen's Bench Division (Administrative Court)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another 263

States

Sovereignty — Extent of sovereignty — Morocco — Western Sahara — International recognition of Western Sahara as a

States (*cont.*)

non-self-governing territory — Whether agreements concluded between Morocco and European Union applicable to Western Sahara — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

Territory

Non-self-governing territory — Western Sahara — Morocco's occupation of Western Sahara — Agreements between European Union and Morocco — Failure to distinguish between sovereign territories of Morocco and Western Sahara — Validity of actions of European Union in reaching Agreements — Whether European Commission able to make Agreements and remain in conformity with international law and UN Charter without consultation and consent of Saharawi people and recognized representatives having been obtained — Whether arguable case of manifest error by European Commission in understanding and applying international law — Whether appropriate for English court to request preliminary reference from Court of Justice of European Union — England, High Court, Queen's Bench Division (Administrative Court)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another 263

Non-self-governing territory — Western Sahara — UN Charter, 1945, Article 73 — Principle of permanent sovereignty over natural resources — Administering power — Rights and obligations of administering powers — Power to conclude international agreements applicable to non-self-governing territory — Whether Morocco administering power of Western Sahara — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

Terrorism

Consular relations — Right to consular access — Treaties — Interpretation — Vienna Convention on Consular Relations, 1963 — Article 36(1) — Whether Article 36(1) of Vienna

Convention applying to persons suspected of espionage or terrorism — International Court of Justice

Jadhav Case (India v. Pakistan) (Order on Provisional Measures) 1

Treaties

Application — Scope — Principle that treaty not applicable to third parties — Agreements between European Union and Morocco — Whether applicable to Western Sahara — Whether Western Sahara a third party — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

Bilateral investment treaty — Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic, 1991 — Whether investor–State dispute resolution provision providing for arbitration compatible with Treaty on the Functioning of the European Union, 2007 — Court of Justice of the European Union (Grand Chamber)

Slowakische Republik (Slovak Republic) v. Achmea BV (Case C-284/16) 175

Interpretation — Effect — Interpretation of GATT Article XX(d) — Relationship between GATT and other international agreements — World Trade Organization, Panel, Appellate Body

Mexico – Tax Measures on Soft Drinks and Other Beverages 436

Interpretation — Vienna Convention on Consular Relations, 1963 — Article 36(1) — Whether Article 36(1) of Vienna Convention applying to persons suspected of espionage or terrorism — International Court of Justice

Jadhav Case (India v. Pakistan) (Order on Provisional Measures) 1

Interpretation — Vienna Convention on the Law of Treaties, 1969, Article 31 — Whether binding on European Union — Subsequent agreement between parties — Special meaning given by parties to term of treaty — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16) 288

War and Armed Conflict

Existence of armed conflict — Whether armed conflict international or internal — Limited gap between norms applicable to international versus non-international armed conflict — Whether violations of laws and customs of war giving rise to individual criminal liability under Dutch law — The Netherlands, Court of Appeal in 's-Hertogenbosch

The “Kouwenhoven” Case

568

International armed conflict — Non-international armed conflict — Status of armed conflict — Law of armed conflict — Armed conflict at sea — Whether armed conflict between non-State organization and Israel — Terrorism — Use of terrorist methods — Relevance — Prerequisites for determining existence of armed conflict — Whether necessary to determine whether armed conflict international or non-international in character — Distinction between war crime and ordinary crime — War crimes — Nexus requirement — Attack in law governing conduct of hostilities — Military objective — Law governing armed conflict at sea — Right to a naval blockade — Status of merchant vessel breaching naval blockade — Status of goods on merchant vessel breaching naval blockade — Contraband — Enforcement of naval blockade on high seas — Naval blockade in law of international armed conflict — Non-international armed conflict — Whether power to impose a naval blockade applicable — Distinction between members of non-State organized armed groups and civilians — Journalists and war correspondents — Civilian taking a direct part in hostilities — Proportionality — International criminal law — Humanitarian assistance and peacekeeping missions — Wilfully causing great suffering and serious injury to body or health — Deportation and forcible transfer — Humiliating and degrading treatment — Unjustifiably delaying return home of a person detained after enforcement of naval blockade — Pillaging and unlawfully destroying, appropriating or seizing property — Crimes against humanity — Contextual element of widespread or systematic attack against any civilian population — Person *hors de combat* in law of armed conflict and international criminal law — Whether criminal investigation to be instigated — Whether sufficient reason to believe crime committed to detriment of German and non-German nationals — Germany, Federal Prosecutor General

Complaint Regarding the Israeli Actions against the Maritime Flotilla for the Gaza Strip (Case No 3 ARP 77/10-4)

488

Occupation — Existence of occupation — Powers of occupant — Treaty-making power in relation to occupied territory — Exploitation of natural resources of occupied territory — Hague Convention IV of 1907 — Articles 42, 43 and 55 of the Hague Regulations — Fourth Geneva Convention, Article 64(2) — Whether *lex specialis* in comparison to principle of permanent sovereignty over natural resources — Whether Morocco occupying power of Western Sahara — Court of Justice of the European Union (Grand Chamber)

R (Western Sahara Campaign UK) v. Commissioners for Her Majesty's Revenue and Customs and Another (Case C-266/16)

288

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Frontmatter
[More Information](#)

TABLE OF TREATIES

This table contains a list, in chronological order according to the date of signature, of the treaties referred to in the decisions printed in the present volume. It has not been possible to draw a helpful distinction between treaties judicially considered and treaties which are merely cited.

In the case of bilateral treaties, the names of the parties are given in alphabetical order. Names of countries follow contemporaneous usage except in the case of small spelling changes (e.g. Roumania/Romania) where modern usage is adopted throughout. Where this seems helpful, the name of a treaty as it is commonly known is included.

Wherever possible, each treaty includes a reference to where an online English-language version of the treaty can be found. For treaties between 1648 and 1919, this is almost always the Consolidated Treaty Series (CTS), under Oxford Historical Treaties on the Oxford Public International Law website. Post-1919, references are most frequently to the League of Nations Treaty Series/United Nations Treaty Series (LNTS/UNTS). Here it should be noted that historically LNTS/UNTS references have taken the form “39 UNTS 55”, 39 being the volume number, 55 the page number. With effect from UNTS volume 2301, UNTS no longer includes the volume and page number as part of the reference, using simply the registration number. UNTS references are now in the form UNTS 42146. For ILR purposes, because of its value as an identifier, the registration number is now being added parenthetically to pre-volume 2301 treaties in the form 213 UNTS 221 [UNTS 2889].

Reference is also made to other treaty databases such as the European Treaty Series (ETS), Organization of American States Treaty Series (OASTS) or to Official Journals, particularly where these are the only databases currently hosting a treaty. Where a treaty appears to be available only on the website of the parent international organization, usually without any citation identifier, users are referred to the relevant website. For bilateral treaties, often the only source it has been possible to find is a non-English-language version on one of the parties’ official websites, such as the parliamentary proceedings approving the treaty. Users requiring a comprehensive list of written sources should refer to the CTS, or to the Flare Index to Treaties, available at IALS Digital.

For abbreviations used in the Table of Treaties reference should be made to the list of abbreviations on pages xi-xvi of the Consolidated Table of Treaties, Volumes 1-160.

1907

- Oct. 18 Hague Convention No IV on the Laws and Customs of Warfare on Land, Regulations annexed to the Convention (205 CTS 277) (Hague Regulations) 338-9

Section II

Art. 36	536-7
Art. 42	366-70
Art. 43	339, 370-2
Art. 53	374-5
Art. 55	339, 366-8, 373-80
Art. 56	374-5

1945

June 26	Charter of the United Nations (https://treaties.un.org/) (UNTS registration number “not available”)
	Chapter I
	Art. 1 273-4, 398
	Art. 1(2) 332-3, 385
	Chapter VII
	Art. 51 398, 504, 693-4
	Chapter XI
	Art. 73 273-5, 311, 323-4, 334, 361-5, 373, 385, 391-2, 401
	Art. 73(e) 274-5, 354
	Chapter XIV
	Art. 96 316
	Chapter XV
	Art. 103 335-7
June 26	Statute of the International Court of Justice (https://treaties.un.org/) (UNTS registration number “not available”)
	Chapter I
	Art. 38(1) 328-9
	Art. 41 1-49

1947

Oct. 30	General Agreement on Tariffs and Trade (GATT 1947) (55 UNTS 194 [UNTS 814])
	Part I
	Art. II:4 480-1
	Art. II:5 459
	Part II
	Art. III 465-7, 473-4
	Art. III:4 459
	Art. III:8 459
	Art. V:3 459
	Art. VII:2 459
	Art. VIII:2 459
	Art. X:1 459, 481

TABLE OF TREATIES

xxxv

	Art. X:3(a)	459
	Art. XVII	480-1
	Art. XX Preamble	484
	Art. XX(d)	449, 475-86
	Art. XX(g)	484
	Art. XX(h)	481
	Art. XXIII:2	484-5
	Part III	
	Art. XXIV	481
1949		
Aug. 12	Geneva Conventions Relative to the Protection of the Victims of International Armed Conflicts (Common Articles)	667-8
	Art. 1	366-7
	Art. 2	366-8, 535
	Art. 2(2)	504-5, 538-9
	Art. 3	576-610, 618, 666-8, 677-8, 687-96
	Art. 3(1)	590-610
Aug. 12	Geneva Convention Relative to the Treatment of Prisoners of War (GC III) (75 UNTS 135 [UNTS 972])	
	Art. 4A(4)	549-50
	Art. 109(1)	556-7
	Art. 118(1)	556-7
	Art. 130	576-89
Aug. 12	Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV) (75 UNTS 287 [UNTS 973])	
	Art. 4	504-5
	Art. 5	556-7
	Art. 27(4)	556-7
	Art. 33	504
	Art. 35(1)	556-7
	Art. 42	556-7
	Art. 43	556-7
	Art. 47	371-3
	Art. 49	555
	Art. 49(6)	379
	Art. 64	339, 366-8, 370-1
	Art. 64(2)	371-2
	Art. 134	556-7
	Art. 147	504-5, 555-7, 576-89

1950

- Nov. 4 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) as amended by Protocol 11, effective as of 1 November 1998 (ECHR) (213 UNTS 221 [UNTS 2889])
- Art. 3 411-15, 422-8, 435
 - Art. 5(1)(f) 415-18, 429, 435
 - Art. 5(4) 415-18
 - Art. 8 429-31, 435
 - Art. 34 406

1957

- Mar. 25 Treaty Establishing the European Economic Community (Treaty of Rome) (298 UNTS 11 [UNTS 4300]) (as amended by the Treaties of Amsterdam (2700 UNTS 161 [UNTS 47936]) and Nice (2701 UNTS 3 [UNTS 47937])) (EC) (numbers shown in square brackets indicate original treaty numbers)
- Art. 293 [220] 204

1958

- Apr. 29 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas (559 UNTS 285 [UNTS 8164]) 356
- Art. 2 356
 - Art. 6 356
- June 10 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (330 UNTS 38 [UNTS 4739])
- Art. 5(1)(d) 244
 - Art. 5(2)(b) 244

1962

- Aug. 15 Indonesia–Netherlands, Agreement concerning West New Guinea (West Irian) (437 UNTS 274 [UNTS 6311])
- Art. I 364
 - Art. XXVII 364

1963

- Apr. 24 Vienna Convention on Consular Relations (VCCR) (596 UNTS 261 [UNTS 8638])
- Art. 36(1) 1-49
 - Art. 73 10, 13
 - Art. 73(2) 11
- Optional Protocol Concerning the Compulsory Settlement of Disputes (596 UNTS 487 [UNTS 8640])
- Art. I 2, 9-13, 39-44

TABLE OF TREATIES

xxxvii

1965

- Mar. 18 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) (575 UNTS 159 [UNTS 8359])
 Art. 53(1) 245

1966

- Dec. 16 International Covenant on Civil and Political Rights (ICCPR) (999 UNTS 171 [UNTS 14668])
 Art. 1 330
- Dec. 16 International Covenant on Economic, Social and Cultural Rights (ICESCR) (993 UNTS 3 [UNTS 14531])
 Art. 1 330

1969

- May 23 Vienna Convention on the Law of Treaties (VCLT) (1155 UNTS 331 [UNTS 18232])
 Art. 3 387
 Art. 29 340-1
 Art. 30 190-1
 Art. 30(3) 190-1, 197-8
 Art. 31 318, 387, 397
 Art. 31(3)(a) 223, 398
 Art. 31(3)(c) 223
 Art. 31(4) 318, 322-3, 399-400
 Arts. 31-3 114
 Art. 34 340-1
 Arts. 46-53 314-15
 Art. 56 316
 Art. 59 109-10, 184
 Art. 59(1) 193-8
 Arts. 65-8 316

1970

- Oct. 19 Belgium–Netherlands, Double Taxation Agreement (811 UNTS 3 [UNTS 11542])
 Art. 24 201-2
 Art. 25 201-2
 Art. 25(3) 203

1974

- Mar. 4 Czechoslovakia–Netherlands, Double Taxation Agreement (970 UNTS 123 [UNTS 14043]) 204

1975

- Nov. 14 Mauritania, Morocco, Spain, Joint Declaration of Principles on Western Sahara (988 UNTS 257 [UNTS 14450]) (Madrid Agreement) 344-6, 348, 362-5, 369-70

1976

- Apr. 14 Mauritania–Morocco, Agreement on the line of the State border established between Mauritania and Morocco (*Annuaire de l'Afrique du Nord*, 1976, Vol. 15, pp. 848 and 849) 322-3, 349
- Apr. 14 Mauritania–Morocco, Cooperation Agreement for the development of the recovered Saharan territories (*Annuaire de l'Afrique du Nord*, 1976, Vol. 15, pp. 849 and 850) 349
- Dec. 20 International Air Transport Association–Swiss Federal Council, Agreement Concerning Fiscal Exemption of the Organization and its Foreign Personnel in Switzerland (1969 RO 1505)
 Art. 50(2) 544-5

1977

- Feb. 17 Morocco–Spain, Agreement on cooperation in sea fisheries (not in force) 321-2, 344-5, 348, 355-6
 Protocol on the Transitional Agreement on sea fisheries (29 June 1979) (BOE 253 of 22 October 1979, p. 24551) 321-2, 369-70
- June 8 Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (AP I) (1125 UNTS 3 [UNTS 17512]) 366-8, 666, 668-9, 677-8
 Art. 1(2) (Martens Clause) 535-7
 Art. 1(4) 366-70, 538-9
 Art. 3(1) 694-5
 Art. 4 371
 Art. 4(1) 538-9
 Art. 13(1) 541-2
 Art. 13(2) 541-2
 Art. 13(3) 550-2
 Art. 17(1) 555
 Art. 48 541-2
 Art. 49(1) 541
 Art. 49(3) 544-5
 Art. 51(2) 541-2
 Art. 51(3) 550-2

TABLE OF TREATIES

xxxix

	Art. 52(1)(2)	542-3
	Art. 52(2)(2)	542-3
	Art. 54(1)	544-5
	Art. 70(1)	553-4
	Art. 79(1)	549-50
	Art. 79(2)	550-2
	Art. 84(4)(a)	379
	Art. 85(4)(a)	555
	Art. 85(4)(b)	556-7
June 8	Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (AP II) (1125 UNTS 609 [UNTS 17513])	666
1979		
June 15	EEC–Senegal, Agreement on fishing off the coast of Senegal (OJ 1980 L226/16)	280-2
1980		
Feb. 27	EEC–Guinea-Bissau, Agreement on fishing off the coast of Guinea-Bissau and of the two exchanges of letters referring thereto (OJ 1980 L226/33)	280-2
1982		
Dec. 10	UN Convention on the Law of the Sea (UNCLOS) (1833 UNTS 3 [UNTS 31363]) Part II, Section 1 Art. 2(1)	357, 386, 399
	Art. 2(3)	386
	Part V Art. 55	356-8, 386, 399
	Art. 56	399
	Art. 56(1)	386
	Art. 56(1)(a)	358
	Art. 75(2)	358
	Part XVI Art. 311(1)	355-8
	Resolution III annexed to the Final Act of UNCLOS III	373
1983		
Aug. 1	Morocco–Spain, Agreement on cooperation on sea fisheries between Spain and Morocco (BOE 243 of 11 October 1983, p. 27588)	321-2

1986

- Mar. 21 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (UN Doc. A/CONF 129/15; 25 ILM 543 (1986) (UNTS registration number not available))
 Arts. 65-8 316

1989

- Nov. 20 Convention on the Rights of the Child (CRC) (1577 UNTS 3 [UNTS 27531])
 Art. 37 433-4
 Art. 37(b) 433-4

1991

- Mar. 26 Treaty Establishing a Common Market between Argentina, Brazil, Paraguay and Uruguay (Treaty of Asunción) (Mercosur) (2145 UNTS 252 [UNTS 37341])
 Olivos Protocol for the Settlement of Disputes in Mercosur (18 February 2002) (42 ILM 2 (2003)) 468-9
- Apr. 29 Czech and Slovak Republic–Netherlands, Bilateral Investment Treaty (available at <http://investmentpolicyhub.unctad.org/Download/TreatyFile/968>) 182-262
 Preamble 114
 Art. 1(a) 103-7, 111-16
 Art. 1(a)(ii) 111
 Art. 1(a)(iv) 111-12
 Art. 2 113, 186, 226
 Art. 3 186-7, 191, 199
 Art. 3(1) 62-3, 97-8, 140-8, 154-5, 159, 170, 190-1, 221, 226, 249-50
 Art. 3(2) 62-3, 97-8, 148-50, 190-1, 202, 226, 232
 Art. 3(3) 226
 Art. 3(4) 226
 Art. 3(5) 223
 Art. 4 62-3, 97-8, 156, 159, 170, 187, 190-1, 199, 249-50
 Art. 5 62-3, 97-8, 132-40, 156-8, 187, 190-1, 198, 226, 235-7
 Art. 6 226
 Art. 7 226
 Art. 8 187-8, 205-62
 Art. 8(1) 64, 257-8
 Art. 8(2) 64, 212
 Art. 8(4) 64

TABLE OF TREATIES

xli

	Art. 8(5)	64, 210, 212-13, 259-61
	Art. 8(6)	104, 152-3, 213, 221, 223-39, 257-8
	Art. 8(7)	211, 259-61
	Art. 10	220, 226
	Art. 10(7)	221
	Art. 13	188-9
	Art. 13(3)	226, 232
Sept. 13	Israel–PLO, Declaration of Principles on Interim Self-Government Arrangements (Oslo I) (available at http:// news.bbc.co.uk/1/hi/in_depth/middle_east/israel_and_the_ palestinians/key_documents/1682727.stm)	513-14
Dec. 16	EC–Hungary, Association Agreement (OJ 1993 L347) Art. 72(2)	195
Dec. 16	EC–Poland, Association Agreement (OJ 1993 L348) Art. 73(2)	195
1992		
Dec. 17	North American Free Trade Agreement (NAFTA) (32 ILM 289 (1993)) Chapter Twenty Art. 2005(6)	473-4
	Art. 2008	473-4
	Chapter Twenty-one	444-9
1993		
Feb. 1	EC–Romania, Association Agreement (OJ 1994 L357) Art. 72(2)	195
Oct. 4	EC–Slovakia, Association Agreement (OJ 1994 L359/2)	79-80
1994		
Apr. 15	Agreement Establishing the World Trade Organization (WTO) (1867 UNTS 154 [UNTS 31874]) Art. VI	481
	Art. VII	481
	Art. XVI:4	459
Apr. 15	Agreement Establishing the World Trade Organization (WTO), Annex 1B (General Agreement on Trade in Services (GATS)) (1869 UNTS 183 [UNTS 31374]) Art. XIV(a)	482-3

- Apr. 15 Agreement Establishing the World Trade Organization (WTO),
 Annex 2 (Dispute Settlement Understanding (DSU)) (1869
 UNTS 401 [UNTS 31374])
 Art. 3.2 446-7, 466-7, 470, 472, 474-5, 485
 Art. 3.3 468, 472-3
 Art. 3.10 446-7
 Art. 7.1 470-1
 Art. 7.2 470-1
 Art. 11 444-9, 466-75
 Art. 16.4 465
 Art. 19.1 439, 462-3
 Art. 19.2 446-7, 466-7, 470, 472-3
 Art. 22 478, 484-5
 Art. 22.3 484-5
 Art. 22.4 484-5
 Art. 23 446-7, 466-7, 470, 472-3, 478, 484-5
- May 4 Agreement on the Gaza Strip and the Jericho Area (Cairo
 Agreement) (available at <https://unispal.un.org/UNISPAL.NSF/0/15AF20B2F7F41905852560A7004AB2D5>) 514
- Dec. 17 Energy Charter Treaty (UNTS 36116) 184, 193, 196,
 201, 223
- 1995**
- Sept. 28 Israel–PLO, Interim Agreement on the West Bank and the Gaza
 Strip (Oslo II) (available at www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx) 514
- Nov. 20 EC–Israel, Association Agreement (available at <http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook2/>)
 Preamble 275
- 1996**
- Feb. 26 EU–Morocco, Association Agreement (OJ 2000 L70)
 (Euro-Mediterranean Agreement) 283-7, 300-403
 Art. 9 275
 Art. 16 389, 400-2
 Art. 17 275, 311
 Art. 29 275
 Art. 94 311, 388, 397-8
 Art. 96 388
 Protocol 4
 Art. 6 311
 Art. 6(4) 275

TABLE OF TREATIES

xliii

1998

July 17	Rome Statute of the International Criminal Court (ICC) (2187 UNTS 90 [UNTS 38544])	558-9
	Art. 7	512-13
	Art. 8	694-5
	Art. 8(1)	554
	Art. 8(2)(a)(i)	512-13
	Art. 8(2)(a)(ii)	512-13
	Art. 8(2)(a)(iii)	512-13, 554
	Art. 8(2)(a)(iv)	512-13
	Art. 8(2)(a)(vii)	512-13, 556-7
	Art. 8(2)(b)(i)	512-13
	Art. 8(2)(b)(ii)	512-13
	Art. 8(2)(b)(iii)	512-13
	Art. 8(2)(b)(iv)	512-13
	Art. 8(2)(b)(vii)	512-13
	Art. 8(2)(b)(viii)	379
	Art. 8(2)(b)(xxi)	512-13, 555-6
	Art. 8(2)(c)	694-5
	Art. 8(2)(e)	694-5
	Art. 8(2)(f)(1)	535-6
	Art. 8(3)	693, 694-5
	Art. 14	512-13
	Art. 15(2)	512-13

2000

Dec. 7	European Charter of Fundamental Rights (CFR) (OJ 2000 C364/01)	
	Art. 17	238
	Art. 17(1)	237-9
	Art. 51(1)	231, 237-8

2001

Oct. 29	Croatia–EC, Stabilization and Association Agreement (OJ 2005 L26)	195
---------	---	-----

2003

Sept. 23	EU–Slovak Republic, Accession Treaty (OJ 2003 L236)	79-80
----------	---	-------

2006

May 22	EC–Morocco, Fisheries Partnership Agreement (FPA) (OJ 2006 L141)	276-7, 283-7, 300-84
	Preamble	305, 388
	Recital 1	398
	Recital 2	357

	Art. 1	305, 376-7, 388, 400-2
	Art. 2(a)	276-7, 305, 318, 389, 397-402
	Art. 3	305, 388
	Art. 3(1)	376-7
	Art. 5	305, 388-9, 397-402
	Art. 5(1)	388-9
	Art. 5(4)	357-8, 388-9, 397
	Art. 6	377, 388
	Art. 6(1)	388-9
	Art. 7	305-6, 358, 377
	Art. 8	376-7
	Art. 9	376-7
	Art. 11	276-7, 306, 318, 355-6, 389, 397-400
	Art. 13	306
	Art. 14	316
	Art. 16	306, 382-3
	Art. 17	388
Oct. 20	EC–Seychelles, Fisheries Partnership Agreement (OJ 2006 L290/2)	
	Art. 5(4)	358
Dec. 8	EC–Mauritania, Fisheries Partnership Agreement (OJ 2006 L343/4)	
	Art. 11	358
2007		
Dec. 4	EC–Guinea-Bissau, Fisheries Partnership Agreement (OJ 2007 L342/5)	
	Art. 2(a)	358
	Art. 11	358
Dec. 13	Treaty of Lisbon amending the Treaty on European Union (TEU) (OJ 2010 C83/1)	
	Title I Common Provisions	
	Art. 2	256-7
	Art. 3(5)	268-70, 309-17, 322-84, 391-4, 396-7, 402-3
	Art. 4(3)	215, 240, 246-8, 252, 256-7
	Art. 6(2)	219
	Title III Provisions on the Institutions	
	Art. 19	257, 259-61
	Art. 19(1)	233, 240-1, 257, 259-61
	Art. 19(3)(b)	394-5

TABLE OF TREATIES

xlv

	Title IV Provisions on Enhanced Cooperation	
	Art. 21	329-31
	Art. 21(1)	326, 332, 359-60, 380, 383-4
	Art. 21(2)(b)	326, 332, 359-60, 380, 383-4
	Art. 21(2)(c)	326, 330-2, 359-60, 380, 383-4
	Title V, Chapter 2 Specific Provisions on the Common Foreign and Security Policy, Section 1 Common Provisions	
	Art. 23	326, 332, 359-60, 380, 383-4
	Title VI, Final Provisions	
	Art. 50(3)	232
Dec. 13	Treaty of Lisbon amending the Treaty on European Union (TEU) (OJ 2010 C83/1) and the Treaty on the Functioning of the European Union (TFEU) (OJ 2012 C326/47), Protocols annexed to	
	Protocol 3 on the Statute of the Court of Justice of the European Union	316-17
	Art. 23	254-5
Dec. 13	Treaty of Lisbon on the Functioning of the European Union (TFEU) (OJ 2012 C326/47)	
	Part II Non-Discrimination and Citizenship of the Union	
	Art. 18	184-5, 192, 198-205, 253-4
	Part III Union Policies and Internal Actions, Title IV Free Movement of Persons, Services and Capital, Chapter 2 Right of Establishment	
	Art. 49	199
	Part III Union Policies and Internal Actions, Title IV Free Movement of Persons, Services and Capital, Chapter 4 Capital and Payments	
	Art. 63	199
	Art. 65(1)	228-30
	Part III Union Policies and Internal Actions, Title VII Common Rules on Competition, Taxation and Approximation of Laws, Chapter 2 Rules on Competition, Section 1 Tax Provisions	
	Arts. 110-13	230-1
	Part V The Union's External Action, Title I General Provisions	
	Art. 205	326, 332, 359-60, 380, 383-4
	Part V The Union's External Action, Title V International Agreements	
	Art. 216	396
	Art. 218(11)	313-15

	Part VI Institutional Financial Provisions, Title I Institutional Provisions, Chapter 1 The Institutions, Section 5 The Court of Justice of the European Union	
	Art. 258	245-6, 314-15
	Art. 259	246
	Art. 260	245-6
	Art. 263	314-15
	Art. 267	77-8, 184-5, 192, 205-14, 240-1, 252-3, 255-61, 266-87, 300-403
	Art. 267(1)(b)	313-17, 394-6
	Art. 272	207
	Art. 273	217-18
	Part VII General and Final Provisions	
	Art. 344	77-8, 184, 186, 191-2, 214-48, 252, 255-61
	Art. 351 [TEC 307]	197-8, 316
2008		
Mar. 17	Côte d'Ivoire–EC, Fisheries Partnership Agreement (OJ 2008 L48/41)	
	Art. 2(c)	358
May 21	India–Pakistan, Agreement on Consular Access (UNTS 54471)	10-11, 13, 15-16, 37-9
2013		
Nov. 18	EU–Morocco, Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco (OJ 2013 L328/2)	277, 283-7, 300-403
	Art. 1	306-7, 333, 389, 398
	Art. 1(1)	306, 382-3
	Art. 2	307, 382-3, 390
	Art. 3	307
	Art. 3(1)	358, 377
	Art. 3(1)(a)(ii)	321
	Art. 3(4)	358, 377-8
	Art. 3(5)	358, 378
	Art. 4	376-7
	Art. 5	376-7, 390
	Art. 5(6)	378
	Art. 6	307-8, 358
	Art. 6(1)	378

TABLE OF TREATIES

xlvii

	Annex	
	Chapter III	319-20, 390, 401
	Chapter X	321
	Appendix 2	377, 390
	Appendix 4	319-20, 390, 401
Dec. 7	WTO Trade Facilitation Agreement (TFA) (www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm)	
	Art. VI:2	459
	Art. VI:3	459
	Art. VII:2	459
	Art. VII:3	459
	Art. VII:4	459
	Art. XVI:4	459
2014		
Oct. 8	EU–Senegal, Sustainable Fisheries Partnership Agreement (OJ 2014 L304/3)	
	Art. 1(f)	358

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