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978-0-521-46423-9 - International Law Reports, Volume 78
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INTERNATIONAL
LAW REPORTS

Volume
78

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*Lauterpacht Research Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
78

Edited by

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GROTIUS PUBLICATIONS
 **CAMBRIDGE**
UNIVERSITY PRESS

Cambridge University Press
978-0-521-46423-9 - International Law Reports, Volume 78
Edited by Elihu Lauterpacht
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PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
10 Stamford Road, Oakleigh, VIC 3166, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

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First published 1988
Reprinted 1995, 2001

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this book is available from the British Library

ISBN 0 521 46423 4 hardback

TABLE OF CONTENTS

	PAGE
PREFACE	vii
EDITORIAL NOTE.....	ix
TABLE OF CASES (alphabetical).....	xiii
TABLE OF CASES (according to courts and countries).....	xv
DIGEST (main headings).....	xviii
DIGEST OF CASES REPORTED IN VOLUME 78.....	xix
TABLE OF TREATIES.....	xl
REPORTS OF CASES.....	1
INDEX	697

PREFACE

The present volume of the *International Law Reports*, the third of 1988, is almost equally divided between the judgments of national courts from nine States and the jurisprudence of three international tribunals. Although there are some older decisions, most of the cases reported in the present volume were decided in the 1980s. They include decisions of the French courts in the *Barbie* case (p. 124) and a decision given by the United States Court of Appeals for the District of Columbia Circuit in February 1988 in the *Williams and Humbert* litigation (p. 676). The latter is being published in these *Reports* immediately in view of the earlier inclusion of the decisions of the English courts in parallel proceedings (75 *I.L.R.* 268). Several decisions of the European Court of Human Rights, the United Nations Human Rights Committee and the Iran-United States Claims Tribunal are included, together with decisions from the courts of Denmark, England, the Federal Republic of Germany, France, Italy, the Netherlands, Scotland, Senegal and the United States.

Many people have contributed to the production of this volume. Mr Andrew Oppenheimer, Barrister-at-Law, has been principally responsible for the preparation of the cases from the civil law jurisdictions. He translated and prepared the summaries of the *Barbie* decisions, the case from Senegal and, in collaboration with Miss Maureen MacGlashan, the two decisions from the Federal Republic of Germany.

The English translations of the decisions from the Netherlands have been extracted with permission from the *Netherlands Yearbook of International Law*. Concise statements entitled "The facts" appear in the *Netherlands Yearbook* before the text of the relevant part of each judgment and these statements have formed the basis of the summaries prepared for this volume. The texts of the judgments printed in this volume are for the most part the extracts, reprinted in their entirety, published in the *Netherlands Yearbook*. The basic preparation of these cases was done by Mr Alan Stephens and Miss Klaske Visser, with the kind permission of the TMC Asser Institute in The Hague and its Director, Dr C.C.A. Voskuil. Subsequent editorial work was done by Mr Oppenheimer.

The selection, translation and preparation of the summaries of the Italian cases was the work of Professor Antonio Cassese and his colleagues, Professor R. Barsotti, Dr A. Calamia and Mrs J. Manco. Most of the cases which appear in this volume have been extracted with permission from the *Italian Yearbook of International Law*.

Mr Oppenheimer wrote a number of summaries and performed much of the editorial work.

The Danish case was translated by Mr I. Levin. Subsequent editorial work was the responsibility of Mr Oppenheimer.

The decisions of the United Nations Human Rights Committee and the European Court of Human Rights were initially prepared by Mr Horst Schade, Barrister-at-Law, and Miss Louise O'Neill, Barrister-at-Law. The summaries of the decisions of the Iran-United States Claims Tribunal were the work of Mrs Jenelle Arnold. Mr Douglas Ross and Mr James Stephenson contributed some of the summaries of the English and Scottish decisions. Dr F.A. Mann very kindly provided a copy of the United States decision in *Williams and Humbert* shortly after it had been given.

The Index is the work of Miss Maureen MacGlashan. Mrs Diane Ilott prepared the Tables of Cases and gave much invaluable assistance in seeing the volume through the press. Miss Maria Mulrennan prepared the Table of Treaties and helped with the task of proof-reading. Miss Christine Kay and Mrs S. Rainbow gave secretarial assistance.

We are most grateful to all those named for their assistance, as well as to the Gomer Press, who have printed this volume with their customary care.

In addition, we owe a considerable debt of gratitude to the following publishers for giving us permission for photographic reproduction of decisions from the reports which they publish: the Incorporated Council of Law Reporting (the *Law Reports* and *Weekly Law Reports*), Messrs Butterworth and Co. (the *All England Reports*), Sweet and Maxwell Ltd. (the *Criminal Appeal Reports*) and the West Publishing Company (the *Federal Reporter*).

E. LAUTERPACHT

C. J. GREENWOOD

RESEARCH CENTRE FOR INTERNATIONAL LAW
UNIVERSITY OF CAMBRIDGE

October 1988

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, e.g. 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 the European Communities). 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 Committee on Human Rights. Selected decisions of the European Commission of Human Rights will be printed, chosen by reference to the importance of the points at issue and their interest to public international lawyers generally. (All reports of decisions of the European Commission of Human Rights are published in an official series, the *Official Collection of Decisions of the European Commission of Human Rights*, as well as in the *European Human Rights Reports*). 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. Pieter Sanders, 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 Editor 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

The material in this volume is of two kinds, material reproduced photographically and material which has been freshly set for this volume.

Material photographically reproduced. This consists exclusively of reports originally printed in the English language. The material can usually be recognized by the differences between its type-style and the Baskerville type otherwise used in these *Reports*. The source of the material is identified by the reference to "Report" in square brackets at the end of the case. Where more than one citation is given, the report used is the one first listed. The bold type figures in square brackets in the inner margin of each page refer to the pagination of the original report. The smaller figures in square brackets in the margins of these cases are the indicators of footnotes which have been editorially introduced.

Other material. The remaining material in the volume has been typeset for this volume. This includes all material specially translated into English for these *Reports* as well as some material in English which in its original form was not suitable for photo-reproduction. The source of all such material is indicated by the reference to the "Report" 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. Small figures in square brackets within the text are indicators of footnotes which have been editorially introduced.

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

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Edited by Elihu Lauterpacht
Frontmatter
[More information](#)

xii

EDITORIAL NOTE

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 page xviii.

TABLE OF CASES REPORTED

ALPHABETICAL

(Cases which are considered 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.)

- Air Canada and Others *v.* Secretary of State for Trade and Others, 520
 Amoco Iran Oil Company *v.* Islamic Republic of Iran and Others: Dissenting Opinion of Dr Shafie Shafeiei, 637
 Arab Republic of Libya *v.* SpA Imprese Marittime Frassinetti and SpA Italiana Lavori Marittimi e Terrestri, 90
 Athens Maritime Enterprises Corporation *v.* Hellenic Mutual War Risks Association (Bermuda) Ltd., 563
 Attorney-General *v.* British Broadcasting Corporation, 395
 Attorney-General of New Zealand *v.* Ortiz and Others, 591
- Barbie, 124
 Beatriz Vasilskis *v.* Uruguay, 72
 Bogatto, Widow of Lesèvre, 148 (note)
 Bottali: *see Re Bottali*
 Bruckmann Case, 176 (note)
- Camera Confederale del Lavoro CGIL and Another *v.* Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies, 86
 Campbell and Fell Case, 292
 Cheall *v.* Association of Professional, Executive, Clerical and Computer Staff, 403
Chrysalis, The: *see Finelvet A.G. v. Vinava Shipping Co. Ltd.*
 Clark (Inspector of Taxes) *v.* Oceanic Contractors Inc., 526
 Craig *v.* Ministry of Energy of Iran and Others, 658
 Cuillier, Ciamborrani and Vallon: *see Re Cuillier, Ciamborrani and Vallon*
- de Jong, Baljet and van den Brink Case, 225
 Di Benigno: *see Re Di Benigno Duinhof and Duijf Case*, 274
- Eastern Territories Status Case, 193 (note)
 Eastern Treaties Constitutionality Case, 176
 Embassy of the Socialist Republic of Czechoslovakia *v.* Jens Nielsen Bygge-Entrepriser A/S, 81
 Estrella *v.* Uruguay, 40
- Fanali *v.* Italy, 54
 Fédération Nationale des Déportés et Internés Résistants et Patriotes and Others *v.* Barbie, 124
 Fernandes *v.* Secretary of State for the Home Department, 371
 Finelvet A.G. *v.* Vinava Shipping Co. Ltd. (*The Chrysalis*), 578
- Gatoil International Inc. *v.* Arkwright-Boston Manufacturers Mutual Insurance Co., 683
 Goddi Case, 213
 Guilfoyle *v.* Home Office, 379
 Guincho Case, 355
- Harmohan Singh, *ex parte*: *see Regina v. Governor of Pentonville Prison, ex parte Harmohan Singh*
 Hart *v.* Helinski, 4
- Indian Association of Alberta, *ex parte*: *see Regina v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta and Others*
- Jurisdiction over Berlin Case, 176 (note)
- Khubchandani, *ex parte*: *see Regina v. Governor of Pentonville Prison, ex parte Khubchandani*
 Kirkwood, *ex parte*: *see R v. Secretary of State for the Home Department, ex parte Kirkwood*

- Larrosa Bequiu *v.* Uruguay, 80 (note)
 Lichtensztejn *v.* Uruguay, 63
 Luberti Case, 194
- Mamadou Traoré *v.* Manutention Africaine, 84
- Manuel and Others *v.* Attorney-General; Noltcho and Others *v.* Attorney-General, 454
- Marais *v.* Madagascar, 28
- Mininni *v.* Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies, 112
- Monguya Mbenge *v.* Zaire, 18
- Mutasa *v.* Attorney-General, 490
- Noltcho and Others *v.* Attorney-General: *see* Manuel and Others *v.* Attorney-General
- Pereira Montero *v.* Uruguay, 71 (note)
- Phillips Petroleum Company, Iran *v.* Islamic Republic of Iran and National Iranian Oil Company: Dissenting Opinion of Dr Shafie Shafeiei, 637
- Political Offences Prosecution Case, 175 (note)
- Public Prosecutor *v.* EJH, 1
- Public Prosecutor *v.* JG (1), 9
- Public Prosecutor *v.* JG (2), 11
- R *v.* Secretary of State for the Home Department, *ex parte* Kirkwood, 388
- Re* Bottali, 105
- Re* Cuillier, Ciamborrani and Vallon, 93
- Re* Di Benigno, 117
- Re* Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, 1972, 149
- Regina *v.* Governor of Pentonville Prison, *ex parte* Harmohan Singh, 506
- Regina *v.* Governor of Pentonville Prison, *ex parte* Khubchandani, 500
- Regina *v.* Governor of Pentonville Prison, *ex parte* Zezza, 513
- Regina *v.* Secretary of State for Foreign and Commonwealth Affairs, *ex parte* Indian Association of Alberta and Others, 421
- Regina *v.* West Yorkshire Coroner, *ex parte* Smith, 550
- Russel *v.* Società Immobiliare Soblim, 101
- Shafeiei, Dissenting Opinion of: *see* Amoco Iran Oil Company *v.* Islamic Republic of Iran and Others *and* Phillips Petroleum Company, Iran *v.* Islamic Republic of Iran and National Iranian Oil Company
- Shaw *v.* Shaw, 483
- Special Representative of State of the City of the Vatican *v.* Pieciukiewicz, 120
- Treaty on the Basis of Relations . . . : *see* *Re* Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, 1972
- van der Sluijs, Zuiderveld and Klappe, 254
- VVDM *v.* The State of the Netherlands, 13
- West Berlin Citizens' Nationality Case, 175 (note)
- Williams and Humbert Ltd *v.* W & H Trade Marks (Jersey) Ltd, 676
- Zeza, *ex parte*: *see* Regina *v.* Governor of Pentonville Prison, *ex parte* Zezza

TABLE OF CASES REPORTED

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

(Cases which are considered 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.)

I. DECISIONS OF INTERNATIONAL TRIBUNALS

European Court of Human Rights

1984
 Campbell and Fell Case, 292
 de Jong, Baljet and van den Brink Case,
 225
 Duinhof and Duijf Case, 274
 Goddi Case, 213
 Guincho Case, 355
 Luberti Case, 194
 van der Sluijs, Zuiderveld and Klappe,
 254

Iran-United States Claims Tribunal

1983
 Amoco Iran Oil Company *v.* Islamic
 Republic of Iran and Others: Dissenting
 Opinion of Dr Shafie Shafeiei, 637

Craig *v.* Ministry of Energy of Iran and
 Others, 658
 Phillips Petroleum Company, Iran *v.*
 Islamic Republic of Iran and National
 Iranian Oil Company: Dissenting
 Opinion of Dr Shafie Shafeiei, 637

United Nations Human Rights Committee

1983
 Beatriz Vasilskis *v.* Uruguay, 72
 Estrella *v.* Uruguay, 40
 Fanali *v.* Italy, 54
 Larrosa Bequio *v.* Uruguay, 80 (note)
 Lichtensztejn *v.* Uruguay, 63
 Marais *v.* Madagascar, 28
 Monguya Mbenge *v.* Zaire, 18
 Pereira Montero *v.* Uruguay, 71 (note)

II. DECISIONS OF MUNICIPAL COURTS

Denmark

1982
 Embassy of the Socialist Republic of
 Czechoslovakia *v.* Jens Nielsen
 Bygge-Entrepriser A/S, 81

England

1979
 Mutasa *v.* Attorney-General, 490
 Shaw *v.* Shaw, 483

1980
 Attorney-General *v.* British Broad-
 casting Corporation, 395

Fernandes *v.* Secretary of State for the
 Home Department, 371
 Guilfoyle *v.* Home Office, 379
 Regina *v.* Governor of Pentonville
 Prison, *ex parte* Khubchandani, 500

1981

Air Canada and Others *v.* Secretary of
 State for Trade and Others, 520
 Attorney-General of New Zealand *v.*
 Ortiz and Others, 591
 Cheall *v.* Association of Professional,
 Executive, Clerical and Computer
 Staff, 403
 Regina *v.* Governor of Pentonville
 Prison, *ex parte* Harmohan Singh, 506

- | | |
|---|--|
| <p style="text-align: center;">1982</p> <p>Athens Maritime Enterprises Corporation <i>v.</i> Hellenic Mutual War Risks Association (Bermuda) Ltd., 563</p> <p>Attorney-General of New Zealand <i>v.</i> Ortiz and Others, 591</p> <p>Cheall <i>v.</i> Association of Professional, Executive, Clerical and Computer Staff, 403</p> <p>Clark (Inspector of Taxes) <i>v.</i> Oceanic Contractors Inc., 526</p> <p>Manuel and Others <i>v.</i> Attorney-General, 454</p> <p>Noltcho and Others <i>v.</i> Attorney-General, 454</p> <p>Regina <i>v.</i> Governor of Pentonville Prison, <i>ex parte</i> Zezza, 513</p> <p>Regina <i>v.</i> Secretary of State for Foreign and Commonwealth Affairs, <i>ex parte</i> Indian Association of Alberta and Others, 421</p> <p>Regina <i>v.</i> West Yorkshire Coroner, <i>ex parte</i> Smith, 550</p> <p style="text-align: center;">1983</p> <p>Attorney-General of New Zealand <i>v.</i> Ortiz and Others, 591</p> <p>Cheall <i>v.</i> Association of Professional, Executive, Clerical and Computer Staff, 403</p> <p>Finelvet A.G. <i>v.</i> Vinava Shipping Co. Ltd. (<i>The Chrysalis</i>), 578</p> <p style="text-align: center;">1984</p> <p>R. <i>v.</i> Secretary of State for the Home Department, <i>ex parte</i> Kirkwood, 388</p> <p style="text-align: center;"><i>Federal Republic of Germany</i></p> <p style="text-align: center;">1973</p> <p>Re Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, 1972, 149</p> <p style="text-align: center;">1974</p> <p>Bruckmann Case, 176 (note)</p> <p style="text-align: center;">1975</p> <p>Eastern Treaties Constitutionality Case, 176</p> | <p style="text-align: center;">1976</p> <p>Eastern Territories Status Case, 193 (note)</p> <p style="text-align: center;">1978</p> <p>Jurisdiction over Berlin Case, 176 (note)</p> <p>West Berlin Citizens' Nationality Case, 175 (note)</p> <p style="text-align: center;">1980</p> <p>Political Offences Prosecution Case, 175 (note)</p> <p style="text-align: center;"><i>France</i></p> <p style="text-align: center;">1983</p> <p>Barbie, 124</p> <p style="text-align: center;">1984</p> <p>Barbie, 124</p> <p style="text-align: center;">1985</p> <p>Fédération Nationale des Déportés et Internés Résistants et Patriotes and Others <i>v.</i> Barbie, 124</p> <p style="text-align: center;">1986</p> <p>Barbie, 148 (note)</p> <p>Bogatto, widow of Lesèvre, 148 (note)</p> <p style="text-align: center;">1987</p> <p>Barbie, 148 (note)</p> <p style="text-align: center;"><i>Italy</i></p> <p style="text-align: center;">1979</p> <p>Arab Republic of Libya <i>v.</i> SpA Imprese Marittime Frassinetti and SpA Italiana Lavori Marittimi e Terrestri, 90</p> <p>Camera Confederale del Lavoro CGIL and Another <i>v.</i> Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies, 86</p> <p>Re Cuillier, Ciamborrani and Vallon, 93</p> <p>Russel <i>v.</i> Società Immobiliare Soblim, 101</p> <p style="text-align: center;">1980</p> <p>Re Bottali, 105</p> |
|---|--|

TABLE OF CASES

xvii

<p>1981 Mininni <i>v.</i> Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies, 112 <i>Re Di Benigno</i>, 117</p> <p>1982 Special Representative of State of the City of the Vatican <i>v.</i> Pieciukiewicz, 120</p> <p><i>The Netherlands</i></p> <p>1976 Hart <i>v.</i> Helinski, 6 (note) Public Prosecutor <i>v.</i> EJH, 1</p> <p>1977 Hart <i>v.</i> Helinski, 4 Public Prosecutor <i>v.</i> JG (1), 9</p> <p>1978 Public Prosecutor <i>v.</i> JG (2), 11.</p> <p>1979 VVDM <i>v.</i> The State of the Netherlands, 17 (note)</p>	<p>1980 VVDM <i>v.</i> The State of the Netherlands, 13</p> <p><i>Scotland</i></p> <p>1984 Gatoil International Inc. <i>v.</i> Arkwright-Boston Manufacturers Mutual Insurance Co., 683</p> <p><i>Senegal</i></p> <p>1985 Mamadou Traoré <i>v.</i> Manutention Africaine, 84</p> <p><i>United States of America</i></p> <p>1988 Williams and Humbert Ltd <i>v.</i> W & H Trade Marks (Jersey) Ltd, 676</p>
--	--

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.)

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

DIGEST OF CASES REPORTED IN VOLUME 78

	<i>Page</i>
Air	
Airports — Operation — Landing rights — Chicago Convention on International Civil Aviation, 1944 — Whether conferring upon airlines of one Contracting State right to land at an airport in another Contracting State — Whether Convention confers right to land notwithstanding non-payment of landing fees — England, High Court	
<i>Air Canada and Others v. Secretary of State for Trade and Others</i>	520
Aliens	
Treatment — Discrimination — Employment — Policy of “Senegalization” — Senegal, Supreme Court	
<i>Mamadou Traoré v. Manutention Africaine</i>	84
Arbitration (see also: International Tribunals)	
Applicable law — Claims for breach of contract — Whether international tribunal bound by national statute of limitations — Whether statute of limitations relevant in determining whether claimant has been guilty of unreasonable delay — Iran-United States Claims Tribunal	
<i>Craig v. Ministry of Energy of Iran and Others</i>	658
Arbitrators — Voluntary withdrawal of arbitrator after hearing of case — Arbitrator not participating in final adoption of award — Arbitrator not signing award — Whether absence prevents tribunal from adopting valid and binding award — Iran-United States Claims Tribunal	
<i>Craig v. Ministry of Energy of Iran and Others</i>	658
Jurisdiction — Iran-United States Claims Settlement Declaration, 1981 — Claims arising out of contract — Contract allegedly governed by Iranian law — Whether within sole jurisdiction of Iranian courts — Whether claimant proved to be a United States national — Whether respondents proved to be government-controlled entities — Iran-United States Claims Tribunal	
<i>Craig v. Ministry of Energy of Iran and Others</i>	658

Arbitration (cont.)

Jurisdiction — Iran-United States Claims Settlement Declaration, 1981 — General Declaration, Principle B — Interpretation of reference to “Majlis position” — Whether obligation to submit disputes to arbitration should be restrictively construed — Restrictions on capacity of representatives of Iran to bind Iran to Algiers Declarations — Iran-United States Claims Tribunal, dissenting opinion

Phillips Petroleum Company, Iran v. Islamic Republic of Iran; Amoco Iran Oil Company v. Islamic Republic of Iran: Dissenting Opinion of Dr Shafie Shafeiei

Page

637

Procedure — Preliminary hearing on jurisdiction — Requirement that respondents should have adequate time in which to prepare their case — Allegations that tribunal and its chairman displayed bias — Iran-United States Claims Tribunal, dissenting opinion

Phillips Petroleum Company, Iran v. Islamic Republic of Iran; Amoco Iran Oil Company v. Islamic Republic of Iran: Dissenting Opinion of Dr Shafie Shafeiei

637

Claims

Exhaustion of local remedies — Availability of remedy — Existence of remedy required to be sufficiently certain before it can be regarded as available — Doubts concerning effectiveness of remedy — European Convention on Human Rights, 1950, Article 26 — European Court of Human Rights

Campbell and Fell Case

292

Local remedies rule — Before human rights tribunal — Absence of effective local remedies — United Nations Human Rights Committee

Estrella v. Uruguay

40

Local remedies rule — Before human rights tribunal — Failure of respondent State to produce evidence of failure to exhaust local remedies — United Nations Human Rights Committee

Marais v. Madagascar

28

Comity

Respect for national heritage of foreign State — Enforcement of foreign law designed to protect national heritage — England, High Court, Court of Appeal and House of Lords

Attorney-General of New Zealand v. Ortiz and Others

591

DIGEST OF CASES		xxi
		<i>Page</i>
Damages		
Human rights violations — Loss of opportunity — Non-pecuniary loss — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>Goddi Case</i>		213
Human rights violations — Non-pecuniary loss — Conduct of applicant contributing to delay — Whether declaration of Court constitutes sufficient satisfaction — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>Luberti Case</i>		194
Human rights violations — Non-pecuniary loss — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>de Jong, Baljet and van den Brink Case</i>		225
Human rights violations — Non-pecuniary loss — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>Duinhof and Duijf Case</i>		274
Human rights violations — Non-pecuniary loss — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>van der Sluijs, Zuiderveld and Klappe</i>		254
Human rights violations — Pecuniary and non-pecuniary loss — Whether findings that violations had occurred constitute sufficient satisfaction — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>Campbell and Fell Case</i>		292
Human rights violations — Unreasonable delay in civil proceedings — Effectiveness of proceedings diminished — Loss of interest on amount of damages due to delay — European Convention on Human Rights, 1950, Article 50 — European Court of Human Rights <i>Guincho Case</i>		355
Diplomatic Relations		
Immunity — Diplomat — Divorce proceedings against diplomat — Application by diplomat to strike out divorce petition on		

	<i>Page</i>
Diplomatic Relations (<i>cont.</i>)	
grounds of immunity — Loss of diplomatic status before hearing of application — Whether divorce petition barred by immunity — Vienna Convention on Diplomatic Relations, 1961, Article 31 — Diplomatic Privileges Act 1964 — England, High Court <i>Shaw v. Shaw</i>	483
Immunity — Diplomats — Embassy — Contract for construction of new embassy premises — Clause providing for settlement of disputes by local courts — Waiver — Vienna Convention on Diplomatic Relations, 1961, Article 32 — Denmark, Eastern Provincial Court and Supreme Court (Appeals Committee) <i>Embassy of the Socialist Republic of Czechoslovakia v. Jens Nielsen Bygge-Entrepriser A/S</i>	81
Immunity — Diplomats — Military attaché — Action to recover rent arrears — Vienna Convention on Diplomatic Relations, 1961, Article 31(1) and (3) — Whether declaratory of customary international law — Whether contrary to Italian Constitution — Italy, Constitutional Court <i>Russel v. Società Immobiliare Soblim</i>	101
Immunity — Diplomats — Purpose of diplomatic immunity — Whether defendant may invoke diplomatic status of plaintiff as a bar to jurisdiction — Netherlands, Supreme Court <i>Hart v. Helinski</i>	4
Expropriation	
Compensation — Whether provision for compensation in expropriatory legislation conclusive evidence that compensation paid — United States policy against expropriation without compensation — United States Court of Appeals (District of Columbia Circuit) <i>Williams and Humbert Ltd v. W & H Trade Marks (Jersey) Ltd</i>	676
Extraterritorial effect — Expropriation of shares in company by State of incorporation — Effect on subsidiary company's assets located in the United States — United States Court of Appeals (District of Columbia Circuit) <i>Williams and Humbert Ltd v. W & H Trade Marks (Jersey) Ltd</i>	676
Extradition	
Convicted persons — Defendant convicted <i>in absentia</i> — Whether convicted in contumacy — Whether English court may examine true nature of foreign law to determine whether conviction given in contumacy — England, House of Lords <i>Regina v. Governor of Pentonville Prison, ex parte Zezza</i>	513

DIGEST OF CASES		xxiii
		<i>Page</i>
Disguised extradition — Defendant deported to State wishing to try him — Absence of extradition treaty — Whether bar to prosecution — France, Court of Cassation <i>Barbie</i>		124
Double criminality — Requirement that alleged conduct would have constituted an offence under the law of the requested State if committed in that State — Property obtained in one State as a result of deception practised in another State — Conspiracy to defraud — Requirement that extradition statute be strictly construed — England, Divisional Court <i>Regina v. Governor of Pentonville Prison, ex parte Khubchandani</i>		500
Limitations — Offences carrying the death penalty in the requesting State — European Convention on Extradition, 1957, Article 11 — Whether reflecting customary international law — Constitutionality of Italian legislation implementing Franco-Italian Extradition Treaty, 1870 — Italy, Constitutional Court <i>Re Guillier, Ciamborrani and Vallon</i>		93
Procedure — Evidence admissible on extradition request — Evidence not given on oath — Affirmation — Whether recognized by English law — Evidence given on oath in proceedings in third State — Admissibility — England, Divisional Court <i>Regina v. Governor of Pentonville Prison, ex parte Harmohan Singh</i>		506
Governments (see also: States)		
Canada — Independence of Canada — Separation of the Crown in Canada from the Crown in the United Kingdom — Obligations of the Crown to the Indian peoples of Canada — Whether obligations of the United Kingdom Government or the Government of Canada — British North America Acts 1867 and 1930 — Statute of Westminster 1931 — England, Court of Appeal <i>Regina v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta and Others</i>		42
Canada — Independence of Canada — Separation of the Crown in Canada from the Crown in the United Kingdom — Obligations of the Crown to the Indian peoples of Canada — Whether obligations of the United Kingdom Government or the Government of Canada — British North America Acts 1867 and 1930 — Statute of Westminster 1931 — England, High Court and Court of Appeal <i>Manuel and Others v. Attorney-General; Noltcho and Others v. Attorney-General</i>		454

	<i>Page</i>
Governments (<i>cont.</i>)	
Colonies — Southern Rhodesia — Unilateral declaration of independence — Southern Rhodesia Act 1965 — Southern Rhodesia Constitution Order 1965 — Authority to provide for government of Southern Rhodesia vested in United Kingdom Government — Whether lawful Government of Southern Rhodesia distinct from United Kingdom Government — Crown Proceedings Act 1947 — England, High Court	
<i>Mutasa v. Attorney-General</i>	490
Human Rights	
Access to courts — Prisoners wishing to take civil proceedings against prison authorities — Requirement that complaint first be ventilated through internal prison procedures — Restrictions on access to lawyers — Respect for correspondence — Interference with prisoners' correspondence — European Convention on Human Rights, 1950, Articles 6 and 8 — European Court of Human Rights	
<i>Campbell and Fell Case</i>	292
Access to courts — Right to a hearing within a reasonable time — Criteria for determining whether length of proceedings reasonable — Delay in routine procedural steps — Whether justified in view of disruption to Portuguese judicial system as a result of restoration of democracy — Whether temporary backlog of cases justifiable — European Convention on Human Rights, 1950, Article 6(1) — European Court of Human Rights	
<i>Guincho Case</i>	355
Arrest and detention — Arrest and detention without charge — Whether arbitrary — United Nations Human Rights Committee	
<i>Monguya Mbenge v. Zaire</i>	18
Arrest and detention — Conditions of — Allegations of torture — United Nations Human Rights Committee	
<i>Estrella v. Uruguay</i>	40
Arrest and detention — Freedom from — Permissible restrictions — Right to be brought promptly before officer authorized by law to exercise judicial power — European Convention on Human Rights, 1950, Article 5(3) — Military discipline — Authority with advisory power — <i>Auditeur-militair</i> — Internal practice of following his advice — Whether sufficiently independent — Delays under military procedure — Whether a	

DIGEST OF CASES

xxv

Page

- deprivation of right to speedy determination of legality of detention — Discrimination — Whether justifiable — European Court of Human Rights
de Jong, Baljet and van den Brink Case 225
- Arrest and detention — Freedom from — Permissible restrictions — Right to be brought promptly before officer authorized by law to exercise judicial power — European Convention on Human Rights, 1950, Article 5(3) — Military discipline — Authority with advisory power — *Auditeur-militair* — Internal practice of following his advice — Whether sufficiently independent — *Officier-commissaris* — Whether empowered to exercise judicial authority — Whether hearing on referral for trial before military court sufficient degree of judicial control — European Court of Human Rights
Duinhof and Duijf Case 274
- Arrest and detention — Freedom from — Permissible restrictions — Right to be brought promptly before officer authorized by law to exercise judicial power — European Convention on Human Rights, 1950, Article 5(3) — Military discipline — Authority with advisory power — *Auditeur-militair* — Internal practice of following his advice — Whether sufficiently independent — *Officier-commissaris* — Whether empowered to exercise judicial authority — Whether hearing on referral for trial before military court sufficient degree of judicial control — European Court of Human Rights
van der Sluijs, Zuiderveld and Klappe 254
- Arrest and detention — Persons of unsound mind — Circumstances in which detention justified — Requirement of speedy process to review legality of detention — Undue delay — European Convention on Human Rights, 1950, Article 5 — European Court of Human Rights
Luberti Case 194
- Association — Freedom of — Right to join trade union — European Convention on Human Rights, 1950, Article 11 — Whether conferring upon individual right to join trade union of his choice — Extent of right — Agreement between trade unions that union will not accept into membership former member of another union — Individual expelled from union to give effect to this agreement — Whether contrary to Article 11 — England, High Court, Court of Appeal and House of Lords
Cheall v. Association of Professional, Executive, Clerical and Computer Staff 403

	<i>Page</i>
Human Rights (cont.)	
Enforcement and remedies — Access to organs of European Convention on Human Rights, 1950 — Deportation of applicant to non-Convention State while application pending — Whether effectively denying her opportunity to pursue application — England, Court of Appeal <i>Fernandes v. Secretary of State for the Home Department</i>	371
Enforcement and remedies — Access to organs of European Convention on Human Rights, 1950 — England, Court of Appeal <i>Guilfoyle v. Home Office</i>	379
Enforcement and remedies — Access to organs of the European Convention on Human Rights, 1950 — Extradition of applicant to non-Convention State — Whether denial of access to Convention organs — Enforcement by national authorities — Whether national authorities required to take account of interim measures indicated by European Commission of Human Rights — England, High Court <i>R v. Secretary of State for the Home Department, ex parte Kirkwood</i>	388
Enforcement and remedies — Amnesty decree — Whether an effective remedy — United Nations Human Rights Committee <i>Monguya Mbenge v. Zaire</i>	18
Enforcement and remedies — General right to a remedy — International Covenant on Civil and Political Rights, 1966, Optional Protocol — United Nations Human Rights Committee <i>Fanali v. Italy</i>	54
Enforcement and remedies — Right to a national remedy — Whether allegations of torture properly investigated by State — United Nations Human Rights Committee <i>Beatriz Vasilskis v. Uruguay</i>	72
Expression — Freedom of — Restrictions upon — Prior restraint of publications likely to affect proceedings pending before court — Definition of court — Whether restrictions necessary in a democratic society — European Convention on Human Rights, 1950, Article 10 — England, House of Lords <i>Attorney-General v. British Broadcasting Corporation</i>	395

DIGEST OF CASES		xxvii
		<i>Page</i>
Fair trial — Appeal — Right of appeal excluded for proceedings before Constitutional Court concerning acts of ministers — International Covenant on Civil and Political Rights, 1966, Article 14(5) — Reservation by Italy — Validity — Applicability — United Nations Human Rights Committee <i>Fanali v. Italy</i>	54	
Fair trial — Disciplinary proceedings against convicted prisoner — Whether proceedings amounting to the determination of a criminal charge — Whether prison board of visitors an impartial and independent tribunal — Whether proceedings required to be held in public — Whether sentence required to be pronounced in public — Right to legal representation before board — Access to lawyer before hearings — European Convention on Human Rights, 1950, Article 6 — European Court of Human Rights <i>Campbell and Fell Case</i>	292	
Fair trial — Punishment of crimes against humanity — Whether subject to statutory limitation periods — European Convention on Human Rights, 1950, Articles 7(2) and 60 — International Covenant on Civil and Political Rights, 1966, Article 15(2) — France, Court of Cassation <i>Barbie</i>	124	
Fair trial — Rights of defence — Appeal — Appeal heard in the absence of accused and his lawyer — Appointment of lawyer by court — European Convention on Human Rights, 1950, Article 6 — European Court of Human Rights <i>Goddi Case</i>	213	
Fair trial — Rights of defence — Right of accused to be tried in his presence — Death sentence — United Nations Human Rights Committee <i>Monguya Mbenge v. Zaire</i>	18	
Fair trial — Rights of defence — Right to choose defence lawyer — Denial of access to lawyer — Time to prepare defence — United Nations Human Rights Committee <i>Marais v. Madagascar</i>	28	
Fair trial — Rights of defence — Trial held <i>in camera</i> — Right to choose defence lawyer — United Nations Human Rights Committee <i>Estrella v. Uruguay</i>	40	

	<i>Page</i>
Human Rights (cont.)	
Fair trial — Trial by military court — Trial held <i>in camera</i> — Rights of defence — Right to choose defence lawyer — Delay in bringing case to trial — Whether accused denied proper opportunity to prepare defence — United Nations Human Rights Committee	
<i>Beatriz Vasilskis v. Uruguay</i>	72
Freedom of movement — Passport — Refusal of State to issue passport to national resident abroad — Freedom to leave country of nationality — Whether imposing obligation on State to grant passport — Issue of travel documents by State of residence — Whether relieving State of nationality of obligation — United Nations Human Rights Committee	
<i>Lichtensztejn v. Uruguay</i>	63
Privacy and correspondence — Requirement of respect for — Censorship of prisoner's correspondence — United Nations Human Rights Committee	
<i>Estrella v. Uruguay</i>	40
Privacy and correspondence — Requirement of respect for — Interference with prisoners' correspondence — European Convention on Human Rights, 1950, Article 8 — European Court of Human Rights	
<i>Campbell and Fell Case</i>	292
Privacy and correspondence — Requirement of respect for — Prisoner's correspondence with legal adviser — England, Court of Appeal	
<i>Guilfoyle v. Home Office</i>	379
Procedure — Notion of a victim of a human rights violation — Applicants' periods of detention on remand taken into account in sentencing — Whether applicants ceased to be victims in respect of alleged violations regarding their detention on remand — European Court of Human Rights	
<i>de Jong, Baljet and van den Brink Case</i>	225
Procedure — Notion of a victim of a human rights violation — Applicants' periods of detention on remand taken into account in sentencing — Whether applicants ceased to be victims in respect of alleged violations regarding their detention on remand — European Court of Human Rights	
<i>Duinhof and Duij Case</i>	274

DIGEST OF CASES		xxix
		<i>Page</i>
Procedure — Notion of a victim of a human rights violation — Applicants' periods of detention on remand taken into account in sentencing — Whether applicants ceased to be victims in respect of alleged violations regarding their detention on remand — European Court of Human Rights <i>van der Sluijs, Zuiderveld and Klappe Case</i>	254	
Remedy under domestic law — Right to — Extent of right — Whether a separate right — European Convention on Human Rights, 1950, Article 13 — European Court of Human Rights <i>Campbell and Fell Case</i>	292	
Torture, inhuman and degrading treatment — Conditions of imprisonment — Solitary confinement — Conditions in cell — Detention incommunicado — United Nations Human Rights Committee <i>Marais v. Madagascar</i>	28	
Torture, inhuman and degrading treatment — Conditions of imprisonment — Whether amounting to torture — United Nations Human Rights Committee <i>Beatriz Vasilkis v. Uruguay</i>	72	
International Organizations		
Immunity — Attachment and execution — Distinguished from jurisdictional immunity — Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies — Assets in use for public functions — Criteria for determining which assets immune from attachment — Italy, Tribunal of Bari <i>Mininni v. Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies</i>	112	
Immunity — Employment — Action brought by trade union concerning alleged disregard of trade union rights — Whether organization immune — Italy, Court of Cassation <i>Camera Confederale del Lavoro CGIL and Another v. Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies</i>	86	
United Nations — United Nations forces — UNIFIL — Whether use of Netherlands armed forces as part of UNIFIL contrary to Netherlands Constitution — Netherlands, Supreme Court <i>VVDM v. The State of the Netherlands</i>	13	

	<i>Page</i>
International Tribunals (see also: Arbitration)	
European Commission of Human Rights — Interim measures of protection — Legal effect — England, High Court <i>R v. Secretary of State for the Home Department, ex parte Kirkwood</i>	388
European Commission of Human Rights — Nature of proceedings before Commission — Whether legal proceedings — Whether individual petitioner a party to proceedings — Whether proceedings judicial or administrative — Examination of prisoner's correspondence relating to proceedings before Commission — European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights, 1969, Article 3(2) — England, Court of Appeal <i>Guilfoyle v. Home Office</i>	379
European Court of Human Rights — Nature of proceedings before Court — Whether Court entitled to take account of changes in law of respondent State effected after events which are the substance of the complaint had occurred — European Court of Human Rights <i>Campbell and Fell Case</i>	292
European Court of Human Rights — Nature of proceedings before Court — Whether individual petitioner a party to proceedings — Examination of prisoner's correspondence relating to proceedings — European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights, 1969, Article 3(2) — England, Court of Appeal <i>Guilfoyle v. Home Office</i>	379
European Court of Human Rights — Procedure — Plea that applicant had failed to exhaust local remedies — Plea not raised before European Commission of Human Rights — Whether respondent State estopped from raising plea before Court — Existence of certain remedies only becoming apparent as a result of decision of English court while proceedings before European Court of Human Rights pending — Whether Court bound by Commission's decision regarding non-exhaustion of local remedies — European Court of Human Rights <i>Campbell and Fell Case</i>	292
Iran-United States Claims Tribunal — Composition — Jurisdiction — Procedure — Iran-United States Claims Tribunal <i>Craig v. Ministry of Energy of Iran and Others</i>	658

DIGEST OF CASES

xxxi

	<i>Page</i>
Iran-United States Claims Tribunal — Jurisdiction — Procedure — Iran-United States Claims Tribunal, dissenting opinion <i>Phillips Petroleum Company, Iran v. Islamic Republic of Iran; Amoco Iran Oil Company v. Islamic Republic of Iran: Dissenting Opinion of Dr Shafie Shafeiei</i>	637
United Nations Human Rights Committee — Evidence and procedure — Duty of State party to provide detailed information — Burden of proof — International Covenant on Civil and Political Rights, 1966, Optional Protocol — United Nations Human Rights Committee <i>Beatriz Vasilskis v. Uruguay</i>	72
United Nations Human Rights Committee — Individual petition — Burden of proof — Whether always resting on petitioner — Duties of State party — International Covenant on Civil and Political Rights, 1966, Optional Protocol — United Nations Human Rights Committee <i>Marais v. Madagascar</i>	28
United Nations Human Rights Committee — Jurisdiction — Individual petition — Petitioner not a national of the respondent State — Whether complaint admissible — Allegations relating to events within territory of respondent State — United Nations Human Rights Committee <i>Estrella v. Uruguay</i>	40
United Nations Human Rights Committee — Jurisdiction — Individual petition — Requirement that petitioner be subject to the jurisdiction of the respondent State — National of respondent State resident abroad refused passport — United Nations Human Rights Committee <i>Lichtensztejn v. Uruguay</i>	63
United Nations Human Rights Committee — Jurisdiction — Whether Committee competent to pronounce on constitutionality of municipal laws — Exclusion of jurisdiction in respect of matters already submitted to other international tribunals — United Nations Human Rights Committee <i>Fanali v. Italy</i>	54
United Nations Human Rights Committee — Mandate — Whether competent to review decisions of national courts — Evidence — International Covenant on Civil and Political Rights, 1966 — Optional Protocol — United Nations Human Rights Committee <i>Monguya Mbenge v. Zaire</i>	18