

**INDEX** 

Abbreviations used in the index

ACHPR (African Charter on Human and Peoples' Rights (1991) (Banjul Charter)) ACHPR Protocol (Protocol on the Establishment of an African Court on Human and

Peoples' Rights (1998))

ACtHPR (African Court on Human and Peoples' Rights)

CCP (Code of Civil Procedure)

CESCR (Committee on Social, Economic and Cultural Rights)

CIL (customary international law)

DPA (Diplomatic Privileges Act (1964) (UK))

ECHR (European Convention on Human Rights (1950))

ECSC (European Convention on State Immunity (Council of Europe, Basle, 1972)) EQD (Qualifications Directive 2004/83 (Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees))

ESCER (economic, social, cultural and environmental rights)

FSIA (Foreign Sovereign Immunities Act (1996) (US))

GATS (General Agreement on Trade in Services (1995)) GATT (General Agreement on Tariffs and Trade (1947))

I-USTA (Treaty of Amity, Economic Relations and Consular Rights (1955))

IACHR (Inter-American Convention on Human Rights (1969, Šan José))

IACtHR (Inter-American Court of Human Rights)

IBRD (International Bank for Reconstruction and Development)

IBRD AoA (Articles of Agreement of International Bank for Reconstruction and Development)

ICCPR (Înternational Covenant on Civil and Political Rights (1966))

ICESCR (International Covenant on Economic, Social and Cultural Rights (1966))

ILC (International Law Commission)

JISP (United Nations Convention on Jurisdictional Immunities of States and Their Property (2004))

OAS (Organization of American States)

PHROP (Inter-American Convention on the Protection of the Human Rights of Older Persons (2015))

RC (Convention Relating to the Status of Refugees (1951))

SIA (State Immunity Act (1978) (UK))

TRIA (Terrorism Risk Insurance Act (2002) (US))

TRNC (Turkish Republic of Northern Cyprus)

UNC (UN Charter (1945))

UNCRC (UN Convention on the Rights of the Child (1989))

UNCSI (UN Convention on Jurisdictional Immunities of States and Their Property

UNDRIP (American Declaration on the Rights of Indigenous Peoples (2016))

UNSCR (Resolutions of the United Nations Security Council)

VCDR (Vienna Convention on Diplomatic Relations (1961))

VCLT (Vienna Convention on the Law of Treaties (1969))

Act of Accession to European Union (2003)

derogations, grounds for 448

Metallurgiki Halyps v. Commission (Case 258/81) 448

Protocol 10—Cyprus: see Cyprus



640 INDEX

### African Charter on Human and Peoples' Rights (1991) by article

1, recognition of rights, duties and freedoms 116

7, access to justice 116

#### African Charter on Human and Peoples' Rights (Protocol 1998) by article

2, right to remedy for individuals and NGOs 111, 114, 116-17

3(1), jurisdiction 91-2, 111, 117

5(3), justiciability of rights 93, 114-15

6(2), admissibility of applications 115

34(1), ratification

lack of signature, relevance of 91, 96-7

34(6), competence of court, acceptance of 114

conferring subjective rights on individuals and NGOs 109-11, 114-17

declaration as unilateral act not supported by VCLT 92

declaration, optional nature of 92, 112, 117

retroactive effect 91, 96

right to withdraw declaration 110

State obligations 93

#### African Court on Human and Peoples' Rights

jurisdiction of court

prima facie jurisdiction 95-6

whether State's declarations accepting jurisdiction are optional 92, 117

whether application to institute proceedings void if unsigned 91

### African Court on Human and Peoples' Rights, Rules of Court, by rule

34(1), application procedures 91, 96

49(1), jurisdiction, preliminary examination 103

51(1), provisional measures 98

#### Agreement between the Republic of Austria, the IBRD, the International Finance Corporation and the Multilateral Investment Guarantee Agency Regarding the Establishment of Liaison Offices in Vienna (Establishment Agreement)

IBRD exemption of court fees under: see IBRD Court Fees Case

#### American Declaration of the Rights and Duties of Man (1948, Bogota Declaration)

Article XI, right to the preservation of health and to well-being 239

## American Declaration on the Rights of Indigenous Peoples (2016) by article

VI, right of indigenous peoples to collective action 216

VIII, right to belong to indigenous peoples 165-6

IX, right of indigenous peoples to juridical personality 216

XIII, right to cultural identity and integrity 248

XIX, right to protection of a healthy environment 255, 370-1

XXV, right to land, territory and resources 371-2

## Argentina

Constitution by article

41, right to a healthy environment 236, 245

75.17, recognition of rights of indigenous peoples 176

indigenous peoples, rights over communal property: see Lhaka Honhat Case

#### armed forces

whether procedure for service on military base necessary through diplomatic channels: see Houghton v. USA

### asylum, refusal of

acts contrary to the purposes and principles of the UN: see Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani

degree of gravity requirement

terrorist acts 119-20



More Information

INDEX 641

EQD, Articles 12(2), 12(3) 125 participation in terrorism: see Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani

#### Australia

state immunity service on foreign states rules 606, 632

#### Austria

Agreement between the Republic of Austria, the IBRD, the International Finance
Corporation and the Multilateral Investment Guarantee Agency Regarding the
Establishment of Liaison Offices in Vienna (Establishment Agreement)
exemption from court fees under: see IBRD Court Fees Case
jurisdiction of Austrian authorities over international organizations: see IBRD Court Fees

#### Belgium

asylum, refusal of
participation in terrorism: see Commissaire Général aux Réfugiés et aux Apatrides
v. Mostafa Lounani
Criminal Code, by article
139, terrorism offences 128
140, participation in terrorism 128
Law of 15 December 1980, Article 55(2), exclusion from refugee status 127
Law of 19 December 2003, terrorism offences 127-8
terrorism
exclusion from refugee status 127
offences 127-8
participation in: see Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa
Lounani

#### Canada

state immunity

diplomatic service of process 606-7

#### central banks

classification of acts as jure imperii or jure gestionis 8-9, 29-30, 54-9 state immunity of: see Certain Iranian Assets (Islamic Republic of Iran v. United States of America)

# Certain Iranian Assets (Islamic Republic of Iran v. United States of America) (background, facts and jurisdiction) 2-5, 11-14

abuse of process
distinction from abuse of rights 5, 7
lack of exceptional circumstances 5
recharacterization of objection 7
unclean hands 5, 7-8
admissibility of claims
abuse of rights versus abuse of process 5, 7
Preliminary Objection 1 5
Preliminary Objection 2 5
unclean hands 7-8
Claimant's submissions
oral proceedings on preliminary objections 18



642 INDEX

```
Certain Iranian Assets (Islamic Republic of Iran v. United States of America)
(background, facts and jurisdiction) (cont.)
    written proceedings on the merits 16-17
  Defendant's submissions
    oral proceedings on preliminary objections 18
    written proceedings on the merits 17
  ICJ jurisdiction
    Barcelona Traction 8
    preliminary objections, restrictions on decision-making 8
    suitability of Rules of Court 79(9) for preliminary objections 8
    company, definition of 5, 7, 10, 35-6
  by article
    III(2), applicability of state immunity to companies 4, 6, 30-2
    IV(1), fair and equitable treatment 4-6, 28, 32-3, 37
    IV(2), minimum standard of treatment 4, 6, 26-8
    X(1), freedom of commerce 4-5, 33-5
    XI(4), limitations on immunities to prevent unfair conduct 4, 6, 29-30
    XX(1)(c)(d), jurisdiction ratione materiae 3-4, 6, 21, 23-5
    XXI(2), jurisdiction to determine and apply state immunity 26, 35
  jurisdiction
    general conclusion of Court 5-8
    limitations on immunities to prevent unfair conduct 4, 6, 29-30
    Preliminary objection 1 unfair and inequitable treatment 3, 5-6, 23-5
    Preliminary Objection 2 violation of state immunity 4-7, 25-35
    Preliminary Objection 3 5, 7
    to determine and apply state immunity 26, 35
  jurisdiction—jurisprudence
    Alleged Violations of I-USTA (Islamic Republic of Iran v. United States of America) 24-5
    Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea
           (Nicaragua v. Colombia) 30
    Application of the International Convention on the Elimination of All Forms of Racial
           Discrimination (Georgia v. Russian Federation) 22
    Border and Transborder Armed Actions (Nicaragua v. Honduras) 22
    Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United
           States of America) 3, 24-5
    Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile) 22
         "Wimbledon" 30
    Territorial and Maritime Dispute (Nicaragua v. Colombia) 3-4, 6, 22-5, 30, 34, 40
    United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)
  overview of claims 14-15
    CIL requirements 26-8, 31-5
    clean hands doctrine, and 5
    companies, immunities of 21-2, 35-41
    fair and equitable treatment 26-8, 32-3, 37
    freedom of access to courts and agencies 30-2, 37
    FSIA, alleged violations 2-3
    incorporation of CIL 27
    I-USTA, alleged violations 21-2
```

minimum standard of treatment 4

jure imperii activities of public entities, immunities of 29-30



INDEX 643

terrorism, allegations of sponsoring 5 US law interference with freedom of commerce 21-2 US responses to violation claims 22 overview of facts 19-20 bombing of US Marine Corps barracks in Beirut 19 diplomatic relations between Iran and US, status of 19 I-USTA, signature of 19 Peterson 2-3, 12-14, 20 US legislative amendments 19-20 terrorism, allegations of sponsoring clean hands doctrine 5 Certain Iranian Assets (Islamic Republic of Iran v. United States of America) (Court judgment—principal ruling) admissibility of claims abuse of rights versus abuse of process 41-4 exceptional circumstances criteria 43-4 overview of objections 7-8, 41 unclean hands 42, 44-5 admissibility of claims—jurisprudence Avena and Other Mexican Nationals (Mexico v. United States of America) 45 Immunities and Criminal Proceedings (Equatorial Guinea v. France) 41-4 Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) 45 Northern Cameroons 43 Central Bank of Iran (Bank Markazi), status of enforcement proceedings against 2-3 freedom of access to courts and agencies 31-2, 37 legal personality 7, 36-8 nature of activities, relevance of 39-41 state immunity, applicability to 5, 7, 10 whether company under I-USTA III(1) 5, 7, 10, 35-41 clean hands doctrine admissibility of claims 44-5 no decision on status under international law 44 satisfaction of circumstances 45 clean hands doctrine—jurisprudence Avena and Other Mexican Nationals (Mexico v. United States of America) 45 companies, status of definition under I-USTA III(1) 5, 7, 10, 35-6 freedom of access to courts and agencies 31-2, 37 whether Bank Markazi within definition of 5, 7, 10, 35-41 general conclusions 41, 45-6 jurisdiction interpretation under VCLT 31(3)(c) 10 Preliminary Objection 1 unfair and inequitable treatment 5-6, 10, 23-5 Preliminary Objection 2 violation of state immunity 6-7, 10, 25-35 Preliminary Objection 3 whether Central Bank is company for state immunity purposes 7, 10, 35-41 nationals, definition 37 overview 5-8 state immunity Bank Markazi, whether company for purposes of 35-41 CIL, and



```
Certain Iranian Assets (Islamic Republic of Iran v. United States of America) (Court
judgment—principal ruling) (cont.)
      fair and equitable treatment 32-3, 37
      freedom of access to courts and agencies 31-2, 37
      freedom of commerce, scope of 4-5, 33-5
      incorporation of 27
      jurisdiction to determine and apply state immunity 35
      minimum standard of treatment 26-8
      Peterson 2-3, 12-14, 20
    I-USTA
      abuse of process 43-4
      by article
         III(2), applicability to companies 4, 6, 30-2
         IV(1), fair and equitable treatment 32-3, 37
         IV(2), minimum standard of treatment 4, 6, 26-8
         X(1), freedom of commerce 4-5, 33-5
        XI(4), limitations on immunities to prevent unfair conduct 4, 6, 29-30
        XXI(2), jurisdiction to determine and apply state immunity 26, 35
    limitations to prevent unfair conduct 4, 6, 29-30
Certain Iranian Assets (Islamic Republic of Iran v. United States of America) (Court
           judgment, separate opinions and declarations)
  Brower, Judge ad hoc 9, 63-77
    clean hands doctrine 9, 64-7
      Diversion of Water from the Meuse 9, 65-7
      Guyana v. Suriname 65
      Special Rapporteurs' references, citation of 64-5
    jurisdiction
      Bank Markazi, whether a company 73-7
      I-USTA XX, as self-judging clause, restriction to raising issue for its merits 67-8
      I-USTA XX, comparison with GATT XXI/GATS XIVbis 67-8
      Preliminary Objection 1 10, 67-8
      Preliminary Objection 2 10, 68-73
      Preliminary Objection 3 10
    overview 9-10
    state immunity 68-73
      Bank Markazi, applicability to 76-7
      CIL, applicability of 70
      commercial activities, relevance to 70-3
      consular and diplomatic immunities 69-70
      I-USTA provisions, applicability and scope of 68-73
      I-USTA XI(4), a contrario interpretation 71-3
      VCLT 31(3)(c), interpretation 70
    state immunity—jurisprudence
      Land, Island and Maritime Frontier Dispute (El Salvador/Honduras) 73
      Petersen 76
      S.S. "Wimbledon" 71-2
      Territorial and Maritime Dispute (Nicaragua v. Colombia) 71-3, 77
    Bank Markazi, recognition of status and sovereign functions 52-3
    I-USTA XI(4), applicability to state entities 8, 53
    Oil Platforms (Islamic Republic of Iran v. United States of America) 52
    overview 8
```



```
Gevorgian J 59-63
  CIL and state immunity 9, 59-63
    Central Bank activities, I-USTA applicability to 60-3
    freedom of commerce 62-3
    US terrorism exception 59-60
  CIL and state immunity—jurisprudence
    Arrest Warrant of 1 April 2000 (Democratic Republic of the Congo v. Belgium) 62
    Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening) 62
    Oil Platforms (Islamic Republic of Iran v. United States of America) 62-3
    Immunities and Criminal Proceedings (Equatorial Guinea v. France) 9, 60
  overview 9
  Petersen 60, 62
Momtaz, Judge ad hoc 12-78
  claims, summary of 78-9
    Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United
         States of America) 79
  conclusion 12-87
  dispute, definition of 80
    Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea
         (Nicaragua v. Colombia) 80
    Immunities and Criminal Proceedings (Equatorial Guinea v. France) 80
    Interpretation of Peace Treaties with Bulgaria, Hungary and Romania 80
    Mavrommatis Palestine Concessions, Judgment No. 2 80
    Oil Platforms (Islamic Republic of Iran v. United States of America) 80
    South West Africa (Ethiopia v. South Africa; Liberia v. South Africa) 80
  jurisdiction
    a contrario interpretation 85-7
    interpretation within scope of treaty 81-3
    jure imperii acts of state entities 79-80, 82-3
    VCLT 31(3)(c), interpretation 83-5
  jurisdiction—jurisprudence
    Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) 86
    Oil Platforms (Islamic Republic of Iran v. United States of America) 81-2, 86
    S.S. "Wimbledon" 85
    Territorial and Maritime Dispute (Nicaragua v. Colombia) 85
    Territorial Dispute (Libyan Arab Jamahiriya/Chad) 81
  overview 10
  state immunity
    company, definition 86
    JISP 21(1)(c) 87
    jure imperii activities by state entities 86-7
    terrorism exception, validity of 87-8
    VCLT 27, CIL applicability 87
  state immunity—jurisprudence
    Applicability of the Obligation to Arbitrate under Section 21 of the United Nations
         Headquarters Agreement of 26 June 1947 87
    Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France) 88
    Greco-Bulgarian Communities 87
    Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening) 88
    Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United
         States of America) 88
    Right of Passage over Indian Territory (Portugal v. India) 88
```



646 INDEX

```
Certain Iranian Assets (Islamic Republic of Iran v. United States of America) (Court
judgment, separate opinions and declarations) (cont.)
    treaty interpretation, and international law 83-5
       ILC Report on Fragmentation of International Law 84-5
    treaty interpretation, and international law—jurisprudence
      Al-Adsani v. United Kingdom 84
       Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) 83
       Georges Pinson (France) v. United Mexican States 83
      Jones and Others v. United Kingdom 84
      Legal Consequences for States of the Continued Presence of South Africa in Namibia
           (South West Africa) notwithstanding Security Council Resolution 276 (1970) 83
       Oil Platforms (Islamic Republic of Iran v. United States of America) 83
  Robinson J 53-9
    CIL and state immunity
       a contrario interpretation 56-7
       applicability of 8-9, 53
       Central banks, I-USTA applicability to 57-9
      jure imperii activities versus commercial activities of public entities 8-9, 54-9 VCLT 31(1), interpretation 54-6
    CIL and state immunity—jurisprudence
      Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea
           (Nicaragua v. Colombia) 56-7
       Schooner Exchange v. McFaddon 55, 57
    overview 8-9
  Tomka and Crawford JJ 46-52
    Bank Markazi, whether company for purposes of I-USTA 51-2
    suitability of Rules of Court 79(9) for preliminary objections 47-52
      Application of the Convention on the Prevention and Punishment of the Crime of
           Genocide (Croatia v. Serbia) 50
       Barcelona Traction 8, 47-8
       Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)
      Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United
           States of America) 48-9
       Questions of Interpretation and Application of the 1971 Montreal Convention arising
           from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United
           Kingdom) 48-50
       Questions of Interpretation and Application of the 1971 Montreal Convention arising
           from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of
           America) 48-50
       Territorial and Maritime Dispute (Nicaragua v. Colombia) 50
CESCR General Comment No 3 (States parties' obligations)
  non-regressive measures, principle of 111, 116
CESCR General Comment No 12 (The right to adequate food)
  indigenous peoples, and 241-3
```

CESCR General Comment No 14 (The right to an attainable standard of health)

CESCR General Comment No 21 (The right to take part in cultural life)

CESCR General Comment No 15 (The right to water)

indigenous peoples, and 243

culture, interpretation 251

indigenous peoples, and 241-3, 246-8



```
indigenous peoples, and 248, 252-3
 necessary conditions for full realization of right 252-3
Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani 118
 background and facts
    acts contrary to purposes and principles of the UN 120-1
    Council Framework Decision 2002/475, 1(1) 120
    EQD, Article 12(2)(c), interpretation 120
    overview 119-20
    RC 1F(c), scope of exclusion 120-1
    refusal of asylum, degree of gravity requirement 119-20
    terrorism and terrorist acts, participation in, interpretation of 120-1
 Council Framework Decision 2002/475
    acts contrary to the purposes and principles of the UN 133
    Article 1(1), definition of terrorist offences 125-6
    Article 2, definition of terrorist groups 126
    definition of terrorist offences 125
    recruitment for terrorism 127
    terrorism, punishable offences 126-7
 Court judgment
    acts contrary to the purposes and principles of the UN
      EC Framework Decision 2002/475 133
      EQD, Article 12(2)(c), relationship with international law 132-3, 139-40
      participation in terrorism, interpretation as 132-3
      RC 1F(c) 122-3, 132
      refugee status, grounds for refusal of 137-9
      terrorist group, membership or participation in 136-9
      UNSCR 1373 (2001) 123, 132
      UNSCR 1624 (2005) 123, 132-3
      UNSCR 2178 (2014) 136
    admissibility 134-5
      grounds for court refusal to rule on preliminary question 134
      Petruhhin 134
      Polkomtel 134
      Prezes Urzêdu Komunikacji Elektronicznej and Petrotel 134
    annulment claims 129
    conclusions 139-40
    facts in main proceedings 128-9
    participation in terrorism
      EQD, Article 12(2)(c), interpretation within meaning of 130-1
      leadership of terrorist organization 131
      membership or participation in terrorist group 136-9
      refugee status, grounds for refusal of 136-9
      whether convicted acts constituted 130-3, 135-6
    refugee status, refusal of 129-30
      A and Others 131-2
      acts contrary to the purposes and principles of the UN 137-9
      B and D 132
      participation in terrorism, scope of interpretation 136-9
    request for preliminary ruling 121-2
      admissibility 134-5
 EQD
    acts contrary to the purposes and principles of the UN 125
```



648 INDEX

```
Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani (cont.)
    Articles 12(2), 12(3), refugee status, grounds for refusal 125
    criteria for recognition of refugee status 125
    grounds for refusal of refugee status 125
    interpretation within international law 131-3
    minimum standards for refugee status 125
    Recitals 125
    terrorism, participation in 125, 130-1, 139-40
  legal context
    Belgian Criminal Code 128
    Belgian Law of 15 December 1980, Article 55(2) 127
    Belgian Law of 19 December 2003 127-8
    EC Framework Decision 2002/475 125-8
    EQD 124-5
    RC 1F(c) 122-3
UNC 1(1), (3) 122
    UNSCR 1373 (2001) 123-32
    UNSCR 1377 (2001) 123-32
    UNSCR 1624 (2005) 123-4
    UNSCR 2178 (2014) 124
  terrorism and terrorist acts, definitions
    punishable offences 126-7
    recruitment for terrorism 127
    structured group 126
    terrorist groups 126
  terrorism and terrorist acts, participation in
    acts contrary to the purposes and principles of the UN 132-3
    interpretation of 120-1
    punishable offences 126-7
    recruitment for terrorism 127
    refugee status, grounds for refusal of 136-9
  terrorism and terrorist acts, prevention of
    grant of refugee status, necessary and appropriate measures 123-4
    State obligations under international law 123-4
Convention 169 of the International Labour Organization (ILO) on Indigenous and
           Tribal Peoples (1989) 176
  human rights of indigenous peoples 216
  respect for relationship with land 369-70
customary international law
  service via diplomatic channels, applicability to armed forces proceedings: see Houghton
           v. ŪSA
  test for identification of 604-5
Cyprus: see also Turkish Republic of Northern Cyprus
  Act of Accession to European Union (2003) Protocol 10
    applicability to Turkish Republic of Northern Cyprus 445
    Orams v. Apostilides (British Residents' Association Intervening) 448, 466-8, 471
    suspension of acquis communautaire under 445, 447-8, 466-8, 470
```

diplomatic immunity from civil proceedings

diplomat's children, conflicts with care proceedings: see London Borough of Barnet v. AG and Foreign Secretary



INDEX 649

#### EU Council Framework Decision 2002/475

acts contrary to the purposes and principles of the UN 133 Article 1(1), definition of terrorist offences 125-6 Article 2, definition of terrorist groups 126 definition of terrorist offences 125 recruitment for terrorism 127 terrorism, punishable offences 126-7

## EU Directive 2002/83/EC on Life Assurance (Qualifications Directive)

acts contrary to the purposes and principles of the UN 125 Article 12(2), 12(3), refugee status, grounds for refusal 125 criteria for recognition of refugee status 125 grounds for refusal of refugee status 125 interpretation within international law 131-3 minimum standards for refugee status 125 Recitals 125

terrorism, participation in 125
EU Directive 2004/38/EC on the Right of Citizens of the Union and their Family
Members to Move and Reside freely within the Territory
applicability to TRNC 461-2

## EU Regulation 2201/2003 on Matrimonial and Parental Judgments by article

8, general jurisdiction 445-57

12(3), grounds for jurisdiction 457

13, jurisdiction based on child's presence 445

14, where no court has jurisdiction 457

15, transfer to court better placed to hear case 472

20, jurisdiction in urgent cases 458

## EU Regulation 1393/2007 on the Service in Member States of Judicial and Extrajudicial Documents

diplomatic service methods, applicability of 607

#### European Convention on Human Rights (1950), by article

3, prohibition on torture and inhuman or degrading treatment or punishment jurisdiction over individuals from non-recognized states: see R (Akarcay) v. Chief Constable of the West Yorkshire Police

whether incompatible with diplomatic immunity in child protection proceedings: see London Borough of Barnet v. AG and Foreign Secretary

6, right to fair trial

jurisdiction over individuals from non-recognized states: see R (Akarcay) v. Chief Constable of the West Yorkshire Police

whether service via diplomatic channels in breach of: see General Dynamics UK Ltd v. Libya

#### European Convention on State Immunity (1972) by article

16, procedural rules for proceedings against a contracting state 558-60, 608-9

#### family law

diplomatic immunity and child protection proceedings: see London Borough of Barnet v. AG and Foreign Secretary

### General Dynamics UK Ltd v. Libya

background and overview Court conclusions principal ruling 537-8



650 INDEX

```
General Dynamics UK Ltd v. Libya (cont.)
      Lady Arden (separate opinion) 538
      Lord Stephens (separate opinion) 538-638
 Court judgment—principal ruling—background and overview
    conclusions 537-8
    evidence relating to effect of service 546-50
    facts 540
    relevant legislation
      CPR 6, rules of service 545-6
      CPR 62.18 543-4
      SIA 12, service of process in default of appearance 544
      SIA 13, other procedural privileges 544-5
      SIA 21, evidence by certificate 545
 Court judgment—principal ruling—issues for consideration issue 1—scope and effect of SIA 12(1) 550-77
      applicable procedural rules 551
      Australian Law Reform Commission commentary on 566-8
      conclusions 576-7
      domestic law interpretations 566-8
      ECSI 16, scope of provisions and differences from SIA 558-60, 577
      entry of appearance and judgments in default of appearance, interpretation 553
      exceptions to State immunity 550
      importance of proper invocation of jurisdiction 566
      judicial authorities 568-76
      meaning of receipt 552
      method of service 551
      permission for service out of jurisdiction 551
      procedure for enforcement of arbitration awards outside scope of ECSI 559-60
      procedure for enforcement of arbitration awards under CPR 62.18 553-4, 556-8
      procedure for service in absence of an agreement 554-5
      requirement to give notice of proceedings 556-8
      role and obligations of FCDO 551-2
      scope of State immunity generally 550
      Singapore State Immunity Act, compared with 574-6
      Supreme Court of Judicature (Consolidation) Act 1925 99, amendment or
          revocation of procedural rules 611
      whether document served was suitable for purposes of instituting proceedings 537-
           8, 571, 576-7
      whether meeting requirements of international law and comity 537
      whether proceedings to enforce arbitral award under New York Convention fall
           within 537, 555-8
      whether UNCSI 22 amounted to CIL 537, 560-5
    issue 1—scope and effect of SIA 12(1)—jurisprudence
      AIC Ltd v. Federal Government of Nigeria 553, 572, 576
      Alcom Ltd v. Republic of Colombia 565
      Barton v. Wright Hassall LLP 557
      Belhaj v. Straw 562
      Benkharbouche v. Embassy of the Republic of Sudan 561
      Boru Hatlari Ile Petrol Tasima AS v. Tepe Insaat Sanayii AS 562
      Certain Underwriters at Lloyd's of London v. Syrian Arab Republic 552, 555
```

European Union v. Syrian Arab Republic 555, 570-1



INDEX 651

Firebird Global Master Fund II Ltd v. Republic of Nauru 564, 572-4 Gold Reserve Inc. v. Bolivarian Republic of Venezuela 571-2, 576 Heiser (Estate of) v. Islamic Republic of Iran 552 Jones v. Ministry of the Interior of the Kingdom of Saudi Arabia 561 Jurisdictional Immunities of the State (Germany v. Italy) 561, 565 Kuwait Airways Corpn v. Iraqi Airways Co 554-5 Lv. Y Regional Government of X 551, 569-70, 576 London Steam-Ship Owners' Mutual Insurance Association Ltdv. Kingdom of Spain (No 4) (The Prestige) 564 Military and Paramilitary activities in and against Nicaragua (Nicaragua v. United States) 562 Norsk Hydro ASA v. State Property Fund of Ukraine (Note) 551, 553, 568-71, 576 North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. The Netherlands) 562 Unión Fenosa Gas SA v. Egypt 552, 571 Van Zyl v. Kingdom of Lesotho 560, 570, 572, 574-6 Wallishauser v. Austria 564-5 Westminster City Council v. Government of the Islamic Republic of Iran 554, 570 issue 2—whether Court has discretion to dispense with service pursuant to CPR 6.16 and/or 6.28, in exceptional circumstances 538, 577-9 Certain Underwriters at Lloyd's of London v. Syrian Arab Republic 579 Qatar National Bank (QPSC) v. Government of Eritrea 579 issue 3—whether service requirements under SIA 12(1) in violation of ECHR 6 579-Al-Adsani v. UK 580 applicability of principle of legality 580-1 Cudak v. Lithuania 581 Holland v. Lampen-Wolfe 580 Jones v. Ministry of the Interior for the Kingdom of Saudi Arabia 580 proportionality 581 relationship between state immunity and court jurisdiction 580-1 issue 3—whether service requirements under SIA 12(1) in violation of ECHR 6 538 Court judgment—Lady Arden (separate opinion) conclusions—overview 538 ECHR 6, whether conflicts with applicability of SIA 12(1) 586-7 ECSI, applicability of SIA 12(1) in light of 538, 583-6 HRA 3, compatibility of SIA 12(1) with 586-7 overview 538 scope of law preceding SIA and legislative intention 583-4 statutory interpretation of SIA 12(1) 583-7 jurisprudence Attorney General v. Edison Telephone Company of London 585 Benkharbouche v. Embassy of the Republic of Sudan 583-4 Cia Naviera Vascongada v. Steamship Cristina (The Cristina) 583-4 Ghaidan v. Godin-Mendoza 586 Philippine Admiral (Owners) v. Wallem Shipping (Hong Kong) Ltd (The Philippine Playa Larga (Owners of Cargo lately laden on board) v. I Congreso del Partido 584 Trendtex Trading Corpn v. Central Bank of Nigeria 584 Court judgment—Lord Stephens (separate opinion) background and facts 591-4



```
General Dynamics UK Ltd v. Libya (cont.)
    CIL, interpretation of
      ILC Draft Conclusions on Identification of CIL (2016) 609-10
      international comity and CIL as restrictive doctrine of state immunity 601-4
      international comity and CIL as to service of proceedings on foreign states 604-11
      state immunity and rules of marketplace 538-9, 598, 601-4
      test for establishment of CIL 604-5
      treaty rules, criteria for codification by 609-10
      whether CIL on diplomatic service of proceedings on foreign states 539, 609-11,
    conclusions—overview 538-638
    diplomatic service of process rules, generally
      Australia, in 606
      Canada, in 606-7
      ECSI 16, applicability of 608-9
      EU Service Regulation (1939/2007) 607
      Germany, in 607
      Hong Kong, in 606
      New Zealand, in 606
      Switzerland, in 607
      UNSCI, creation of CIL by 609-10
      US, in 605-6
    introduction 587-91
    issue 1—scope and effect of SIA 12(1)
      absence of specific contrary provisions, interpretation in light of 629-35
      access to justice, importance of 615
      always speaking interpretation 598-600
      CIL, whether relevant rules of 615
      conclusions 635
      considerations 588-9
      enforcement of awards under AA 1950, 26 614-15
      ex parte registration of foreign judgments under RSC 71.2(1) and 73.8 (1965) 612-
      exceptions in arbitration proceedings under AA 1996 101 616, 623-4
      exceptions to state immunity, generally 615-16
      executive control and diplomatic balance, importance of 625-8
      facilitative nature of 620
      historical background to domestic procedural provisions 611-15
      international comity requirements, general compatibility with 538-9, 598
      interpretation in absence of specific contrary provision 595
      interpretation in light of ECSI 16 595, 616-18, 628-9
      judgments in default of appearance 617, 619-20, 623-5
      legislative background 611-13
      non-compliance, consequences of 620-2
      overseas territories, applicability to 618-20
      overview 594-5
      procedural provisions in Northern Ireland 611-12, 618
      procedural provisions in Scotland 612, 618
      purposive construction of an enactment 597-8
      review of Court of Appeal ruling 596-7
      review of first instance ruling 595-6
      scope of law preceding SIA and legislative intention 597-600, 611-15
```



INDEX 653

service requirements for enforcement orders under CPR 6.28 592-3, 614 territorial applicability 618-20 time for entering an appearance under SIA 12(2), and 624 whether document served was suitable for purposes of instituting proceedings 630-1 whether interpretation of SIA 12(1) incorporating developments in procedural law 539, 611-15, 619-20 whether proceedings have been instituted under domestic procedural rules, parliamentary intention 539, 622-3 whether subversion of purpose of SIA 12(1) leads to creation of de facto immunity 538, 589-90, 634 without notice applications 612 writs of control, validity of 590-1 issue 2—whether Court has discretion to dispense with service pursuant to CPR 6.28 and/or 6.16 in exceptional circumstances considerations 596, 635-6 overview 589, 597 issue 3—whether service requirements under SIA 12(1) in violation of ECHR 6 common law principle of access to justice, exceptions to 637 conclusions 636-8 considerations 539-638 incorporation of domestic procedural law 635-6 jurisprudence Adams v. Adams (Attorney General intervening) 627 AIC Ltd v. Federal Government of Nigeria 623 Al-Adsani v. UK 638 Ashingdane v. UK 638 Banque Commerciale Arabe SA v. Popular Democratic Republic of Algeria 607 Barker v. Wilson 600 Belfast City Council v. Miss Behavin' Ltd 621 Belhaj v. Straw 609, 626-7 Benkharbouche v. Embassy of the Republic of Sudan 601, 604-5, 609, 616, 638 Chapman v. Kirke 600 Democratic Republic of the Congo v. FG Hemisphere Associates LLC 606 Federal Comr of Taxation v. ICI Australia Ltd 600 FG Hemisphere Associates LLC v. Democratic Republic of the Congo 606 Firebird Global Master Fund II Ltd v. Republic of Nauru 623, 631-4 Fisheries case (UK v. Norway) 605 Garden Contamination Case (No 1) 607 Gold Reserve Inc v. Bolivarian Republic of Venezuela 631 Golder v. UK 637 I Congreso del Partido 598, 601, 603-4, 627 International Schools Service v. Government of Iran 606 Jones v. Ministry of the Interior of the Kingdom of Saudi Arabia 610 Kuwait Airways Corpn v. Iraqi Airways Co 617 L v. Y Regional Government of X 630-1 La Générale des Carrières et des Mines v. F G Hemisphere Associates 617 Lake Macquarie Shire Council v. Aberdare County Ĉouncil 600 London Steam-Ship Owners' Mutual Insurance Association Ltd v. Kingdom of Spain (No 4) (The Prestige) 607 Nationwide Access Ltd v. Customs and Excise Comrs 600 New England Merchants National Bank v. Iran Power Generation and Transmission 606 Norsk Hydro ASA v. State Property Fund of Ukraine (Note) 629-30



654 INDEX

General Dynamics UK Ltd v. Libya (cont.)

North Somerset District Council v. Honda Motor Europe Ltd 621 Parkyns v. Preist 600 Philippine Admiral (Owners) v. Wallem Shipping (Hong Kong) Ltd 602, 604 R (N) v. Walsall Metropolitan Borough Council 599 R (Quintavalle) v. Secretary of State for Health 597, 599-600 R v. Secretary of State for the Home Department, Ex p Jeyeanthan 620 R v. Soneji 621 Ritter v. Donell 607 Shahid v. Scottish Ministers 621 SM (Rwanda) v. Secretary of State for the Home Department 621 Svenska Petroleum Exploration AB v. Government of the Republic of Lithuania (No 2) 616, 638 Thai-Europe Tapioca Service Ltd v. Government of Pakistan, Directorate of Agricultural Supplies 601-3 Trendtex Trading Corpn v. Central Bank of Nigeria 598, 601-4 Unión Fenosa Gas SA v. Egypt 612 United Arab Republic v. X 607 USA v. Friedland 607 Van Zyl v. Kingdom of Lesotho 634 Victory Transport Inc. v. Comisaria General 605 Westinghouse Electric Corpn Uranium Contract Litigation MDL Docket No 235 (Nos 1 and 2), In re 627 Yukos Capital SARL v. OJSC Rosneft Oil Co (No 2) 626-7 Germany state immunity diplomatic service of process 607 Hong Kong state immunity absolute doctrine of state immunity 606 Houghton v. USA background and overview Court conclusions 526 facts 525-6 Court judgment arguments of the parties claimant's contentions 531-2 respondent's contentions 528-31 basis of claim 527-8 discussion and decision consequences of lack of time extension 534

relevance of subject matter of proceedings involving armed forces 534

subject matter of proceedings did not derogate from need for time for proceedings

whether SIA 12(1) can be disapplied before institution of proceedings 533-4

SIA 12(1), procedure for service via diplomatic channels applicability to armed forces proceedings 529-31

interests of justice requirement 532-4 proceedings, interpretation of 526, 533

unfairness, avoidance of 534



```
CIL applicability to 529, 531
       CPR 6.44, and 530-1
       ET Rules of Procedure 91, applicability of 531
       general applicability 528-9
    SIA 12(1), procedure for service via diplomatic channels—jurisprudence
       Estate of Michael Heiser & 121 Others v. Iran 529
       Kuwait Airways Corporation v. Iraqi Airways 528
       Kwik Save Stores Ltd v. Swain 534
       L and others v. Y Regional Government of X 530, 533
       Pendragon plc (t/a ČD Bramall Bradforď) v. Copus 534
       Wright v. USA and Webster v. USA 529
    SIA 16(2), exclusion of armed forces proceedings 529-32
Hossou and Adelakoun v. Benin 89
  background and facts
    applicant's claims 90
    jurisdiction
      ACHPR 3(1) 91-2
       State acceptance, optional nature of 92
    overview 90
    respondent's claims 90
  Court judgment
    ruling on costs 105
    ruling on jurisdiction
       access to justice, restrictions on 101
       assessment of jurisdiction, court powers 103
       Court conclusions 105-6
       declaration as unilateral act 104-5
       human rights violations 101
      overview 91-2
       parties 100
       procedure before court, summary of 101
       requests of the parties 101-2
       scope of material jurisdiction 104
       State acceptance, optional nature of 103
       subject of application 100-1
       VCLT, applicability of 104
       withdrawal of declaration, validity of 104
    ruling on provisional measures
       access to justice, restrictions on 94
       admissibility for request for provisional measures 96-7
       Court conclusions 99
       Court powers 98
       Houngue Eric Noudehouenou v. Republic of Benin 96-7
       Ingabire Victoire Umuhoza v. Rwanda 97
      lack of signature, relevance of 94
       measures requested 97-9
      overview 91
      parties 93-4
      prima facie jurisdiction 95-6
      procedure before court, summary of 95
       regression of rights 94
      subject of application 94
```



656 INDEX

Hossou and Adelakoun v. Benin (cont.) Bensaoula J (dissenting opinion) 106-17 Ajavon v. Benin 93 Court's decision contradicts previous jurisprudence 107-9 Court's failure to address all requests 117 declaration, optional nature of 112, 117 Houngue Eric Noudehouenou v. Republic of Benin 109 human rights in African context, ruling's exclusion of 110-13 human rights, justiciability of 113-17 human rights, withdrawal as violation of 92-3, 109-17 Ingabire Victoire Umuhoza v. Republic of Rwanda 107-9 jurisdiction, lack of 106-9 non-regressive measures, principle of 92-3, 116 overview 92-3 rights of individuals and NGOs to judicial remedy 111 Sébastien Germain Marie Aikoué Ajavon v. Benin 111, 116 Umuhoza v. Rwanda 92 human rights evolutive interpretation 312

evolutive interpretation 312
justiciability of, basis for
 conferring subjective rights on individuals and NGOs 109-11, 114-17
 humans as subjects of international law 113
 principle of reciprocity 113
 state obligations 113-14
 state sovereignty, implications for 113
 progressive realization, principle of 111, 116
 state immunity rules in breach of: see General Dynamics UK Ltd v. Libya
 State withdrawal from treaty, whether regression of rights: see Hossou and Adelakoun
 v. Benin

## IBRD Court Fees Case

background—facts applicable dispute settlement provisions 403 claim of exemption from court fees 403 Establishment Agreement 10(3), whether transactions within scope of 403 IBRD AoA VII(9)(a), whether court fees included in exemption 404 immunity from taxation and customs duties 404 separation from immunity from jurisdiction 404 transactions and documents 404 summary 402-3 Court conclusions overview 404 Court judgment Austrian law CCP 84, security for legal costs 418 CCP 408, subjection to judicial assertion of claims resulting from proceedings 418 court fees, applicable law 405-6 dispute settlement provisions 418 Enterprise Liquidity Support Act, 8, exemption of liability agreements from fees 419-20 impermissibility of prescribing fees as lack of jurisdiction 409 judicial duty to decide 408-10



```
jurisdiction of Austrian authorities 406-10, 416-19
      property, definition 416
      waiver of immunity of international organizations 418-19
    exemption from jurisdiction
      exemption from court fees separated from 419-22
      limitations on 409
      scope of immunity 415
      waiver of immunity from 418
    IBRD AoA VII(3), position of IBRD with regard to judicial process 413, 418
    IBRD AoA VII(9), immunity from taxation
      court fees, whether included in exemption 405, 407-8, 421-2
      scope of provisions 413-14
    IBRD AoA IX, dispute settlement provisions 418
    IBRD Establishment Agreement by article
      5, immunity from jurisdiction 414, 417-18
      10(1), immunity from taxation 409-16, 420
      10(3), immunity from court fees 405-6, 419-21
      20(1), dispute settlement provisions 408-15, 418
    immunity of international organizations in civil proceedings 415
      dispute settlement provisions 417
      reasons for 417
      Waite and Kennedy 417
      waiver of immunity from jurisdiction, distinction from enforcement against assets
      waiver of, generally 418-19
    jurisdiction of Austrian authorities 406-7, 416-19
      admissibility of appeal 412, 416
      contested decision, legal status of 409-11
      decision not to hold oral hearings 411-12
      immunities, interpretation 417
    material exemption from court fees 419-22
      contested decision, legal status of 409-11
      good faith interpretation 419
      immunity from taxation, interpretation 420
      obligation to pay fees, impacts of arbitral awards on 409-10
      personal exemption from fees, restrictions on 412-13
      separation from immunity of jurisdiction 404
      taxation, interpretation 420
      transactions and documents 406-7, 416, 420-1
      whether lex specialis 408
    overview 405
    waiver of immunity from jurisdiction 404
indigenous peoples
  fission-fusion 165-6
  indigenous communities, definition 165-6
  right to cultural identity: see Lhaka Honhat Case
  right to food and water: see Lhaka Honhat Case
  right to indigenous communal property: see Lhaka Honhat Case
  right to a healthy environment: see Lhaka Honhat Case
Inter-American Convention on Human Rights (1969) by article
  1, State obligation to respect rights 322
  2, State obligation to adopt domestic legal provision 191-6, 203-4
```



**More Information** 

658 INDEX

#### Inter-American Convention on Human Rights (1969) by article (cont.)

21, effective title for indigenous communities 191-6, 223

22, freedom of movement 231-2, 322

25, judicial protection 322

26, progressive development 232-3, 309-10 treaty interpretation 318, 321-37

29, restrictions regarding interpretation 232-3, 310-11, 313-14, 322

30, scope of restrictions 322

31, recognition of other rights 322

45, competence to examine violations of human rights 322

48(1)(f), allegations of violation of rights, procedures regarding 322

63(1), right to compensation for violation of human rights 322

## Inter-American Convention on the Protection of the Human Rights of Older Persons (2015), Article 12, rights of older persons in long-term care 245

Inter-American Court of Human Rights, Rules of Procedure, Rule 35(2), identification of presumed victims 165

#### International Bank for Reconstruction and Development

Articles of Agreement, by article

VII, status, immunities and privileges 413

VII(3), position with regard to judicial process 413, 418

IX, immunities from taxation 413-14, 418

immunity from court fees: see IBRD Court Fees Case

immunity from judicial process 413, 418

## International Court of Justice, Rules of Court (1964), Rule 62(5), preliminary objections 8, 47-8

## International Court of Justice, Rules of Court (1978), Rule 79(9), preliminary objections 8, 47-52

### International Covenant on Civil and Political Rights (1966), by article

24, rights of the child 502

27, equality before the law

indigenous peoples 250

## International Covenant on Economic, Social and Cultural Rights (1966) by article

11(1), right to adequate standard of living 239-40

15(1), right to take part in cultural life 250

#### International Law Commission, Draft Conclusions on Identification of Customary International Law (2016), treaty rules, criteria for codification by 609-10

international organizations, immunity from court fees: see IBRD Court Fees Case

Iran-US Treaty of Amity, Economic Relations and Consular Rights (1995), state immunity, allegations of violation: see Certain Iranian Assets (Islamic Republic of Iran v. United States of America)

## Lhaka Honhat Case (Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina) (Merits, Reparations and Costs), judgment

background—evidence

admissibility of documentary evidence 167-70

admissibility of testimonial and expert evidence 170

background—facts

administrative and judicial actions filed 189

construction work, activities and projects on territory claimed 189

indigenous and criollo population on Lots 14 and 55

historical nomadic background 174



INDEX 659

non-indigenous (criollo) settlement patterns 174-5 overview 171-5 variability of population and nomadic practices 174 indigenous territorial claims—first stage (pre-1999) claims and commitments to grant land titles 179-80 Decree 2609/91 179 Decree 3097/95 180 indigenous territorial claims—second stage (1999-2004) claims and commitments to grant land titles 181-2 Decree 339/01 181 division of land proposals 181-2 indigenous territorial claims—third stage (2005-2006) creation of Provincial Executing Unity (EUP) 182 Decree 939/05 182 Law 7,352 of 2005 183 referendum 183 indigenous territorial claims—fourth stage (2007-) Decree 4705/08 (Salta province) 184 Decree 2398/12 185 Decree 2001/13 185 Decree 1498/14 186-8 Memorandum of Understanding (October 1, 2007) 184 National Institute for Indigenous Affairs, creation of (INAI) 175-6 National Registry of Organizations of Indigenous Peoples, creation of 177 overview 142-4, 170-1 relevant legislation on indigenous lands Constitutional Amendment 1994, 176 Decree 155/1989 175-6 Decree 339/01 (Salta province) 181 Decree 700/2010 177 Decree 939/05 (Salta province) 182 Decree 1498/14 186-8 Decree 2398/12 185 Decree 2609/91 (Salta province) 179 Decree 2786/07 (Salta province) 184 Decree 3097/95 (Salta province) 180 Decree 3459/11 (Salta province) 210 Decree 3505/14 (Salta province) 178 Decree 4705/08 (Salta province) 185 INAI Resolution 328/2010 175-7 Law 23,302 of 1985 178 Law 6,373 of 1986 (Salta province) 178 Law 24/071 of 1992 176 Law 7,121 of 2000 (Salta province) 178 Law 7,352 of 2005 (Salta province) 183 Law 26,160 of 2006 176-7 Law 26,994 of 2016 177 National Civil and Commercial Code 9 177 background—jurisdiction 160 background—preliminary considerations determination of presumed victims

arguments of parties and Commission 163-4



660 INDEX

```
Lhaka Honhat Case (Indigenous Communities of the Lhaka Honhat (Our Land)
Association v. Argentina) (Merits, Reparations and Costs), judgment (cont.)
      Court considerations 164-7
      exception applying when not possible to identify alleged victims in cases of human
           rights violations 165
      identification difficulties, cultural reasons for 165-6
      indigenous communities, definition 165-6
      non-indigenous settlers (criollos), differentiation from indigenous peoples 166-7
    facts subsequent to January 26 2012
      arguments of parties and Commission 160-1
      Court considerations 161-3
      preliminary objection, validity of 160-3
  background—proceedings before Court
    amicus curiae briefs 157-9
    answering brief 157
    brief with pleadings, motions and evidence 156
    case deliberations 160
    final written arguments and observations 160
    notification of State and representative 156
    on site procedures 159
    preliminary objections 157
    public hearing 157
  background—purpose of dispute
    Admissibility Report 78/06 154
    case overview 153-4
    Commission's requests 156
    Merits Report 2/12 154
    notification to the State 155
    petition 154
    procedure before the Commission 154-6
    Reports on the Commission's recommendation 155-6
    submission to the Court 156
  Court conclusions 144-6, 227, 297-300
  merits—overview 189-91
  merits-right to indigenous communal property
    general considerations on communal property
      Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano
           and their members v. Panama 195
      Mayagna (Sumo) Awas Tingni Community v. Nicaragua 191-6
      overview 191-6
      Saramaka People v. Suriname 193
      Sawhoyamaxa Indigenous Community v. Paraguay 194
      Xucuru Indigenous People and its members v. Brazil 196
      Yakye Axa Indigenous Community v. Paraguay 192-4
    recognition and determinations on communal property 196-378
```

arguments of the Commission 197-8 arguments of the representatives 198-200 arguments of the State 200-378 Court conclusions 221

failure to provide clear title 197-8, 204-5

failure to enable effective enjoyment of rights 198-200

harmonization of rights in the interests of society 201-378



INDEX 661

State actions taken regarding alleged violation of juridical personality 199-200, State actions taken towards recognition of ownership pre-1999 205-6 1999-2004 206-7 2005-2006 207 2007-207-8 descriptions 202-5 dialogue with criollo population 208-10 procedures followed 210-14 impact of domestic law 217-21 state obligations to adopt domestic legal provisions 203-5 right to participate in relation to projects or works on communal property arguments of the Commission and parties 221-2 Court conclusions 227 failure to comply with consultation obligations 222 international bridge and related civil works 226-7 Kaliña and Lokono Peoples v. Suriname 223-4 Kichwa Indigenous People of Sarayaku v. Ecuador 223-4 provincial route 54 225-6 Saramaka People v. Suriname 223-4 State obligations and guarantees 223-5 violation of rights of access to information 221 merits—rights to healthy environment, food, water and cultural identity arguments of the representatives environmental degradation of territory 229-30 fencing as illegitimate and unjustified interference 228-30 presence of *criollo* population, implications of 229-30 arguments of the State allegations of violation of right to cultural identity 231 right to food and water 230-1 right to healthy environment, disproportionate burden of 230 interdependence between rights and specificity adequacy of food, cultural dimension of 254 expression of cultural identity and traditional activities 256-8 role of indigenous peoples in environmental protection 256 special measures for safeguarding culture and environment 254-5 interpretation by referral to OAS Charter 232-3 jurisprudence Acevedo Buendía v. Peru 232 ANCEJUB-SUNAT v. Peru 232-3 Artavia Murillo et al. (In vitro fertilization) v. Costa Rica 243 Atala Riffo v. Chile 233 Chinchilla Sandoval et al. v. Guatemala 243 Cuscul Pivaral et al. v. Guatemala 232-3 Dismissed Employees of PetroPeru et al. v. Peru 232 Gelman v. Uruguay 233, 243 Hernández v. Argentina 232-4, 243 I.V. v. Bolivia 233 Kaliña and Lokono Peoples v. Suriname 243 Kichwa Indigenous People of Sarayaku v. Ecuador 248 Lagos del Campo v. Peru 232-3



662 INDEX

```
Lhaka Honhat Case (Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina) (Merits, Reparations and Costs), judgment (cont.)
```

Marangopoulos Foundation for Human Rights v. Greece 243 Massacres of El Mozote v. El Salvador 243 Muelle Flores v. Peru 232-3, 241 Omeara Carrascal et al. v. Colombia 231, 243 Pacheco Tineo family v. Bolivia 232-4 Poblete Vilches et al. v. Chile 232-3, 241-3 Ricardo Canese v. Paraguay 231 San Miguel Sosa et al. v. Venezuela. 232 Sawhoyamaxa Indigenous Community v. Paraguay 243 Trujillo Oroza v. Bolivia 243 Velásquez Rodríguez v. Honduras 234 Xákmok Kásek Indigenous Community v. Paraguay 243, 246 Yakye Axa Indigenous Community v. Paraguay 243 overview 231-4 right to adequate food adequacy of food and food security 242-3 availability and accessibility of food 241-2 Constitutional provisions 240 domestic law recognition 240-1 international obligations 239-41 right to freedom of movement and residence 231-2 right to healthy environment Advisory Opinion OC-23/17 235-9 CIL and principle of prevention of environmental harm 238 Constitutional provisions 236 cultural vulnerabilities 238-9 international obligations 236-8 right to take part in cultural life Constitutional provisions 250 culture, definition 250-1 international obligations 248-50 necessary conditions for full realization of right 252-3 prevention of interference 253 right to water Advisory Opinion OC-23/17 243, 246-7 Constitutional provisions 245 environmental hygiene, and 247 international obligations 243-8, 253 right to life, link with 245 special attention requirements regarding indigenous peoples 247-8 State acts and responsibilities analysis of 266-71 expert witness testimony on human rights impacts 267-9 fencing practices—overview of impacts 259, 262-3 fencing practices—State actions 263-4 fencing practices—whether violation of IACHR 22 231-2 illegal logging—overview of impacts 261-2 illegal logging—State actions 264-5 impacts on indigenous practices and cultural identity 267-71 interdependence of rights and cultural identity 266-7



```
livestock practices—overview of impacts 259-61
    progressive development obligations 232-3
merits-rights to judicial guarantees
  arguments of representatives 271-2
  arguments of the State 272
  circumstances of the case
    actions relating to Decree 461/99 and Resolution 423/99 275-6
    application for amparo regarding construction of international bridge 274-5
    judicial action against 2005 Referendum 276
  Court conclusions 297-300
  general considerations
    due process and effective level remedy obligations 273-4
  jurisprudence
    Amrhein et al. v. Costa Rica 276
    ANCEJUB-SUNAT v. Peru 273
    Bayarri v. Argentina 275
    Cantos v. Argentina 273
    Colindres Schonenberg v. El Salvador 275
    García Lucero et al. v. Chile 273
    Goiburú et al. v. Paraguay 273
    Gómez Virula et al. v. Guatemala 273
    Granier et al. (Radio Caracas Televisión) v. Venezuela 276
    López et al. v. Argentina 273
    Mejía Idrovo v. Ecuador 273
    Ramírez Escobar et al. v. Guatemala 275
    Velásquez Rodríguez v. Honduras 273
reparations
  applicability 277
  injured party, identification of 278
  measures for restitution—general considerations
    Commission's requirements 278
    Court's considerations 281
    representatives' requirements 278-80
    State's requirements 280-1
  measures for restitution—jurisprudence
    Cantoral Benavides v. Peru 290
    Garifuna Community of Punta Piedra v. Honduras 287
    Garrido and Baigorria v. Argentina 295
    Jenkins v. Argentina 290
    Kaliña and Ľokono Peoples v. Suriname 283, 287
    Loayza Tamayo v. Peru 292
    Mayagna (Sumo) Awas Tingni Community v. Nicaragua 283
    Moiwana Community v. Suriname 292
    Muelle Flores v. Peru 295
    Rodríguez Vera (Disappeared from the Palace of Justice) v. Colombia 291
    Sawhoyamaxa Indigenous Community v. Paraguay 292
    Yakye Axa Indigenous Community v. Paraguay 287, 291
  measures for restitution—right to healthy environment, food, water and cultural
    Community Development Fund for indigenous culture 287-8
    State actions relating to water, food and forestry resources 285-7
  measures for restitution—right to property
```



```
Lhaka Honhat Case (Indigenous Communities of the Lhaka Honhat (Our Land)
Association v. Argentina) (Merits, Reparations and Costs), judgment (cont.)
      delimitation, demarcation and titling 282-3
      prior consultation obligations 283
      relocation of criollo population 284-5
    measures for restitution—supplementary considerations
      costs and expenses 295-6
      measures of non-repetition 291-4
      measures of satisfaction 290-1
      method of compliance 296
      other measures requested 294-5
      State reports, work plans and monitoring measures 288-9
    measures for restitution—time frame for compliance 280-2
  Annex I—indigenous communities included in initial petition according to Merits
           Report 2/12 300
  Annex II—indigenous communities considered victims in Merits Report 2/12 301
  Annex III—indigenous communities included in Decree 1498/14 of Salta Province
  Annex IV—indigenous communities indicated in the brief with pleadings, motions and
          evidence 303
  Annex V—indigenous communities indicated in the representatives' final written
          arguments that are victims in the case pursuant to the judgment 306
Lhaka Honhat Case (Indigenous Communities of the Lhaka Honhat (Our Land)
           Association v. Argentina) (Merits, Reparations and Costs), opinions
  Freire J (concurring)
    Convention interpretations, restrictions on 313-14
    evolutive interpretation of human rights 312
    interdependence of rights 314-15
    international derivation of rights 309-12
    introduction 309-11
    limitations of Court judgment in expanding indigenous rights law 312-13
    State responsibility for progressive development 309-10
  Mac-Gregor Poisot J (separate opinion)
      Court Rules of Procedure regarding 387-8
      role in dialogue between civil society and IACtHR 389-92
      use of, generally 387-9
      use of, in Lhaka Honhat case 389-92
    conclusions 392-4
    indigenous communal property, land and territoriality interpretations
      African Commission on Human and Peoples' Rights (Ogiek) v. Kenya 377-80
      American Declaration XIX and XXV 370-2
      differentiated protections 366-80
      ILO Convention 169, relationship with land 369-70
      Kaliña and Lokono Peoples v. Suriname 372
      Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano
          and their members v. Panama 373
      Lagos del Campo v. Peru 374
      Mayagna (Sumo) Awas Tingni Community v. Nicaragua 368-9
      non-indigenous settlers, presence of 376
      OAS Charter 21, autonomous rights, enjoyment of 378-80
```



INDEX 665

rights to healthy environment, food and water and cultural identity, separation from 375-7 Saramaka People v. Suriname 372-3 Sawhoyamaxa Indigenous Community v. Paraguay 374 UN Declaration 25 370 Yakye Axa Indigenous Community v. Paraguay 373-4 interdependence of human rights ANCEJUB-SUNAT v. Peru 382 autonomy, relationship with 380-2 Cuscul Pivaral et al. v. Guatemala 383 Hernández v. Argentina 383 Lagos del Campo v. Peru 384 Poblete Vilches v. Chile 382 San Miguel Sosa et al. v. Venezuela 382 state obligations, interpretation of reasons for violations of 380-4 introduction 363-7 amicus curiae briefs 366-7 importance of case 364-7 Kichwa Indigenous People of Sarayaku v. Ecuador 366 Lagos del Campo v. Peru 364 Mayagna (Sumo) Awas Tingni Community v. Nicaragua 363 Suárez Peralta v. Ecuador 365 overview 148 reparations, ESCER focus of challenges of 386-7 community development fund 385-6 conclusions 387 limitations of 385 objectives, multiplicity of 386 unique nature of 384-5 Manrique J (partially dissenting) conclusions 400-1 interdependence and simultaneity of human rights ANĈEJUB-SUNAT v. Peru 396 Hernández v. Argentina 398 interpretations 396-8 Mayagna (Sumo) Awas Tingni Community v. Nicaragua 399 San Salvador Protocol, restrictions of 397-8 violations of ESCER rights in *Lhaka Honhat*, analysis of interpretation 398-400 introduction 394-5 jusiciability of ESCER competence of Court to examine autonomous violations 395-7 discussion regarding 395-6 overview 147-9 Porto J (partially dissenting) justiciability of IACHR 26 and economic, social, cultural and environmental rights compliance with reparation measures, challenges of 362-3 Court competence, limits of 352-3 general considerations 351-5 Genie Lacayo v. Nicaragua 361 Hernández v. Argentina 353 improper use of the iura novit curiae principle 353



666 INDEX

```
Lhaka Honhat Case (Indigenous Communities of the Lhaka Honhat (Our Land)
Association v. Argentina) (Merits, Reparations and Costs), opinions (cont.)
       interdependence of rights 355, 357-9
       Kaliña and Lokono Peoples v. Suriname 358
       Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano
           and their members v. Panama 358, 361
       Lagos del Campo v. Peru 352
       Mayagna (Sumo) Awas Tingni Community v. Nicaragua 357
       OAS Charter derived rights, Court interpretation of 354
       Pacheco Tineo family v. Bolivia 361
       Punta Piedra Garifuna People and its members v. Honduras 358
       right to communal property, interpretation challenges (IACHR 21) 356-60
       rights of indigenous peoples and rights of third parties, need for balance 355-6
       rights of indigenous peoples, direct legal effectiveness 360-2
      rights of indigenous peoples, progressive nature of 359-60 State obligations, direct legal effectiveness of rights 360-2
       Triunfo de la Cruz Garifuna Community and its members v. Honduras 358
      Xucuru Indigenous People and its members v. Brazil 358
       Yakye Axa Indigenous Community v. Paraguay 358
    overview 147-8
  Vio Grossi J (partially dissenting)
    conclusions 347-50
    distinction between general human rights and those justiciable before international
           jurisdiction 317, 343-5
    interpretation of IACHR 26
      Advisory Opinion OC-23/17 329-30
      American Declaration 329
       Commission and Court responsibilities 325-7
       consideration on own merits 320-1
       Conventions and OAS Charter, differing obligations under 326-33
       Cuscul Pivaral v. Guatemala 319, 334
       derived rights, references to 338-42
       draft articles, intention of 336-7
       functional or teleological method 333-6
      generally 318-34
       good faith 319-21
       intention of drafters of OAS Charter 339-40
       judicial competence, limitations on 346-7
       Lagos del Campo v. Peru 332
       OAS Charter, derived rights under 338-40
       OAS Resolutions 2349/07 and 2760/12 328
       progressive development of rights 342-3
       San Salvador Protocol, influences of 340-7
       subjective method 324-33
       supplementary means 318, 336-7
       textual or literal rule 321-4
    introduction 315-18
    overview 147-8
```

applicability of Regulation 2201/2003 to TRNC 470-1

Local Authority B v. X, V and T

Court conclusions 445-6, 472-4

background 444-5



```
habitual residence 463-5
  referral to CJEU, whether necessity for 472
Court judgment
  background facts 450-5
  care proceedings
    abuse of process challenge 453-5
    initiation of 446, 453
    whether UK has jurisdiction 446-7
  deportation
    circumstances of 451-2
    habitual residence, effects on 460-1, 463-5
    interim emergency orders 453
    whether breach of Directive 2004/38/EC 461-2
    whether breach of ECHR 8 462
  habitual residence
    applicability of Regulation 2201/2003 456-8, 465-71
    asylum seekers, of 461
    child-focused approach 458-9
    degree of integration 459-60, 463
    deportation, effects of 460-1, 463-5
    findings and conclusion 463-5
    lack of, effects of 457, 462
    legal basis for 456-61
    Lewisham London Borough Council v. D (Criteria for Territorial Jurisdiction in Public
         Law Proceedings) 456
    London Borough of Barking & Dagenham v. SS 461
    loss of 459-60
    Re B 460-1
    Re B (A child)(Custody Rights, Habitual Residence) 458
    Re J (Child Refugees) 461, 464
    Re LC (Reunite, International Child Abduction Centre Intervening) 459-60, 464
    Re R (Care Orders, Jurisdiction) 456
    residence in TRNC, whether applicable for purposes of Regulation 2201/2003 465-71
    retention of 445
    stability and permanence, relevance of 459-60
    test for 458-60
    trafficked persons 461
  introduction 446-7
  jurisdiction
    based on child's presence 445
    best interests of child 457, 473
    habitual residence, impact of deportation on 463-5
    habitual residence, retention of 445
    Leicester City Council v. Chhatbar 469
    provisions of Council Regulation 2201/2003 456-8
    proximity criterion 471, 473
    Re H (Jurisdiction) 469
    Re K and D (Wardship, Without Notice Return Order) 446, 468, 472
    transfer to a court better placed to hear case 472
    UK jurisdiction, assumption of 444-65
    urgent cases 458
    where habitual residence cannot be established 457
```



```
Local Authority B v. X, V and T (cont.)
    overview 449-50
    Protocol 10, Act of Accession to European Union (2003)
      Orams v. Apostilides (British Residents' Association Intervening) 448, 466-8, 471
      suspension of acquis communautaire under 445, 447-8, 466-8, 470
    referral to CJEU
      basis for 455-6, 471-2
      whether necessity for 472
    residence in TRNC, whether applicable for purposes of Regulation 2201/2003 465-71
    suspension of acquis communautaire 445, 447-8, 466-8, 470
    TRNC, recognition of
      international law status 447
      whether state for purposes of Council Regulation 2201/2003 465-71
  Protocol 10, Act of Accession to European Union (2003)
    suspension of acquis communautaire under 445, 447-8, 466-8, 470
  Regulation No 2201/2003 on Matrimonial and Parental Judgments
    Article 8, general jurisdiction 445-56
    Article 13, jurisdiction based on child's presence 445
    Article 15, transfer to a court better placed to hear case 472
      applicability, comparison with Brussels I Regulation 466-8
      applicability, generally 465
      habitual residence in TRNC, and 465-71
      impact of deportation on 445
      JKN v. JCN 468
      Mittal v. Mittal 468
    purpose of 445, 466
    territorial scope 466
London Borough of Barnet v. AG and Foreign Secretary of State for Foreign,
           Commonwealth and Development Affairs
  background and overview
    facts 476
    findings and conclusions 477-8
  Court conclusions
    overview 477-8
    whether declaration of incompatibility should be issued 523-4
  Court judgment
    background and facts 478-86
      emergency protection order application 480-1
      interim care order application 481-3
      local authority evidence 486-8
      local authority investigations 479-82
      police emergency powers 480, 486-7
    Children Act 1989
      compliance with ECHR 3 obligations 509-10
      consent of child to participate in enquiries 523
      diplomatic immunity, incompatibility with 478-9
      diplomatic immunity, investigative restrictions 522-3
      interim care orders, grounds for 481
      significant harm, interpretation 479
    declaration of incompatibility between ECHR/HRA and DPA/VCDR
      approach 504-5
```



INDEX 669

background to claim 478 best interest of the child, relevance 505 considerations 479 DPA restrictions 478-9 grounds for claim 498, 504-5 jurisprudence 504-13 permission for application 486 similarity of subject matter 515-16 statutory intention 517-19 diplomatic immunity degrees of immunities and privileges 488-9 Democratic Republic of the Congo v. Belgium (Arrest Warrant of 11 April 2000) 492 historical development 491-2 immunities and privileges affecting child protection proceedings 486-7, 522-3 immunities and privileges, general scope 488-90 investigative restrictions 522-3 inviolability of premises and persons 479, 489, 522-3 lack of explicit exception to immunity or inviolability for child protection 499-500 limitations of 492 purpose of 484, 492 reciprocity principle, and 484, 494-5 waiver in emergency situations, availability of 485 waiver, application for 485 whether incompatible with ECHR 6 519-22 DPA 1964 declaration of incompatibility with ECHR, grounds for 498, 504-5 incompatibility with ECHR/HRA, considerations 479 incompatibility with ECHR/HRA, jurisprudence 506-13 reciprocity provisions 488 **ECHR** declaration of incompatibility with DPA, grounds for 498, 504-5 incompatibility with DPA/VCDR, considerations 479 incompatibility with DPA/VCDR, jurisprudence 506-13 overview of provisions relevant to the case 497-8 significant harm, interpretation of 479 UNCRC, relationship between 500-4 ECHR 3, prohibition on torture and inhuman or degrading treatment or punishment operational duties 507-8, 511-13 positive obligation, as 505-13 reasonable chastisement defence 507 textual interpretation 505-6 UNCRC role in interpretation of 513-17 ECHR 3, prohibition on torture and inhuman or degrading treatment or punishment -jurisprudence 506-13 A Local Authority v. X 517 A v. United Kingdom 507 Assenov v. Bulgaria 506 Chahal v. UK 509 Dv. Commissioner of Police of the Metropolis 506, 508 Ev. Chief Constable of the RUC 511 In re Officer L 512 MAGB v. GQC 505, 513



```
London Borough of Barnet v. AG and Foreign Secretary of State for Foreign,
Commonwealth and Development Affairs (cont.)
      Osman v. United Kingdom 507
      Poplar Housing Community Association Ltd v. Donoghue 504
      Rabone v. Pennine Care NHS Trust 512
      Soering v. UK 509
      Van Colle v. Chief Constable of the Hertfordshire Police 508
    ECHR 6, right to fair trial
      Al-Adsani v. UK 520
      Ashingdane v. United Kingdom 520
      Benkharbouche v. Embassy of Sudan 519, 521
      diplomatic immunity, incompatibility with 519-22
      Estrada v. Al-Juffali 521-2
      margin of appreciation and proportionality 520-1
    UNCŘC
      applicability under UK law 500-1
      best interest of the child, interpretation of 503
      Demir v. Turkey 500-1
      ECHR, relationship between 500-4
      immunity of diplomatic children, reference to 503-4
      In re B 516
      R (C) v. Secretary of State for Work and Pensions 500
      R (DA) v. Secretary of State for Work and Pensions 503 role in interpretation of ECHR 513-17
      whether UNCRC represents customary law 500-1
    VCDR
      applicable provisions 513-16
      degrees of immunities and privileges 488-9
      exceptions, interpretation of 498-9, 502
      incorporation into domestic law 478
      interpretation leading to prevention of or impediments to local authority
           intervention 476-88
      interpretation within light of HRA, suitability of 483
      inviolability of premises and persons 479, 489, 522-3
      possible consequences of proceedings to national safety and security 476-97
      reciprocity principle, and 484, 494-5
      remedies for misconduct in receiving state 496
      UNCRC influences on 513-17
      unilateral amendments, implications of 476-97
  HRA 1998
    interpretation of compatibility with other legislative provisions 483
      Dv. Commissioner of Police of the Metropolis 524
      Ghaidan v. Godin-Mendoza 517
      Re S (Care Order Implementation of Care Plan) 483, 517
      Reyes v. Al-Malki 483, 490, 521-2
      statutory intention, relevance of 517-18
  treaty interpretation
      broad principles of general acceptation 494-5
      inviolability of premises and persons 479
      lack of explicit exception to immunity or inviolability for child protection 499-500
      lex posteriori principle 494-5, 499, 514
```



INDEX 671

principles applicable to 492-4 R v. Secretary of State for the Home Department, Ex p Adan 493 reciprocity principle, and 484, 494-5 Stag Line Ltd v. Foscolo, Mango and Co, Ltd 494 within light of HRA 483 within light of VCLT 493-4, 498-500, 514

New Zealand, state immunity, diplomatic service of process 606 non-recognized states: see Turkish Republic of Northern Cyprus

Organization of American States, Charter (1948), Article 29, interpretation 232 Organization of American States, General Assembly Resolutions

2349/07, Water, health and human rights (2007) 245, 328 2760/12, The human right to safe drinking water and sanitation (2012) 245, 328

prohibition of torture and inhuman or degrading or inhuman treatment, prison conditions in violation of: see R (Akarcay) v. Chief Constable of the West Yorkshire Police

#### R (Akarcay) v. Chief Constable of the West Yorkshire Police

background and overview Court conclusions 424-5, 443 facts 424 grounds for judicial review 424 Court judgment human rights violations, risk of Al Skeini v. UK 441 Bankovic v. Belgium 441 prison conditions 442-3 prohibition of torture, and inhuman or degrading treatment or punishment 442-3 R (Ullah) v. Special Adjudicator 442 right to fair trial 442 whether jurisdiction for purposes of ECHR 441-3 iurisdiction for cooperation with TRNC law enforcement agencies 427-8 for purposes of ECHR, whether within 441-3 for purposes of mutual legal assistance 439 Local Authority B v. X, V and T 448 non-recognition of TRNC CIL requirements for 436 general position 428 interpretation of international law in light of 432-5 JH Rayner (Mincing Lane) Ltd v. Department of Trade and Industry 435 Keyu v. Secretary of State for Foreign and Commonwealth Affairs 436 R (Kibris Turk Hava Yolari and CTA Holidays Ltd) v. Secretary of State for Transport UN Security Council Resolutions 541 and 550 432

unincorporated treaties, obligations under 435-6



672 INDEX

```
R (Akarcay) v. Chief Constable of the West Yorkshire Police (cont.)
      whether domestic duty to refrain from recognition 431-7
      whether jurisdiction for purposes of ECHR 441-3
      whether police cooperation amounted to act of recognition 426, 437
    Overseas Security and Justice Assistance Risk Assessment 429-30
    overview of facts 427-31
    police cooperation with TRNC
      lack of prohibition on mutual legal assistance 439
      lawful mechanisms for 426
      likelihood of leading to human rights violations 430
      non-availability of extradition, mechanisms to circumvent 431-5
      Operation Zygos and related operations 429-30
      public interest grounds for 438-41
      R (Al Fawwaz) v. Secretary of State for the Home Department 441
      reputational or political risk associated with 430
      statutory provisions and Home Office Guidance, whether conflicts with 437-41
      territorial authority for mutual legal assistance 439
      unofficial cooperation, status of 428
      whether breach of duty of confidence 437-40
      whether provision of material aid amounted to act of recognition of Northern
           Cyprus 426, 437
      whether violation of ECHR 3 426-7
      whether violation of ECHR 6 424-6
      Woolgar 439-40
    Treaty of Guarantee between UK, Turkey, Greece and Cyprus (1960)
      background to 432
      prohibition of acts directly or indirectly promoting recognition 431
      whether duties incorporated into domestic law 435-6
```

Refugee Convention (1951), 1F(c), non-application on grounds of acts contrary to the purposes of principles of the UN: see Commissaire Général aux Réfugiés et aux Apatrides v. Mostafa Lounani

right to fair trial, jurisdiction over individuals from non-recognized states: see

R (Akarcay) v. Chief Constable of the West Yorkshire Police

rights of EU citizens and their family members to move and reside freely within the territory, applicability to TRNC 461-2

rights of the child, diplomatic immunity and child protection proceedings: see London Borough of Barnet v. AG and Foreign Secretary

# San Salvador Protocol (1998) (ACHR Additional Protocol on Economic, Social and Cultural Rights) by article

11, right to healthy environment 236 12(1), right to adequate nutrition 239

14, right to take part in cultural life 249

18, signature, ratification or amendment 345

19, protection of rights 342-3

### state immunity

central banks or monetary authorities, of: see Certain Iranian Assets (Islamic Republic of Iran) v. United States of America

JISP 19(c), 21(c), 53 VCLT 31(1) 54-6

classification of acts as jure imperii or jure gestionis 8-9, 29-30, 54-9



INDEX 673

diplomatic service of process, legality and validity of: see General Dynamics UK Ltd v. Libya international law: see European Convention on State Immunity (1972); UN Convention on Jurisdictional Immunities of States and Their Property (2004) whether procedure for service on military base necessary through diplomatic channels: see Houghton v. USA state sovereignty human rights impacts on 113 international obligations, respect for 113-14 State withdrawal from treaty consent, role of 90, 103 human rights regression, as 94, 115 whether unilateral act 92, 104 Switzerland, state immunity, diplomatic service of process 607 terrorism and terrorist acts definitions punishable offences 126-7 recruitment for terrorism 127 structured group 126 terrorist groups 126 participation in acts contrary to the purposes and principles of the UN 132-3, 136-9 interpretation of 120-1 membership or participation in terrorist group 136-9 punishable offences 126-7 recruitment for terrorism 127 refugee status, grounds for refusal of 136-9 prevention of grant of refugee status, necessary and appropriate measures 123-4 State obligations under international law 123-4 treaty interpretation Act of Accession of Cyprus to EU, Protocol 10, effect of suspension of acquis communautaire to TRNC 466-8 amendments, status of 344-5 context and purpose of treaties, relevance of 513 declarations as unilateral acts, non-applicability to 92, 104 domestic law cannot be used to justify failure to perform treaty obligations 87 evolutive interpretation 312 functional or teleological method 333-6 good faith interpretation 54-6, 319-21, 419 relationship between unincorporated treaties and domestic law 500-1 rights of States, consent 90, 103 state immunity, classification of acts as jure imperii or jure gestionis 8-9, 29-30, 54-9 State withdrawal, whether unilateral act 92, 104 subjective method 324-33

supplementary means 318, 336-7 textual or literal rule 321-4

26, pacta sunt servanda 319-21

VCLT by article

unincorporated treaties, obligations under 435-6



**More Information** 

674 INDEX

#### treaty interpretation (cont.)

27, internal law cannot be used to justify failure to perform treaty obligations 87

30, lex posteriori principle 499, 514

31, general rules of interpretation 318, 493, 498-9

31(1), good faith interpretation 54-6, 419

31(3)(c), applicability of international law 8-9, 29-30, 54-9

32, supplementary means of interpretation 318

39, amendment of multilateral treaties 345

VCLT, good faith interpretation 493, 498-9 VCLT, *lex posteriori* principle 514

### Treaty of Guarantee between UK, Turkey, Greece and Cyprus (1960)

background 432

prohibition of acts directly or indirectly promoting recognition 431

whether duties incorporated into domestic law 435-6

#### Turkish Republic of Northern Cyprus

applicability of Act of Accession to European Union (2003) Protocol 10 445, 466-8 international status of 448

jurisdiction

habitual residence for care proceedings: see Local Authority B v. X, V and T mutual legal assistance 448-9: see also R (Akarcay) v. Chief Constable of West Yorkshire Police

non-recognition of, jurisdiction over individuals from non-recognized states in criminal investigations: see R (Akarcay) v. Chief Constable of the West Yorkshire Police

real property rights 467

recognition and enforcement of foreign judgments

Orams v. Apostilides (British Residents' Association Intervening) 466-8

rights of EU citizens and their family members to move and reside freely, applicability to TRNC 461-2

## UN Charter (1945), purposes and principles of the UN 122 UN Charter (1945), by section

1(1) 122

1(3) 122

## UN Convention on Jurisdictional Immunities of States and Their Property (2004)

whether provisions represent CIL binding on States 537, 560-5, 610

UN Convention on Jurisdictional Immunities of States and Their Property (2004), Article 22, service of process 560-1

#### UN Convention on Rights of the Child (1989)

diplomatic immunity and child protection proceedings, relevance to: see London Borough of Barnet v. AG and Foreign Secretary

relationship between international and domestic law 500-1

travaux préparatoires, diplomatic children, position of 503-4

UN Declaration on the Rights of Indigenous Peoples (2007), Article 25, rights to lands, territories, waters and coastal seas and other resources 370

UN Declaration on the Rights of the Child (1959), Principle 2, special protection and opportunities 501

#### **United Nations Security Council Resolutions**

541 (1983), Regarding non-recognition of Northern Cyprus 432

550 (1984), Regarding non-recognition of Northern Cyprus 432



INDEX 675

- 1373 (2001), Threats to international peace and security caused by terrorist acts, State obligations regarding refugees 123-32
- 1377 (2001), Threats to international peace and security caused by terrorist acts, prevention of financing of terrorist acts 123-32
- 1624 (2005), Threats to international peace and security caused by terrorist acts, State obligations regarding terrorism prevention 123-4, 132-3
- 2178 (2014), Threats to international peace and security caused by terrorist acts, State obligations regarding prevention of terrorism 124, 136

United States, diplomatic service of process rules and practices 605-6 Universal Declaration of Human Rights (1948), Article 25(1), right to food 239

#### Vienna Convention on Diplomatic Relations (1961)

declaration of incompatibility with ECHR/HRA: see London Borough of Barnet v. AG and Foreign Secretary

whether taking action to protect diplomats' children breach of: see London Borough of Barnet v. AG and Foreign Secretary

#### Vienna Convention on Diplomatic Relations (1961), by article

- 22, inviolability of mission premises 489
- 29, inviolability of diplomatic agents 489
- 30, inviolability of diplomatic residences 489
- 31, immunity from civil and criminal proceedings 489
- 32, waiver of immunity 490
- 37, immunity of family members and household staff 490
- 39, duration of entitlement 490