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VOLUME 204

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| Vol. 10 (1941-42) | | |
| Vol. 11 (1919-42) | | |
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|---|---|---|
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INTERNATIONAL LAW REPORTS

VOLUME
204

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CONTENTS

	<i>Page</i>
PREFACE	vii
EDITORIAL NOTE	ix
TABLE OF CASES (alphabetical)	xiii
TABLE OF CASES (according to courts and countries)	xv
DIGEST (main headings)	xvii
DIGEST OF CASES REPORTED IN VOLUME 204	xix
TABLE OF TREATIES	xxv
REPORTS OF CASES	1
INDEX	693

PREFACE

The present volume contains the 2021 judgment on the merits of the International Court of Justice in *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*. Devoted to international jurisprudence, this volume also contains the 2021 decision of the International Criminal Court on the request for a ruling on the Court's territorial jurisdiction in Palestine (*Situation in the State of Palestine*), the 2019 orders on provisional measures of the International Tribunal for the Law of the Sea in the *M/T "San Padre Pio" Case (Switzerland v. Nigeria)* (together with the 2021 discontinuance order) and in the *Case concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. Russian Federation)*, together with the 2022 arbitral award on the preliminary objections of the Russian Federation in respect of a *Dispute concerning the Detention of Ukrainian Naval Vessels and Servicemen*.

The Editors wish to thank the many people whose work has made this volume possible. Dr Massimo Lando undertook the major task of preparing the summaries of the cases from the International Court of Justice and the International Tribunal for the Law of the Sea and Dr Stella Margariti wrote the summary of the decision of the International Criminal Court. Ms Karen Lee saw the volume through the press. Ms Nahide Basri, the ILR Editorial Assistant, prepared the Tables of Cases and Digest. Mrs Rowena Gavars compiled the Table of Treaties and Index. Mrs Alison Tickner checked the copy and Mr Jack Webb read the proofs.

The Editors are very grateful to the International Court of Justice, the International Criminal Court (which owns the copyright in its material ©ICC-CPI) and the Permanent Court of Arbitration for kindly permitting these Reports to use the electronic files of the relevant texts posted on their official websites. Thanks are also due to the International Tribunal for the Law of the Sea and to Brill publishers for their kind permission to publish the text of the orders from the *ITLOS Reports* posted on the ITLOS website.

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

C. J. GREENWOOD

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May 2023

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 Justice of the European Union). In these instances, those decisions are selected which appear to have the greatest long-term value.

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

international lawyers such as the relationship of international law and national law, the extent of the right of derogation or the principles of the interpretation of treaties.

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

DECISIONS OF NATIONAL TRIBUNALS

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

EDITORIAL TREATMENT OF MATERIALS

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

PRESENTATION OF MATERIALS

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

NOTES

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

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

DIGEST OF CASES

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

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and a Consolidated Tables of Cases and Treaties for volumes 1-80 were published in two volumes in 1990 and 1991. A further volume containing the Consolidated Index and Consolidated Tables of Cases and Treaties for volumes 81-100 was published in 1996. A Consolidated Index, a Consolidated Tables of Cases and a Consolidated Table of Treaties for volumes 1-125 were published in 2004. A Consolidated Index and a Consolidated Table of Treaties for volumes 1-160 were published in 2017. Volume 200 contains Consolidated Tables of Cases for volumes 126-200.

TABLE OF CASES REPORTED

ALPHABETICAL

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

Case Concerning the Detention of Three Ukrainian Naval Vessels (<i>Ukraine v. Russian Federation</i>) (Order on Provisional Measures) 528	The <i>M/T “San Padre Pio”</i> Case (<i>Switzerland v. Nigeria</i>) (Order on Provisional Measures) (Order on Removal of Case from List) 413, 525
Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (<i>Ukraine v. Russian Federation</i>) (Award on the Preliminary Objections of Russian Federation) 599	Situation in the State of Palestine (Decision on the “Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine”) 165
Maritime Delimitation in the Indian Ocean (<i>Somalia v. Kenya</i>) (Merits) 1	

TABLE OF CASES REPORTED

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

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

I. DECISIONS OF INTERNATIONAL TRIBUNALS

<p style="text-align: center;"><i>Arbitration Tribunal</i></p> <p style="text-align: center;">2022</p> <p>Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine <i>v.</i> Russian Federation) (Award on the Preliminary Objections of Russian Federation) 599</p> <p style="text-align: center;"><i>International Court of Justice</i></p> <p style="text-align: center;">2021</p> <p>Maritime Delimitation in the Indian Ocean (Somalia <i>v.</i> Kenya) (Merits) 1</p> <p style="text-align: center;"><i>International Criminal Court</i></p> <p style="text-align: center;">2021</p> <p>Situation in the State of Palestine (Decision on the “Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine”) 165</p>	<p style="text-align: center;"><i>International Tribunal for the Law of the Sea</i></p> <p style="text-align: center;">2019</p> <p>Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine <i>v.</i> Russian Federation) (Order on Provisional Measures) 528</p> <p>The <i>M/T “San Padre Pio”</i> Case (Switzerland <i>v.</i> Nigeria) (Order on Provisional Measures) 413</p> <p style="text-align: center;">2021</p> <p>The <i>M/T “San Padre Pio”</i> Case (Switzerland <i>v.</i> Nigeria) (Order on Removal of Case from List) 525</p>
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DIGEST OF CASES

List of Main Headings

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

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

DIGEST OF CASES REPORTED IN VOLUME 204

Page

Arbitration

Jurisdiction — United Nations Convention on the Law of the Sea, 1982, Annex VII — Constitution of Annex VII tribunal — Conditions for jurisdiction of tribunal — Exception for disputes concerning military activities — Confrontation between warships — Subsequent arrest and detention of warships and crews — Whether military activities or law enforcement — Point at which military activity becoming law enforcement — Provisional measures order by International Tribunal for the Law of the Sea — Whether Annex VII tribunal possessing jurisdiction over claim that respondent did not comply with provisional measures — Whether tribunal possessing jurisdiction over claim for non-aggravation of dispute — Requirement of exchange of views prior to initiation of arbitration proceedings — Arbitration Tribunal

Detention of Ukrainian Naval Vessels (Ukraine v. Russian Federation) (Award on Preliminary Objections by Russian Federation)

599

International Court of Justice

Delimitation of maritime boundary between Kenya and Somalia — United Nations Convention on the Law of the Sea, 1982 — Commission on the Limits of the Continental Shelf — Territorial sea — Exclusive economic zone — Continental shelf — Relationship between delimitation of maritime boundaries and delineation of outer limits of continental shelf beyond 200 nautical miles — International Court of Justice

Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) (Merits)

1

International Criminal Law

International Criminal Court — Article 19(3) of Rome Statute of International Criminal Court, 1998 — States Parties — Scope of application — Palestine — Occupied Palestinian Territory — Scope of Court's jurisdiction extending to Occupied Palestinian

International Criminal Law (*cont.*)

Territory for purposes of Rome Statute — International Criminal Court, Pre-Trial Chamber I

Situation in the State of Palestine (Decision on the “Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine”)

165

International Tribunals

Provisional measures — International Tribunal for the Law of the Sea — Arbitral tribunal constituted under Annex VII of United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”) — Provisional measures requested pending constitution of Annex VII tribunal — Article 290(5) of UNCLOS — *Prima facie* jurisdiction — Admission that Annex VII tribunal had *prima facie* jurisdiction over some of Switzerland’s claims — Plausibility of applicant’s rights — Rights and duties under International Covenant on Civil and Political Rights, 1966 and the Maritime Labour Convention, 2006 — Article 56(2) of UNCLOS — Irreparable prejudice — Urgency — Whether prejudice to applicant’s rights could be repaired by compensation — Evidence filed by Parties — Humanitarian considerations — Bond — Similarity with prompt release — Report on compliance — Removal of case from List — International Tribunal for the Law of the Sea

The M/T “San Padre Pio” Case (Switzerland v. Nigeria) (Order on Provisional Measures)

413

Provisional measures — Jurisdiction — United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”) — International Tribunal for the Law of the Sea (“ITLOS”) — Arbitral tribunal constituted under Annex VII of UNCLOS (“Annex VII tribunal”) — Provisional measures requested pending constitution of Annex VII tribunal — Article 290(5) of UNCLOS — *Prima facie* jurisdiction — Whether dispute concerning interpretation or application of UNCLOS — Immunity of warships and auxiliary vessels — Immunity of crewmembers — Military activities exception — Article 298(1)(b) of UNCLOS — Whether incident of 25 November 2018 involving military activities excluded from jurisdiction of Annex VII tribunal — Distinction between military and law-enforcement activities — Whether Parties using force in the context of incident of 25 November 2018 — Plausibility of rights invoked by Ukraine — Real and

imminent risk of irreparable prejudice — Urgency — ITLOS having power to prescribe provisional measures different, in whole or in part, from those requested — Provisional measures for non-aggravation and non-extension of dispute — Binding character of provisional measures — Report on compliance with provisional measures prescribed — International Tribunal for the Law of the Sea

Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. Russian Federation) (Order on Provisional Measures)

528

Provisional measures — Jurisdiction of International Tribunal for the Law of the Sea to order provisional measures in dispute submitted to arbitration — Whether dependent on existence of jurisdiction over dispute — Non-aggravation order — Arbitration Tribunal

Detention of Ukrainian Naval Vessels (Ukraine v. Russian Federation) (Award on Preliminary Objections by Russian Federation)

599

Sea

Exclusive economic zone — Rights of coastal State — Rights of flag State — Articles 58 and 92 of United Nations Convention on the Law of the Sea, 1982 — International Tribunal for the Law of the Sea

The M/T “San Padre Pio” Case (Switzerland v. Nigeria) (Order on Provisional Measures)

413

Existence of tacitly agreed maritime boundary along parallel of latitude — Acquiescence — Whether Somalia had not protested Kenya’s actions when protests were called for — Evidence of naval patrols, fishing conduct and oil concessions — Delimitation of territorial sea — Identification of base points — Construction of median line — Delimitation of exclusive economic zone — Methodology — Three-stage approach — Establishment of provisional equidistance line — Relevant circumstances — Cut-off effect — Whether Kenya’s coastal projections inequitably cut off by equidistance line — Consideration of concavity in broader geographical context — Position of third States — Relevance of agreed maritime boundary between Kenya and Tanzania to existence of cut-off effect — Disproportionality test — Delimitation of continental shelf beyond 200 nautical miles — Methodology — Whether Court could delimit continental shelf

Sea (cont.)

beyond 200 nautical miles — Proof of continental shelf entitlement beyond 200 nautical miles — Use of directional arrow — International Court of Justice

Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) (Merits)

1

Straits — Kerch Strait — Passage through Kerch Strait obstructed — Confrontation between warships of Ukraine and Russian Federation — International Tribunal for the Law of the Sea

Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. Russian Federation) (Order on Provisional Measures)

528

United Nations Convention on the Law of the Sea, 1982 — Interpretation and application — Warships — Whether Convention incorporating customary international law on immunity of warships — Arrest of warships of one State for entering waters claimed as territorial sea of another State — Whether arrest occurring in the territorial sea — Settlement of disputes — Annex VII tribunal — Straits — Kerch Strait — Passage through Strait obstructed — Arbitration Tribunal

Detention of Ukrainian Naval Vessels (Ukraine v. Russian Federation) (Award on Preliminary Objections by Russian Federation)

599

State Immunity

Warships — Immunity of warships from arrest — United Nations Convention on the Law of the Sea, 1982 — Customary international law — Arbitration Tribunal

Detention of Ukrainian Naval Vessels (Ukraine v. Russian Federation) (Award on Preliminary Objections by Russian Federation)

599

State Responsibility

Obligations of States in undelimited maritime areas — Whether Kenya's conduct breached Somalia's sovereign rights and jurisdiction in disputed maritime area — Whether Kenya breached its obligation not to jeopardize or hamper reaching of agreement on maritime delimitation — Articles 74(3) and 83(3)

of United Nations Convention on the Law of the Sea, 1982 —
 Reparation — International Court of Justice

Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)
(Merits) 1

States

Palestine — Whether a State — Whether a State Party to the
 Statute of the International Criminal Court — Jurisdiction of the
 International Criminal Court — International Criminal Court,
 Pre-Trial Chamber I

*Situation in the State of Palestine (Decision on the “Prosecution
 Request Pursuant to Article 19(3) for a Ruling on the Court’s
 Territorial Jurisdiction in Palestine”)* 165

Territory

International Criminal Court — Article 12(2)(a) of Rome Statute
 of International Criminal Court, 1998 — Whether Palestine
 qualifying as State Party to Rome Statute — Whether Occupied
 Palestinian Territory qualifying as territory of State Party to Rome
 Statute — International Criminal Court, Pre-Trial Chamber I

*Situation in the State of Palestine (Decision on the “Prosecution
 Request Pursuant to Article 19(3) for a Ruling on the Court’s
 Territorial Jurisdiction in Palestine”)* 165

War and Armed Conflict

Naval confrontation between warships of two States — Arrest of
 warships and crews — Whether military activity or law
 enforcement — Prisoners of war — Whether arrested crews
 prisoners of war — Arbitration Tribunal

*Detention of Ukrainian Naval Vessels (Ukraine v. Russian
 Federation) (Award on Preliminary Objections by Russian
 Federation)* 599

Occupied territory — West Bank, East Jerusalem and Gaza —
 Status of territory since 1967 — Oslo Accords — Jurisdiction of
 the International Criminal Court — International Criminal
 Court, Pre-Trial Chamber I

*Situation in the State of Palestine (Decision on the “Prosecution
 Request Pursuant to Article 19(3) for a Ruling on the Court’s
 Territorial Jurisdiction in Palestine”)* 165

TABLE OF TREATIES

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

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

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

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

For abbreviations used in the Table of Treaties reference should be made to the list of abbreviations attached to the index in individual volumes.

1913

June 17-30	Treaty of London (Peace Treaty between Greece, Bulgaria, Serbia, Montenegro and the Ottoman Empire) (218 CTS 159)	
	Art. 2	339
	Art. 3	339
	Art. 5	339

1919

- June 28 Constitution of the International Labour Organization (Part XIII of the Treaty of Versailles) (225 CTS 188)
- | | |
|--------------|-----|
| Art. 2 | 301 |
| Art. 4 | 301 |
| Art. 6 | 301 |
- June 28 Treaty of Versailles (Treaty of Peace between the Allied and Associated Powers and Germany) (225 CTS 188)
- | | |
|---------------|-----|
| Part III | |
| Art. 81 | 287 |
| Art. 87 | 287 |
- Sept. 10 Treaty of St Germain (Treaty of Peace between the Allied and Associated Powers and Austria) (226 CTS 8)
- | | |
|---------------|-----|
| Art. 91 | 287 |
|---------------|-----|

1920

- June 4 Treaty of Trianon (Treaty of Peace between the Allied and Associated Powers and Hungary) (6 LNTS 188 [LNTS 152])
- | | |
|---------------|-----|
| Art. 75 | 287 |
|---------------|-----|

1921

- Nov. 12 Workmen's Compensation in Agriculture (ILO Convention No 12) (38 LNTS 165 [LNTS 595]) 301
- Dec. 6 Anglo-Irish Treaty (Articles of Agreement concerning Irish Free State Treaty) (26 LNTS 10 [LNTS 636])
- | | |
|---------------|-----|
| Art. 12 | 274 |
|---------------|-----|

1924

- May 15 Treaty between United Kingdom and Italy regulating certain questions regarding boundaries of their respective territories in East Africa (Jubaland 1927/1933 Agreement) 2-3, 18-19, 40, 44-5, 102-3, 149-53, 161-4

1933

- Dec. 26 Montevideo Convention on the Rights and Duties of States (165 LNTS 19 [LNTS 3802]) 172, 269-70
- | | |
|-----------------|-----|
| Art. 1 | 270 |
| Art. 2 | 276 |
| Art. 3(1) | 270 |
| Art. 3(2) | 270 |
| Art. 4 | 270 |
| Art. 4(1) | 295 |

TABLE OF TREATIES

xxvii

	Art. 5	270, 271
	Art. 6	270-1
	Art. 8	270
	Art. 9	271
	Art. 10	270, 271
	Art. 11	271
	Art. 11(2)	270
	Art. 12	271
1941		
Apr. 13	Soviet-Japanese Neutrality Pact	271
1944		
Sept. 12	Agreement Between the Governments of the United States of America, the United Kingdom, and the Union of Soviet Socialist Republics, on the One Hand, and the Government of Rumania, on the Other Hand, Concerning an Armistice	
	Art. 4	290
	Art. 19	290
Dec. 7	Chicago Convention on International Civil Aviation (15 UNTS 295 [UNTS 102])	243
1945		
June 26	Charter of the United Nations (1 UNTS XVI)	533
	Art. 1(2)	220
	Art. 2(3)	675
	Art. 2(4)	588
	Art. 25	232
	Art. 33	573
	Art. 33(1)	675
	Art. 103	377
June 26	Statute of the International Court of Justice (33 UNTS 933)	
	Art. 31(2)	9
	Art. 36(2)	9
	Art. 40(2)	9
	Art. 40(3)	9
	Art. 41	675-6
	Art. 63(1)	10
1946		
Oct. 9	Convention on Final Articles Revision (ILO Convention No 80) (38 UNTS 3 [UNTS 583])	301

1947		
July 11	Labour Inspection Convention (ILO Convention No 81) (54 UNTS 3 [UNTS 792])	301
1948		
July 9	Convention concerning Freedom of Association and Protection of the Right to Organize (ILO Convention No 87) (68 UNTS 17 [UNTS 898])	301
1949		
June 29	Convention concerning Labour Clauses in Public Contracts (ILO Convention No 94) (138 UNTS 207 [UNTS 1870])	301
July 1	Convention concerning the Right to Organize and Collective Bargaining (ILO Convention No 98) (96 UNTS 257 [UNTS 1341])	301
July 1	Convention on Protection of Wages (ILO Convention No 95) (138 UNTS 225 [UNTS 1872])	301
Aug. 12	Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV) (75 UNTS 287 [UNTS 973])	167, 185, 312, 365, 368
	Art. 7	370-2
	Art. 11(1)	371
	Art. 14	371
	Art. 15	371
	Art. 17	371
	Art. 22	371
	Art. 23	371
	Art. 27	374
	Art. 36	371
	Art. 83	371
	Art. 108	371
	Art. 132	371
	Art. 133	371
	Art. 135	371
	Art. 143	371
	Art. 146	373, 375-6
	Art. 146(2)	372
	Art. 147	373
	Art. 148	373
	Art. 149	371

TABLE OF TREATIES

xxix

Aug. 12	Geneva Convention Relative to the Treatment of Prisoners of War (GC III) (75 UNTS 135 [UNTS 972]) 533, 589 Art. 51 573
1951	
June 19	Agreement regarding the Status of the Forces of Parties to the North Atlantic Treaty (London Agreement) (SOFA) (199 UNTS 67 [UNTS 2678]) 271
June 28	Convention concerning Minimum Wage Fixing Machinery in Agriculture (ILO Convention No 99) (172 UNTS 159 [UNTS 2244]) 301
June 29	Convention on Equal Remuneration (ILO Convention No 100) (165 UNTS 303 [2181]) 301
1952	
June 24	UK–Guernsey Double Taxation Arrangement 281
June 26	Convention on Holidays with Pay in Agriculture (ILO Convention No 101) (196 UNTS 183 [UNTS 2624]) 301
1953	
Mar. 31	Convention on the Political Rights of Women (193 UNTS 135 [UNTS 2613]) 363
July 1	Convention for the Establishment of a European Organization for Nuclear Research (CERN) (200 UNTS 149 [UNTS 2701]) Art. XIV 257
1954	
Mar. 1	Hague Convention relating to Civil Procedure (286 UNTS 265 [UNTS 4173]) Art. 4 257
1956	
Jan. 1	Guernsey–Jersey Double Taxation Agreement 281
1957	
Feb. 20	Convention on the Nationality of Married Women (309 UNTS 65 [UNTS 4468]) 363
1958	
Apr. 29	Convention on the Territorial Sea and the Contiguous Zone (516 UNTS 205 [UNTS 7477]) 658, 667 Art. 4(5) 113

Apr. 29	Geneva Convention on the Continental Shelf (516 UNTS 205 [UNTS 7302]) Art. 6(2)	116
1962		
Dec. 10	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (521 UNTS 231 [UNTS 7525])	363
1963		
Apr. 24	Vienna Convention on Consular Relations (VCCR) (596 UNTS 261 [UNTS 8638])	674
1966		
Dec. 16	International Covenant on Civil and Political Rights (ICCPR) (999 UNTS 171 [UNTS 14668]) 414, 417, 424, 430, 433-4, 437-40, 467-9 Art. 1(1) 220 Art. 2(1) 468 Art. 9 468, 488 Art. 9(1) 437 Art. 12 488	
1969		
May 23	Vienna Convention on the Law of Treaties (VCLT) (1155 UNTS 331 [UNTS 18232]) 172 Art. 3 283, 369-70 Art. 31 247-8, 266, 268 Art. 31(1) 251-2, 666 Art. 31(2) 209 Art. 31(3) 208 Art. 31(3)(c) 207, 248, 253-4 Art. 31(4) 253 Art. 32 247, 253-5, 266, 268 Art. 44 370 Art. 49 370 Art. 50 370 Art. 51 370 Art. 52 370 Art. 53 370, 376 Art. 60 370 Art. 64 370, 376 Art. 65(3) 376 Art. 66 376 Art. 76(2) 314	

TABLE OF TREATIES

xxxi

	Art. 77	211
	Art. 77(2)	239
1973		
Dec. 14	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York Convention) (1035 UNTS 167 [UNTS 15410])	363
1977		
Apr. 28	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1861 UNTS 361 [UNTS 31699])	
	Art. 7	257
1978		
Aug. 23	Vienna Convention on Succession of States in respect of Treaties (1946 UNTS 3 [UNTS 33356])	150-1
	Art. 11	151-2, 161
	Art. 12	161
	Art. 16	151-2
1980		
May 21	European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No 106)	279
1982		
Dec. 10	UN Convention on the Law of the Sea (UNCLOS) (1833 UNTS 3 [UNTS 31363])	2, 243
	Preamble	668
	Art. 2(3)	663, 669
	Art. 5	40, 45, 98-9
	Art. 7(6)	112-13
	Art. 15	24, 26-7, 30, 34, 41-2, 96, 98, 157-8, 585
	Art. 16(2)	31
	Art. 19	533, 576, 630
	Art. 19(2)	533, 576-7
	Art. 29	554, 556
	Art. 30	530, 543-4, 601, 611, 615, 621-2, 656, 659-60, 664, 667, 669, 673
	Art. 31	656, 659, 667
	Art. 32	529, 530, 543, 548, 553-4, 561, 583, 596, 603, 611-12, 615, 621-2, 656-71, 673
	Art. 47(5)	112