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Peremptory Norms and Their Legal Consequences as a Feature of General International Law

A Introduction

a Preliminary Considerations

Peremptory norms of general international law possess certain basic characteristics, and an account of these norms, even one the self-professed focus of which is on their legal consequences, must begin with a descriptive and analytical discussion of these characteristics.[1] Like the rest of the study, this introductory discussion focuses primarily on these norms' *legal* features rather than on the substantive principles that peremptory norms represent and protect. Ultimately, a peremptory norm is and has always been a legal concept, albeit a particularly important one.

The firmly legal understanding of peremptory norms, which will receive fuller elaboration across the remainder of this study, enjoys institutional backing. According to the International Court of Justice, for example, the question 'whether a norm is part of the *jus cogens* relates to the legal character of the norm.'[2] The purpose behind these norms is to protect certain fundamental principles of the international legal system.[3] It is possible to

[1] The term 'general international law' here and throughout the study refers to the body of customary international and general principles of law and of international law applicable to all States. Regional and local customary law, as well as customary rules to which States have persistently objected, are not part of general international law. However, since regional and local custom and persistent objection are very rare, general international law is often co-extensive with custom and general principles. 'General international law' can have different connotations from 'customary international law'. Sir Michael Wood, Formation and Evidence of Customary International Law, A/CN.4/653 (2012). According to Article 53 VCLT, a peremptory norm is, for the purposes of the Convention, a norm of general international law. *See* Hannikainen (1998), 208–209. *See further* Domb (1976), 108–111. On the possibility of a regional peremptory norm in international law and the relevance of persistent objection, *see below*.

[2] *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p. 226, 258 (para. 83).

[3] *See, e.g.,* John Dugard, First Report on Diplomatic Protection, A/CN.4/506, para. 89 (2007). Dire Tladi, First Report on *Jus Cogens*, A/CN.4/693, 43–44, 45.

achieve such protections by attaching particular legal effects to the norms that express these values. These legal effects, and their extent, are the subject of this book.

The historical record reveals that the development of this legal concept was informed in important ways through social and moral considerations over the course of the 20th century, notably between the two world wars and in particular following the Second World War. That said, despite the importance of peremptory norms, their precise doctrinal basis has always remained unsettled. The failure, so far, to reach any agreement on these norms' doctrinal basis strongly suggests that this disagreement will endure in judicial pronouncements and in the literature. Yet this circumstance is largely irrelevant for the purpose of this book. The fact that there exists a general acknowledgement that peremptory norms are – in whatever shape it may be – a feature of the international legal system and capable, at least in theory, of being applied and producing legal effects,[4] provides sufficient material for a study of the manner in which the concept is applied by States as well as by courts and tribunals.

There is sometimes a tendency to examine new concepts through the doctrine of sources of international law and these legal norms' substantive characteristics. The debate over peremptory norms has not escaped this tendency. It has become commonplace to discuss peremptory norms from the vantage point of a discussion about international legal norms and the grounds for their validity. The 'source' of a peremptory norm was for a while a lively topic of discussion in the legal journals, primarily because the legal consequences of a peremptory norm are regarded as a challenge to widely accepted processes of international rule-making, which still cling to a somewhat fictional notion of State consent to specific rules of international law.[5] Yet the doctrine of sources, with its close doctrinal and practical association with the *locus classicus* of Article 38 of the ICJ Statute, and its equivalent predecessor in the PCIJ Statute, is not invariably the best road to travel down, nor the best starting point in a discussion about peremptory norms. On the whole, this long-standing debate has not led to much common ground. Again, however, scholarly agreement on the doctrinal basis, or 'source', of peremptory norms is no necessary condition for

[4] Certain critical voices remain, though they are outliers and do not necessarily offer a particularly fair representation of the concept. *See, e.g.,* Weisburd (1995–1996); Glennon (2006).

[5] *See especially* Weil (1983); *ibid.* (1992), especially chapter VII; Charney (1993); Alston & Simma (1988–1989); Janis (1987–1988a) and *ibid.* (1987–1988b); Turpel & Sands (1987–1988); Onuf & Birney (1974). *See further* Pellet (1988–1989).

the application of these norms and their legal consequences in practice, much less for a study of the legal effects associated with these norms as they appear in international practice.

Substantively, there is a close connection between peremptory norms and certain important values shared across various legal traditions and articulated in international instruments. References to fundamental values have long played a part in international law. For instance, the ICJ's 1949 judgment in the *Corfu Channel* case relied on the notion of 'elementary considerations of humanity' as a basis for the Albanian authorities' legal obligation to make known, in the general interest of navigation, the presence of a minefield in its territorial waters and to warn approaching British warships of this danger. Today, concerns associated with the notion of 'humanity' find contemporary expression, for instance, in the International Law Commission's work on the protection of persons in the event of a natural disaster,[6] as well as in international humanitarian law.[7] To the extent elementary considerations of humanity referred to international humanitarian law in the *Corfu Channel* case, they could not be grounded in conventional international law, since the Hague Convention of 1907, No. VIII, was only applicable in time of war, and the events giving rise to the litigation occurred in peacetime.[8] More recently, the International Court noted in its judgment in *Jurisdictional Immunities* – a case that also involved questions concerning the application of peremptory norms – that '[Germany's] acts in question can only be described as displaying a complete disregard for the "elementary considerations of humanity." '[9] However, it attached no legal consequences to this finding.

[6] Eduardo Valencia Ospina, Third Report on the Protection of Persons in the Event of Disasters, A/CN.4/629 (paras. 37–50) (2010); ILC, Draft Articles on the Protection of Persons in the Event of Disasters Adopted by the Commission on First Reading, with commentaries, Report of the International Law Commission on the Work of its Sixty-Sixth Session (2014), A/69/10, 99–105 (draft articles 5–7 and commentary).

[7] *See further* G. Fitzmaurice (1950), 4–5, 17; Thirlway (1990), 6–13.

[8] *Corfu Channel (United Kingdom v. Albania)*, Merits, ICJ Reports 1949, p. 4, 22. The Court even emphasized that these elementary considerations of humanity were more exacting in times of peace than of war. The incidents took place in peacetime, and therefore neither the Hague Convention nor even the residual 'Martens Clause' in its preamble came into operation. On the 'Martens Clause', *see* Münch (1976).

[9] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, ICJ Reports 2012, p. 99, 121 (para. 52). The Court also cited the relevant passage from the *Corfu Channel* case in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, ICJ Reports 1986, p. 14, 112 (para. 215) and 114 (para. 218). *See also Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Reports 1951, p. 15, 23; *Ahmadou Sadio Diallo (Republic of Guinea v. DRC)*, Merits, ICJ Reports 2010, p. 639, 671 (para. 87). However, these decisions do little more

While 'elementary considerations of humanity' are not a free-standing source of obligation in international law, they may further the identification of those norms and obligations in the integrity and enforcement of which the international community shares a strong common interest. The term, as used in the jurisprudence of the ICJ, should not be equated with the peremptory character of a legal norm, though these 'elementary considerations of humanity' are, by broad agreement, among the values that peremptory norms are designed to protect.

Yet without doing injustice to the moral and political *imprimatur* of peremptory norms, and to the noble but grandiose ambition that can be its fruit, considerations associated with the humanitarian values of the international community do not, by themselves and without more, form the basis of certain norms' peremptory character.[10] In its controversial 1966 second-phase judgment in *South West Africa*, the International Court, for example, noted that humanitarian considerations were not sufficient to generate legal rights and obligations. It could 'take account of moral principles only in so far as these are given a sufficient expression in legal form'.[11] Whether or not an international legal norm has the characteristics and produces the legal consequences of a peremptory norm depends in first instance on the settled practice of States.[12] At the same time, though, considerations associated with humanitarian values can inform, and in the past have informed, the practice of States that led to the acceptance of peremptory norms as a legal concept. In its 1966 judgment in *South West Africa*, for example, the ICJ noted that '[h]umanitarian considerations may constitute the inspirational basis for rules of law, just as, for instance, the preambular parts of the United Nations Charter constitute the moral and political basis for the specific legal provisions thereafter set out'.[13] The Court added, however, that '[s]uch considerations do not, however, in themselves amount to rules of law'.[14]

Certain scholarly contributions have further described the body of legal norms with a peremptory character collectively as a form of public order law,[15] but ultimately this characterization is not particularly useful and

than to identify the relevant obligation for States as arising not only under certain treaties but also under customary international law.

[10] *Cf.* Verdross (1966), 59.

[11] *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase*, ICJ Reports 1966, p. 6, 34 (para. 49).

[12] *See* Dire Tladi, First Report on *Jus Cogens*, A/CN.4/693, 25.

[13] *South West Africa, Second Phase*, 34 (para. 50).

[14] *Ibid.* For States' positions on these matters, *see* Chapter 2. For a discussion and criticism of an approach to peremptory norms that relies on notions of hierarchy, *see* Kolb (2001), 130.

[15] *See generally* Mosler (1980), 17–20; *ibid.* (1974), 33; *ibid.* (1968); Hersch Lauterpacht, Report on the Law of Treaties, A/CN.4/63, *YbILC* 1953, Vol. II, 155. *Cf.* Christenson (1988).

may indeed be misleading.[16] The terms 'public policy'[17] or '*ordre public*', the latter anglicised into 'public order', are terms of art, both in domestic legal systems and in private international law.[18] The present analysis gains little by attaching this label to the collection of legal norms with a peremptory character, and no substantive inferences should, as a general matter, be drawn from a mere label. Peremptory norms and public order are, in any event, not the same concept. Sir Humphrey Waldock's reference to public order in his Second Report on the Law of Treaties was not included by the International Law Commission in its commentary to draft article 50 on the law of treaties.[19] For present purposes at least, the term may invite too heavy a focus on the content[20] of these legal norms, rather than on their legal effects. The rhetoric of 'international public order', with its private international law origins, or alternatively its authoritative overtones, scarcely tells us anything about legal effects. Instead, the notion has the potential to confuse. It is not clear whether an analogy between private and public international law is even appropriate in this context. The term '*ordre public*' and the English term 'public order' lead to ambiguity when placed side by side with 'public policy',[21] since the two terms are not necessarily congruent.[22] Judge Lauterpacht's separate opinion in *Guardianship of Infants* noted, albeit in the context of reliance on *ordre public* from domestic law and as a general principle of law in the application of the 1902 Hague Convention governing the guardianship of infants, that

> the notion of *ordre public* – like that of public policy – is variable, indefinite and occasionally productive of arbitrariness and abuse. It has been

[16] *See* Kolb (2015), 32–37 ; *ibid.* (2001), 172–181. *See further* Dire Tladi, First Report on *Jus Cogens*, A/CN.4/693, 35.

[17] *See* Schwarzenberger (1964–1965).

[18] *But see Austria v. Italy*, Application no. 788/60 (Decision of January 11, 1961), *YbECHR* 1961, 116, 138. This decision noted that the purpose of concluding the ECHR was to establish a 'common public order of the free democracies of Europe'.

[19] *See* Sir Humphrey Waldock, Second Report on the Law of Treaties, A/CN.4/156 and Add.1–3, *YbILC* 1963, Vol. II, 52. *Cf.* DALT, Article 50 commentary. *See further* Sztucki (1974), 10–11.

[20] Throughout this study, the term 'content' in relation to a treaty or a treaty provisions refers to the substance of the treaty as a whole or of one of its provisions. 'Content' is more specific than 'subject-matter', as that term is used in Articles 30 and 59 VCLT, and is not a term of art like 'object and purpose'.

[21] For a contribution that uses this term, *see* Schwarzenberger (1965). Schwarzenberger's position was very sceptical. *See especially ibid.* 203–204 and 212. For a further critical view, *see* Alexidze (1981), 255. *See further* Tunkin (1971); on custom, *ibid.* (1961).

[22] *See Application of the Convention of 1902 governing the Guardianship of Infants (Netherlands v. Sweden)*, ICJ Reports 1958, p. 55, 90–91 (Judge Sir Hersch Lauterpacht, sep. op.).

> compared in this respect, not without some justification, with the vagueness of the law of nature.[23]

Similarly, in the cases concerning *Serbian Loans* and *Brazilian Loans*, the PCIJ had noted that domestic public policy was 'a conception the definition of which in any particular country is largely dependent on the opinion prevailing at any given time in such country itself'.[24] Granted, these dicta concerned domestic rather than international public policy, but they arguably also underline the fluidity of this legal concept in general.[25]

Some scholars base the concept of peremptory norms on the need to protect this suggested *international* public order.[26] Yet there is little need for the term. The adjective 'peremptory', as presently used in this connection, captures the collective interest in the maintenance and enforcement of these legal norms well enough, in the way the term is now understood, and it is not necessary to enter a *tertium quid* by referring to this body of law as public order. Again, 'public order' can serve as an umbrella term to capture the principles behind or the general function of peremptory norms. Further down the road of legal technicality, however, the term's usefulness quickly recedes.

Today, multilateral treaties, especially quasi-universal treaties, typically serve as evidence of which legal norms in international law are non-derogable and have a peremptory character under general international law. In order to determine whether a norm is non-derogable, at least for the purposes of the treaty, it is necessary to interpret the relevant treaty provision. In many instances, the exercise is presented as straightforward. However, contracting States' inclusion of a denunciation clause in a treaty text could undermine the claim that the relevant rules are non-derogable as a matter of general international law.[27] That said, a denunciation clause pertains only to the rule's conventional source and has no bearing on the rule's character under

[23] *Ibid.* 94 (Judge Sir Hersch Lauterpacht, sep. op.). Lauterpacht also defined *ordre public* in more technical terms. *Ibid.* 90. The Court, in its judgment, did not consider it necessary to pronounce on the parties' submissions relating to *ordre public*. *Ibid*. at 70.

[24] *Payment of Various Serbian Loans Issued in France*, PCIJ, Ser. A., No. 20, p. 46; *Payment in Gold of Brazilian Loans Contracted in France*, PCIJ, Ser. A., No. 21, p. 125.

[25] For a discussion that illustrates the breadth of areas that the term 'international public policy' can potentially cover in academic writing, *see* Jenks (1964), 428–546.

[26] *See, e.g.,* Orakhelashvili (2006).

[27] *See, e.g.,* Art. 10, Slavery Convention (September 25, 1926), 60 L.N.T.S. 255; Art. 15, Convention on the Prevention and Punishment of the Crime of Genocide (January 12, 1951), 78 U.N.T.S. 277; Art. 63, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (August 12, 1949), 75 U.N.T.S. 31; Art. 62, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and

general international law.[28] Indeed, for this very reason, the denunciation clauses of the four Geneva Conventions of 1949 provide that the denunciation of the convention shall have no effect on any equivalent obligations to which the State may be subject under general international law. The conventions in this manner reflect the separate character of treaty and custom as sources of international law. Denunciation of a treaty cannot have any effect on the continued existence of a customary obligation. In general, it is not permissible to conclude that if a treaty contains a denunciation clause, an obligation under customary international law equivalent to an obligation under the treaty is derogable. A denunciation clause in a treaty, even in a widely adhered-to multilateral one, *prima facie* has no bearing on the derogability of an equivalent obligation under customary international law.

In sum, something would be amiss in an account of peremptory norms and their legal consequences that was insensitive to the social and moral *imprimatur* of certain rules and principles and to the role these norms have assumed in international practice. At the same time, it is important to present international law realistically. The social and moral ends that peremptory norms and their legal consequences are designed to protect can inform State practice and in that manner enjoy legal relevance. Yet in the end, an analytical approach to peremptory norms that primarily analyses international instruments, judicial decisions and other international materials and manifestations of State practice may sooner promote the policy of protecting certain values than an approach that reasons directly from certain values to specific legal effects.[29]

b Doctrinal History

Scholars writing on the law of nations have long espoused the theoretical possibility of a body of non-derogable rules between sovereigns, even

Shipwrecked Members of Armed Forces at Sea (August 12, 1949), 75 U.N.T.S. 85; Art. 142, Geneva Convention Relative to the Treatment of Prisoners of War (August 12, 1949), 75 U.N.T.S. 135; Art. 158, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (August 12, 1949), 75 U.N.T.S. 287; Art. 21, International Convention on the Elimination of All Forms of Racial Discrimination (March 7, 1966), 660 U.N.T.S. 195; Art. 31, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 10, 1984), 1465 U.N.T.S. 85. Both the General Treaty for the Renunciation of War as an Instrument of National Policy (August 27, 1928), 94 L.N.T.S. 57 and the Charter of the United Nations do not include denunciation clauses. Schwelb (1967), 953; *ibid*. (1966), 1054. *See further* Hannikainen (1988), 263–264.

[28] On the relationship between the admissibility of reservations to the peremptory character of a legal norm, *see* Chapter 5.

[29] *See* General Conclusions, *below*.

when the realities of international practice looked different. Emer de Vattel, in *Le droit des gens*,[30] discussed a body of law that lay beyond contracting States' disposition. Without specifying which rules belonged to this non-disposable body of 'necessary' law, nor indicating why it lay beyond the autonomy of the parties, Vattel wrote in the late 18th century that there existed a body of rules that States could not set aside in agreements between each other.[31] He characterized this body of law as 'immutable' and noted that 'les Nations ne peuvent y apporter aucun changement par leurs Conventions, ni s'en dispenser elles-mêmes, ou réciproquement l'une l'autre.'[32]

Pasquale Fiore's draft code on the law of treaties from his work *Il diritto internazionale codificato* provided that '[n]essuno Stato può in virtù di un trattato obbligarsi a fare quello che sia contro il Diritto internazionale positivo, o contro i precetti della morale e della giustizia universale.'[33] David Dudley Field's *Draft Code* of 1876 likewise provided for the invalidity of a treaty on a similar basis.[34] Bluntschli's *Draft Code* of 1881 provided in paragraphs 410, 411 and 412 that a treaty compromising general rights of humanity or necessary principles of international law was void.[35] By contrast, early codification projects showed greater reserve. The 1935 Harvard Research Draft Convention on the Law of Treaties did not provide for the possibility of a treaty's being void on the basis of derogation from certain norms of general international law.[36] Similarly the Convention on Treaties adopted by the Sixth International Conference of American States at Havana did not provide for invalidity on this basis.[37]

At what point in history the term '*jus cogens*' saw its first application remains uncertain. '*Jus cogens*' is a 19th-century term and one that does not have its origins in international legal writings. An early use of the

[30] *See generally* Jouannet (2012), 110. *See further* Chetail & Haggenmacher (eds.) (2011). The publication of this recent collection of essays is a testimony to Vattel's enduring influence in international law.
[31] Vattel (1916, reproduction of Books I and II of edition of 1758), Préliminaries, §. 8 and 9.
[32] *Ibid.* §9. This distinction, however, does not fully overlap with the distinction between derogable and non-derogable norms. *See* Dupuy (2011), 162–164.
[33] Fiore (1890), 246 (§693). For English translation passage from 5th Italian edition, by E.M. Borchard (1918), *see* (1935) 29 *AJIL Supp.* 1213.
[34] 29 *AJIL Supp.* 1207–1208 (1935).
[35] *Ibid.*, 1209–1210. The second limb of Bluntschli's formulation harks back to Vattel's similar formulation. Vattel (1916, reproduction of Books I and II of edition of 1758), Préliminaries, §. 8 and §. 9.
[36] (1935) 29 *AJIL Supp.* 657.
[37] (1935) 29 *AJIL Supp.* 1205–1207.

term *jus cogens* is in Georg Friedrich Puchta's *Lehrbuch der Pandekten*,[38] a mid-19th-century German textbook on Roman and private law. The term does not have its origins in Roman law,[39] and its first use lay within the domain of domestic private law of the 19th century.

An early arbitral decision referring to the concept of the '*jus cogens*' is the *Pablo Nájera* arbitral award between France and Mexico.[40] A preliminary question that arose in that case concerned the scope of the obligation under Article 18 of the Covenant of the League of Nations to register treaties and of the sanction of invalidity in the event of non-registration. Mexico, not a League member, had raised the non-registration by France, a League member, of the Franco-Mexican *compromis* as a preliminary objection. The president of the arbitration commission, J.H.W. Verzijl, characterized the obligation under Article 18 as non-derogable *inter se* between League members and used the term '*jus cogens*' to describe this type of obligation.[41] The award used the term not to describe a legal norm under general international law but one arising for the parties to a multilateral treaty.

Another early and prominent judicial use of the term was Judge Schücking's separate opinion to the Permanent Court of International Justice's judgment in the *Oscar Chinn* case, in 1927.[42] In that case Judge Schücking noted in his separate opinion that the PCIJ would never 'apply a convention the terms of which were contrary to public morality'. Nor should it as a matter of international public policy apply a treaty that was null and void because of a flaw in its origin, such as here the 1919 Treaty of Saint-Germain in its capacity as an *inter se* modification of the 1885 General Act of Berlin as modified by the 1890 Declaration of Brussels.[43] Notice how Schücking's use of the indefinite article indicates that he is using the term 'a *jus cogens*' in a generic capacity to denote not a name but rather a feature of the international legal system that is analogous to this feature's domestic equivalent.[44]

[38] Puchta (1848), 158 (§. 110); *ibid.* (1862), 242 (§. 110, 'Ausschließung der Anwendung durch Privatwillen').
[39] Schwelb (1967), 948.
[40] *Pablo Nájera (France) v. United Mexican States*, 5 RIAA 466, 470 and 472 (Award of October 19, 1928).
[41] *Ibid.*
[42] *The Oscar Chinn Case*, PCIJ Ser. A./B., No. 63, p. 149 (Judge Schücking, sep. op.).
[43] *Ibid.*, 150.
[44] For a discussion of the cases *In re Krupp and others* and *Oscar Chinn* in this connection, *see* Schwelb (1967), 950. Judge Schücking's use of the indefinite article suggests that other

Interest in the rules of international law with the character of a '*jus cogens*' grew during the period between the two world wars.[45] Notably the writings of Alfred von Verdross reflected an interest in a legal expression of ethical principles of the international community.[46] Peremptory norms were first comprehensively analysed during a 1966 conference in the town of Lagonissi, Greece.[47] The concept of peremptory norms in general international law also came into sharper focus when Special Rapporteurs Lauterpacht, Fitzmaurice and Waldock introduced it into the International Law Commission's preparatory work on the law of treaties. Draft article 50 of the 1966 Draft Articles on the Law of Treaties entered the 1969 Vienna Convention on the Law of Treaties[48] in slightly modified form as Article 53.[49] The provision has generated much debate ever since,[50] but neither Article 53 nor 64 has seen direct application by the International Court of Justice or by an arbitral tribunal as a source of a treaty's invalidity *ab initio*, or its invalidity *ex nunc* and termination, respectively. Nor have parties to a treaty ever concluded an amicable agreement voiding or terminating a treaty expressly on the basis of Article 53 or 64. However, there have been some developments in State practice on the invalidity of certain treaties by reason of their content or effect, notably with respect to the Agreement for the Cession by Czechoslovakia to Germany of Sudeten German Territory (the 'Munich Agreement') of September 1938.[51] Also, courts have repeatedly referred to Article 53 as a definition of a peremptory norm.[52]

When the concept of a peremptory norm of general international law was codified as part of the law of treaties, it is possible that the ILC and States' delegates had the Munich Agreement in mind, as certain

legal systems – domestic legal systems – have their own '*jus cogens*'. It suggests that every legal system can possess a set of legal norms that are beyond the contractual disposition of contracting parties, as a contrast to the so-called '*jus dispositivum*'. The term '*jus cogens*' is however rarely used today in a domestic legal setting.

45 Kunz (1945), 186–187, *citing* Fröhlich (1924); Brandner (1937); Verdross (1937b) and (1937a). *See further* Heydte (1932).

46 Verdross (1937a); *see further* Bruns (1929) and *ibid.* (1933).

47 Carnegie Endowment for International Peace, *Conference on International Law* (Lagonissi, April 3–8, 1966), Papers and Proceedings, The Concept of Jus Cogens in Public International law 85 (1967) (Summary Record).

48 Vienna Convention on the Law of Treaties (May 23, 1969), 1155 U.N.T.S. 331.

49 DALT, Article 50.

50 *See especially* Gómez Robledo (1981); Suy (2011); Schwelb (1967); Danilenko (1991).

51 *See* Chapter 3.

52 *See, e.g., Jones v. Ministry of Interior of the Kingdom of Saudi Arabia and another (Secretary of State for Constitutional Affairs and others intervening)*, [2007] 1 AC 270, 292 (para. 42).