

INTERNATIONAL
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VOLUME 190

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INTERNATIONAL LAW REPORTS

VOLUME
190

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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 190	xix
TABLE OF TREATIES	xxvii
REPORTS OF CASES	1
INDEX	697
CONSOLIDATED TABLES OF CASES, VOLUMES 126-190	749

PREFACE

The present volume contains the 2016 judgment on preliminary objections and the 2017 order on counterclaims of the International Court of Justice in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, as well as its 2018 judgment on the merits in the joined cases of *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*. International jurisprudence is further reflected in the 2019 final arbitral award on reparations in *The Duzgit Integrity (Republic of Malta v. São Tomé and Príncipe)* and the Grand Chamber judgment of the European Court of Human Rights in *Bărbulescu v. Romania*. National jurisprudence is reflected in decisions from the courts of England (*SG, LR Avionics* and *Heiser Estate*) and the United States (*Marshall Islands*).

The Editors wish to thank the many people whose work has made this volume possible. Dr Massimo Lando undertook the task of summarizing the cases from the International Court of Justice. Mr Max Dowbenko, Mr Daniel Regan and Dr Natalie Jones prepared the summaries of *SG, Heiser Estate* and *LR Avionics* respectively. Ms Portia Karegeya wrote the summary of *Bărbulescu*. Ms Karen Lee summarized the *Duzgit Integrity* final arbitral award and the case from the United States, and saw the volume through the press. Ms Isabelle l'Anson, the ILR Editorial Assistant, prepared the Tables of Cases and Digest. Miss Maureen MacGlashan, CMG, compiled the Table of Treaties and Index. Mrs Alison Tickner checked the copy and Mrs Jenny Macgregor read the proofs.

The Editors are very grateful to the International Court of Justice, the Permanent Court of Arbitration and the European Court of Human Rights for kindly permitting these *Reports* to use the electronic files of the relevant judgments posted on their official websites. The judgments from England published in this volume carry Crown copyright and contain public sector information licensed under the Open Government Licence v3.0; the electronic files were sourced from the United Kingdom Supreme Court and the British and Irish Legal Information Institute Websites.

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

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March 2020

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. Albert Jan van den Berg, under the auspices of the International Council for Commercial Arbitration).) But where there is a sufficient point of contact with public international law then the relevant parts of the award will be reported. Examples of such points of contact are cases in which the character of a State as a party has some relevance (e.g. State immunity, stabilization clauses, *force majeure*) or where there is a choice of law problem involving discussion of international law or general principles of law as possible applicable laws. The same criteria will determine the selection of decisions of national courts regarding the enforcement of arbitral awards.

DECISIONS OF NATIONAL TRIBUNALS

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

EDITORIAL TREATMENT OF MATERIALS

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

PRESENTATION OF MATERIALS

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

NOTES

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

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

DIGEST OF CASES

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

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and a Consolidated Tables of Cases and Treaties for volumes 1-80 were published in two volumes in 1990 and 1991. A further volume containing the Consolidated Index and Consolidated Tables of Cases and Treaties for volumes 81-100 was published in 1996. A Consolidated Index, a Consolidated Tables of Cases and a Consolidated Table of Treaties for volumes 1-125 were published in 2004. A Consolidated Index and a Consolidated Table of Treaties for volumes 1-160 were published in 2017. Volume 190 contains Consolidated Tables of Cases for volumes 126-190.

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.)

Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua <i>v.</i> Colombia) (Preliminary Objections) (Counterclaims) 1	Land Boundary in the Northern Part of Isla Portillos (Costa Rica <i>v.</i> Nicaragua) (Merits) 173 LR Avionics Technologies Ltd <i>v.</i> Federal Republic of Nigeria and Another 572
Bărbulescu <i>v.</i> Romania (Application No 61496/08) 410	Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica <i>v.</i> Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica <i>v.</i> Nicaragua) (Merits) 173 Marshall Islands, Republic of the <i>v.</i> United States of America and Others 679
<i>The Duzgit Integrity</i> Arbitration (Republic of Malta <i>v.</i> Democratic Republic of São Tomé and Príncipe) (Final Award on Reparation) 324	
Estate of Michael Heiser and 121 Others <i>v.</i> Islamic Republic of Iran and Iranian Ministry of Information and Security 586	R (SG and Others (previously JS and Others)) <i>v.</i> Secretary of State for Work and Pensions 475

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;">2019</p> <p><i>The Duzgit Integrity</i> Arbitration (Republic of Malta <i>v.</i> Democratic Republic of São Tomé and Príncipe) (Final Award on Reparation) 324</p> <p style="text-align: center;"><i>European Court of Human Rights</i></p> <p style="text-align: center;">2017</p> <p>Bărbulescu <i>v.</i> Romania (Application No 61496/08) 410</p> <p style="text-align: center;"><i>International Court of Justice</i></p> <p style="text-align: center;">2016</p> <p>Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua <i>v.</i> Colombia) (Preliminary Objections) 1, 10</p>	<p style="text-align: center;">2017</p> <p>Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua <i>v.</i> Colombia) (Counterclaims) 1, 104</p> <p style="text-align: center;">2018</p> <p>Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica <i>v.</i> Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica <i>v.</i> Nicaragua) (Merits) 173</p>
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II. DECISIONS OF MUNICIPAL COURTS

<p style="text-align: center;"><i>United Kingdom, England</i></p> <p style="text-align: center;">2015</p> <p>R (SG and Others (previously JS and Others)) <i>v.</i> Secretary of State for Work and Pensions 475</p> <p style="text-align: center;">2016</p> <p>LR Avionics Technologies Ltd <i>v.</i> Federal Republic of Nigeria and Another 572</p>	<p style="text-align: center;">2019</p> <p>Estate of Michael Heiser and 121 Others <i>v.</i> Islamic Republic of Iran and Iranian Ministry of Information and Security 586</p> <p style="text-align: center;"><i>United States of America</i></p> <p style="text-align: center;">2017</p> <p>Republic of the Marshall Islands <i>v.</i> United States of America and Others 679</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	International Tribunals
<i>Arbitration</i>	<i>Jurisdiction</i>
Canals	Lakes and Landlocked Seas
Claims	Nationality
Comity	Recognition
Conciliation	<i>Relationship of International Law and Municipal Law</i>
Consular Relations	Reprisals and Countermeasures
<i>Damages</i>	Rivers
<i>Diplomatic Relations</i>	<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	States
Governments	<i>Territory</i>
<i>Human Rights</i>	<i>Terrorism</i>
<i>International Court of Justice</i>	<i>Treaties</i>
International Criminal Law	War and Armed Conflict

DIGEST OF CASES REPORTED IN VOLUME 190

Page

Arbitration

United Nations Convention on the Law of the Sea, 1982 — Part XV and Annex VII — Dispute Settlement Mechanism — Dispute between Republic of Malta and Democratic Republic of São Tomé and Príncipe — Award on Jurisdiction and the Merits — Finding that Malta entitled to claim reparation in a further phase of proceedings — Suspension of proceedings — Unsuccessful settlement negotiations — Resumption of proceedings — Malta submitting claim and supplementary claim for reparation — São Tomé not participating in reparation phase of proceedings — Whether São Tomé to pay Malta compensation — Arbitration Tribunal

The Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of São Tomé and Príncipe (Final Award on Reparation))

324

Damages

Compensation — Quantum — Material damages for lost earnings, value of cargo, payment to secure release of vessel, vessel repairs, classification expenses, administrative expenses, reputational losses — Non-material damages for prosecution and detention of persons — Calculation method — Whether Malta sufficiently substantiating quantum of its claims — Whether Malta establishing causation between its loss and São Tomé's unlawful conduct for each head of claim — Whether Settlement Agreement mitigating any of damages suffered by owner of the *Duzgit Integrity* — Whether claims under Settlement Agreement distinct from claims brought by Malta at international law under United Nations Convention on the Law of the Sea, 1982 — Whether acts and omissions of the *Duzgit Integrity*, its Master, owner and Charterer mitigating any of damages claimed by Malta — Costs — Parties normally bearing expenses in equal share — Implementation of normal rule — Interest payable — Practice of international courts and tribunals — Arbitration Tribunal

The Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of São Tomé and Príncipe (Final Award on Reparation))

324

Damages (*cont.*)

Non-pecuniary damage — Finding of violation of Article 8 of European Convention on Human Rights, 1950 — Whether applicant suffering non-pecuniary damage — Whether finding of violation constituting in itself sufficient just satisfaction — Article 41 of Convention — European Court of Human Rights (Grand Chamber)

Bărbulescu v. Romania (Application No 61496/08)

410

Diplomatic Relations

Property of State — Whether forming part of State's diplomatic mission — Diplomatic Privileges Act 1964, Section 2 — Vienna Convention on Diplomatic Relations, 1961, Article 22 — England, High Court, Queen's Bench Division, Commercial Court

LR Avionics Technologies Ltd v. Federal Republic of Nigeria and Another

572

Human Rights

Discrimination — Indirect discrimination — European Convention on Human Rights, 1950, Article 14 — Protocol No 1 to European Convention, Article 1 — Discrimination against women — Discrimination against children — Caps on welfare payments — United Kingdom Regulations implementing benefit cap affecting greater number of women in non-working lone parent households in receipt of benefits — Whether Regulations contrary to Article 14 of European Convention read together with Article 1 of Protocol No 1 — United Kingdom, Supreme Court

Regina (SG and Others) v. Secretary of State for Work and Pensions

475

Right to respect for private and family life — European Convention on Human Rights, 1950 — Article 8 — Applicability — Whether communications in workplace covered by concepts of "private life" and "correspondence" — Compliance with Article 8 — Employment — Personal data — Data protection — Electronic communications — Whether case concerning State's negative or positive obligations — Whether respondent State required to set up legislative framework to protect applicant's right in context of professional relationship

with private employer — Margin of appreciation — Whether domestic authorities adequately protecting applicant's right — Whether striking fair balance between interests of individual and community as whole — Whether respondent State violating Article 8 of Convention — European Court of Human Rights (Grand Chamber)

Bărbulescu v. Romania (Application No 61496/08) 410

International Court of Justice

Counterclaims — Jurisdiction in respect of counterclaims — Requirement of connection between counterclaim and main claim — Article 80 of Rules of Court — Admissibility of counterclaims — Direct connection — Direct connection in fact — Direct connection in law — Whether Colombia's counterclaims directly connected with Nicaragua's original claim — Jurisdiction — Whether lapse of a title of jurisdiction affecting Court's jurisdiction over Colombia's counterclaims — Whether there existed a dispute concerning subject-matter of Colombia's third and fourth counterclaims — Whether precondition under Article II of Pact was met in relation to the third and fourth counterclaims — International Court of Justice

Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia) (Preliminary Objections) (Counterclaims) 1

Jurisdiction — Admissibility — American Treaty on Pacific Settlement, 1948 (Pact of Bogotá) — Declarations of acceptance of compulsory jurisdiction — *Res judicata* — Joinder of proceedings — Expert opinion — International Court of Justice

Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua) (Merits) 173

Jurisdiction — Treaty — Pact of Bogotá — Effect of denunciation — Whether termination of Pact by Colombia precluding the Court from having jurisdiction over claim filed before expiry of one year from denunciation — Articles XXXI and LVI of Pact — Requirement of dispute — Whether there existed a dispute on subject-matter of claim brought by Nicaragua — Dispute over alleged violation by Colombia of sovereign rights — Dispute over alleged violation by Colombia of prohibition of use of force — Whether precondition under Article II of Pact

International Court of Justice (*cont.*)

satisfied — Prospect of negotiated settlement — Inherent jurisdiction of the Court — Whether Nicaragua's claim was an attempt to enforce 2012 judgment — International Court of Justice

Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia) (Preliminary Objections) (Counterclaims)

1

Jurisdiction

State immunity — Immunity from suit — Civil Jurisdiction and Judgments Act 1982, Section 31 — State Immunity Act 1978, Section 5 — Whether judgment against a State obtained in a foreign jurisdiction can be enforced in English courts — England, High Court, Queen's Bench Division

Estate of Michael Heiser and 121 Others v. Islamic Republic of Iran and Iranian Ministry of Information and Security

586

Relationship of International Law and Municipal Law

Treaties — Human rights — Right to a fair trial — European Convention on Human Rights, 1950, Article 6 — State Immunity Act 1978, Section 5 — Civil Jurisdiction and Judgments Act 1982, Section 31(1)(b) — English court's interpretation of United Kingdom legislation — Whether Article 6 of European Convention having role to play — England, High Court, Queen's Bench Division

Estate of Michael Heiser and 121 Others v. Islamic Republic of Iran and Iranian Ministry of Information and Security

586

Treaties — Human rights treaties — European Convention on Human Rights, 1950 — Interpretation — Unincorporated treaties — Effect — United Nations Convention on the Rights of the Child, 1989 — Article 3(1) — Relevance for determining whether any breach of European Convention — Whether part of United Kingdom law — Primary interest of children in welfare cases — United Kingdom, Supreme Court

Regina (SG and Others) v. Secretary of State for Work and Pensions

475

Treaties — Interpretation — Enforceability — Treaty on the Non-Proliferation of Nuclear Weapons, 1968 — Article VI of

Treaty — United States Constitution — Supremacy Clause of Constitution — State Party seeking to enforce its treaty rights in domestic court of another State Party — Enforceability of treaty provisions in United States' courts — Separation of powers — Diplomatic negotiations — Decision-making with respect to nuclear disarmament — Whether falling to Executive or Judiciary — Enforceability of Article VI — Self-execution — Standing and redressability — Political question doctrine — Whether United States' federal court able to grant plaintiff judicial relief — United States, Court of Appeals

Republic of the Marshall Islands v. United States of America and Others

679

Sea

Treaties — United Nations Convention on the Law of the Sea, 1982 — Annex VII — UNCLOS Article 49(3) — Archipelagic waters — Sovereignty of coastal State — Arbitration Tribunal finding violation of Article 49(3) by São Tomé — Reparation phase of proceedings — Article 9 of Annex VII to UNCLOS — Whether claims of Malta well-founded in fact and law — Full reparation — Material damages — Non-material damages — Interest — Appropriate damages payable by São Tomé for breach of UNCLOS Article 49(3) — Rights of flag State under UNCLOS — Claims brought by Malta at international law under UNCLOS — Arbitration Tribunal

The Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of São Tomé and Príncipe (Final Award on Reparation))

324

United Nations Convention on the Law of the Sea, 1982 — Articles 15, 74 and 83 — Maritime delimitation — Starting point — Fixed point — Territorial sea — Provisional median line — Special circumstances — Whether convexity and concavity at Punta de Castilla justifying adjusting provisional median line — Whether configuration of coast in vicinity of Salinas Bay justifying adjusting provisional median line — Exclusive Economic Zone — Continental shelf — Three-stage approach — Relevant coast — Relevant area — Radial projections — Frontal projections — Provisional equidistance line — Whether Corn Islands, Paxaro Bovo and Palmenta Cays appropriate base points — Relevant circumstances — Whether three-State concavity inequitably cutting off Costa Rica's coastal projections — Whether Corn Islands to be given no effect — Whether convexity and concavity around Punta de Castilla

Sea (cont.)

justifying adjusting provisional equidistance line — Whether Santa Elena Peninsula and Nicoya Peninsula to be given half effect — Disproportionality test — Simplified maritime boundary — International Court of Justice

Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua) (Merits)

173

State Immunity

Immunity from execution — Whether property of State in use for non-commercial purposes — Consular activities — Whether property leased to private company to outsource consular activities immune from execution — Nature of activity of processing visa and passport applications — Enforcement — State Immunity Act 1978, Section 13 — Arbitration exception to State immunity — Enforcement of judgment — England, High Court, Queen's Bench Division, Commercial Court

LR Avionics Technologies Ltd v. Federal Republic of Nigeria and Another

572

Procedure — Service of proceedings on a foreign State — State Immunity Act 1978, Section 12 — Whether service of proceedings in compound of Ministry of Foreign Affairs of a foreign State constituting good service — Whether service was received by a foreign State where its Ministry of Foreign Affairs had refused to accept service — Whether service by email to Ministry of Foreign Affairs of a foreign State constituting good service — England, High Court, Queen's Bench Division

Estate of Michael Heiser and 121 Others v. Islamic Republic of Iran and Iranian Ministry of Information and Security

586

State Responsibility

Law of State responsibility — Articles on the Responsibility of States for Internationally Wrongful Acts 2001, Article 15 — Detention of the *Duzgit Integrity* by São Tomé — Point at which detention unlawful — When detention incompatible with United Nations Convention on the Law of the Sea, 1982, Article 49 — Whether São Tomé's breach of Article 49 taking form of composite act — First of actions of composite act — Length of actions not in conformity with international obligation — Whether Malta to be compensated for loss of hire

of the *Duzgit Integrity* during its detention — Full reparation — Interest as element of full reparation recognized in Articles on State Responsibility — Arbitration Tribunal

The *Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of São Tomé and Príncipe (Final Award on Reparation))*

324

Territory

Admissibility of Nicaragua's claim — *Res judicata* — Whether International Court of Justice ("ICJ") having determined Costa Rica's sovereignty over the coast of Isla Portillos in judgment of 16 December 2015 — Starting point of land boundary — Cleveland Award, 1888 and Alexander Award, 1897 — Assessment of the ICJ-appointed experts — Whether water channel connecting Harbor Head Lagoon to San Juan River — State responsibility — Whether Nicaragua violating Costa Rica's sovereignty by placing a military camp on Costa Rica's territory — Whether Nicaragua violating 2015 judgment by placing a military camp on Costa Rica's territory — Whether Nicaragua obliged to remove military camp — International Court of Justice

Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua) (Merits)

173

Terrorism

State-sponsored terrorism — Money damages awarded in United States judgments — Whether act of State-sponsored terrorism governmental or private act — Whether Section 3 of State Immunity Act 1978 applicable — England, High Court, Queen's Bench Division

Estate of Michael Heiser and 121 Others v. Islamic Republic of Iran and Iranian Ministry of Information and Security

586

Treaties

Interpretation — Self-executing and non-self-executing treaties — Treaty on the Non-Proliferation of Nuclear Weapons, 1968 — Article VI of Treaty — Whether non-self-executing — Enforceability — Whether Article VI enforceable in domestic courts — Treaty text — Context — Aids to interpretation — Negotiation and drafting history — Post-ratification

Treaties (*cont.*)

understanding of signatory nations — Whether Article VI
providing basis for justiciable claim — United States, Court of
Appeals

*Republic of the Marshall Islands v. United States of America and
Others*

679

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 table of abbreviations attached to the index in individual volumes.

1858

Apr. 15	Costa Rica–Nicaragua, Treaty of Territorial Limits (Cañas-Jerez Treaty) (118 CTS 439).....	201-2, 276-9, 283-4, 287-94, 307-10, 311-12, 315-16
	Art. I	310

Art. II	202, 207-8, 209-10, 289-91, 308-9
Art. VI	291, 309-10

1920

Dec. 16	Statute of the Permanent Court of International Justice (PCIJ) (6 LNTS 379 [LNTS 170])	61
	Art. 36	185, 200
	Art. 60	83

1929

Jan. 5	General Treaty of Inter-American Arbitration (130 LNTS 135 [LNTS 2988])	19, 29-30
	Art. 9	19, 29-30
Jan. 5	General Treaty of Inter-American Conciliation (100 LNTS 401 [LNTS 2309])	19, 29-30
	Art. 16	19, 29-30
Oct. 12	Warsaw Convention relating to International Carriage by Air (137 LNTS 11 [LNTS 3145])	687

1945

June 26	Charter of the United Nations (https://treaties.un.org/) (UNTS registration number “not available”)	
	Chapter XIV	
	Art. 94(1)	689
	Art. 94(2)	46-8, 71, 76
	Chapter XV	
	Art. 102(1)	175, 312
	Art. 102(2)	314-15
June 26	Statute of the International Court of Justice (https://treaties.un.org/) (UNTS registration number “not available”)	
	Chapter I	
	Art. 30	56
	Art. 31(3)	185, 189-90
	Chapter II	
	Art. 34(3)	11
	Art. 36	45, 63
	Art. 36(2)	17, 18, 21, 27-9, 30-2, 63, 127, 138, 141, 175, 185, 200
	Art. 36(5)	185, 200
	Art. 38	78-9, 218, 273
	Chapter III	
	Art. 40(1)	31, 87
	Art. 40(2)	11, 31, 185

TABLE OF TREATIES

xxix

- | | | |
|-------------|--|---|
| | Art. 40(3) | 11, 185 |
| | Art. 41 | 72 |
| | Art. 48 | 187 |
| | Art. 50 | 175, 187 |
| | Art. 57 | 72 |
| | Art. 59 | 208-9, 284-7 |
| | Art. 60 | 72, 206, 208-9, 286-7 |
| | Art. 61(3) | 72 |
| | Art. 63(1) | 185 |
|
 | | |
| 1948 | | |
| Apr. 30 | American Treaty on Pacific Settlement (Pact of Bogotá) (30 UNTS 55 [UNTS 449]) | |
| | Chapter 1 (general obligation to settle dispute by peaceful means) | |
| | Art. I | 25, 28 |
| | Art. II | 16, 25-8, 39-45, 100-4, 123, 128-9, 153, 160, 202 |
| | Art. VII | 28 |
| | Chapter 5 (judicial procedure) | |
| | Art. XXXI | 11, 15, 16-30, 45-7, 49, 80-2, 104-5, 123-33, 153, 175, 185, 189, 200 |
| | Chapter 6 (fulfilment of decisions) | |
| | Art. L | 46-8, 54, 76 |
| | Chapter 8 (final provisions) | |
| | Art. LVI | 17-30, 125, 138, 155 |
| | Art. LVIII | 27 |
| | Art. LIX | 27 |
| | Art. LX | 11 |
|
 | | |
| Apr. 30 | Charter of the Organization of American States (OAS Charter) (119 UNTS 4 [UNTS 1609]) (as amended by the Protocol of Buenos Aires (1967), the Protocol of Cartagena de Indias (1985), the Protocol of Washington (1992) and the Protocol of Managua (1993)) (available at: https://www.refworld.org/docid/3ae6b3624.html) | |
| | Part I, Chapter V (Pacific Settlement of Disputes) | |
| | Art. 27 | 25 |
|
 | | |
| 1950 | | |
| Nov. 4 | European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (213 UNTS 221 [UNTS 2889]): see 1998 Nov. 1 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) as amended by Protocol 11, effective as of 1 November 1998 (ECHR) (213 UNTS 221 [UNTS 2889]) | |

Nov. 4	European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), First Protocol (20 March 1952) (213 UNTS 221 [UNTS 2889]) Art. 1 479-571
1961	
Apr. 18	Vienna Convention on Diplomatic Relations (VCDR) (500 UNTS 95 [UNTS 7312]) Art. 22 584
1963	
Apr. 24	Vienna Convention on Consular Relations (VCCR) (596 UNTS 261 [UNTS 8638]) Art. 5(d) 581
1965	
Dec. 21	International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (60 UNTS 195 [UNTS 9464]) Art. 22 82, 85
1968	
July 1	Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (729 UNTS 161 [UNTS 10485]) Art. VI 681-96
1969	
May 23	Vienna Convention on the Law of Treaties (VCLT) (1155 UNTS 331 [UNTS 18232]) Art. 18 233 Art. 31 17-19, 298-9, 505-6, 517-18, 567-8 Arts. 31-3 17-19, 22 Art. 32 303
1972	
May 16	European Convention on State Immunity (Basle) (ECSI) (1495 UNTS 182 [UNTS 25699]) Art. 11 625, 634-5 Art. 16 648, 664, 665 Art. 40(2) 18
1976	
Nov. 20	Colombia–Panama, Treaty for the Delimitation of their Maritime Boundaries in the Caribbean Sea (1074 UNTS 221 [UNTS 16398]) 180, 204, 230, 232, 233

TABLE OF TREATIES

xxxi

1977

- Mar. 17 Colombia–Costa Rica, Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation (Not registered. Text available at www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-CRI1977MC.PDF (accessed 26 August 2020)) 175, 204, 230, 231-3, 312

1981

- Jan. 28 COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) 429-33

1982

- Dec. 10 UN Convention on the Law of the Sea (UNCLOS) (1833 UNTS 3 [UNTS 31363])
 Part II, Section 2
 Art. 9 342-3
 Art. 15 218-20, 221, 251-3, 280-2, 294-307
 Part IV
 Art. 49(3) 338, 348, 356-8, 400-1
 Part V 13, 107, 114, 166
 Art. 74 ... 218-20, 221, 223-48, 253-70, 273-6, 294-307
 Part VI 13, 107, 114, 166
 Art. 83 ... 218-20, 221, 223-48, 253-70, 273-6, 294-307
 Part VIII
 Art. 121(1) 225-8, 235
 Art. 121(3) 225-8, 235
 Part XV, Section 2
 Art. 287 325, 338
 Annex VII (Arbitration)
 Art. 1 338
 Art. 7 341n. 2, 342, 397-8
 Art. 9 348-9

1989

- Nov. 20 Convention on the Rights of the Child (CRC) (1577 UNTS 3 [UNTS 27531])
 Art. 3(1) 504-9, 512-13, 516, 517-24, 525-33, 553-9, 560-71

1993

- Jan. 13 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1974 UNTS 45 [UNTS 33757]) 685

1998

- July 17 Rome Statute of the International Criminal Court (ICC) (2187 UNTS 90 [UNTS 38544])
- Art. 8 416-74
 - Art. 26(4) 416-17
 - Art. 26(5) 416-17
 - Art. 36(2) 417
 - Art. 43 416
- Nov. 1 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) as amended by Protocol 11, effective as of 1 November 1998 (ECHR) (213 UNTS 221 [UNTS 2889])
- Art. 6 119-29, 638-40
 - Art. 14 479-571
 - Art. 58(2) 18

2000

- Dec. 7 European Charter of Fundamental Rights (CFR) (OJ 2000 C364/01)
- Art. 1 452
 - Art. 2 433-4
 - Art. 6 434
 - Art. 7 433, 434-5
 - Art. 8 435

2004

- Dec. 2 UN Convention on Jurisdictional Immunities of States and their Property (JISP) (44 ILM 803 (2005))
- Part III
 - Art. 12 635-6, 664, 665
 - Part IV
 - Art. 22 648-9