

COMMON INTERESTS IN INTERNATIONAL LITIGATION

COMMON INTERESTS IN INTERNATIONAL LITIGATION

A Case Study on Natural Resource
Exploitation Disputes

Claire BUGGENHOUDT



intersentia

Cambridge – Antwerp – Portland

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

Distribution for the UK and Ireland:
NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7 PP
United Kingdom
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for Europe and all other countries:
Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21
Email: mail@intersentia.be

Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832
Email: info@isbs.com

Common Interests in International Litigation. A Case Study on Natural Resource Exploitation Disputes

© Claire Buggenhoudt 2017

The author has asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as author of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Cover image: Paul Klee (1879–1940), Verhext – Versteinert © bpk / Nationalgalerie, SMB / Jörg P. Anders

ISBN 978-1-78068-446-8
D/2017/7849/4
NUR 828

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

ACKNOWLEDGEMENTS

This book concerns issues of common interests in international law. It was written as a thesis for the degree of doctor of law between 2009 and 2015. A common interest, to me, is an interest that reflects a shared value and requires collective action. In other words, a common interest is an interest that no one can reach alone and an interest of which no one person can reap all the benefits. In the same vein, one could describe academic research as a shared value within the academic community. However, it is the element of collective action that makes the process of writing a dissertation a true common interest (within a limited community). I could not have finished this work alone and I hope I am not the only one who will enjoy the finished result. Therefore, I would like to express my gratitude to all of you who have contributed to this collective effort.

First and foremost I would like to thank my supervisor, Prof. Dr Koen De Feyter, for believing in me, challenging me and giving me the freedom to find my own path while providing exactly the right amount of guidance. Furthermore, I am deeply indebted to the members of my individual doctoral committee. Prof. Dr Alexia Herwig, Prof. Dr Frank Maes and Prof. Dr Wouter Vandenhoele, thank you for the detailed feedback after each meeting, the numerous academic opportunities you provided and the encouragement throughout.

I would also like to thank my colleagues at the University of Antwerp for creating a workplace where both the highs and lows of thesis writing can be shared. Special thanks go to the members of the Law and Development research group, who have enriched both my research and my life in many ways.

Last but not least, I would like to thank my family and friends for their sustained efforts in understanding my work and the support they have given me in every area of life. My special thanks go to my son Wannas, who kept me calm, happy and tired during the final months of this process, and Pieter, who taught me that ‘the taste of love is sweet’.

CONTENTS

<i>Acknowledgements</i>	v
<i>Table of Cases</i>xi
<i>List of Abbreviations</i>xix
Chapter 1. Introduction and Research Design	1
1.1. Background	2
1.1.1. History and Nature of International Law	2
1.1.2. Emergence of the Common Interest in International Law	4
1.1.2.1. Peace and Security	6
1.1.2.2. Environmental Concerns	7
1.1.2.3. Areas beyond National Territorial Jurisdiction	8
1.1.2.4. Protection of Human Rights	9
1.1.3. Proliferation of International Judicial Bodies	10
1.1.4. The Common Interest in International Litigation	14
1.2. Definitions, Methodology and Structure	16
1.2.1. Definitions	17
1.2.1.1. Public and Common Interests	17
1.2.1.2. International Litigation	20
1.2.1.3. Natural Resource Exploitation	25
1.2.2. Methodology	27
1.2.3. Structure	29
Chapter 2. Procedural Considerations and Common Interests	31
2.1. Introduction	31
2.2. Jurisdiction	32
2.2.1. International Court of Justice	33
2.2.2. International Centre for Settlement of Investment Disputes	37
2.2.3. Summary: Jurisdiction and Common Interest	39
2.3. Standing	39
2.3.1. International Court of Justice	40
2.3.2. International Tribunal for the Law of the Sea	42
2.3.3. WTO Dispute Settlement Mechanism	43
2.3.4. Regional Human Rights Mechanisms	45

2.3.4.1.	European Court of Human Rights	45
2.3.4.2.	Inter-American Court of Human Rights	46
2.3.4.3.	African Commission on Human and Peoples’ Rights	47
2.3.5.	Summary: Standing and Common Interest	47
2.4.	Evidence	48
2.4.1.	International Court of Justice	49
2.4.2.	International Tribunal for the Law of the Sea	50
2.4.3.	International Centre for Settlement of Investment Disputes	53
2.4.4.	WTO Dispute Settlement Mechanism	53
2.4.5.	Regional Human Rights Mechanisms	55
2.4.5.1.	European Court of Human Rights	55
2.4.5.2.	Inter-American Court of Human Rights	56
2.4.5.3.	African Commission on Human and Peoples’ Rights	58
2.4.6.	Summary: Evidence and Common Interest	58
2.5.	Third Party Interventions	59
2.5.1.	International Court of Justice	59
2.5.2.	International Tribunal for the Law of the Sea	61
2.5.3.	International Centre for Settlement of Investment Disputes	63
2.5.4.	WTO Dispute Settlement Mechanism	67
2.5.5.	Regional Human Rights Mechanisms	69
2.5.5.1.	European Court of Human Rights	69
2.5.5.2.	Inter-American Court of Human Rights	69
2.5.5.3.	African Commission on Human and Peoples’ Rights	71
2.5.6.	Summary: Third Party Interventions and Common Interest	71
2.6.	Provisional Measures	71
2.6.1.	International Court of Justice	72
2.6.2.	International Tribunal for the Law of the Sea	73
2.6.3.	Summary: Provisional Measures and Common Interest	79
 Chapter 3. Substantive Considerations and Common Interests		81
3.1.	Introduction	81
3.2.	Public Interest Exceptions	82
3.2.1.	International Court of Justice	82
3.2.1.1.	Emergency Clauses	82
3.2.2.	WTO Dispute Settlement Mechanism	85
3.2.2.1.	Like Products in the NT Provisions	85
3.2.2.2.	General Exceptions Clause	89

3.2.2.3.	Health Concerns and SPS Agreement	97
3.2.2.4.	PPMs and TBT Agreement	99
3.2.3.	International Centre for Settlement of Investment Disputes	102
3.2.3.1.	Like Circumstances in the NT and MFN Provisions	102
3.2.3.2.	Regulatory Takings	105
3.2.3.3.	FET and Proportionality	110
3.2.3.4.	Non-Precluded Measures	114
3.2.4.	Regional Human Rights Mechanisms	117
3.2.4.1.	European Court of Human Rights	117
3.2.4.2.	Inter-American Court of Human Rights	126
3.2.4.3.	African Commission on Human and Peoples' Rights	128
3.2.5.	Summary: Public Interest Exceptions	130
3.3.	Common Interest Norms	131
3.3.1.	International Court of Justice	131
3.3.1.1.	<i>Jus Cogens</i> and <i>Erga Omnes</i> Norms	131
3.3.1.2.	Environmental Protection	132
3.3.2.	International Tribunal for the Law of the Sea	137
3.3.3.	Regional Human Rights Mechanisms	140
3.3.3.1.	European Court of Human Rights	140
3.3.3.2.	Inter-American Court of Human Rights	142
3.3.3.3.	African Commission on Human and Peoples' Rights	144
3.3.4.	Summary: Common Interest Norms	146
 Chapter 4. A Common Approach to Common Interests		149
4.1.	Reasons for (In)Consistency in International Litigation on Common Interests	149
4.1.1.	Introduction	149
4.1.2.	Reasons for (In)Consistency	150
4.1.2.1.	Factors that Affect the Consistency of International Litigation in General	152
4.1.2.2.	Factors that Are Specifically Relevant for Common Interest Litigation	159
4.2.	Promoting Respect for Common Interests in International Litigation	166
4.2.1.	Coordination Techniques	167
4.2.1.1.	Vertical Coordination: Hierarchy	167
4.2.1.2.	Horizontal Coordination: Procedural and Private International Law Rules	168

4.2.1.3.	Coordination through Judicial Dialogue.....	169
4.2.1.4.	Harmonious Interpretation	169
4.2.1.5.	Systemic Interpretation	170
4.2.1.6.	Interim Conclusion: Coordination to Protect Common Interests.....	171
4.2.2.	Common Decision-Making Method.....	172
4.2.2.1.	Compromise of Interests	172
4.2.2.2.	Balancing	173
4.2.2.3.	Balancing and the Margin of Deference.....	174
4.2.2.4.	Interim Solution: Common Decision-Making Method to Protect Common Interests	176
4.2.3.	Pluralistic Approach	176
4.3.	Conclusion	179
Chapter 5. General Conclusion.....		181
<i>Bibliography.....</i>		<i>185</i>
<i>Index.....</i>		<i>199</i>

TABLE OF CASES

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

African Commission on Human and Peoples' Rights May 1999, <i>Amnesty International v Zambia</i> , no. 212/98	128
African Commission on Human and Peoples' Rights October 2001, <i>The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria</i> , no. 155/96	47, 145–146
African Commission on Human and Peoples' Rights May 2003, <i>Democratic Republic of Congo v Burundi, Rwanda, Uganda</i> , no. 227/99	145
African Commission on Human and Peoples' Rights November 2009, <i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> , no. 276/2003	128–130, 144, 160

EUROPEAN COURT OF HUMAN RIGHTS

ECtHR 27 March 1962, <i>De Becker v Belgium</i> , no. 214/5	45
ECtHR 23 July 1968, <i>Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' (Belgian Linguistic case)</i> , no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64	118
ECtHR 21 February 1975, <i>Golder v the United Kingdom</i> , no. 4451/70	163
ECtHR 7 December 1976, <i>Handyside v the United Kingdom</i> , no. 5493/72	118–119, 122–123
ECtHR 18 January 1978, <i>Ireland v the United Kingdom</i> , no. 5310/71	55–56
ECtHR 6 September 1978, <i>Klass and Others v Germany</i> , no. 5029/71	45
ECtHR 26 April 1979, <i>Sunday Times v the United Kingdom</i> , no. 6538/74	124
ECtHR 23 September 1982, <i>Sporrong and Lönnroth v Sweden</i> , no. 7151/75; 7152/75	122–123
ECtHR 25 March 1983, <i>Silver and Others v the United Kingdom</i> , no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75	124–125
ECtHR 21 February 1986, <i>James and Others v the United Kingdom</i> , no. 8793/79	122
ECtHR 19 December 1989, <i>Mellacher and Others v Austria</i> , no. 10522/83; 11011/84; 11070/84	120
ECtHR 18 February 1991, <i>Fredin v Sweden (No. 1)</i> , no. 12033/86	121, 123
ECtHR 24 June 1993, <i>Papamichalopoulos and Others v Greece</i> , no. 14556/89	120
ECtHR 25 May 2000, <i>Noack and Others v Germany</i> , no. 46346/99	124–125
ECtHR 24 September 2002, <i>Posti and Rahko v Finland</i> , no. 27824/95	121–123
ECtHR 8 July 2003, <i>Hatton and Others v the United Kingdom</i> , no. 36022/97	119, 141

ECtHR 10 November 2004, <i>Taskin and Others v Turkey</i> , no. 46117/99	141
ECtHR 22 February 2005, <i>Hutten-Czapska v Poland</i> , no. 35014/97	69
ECtHR 9 June 2005, <i>Fadeyeva v Russia</i> , no. 55723/00	119
ECtHR 28 July 2005, <i>Alatulkkila and Others v Finland</i> , no. 33538/96	121–123
ECtHR 5 June 2007, <i>Lemke c. Turquie</i> (only available in French), no. 17381/02	141
ECtHR 27 January 2009, <i>Tătar c. Roumanie</i> (only available in French), no. 67021/01	45–46, 141–142
ECtHR 10 February 2011, <i>Dubetska and Others v Ukraine</i> , no. 30499/03	124–125

INTER-AMERICAN COMMISSION AND COURT OF HUMAN RIGHTS

Inter-American Court of Human Rights, <i>Case of Velásquez-Rodríguez v Honduras</i> , Judgment of 29 July 1988	70
Inter-American Court of Human Rights, <i>Case of International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights), Advisory Opinion</i> , Judgment of 9 December 1994.	46
Inter-American Court of Human Rights, <i>Case of Mayagna (Sumo) Awas Tingni Community v Nicaragua</i> , Judgment of 31 August 2001	70, 143–144, 160
Inter-American Commission of Human Rights, <i>Case of Metropolitan Nature Reserve v Panama</i> , Judgment of 22 October 2003.	46
Inter-American Court of Human Rights, <i>Case of Ricardo Canese v Paraguay</i> , Judgment of 31 August 2004	142–143
Inter-American Court of Human Rights, <i>Case of Yakye Axa Indigenous Community v Paraguay</i> , Judgment of 17 June 2005	57, 126, 144, 160, 163
Inter-American Court of Human Rights, <i>Case of Sawhoyamaya Indigenous Community v Paraguay</i> , Judgment of 29 March 2006.	57–58, 126, 160
Inter-American Court of Human Rights, <i>Case of Claude-Reyes et al. v Chile</i> , Judgment of 19 September 2006	143
Inter-American Court of Human Rights, <i>Case of the Saramaka People v Suriname</i> , Judgment of 28 November 2007.	127, 160
Inter-American Court of Human Rights, <i>Case of Kawas-Fernández v Honduras</i> , Judgment of 3 April 2009	57, 70, 142–143
Inter-American Court of Human Rights, <i>Case of Xákmok Kásek Indigenous Community v Paraguay</i> , Judgment of 24 August 2010	57, 127

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID, <i>Antoine Goetz et consorts v République du Burundi, Award</i> , ICSID case no. ARB/95/3, 10 February 1999	109
ICSID, <i>Maffezini v Spain, Decision on Objections to Jurisdiction</i> , ICSID case no. ARB/97/7, 25 January 2000	38
ICSID, <i>Metalclad Corporation v the United Mexican States, Award</i> , ICSID case no. ARB(AF)/97/1, 30 August 2000	106–107, 111

ICSID, <i>Tecnicas Medioambientales Tecmed S.A. v the United Mexican States, Award</i> , ICSID case no. ARB (AF)/00/2, 29 May 2003.	108–109, 111
ICSID, <i>Salini v Jordan, Decision on Jurisdiction</i> , ICSID case no. ARB/02/13, 15 November 2004.	39
ICSID, <i>Plama v Bulgaria, Decision on Jurisdiction</i> , ICSID case no. ARB/03/24, 8 February 2005	39
ICSID, <i>CMS Gas Transmission Company v Argentina, Award</i> , ICSID case no. ARB/01/8, 12 May 2005	111, 115
ICSID, <i>Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v the Argentine Republic, Order in Response to a Petition for Transparency and Participation as Amicus Curiae</i> , ICSID case no. ARB/03/19, 19 May 2005.	64–65, 165
ICSID, <i>Aguas del Tunari, S.A. v Republic of Bolivia, Decision on Jurisdiction</i> , ICSID case no. ARB/02/3, 21 October 2005	64, 165
ICSID, <i>Biwater Gauff (Tanzania) Limited v United Republic of Tanzania, Procedural Order No. 2</i> , ICSID case no. ARB/05/22, 24 May 2006	53
ICSID, <i>Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v the Argentine Republic, Decision on Jurisdiction</i> , ICSID case no. ARB/03/19, 3 August 2006	37–38
ICSID, <i>LG&E Energy Corp. LG&E Capital corp. LG&E International, Inc. v Argentine Republic, Decision on Liability</i> , ICSID case no. ARB/02/1, 3 October 2006.	108–110, 116
ICSID, <i>Methanex. Biwater Gauff (Tanzania) Limited v United Republic of Tanzania, Procedural Order No. 5</i> , ICSID case no. ARB/05/22, 2 February 2007	64–66
ICSID, <i>Enron Corporation Ponderosa Assets, L.P. v the Argentine Republic, Award</i> , ICSID case no. ARB/01/3, 22 May 2007	115–116
ICSID, <i>Parkerings-Compagniet AS v Lithuania, Award</i> , ICSID case no. ARB/05/8, 11 September 2007.	103, 105
ICSID, <i>CMS Gas Transmission Company v Argentina, Decision of the Ad Hoc Committee on the Application for Annulment of the Argentine Republic</i> , ICSID case no. ARB/01/8, 25 September 2007	116
ICSID, <i>Sempra Energy International v Argentine Republic, Award</i> , ICSID case no. ARB/02/16, 28 September 2007	115–116
ICSID, <i>Continental Casualty Company v the Argentine Republic, Award</i> , ICSID case no. ARB/03/9, 5 September 2008	116, 158–159
ICSID Additional Facility, <i>Glamis Gold, Ltd. v United States of America, Award</i> , 8 June 2009	112–113, 161
ICSID, <i>Saipem S.P.A. Claimant v the People's Republic of Bangladesh, Award</i> , 30 June 2009	19, 22, 155–156
ICSID, <i>Piero Foresti, Laura De Carli and Others v the Republic of South Africa, Procedural Order</i> , ICSID case no. ARB(AF)/07/1, 25 September 2009	65
ICSID, <i>EDF (Services) Limited v Romania, Award</i> , ICSID case no. ARB/05/13, 8 October 2009.	112
ICSID, <i>Suez, Sociedad General de Aguas de Barcelona S.A., and InterAgua Servicios Integrales del Agua S.A. v the Argentine Republic, Decision on Liability</i> , ICSID case no. ARB/03/17, 30 July 2010.	113
ICSID, <i>Suez, Sociedad General de Aguas de Barcelona, S.A., and Vivendi Universal S.A. v the Argentine Republic, Decision on Liability</i> , ICSID case no. ARB/03/19, 30 July 2010	113

ICSID, <i>Piero Foresti, Laura De Carli and Others v the Republic of South Africa, Award</i> , ICSID case no. ARB(AF)/07/1, 4 August 2010	65
ICSID, <i>Total S.A. v Argentine Republic, Award</i> , ICSID case no. ARB/04/1, 27 December 2010	103
ICSID, <i>Pac Rim Cayman LLC v Republic of El Salvador, Procedural Order No. 8</i> , ICSID case no. ARB/09/12, 23 March 2011	65
ICSID, <i>Pac Rim Cayman LLC v Republic of El Salvador, Decision on Jurisdiction</i> , ICSID case no. ARB/09/12, 1 June 2012	65
ICSID, <i>Von Pezold/Border Timbers v Republic of Zimbabwe, Procedural Order No. 2</i> , ICSID case no. ARB/10/15 and ARB/10/25, 26 June 2012	65–66
ICSID, <i>Occidental Petroleum Corporation, Occidental Exploration and Production Company v the Republic of Ecuador, Award</i> , ICSID case no. ARB/06/11, 5 October 2012	113–114

INTERNATIONAL COURT OF JUSTICE

ICJ, <i>Corfu Channel case (United Kingdom v Republic of Albania), Judgment</i> , 9 April 1949, <i>ICJ Reports</i> 1949, p 4	33, 84
ICJ, <i>Reservations to the Convention on Genocide, Advisory Opinion</i> , 28 May 1951, <i>ICJ Reports</i> 1951, p 15	25, 160
ICJ, <i>Case of the monetary gold removed from Rome in 1943 (Preliminary Question), Judgment</i> , 15 June 1954, <i>ICJ Reports</i> 1954, p 19	36, 53, 154
ICJ, <i>South West Africa, Second Phase, Judgment</i> , 18 July 1966, <i>ICJ Reports</i> 1966, p 6	40
ICJ, <i>Barcelona Traction, Light and Power Company, Limited, Judgment</i> , 5 February 1970, <i>ICJ Reports</i> 1970, p 3	36, 40–41, 131
ICJ, <i>Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment</i> , 21 March 1984, <i>ICJ Reports</i> 1984, p 3	60
ICJ, <i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Judgment on the merits</i> , 27 June 1986, <i>ICJ Reports</i> 1986, p 14	49
ICJ, <i>Certain Phosphate Lands in Nauru (Nauru v Australia), Preliminary Objections, Judgment</i> , 26 June 1992, <i>ICJ Reports</i> 1992, p 240	19, 36, 53, 154
ICJ, <i>Case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment</i> 3 February 1994, <i>ICJ Reports</i> 1994, p 6	162
ICJ, <i>East Timor (Portugal v Australia), Judgment</i> , 30 June 1995, <i>ICJ Reports</i> 1995, p 90	36–37, 132
ICJ, <i>Case of Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion</i> , 8 July 1996, <i>ICJ Reports</i> 1996, p 226	25, 61, 132, 138, 160
ICJ, <i>Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment</i> , 25 September 1997, <i>ICJ Reports</i> 1997, p 7	49, 61, 82–83, 131–133, 135, 159–160
ICJ, <i>Fisheries Jurisdiction (Spain v Canada), Jurisdiction, Judgment</i> , 4 December 1998, <i>ICJ Reports</i> 1998, p 432	35, 138–139
ICJ, <i>LaGrand (Germany v United States of America), Judgment</i> , 27 June 2001, <i>ICJ Reports</i> 2001, p 466	72
ICJ, <i>Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda), Provisional Measures, Order</i> , 10 July 2002, <i>ICJ Reports</i> 2002, p 219	72–73, 131

ICJ, <i>Oil Platforms (Islamic Republic of Iran v United States of America)</i> , <i>Judgment</i> , 6 November 2003, ICJ Reports 2003, p 16	61, 83–85, 153, 163
ICJ, <i>Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion</i> , 9 July 2004, ICJ Reports 2004, p 136	132
ICJ, <i>Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)</i> , <i>Judgment</i> , 19 December 2005, ICJ Reports 2005, p 168	19, 34, 36–37, 41, 53, 154
ICJ, <i>Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda)</i> , <i>Jurisdiction and Admissibility, Judgment</i> , 3 February 2006, ICJ Reports 2006, p 6.	33–35, 37, 171
ICJ, <i>Pulp Mills on the River Uruguay (Argentina v Uruguay)</i> , <i>Provisional Measures Order</i> , 13 July 2006, ICJ Reports 2006, p 113.	72
ICJ, <i>Pulp Mills on the River Uruguay (Argentina v Uruguay)</i> , <i>Judgment</i> , 20 April 2010, ICJ Reports 2010, p 14	50, 76, 134–135, 163
ICJ, <i>Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Declaration of Judge Simma</i> , 22 July 2010, ICJ Reports 2010, p 403	134, 153
ICJ, <i>Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v Thailand)</i> , <i>Provisional Measures</i> , 18 July 2011, ICJ Reports 2011, p 537.	73
ICJ, <i>Jurisdictional Immunities of the State (Germany v Italy; Greece Intervening)</i> , <i>Judgment</i> , 3 February 2012, ICJ Reports 2012, p 99	132
ICJ, <i>Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)</i> , <i>Judgment</i> , 20 July 2012, ICJ Reports 2012, p 422.	41–42
ICJ, <i>Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)</i> , <i>Judgment</i> , 31 March 2014	136–137

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

ICTY, <i>Prosecutor v Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction</i> , 2 October 1995, IT-94-1	13
--	----

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ITLOS, <i>The M/V 'Saiga' Case, Prompt Release</i> , 4 December 1997, Case No. 1	43
ITLOS, <i>The M/V 'Saiga' (No. 2) Case, Judgment</i> , 1 July 1999, Case No. 2.	43, 138
ITLOS, <i>Southern Bluefin Tuna Case (New Zealand v Japan; Australia v Japan)</i> , <i>Provisional Measures</i> , 27 August 1999, Case Nos 3 & 4	50–52, 74–77, 79, 138
ITLOS, <i>Southern Bluefin Tuna Case (Australia and New Zealand v Japan)</i> , <i>Award on Jurisdiction and Admissibility</i> , 4 August 2000.	75–76
ITLOS, <i>The MOX Plant Case (Ireland v United Kingdom)</i> , <i>Provisional Measures</i> , 3 December 2001, Case No. 10.	52–53, 74–78
ITLOS, <i>The 'Volga' Case (Russian Federation v Australia)</i> , <i>Prompt Release</i> , 23 December 2002, Case No. 11	62, 139–140

ITLOS, *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore)*, Provisional Measures, 8 October 2003, Case No. 12 77–79

ITLOS, *M/V 'Louisa' Case (Saint Vincent and the Grenadines v Kingdom of Spain)*, Provisional Measures, 23 December 2010, Case No. 18 78

ITLOS Seabed Disputes Chamber, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion, 1 February 2011, Case No. 17 62–63, 76, 153, 163

ITLOS, *The Arctic Sunrise Case (Kingdom of the Netherlands v Russian Federation)*, Provisional Measures, 22 November 2013, Case No. 22 63

PERMANENT COURT OF INTERNATIONAL JUSTICE

PCIJ, *The Case of the S.S. Lotus (France v Turkey)*, 7 September 1927, *Publications of the PCIJ*, Series A, No. 10 3

UNCITRAL

UNCITRAL, *Pope & Talbot v Canada*, Award, 10 April 2001 104–105

UNCITRAL, *S.D. Myers, Inc. v Government of Canada*, Partial Award, 13 November 2000 103–104

UNCITRAL, *Methanex Corporation v United States of America*, Decision on Petitions from Third Persons to Intervene as 'Amici Curiae', 15 January 2001 64

UNCITRAL, *Occidental Exploration and Production Company v the Republic of Ecuador*, Award, 1 July 2004 103

UNCITRAL, *GAMI Investments, Inc. v United Mexican States*, Award, 15 November 2004 105

UNCITRAL, *Methanex Corporation v United States of America*, Award, 9 August 2005 103, 107–108

WORLD TRADE ORGANIZATION

WTO Panel Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/R, adopted 29 January 1996 90

WTO Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 29 April 1996 67, 89–90, 95

WTO Appellate Body Report, *United States – Measure affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 25 April 1997 54

WTO Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 9 September 1997 44

WTO Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R; WT/DS48/AB/R, adopted 16 January 1998 50, 54, 97–98, 137

WTO Panel Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/R, adopted 15 May 1998	68
WTO Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R, adopted 12 October 1998	55, 67–68, 89, 91, 95–96, 157–158, 164
WTO Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 2 August 1999	54
WTO Panel Report, <i>United States – Sections 301–310 of the Trade Act of 1974</i> , WT/DS152/R, adopted 22 December 1999	44
WTO Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/169/AB/R, adopted 11 December 2000	92–93
WTO Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-containing Products</i> , WT/DS135/AB/R, adopted 12 March 2001	55, 68, 86–88, 90, 92–93, 98, 165
WTO Panel Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i> , WT/DS257/R, adopted 29 August 2003	68
WTO Appellate Body Report, <i>Japan – Measures affecting the Importation of Apples</i> , WT/DS245/AB/R, adopted 26 November 2003	99
WTO Appellate Body Report, <i>United States – Measures affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R, adopted 7 April 2005	91, 94
WTO Appellate Body Report, <i>Dominican Republic – Measures affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/AB/R, adopted 25 April 2005	88, 93
WTO Panel Report, <i>European Communities – Measures affecting the Approval and Marketing of Biotech Products</i> , WT/DS291/R; WT/DS292/R; WT/DS293/R, adopted 29 September 2006	88, 99
WTO Appellate Body Report, <i>Brazil – Measures affecting Imports of Retreaded Tyres</i> , WT/DS332/AB/R, adopted 3 December 2007	93, 96
WTO Appellate Body Report, <i>United States – Continued Suspension of Obligations in the EC – Hormones Dispute</i> , WT/DS320/AB/R, adopted 16 October 2008	99
WTO Appellate Body Report, <i>China – Measures affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/AB/R, adopted 21 December 2009	94
WTO Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/AB/R, adopted 19 May 2011	99
WTO Panel Report, <i>China – Measures related to the Exportation of Various Raw Materials</i> , WT/DS394/R; WT/DS395/R; WT/DS398/R, adopted 5 July 2011	92–93, 95
WTO Panel Report, <i>United States – Measures concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/R, adopted 15 September 2011	100
WTO Appellate Body Report, <i>United States – Measures Affecting the Production and Sale of Clove Cigarettes</i> , WT/DS406/AB/R, adopted 4 April 2012	101

WTO Appellate Body Report, *United States – Measures concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, adopted 16 May 2012. 100–101, 163

WTO Panel Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R, adopted 25 November 2013 93–94

WTO Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R, adopted 22 May 2014. 88, 91, 94–97, 101

LIST OF ABBREVIATIONS

AB	Appellate Body of the World Trade Organization
ACHPR	African Commission on Human and Peoples' Rights
ACtHR	African Court on Human and Peoples' Rights
BIT	Bilateral Investment Treaty
CITES	Convention on International Trade in Endangered Species
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEZ	exclusive economic zone
EIA	environmental impact assessment
FET	Fair and Equitable Treatment
GATS	WTO General Agreement on Trade in Services
GATT	WTO General Agreement on Tariffs and Trade
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICRW	International Convention for the Regulation of Whaling
ICSID	International Centre for Settlement of Investment Disputes
ICTY	International Criminal Tribunal for the Former Yugoslavia
IEL	International Environmental Law
IIA	International Investment Agreement
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
IUU	illegal, unregulated and unreported
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NGO	non-governmental organisation
NT	National Treatment
PPM	Process and Production Method
SPS	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade (WTO Agreement)

TRIPS	Trade Related Aspects of Intellectual Property Rights (WTO Agreement)
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization