

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

---

## **Enforcing Obligations *Erga Omnes* in International Law**

The concept of obligations *erga omnes* – obligations owed to the international community as a whole – has fascinated international lawyers for decades, yet its precise implications remain unclear. This book assesses how this concept affects the enforcement of international law. It shows that all States are entitled to invoke obligations *erga omnes* in proceedings before the International Court of Justice, and to take countermeasures in response to serious *erga omnes* breaches. In addition, it suggests ways of identifying obligations that qualify as *erga omnes*. In order to sustain these results, the book conducts a thorough examination of international practice and jurisprudence as well as the recent work of the UN International Law Commission in the field of State responsibility. By so doing, it demonstrates that the *erga omnes* concept is now solidly grounded in modern international law, and clarifies one of the central aspects of the international regime of law enforcement.

CHRISTIAN J. TAMS is a Lecturer at the Walther Schücking Institute for International Law at the University of Kiel, Germany.

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## CAMBRIDGE STUDIES IN INTERNATIONAL AND COMPARATIVE LAW

Established in 1946, this series produces high quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal subdisciplines, developments since 1946 confirm their interrelation.

Comparative law is increasingly used as a tool in the making of law at national, regional, and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonisation of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to 'foreign affairs', and to the implementation of international norms, are a focus of attention.

The Board welcomes works of a theoretical or interdisciplinary character, and those focusing on the new approaches to international or comparative law or conflicts of law. Studies of particular institutions or problems are equally welcome, as are translations of the best work published in other languages.

*General Editors*

James Crawford SC FBA

*Whewell Professor of International Law, Faculty of Law, and  
Director, Lauterpacht Research Centre for International Law,  
University of Cambridge*

John S. Bell FBA

*Professor of Law, Faculty of Law, University of Cambridge*

*Editorial Board*Professor Hilary Charlesworth *University of Adelaide*Professor Lori Damrosch *Columbia University Law School*Professor John Dugard *University of Leiden*Professor Mary-Ann Glendon *Harvard Law School*Professor Christopher Greenwood *London School of Economics*Professor David Johnston *University of Edinburgh*Professor Hein Kötz *Max-Planck-Institut, Hamburg*Professor Donald McRae *University of Ottawa*Professor Onuma Yasuaki *University of Tokyo*Professor Reinhard Zimmermann *Universität Regensburg**Advisory Committee*

Professor D. W. Bowett QC

Judge Rosalyn Higgins QC

Professor J. A. Jolowicz QC

Professor Sir Elihu Lauterpacht CBE QC

Professor Kurt Lipstein

Judge Stephen Schewebel

*A list of books in the series can be found at the end of this volume.*

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

# Enforcing Obligations *Erga Omnes* in International Law

---

Christian J. Tams

*Walther Schücking Institute*

*University of Kiel (Germany)*



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press  
0521856671 - Enforcing Obligations Erga Omnes in International Law  
Christian J. Tams  
Frontmatter  
[More information](#)

---

CAMBRIDGE UNIVERSITY PRESS  
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

CAMBRIDGE UNIVERSITY PRESS  
The Edinburgh Building, Cambridge CB2 2RU, UK

Published in the United States of America by Cambridge University Press,  
New York

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9780521856676](http://www.cambridge.org/9780521856676)

© Christian J. Tams 2005

This publication is in copyright. Subject to statutory exception  
and to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without  
the written permission of Cambridge University Press.

First published 2005

Printed in the United Kingdom at the University Press, Cambridge

*A catalogue record for this book is available from the British Library*

ISBN-13 978-0-521-85667-6 hardback  
ISBN-10 0-521-85667-1 hardback

Cambridge University Press has no responsibility for  
the persistence or accuracy of URLs for external or  
third-party internet websites referred to in this publication,  
and does not guarantee that any content on such  
websites is, or will remain, accurate or appropriate.

# Contents

<i>Foreword</i>	<i>page</i> xiii
<i>Preface</i>	xv
<i>Notes on citation</i>	xvii
<i>Table of cases</i>	xviii
<i>List of abbreviations</i>	xxviii
 Introduction	 1
 <b>Part I Background to the <i>erga omnes</i> concept</b>	 17
1 Clarifications	19
1.1 Countermeasures and ICJ proceedings	19
1.2 The notion of standing	25
1.2.1 Standing as a normative concept	28
1.2.2 Standing as a flexible concept	32
1.2.3 The diversity of rules governing standing	36
1.2.4 Interim conclusions	40
1.3 Standing to enforce individual legal positions	40
1.3.1 The basis of the distinction	41
1.3.2 Categories of individual legal positions	42
1.3.2.a Bilateral legal rules and similar situations	42
1.3.2.b Special injury	44
1.4 Concluding observations	46
2 Traditional approaches to standing	48
2.1 Restrictive tendencies	52
2.1.1 A structural analysis of multilateral obligations	53
2.1.1.a Three categories of obligations	54
2.1.1.b The legal regime	58

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## viii CONTENTS

2.1.2 A restrictive interpretation of treaty provisions: the <i>South West Africa</i> case	63
2.2 Expansive tendencies	69
2.2.1 Treaty-based rules of standing	70
2.2.1.a Unequivocal treaty clauses	71
2.2.1.b Equivocal clauses broadly interpreted: the <i>Wimbledon</i> case	76
2.2.2 The position in the absence of special treaty regulations	80
2.2.2.a Interdependent obligations	80
2.2.2.b Status treaties	80
Background	81
Standing to react against breaches	83
2.2.2.c The duty to comply with judgments of the International Court of Justice	87
2.2.2.d Basic humanitarian standards	89
2.3 Concluding observations	94
<b>Part II Legal issues raised by the <i>erga omnes</i> concept</b>	97
3 Distinguishing types of <i>erga omnes</i> effects	99
3.1 Terminological imprecision	101
3.2 The traditional meaning of the term	103
3.3 'Other' <i>erga omnes</i> effects in the ICJ's jurisprudence	106
3.3.1 The traditional meaning	107
3.3.2 The territorial restriction of obligations	110
3.3.3 The descriptive function	112
3.4 Concluding observations	115
4 Identifying obligations <i>erga omnes</i>	117
4.1 The question of sources	120
4.1.1 The Court's jurisprudence	121
4.1.2 Further considerations	123
4.2 Distinguishing obligations <i>erga omnes</i> from other customary obligations	128
4.2.1 The structural approach	130
4.2.1.a The strong version	131
4.2.1.b The moderate version	133
4.2.1.c Interim conclusion	135
4.2.2 The material approach	136

	CONTENTS	ix
4.2.2.a	The point of reference	136
4.2.2.b	The required threshold of importance	138
	Obligations <i>erga omnes</i> and norms of <i>jus cogens</i>	139
	The merits of a comparative approach	141
	Implications for the <i>erga omnes</i> concept	146
	Interim conclusion	151
	Beyond <i>jus cogens</i> : obligation <i>erga omnes</i> not deriving from peremptory norms	151
	Dispositive obligations <i>erga omnes</i> ?	152
	Relevant factors	153
4.3	Concluding observations	156
5	Standing to institute ICJ proceedings	158
5.1	The <i>Barcelona Traction</i> dictum	162
5.2	Possible counter-arguments	165
5.2.1	Isolated pronouncements?	165
5.2.2	An <i>obiter dictum</i> lacking legal relevance?	167
5.2.3	The international community as the exclusive beneficiary?	173
5.2.4	Contradictions within the judgment?	176
5.2.5	Inconclusive jurisprudence since 1970?	179
5.2.5.a	The <i>Nuclear Tests</i> cases	180
5.2.5.b	The <i>East Timor</i> case	182
	Obligations <i>erga omnes</i> and the indispensable third-party rule	183
	The issue of standing	185
5.2.5.c	The <i>Genocide</i> case	187
5.2.5.d	The <i>Nicaragua</i> case	187
5.2.5.e	The <i>Gabčíkovo</i> case	190
5.2.5.f	Summary	192
5.2.6	A restrictive, contextual interpretation?	193
5.3	Concluding observations	196
6	Standing to take countermeasures	198
6.1	The Court's jurisprudence	201
6.1.1	The <i>Barcelona Traction</i> case	202
6.1.2	The <i>Namibia</i> and <i>Hostages</i> cases	204
6.1.3	The <i>Nicaragua</i> case	205
6.1.4	Interim conclusions	207

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## X

## CONTENTS

6.2 International practice	207
6.2.1 Specific instances of state practice	208
6.2.1.a Actual violations	209
Western countries – Uganda (1971–1978)	210
European countries – Liberia (1980)	211
G77 and socialist countries – colonial regimes (1970s–1990s)	211
Western countries – Poland (1981)	213
United States – Soviet Union (1981)	214
Western countries – Argentina (1982)	215
Western countries – Soviet Union (1983)	217
Western countries – South Africa (1985–1986)	217
Various countries – Iraq (1990)	219
European and Commonwealth countries – Nigeria (1995)	220
African States – Burundi (1996)	221
European countries – Yugoslavia (1998)	223
Various countries – Zimbabwe (2002–2003)	224
6.2.1.b Statements implying a right to take countermeasures	225
G7 declarations on aircraft hijacking (1978/1981)	225
Western countries – Iran (1979–1980)	226
6.2.1.c Actual non-compliance justified differently	227
Netherlands–Surinam (1982)	227
European countries–Yugoslavia (1991)	228
6.2.1.d An assessment	228
A preliminary evaluation	230
Counter-arguments examined	231
The relevance of the <i>erga omnes</i> concept	232
The selectivity of practice	234
The dominance of western practice	235
A lack of <i>opinio juris</i>	237
The requirement of collective action	240
Interim conclusion	241



Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## CONTENTS xi

6.2.2 Governments' comments on the ILC's work on State responsibility	241
6.2.2.a Comments made during the first reading	242
6.2.2.b Comments made during the second reading	245
6.2.2.c Interim conclusions	248
6.3 Concluding observations	249
7 <i>Erga omnes</i> enforcement rights and competing enforcement mechanisms	252
7.1 Identifying areas of conflict	256
7.1.1 Overlapping legal rules	256
7.1.2 Different enforcement rights	258
7.1.2.a Treaty-based systems of enforcement: a survey	259
7.1.2.b Specific types of conflict	261
7.2 Addressing conflicts	263
7.2.1 Contracting out of decentralised enforcement by States	263
7.2.1.a Direct recourse by individuals	263
7.2.1.b Institutional enforcement	264
7.2.1.c Summary	268
7.2.2 Contracting out of specific forms of decentralised enforcement	268
7.2.2.a General considerations	268
The exclusivity thesis	269
Alleged support in international jurisprudence	269
Its rejection	271
Guidelines for the analysis of specific conflicts	276
Explicit conflict rules	276
Effectivity	277
Formal indications of effectivity	278
The character of the breach	278
Summary	279
7.2.2.b Contracting out of ICJ proceedings	279
Non-exclusivity clauses	280
Implied non-exclusivity	282
Flexible exclusivity clauses	283
Interim conclusion	286

Cambridge University Press  
0521856671 - Enforcing Obligations Erga Omnes in International Law  
Christian J. Tams  
Frontmatter  
[More information](#)

xii      CONTENTS

7.2.2.c Contracting out of countermeasures	286
No inter-State procedures available	288
Inter-State procedures available	289
Non-judicial procedures	289
Judicial procedures	291
Interim conclusion	299
7.2.3 Special factors restricting treaty enforcement	300
7.2.3.a Article 51 UNC	300
7.2.3.b The effects of reservations	302
7.3 Concluding observations	304
Conclusion	306
<i>Bibliography</i>	312
<i>Index</i>	351

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## Foreword

The subject of obligations *erga omnes* – obligations to the international community as a whole – their character and possible consequences has been with us ever since the stray dictum of the International Court in the *Barcelona Traction* case in 1970. The shares in that Canadian company may have become worthless, but huge resources have been put into explaining and accounting for this particular product of the company's failure. And as so much has been said, so opinions have differed. The phrase was used incidentally only to mark out the terrain of diplomatic protection as an inherently bilateral sphere of interstate relations. It was a pretext for an apology for the Court's earlier decision in *Second South West Africa* – a disaster from a public relations point of view for the Court and a turning point in its relations with the Third World – in short it was law as politics. It showed the Court confronting a new structure of international law, where what matters are not bilateral but multilateral relations and multilateral norms – self-determination, non-discrimination, the prohibition of aggression, fundamental human rights. It showed the Court evading the challenge presented by the concept of peremptory norms of general international law, adopted over the dissent of France at the Vienna Conference in 1969. Where the States (or most of them) would boldly go with a fundamental assertion of core substantive values – or at least of the *possibility* of such values – the Court would timorously follow, reducing those values to a procedural concept of standing to sue. And so on.

The conceptual split which the two Latin phrases – *jus cogens* and *erga omnes* – caused in the academy has still not been fully traced. Could they not be different aspects of the same underlying concept – fundamental values of juridical interest to all and therefore not waivable without general assent? The International Law Commission in its Articles on

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## xiv FOREWORD

Responsibility of States for Internationally Wrongful Acts used both terms (in Articles 40 and 48) without implying that there is any radical distinction between them. It also used the notion of a group of States (Article 48(1)(a)), immediately contrasted with the international community as a whole – not, be it noted, the international community of States. Historically we have had a world in which there were hundreds of States and State-like entities – countless hundreds in 1648 – and a world in which there were around 60, at the numerical low point of 1945. Currently in the oscillation of numbers of States we seem to be stuck just short of 200 – but such numbers are evidently arbitrary. Perhaps all the States there are now are simply a ‘group of States’, the group of entities that happen to be States at this time, a contingency not a category.

There is much here that needs careful, painstaking and dispassionate analysis, avoiding dogma and the a priori. Christian Tams provides all this. Of course his is not the only work in the field but it may be judged by some distance the best, and not merely because it has the temporary advantage of being the most recent. It is well researched, historically informed, well-written and balanced in its judgements. It does not oversell the subject but deals with it lucidly and thoroughly, convincing the reader where more strident works on the subject might not. It is a significant contribution, which I believe will help mark out Christian Tams as one of the very best international lawyers of the coming generation.

James Crawford

*Lauterpacht Research Centre for International Law*

16 July 2004

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## Preface

The concept of obligations *erga omnes* has fascinated international lawyers for some time. It has raised high hopes about the protection of fundamental interests shared by the international community as a whole, yet its precise implications remain, at best, uncertain. My own interest in the concept goes back to a seminar, held at the Christian-Albrechts University of Kiel (Germany) in early 1998, which clearly exposed both aspects – high hopes and lack of certainty. Internships at the United Nations International Law Commission, during the final stages of its work on State responsibility (1999–2001), made me realise that obligations *erga omnes* not only present an intellectual challenge, but are eminently relevant to States.

This book assesses to what extent the fascinating, yet elusive, concept of obligations *erga omnes* has had an impact on the rules of modern international law. It is based on research undertaken at the Universities of Cambridge and Kiel. It was submitted as a PhD thesis to the University of Cambridge in late 2003, and was subsequently awarded the Yorke Prize 2005. My research in Cambridge was supervised by Professor James Crawford, to whom I am much indebted. As the International Law Commission's Special Rapporteur on the topic of State responsibility, he was in a unique position to provide expert guidance. His comments and advice proved most helpful. At the same time, I have greatly appreciated his tolerance of criticism of the Commission's work.

In addition, a great number of people have helped me develop my thoughts on the topic. They include Judge Bruno Simma (The Hague); Professors Jost Delbrück (Kiel), Rainer Hofmann (Frankfurt), and Colin Wabrick (Durham); Chester Brown and Ben Olbourne (both at London); Martin Mennecke (Copenhagen); Dr. Andreas Paulus (Munich); as well as Dr. Guiguelmo Verdirame, Dr. Matthew Conaglen, and Dr. Roger O'Keefe

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

xvi

PREFACE

(all at Cambridge). Between 2000 and 2003, while I was a member of Gonville & Caius College, Cambridge, my research was generously supported by the College's W. M. Tapp Fund. I am grateful to the Trustees of the Fund, in particular to Dr. Pippa Rogerson, as well as to the following bodies: the Whewell Fund; the Cambridge European Trust; Studienstiftung des deutschen Volkes; Evangelisches Studienwerk Villigst; Deutscher Akademischer Austauschdienst. Thanks are also due to Cambridge University Press, in particular to Finola O'Sullivan, Annie Lovett, and Jan Miles-Kingston, for all their help in turning this manuscript into book form.

Finally, my deepest thanks are owed to my parents, Christa and Dr Gerhard Tams, and to Ina Wiesner, for all their support and encouragement. This work is dedicated to them.

## Notes on citation

Citations in the book follow a modified social sciences (Harvard) style, with abbreviated references in the footnotes and full references in the bibliography.

A full bibliographical reference such as

Delbrück, Jost, 'Laws in the Public Interest – Some Observations on the Foundations and Identification of erga omnes Norms in International Law', in: *Liber Amicorum Günther Jaenicke – Zum 85. Geburtstag* (Götz *et al.* eds., 1998), 17

therefore is given in the footnotes as

Delbrück (1998), 17

Where necessary, different entries published in the same year are distinguished by 'a' or 'b', i.e. Delbrück (1999a), Delbrück (1999b).

Documents issued by the International Law Commission are not included in the general bibliography, but listed separately.

Cases cited in the footnotes are listed in the Table of cases, which also gives shorthand titles used in the text.

Websites were checked on 20 December 2004.

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## Table of cases

### 1. International Court of Justice

- Aegan Shelf case (Greece/Turkey)* (interim protection), ICJ Reports 1976, 3 171
- Ahmadou Sadio Diallo (Guinea/Congo)*, Application of 28 December 1998, available at: <http://www.icj-cij.org/icjwww/idecisions.htm> 282
- Ambatielos case (Greece/United Kingdom)* (preliminary objections), ICJ Reports 1952, 28 24
- Anglo-Iranian Oil Co. case (United Kingdom/Iran)* (preliminary objections), ICJ Reports 1952, 93 265
- Anglo-Norwegian Fisheries case (United Kingdom/Norway)*, ICJ Reports 1951, 116 237, 238
- Arbitral Award case (Nicaragua/Honduras)*, ICJ Reports 1960, 192 43
- Armed Activities case (DRC/Rwanda) (new application)* (provisional measures), ICJ Reports 2002, 299 97, 117, 160, 282
- Armed Activities case (DRC/Uganda) case* (provisional measures), ICJ Reports 2000, 111 23, 282, 303
- Arrest Warrant case (DRC/Belgium)*, Judgment of 14 February 2002, ICJ Reports 2002, 3 143
- Asylum case (Columbia/Peru)*, ICJ Reports 1951, 266 239
- Barcelona Traction case (Belgium/Spain)* (preliminary objections), ICJ Reports 1964, 6 1, 23, 39
- Barcelona Traction case (Belgium/Spain)* (merits) ICJ Reports 1970, 3 1–3, 4, 11, 14, 15, 29, 31, 33, 34, 39, 41, 45, 46, 52, 97–98, 102–103, 105–108, 112, 113, 117, 118, 120, 122, 123, 128, 135, 140, 162–165, 169, 171, 176–179, 194, 197, 202–204, 238, 269, 270–272, 307, 308, 309–310
- Breard case (Paraguay/United States)* (provisional measures), ICJ Reports 1998, 248 45



Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

- Certain Expenses case* (advisory opinion), ICJ Reports 1962, 151  
171, 265
- Certain Properties case*, (Liechtenstein/Germany), Application of 1 June 2001 and Judgment of 10 February 2005, available at: <http://www.icj-cij.org/icjwww/idecisions.htm> 283, 286
- Continental Shelf (Libya/Malta) case*, ICJ Reports 1984, 3 88
- Corfu Channel case (United Kingdom/Albania)*, ICJ Reports 1949, 4 10, 44, 87, 93, 118, 293
- East Timor case (Portugal/Australia)*, ICJ Reports 1995, 90 12, 29, 31, 33, 97, 118, 123, 153, 159, 160, 166, 166–167, 168, 174, 176, 179, 180, 182–186, 192, 202, 230, 266, 281, 301, 311
- ELSI case (United States/Italy)*, ICJ Reports 1989, 15 1, 171
- Gabcikovo case (Hungary/Slovakia)*, ICJ Reports 1997, 7 12, 19, 20, 24, 27, 97, 118, 137, 167, 187, 190–192, 301
- Genocide case (Bosnia/FRY)* (preliminary objections), ICJ Reports 1996, 595 12, 75, 110–112, 135, 167, 174, 187, 192, 266
- Genocide case (Bosnia/FRY)* (provisional measures, second request), ICJ Reports 1993, 325 11, 135, 266
- Genocide Convention* (advisory opinion), ICJ Reports 1951, 15 2, 50, 53, 97, 303
- Gulf of Maine case (Canada/United States)*, ICJ Reports 1984, 246 238
- Hostages case (United States/Iran)* (provisional measures), ICJ Reports 1979, 15 21, 45, 204–205, 265, 277, 297
- Hostages case (United States/Iran)* (merits), ICJ Reports 1980, 3 21, 45, 153, 265
- ICAO case (India/Pakistan)*, ICJ Reports 1972, 46 21
- Interhandel case (Switzerland/United States)* (preliminary objections), ICJ Reports 1959, 6 24
- International Status of South West Africa* (advisory opinion), ICJ Reports 1950, 128 66, 82
- Israeli Wall case* (advisory opinion), 43 ILM (2004), 1009; available at: <http://www.icj-cij.org/icjwww/idecisions.htm> 11, 12, 97, 118, 123, 145, 166, 184
- Kosovo case (Yugoslavia/Belgium)* (provisional measures), ICJ Reports 1999, 124 295

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## XX TABLE OF CASES

*Kosovo case (Yugoslavia/Netherlands)* (provisional measures), ICJ Reports 1999, 542 23, 295

*Kosovo case (Yugoslavia/Spain)* (provisional measures), ICJ Reports 1999, 761 295, 303

*Kosovo case (Yugoslavia/United States)* (provisional measures), ICJ Reports 1999, 916 295, 303

*LaGrand case*, ICJ Reports 2001, 514 292

*Land and Maritime Boundary (Cameroon/Nigeria)* (preliminary objections), ICJ Reports 1998, 275 24

*Lockerbie cases (Libya/United Kingdom, Libya/United States)* (provisional measures), ICJ Reports 1992, 3 and 114 266

*Lockerbie cases (Libya/United Kingdom, Libya/United States)* (preliminary objections), ICJ Reports 1998, 9 and 115 266

*Monetary Gold case (Italy/United Kingdom, France, United States)*, ICJ Reports 1954, 19 23, 87–88, 183, 184, 186

*Namibia case* (advisory opinion), ICJ Reports 1971, 16 97, 107–109, 204

*Nauru case (Nauru/Australia)*, ICJ Reports 1992, 240 23, 183

*Nicaragua case (Nicaragua/United States)* (provisional measures), ICJ Reports 1984, 185 15, 23, 118, 196, 222, 293

*Nicaragua case (Nicaragua/United States)* (jurisdiction and admissibility), ICJ Reports 1984, 392 112, 114–115, 167, 222, 265, 266, 293

*Nicaragua case* (merits), ICJ Reports 1986, 14 93, 97, 171, 179, 187, 187–190, 192, 205–207, 209, 212, 222, 257, 269–270, 293, 300, 301, 303

*North Sea Continental Shelf cases (Germany/ Denmark, Germany/Netherlands)*, ICJ Reports 1969, 3 36, 143, 154, 207, 235, 238

*Northern Cameroons case (Cameroon/United Kingdom)*, ICJ Reports 1963, 15 23

*Nottebohm case (Liechtenstein/Guatemala)*, ICJ Reports 1955, 4 24, 169

*Nuclear Tests cases (Australia/France, New Zealand/France)* (provisional measures), ICJ Reports 1973, 99 and 135 46, 49, 51, 97, 155, 168, 176

*Nuclear Tests cases (Australia/France, New Zealand/France)* (merits), ICJ Reports 1974, 253 and 474 23, 31, 43, 46, 49, 51, 97, 109, 112–114, 155, 159, 161, 168, 176, 177, 178, 180–182, 192, 202

*Nuclear Tests case (New Zealand's Request for an Examination of the Situation)*, ICJ Reports 1995, 288 46, 49, 97, 155, 167, 168, 176

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

*Nuclear Weapons* (advisory opinion requested by the UN General Assembly), ICJ Reports 1996, 226 107, 109–110, 202

*Oil Platforms case (Iran/United States)* (preliminary objections), ICJ Reports 1996, 803 36, 222, 257

*Oil Platforms case (Iran/United States)* (merits), ICJ Reports 2003, 161 170, 205, 222

*Pakistani Prisoners of War case (Pakistan/India)* (provisional measures), ICJ Reports 1973, 328 294

*Reparations for Injuries case* (advisory opinion), ICJ Reports 1949, 174 82, 83, 105, 175

*Rights of Passage case (Portugal/India)*, ICJ Reports 1960, 39 42, 43

*South West Africa case (Ethiopia/South Africa, Liberia/South Africa)* (preliminary objections), ICJ Reports 1962, 319 23, 24, 26, 28, 30, 32, 39, 51, 63–69, 66, 73, 76, 164, 264

*South West Africa case (Ethiopia/South Africa, Liberia/South Africa)* (merits), ICJ Reports 1966, 6 15, 24, 29, 30–31, 37, 39, 53, 71, 72, 73, 74, 76, 94–95, 105, 124, 161, 163, 164, 175, 193–194, 196, 203, 307, 308

*Territorial Dispute (Libya/Chad)*, ICJ Reports 1996, 6 24

## 2. Permanent Court of International Justice

*Chorzów Factory case* (interpretation of Judgments No. 7 and 8), PCIJ Reports, Ser. A, No. 13 (1928) 170

*Chorzów Factory case* (jurisdiction), PCIJ Reports, Ser. A, No. 9 (1927) 23, 278

*Chorzów Factory case* (merits), PCIJ Reports, Ser. A, No. 17 (1928) 23, 172

*Eastern Greenland case*, PCIJ Reports, Ser. A/B, No. 53 (1933) 43, 114

*Free Zones of Upper Savoy and the District of Gex*, PCIJ Reports, Ser. A/B, No. 46 (1932) 44, 104, 172–173

*German Interests in Polish Upper Silesia*, PCIJ Reports, Ser. A, No. 6 (1925) 23

*Lotus case*, PCIJ Reports, Ser. A, No. 10 (1927) 173

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## xxii TABLE OF CASES

*Mavrommatis Jerusalem Concessions (jurisdiction) case*, PCIJ Reports, Ser. A, No. 5 (1925) 66*Mavrommatis Palestine Concessions*, PCIJ Reports, Ser. A, No. 2 (1924) 21, 24*Memel Statute Interpretation case* (merits), PCIJ Reports, Ser. A/B, No. 49 (1932) 75–76, 195*Memel Statute Interpretation case* (preliminary objections), PCIJ Reports, Ser. A/B, No. 47 (1932) 75–76, 308*Minority Schools in Upper Silesia*, PCIJ Reports, Ser. A, No. 15 (1928) 76*Socobel case*, PCIJ Reports, Ser. A/B, No. 78 (1939) 44*Wimbledon case*, PCIJ Reports, Ser. A, No. 1 (1923) 38, 76–79, 82, 195, 308**3. Arbitral Awards***Air Services case (United States/France)*, 54 ILR 204 19, 20, 271–276, 277, 278, 287*Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary)*, 20 ILR 316 89*Cysne case*, RIAA, Vol. II, 1035 20, 21*Fur Seal Arbitration*, in: Moore, History and Digest of International Arbitration, Vol. I (1898), 755 9*Guinea-Bissau v. Senegal*, 83 ILR 1 143*Island of Palmas case*, RIAA, Vol. II, 840 104*Kuwait v. Aminoil*, 66 ILR 587 142*Lac Lanoux case*, RIAA, Vol. XII, 314 31*Lena Goldfield case*, 36 Cornell Law Quarterly (1950–1951), 42 44*Monetary Gold* (arbitration), RIAA, Vol. XII, 13 44, 87*Mox Plant case (Ireland/United Kingdom)* (arbitration), Suspension Order of 24 June 2003, available at: <http://pca-cpa.org/ENGLISH/RPC> 277*Naulilaa case*, RIAA, Vol. II, 1013 20

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)*Socobel v. Greek State*, 18 ILR 3 44*Southern Bluefin Tuna case* (arbitral award), 39 ILM (2000), 1359 253, 256, 277, 279

#### 4. Judgments of the ICTY and ICTR

The relevant decisions are available at: <http://www.un.org/icty/cases/indictindex-e.htm> and <http://www.ictcr.org> respectively*Blaskic*: ICTY, Appeals Chamber, *Prosecutor v. Blaskic*, Case IT-95-14-AR 108bis (Judgment on the Request of the Republic of Croatia for Review of the Decision of the Trial Chamber, 29 October 1997), reproduced in: 110 ILR 607 119, 120, 126, 127*Delalic*: ICTY, Trial Chamber, *Prosecutor v. Delalic*, Case IT-96-21-T (Judgment of 16 November 1998) 145*Furundzija*: ICTY, Trial Chamber, *Prosecutor v. Furundzija*, Case IT-95-17/1-T (Judgment of 10 December 1998) 119, 143, 145, 278, 289, 291*Kambanda*: ICTR, Trial Chamber, *Prosecutor v. Kambanda*, Case ICTR-97-23 (Judgment and Sentence, 4 September 1998) 294*Kunarac*: ICTY, Trial Chamber, *Prosecutor v. Kunarac*, IT-96-23-T (Judgment of 22 February 2001) 145*Kupreskic* (evidence): ICTY, Trial Chamber, *Prosecutor v. Kupreskic et al.*, Case IT-95-16-T (Decision on evidence of the good character of the accused and the defence of *tu quoque*, 17 February 1999) 191*Kupreskic* (judgment): ICTY, Trial Chamber, *Prosecutor v. Kupreskic et al.*, Case IT-95-16 (judgment of 14 January 2000) 145

#### 5. European Court/ Commission of Human Rights

*European Commission of Human Rights**Cyprus v. Turkey case* (admissibility), 39 YbECHR (1996), 54–55, 283, 285*The Greek case* (Denmark, Norway, Sweden and the Netherlands v. Greece) (admissibility), 11 YbECHR (1968), 690 and 730 72, 87*The Greek case* (Denmark, Norway, Sweden and the Netherlands v. Greece) (report) 12 YbECHR (1969) (special issue) 72, 91

xxiv TABLE OF CASES

*Pfunders case* (admissibility), 4 YbECHR (1961), 116 50, 55,  
 72, 91

*Pfunders case* (report), 6 YbECHR (1963), 740 50, 53

*European Court of Human Rights*

*Al-Adsani v. United Kingdom*, (Application No. 35763/97), 34 European  
 Human Rights Reports (2002), 273; also available at: [http://](http://www.echr.coe.int/Eng/judgments.htm)  
[www.echr.coe.int/Eng/judgments.htm](http://www.echr.coe.int/Eng/judgments.htm) 143, 145

*Bankovic and Others v. Belgium and 16 Other Contracting States* (Application No.  
 52207/99); available at: [http://www.echr.coe.int/Eng/](http://www.echr.coe.int/Eng/Judgments.htm)  
[Judgments.htm](http://www.echr.coe.int/Eng/Judgments.htm) 111

*Cruz Varas v. Sweden*, ECHR, Ser. A, No. 201 (1991) 292, 298

*Ireland v. United Kingdom case*, Ser. A, No. 25 (1978) 55, 63

*Mamatkulov and Abdurasulovic v. Turkey* (Applications Nos. 46827/99  
 and 46951/99); available at: [http://www.echr.coe.int/Eng/](http://www.echr.coe.int/Eng/Judgments.htm)  
[Judgments.htm](http://www.echr.coe.int/Eng/Judgments.htm) 292

*Neumeister case*, ECHR, Ser. A, No. 17 (1974) 256

*Papamichalopolous and Others v. Greece* (just satisfaction), ECHR, Ser. A,  
 No. 330B (1995) 292

*Pfeifer and Plankl v. Austria*, ECHR, Ser. A, No. 227 (1992) 298

*Stran Greek Refineries and Stratis Andreadis case* (merits and just  
 satisfaction), ECHR, Ser. A, No. 301B (1994) 292

## 6. GATT/ WTO Reports

*Bananas (Panel Report): EC – Regime for the Importation, Sale and Distribution of  
 Bananas*, WT/DS27/R, 126

*Bananas (Appellate Body Report): EC – Regime for the Importation, Sale and  
 Distribution of Bananas*, WT/DS27/AB/R, 126

*Japan – Leather: Japanese Measures on Imports of Leather*, Panel Report, BISD  
 31S/94, 126

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

*Korea – Dairy: Korea – Definitive Safeguard Measures on Imports of Certain Dairy Products*, WT/DS98/R (Panel), 126

*Oilseeds: EEC – Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins*, GATT Panel Report, BISD 37S/86, 126

*Shrimp/Turtle: United States – Import Prohibition of Certain Shrimp and Shrimp Products* (Appellate Body), WT/DS58/AB/R, 9

*Tuna II: United States – Restrictions on Import of Tuna*, DS29/R (unadopted Panel Report), reproduced in: 33 ILM (1994), 839, 9, 126

*US – Anti-Dumping Act of 1916: United States – Anti-Dumping Act of 1916*, WT/DS136/AB/R (Appellate Body), 254

*US – Hot-Rolled Steel: United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R (Appellate Body), 254

*US – Shirts and Blouses: United States – Measures Affecting Imports of Woven Wool Shirts and Blouses*, WT/DS33/AB/R (Appellate Body), 254

## 7. Other International Decisions/ Proceedings

*Aaland Island dispute*, Report of the Committee of Jurists, LNOJ, Special Supplement No. 3, Oct. 1920, 82, 84–86, 106, 308

*Commission v. Luxembourg and Belgium* (ECJ), Cases 90/63 and 91/63, [1964] ECR 631, 277

*Communication 227/99 (DRC v. Burundi, Rwanda and Uganda)* (African Commission of Human Rights and Peoples' Rights), 283

*Ghana Portugal complaint* (ILO inter-State complaint), 45 ILO Bulletin (1962), No. 2, Supplement II, 73

*Loayaza Tamayo* (Inter-American Court of Human Rights), 19 HRLJ (1998), 203, 260

*M. V. Saiga (No.2) case* (merits) (International Tribunal for the Law of the Sea), 38 ILM (1999), 1323, 38, 78

*Opinion No. 10* (Arbitration Commission on Yugoslavia), 96 RGDIP (1992), 594, 144

Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)

## xxvi TABLE OF CASES

*Portugal Liberia complaint* (ILO inter-State complaint), 46 ILO Bulletin (1963), No. 2, Supplement II, 803, 73

*Racke GmbH and Gov. Hauptzollamt Mainz* (ECJ), Case C-162/96 [1998] ECR I-3655, 228

*Roach and Pinkerton v. United States* (American Commission on Human Rights), 8 HRLJ (1997), 351, 139

*Southern Bluefin Tuna case* (provisional measures) (International Tribunal for the Law of the Sea), 38 ILM (1999), 1624, 277

## 8. National decisions

### a. Germany

Bundesverfassungsgericht (Federal Constitutional Court)

BVerfGE 96, 68 (Decisions of the Federal Constitutional Court, Vol. 96, 68) – *GDR Ambassador case* 100, 104

BVerfGE 75, 20 (Decisions of the Federal Constitutional Court, Vol. 75, 20)

Order of 12 December 2000, 54 Neue Juristische Wochenschrift (2001), 1848 119, 149

Bundesverwaltungsgericht (Federal Administrative Court)

BVerwGE 30, 191 (Decisions, Vol. 30, 191) 35

BVerwGE 61, 256 (Decisions, Vol. 61, 256) 35

BVerwGE 65, 167 (Decisions, Vol. 65, 167) 35

### b. United Kingdom

*Abbasi and another v. Secretary of State for Foreign and Commonwealth Affairs and another* (Court of Appeal) [2002] EWCA Civ. 159 143

*Al-Adsani case* (High Court) 103 ILR 420 143, 145

*Al-Adsani case* (Court of Appeal) 107 ILR 536 143, 145

*Bearmans Ltd v. Metropolitan Police District Receiver* (High Court) [1961] 1 All ER 391 28

*The ‘Le Louis’* 2 Dodson 210 (1817) 52

*R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte* (No. 3) (House of Lords) [2000] 1 A.C. 198 143, 145



Cambridge University Press

0521856671 - Enforcing Obligations Erga Omnes in International Law

Christian J. Tams

Frontmatter

[More information](#)*c. United States**The 'Antelope'*, 23 US (10 Wheaton) 64 (1825) 52*Cabiri v. Assasie-Gyimah*, 921F. Supp. 1189 (S.D.N.Y. 1996) 145*Filartiga v. Peña-Irala* (Court of Appeals, 2nd Cir.), 77 ILR, 169 145*Marcos Manto v. Thajane*, 508 US 972 (1993) 145*Princz v. Germany* (Court of Appeals, District of Columbia), 103 ILR 604 143*Siderman de Blake v. Argentina* (Court of Appeals, 9th Cir.), 193 ILR 455 143, 145*Trajanos v. Marcos*, 978 F. 2d 500 (9th Circ. 1992) 145*United States v. 'La Jeune Eugénie'*, 26 Federal Cases 832 (1822) 52*d. Decisions of other national courts*Brussels Court of First Instance: *In re Pinochet* (Order of 6 November 1998, 119 ILR 346) 119, 143, 145, 149Hungarian Supreme Court: Decision No. 53 of 13 December 1993, reproduced in: *Az Alkotmánybírósg Hatá rosatai*, 1994, 2836 144, 145Ontario Superior Court of Justice, *Bouzari and Others v. Iran*, 124 ILR 427 145Spanish National Criminal Court (*Audencia Nacional*): *Pinochet case* (Order of 5 November 1998), 119 ILR 331 144Swiss Supreme Court (*Tribunal Fédéral*): *Bufano et al.*, Arrêts du Tribunal Fédéral Suisse, Recueil Officiel, Vol. 108, I, 408 144Swiss Supreme Court (*Tribunal Fédéral*): *Lynas*, Arrêts du Tribunal Fédéral Suisse, Recueil Officiel, Vol. 101, 541 144Swiss Supreme Court (*Tribunal Fédéral*): *Sener*, Arrêts du Tribunal Fédéral Suisse, Recueil Officiel, Vol. 109, I, 72 144

# Abbreviations

A.C.	Appeal Cases (England and Wales)
ACHR	(Inter-)American Convention on Human Rights
AFDI	Annuaire français de droit international
AJIL	American Journal of International Law
AJPIL	Austrian Journal of Public International Law
All ER	All England Law Reports
AnnIDI	Annuaire de l'Institut de Droit International
ASR	Articles on State Responsibility (International Law Commission)
AVR	Archiv des Völkerrechts
Bd(e).	Band/Bände
BDGVR	Berichte der deutschen Gesellschaft für Völkerrecht
BGBI.	Bundesgesetzblatt
BISD	Basic Instruments and Selected Documents (GATT)
BYIL	British Yearbook of International Law
CAT	Convention Against Torture
CCPR	(International) Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	(International) Convention on the Elimination of Racial Discrimination
CSECR	(International) Covenant on Social, Economic and Cultural Right
CTS	Consolidated Treaty Series (Parry ed.)
Diss.Op	Dissenting Opinion
Doc.	Document

DRC	Democratic Republic of Congo
EC	European Community
EC Bull.	Bulletin of the European Communities
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECOSOC	(United Nations) Economic and Social Council
ECR	European Court Reports (ECJ)
ed(s).	edition/editor(s)
EJIL	European Journal of International Law
ELR	European Law Review
EPIL	Encyclopaedia of Public International Law
<i>et al.</i>	<i>et aliter</i>
ETS	European Treaty Series
EURATOM	European Atomic Energy Community
Eur. Comm'n HR	European Commission on Human Rights
Eur. Ct. HR	European Court of Human Rights
EWCA (Civ.)	England and Wales Court of Appeal (Civil Division)
FCN	Friendship, Commerce and Navigation (treaties)
FRY	Federal Republic of Yugoslavia
GA	(United Nations) General Assembly
GATT	General Agreement on Tariffs and Trade
GYIL	German Yearbook of International Law
HJIL	Harvard Journal of International Law
HRLJ	Human Rights Law Journal
HRQ	Human Rights Quarterly
<i>ibid.</i>	<i>ibidem</i>
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
<i>id.</i>	<i>idem</i>
IDI	Institut de droit interational
i.e.	<i>id est</i>
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials

xxx ABBREVIATIONS

ILO	International Labour Organisation
ILR	International Law Reports
Indian JIL	Indian Journal of International Law
JIR	Jahrbuch für Internationales Recht
LJIL	Leiden Journal of International Law
LNTS	League of Nations Treaty Series
LOSC	Law of the Sea Convention
MichJIL	Michigan Journal of International Law
MN	Marginal note
NILR	Netherlands International Law Review
NQHR	Netherlands Quarterly for Human Rights
Nordic JIL	Nordic Journal of International Law
NRG	Nouveau Recueil Général (Martens)
NYIL	Netherlands Yearbook of International Law
OAS	Organization of American States
OJ	Official Journal of the European Communities
ÖZÖR	Österreichische Zeitschrift für Öffentliches Recht
para(s).	paragraph(s)
PCIJ	Permanent Court of International Justice
Proc. ASIL	Proceedings, American Society of International Law
RBDI	Revue belge de droit international
RdC	Recueil des Cours
Res.	Resolution
RGDIP	Revue générale de droit international public
RIAA	Reports of International Arbitral Awards
RIW	Recht der Internationalen Wirtschaft
SADC	Southern African Development Community
SAYIL	South African Yearbook of International Law
SC	(United Nations) Security Council
SchwJIR	Schweizerisches Jahrbuch für Internationales Recht
Sep.Op.	Separate Opinion
Ser.	Series
Strasbourg Court	European Court of Human Rights
TEC	Treaty Establishing the European Community
TEU	Treaty Establishing the European Union
UKTS	United Kingdom Treaty Series
UN	United Nations
UNC	United Nations Charter
UNTS	United Nations Treaty Series

UNYB	United Nations Yearbook
US	United States
VCLT	Vienna Convention on the Law of Treaties
Virginia JIL	Virginia Journal of International Law
Vol.	Volume
VwGO	Verwaltungsgerichtsordnung (Germany)
WTO	World Trade Organization
Yb.	Yearbook
YbILC	Yearbook of the International Law Commission
YbECHR	Yearbook of the European Convention of Human Rights
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZÖR	Zeitschrift für Öffentliches Recht