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Colonial Clause

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(2) Convention on the Elimination of All Forms of Discrimination Against Women, (18 December 1979)entered into force 3 September 1981.

(3) Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Adopted AT: BELEM DO PARA, BRAZIL DATE: 06/09/94 entered into force: 03/05/95: <http://www.oas.org/juridico/english/sigs/a-61.html>

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(4) The African Charter Human and Peoples Rights (26 June 1981) OAU Doc CAB/LEG/67/3 rev.5; 1520 UNTS 217, entered into force 21 October 1986. Article 1: The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them. Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status

(5) American Convention on Human Rights (22 November 1969) 1144 UNTS 123 entered into force 18 July 1978

(6) European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS entered into force 3 September 1953

(7) International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976.

(8) International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965) entered into force 4 January 1969.

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Cyprus v. Turkey

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(9) Cyprus v. Turkey , 6780/74 6950/75 6780/74 6950/75, para.7 :“The respondent Government further contend that the Commission has no jurisdiction ration loci to examine the applications, insofar as they relate to alleged violations of the Convention in the island of Cyprus . They submit that, under A rt . 1 of the Convention, the Commission’s competence ration loci is limited to the examination of acts alleged to have

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Drozd and Janousek v. France and Spain

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been committed in the national territory of the High Contracting Party concerned ; Turkey has not extended her jurisdiction to Cyprus.”

(10) Id., para.8: “The Commission finds that this term is not(within their jurisdiction), as submitted by the respondent Government, equivalent to or limited to the national territory of the High Contracting Pa rty concerned . It is clear from the language, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad..... Authorized agents of a State, including, diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property within the jurisdiction of that State , to the extent that they exercise authority over such persons or property. Insofar as, by their acts or omissions, they affect such persons or property.”

(11) Hess v. UK , 6231/7 , p.73

(12) Drozd and Janousek v. France and Spain 12747/87, para. 91

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Ilascu and Others v Moldova and the Russian

Federation:

(13) Loizidou v. Turkey 15318/89, paras. 47-51

(14) *supra* note 13, para. 62: "...Jurisdiction" in Article 1 was not restricted to the territory of a High Contracting party and, thus, that "responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory...the Court ruled that: "...bearing in mind the object and purpose of the Convention responsibility of a Contracting Party may also arise when as a consequence of military action whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration."

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(15) Ilascu and Others v Moldova and the Russian Federation, 48787/99, paras.331–332- 333- 335-352

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Hirsi Jamaa and Others v Italy and Alaban

Öcalan v. Turkey

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(16) *Stocké v. Germany*, 11755/85 11755/85, para. 166

(17) *M. v. Denmark*, 17392/90, para.1: “It is clear, in this respect, from the constant jurisprudence of the Commission that authorised agents of a State, including diplomatic or consular agents, bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property. In so far as they affect such persons or property by their acts or omissions, the responsibility of the State is Therefore, in the present case the Commission is satisfied that the acts of the Danish ambassador complained of affected persons within the jurisdiction of the Danish authorities within the meaning of Article 1 (Art. 1) of the Convention.” ; MichaÅ Gondek: *Extraterritorial Application of The European Convention on Human Rights: Territorial Focus in the Age of Globalization?* *Netherlands International Law Review*, LII: 349-387, 2005.

(18) *Hirsi Jamaa and Others v. Italy*, 27765/09, para.76; *Issa and Others v. Turkey*, 31821/96 31821/96 paras. 52-55

(19) *Öcalan v. Turkey*, 46221/99, paras. 91-93; Milanovic, Marko, *Extraterritorial Application of Human Rights Treaties, Law, Principles, and, policy*, Oxford University Press, 2011, p.165

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Jacobs, White, Ovey, *The European Convention on Human Rights*, 5th edit, Oxford University Press 2010, pp.71-77; Harris, O'Boyle & Warbrick, *Law on the European Convention on Human Rights*, 2nd edit, Oxford University Press 2009, pp.5-8.

(21) *Ireland v. UK* 5310/71, para .239: "Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement.'"; *Soering v. UK*, 14038/88 para. 87; *Loizidou. supra* note 13, para. 62; *Cyprus supra* note 9 para 75; Orakhelashivili, Alexander: *Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights*, EJIL 14(2003), 529-568

(22) *Airey v. Ireland*, 6289/73 para. 24: "The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective."

(23) *Artico v. Italy*, 6694/74 para. 33: "... the Court will favor the interpretation which is 'practical and effective' rather than 'formal' ... 'the Convention is intended to guarantee not rights that are theoretical and illusory but rights that are practical and effective' Interpreting the word 'jurisdiction' in Article 1 to only encompass legal exercises of Contracting Parties' jurisdiction does not achieve this purpose so well as interpreting the term to include all situations where Contracting Parties assert jurisdiction over individuals, whether acting lawfully or not."

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(24) Loizidou *supra* note 13, para. 73; Selmouni v. France, 25803/94 , para.101

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(26) Legality of the threat or Use of Nuclear weapons, Advisory opinion, ICJ Rep 1996, 8 July 1969, para.25; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory opinion 2004 ICJ Rep, 9 July 2004 para.107-13; Case Concerning Armed Activities on the territory of the Congo (Democratic Republic of the Cong v. Uganda) Judgment, ICJ General List No 116, 2005 (19 December 2005) para 216; Georgia v. Russian Federation, Application of the International Convention on the Elimination of All Forms of Racial Discrimination, Request for the indication of Provisional Measures, International Court of Justice, 15 October 2008: “... and whereas the court consequently finds that these provisions of CERD generally appear to apply, like other provisions of instruments of that nature, to the actions of a state party when it acts beyond its territory” para.109; Lubell, Noam, , Extraterritorial use of force against non-states actors, Oxford Monographs in international law, Oxford University Press, 2010, pp.193-19

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(27) The legal consequences of the construction of a wall in the occupied Palestinian Territory, *supra* note 26, paras. 107-13

(28) Human Rights Committee, General Comment 31, UN Doc CCPR/C/21/Rev.1/Add.13 (2004): "States are required by article 2, paragraph 1 to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not suited within the territory of the State Party.... This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory. " p.196; Delia Saldias de Lopev v. Uruguay, Comm no52/1979, UN Doc CCPR/C/OP/1 at 88 (1984)

(29) Alejandro Jr . v. Republic de Cuba, case 11.589, Report no 86/99, OAE/Ser.L/v/II.106 Doc.3 rev.at 586 (1999), para 23; Coard and ors v. United States, case 10.951, Report 109/99,IACHR, 29 September 1999, para 37.; King, Hugh The Extraterritorial Human Rights Obligations of States, ; Human Rights Law Review 9:4 [2009] 521-556; Schutter , Olivier de: Globalization and Jurisdiction: Lessons from the European Convention on Human Rights, Center for Human Rights and Global Justice Working Paper Number 9, 2005, NYU School of law New York, NY 10012

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(30) Loizidou *supra* note 13, the Court stated:“It is not necessary to determine whether Turkey actually exercised detailed control over the policies and actions of the authorities of the “TRNC”. It is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control entails her responsibility for the policies and actions of the TRNC” Those affected by such policies or actions therefore come within the “jurisdiction” of Turkey for the purposes of Article 1 of the Convention”, para. 56; Ilascu , *supra* note 15, paras. 336-351

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(31) Loizidou *supra* note 13, para. 56.

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(32) Banković and Others v. Belgium and Others , 52207/99

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(33) *supra* note 32, para. 28

(34) *supra* note 32, para. 46

(35) *supra* note 32, para. 47

(36) *supra* note 32, para. ! . !

(37) *supra* note 32, para. 82: “The Court is not therefore persuaded that there was any jurisdictional link between the persons who were victims of the act complained of and the respondent States. Accordingly, it is not satisfied that the applicants and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extra-territorial act in question.”

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(38) *supra* note 32, paras. . ! , 3: “The Court is of the view, therefore, that Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.....in short, the Convention is a multi-lateral treaty operating, subject to Article 56 of the Convention, in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States. The FRY clearly does not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States. Accordingly, the desirability of avoiding a gap or vacuum in human rights’ protection has so far been relied on by the Court in favour of establishing jurisdiction only when the territory in question was one that, but for the specific circumstances, would normally be covered by the Convention.”; Mantouvalou, Virginia: Extending Judicial Control in International Law: Human Rights Treaties and Extraterritoriality *International Journal of Human Rights* Vol. 9, No. 2,(June 2005) 147–163.

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(39) *supra* note 32 , para. 4: “As to the “ordinary meaning” of the relevant term in Article 1 of the Convention, the Court is satisfied that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. While international law does not exclude a State’s exercise of jurisdiction extra-territorially, the suggested bases of such jurisdiction (including nationality, flag, diplomatic and consular relations, effect, protection, passive personality and universality) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States.” ; Dixon , Martin, International law, oxford University Press, 6th edition, 2007,pp142-143; Brownlie, Ian, Principles of Public International Law,7th edition, Oxford, 2008, pp.299-300-311; Milanovic, *supra* note 19, p.23;

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(40) International Convention for the Protection of All Persons from Enforced Disappearance (December 2006), entered into force on 23 December 2010

(41) King, Hugh: The Extraterritorial Human Rights Obligations of States, *Human Rights Law Review* 9:4 (2009); Orakhelashvili *supra* note 21; Roxstrom, Erik, Gibney Mark, and Einarsen, Terje: The NATO Bombing Case (*Bankovic et al. v. Belgium et al.*) And The Limits of Western Human Rights, *Boston University International Law Journal* [Vol. 23:55; Milanovic, *supra* note 19], p.183: "The convention cannot be interpreted as to allow a state party to perpetrate violations of convention on the territory of another state, which it cannot perpetrate on its own territory"; Harris, D.J., O'Boyle, M., C. Warbrick, *Law of the European Convention on Human Rights*, 2nd edition oxford university 2009, p. 806

(42) *supra* note 32, para.40

(43) <http://www.icrc.org/ara/resources/documents/misc/7umf63.htm>

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(45) Focarelli, Carlo: *The Common Article 1 of the 1949 Geneva Conventions: A Soap Bubble? The European Journal of International Law Vol. 21 no. 1, 125-1 71*

(46) Meron, Theodor, *The 1994 U.S. Action in Haiti: Extraterritoriality of Human Rights Treaties*, "Bona fide interpretation of human rights treaties by the administration and the courts is called for, in accordance with their object and purpose of promoting human rights, even where such interpretation leads to the extraterritoriality of humanitarian obligations of the United States. The established jurisprudence of the Human Rights Committee provides clear guidance and should discourage a narrow territorial construction of the Political Covenant. Narrow territorial interpretation of human rights treaties is anathema to the basic idea of human rights, which is to ensure that a state should respect human rights of persons over whom it exercises jurisdiction." 89 *A.J.I.L.*(January 1995): 78

(47) *Tyrer v. U K.*, [5856/72](#), para.31; *Wemhoff v. Germany* [2122/64](#) , para. 8." Given that it is a law-making treaty, it is also necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties." ; *Orakelashvili* , *supra* note 21.

(48) *supra* note 32, paras. 58-63-65

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Jacobs , White, & Ovey: The European Convention on Human Rights: "Preparatory work is notoriously unreliable as a general guide to treaty interpretation", 5th edition Oxford University Press (2010), p. 66 ; Cannizzaro, ' Enzo, The Law of Treaties Beyond the Vienna Convention, Oxford University Press, 2011, at145-151; Brownlie, *supra* note 40, p. 634

(50) Collected Edition of the *Travaux préparatoires* of the European Convention on Human Rights, part I, 11 May- 8 September 1949, The Hague : Martinus Nijhoff, 1975 p. 276.

(51) Collected Edition of the *Travaux préparatoires* of the European Convention on Human Rights, part III., 2 February 1950-10 March, The Hague : Martinus Nijhoff, 1976, p. 200.

(52) Milanovic, Marko :From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties Human Rights Law Review 8:3 _ [2008] 432-433

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(53) The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *supra* note 26, para 109; Milanovic, *supra* note 19: "...the ICCPR jurisdiction clause has a specific purpose of taking care of difficulties which might impede the implementation of the Covenant in specific situations, difficulties which make a state normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizens abroad.", p.176-177

(54) *Lawson, Rick* : Life after Bankovic: On the Extraterritorial Application of the European Convention on Human Rights in: Coomans, Fons (ed.), Kamminga Menno T. (ed.) : Extraterritorial Application of Human Rights Treaties, 1st print, [Intersentia](#), Maastricht Series in Human Rights 2004, p.8; Meron, *supra* note 47: "The legislative history of Article 2(1) does not support a narrow territorial construction. Article 2 (1) should be read so that each party would have assumed the obligation to ensure the rights recognized in the Covenant both 'to all individuals within its territory' and to all individuals subject to its jurisdiction."; Rosalyn Higgins: "As regards the question of jurisdiction, the Committee had always maintained that States were responsible for ensuring respect for human rights proclaimed in the Covenant when their representatives were implicated and when their acts affected human beings even outside their national territory." at Lubell *supra* note 26, p.196

(55) The European Commission emphasized that the European Convention should be interpreted objectively and not by reference to what may have been the understanding of one Party at the time of its ratification, *East African Asians*, 3 EHRR 76 ; Orakhelashvili *supra* note 21; Mantouvalou, *supra* note 39; Inter-American Court has explained: "This method of interpretation respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation. In the case of human rights treaties, moreover, objective criteria of interpretation that look to the texts themselves are more appropriate than subjective criteria that seek to ascertain only the intent of the Parties. This is so because human rights treaties, as the Court has already noted, 'are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States; rather 'their object and purpose is the protection of the basic rights of individual human beings, irrespective of their nationality, both against the State of their nationality and all other contracting States.'", *Restrictions to Death Penalty*, para. 50, 70 ILR (1986), at 466.

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(56) *supra* note 32, par. 62; Lubell *supra* note 26, pp. 197-199-202; Dennis, Michel : Application of Human Rights Treaties Extraterritoriality to Detention of Combatants and Security Internees: Fuzzy Thinking All Around?: "In short, the United States interprets human rights treaties to apply to persons living in the territory of the United States, not to any person with whom agents of our government deal in international community.", *ILSA Journal of International and Comparative Law* 459 (Spring 2006) 463; Dennis, Michel : ICJ Advisory opinion on Construction of a Wall in the Occupied Palestinian Territory: Application of Human Rights treaties extraterritorially in times of armed conflicts and military occupation, 1 *AJIL*. 99 (2005), 120.

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(57) Lubell *supra* note 26, pp.198-200

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(61) *Al-Skeini and others v Secretary of State for Defence* [2007] UKHL 26, [2008] AC 153, paras. 78-79

(62) *Id.*, para. 116.

(63) *supra* note 62, para. 83: “In my judgment it is quite impossible to hold that the UK, although an occupying power for the purposes of the Hague Regulations and Geneva IV, was in effective control of Basrah City for the purposes of ECHR jurisprudence at the material time. If it had been, it would have been obliged, pursuant to the *Bankovic* judgment, to secure to everyone in Basrah City the rights and freedoms guaranteed by the ECHR. One only has to state that proposition to see how utterly unreal it is. The UK possessed no executive, legislative or judicial authority in Basrah City, other than the limited authority given to its military forces, and as an occupying power it was bound to respect the laws in force in Iraq unless absolutely prevented (see Article 43 of the Hague Regulations ...). It could not be equated with a civil power: it was simply there to maintain security, and to support the civil administration in Iraq in a number of different ways ...”

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(64) *supra* note 62, para. 88 .” As for the sixth case, I for my part would recognise the UK’s jurisdiction over Mr Mousa only on the narrow basis found established by the Divisional Court, essentially by analogy with the extra-territorial exception made for embassies.”

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(65) *supra* note 60
(66) *supra* note 60, paras.121-122-123
(67) *supra* note 60, paras. 127-129
(68)*supra* note, 60, para. 114
(69)*supra* note 60, para.111

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(70)*supra* note 60 , para. 116

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(71) *supra* note 60, para. 149; Milanovic, Marko: *Al-Skeini and Al-Jedda* in Strasbourg, The European Journal of International Law Vol. 23 no. 1 © EJIL 2012; EJIL (2012), Vol. 23 No. 1, 121–139 ; Ryngaert, Cedric: Clarifying the Extraterritorial Application of the European Convention on Human Rights *Al-Skeini and others v United Kingdom* , Utrecht Journal of International and European Law, Vol. 28/74,59-60.

(72) *supra* note 60, para.141

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First: International Treaties

- 1- African Charter Human and Peoples Rights (26 June 1981), 1520 UNTS 217, entered into force 21 October 1986.
- 2- American Convention on Human Rights (22 November 1969), 1144 UNTS 123 entered into force 18 July 1978.
- 3- Convention on the Elimination of All Forms of Discrimination Against Women (18 December 1979), 1249 UNTS 13, entered into force 3 September 1981
- 4- European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950), 213 UNTS entered into force 3 September 1953.
- 5- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, (6 September 1994), entered into force 3 May 1995 <http://www.oas.org/juridico/english/signs/a-61.html>.
- 6- International Covenant on Civil and Political Rights (16 December 1966) 999UNTS 171, entered into force 23 March 1976.
- 7- International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), 660 UNTS 195, entered into force 4 January 1969.
- 8- International Convention for the Protection of All Persons from Enforced Disappearance (December 2006), United Nations, *Treaty Series*, vol. 2716, Doc. A/61/448, entered into force 23 December 2010.
- 9- Vienna Convention on the Law of Treaties (23 May 1969), 1155 UNTS 331, entered into force 27 January 1980.

Second : United Nations Human Rights Committee:

- 1- General Comment No. 31: Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 10, UN Doc. CCPR/C/74/CRP.4/Rev.6 (2004) [*General Comment No. 31*]
- 2- Lilian Celiberti de Casariego v. Uruguay, Comm. No. 56/1979, Human Rights Committee, UN Doc. CCPR/C/13/D/56/1979 (July 29, 1981)
- 3- Lopez Burgos v. Uruguay, Comm. No. R.12/52, Human Rights Committee, Supp. No. 40, UN doc. A/36/40 (1981)
- 4- Delia Saldias de Lopev v. Uruguay, Comm. Human Rights Committee, No52/1979, UN Doc CCPR/C/OP/1 (1984)

Third: The Travaux Préparatoires of the European Convention on Human Rights

- 1- Collected Edition of the *Travaux préparatoires* of the European Convention on Human Rights, part I, 11 May- 8 September 1949, The Hague : Martinus Nijhoff, 1975 .

2-Collected Edition of the *Travaux préparatoires* of the European Convention on Human Rights, part III, 2 February 1950-10 March, The Hague : Martinus Nijhoff, 1976.

Fourth: Cases

A- American Court of Human Rights:

- 1- Alejandro Jr . v. Republic de Cuba, case 11.589, Report no 86/99, OAE/Ser. L/v/II.106 Doc.3 rev.at 586 (1999)
- 2- Coard and Others v. United States, case 10.951, Report 109/99, IACHR, (29 September 1999).

B- European Court of Human Rights:

- 1- Al-Jedda v. UK, 27021/08, 7/07/ 2011
- 2- Al-Skeini and Others v. U K, 55721/, 07/07/2011
- 3- Airey v. Ireland 6289/73 09/10/1979
- 4- Artico v. Italy 6694/74, 13/05/1980, 13/05/1980
- 5- Banković and Others v. Belgium and Others 52207/99, 12/12/2001
- 6- Cyprus v. Turkey, 6780/74 6950/75 6780/74 6950/75, 26/05/1975.
- 7- Drozd and Janousek v. France and Spain 12747/87, 26/06/1992
- 8- Hassan v. U. K, 29750/09, 16.09.2014
- 9- Hess v. UK, 6231/73, 28/05/1975
- 10- Hirsi Jamaa and Others v. Italy, 27765/09, 23/02/2012
- 11- IL aşcu and Others v. Moldova and Russia, 48787/ 99, 08/07/2004
- 12- Ireland v. UK, 5310/71, 18/01/1978
- 13- Issa and Others v. Turkey, 31821/96 , 16/11/2004
- 14- Loizidou v. Turkey, 15318/89, 23/03/1995
- 15-M. v. Denmark, 17392/90, 14/10/1992
- 16-Öcalan v. Turkey, 46221/99, 12/05/2005
- 17- Selmouni v. France, 25803/94, 28/07/1999
- 18- Stocké v. Germany, Case No. 28/1989/188/248, 19/03/1991
- 19- Tyrer v. U K, 5856/72, 25 /04/ 1978
- 20- Wemhoff v. Germany, 2122/64 , 27 /06/ 1968.

C- International Court of Justice:

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