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VOLUME 138

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# INTERNATIONAL LAW REPORTS

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138

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## PREFACE

The present volume contains decisions on a range of subjects from international and national courts and tribunals, many of which are closely related. Thus, the volume contains the awards in *Occidental*, which is reported together with the English decisions in that case, and *EnCana*. Also included are the decisions of the Southern African Development Community Tribunal in the *Campbell* case, together with the related decision of the Supreme Court of Zimbabwe, and the award of the ICSID Arbitral Tribunal in another related case, *Funnekotter*. The volume also contains the decisions of the United Nations Human Rights Committee and Sri Lanka Supreme Court in *Singarasa*. There are also national decisions from the courts of England (*Bancoult No 2*), France (*African Development Bank Case*), Germany (*Argentine Necessity Case*), Hong Kong (*C and RV*), Nepal (*Pant*), the Russian Federation (*Compliance with Charter of St Petersburg*) and Timor-Leste (*Armando dos Santos*).

We are very grateful to those whose work has made this volume possible. Ms Karen Lee, Assistant Editor, wrote the summaries of the decisions from Zimbabwe, the Southern African Development Community Tribunal, the United Nations Human Rights Committee, Sri Lanka, Hong Kong, Nepal, the Russian Federation and Timor-Leste, summarized *Bancoult* and saw the volume through the press. Dr Kate Parlett summarized the *Occidental* and *EnCana* awards, and *Occidental No 1*. Ms Alexandra Harrington summarized the cases from France and Germany, translated the French case and, together with Dr Markus Gehring, who supplied the cases to us, revised the translation from German. Sir Christopher Greenwood prepared the summaries of *Occidental No 2* and *Funnekotter*.

We are grateful to Dr Michael Waibel for drawing our attention to the German decision and to the German Constitutional Court for permitting us to use its translation. We are also grateful to Mr Sergey A. Golubok, LLM for supplying and translating the text of the judgment of the Russian Federation Charter Court of St Petersburg and to Mr Iain Byrne of Interights for supplying the text of the Sri Lankan decision. Thanks are also due to the Supreme Court of Nepal for its unofficial English translation of the *Pant* judgment and to Dr Suzannah Linton for supplying that case. Ms Tara Grant prepared the Tables of Cases and Digest. Miss Maureen MacGlashan, CMG compiled the Table of

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PREFACE

Treaties and Index. Mrs Diane Ilott checked the copy and Mr Philip Riley read the proofs.

In addition, we would like to extend our thanks to all the others who have worked to complete this volume, particularly our publishers, Cambridge University Press, and typesetters, Aptara, and their staff.

LAUTERPACHT CENTRE  
FOR INTERNATIONAL LAW,  
UNIVERSITY OF CAMBRIDGE

E. LAUTERPACHT

THE PEACE PALACE,  
THE HAGUE

C. J. GREENWOOD

*February 2010*

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## EDITORIAL NOTE

The *International Law Reports* endeavour to provide within a single series of volumes comprehensive access in English to judicial materials bearing on public international law. On certain topics it is not always easy to draw a clear line between cases which are essentially ones of public international law interest and those which are primarily applications of special domestic rules. For example, in relation to extradition, the *Reports* will include cases which bear on the exception of “political offences” or the rule of double criminality, but will restrict the number of cases dealing with purely procedural aspects of extradition. Similarly, while the general rules relating to the admission and exclusion of aliens, especially of refugees, are of international legal interest, cases on the procedure of admission usually are not. In such borderline areas, and sometimes also where there is a series of domestic decisions all dealing with a single point in essentially the same manner, only one illustrative decision will be printed and references to the remainder will be given in an accompanying note.

### DECISIONS OF INTERNATIONAL TRIBUNALS

The *Reports* seek to include so far as possible the available decisions of every international tribunal, e.g. the International Court of Justice, or *ad hoc* arbitrations between States. There are, however, some jurisdictions to which full coverage cannot be given, either because of the large number of decisions (e.g. the Administrative Tribunal of the United Nations) or because not all the decisions bear on questions of public international law (e.g. the Court of Justice of the European Communities). In these instances, those decisions are selected which appear to have the greatest long-term value.

*Human rights cases.* The number of decisions on questions of international protection of human rights has increased considerably in recent years and it is now impossible for the *Reports* to cover them all. As far as decisions of international jurisdictions are concerned, the *Reports* will continue to publish decisions of the European Court of Human Rights and of the Inter-American Court of Human Rights, as well as “views” of the United Nations Committee on Human Rights. Decisions of national courts on the application of conventions on human rights will not be published unless they deal with a major point of substantive human rights law or a matter of wider interest to public international



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lawyers such as the relationship of international law and national law, the extent of the right of derogation or the principles of the interpretation of treaties.

*International arbitrations.* The *Reports* of course include arbitral awards rendered in cases between States which involve an application of public international law. Beyond this, however, the selection of arbitral decisions is more open to debate. As these *Reports* are principally concerned with matters of public international law, they will not include purely private law commercial arbitrations even if they are international in the sense that they arise between parties of different nationality and even if one of them is a State. (For reports of a number of such awards, see *Yearbook Commercial Arbitration* (ed. Albert Jan Van den Berg, under the auspices of the International Council for Commercial Arbitration).) But where there is a sufficient point of contact with public international law then the relevant parts of the award will be reported. Examples of such points of contact are cases in which the character of a State as a party has some relevance (e.g. State immunity, stabilization clauses, *force majeure*) or where there is a choice of law problem involving discussion of international law or general principles of law as possible applicable laws. The same criteria will determine the selection of decisions of national courts regarding the enforcement of arbitral awards.

#### DECISIONS OF NATIONAL TRIBUNALS

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

#### EDITORIAL TREATMENT OF MATERIALS

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

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PRESENTATION OF MATERIALS

The material in the volume has been typeset for this volume. The source of all such material is indicated by the reference to the “Report” in square brackets at the end of the case. The language of the original decision is also mentioned there. The bold figures in square brackets in the body of the text in non-English cases indicate the pagination of the original report.

NOTES

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

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

DIGEST OF CASES

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

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and a Consolidated Tables of Cases and Treaties for volumes 1-80 were published in two volumes in 1990 and 1991. A further volume containing the Consolidated Index and Consolidated Tables of Cases and Treaties for volumes 81-100 was published in 1996. A Consolidated Index, a Consolidated Tables of Cases and a Consolidated Table of Treaties for volumes 1-125 were published in 2004. Volume 135 contains Consolidated Tables of Cases for volumes 126-135.

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