INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS

On 8 July 1996, the International Court of Justice handed down two Advisory Opinions on the legality of nuclear weapons. These were the first authoritative international judicial opinions since the development of nuclear weapons in the 1940s.

This is the first book to offer a comprehensive study of these Opinions. More than thirty internationally respected experts contribute their analyses of the status of nuclear weapons in international law across all its sectors: use of force, humanitarian law, environment and human rights.

The contributors also assess the implications for international organisations and the international judicial function. Contributors include lawyers, academics, diplomats and advisors to international bodies. A timely and important book.

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Blandine, Emily et Brielle
To Leo and Lara
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PREFACE

This volume is the product of a collaboration between us which dates back to the late summer of 1993, when we were working together on the Secretariat of the Institut de Droit International at its Milan session. Shortly before, the World Health Assembly had requested the International Court of Justice for an Advisory Opinion on nuclear weapons. There was a certain interest in Milan, because several members of the Court as well as potential advocates were present. Early in 1994 we, together with Professors Roger Clark, James Crawford, Eric David and Jean Salmon, were then privileged to be retained by three South Pacific states – Solomon Islands, Samoa and Marshall Islands – in the preparation of their observations to the International Court in the Advisory Opinion proceedings. These countries and their peoples have had a long-standing interest in nuclear weapons, including their testing, use and disposal. Their interest had developed principally because islands in that part of the world had served as nuclear weapons testing sites as far back as the 1940s and 1950s and right up until the 1990s.

Our participation as Counsel in the proceedings before the International Court of Justice the following year gave us a first-hand view of many of the issues. Our perspective was one which could not have been obtained from the Court’s two Opinions, or from other accounts. The privilege of participating in proceedings before the ‘principal judicial organ of the United Nations’ gave some valuable insights. In this context, the principal purpose of this collection of essays is to seek to address the wide range of issues that were canvassed and to give as broad a picture as possible of the differing views. Although we were associated with a particular view during those proceedings, we invited our contributors on the basis of what we
intended to be – and very much hope is – a balance of perspectives. We also wanted to make sure that persons who had not participated in the proceedings but had a particular connection with the issues put to the Court also had an opportunity to contribute. We were pleased to receive positive responses from virtually everyone who was invited to contribute. We hope that this collection of essays satisfies our primary objective, namely to give readers an understanding of the intricacies of some of the issues that were raised, from a range of different perspectives, in the context of international law at the close of the twentieth century.

There are a number of colleagues who deserve particular mention. First and foremost we wish to record our appreciation to Neroni Slade, Permanent Representative of Samoa at the United Nations, and Ambassador Rex Horoi, Permanent Representative of Solomon Islands at the United Nations. They provided us with a unique opportunity to participate in the proceedings before the Court, working closely with them in a context which indicated the obstacles and burdens which so evidently face small developing countries in major international litigation and related matters.

We wish to thank all the contributors for taking time out of their busy schedules to help us make this volume come together. We must also thank Louise Rands Silva for her unstinting administrative assistance in keeping track of the various streams of paperwork heading off in various directions around the world, and Karen Campbell for her first-class editorial and substantive input in seeking to give the various contributions a degree of coherence. We also record our thanks to Finola O’Sullivan of Cambridge University Press for steering the project through the Press; to Professor James Crawford for encouraging us to put the volume together and to send it the way of Cambridge University Press; to our colleagues at the Foundation for International Environmental Law and Development (FIELD) (in particular Ruth Khalastchi and Jake Werksman who put so much time into the preparation of the associated material). Finally, we would like to thank Tallat Hussein and Anthony Nannini for assiduously assisting in the proof-reading of the entire text. Last but not least, we would like to thank Pierre Klein whose sense of the possible originated our joint efforts in this domain.

Laurence Boisson de Chazournes, Washington DC
Philippe Sands, Russell Square, London
1 January 1999

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ABBREVIATIONS

AJIL  American Journal of International Law
ASIL  American Society of International Law
BYbIL  British Yearbook of International Law
CLR  Commonwealth Law Reports
EHRR  European Human Rights Reports
FAO  Food and Agriculture Organization
GA  General Assembly
GATT  General Agreement on Tariffs and Trade
IAEA  International Atomic Energy Agency
ICAO  International Civil Aviation Organisation
ICJ  International Court of Justice
ICLQ  International and Comparative Law Quarterly
ICRC  International Committee of the Red Cross
ILC  International Law Commission
ILM  International Legal Materials
ILO  International Labour Organization
ILR  International Law Reports
IUHEI  Institut Universitaire des Hautes Études Internationales
LQR  Law Quarterly Review
NAM  Non-aligned Movement
NEA  Nuclear Energy Agency
NGO  non-governmental organisation
NNWS  non-nuclear-weapon state(s)
NPT  Non-Proliferation Treaty
NWS  nuclear-weapon state(s)
OECD  Organisation for Economic Cooperation and Development
PCIJ  Permanent Court of International Justice
### Abbreviations

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<td>Recueil des cours</td>
<td>Recueil des cours de l’Académie de Droit International</td>
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<td>RGDIP</td>
<td>Revue général de droit international public</td>
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<td>UN Reports of International Arbitral Awards</td>
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<td>SC</td>
<td>Security Council</td>
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<td>YBUN</td>
<td>Yearbook of the United Nations</td>
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