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63

Edited by

ELIHU LAUTERPACHT, CBE QC
*Honorary Professor of International Law, University of Cambridge
Bencher of Gray's Inn*

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PREFACE

In recent weeks, death has deprived us of two distinguished members of our Advisory Committee, Sir Gerald Fitzmaurice, G.C.M.G., Q.C. and Professor Clive Parry, LL.D. This is not the place to attempt the full appreciation of each which their considerable individual contributions to international law require.

But it must be recorded that Sir Gerald Fitzmaurice was a member of the Advisory Committee for close on thirty years. During that time he was always ready with wise counsel whenever his aid was sought. We are proud too that the volumes in this series from 1960 onwards contain the many decisions which he wrote, either as a member of the majority, or as separate or dissenting opinions, during his periods of membership of the International Court of Justice, of the European Court of Human Rights and of various arbitral tribunals—decisions which, by reason of their analytical quality, precise reasoning and comprehensive knowledge will always stand as a significant contribution to the science of international law.

The interest of Professor Parry in international law was of a different kind. Over the years he devoted himself increasingly to making the primary materials for research more readily accessible. The inventiveness and breadth of outlook which marked the guidance he offered, as much before he became a member of the Advisory Committee of these *Reports* in 1968 as after, were applied in an even more constructive fashion in the production of such monumental reference works as the *British International Law Cases*, the *Commonwealth International Law Cases*, the *British Digest of International Law* and the *Consolidated Treaty Series*.

Though Gerald Fitzmaurice and Clive Parry were very different characters, they each possessed in great quantity the virtues of warmth, understanding, humour, sensitivity and generosity. They will be greatly missed.

Of the various topics of international law which are dealt with primarily within national tribunals, State immunity is undoubtedly the most prominent. Moreover, it is a subject upon which great attention has been focussed in the last decade in the form, initially, of the European Convention on State Immunity, then of national legislation such as the Foreign Sovereign Immunities Act 1976 of the United States and the State Immunity Act 1978 of the United Kingdom and, more recently, of consideration by the International Law Commission of the United Nations as well as by the Institute of International Law and the International Law Association. Thus, for reasons no less

of intrinsic interest than of convenience, it seemed appropriate to concentrate on the publication of cases on State immunity as a major step towards the elimination of arrears in the coverage of national cases in these *Reports*.

The present volume is the first of three which will be devoted exclusively to cases on State immunity. It covers decisions of the courts of the United States mainly from 1967 (though some go back to 1961) to the end of 1980. It will soon be followed by volume 64 which will contain State immunity decisions from other jurisdictions in which the judgments are rendered in English (principally the United Kingdom and the members of the Commonwealth). Volume 65 will complete this series within the *Reports* with English translations of judicial decisions originally given in languages other than English. Thereafter State immunity cases will revert to their usual position as a part, but not the entire content, of subsequent volumes in these *Reports*. But this concentration in volumes 63, 64 and 65 will not only make a material contribution to subsequent judicial, professional and academic treatment of the subject but also bring these *Reports* up to date in a central area of national judicial activity.

There have, of course, been some problems regarding the choice of materials for the volume. Five other areas of international law overlap to some extent with State immunity, namely, "act of State" and the immunities of diplomats, consuls, foreign armed forces and international organizations. With one or two exceptions of cases on the immunities of international organizations which have a specially high degree of "State immunity" content, these other categories are being omitted from these three volumes. They would have diluted excessively the specialist character of the volumes and would have required the immediate commitment to the subject of too much additional space. In any event, they will appear in later volumes. Act of State cases from the United States will, in particular, appear in volume 66. Appendix II to the present volume lists the cases which will be included there.

Because all the cases belong to the same main chapter heading, no further classification has been attempted, though each case is still introduced by a bold letter heading which relates it to the usual *International Law Reports* classification. Instead, the material has been presented in chronological order (with the exception of a case or two which arrived late)—and this is so even where a single case has gone through various stages of the appeal procedure. Notes and cross-references will indicate that an appeal decision is to be found later in the volume.

The United States cases presented here fall into two main categories: about one hundred pages of text relate to decisions given under the law as it stood before the Foreign Sovereign Immunities Act 1976;

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the remaining pages contain post-Act cases. One case, *Pfizer Inc. v. Government of India*, is not, strictly speaking, about State immunity but has been included because it deals with the status of governments, refers to the 1976 Act and was decided by the Supreme Court. For convenience, the text of the 1976 Act appears in Appendix I at p. 655.

In forming this collection of United States decisions, we received great help, first, from Mr Charles N. Brower, who gave us his own personal collection of cases which contained many of the judgments printed here. Mr Monroe Leigh was also good enough to provide us, sometimes at quite short notice, with a number of additional decisions. To both these old friends, I express my warmest thanks, as I do also to Mr Leigh's assistants, Miss Alice Mattice and Mr Marco C. E. J. Bronckers.

But there was still a good deal of work to do here, especially in the preparation of summaries. Of these about a half have been written by Mr C. J. Greenwood (to whom generally much of the credit for preparing this volume should go) and the rest were prepared by Miss Sally Morris, Mr Fergal Martin and Mr Robin Pirrie. The detailed index has been compiled by Mr Hugh Paton, Fellow of Robinson College, Cambridge, the Table of Treaties by Mr Barry Wolfe and the Table of Cases by Miss E. E. Jansen. Mr A. Hertz also gave much help in checking the scope of our coverage. All that they have done is greatly appreciated.

Because of the exclusively American character of the content of the volume, we are more than usually indebted to the West Publishing Company for its kindness in permitting the photographic reproduction of the decisions originally published by them. We are also grateful to The Lawyers Co-operative Publishing Company for their permission to reproduce the judgment in the *Pfizer* case.

As usual, I conclude with sincere thanks to my secretary, Mrs S. Rainbow, and to the printers, the Gomer Press, Llandysul, for all the work that they have put into this volume.

E. LAUTERPACHT

TRINITY COLLEGE,
CAMBRIDGE
September 1982

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 European Commission of Human Rights or 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 the European Communities). In these instances, those decisions are selected which appear to have the greatest long-term value.

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 Editor 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.

PRESENTATION OF MATERIALS

The material in this volume is of two kinds, material reproduced photographically and material which has been freshly set for this volume.

Material photographically reproduced. This consists exclusively of reports originally printed in the English language. The material can usually be recognized by the differences between its type-style and the Baskerville type otherwise used in these *Reports*. The source of the material is identified by the reference to "Report" in square brackets at the end of the case. Where more than one citation is given, the report used is the one first listed. The bold type figures in square brackets in the inner margin of each page refer to the pagination of the original report. The smaller figures in square brackets in the margins of these cases are the indicators of footnotes which have been editorially introduced.

Other material. The remaining material in the volume has been typeset for this volume. This includes all material specially translated into English for these *Reports* as well as some material in English which in its original form was not suitable for photo-reproduction. 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 indicate the pagination of the original report. Small figures in square brackets within the text are indicators of footnotes which have been editorially introduced.

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.

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