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# INTERNATIONAL LAW REPORTS

Volume  
73

EDITED  
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## PREFACE

The present volume is devoted primarily to decisions from national courts, with 72 decisions from the courts of 12 countries, including a number of States (Ivory Coast, Madagascar, Senegal and Togo) from which few cases have appeared in the *International Law Reports* in the past. As with the preparation of the decisions from France, the Federal Republic of Germany and Luxembourg, these cases represent the work of a team under the guidance of Mr Andrew Oppenheimer, Barrister-at-Law, who has made a very large contribution to the volume by his selection, translation and editing of these decisions and by his preparation of the Index.

The volume also contains a number of cases from the Netherlands. These English translations have been extracted with permission from the *Netherlands Yearbook of International Law*. Concise statements entitled "The facts" appear in the *Netherlands Yearbook* before the text of the relevant part of each judgment and these statements have been reproduced, with some exceptions, in the summaries prepared for this volume and introduced at the head of each case. The texts of the judgments printed in this volume are normally the complete extracts published in the *Netherlands Yearbook*. The basic preparation of these cases was done by Mr Alan Stephens and Miss Klaske Visser, with the kind permission of the T.M.C. Asser Institute in The Hague and its Director, Dr C. C. A. Voskuil. Subsequent editorial work was done by Mr Oppenheimer.

The inclusion of so many national decisions has necessarily reduced the space available for decisions of international tribunals. Nevertheless, the present volume includes a number of decisions of the European Court of Human Rights and one decision of the European Commission of Human Rights (which is published alongside an English decision in the same matter). The jurisprudence of a number of other international tribunals will be represented in volume 74, which will be published shortly after the present volume.

We are indebted to the following publishers for permission to reproduce decisions from the reports which they publish: The Incorporated Council of Law Reporting (the English *Law Reports* and *Weekly Law Reports*), the Canadian Law Book Company (the *Dominion Law Reports*), Butterworths (Australia) Ltd (the *Australian Law Reports*) and Butterworths Ltd (the *Jamaican Law Reports*).

The following have also made helpful contributions which I would like to acknowledge: Professor James Crawford (the Australian decisions); Dr Mark Villiger (three of the decisions of the European Court of Human Rights); Dr Richard Plender (decisions from

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---

vi

## PREFACE

Canada and France); Mr Sudipto Sarkar (decisions from Canada); Dr Christoph von Katte (German cases) and Mr Hugh Paton (French cases). I am also grateful to those who have rendered general editorial assistance: Mr Horst Schade, who was responsible for many of the summaries of cases, particularly those from the European Court of Human Rights; Miss Louise O'Neill, who prepared the tables of cases and treaties and shouldered much of the burden of proof reading as well as contributing a number of the summaries; Mrs J. Oppenheimer and my secretary, Mrs S. Rainbow. The volume has been printed with their customary care by the Gomer Press. To all the above I extend my warmest thanks.

E. LAUTERPACHT

RESEARCH CENTRE FOR INTERNATIONAL LAW  
UNIVERSITY OF CAMBRIDGE

*March, 1987*

## 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 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. Selected decisions of the European Commission on Human Rights will be printed, chosen by reference to the importance of the points at issue and their interest to public international lawyers generally. (All reports of decisions of the European Commission of Human Rights are published in an official series, the *Official Collection of Decisions of the European Commission of Human Rights*, as well as in the *European Human Rights Reports*). Decisions of national courts on the

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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 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 of Commercial Arbitration* (ed. Pieter Sanders, 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 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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# TABLE OF CONTENTS

See also CLASSIFICATION

	PAGE
PREFACE.....	v
EDITORIAL NOTE.....	vii
ADVISORY COMMITTEE.....	xi
CLASSIFICATION.....	xv
TABLE OF CASES (alphabetical).....	xxvii
TABLE OF CASES (according to courts and countries).....	xxix
TABLE OF TREATIES.....	xxxiii
<b>PART I</b>	
INTERNATIONAL LAW IN GENERAL.....	1
<b>PART II</b>	
STATES AS INTERNATIONAL PERSONS.....	7
<b>PART III</b>	
STATE TERRITORY.....	56
<b>PART IV</b>	
JURISDICTION.....	226
<b>PART V</b>	
STATE RESPONSIBILITY.....	376
<b>PART VI</b>	
THE INDIVIDUAL IN INTERNATIONAL LAW.....	381
<b>PART VII</b>	
DIPLOMATIC AND CONSULAR INTERCOURSE AND PRIVILEGES...	678
<b>PART VIII</b>	
TREATIES.....	691
<b>PART IX</b>	
INTERNATIONAL ORGANIZATION AND ADMINISTRATION.....	707

## TABLE OF CONTENTS

	<i>Page</i>
<b>PART X</b>	
<b>DISPUTES</b> .....	<b>708</b>
<b>PART XI</b>	
<b>WAR AND NEUTRALITY</b> .....	<b>—</b>
—————	
<b>INDEX</b> .....	<b>711</b>

# CLASSIFICATION

## PART I

### INTERNATIONAL LAW IN GENERAL

	<i>Page</i>
I. NATURE AND BINDING FORCE . . . . .	—
II. SOURCES . . . . .	1
( <i>See also</i> Part X: A, I, ii.)	
III. SUBJECTS OF INTERNATIONAL LAW . . . . .	—
( <i>See also</i> Part VI: A; and Part VIII: B, VII.)	
IV. RELATION TO MUNICIPAL LAW . . . . .	1
( <i>See also</i> Part VIII: B, VII; and Part VI: A.)	
V. INTERNATIONAL COMITY . . . . .	4
VI. MISCELLANEOUS . . . . .	—

## PART II

### STATES AS INTERNATIONAL PERSONS

A. IN GENERAL . . . . .	7
I. THE BEGINNING OF STATE EXISTENCE . . . . .	—
( <i>For Recognition see below, D.</i> )	
II. SOVEREIGNTY AND INDEPENDENCE . . . . .	7
i. In Foreign Relations . . . . .	7
( <i>See also below, IV; Part IV; and Part VIII: D, II.</i> )	
ii. In Matters of Domestic Jurisdiction . . . . .	7
iii. Conduct of Foreign Relations. Conclusiveness of Statements of the Executive . . . . .	8
iv. Waiver of Rights. Estoppel. . . . .	—
III. EQUALITY OF STATES . . . . .	—
IV. RECOGNITION OF ACTS OF FOREIGN STATES AND GOVERN- MENTS . . . . .	9
( <i>See also below, D; and Part IV: A, I.</i> )	
V. CONTINUITY OF STATES . . . . .	—
( <i>See also below, E.</i> )	
VI. EXTINCTION OF STATES . . . . .	—
B. COMPOSITE AND DEPENDENT STATES AND TERRITORIES . . . . .	—
I. UNIONS OF STATES . . . . .	
i. Federal States and Confederations . . . . .	—
ii. Other Unions (including Customs Unions) . . . . .	—
II. BRITISH COMMONWEALTH OF NATIONS . . . . .	—
III. PROTECTED STATES AND PROTECTORATES. DEPENDENT STATES . . . . .	—

xvi	CLASSIFICATION	<i>Page</i>
	IV. MANDATED AND TRUST TERRITORIES . . . . .	—
	i. Sovereignty over Mandated and Trust Territories. Status of Mandated and Trust Territories . . . . .	—
	ii. Rights and Duties of the Administering Authority . . . . .	—
	iii. Rights and Duties of the Supervisory Authority . . . . .	—
	iv. Equality of Opportunity . . . . .	—
	v. Nationality in Mandated and Trust Territories . . . . .	—
	vi. Other Matters . . . . .	—
	C. NEUTRALIZATION AND DEMILITARIZATION . . . . .	—
	D. RECOGNITION	
	<i>(See also above, A, IV; and Part IV: A, I.)</i> . . . . .	9
	I. OF STATES . . . . .	9
	II. OF GOVERNMENTS . . . . .	31
	III. OF INSURGENCY . . . . .	—
	IV. OF BELLIGERENCY . . . . .	—
	V. OF ANNEXATION . . . . .	—
	VI. CONDITIONAL RECOGNITION . . . . .	—
	VII. IMPLIED RECOGNITION . . . . .	—
	VIII. WITHDRAWAL OF RECOGNITION . . . . .	—
	E. STATE SUCCESSION . . . . .	31
	I. SUCCESSION TO RIGHTS . . . . .	31
	II. SUCCESSION WITH REGARD TO CONTRACTUAL AND OTHER OBLIGATIONS AND CONCESSIONS . . . . .	—
	III. THE PUBLIC DEBT. PENSIONS . . . . .	36
	IV. SUCCESSION WITH REGARD TO OBLIGATIONS FOR DELIN- QUENCIES (TORTS) . . . . .	—
	V. RESPECT FOR PRIVATE RIGHTS . . . . .	—
	VI. UPON TERMINATION OF A REBELLION . . . . .	—
	VII. INTERNATIONAL CONVENTIONS . . . . .	38
	VIII. IN MATTERS OF ADMINISTRATION. OFFICIALS . . . . .	—
	IX. CONTINUITY OF THE LAW. JUDGMENTS OF COURTS. PENDING ACTIONS . . . . .	—
	X. IN MATTERS OF EXTRADITION . . . . .	44
	F. SUCCESSION OF GOVERNMENTS . . . . .	—
	I. IN GENERAL . . . . .	—
	II. UPON TERMINATION OF A REBELLION . . . . .	—
	G. MISCELLANEOUS . . . . .	—

## CLASSIFICATION

xvii

**PART III**  
**STATE TERRITORY**

	<i>Page</i>
A. IN GENERAL . . . . .	56
I. NATURE OF TERRITORIAL SOVEREIGNTY . . . . .	56
II. ACQUISITION OF TERRITORIAL SOVEREIGNTY	
i. Accretion and Accession . . . . .	—
ii. Occupation. Discovery. The Principle of Contiguity . . . . .	136
iii. Cession . . . . .	—
iv. Prescription . . . . .	—
v. Conquest and Annexation . . . . .	163
III. LOSS OF TERRITORIAL SOVEREIGNTY . . . . .	—
IV. EFFECTS OF CHANGES OF SOVEREIGNTY . . . . .	—
( <i>See also</i> Part II: E.)	
V. OCCUPATION OF FOREIGN TERRITORY IN TIME OF PEACE . . . . .	—
VI. INTERNATIONAL LEASES AND GRANTS IN PERPETUITY . . . . .	—
VII. SOVEREIGNTY OVER THE AIR . . . . .	—
i. Air Navigation Conventions . . . . .	—
ii. Wireless Telegraphy, Telephony, etc. . . . .	—
( <i>See also</i> Part XI: D.)	
B. PARTS OF STATE TERRITORY . . . . .	163
I. BOUNDARIES	
i. Land Boundaries . . . . .	163
ii. Water Boundaries . . . . .	—
II. RIVERS	
i. National Rivers . . . . .	—
ii. Multi-national Rivers . . . . .	—
iii. International Rivers	
(a) The Principle of Freedom of Navigation on International Rivers . . . . .	164
(b) Functions and Competence of International Commissions on International Rivers . . . . .	166
iv. Utilization of the Flow of Non-national and International Rivers . . . . .	—
III. TERRITORIAL WATERS	
i. Nature of the Maritime Belt . . . . .	—
ii. Breadth and Delimitation of the Maritime Belt. Base Lines. Islands. Subsoil of Territorial Waters . . . . .	173
iii. Jurisdiction in the Maritime Belt . . . . .	179
iv. Innocent Passage . . . . .	179
v. Coasting Trade and Fisheries . . . . .	—
( <i>See also</i> Part IV: A, I.)	
IV. NATIONAL WATERS . . . . .	186
V. CONTINENTAL SHELF . . . . .	—
VI. STRAITS . . . . .	186
VII. BAYS . . . . .	—
VIII. INTERNATIONAL CANALS . . . . .	—
IX. LAKES AND LAND-LOCKED SEAS . . . . .	—
X. ISLANDS . . . . .	—
XI. STATE SERVITUDES . . . . .	—

	<i>Page</i>
XII. DEMILITARIZED ZONES . . . . .	—
C. MISCELLANEOUS . . . . .	—

## PART IV JURISDICTION

A. IN GENERAL. TERRITORIAL AND PERSONAL . . . . .	226
I. TERRITORIAL . . . . .	226
i. Over Territory in general and Persons and Property Situated therein. Territorial Limits of Jurisdiction. Expropriation of Alien Property . . . . .	226
<i>(See also Part II: A, IV, and D.)</i>	
ii. Jurisdiction over Foreigners . . . . .	365
iii. Over Ports and National Waters . . . . .	—
<i>(See also Part III: B, III.)</i>	
iv. At the Maritime Frontier. Hovering Laws . . . . .	—
<i>(See also below, C.)</i>	
v. Coasting Trade . . . . .	—
vi. Fisheries . . . . .	373
vii. Continental Shelf . . . . .	—
<i>(See also Part III: B, V.)</i>	
viii. Exemptions from and Restrictions upon Territorial Jurisdiction . . . . .	—
(a) Foreign States . . . . .	—
<i>(See also Part II: A, II, iii.)</i>	
(b) Heads of Foreign States . . . . .	—
(c) Public Ships and Other Property of Foreign States . . . . .	—
(d) Foreign Armed Forces . . . . .	—
(e) International Organizations . . . . .	—
ix. Irregular Apprehension . . . . .	—
II. PERSONAL . . . . .	—
i. Over Nationals in respect of Crimes Committed Abroad . . . . .	—
ii. Over Nationals Abroad or on the High Seas and their Property Abroad . . . . .	373
B. EXTRATERRITORIAL JURISDICTION: CONSULAR JURISDICTION. REGIME OF CAPITULATIONS . . . . .	—
C. HIGH SEAS . . . . .	374
I. CONCEPTION OF THE HIGH SEAS AND FREEDOM OF THE SEA . . . . .	—
II. JURISDICTION ON THE HIGH SEAS . . . . .	
i. For Ensuring the Safety of Traffic. Collisions. Salvage. Pollution of the High Seas . . . . .	—
ii. For Enforcement of International Conventions. Slave Trade . . . . .	—
iii. Visit, Search and Arrest by Men-of-War in Time of Peace . . . . .	—
iv. The Law Governing the Flag. Ship's Papers . . . . .	—
v. The Right of Pursuit . . . . .	—
vi. For Enforcement of Hovering, Revenue and Other Municipal Laws . . . . .	—
vii. Piracy . . . . .	374
<i>(See also Part III: B, III, VI and VII.)</i>	
III. SUBMARINE CABLES . . . . .	—
D. THE AIR SPACE . . . . .	—
E. MISCELLANEOUS . . . . .	—



CLASSIFICATION	Page
<b>PART V</b>	
<b>STATE RESPONSIBILITY</b>	
A. NATURE AND KINDS OF STATE RESPONSIBILITY	376
I. IN GENERAL. ABSOLUTE RESPONSIBILITY AND RESPONSIBILITY BASED ON FAULT . . . . .	—
II. FOR BREACHES OF TREATY OBLIGATIONS . . . . .	376
III. FOR TAKING OF, OR INTERFERENCE WITH, PROPERTY . . . . .	—
IV. FOR REVOCATION OF, OR INTERFERENCE WITH, CONCESSIONS OR CONCESSIONARY CONTRACTS . . . . .	—
V. FOR DEBTS . . . . .	—
VI. FOR OTHER BREACHES OF CONTRACTUAL OBLIGATIONS . . . . .	—
VII. FOR WRONGS UNCONNECTED WITH CONTRACTUAL OBLIGATIONS	
i. Acts and Omissions of State Organs and Officials	
(a) Denial of Justice. Exhaustion of Legal Remedies . . . . .	377
(b) Executive Action or Inaction . . . . .	—
(c) Connected with Legislation . . . . .	—
(d) Plea of Non-discrimination against Foreigners . . . . .	—
(See also Part IV: A, I, i.)	
ii. Acts of Insurgents, Rioters and Private Individuals in general . . . . .	—
VIII. FOR ACTS OR OMISSIONS OF REVOLUTIONARY OR <i>DE FACTO</i> GOVERNMENTS . . . . .	—
IX. MISCELLANEOUS . . . . .	—
B. CLAIMS	
I. IN GENERAL . . . . .	—
II. NATIONALITY OF CLAIMS . . . . .	—
III. ASSIGNMENT OF CLAIMS . . . . .	378
IV. STATE CONTROL OVER PRIVATE CLAIMS . . . . .	—
V. MISCELLANEOUS . . . . .	—
C. PRESCRIPTION (EXTINCTIVE PRESCRIPTION)	
I. BEFORE INTERNATIONAL TRIBUNALS . . . . .	—
II. EFFECT OF MUNICIPAL STATUTES OF LIMITATION . . . . .	—
III. EFFECT OF WAR . . . . .	—
D. DAMAGES (MEASURE OF DAMAGES)	
I. AWARD OF DAMAGES IN GENERAL. GROUNDS FOR AWARDING DAMAGES . . . . .	380
II. INDIRECT DAMAGES AND DAMAGES FOR LOSS OF PROFITS . . . . .	—
III. PUNITIVE AND EXEMPLARY DAMAGES . . . . .	—
E. INTEREST	
I. IN GENERAL . . . . .	—
II. RATE OF INTEREST. COMPOUND INTEREST . . . . .	—
III. THE <i>DIES A QUO</i> . THE <i>DIES AD QUEM</i> . . . . .	—
F. MISCELLANEOUS . . . . .	657

## PART VI

## THE INDIVIDUAL IN INTERNATIONAL LAW

	<i>Page</i>
A. IN GENERAL . . . . .	381
I. POSITION OF INDIVIDUALS IN INTERNATIONAL LAW. HUMAN RIGHTS AND FREEDOMS . . . . .	381
(See also Part I: IV; and Part VIII: B, VII.)	
II. BEFORE INTERNATIONAL TRIBUNALS . . . . .	—
B. NATIONALITY . . . . .	565
I. IN GENERAL. PROOF OF NATIONALITY . . . . .	—
II. ACQUISITION OF NATIONALITY. NATIONALITY AS AFFECTED BY CHANGE OF SOVEREIGNTY . . . . .	565
III. AS DETERMINING THE RIGHT OF PROTECTION OF CITIZENS ABROAD . . . . .	—
(See also Part V: A, and B, II.)	
IV. PROTECTED PERSONS AND <i>DE FACTO</i> SUBJECTS . . . . .	—
V. NATURALIZATION . . . . .	567
VI. EXPATRIATION. LOSS OF NATIONALITY . . . . .	—
VII. DENATIONALIZATION . . . . .	—
VIII. DOUBLE NATIONALITY . . . . .	—
IX. NATIONALITY OF MARRIED WOMEN . . . . .	567
X. OPTION . . . . .	569
XI. STATELESSNESS . . . . .	—
XII. NATIONALITY OF CORPORATIONS . . . . .	571
(See also Part XI: A, VI.)	
C. ALIENS . . . . .	595
I. ADMISSION OF ALIENS . . . . .	595
II. POSITION OF ALIENS . . . . .	599
i. Subjection to Territorial Sovereignty of the Receiving State . . . . .	—
ii. Protection by the National State . . . . .	—
iii. Treatment by and Responsibilities of the Receiving State . . . . .	599
(See also Part V.)	
iv. Plea of Non-discrimination . . . . .	—
(See also Part V.)	
v. Respect for Property. Expropriation . . . . .	613
(See also Part IV: A, I.)	
III. EXPULSION OF ALIENS . . . . .	
i. Right of Expulsion . . . . .	613
ii. Procedure of Expulsion . . . . .	635
D. EXTRADITION . . . . .	657
I. IN GENERAL . . . . .	—
II. EXTRADITION OF NATIONALS . . . . .	—
III. CONDITIONS OF EXTRADITION. EXTRADITABLE CRIMES . . . . .	—

	CLASSIFICATION	xxi
		<i>Page</i>
IV. PROCEDURE OF EXTRADITION . . . . .		661
V. POLITICAL CRIMES . . . . .		—
VI. MISCELLANEOUS . . . . .		—
E. MINORITIES (PROTECTION OF MINORITIES) . . . . .		—
F. MISCELLANEOUS . . . . .		671

## PART VII

### DIPLOMATIC AND CONSULAR INTERCOURSE AND PRIVILEGES

A. PERMANENT DIPLOMATIC ENVOYS . . . . .	678
I. APPOINTMENT AND RECEPTION OF DIPLOMATIC ENVOYS . . . . .	—
II. POSITION AND FUNCTIONS OF DIPLOMATIC ENVOYS . . . . .	678
III. PRIVILEGES AND IMMUNITIES OF	
i. Diplomatic Envoys and their Staff . . . . .	—
ii. Subordinate Members of the Diplomatic Staff . . . . .	—
iii. The Family and Retinue of Diplomatic Envoys . . . . .	—
iv. Diplomatic Premises . . . . .	—
B. SPECIAL ENVOYS. DELEGATES AT INTERNATIONAL CONFERENCES. TRADE DELEGATIONS . . . . .	—
C. RIGHT OF OTHER PERSONS TO PRIVILEGES AND IMMUNITIES	
I. OFFICIALS OF THE UNITED NATIONS . . . . .	—
II. REPRESENTATIVES SENT BY OR ACCREDITED TO THE UNITED NATIONS . . . . .	—
III. DELEGATES OF STATES ATTENDING INTERNATIONAL CONFERENCES . . . . .	—
IV. OFFICIALS OF INTERNATIONAL ORGANIZATIONS . . . . .	683
V. JUDGES AND OFFICIALS OF THE INTERNATIONAL COURT OF JUSTICE AND OTHER INTERNATIONAL TRIBUNALS . . . . .	689
D. CONSULS . . . . .	—
I. APPOINTMENT AND EXEQUATUR . . . . .	—
II. POSITION AND FUNCTIONS OF CONSULS . . . . .	—
III. PRIVILEGES AND IMMUNITIES OF CONSULS . . . . .	—
E. MISCELLANEOUS . . . . .	—

## PART VIII

## TREATIES

	<i>Page</i>
A. IN GENERAL . . . . .	—
I. CONCEPTION AND FUNCTION OF TREATIES . . . . .	—
II. FORMS OF INTERNATIONAL AGREEMENTS: TREATIES. CONVENTIONS. GOVERNMENTAL AGREEMENTS. EXCHANGES OF NOTES. OTHER FORMS OF TREATIES . . . . .	—
B. CONCLUSION AND OPERATION OF TREATIES . . . . .	691
I. SIGNATURE. ACCESSION AND ADHESION. TACIT RENEWAL . . . . .	—
II. CONDITIONS OF VALIDITY OF TREATIES. REGISTRATION OF TREATIES . . . . .	—
III. PARTIES TO TREATIES. RIGHT TO CONCLUDE TREATIES. COMPOSITE AND DEPENDENT STATES AND TERRITORIES. INTERNATIONAL ORGANIZATIONS . . . . .	—
IV. CONSTITUTIONAL LIMITATIONS . . . . .	691
V. RESERVATIONS . . . . .	—
VI. RATIFICATION OF TREATIES. ENTRY INTO FORCE . . . . .	695
VII. OPERATION AND ENFORCEMENT OF TREATIES. NECESSITY FOR MUNICIPAL LEGISLATION . . . . . (See also Part I: IV; and Part VI: A.)	695
VIII. EFFECT OF TREATIES ON THIRD PARTIES . . . . .	697
IX. EFFECT OF MUNICIPAL LEGISLATION . . . . .	698
X. MISCELLANEOUS . . . . .	—
C. TERMINATION OF TREATIES . . . . .	705
I. BY OPERATION OF LAW . . . . .	
i. In general . . . . .	705
ii. Extinction and Dismemberment of Contracting Party . . . . .	705
iii. Outbreak of War . . . . . (See also Part XI.)	—
II. BY ACT OF PARTY . . . . .	
i. In general . . . . .	—
ii. Mutual Consent. Revision of Treaties . . . . .	—
iii. Unilateral Denunciation. Result of Non-performance by the Other Party . . . . .	—
D. INTERPRETATION OF TREATIES . . . . .	705
I. AGENCIES OF INTERPRETATION . . . . .	—
II. PRINCIPLES AND RULES OF INTERPRETATION . . . . .	705
III. BILINGUAL TREATIES. MULTILINGUAL TREATIES . . . . .	—
IV. CONSIDERATION OF PREPARATORY WORK . . . . .	—
V. MISCELLANEOUS . . . . .	706
E. SPECIAL KINDS OF TREATIES . . . . .	—

CLASSIFICATION

xxiii

**PART IX**

**INTERNATIONAL ORGANIZATION AND  
 ADMINISTRATION**

	<i>Page</i>
A. INTERNATIONAL ORGANIZATION IN GENERAL	—
B. THE UNITED NATIONS	—
I. LEGAL NATURE OF THE UNITED NATIONS. MEMBERSHIP	—
II. THE GENERAL ASSEMBLY	—
III. THE SECURITY COUNCIL	—
IV. OTHER ORGANS OF THE UNITED NATIONS	—
V. INTERPRETATION OF THE CHARTER OF THE UNITED NATIONS	—
C. SPECIALIZED AGENCIES OF THE UNITED NATIONS	—
D. OTHER INTERNATIONAL ORGANIZATIONS AND ORGANS OF INTERNATIONAL ADMINISTRATION	—
E. INTERNATIONAL OFFICIALS	707
F. MISCELLANEOUS	—

**PART X**

**DISPUTES**

A. ARBITRATION	—
I. IN GENERAL	
i. Conception and Function of Arbitration	—
ii. The Law Applied by Arbitral Tribunals	—
iii. The Arbitration Treaty. Appointment and Withdrawal of Arbitrators	—
II. PROCEDURE	
i. Procedure before the Tribunal (Oral and Written Arguments)	—
ii. Competence. Competence to Determine Jurisdiction	—
iii. Intervention	—
iv. Procedure. Appeals	—
III. EVIDENCE	—
IV. THE AWARD	
i. Scope and Binding Force of the Award	—
ii. Appeal and Revision	—
V. MISCELLANEOUS	—

	<i>Page</i>
B. INTERNATIONAL COURT OF JUSTICE . . . . .	—
I. ORGANIZATION OF THE COURT . . . . .	—
II. CONTENTIOUS JURISDICTION	
i. Competence . . . . .	—
ii. Procedure . . . . .	—
iii. The Law Applicable . . . . .	—
iv. Judgment . . . . .	—
III. ADVISORY JURISDICTION	
i. Competence . . . . .	—
ii. Procedure . . . . .	—
iii. The Law Applicable . . . . .	—
iv. Opinion . . . . .	—
C. OTHER INTERNATIONAL COURTS . . . . .	708
D. CONCILIATION . . . . .	—
E. UNILATERAL MEANS OF REDRESS SHORT OF WAR: RETORSION. REPRISALS. PACIFIC BLOCKADE. INTERVENTION . . . . .	—
F. NEGOTIATION . . . . .	—
G. MISCELLANEOUS . . . . .	—

## PART XI

## WAR AND NEUTRALITY

A. WAR IN GENERAL . . . . .	—
I. DEFINITION AND TECHNICAL MEANING OF WAR. BELLIGERENCY AND INSURGENCY . . . . .	—
II. COMMENCEMENT OF WAR . . . . .	—
III. REGION OF WAR . . . . .	—
IV. BELLIGERENT FORCES . . . . .	—
V. EFFECTS OF OUTBREAK OF WAR	
i. In general . . . . .	—
ii. On Treaties . . . . .	—
iii. On Private Contracts . . . . .	—
iv. On Enemy Subjects with regard to	
(a) Their Personal Status in the Territory of the Belligerent.	
<i>Persona standi in judicio</i> . . . . .	—
(b) Their Property and Other Rights . . . . .	—
v. On Enemy Merchant Ships in Port . . . . .	—
vi. On Neutral Persons and Property. The Right of Angary . . . . .	—
vii. Trading with the Enemy . . . . .	—
VI. ENEMY CHARACTER	
i. Of Individuals . . . . .	—
ii. Of Corporations . . . . .	—
iii. Of Ships . . . . .	—
iv. Of Goods . . . . .	—

CLASSIFICATION	xxv
	<i>Page</i>
VII. THE BINDING FORCE OF THE LAWS OF WAR . . . . .	—
VIII. ENFORCEMENT OF THE LAWS OF WAR . . . . .	—
i. Reprisals . . . . .	—
ii. Punishment of War Crimes and Crimes against Humanity. Defence of Superior Orders . . . . .	—
iii. Compensation and Reparation . . . . .	—
IX. PRISONERS OF WAR . . . . .	—
X. TREATMENT OF WOUNDED . . . . .	—
XI. NON-HOSTILE RELATIONS BETWEEN BELLIGERENTS, ESPECIALLY ARMISTICES . . . . .	—
XII. TERMINATION OF WAR . . . . .	—
XIII. EFFECTS OF TREATIES OF PEACE . . . . .	—
i. In general . . . . .	—
ii. Amnesty . . . . .	—
iii. <i>Postliminium</i> . . . . .	—
iv. Miscellaneous . . . . .	—
XIV. PERFORMANCE OF TREATIES OF PEACE . . . . .	—
XV. MISCELLANEOUS . . . . .	—
 B. WARFARE ON LAND . . . . .	—
I. MEASURES AND INSTRUMENTS OF FORCE . . . . .	—
II. APPROPRIATION, UTILIZATION AND DESTRUCTION OF ENEMY PROPERTY . . . . .	—
III. OCCUPATION OF ENEMY TERRITORY . . . . .	—
i. Nature and Effects of the Occupation . . . . .	—
ii. Legislative, Judicial and Administrative Functions of the Occupant iii. Respect for Private Property. The Public Property of the Enemy State. Requisitions and Contributions . . . . .	—
iv. Inhabitants. Services. Deportations. Hostages . . . . .	—
 C. WARFARE AT SEA . . . . .	—
I. MEASURES AND INSTRUMENTS OF FORCE . . . . .	—
II. VISIT, SEARCH, CAPTURE AND DESTRUCTION . . . . .	—
i. Of Enemy Merchantmen . . . . .	—
ii. Of Neutral Merchantmen . . . . .	—
III. RESTRICTIONS ON THE RIGHT OF CAPTURE (HOSPITAL SHIPS, ETC., POSTAL CORRESPONDENCE, PROPERTY UNDER NEUTRAL FLAG) . . . . .	—
IV. PRIZE LAW . . . . .	—
i. Nature and Extent of Jurisdiction of Prize Courts . . . . .	—
ii. Procedure . . . . .	—
iii. Indemnities and Damages . . . . .	—
 D. CONTRABAND . . . . .	—
I. CONCEPTION OF CONTRABAND. ABSOLUTE AND CONDITIONAL CONTRABAND . . . . .	—
II. CARRIAGE OF CONTRABAND AND DOCTRINE OF CONTINUOUS VOYAGE . . . . .	—
III. PENALTY FOR CARRIAGE OF CONTRABAND . . . . .	—

	<i>Page</i>
E. BLOCKADE	
I. ESTABLISHMENT OF BLOCKADE. CONDITIONS OF VALIDITY	—
II. BREACH AND PENALTY . . . . .	—
III. BLOCKADE AND THE DOCTRINE OF CONTINUOUS VOYAGE	—
F. AIR WARFARE . . . . .	—
G. NEUTRALITY	
I. NATURE AND DUTIES OF NEUTRALITY . . . . .	—
II. NEUTRAL AND MILITARY AND NAVAL OPERATIONS AND PREPARATIONS . . . . .	—
III. NEUTRAL ASYLUM . . . . .	—
IV. SUPPLIES, LOANS AND SERVICES TO BELLIGERENTS . . . . .	—
V. EFFECT OF THE CHARTER OF THE UNITED NATIONS . . . . .	—



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Frontmatter

[More information](#)

## TABLE OF CASES REPORTED

## ALPHABETICAL

(The figures in heavier type indicate the page numbers of the actual reports. The ordinary type indicates pages containing notes or relevant cross-references.)

- Ahmad *v.* Inner London Education Authority; Ahmad *v.* United Kingdom, 3, **399**, 697  
Axen Case, 377, **498**, 705, 708
- Batkoun, **249**  
Ben Mohamed Ben Mana'an Bachiri *v.* NV Textiel- en Oliefabrieken, Afdeling Crock en Laan, 43, **600**  
Burnell *v.* International Joint Commission, **166**
- C *v.* Minister of the Interior, **602**  
Caisse Sociale de la Région de Constantine (CASOREC) *v.* Entreprise Soudic and Others, **31**  
Calder *et al.* *v.* Attorney-General of British Columbia, 7, **56**  
Camin *v.* Oudes, **4**  
Carl Zeiss Heidenheim and Others *v.* VEB Carl Zeiss Jena and Others, 9, **580**  
Ceskovic *v.* Minister for Immigration and Ethnic Affairs, **627**, **657**  
Coe *v.* Commonwealth of Australia and Another, **136**, **163**
- Das Land Nordrhein-Westfalen *v.* Vogels and van Loon, **599**  
D.C. *v.* Public Prosecutor, **38**, 55, 671, 705  
Deportation to U. Case, 564, **613**  
Director of Public Prosecutions *v.* Stonehouse, 6, **252**  
Duff *v.* R., **678**
- East-Treaties Constitutionality Case, 7, **691**, **695**  
Eckle Case (Article 50), 376, 380, **427**, 708  
Egger *v.* ISOT, **363**  
Einhorn-Fielstein *v.* Netherlands Claims Commission (Czechoslovakia), **378**  
Epelbaum *v.* Société Shell Berre, **576**  
ESOC Official Immunity Case, **683**, 707  
Extradition from Morocco Case, **659**
- Filet *v.* Ministère Public, 371  
Frühau, **569**
- Gemin *v.* Minister of Justice, **654**  
G.N. *v.* Public Prosecutor, **381**  
Gossard *v.* Receveur des Finances de Compiègne, **695**  
Greek National Military Service Case (1), **612**  
Greek National Military Service Case (2), 8, 374, 564, 567, **606**
- Hardayal and Minister of Manpower and Immigration, *re*, **617**, **657**  
Hesperides Hotels Ltd. and Another *v.* Aegean Turkish Holidays Ltd. and Multizade, 8, 9, **31**  
H.S. *v.* Gambino, **567**  
H.S. *v.* Public Prosecutor, **657**  
Huijing's Handelsmaatschappij NV *v.* Fargion Heirs, **676**  
Hurt *v.* Minister of Manpower and Immigration, **595**
- J.A.M. *v.* Public Prosecutor, **387**
- Kissel *v.* Ministère Public, **665**
- Li Chia Hsing *v.* Rankin, **173**, **373**
- Maffei *v.* Minister of Justice, **652**  
Males, 8, 365, **698**, 706  
Mamadou, **669**  
Markovits *v.* Tasnady, **671**  
Ministère Public *v.* Brabant, **369**  
Ministère Public *v.* de Breusing, **365**
- Netherlands Foundation for Moral Rearmament *v.* Minister for Cultural Affairs, **397**  
Nigerian Objets d'Art Export Case, 1, **226**, **697**
- Orsini, 365, **661**  
Ownership of the Bed of the Strait of Georgia and Related Areas, *re*, 163, **186**

Cambridge University Press

978-052-1-46418-5 - International Law Reports, Volume 73

Edited by E. Lauterpacht

Frontmatter

[More information](#)

xxviii

## TABLE OF CASES

- Öztürk Case, 377, 380, **511**, 613, 706, 709
- Passport Seizure Case, **372**, 373, 613
- Pawlett, *re*, 135
- Permanent Court of Arbitration  
Employee Case, **1**, 689, 695
- Pianka and Another *v.* The Queen, 179, 186, **273**
- Pretto and Others Case, 377, **482**, 706, 708
- Procureur de la République *v.* Gova, **565**
- Public Prosecutor *v.* N.C.J., **374**
- Public Prosecutor *v.* X, **385**
- R. v.* Dakin and Others, **179**
- R. v.* Director of Public Prosecutions and Another, *ex parte* Schwartz, 43, **44**, 661, 705
- R. v.* Secretary of State for Home Affairs, *ex parte* Hosenball, 377, 564, **635**
- Raparison, **391**
- Ratsimba, **388**, 697
- Re* Hardayal, *see under* Hardayal and Minister of Manpower and Immigration, *re*
- Re* Ownership of the Bed of the Strait of Georgia, *see under* Ownership of the Bed of the Strait of Georgia and Related Areas
- Rio Tinto Zinc Corporation and Others *v.* Westinghouse Electric Corporation, 3, 7, 8, **296**, 373, 697
- SA Marbrerie Focant *v.* SA Bacci, **571**
- Sadok, **36**
- Schul *v.* Commander of the Army Logistics Corps, **393**
- Sociedad Minera el Teniente SA *v.* Norddeutsche Affinerie AG, 9, **230**, 613
- Société de Noter *v.* Overseas Apeco Ltd., 365, **578**
- State of the Netherlands *v.* van de Bosch, 165
- Sutter Case, **549**, 706, 709
- Trafik Aktiebolaget Grangesberg-Oxelösund and Another *v.* The Netherlands, **164**
- Van der Mussele Case, 376, **459**, 706, 708
- Waver *v.* State Secretary of Justice, **674**
- X *v.* Minister of Defence, **382**
- Yugoslav Consul Immunity Case, **689**
- Zimmermann and Steiner Case, 376, **446**

Cambridge University Press

978-052-1-46418-5 - International Law Reports, Volume 73

Edited by E. Lauterpacht

Frontmatter

[More information](#)

## TABLE OF CASES REPORTED

ARRANGED ACCORDING TO COURTS AND TRIBUNALS  
(INTERNATIONAL CASES) AND COUNTRIES (MUNICIPAL CASES).

(The figures in heavier type indicate the page numbers of the actual reports. The ordinary type indicates pages containing notes or relevant cross-references.)

### I. DECISIONS OF INTERNATIONAL TRIBUNALS

<i>European Commission of Human Rights</i> 1981	Eckle Case (Article 50), 376, 380, <b>427</b> , 708
Ahmad <i>v.</i> United Kingdom, 3, <b>399</b> , 697	Öztürk Case (Decision), 377, 380, <b>511</b> , 613, 706, 709
<i>European Court of Human Rights</i> 1982	Pretto and Others Case (Merits), 377, <b>482</b> , 706, 708
Axen Case (Decision), 377, <b>498</b> , 705, 708	Van der Mussele Case (Merits), 376, <b>459</b> , 706, 708
Pretto and Others Case (Decision), 377, <b>482</b> , 706, 708	Zimmermann and Steiner Case, 376, <b>446</b>
Sutter Case (Decision), <b>549</b> , 706, 709	
Van der Mussele Case (Decision), 376 <b>459</b> , 706, 708	
	1984
	Öztürk Case (Merits and Article 50), 377, 380, <b>511</b> , 613, 706, 709
	Sutter Case (Merits), <b>549</b> , 706, 709
1983	
Axen Case (Merits), 377, <b>498</b> , 705, 708	

### II. DECISIONS OF MUNICIPAL COURTS

<i>Australia</i> 1978	Ownership of the Bed of the Strait of Georgia and Related Areas, <i>re</i> , 163, <b>186</b>
Li Chia Hsing <i>v.</i> Rankin, <b>173</b> , 373	
	1978
	Hurt <i>v.</i> Minister of Manpower and Immigration, <b>595</b>
	<i>England</i>
	1977
	Ahmad <i>v.</i> Inner London Education Authority, 3, <b>399</b> , 697
	Director of Public Prosecutions <i>v.</i> Stone- house, 6, <b>252</b>
	Hesperides Hotels Ltd. and Another <i>v.</i> Aegean Turkish Holidays Ltd. and Muftizade, 8, <b>9</b> , 31
	R. <i>v.</i> Secretary of State for Home Affairs, <i>ex parte</i> Hosenball, 377, 564, <b>635</b>
	Rio Tinto Zinc Corporation and Others <i>v.</i> Westinghouse Electric Corpora- tion, 3, 7, 8, <b>296</b> , 373, 697
<i>Canada</i> 1973	
Calder <i>et al.</i> <i>v.</i> Attorney-General of British Columbia, 7, <b>56</b>	
Pawlett, <i>re</i> , 135	
	1976
Burnell <i>v.</i> International Joint Commis- sion, <b>166</b>	
Hardayal and Minister of Manpower and Immigration, <i>re</i> , <b>617</b> , 657	

Cambridge University Press

978-052-1-46418-5 - International Law Reports, Volume 73

Edited by E. Lauterpacht

Frontmatter

[More information](#)

xxx

## TABLE OF CASES

- Federal Republic of Germany*  
1972  
Deportation to U. Case, 564, **613**  
East-Treaties Constitutionality Case, 7, **691**, 695  
Greek National Military Service Case (1), 612  
Nigerian Objets d'Art Export Case, 1, **226**, 697  
Passport Seizure Case, **372**, 373, 613
- 1973  
ESOC Official Immunity Case, **683**, 707  
Extradition from Morocco Case, **659**  
Greek National Military Service Case (2), 8, 374, 564, 567, **606**  
Sociedad Minera el Teniente SA v. Norddeutsche Affinerie AG, 9, **230**, 613  
Yugoslav Consul Immunity Case, **689**
- France*  
1972  
Epelbaum v. Société Shell Berre, **576**  
Gossard v. Receveur des Finances de Compiègne, **695**  
Males, 8, 365, **698**, 706  
Procureur de la République v. Gova, **565**  
Sadok, 36  
Société de Noter v. Overseas Apeco Ltd., 365, **578**
- 1973  
Batkoun, **249**  
C v. Minister of the Interior, **602**  
Caisse Sociale de la Région de Constantine (CASOREC) v. Entreprise Sourdive and Others, **31**  
Males, 8, 365, **698**, 706
- 1975  
Carl Zeiss Heidenheim and Others v. VEB Carl Zeiss Jena and Others, 9, **580**
- Ivory Coast*  
1982  
Mamadou, **669**
- Jamaica*  
1976  
R. v. Director of Public Prosecutions and Another, *ex parte* Schwartz, 43, **44**, 661, 705
- 1977  
Pianka and Another v. The Queen, 179, **186**, **273**
- 1978  
R. v. Dakin and Others, **179**
- Luxembourg*  
1970  
Markovits v. Tasnady, **671**  
Ministère Public v. de Bressing, **365**
- 1971  
SA Marbrerie Focant v. SA Bacci, **571**
- 1972  
Ministère Public v. Brabant, **369**
- 1975  
Frühauf, **569**
- 1978  
Filet v. Ministère Public, **371**
- 1980  
Gemin v. Minister of Justice, **654**  
Kissel v. Ministère Public, **665**  
Maffei v. Minister of Justice, **652**
- Madagascar*  
1969  
Ratsimba, **388**, 697
- 1970  
Raparison, **391**
- The Netherlands*  
1968  
G.N. v. Public Prosecutor, **381**  
H.S. v. Gambino, **567**  
Public Prosecutor v. X, **385**  
Trafik Aktiebolaget Grangesberg-Oxelösund and Another v. The Netherlands, **164**  
X v. Minister of Defence, **382**
- 1969  
J.A.M. v. Public Prosecutor, **387**

Cambridge University Press

978-052-1-46418-5 - International Law Reports, Volume 73

Edited by E. Lauterpacht

Frontmatter

[More information](#)

## TABLE OF CASES

xxxi

1970	1972
Das Land Nordrhein-Westfalen <i>v.</i> Vogels and van Loon, <b>599</b>	D.C. <i>v.</i> Public Prosecutor, <b>38, 55, 671,</b> <b>705</b>
Camín <i>v.</i> Oudes, <b>4</b>	Huijting's Handelmaatschappij NV <i>v.</i> Fargion Heirs, <b>676</b>
1971	Netherlands Foundation for Moral Rearmament <i>v.</i> Minister for Cultural Affairs, <b>397</b>
Ben Mohamed Ben Manaán Bachiri <i>v.</i> NV Textiel- en Oliefabrieken, Afdeling Crock en Laan, <b>43, 600</b>	Waver <i>v.</i> State Secretary of Justice, <b>674</b>
Einhorn-Fielstein <i>v.</i> Netherlands Claims Commission (Czechoslovakia), <b>378</b>	1978
H.S. <i>v.</i> Public Prosecutor, <b>657</b>	State of the Netherlands <i>v.</i> van de Bosch, <b>165</b>
Permanent Court of Arbitration Employee Case, <b>1, 689, 695</b>	<i>Senegal</i>
Public Prosecutor <i>v.</i> N.C.J., <b>374</b>	1975
Schul <i>v.</i> Commander of the Army Logistics Corps, <b>393</b>	Orsini, <b>365, 661</b>
	<i>Togo</i>
	1981
	Egger <i>v.</i> ISOT, <b>363</b>

Cambridge University Press

978-052-1-46418-5 - International Law Reports, Volume 73

Edited by E. Lauterpacht

Frontmatter

[More information](#)

## TABLE OF TREATIES

This table contains a list, in chronological order according to the date of signature, of the treaties referred to in the decisions printed in the present volume. It has not been possible to draw a helpful distinction between treaties judicially considered and treaties which are merely cited.

In the case of bilateral treaties, the names of the parties are given in alphabetical order. Multilateral treaties are referred to by the name by which they are believed commonly to be known, *e.g.* Hague Convention No. 1 of 1899; Treaty of Versailles, 1919. References to the texts of treaties have been supplied, including wherever possible at least one reference to a text in the English language. The full titles of the abbreviated references will be found in the List of Abbreviations printed in the volume containing the Consolidated Tables and Index to Vols. 1-35.

### 1697

Sept. 20 Treaty of Ryswick (Treaty of Peace between France and Spain)  
(21 C.T.S. 453).....366

### 1763

Feb. 10 France-Great Britain-Spain, Definitive Treaty of Peace (Paris)  
(1 Martens R. 33; 1 Martens R. 2, p. 104; 15 *Traité*s  
66; 1 B.F.S.P. Part I, 422 (extract); 2 Hertslet 233  
(extract)).....62, 113-14

### 1794

Nov. 19 Great Britain-U.S.A., Treaty of Amity, Commerce and  
Navigation (Jay Treaty) (6 Martens R. 338; 5 Martens R. 2,  
p. 641; U.S.T.S. No. 105; 1 U.S. Treaties 590; 2 Miller,  
Treaties 245; 1 B.F.S.P. Part I, 784; 52 C.T.S. 243).....52

### 1818

Oct. 20 Great Britain-U.S.A., Convention of Commerce (4 Martens  
N.R. 571; 2 Hertslet 392; 6 B.F.S.P. 3; 2 Miller, Treaties  
658; 69 C.T.S. 293).....63, 104

### 1825

Feb. 28 Great Britain-Russia, Convention on Trade and Establishment  
of Pacific Boundary (12 B.F.S.P. 38).....63-4

### 1839

Apr. 19 Belgium-Netherlands-Luxembourg, Treaty for the Definitive  
Separation of the Respective Territories (Treaty of London)  
(16 Martens N.R. 773; 2 Hertslet, Map of Europe, 994; 37  
B.F.S.P. 1320 (in French); 88 C.T.S. 427)  
Para. 1.....164  
Para. 2.....165

### 1846

June 15 Great Britain-U.S.A., Oregon Boundary Treaty (9 Martens  
N.R.G. 27; U.S.T.S. No. 120; 5 Miller, Treaties 3; 1 U.S.  
Treaties 656; 100 C.T.S. 39; 34 B.F.S.P. 14).....63, 189-90,  
206, 214, 218-21  
Art. I.....189, 206, 218