

INTERNATIONAL
LAW REPORTS

Volume
82

Volumes published under the title:

**ANNUAL DIGEST AND REPORTS
 OF PUBLIC INTERNATIONAL LAW CASES**

- Vols. 1 *and* 2 Edited by Sir John Fischer Williams, K.C., and
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Volumes published under the title:

INTERNATIONAL LAW REPORTS

- Vols. 17—23 Edited by Sir Hersch Lauterpacht, Q.C., LL.D.,
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 Vol. 24 Edited by Sir Hersch Lauterpacht, Q.C., LL.D.,
 F.B.A., and E. Lauterpacht
 Vols. 25—68 *and* Consolidated Tables and Index to Vols. 1—35 *and*
 36—45
 Edited by E. Lauterpacht, Q.C.
 Vols. 69—82 Edited by E. Lauterpacht, C.B.E., Q.C., and
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INTERNATIONAL LAW REPORTS

Volume
82

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A PUBLICATION OF
THE RESEARCH CENTRE FOR INTERNATIONAL LAW,
UNIVERSITY OF CAMBRIDGE

CAMBRIDGE
GROTIUS PUBLICATIONS LIMITED

1990

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9780521464277

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First published 1990

Reprinted 2016

Printed in Singapore by Markono Print Media Pte Ltd

A catalogue record for this publication is available from the British Library

ISBN 978-0-521-46427-7 Hardback

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PREFACE

This volume gives additional recognition to two names that have been associated with it for a number of years. Mr Christopher Greenwood began his work on these *Reports* in 1978. In 1985 he became Assistant Editor. Now he becomes Joint Editor. This acknowledgement is well deserved. He has brought to his task dedication, painstaking care and constructive imagination. It was, for example, he who proposed the idea, first reflected in volume 75, of replacing the “classification” system by a digest of cases. The effect of this has been to introduce much greater flexibility into the editorial process while, at the same time, assisting the reader rapidly to become acquainted with the principal contents of each volume. We should regard ourselves as fortunate that we can enjoy the contribution of someone so committed to International Law as is Mr Greenwood.

The other name now accorded a greater prominence in this work is that of Mr Andrew Oppenheimer, MA, Barrister-at-Law. For the last eight years he has been much more than the translator whose felicitous use of words has reduced into lucid English the often complex and elusive languages of decisions rendered in French, German, Italian and Spanish. He has scrutinized the law reports and periodicals of the various Civil Law countries to identify cases suitable for inclusion in this series. In addition, he has increasingly borne the responsibility for preparing summaries of, and otherwise making ready for the press, the cases that he has selected. He is now to have the title of “Associate Editor: Civil Law Jurisdictions”. He is also a Research Fellow of the Research Centre for International Law, under the auspices of which this series is published. Amongst the fruits of Mr Oppenheimer’s labour in the present volume will be found judgments from the courts of Poland, France, Switzerland and Belgium.

This volume also contains a substantive innovation—a documentary section (see pp. 671 and following). This does not herald a change to make the series other than one devoted to judicial and arbitral materials. However, on occasion in the past, we have appended to the text of a decision a note containing later material closely related to it, for example, the Memorandum of the Claimant when seeking the reopening of the arbitral decision in *BP v. Libyan Arab Republic*, printed in 53 *ILR* 358-74. Later decisions by way of appeal in the same case are, naturally, in a different category, as they are usually reported in due course. But collateral material emerging some time after the appearance of the volume containing the case to which it pertains has not been reprinted. Now, however, with the publication of the Consolidated Tables of Cases and Indexes (which will, we

hope, be further consolidated over shorter intervals in the future), the retrieval of materials wherever located in the series will become easier. It is, therefore, possible to contemplate the later insertion of relevant documents, sometimes even several volumes later than the one in which the related case is reported. Thus the present volume reprints, by way of appendix to the *Beagle Channel* case in 1977, reported as far back as 52 *ILR* 93, the documents relating to the Papal mediation in the period 1978-84 and the settlement of the differences between Argentina and Chile arising from that Award. Such additional materials will in the future be entered both in the Tables of Cases and the Index of each volume.

In addition to Mr Oppenheimer's extensive contribution, already mentioned, we are indebted to the following persons who have assisted in divers ways. Professor D.W. Bowett QC kindly helped prepare the summary of the *Rainbow Warrior* award. The text in its printed form was made available by the Registrar of the Tribunal, Mr Michael F. Hollering, General Counsel of the American Arbitration Association. Professor Bowett and Mr T.D. Wright also gave valuable assistance with the preparation of the *La Bretagne* case. Professor Joe Verhoeven contributed most helpfully in the selection of the Belgian decisions and also provided the translation of one decision rendered in Flemish. Miss Maria Mulrennan LL.M. and Miss Donata Rugarabamu BA contributed many of the summaries and performed numerous other tasks in connection with the preparation of the volume. The Index is the work of Miss Maureen MacGlashan. Miss Rugarabamu compiled the Tables of Cases and Treaties. Mrs Diane Illott corrected the proofs and was responsible for much of the work of seeing the volume through the press. Miss Christine Kay gave valuable secretarial assistance. The volume has again been most carefully printed by the Gomer Press.

Our gratitude is also due to the following publishers who kindly gave permission for the photographic reproduction of decisions appearing in their law reports: the West Publishing Company (the *Federal Reporter* and the *Federal Supplement*); Messrs Juta and Co (the *South African Law Reports*) and the Canadian Law Book Company (the *Dominion Law Reports*). We are also most grateful to the International Court of Justice for permission to reproduce the decision from the *International Court of Justice Reports*.

E. LAUTERPACHT
C. J. GREENWOOD

RESEARCH CENTRE FOR INTERNATIONAL LAW
UNIVERSITY OF CAMBRIDGE

July 1990

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 of 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

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 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.

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 page xviii.

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