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VOLUME 110

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and C. J. Greenwood |

*Lauterpacht Research Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
110

Edited by

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PREFACE

by

THE JOINT EDITORS

Volume 110 is devoted to a small group of highly significant decisions of international tribunals. Two-thirds of the volume is taken up with the texts of the Advisory Opinions of the International Court of Justice regarding the use, or threat of use, of nuclear weapons. These Opinions were delivered in July 1996 and the Editors had hoped to publish them in an earlier volume. Unfortunately, due to the budgetary difficulties faced by the International Court, the printed versions of the two Opinions, which include the official translations of those separate and dissenting opinions given in French, were not published until more than a year later. We have, however, included them in the *International Law Reports* at the earliest possible opportunity, the present volume going to press only three weeks after the publication of the printed text of the Court's second Opinion (p. 163 of this volume).

The volume also includes the report of the first arbitral panel constituted under Article 2008 of the North American Free Trade Agreement (p. 542), the first decision of the International Tribunal for the Law of the Sea (p. 736), two decisions of the OECD Administrative Tribunal (pp. 599 and 602) and the decisions of the International Criminal Tribunal for the Former Yugoslavia in relation to the issue of *subpoenae duces tecum* to States and high officials of States (p. 607). The volume also includes Consolidated Tables of Cases for Volumes 101-110. These are printed on yellow pages after the Index.

Several people have contributed to the contents of this volume. HE Judge David Anderson, of the International Tribunal for the Law of the Sea, provided the text of the judgment in the case of the *M/V Saiga*. Professor James Crawford supplied the texts and summaries of the two OECD decisions. Mr W. R. Fenrick, Office of the Prosecutor of the International Criminal Tribunal, provided copies of the decisions in *Blaškić*. Mr Dapo Akande, LL.M., wrote the summary of the NAFTA decision. The Index and Table of Treaties and the Consolidated Tables of Cases were prepared by Miss Maureen MacGlashan, CMG. The Tables of Cases for this volume and the Digest were the work of Ms Karen Lee, MA, who also undertook much of the task of seeing the volume through the press and assisting in the compilation of the Consolidated Tables. The summaries of the two Opinions of the International Court of Justice, of the *Blaškić* case

and of the *M/V Saiga* were written by Professor Greenwood. Mrs Anne Skinner and Miss Sarah Greenwood provided secretarial assistance. The International Court of Justice kindly permitted the photographic reproduction of the two Opinions of the Court. Ms Finola O'Sullivan and Ms Jayne Matthews of the Cambridge University Press and Mrs Diane Ilott and Mr Adrian Lee gave much valuable assistance in sub-editing the copy and seeing the volume through the press. The volume has been printed with their customary care by the Gomer Press. The Editors are most grateful to all concerned.

E. LAUTERPACHT

LAUTERPACHT RESEARCH CENTRE
FOR INTERNATIONAL LAW,
UNIVERSITY OF CAMBRIDGE

C. J. GREENWOOD

LAW DEPARTMENT,
LONDON SCHOOL OF ECONOMICS
AND POLITICAL SCIENCE

February 1998

ADDITIONAL PREFACE

by

PROFESSOR GREENWOOD

and

MR OPPENHEIMER

The publication of this volume coincides with two events which make it appropriate that we should have the pleasure of adding a few words of our own to the normal Preface from the Editors.

First, in 1997 the University of Cambridge decided to change the name of the Research Centre for International Law to the Lauterpacht Research Centre for International Law. The change of name is in recognition of the enormous contribution to international law, and to the study of that subject at Cambridge, made by the Lauterpachts, father and son. It was Judge Sir Hersch Lauterpacht (1897-1960) who, together with Lord McNair, conceived the idea of a digest or series of reports of decisions on public international law and first edited what was initially known as the *Annual Digest of Public International Law Cases*, the first volume of which (volume 3 of the series, for volumes 1 and 2 were added at a later date) was published in 1929. Despite the other demands on his time during a career which saw him become Whewell Professor of International Law at Cambridge and then a Judge at the International Court of Justice, he continued as Editor until his death in 1960.

Eli Lauterpacht succeeded his father as Editor, assuming responsibility for the series with effect from volume 24, so that the present volume is the eighty-seventh which has borne his name. Having had the pleasure of working with him on the series for many years, we can testify to the high priority he has always given to the *Reports* despite the demands of his academic career and his professional activities as a judge and advocate. It was Eli Lauterpacht who had the vision to create the Research Centre under the auspices of which these *Reports* have been published since 1984. It was his leadership as its first Director which made the Centre into the focal point for research in international law which it is today.

Secondly, as this volume was about to be printed, it was announced that Eli Lauterpacht was to be knighted for services to international law. It is a source of great pleasure and pride to both of us and to all who have been associated with the publication of the *International Law*

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ADDITIONAL PREFACE

Reports over the years that his wide-ranging contributions to international law have received this richly deserved recognition. On behalf of all those associated with the Reports, we offer our warmest congratulations to Sir Elihu and Lady Lauterpacht.

CHRISTOPHER GREENWOOD
Joint Editor

ANDREW OPPENHEIMER
Associate Editor

13 June 1998

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 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.

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 xix.

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and Consolidated Tables of Cases and Treaties for volumes 1-80 was 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. The present volume contains Consolidated Tables of Cases for volumes 101-10.

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| <p>Billaud and Bessoles <i>v.</i> Secretary-General (Joined Cases Nos. 24/25) 602</p> <p>Blaškić. <i>See</i> Prosecutor <i>v.</i> Blaškić (Objection to the Issue of <i>Subpoenae Duces Tecum</i>) (Cases IT-95-14-PT and IT-95-14-AR108<i>bis</i>)</p> <p>In the Matter of: Tariffs Applied by Canada to Certain US-Origin Agricultural Products (CDA-95-2008-01) 542</p> <p>Legality of the Threat or Use of Nuclear Weapons (Request by the United Nations General Assembly for an Advisory Opinion) 163</p> <p>Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by the World Health Organization for an Advisory Opinion) 1</p> <p>Prosecutor <i>v.</i> Blaškić (Objection to the Issue of <i>Subpoenae Duces Tecum</i>) (Cases IT-95-14-PT and IT-95-14-AR108<i>bis</i>) 607</p> | <p><i>Saiga, M/V</i> (Saint Vincent and the Grenadines <i>v.</i> Guinea) 736</p> <p>United Nations General Assembly, Request for an Advisory Opinion. <i>See</i> Legality of the Threat or Use of Nuclear Weapons (Request by the United Nations General Assembly for an Advisory Opinion)</p> <p>World Health Organization, Request for an Advisory Opinion. <i>See</i> Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by the World Health Organization for an Advisory Opinion)</p> <p>X <i>v.</i> Secretary-General (Case No. 22) 599</p> |
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(Cases which are reported only in a note are distinguished from cases which are reported in full by the insertion of the word “note” in parentheses after the page number of the report.)

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(Those headings for which there are entries in the present volume are printed in italics. For a guide to the Digest, see the Editorial Note at p. xi.)

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- June 17 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (94 LNTS 65; UKTS 24 (1930), Cmd 3604; 126 BFSP 324; 26 UST 571; TIAS 8061; JOF 29 August 1928; 29 Vert A 391; 3 Hudson 1670; 25 AJIL (1931) Supp. 94; 14 ILM (1975) 49; Roberts 137; Schindler 109; 15 Ruster 7815) 122, 151-2, 198, 205, 353, 383, 385, 458-62, 530

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- June 26 Charter of the United Nations (9 Hudson 327; UKTS 67 (1946), Cmd 7015; 145 BFSP 805; USTS 993; 1 Peaslee 1288; 59 Stat 1031; 1 UNTS 16; 39 AJIL (1945) Supp. 190; JOF 13 January 1946; 3 Bevans 1153) 391-2
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