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Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer

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# INTERNATIONAL LAW REPORTS

VOLUME 114

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*Lauterpacht Research Centre for International Law  
University of Cambridge*

# INTERNATIONAL LAW REPORTS

VOLUME  
114

*Edited by*

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SIR ELIHU LAUTERPACHT

1999

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## PREFACE

The present volume again contains a mixture of national and international decisions. The latter include the first award, given in October 1998, of the arbitration tribunal established by the Governments of Eritrea and Yemen, two ICSID arbitration awards and five indications of views given by the United Nations Human Rights Committee. The jurisprudence of national tribunals is represented by cases from Australia, England, Germany, Italy, New Zealand and the United States of America. These include decisions from courts in Australia (p. 383), England (p. 402) and the United States (p. 606) regarding extradition to Hong Kong at the time of the reversion of Hong Kong to the People's Republic of China.

Many people have made possible the publication of this volume. Sir Robert Jennings, QC, President of the Eritrea–Yemen Arbitration Tribunal, kindly provided a copy of the award of that Tribunal and Mr P. J. H. Jonkman, Secretary-General of the Permanent Court of Arbitration, gave much valuable assistance regarding its publication. Professor James Crawford, SC and Professor John Dugard contributed decisions on the Hong Kong extradition issue. Mr Andrew Oppenheimer, Associate Editor for Civil Law Jurisdictions, prepared the summaries of the decisions of the German and Italian courts. Ms Rosemary Rayfuse, LL.M., Lecturer in Law at the University of New South Wales, prepared the summary of the *Kaiser Bauxite* case and, together with Dr A. V. Lowe, Reader in International Law at the University of Cambridge, the summary in the *Klöckner* case. Ms Fiona Mucklow, LL.M., prepared the summaries of four of the United Nations Human Rights Committee cases, as well as the New Zealand decision and the *Willoughby* decision from the United States. Ms Karen Lee, MA, prepared the summaries of the *Cox*, *Tse Chu-Fai*, *Lauder* and *Lui* cases, as well as compiling the Tables of Cases and the Digest and seeing the volume through the press.

The German decisions were translated by Mr Tim Johnston, Solicitor, and Mrs Jane Martens, MA and the Italian decisions by Mr Tim Johnston and the law firm Verusio e Cosmelli in Rome. HE Miss Maureen MacGlashan, CMG, compiled the Index and Table of Treaties. Mrs Diane Ilott performed much valuable sub-editorial work. Mr Adrian Lee corrected the proofs. Mrs Anne Skinner gave valuable secretarial assistance.

We are also indebted to the following publishers for their kindness in allowing us to reproduce decisions from the reports which they publish: Cambridge University Press (*ICSID Reports*), Butterworths (Australia) Limited (*Australian Law Reports*), the Incorporated Council of Law Reporting for England and Wales (*Weekly Law Reports*),

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PREFACE

Butterworths Law Publishers Limited (*All England Law Reports*), Jordan Publishing (*Family Law Reports*) and the West Publishing Company (*Federal Reporter*, *Pacific Reporter* and *Federal Supplement*).

Finally, we extend our thanks to our publishers, Cambridge University Press, and, in particular, to Ms Finola O'Sullivan and Ms Jayne Matthews, and to our printers, the Gomer Press, for the trouble which they have taken with this volume.

E. LAUTERPACHT

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LONDON SCHOOL OF ECONOMICS  
AND POLITICAL SCIENCE

*February 1999*

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## 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



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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.

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## 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 the "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

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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 xvii.

#### 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.

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