

INTERNATIONAL
ENVIRONMENTAL
LAW REPORTS

Volume 1

EARLY DECISIONS

Volume 1 of the *International Environmental Law Reports* contains decisions dating from the 1880s to the 1960s that are regarded as significant in the development of international environmental law.

It includes all the well-known and some less well-known decisions of international tribunals (with the exception of the decisions of the International Court of Justice, to which volume 5 of the *Reports* will be devoted).

Volume 1 also includes a number of national decisions, either because they were the background against which international decisions were taken or because they are illustrative of states' views of the content and direction of international law in this domain at the beginning of the twentieth century.

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INTERNATIONAL ENVIRONMENTAL LAW REPORTS

Volume 1
EARLY DECISIONS

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Preface

While there are a few well-known cases in international law considered as laying down general principles relevant to the environment – notably the *Trail Smelter* and *Lake Lanoux* cases – international environmental law is at present to be found predominantly in treaties and other international instruments. It can be expected, however, that judicial decisions will play an increasingly important role in clarifying the scope of such instruments and in developing underlying principles. The overwhelming emphasis on treaties in textbooks on international environmental law belies the fact that there is at present a considerable and growing body of relevant jurisprudence. It is with this in mind that the *International Environmental Law Reports* have been compiled. The objectives of the *Reports* are two-fold: first, to reproduce in one easily accessible collection the key decisions from international and national tribunals and, second, to provide source material that will assist in the further development of the law in this field.

A major difficulty in preparing a project such as the present lies in establishing the parameters of the subject matter the *Reports* are intended to cover. The editors decided to focus initially on preparing five volumes, each corresponding to a particular field or theme.

The first volume contains decisions dating from the 1880s to the 1960s that are regarded, with varying degrees of justification, as significant in the development of international environmental law. It includes all the well-known and some less well-known decisions of international tribunals (with the exception of the decisions of the International Court of Justice, to which volume 5 of the *Reports* will be devoted). It also includes a number of national decisions, either because they were the background against which international decisions were taken (as in the case of certain Swiss and US decisions referred to in the *Trail Smelter* case) or because they are illustrative of states' views of the content and direction of international law in this domain at the beginning of the twentieth century.

Volume 2 focuses on the evolving relationship between trade and

environment. As the number of trade regimes coming to terms with this relationship increases, the volume focuses on the environment-related decisions taken in the context of three prominent international trade agreements, the General Agreement on Tariffs and Trade (GATT), the Canada-USA Free Trade Agreement (Canada-USA FTA) and the agreements establishing the European Community. It spans the decisions of panels established under GATT 1947 as well as recent decisions of panels and the Appellate Body of the World Trade Organisation, which succeeded GATT 1947, decisions of panels established under the Canada-USA FTA, and the case law of the Court of Justice of the European Communities, reproducing the relevant legal findings in each case. Extracts from decisions dealing with subjects other than the environment but which have significance for principles applicable in an environmental context are also included.

Volume 3 focuses on the theme of rights in relation to the environment. It brings together the growing number of decisions of international tribunals before which attempts have been made to use human rights to achieve environmental objectives or to contest environmental measures. Decisions have been drawn from the African, American, European and United Nations human rights systems.

Volume 4 focuses on international environmental law in national courts. It contains decisions explicitly and implicitly applying or otherwise dealing with aspects of international law as they relate to the environment. It features the growing number of decisions of national courts on subjects such as the precautionary and polluter pays principles, inter-generational equity, and sustainable development, as well as decisions drawing upon and interpreting the ever increasing number of international environmental agreements. Decisions have been drawn from courts around the world in Africa, the Americas, Asia, Australasia and Europe.

Volume 5 is devoted to the jurisprudence of the International Court of Justice (ICJ). Environmental cases may well form a larger part of the Court's workload in the future. There have already been a number of cases before the ICJ in which environmental considerations have played a significant part, though attention has not always been focused on those aspects of the decisions. Given the considerable length of ICJ decisions, only key extracts of the relevant decisions are reproduced.

Thanks are due to many people for their assistance in the preparation of volume 1 of the *International Environmental Law Reports*. In particular, thanks are due to Professor Sir Elihu Lauterpacht, CBE, QC, for providing the foresight and resources to initiate the project during his Directorship of

the Research Centre, and to Professor John Dugard for continuing to support it through his; to Jared Blumenfeld and Robert Volterra for work they did in the early stages of the project; to Florian Becker, Emanuela Gillard, Julian Jackson and Tim Johnston for work on translations; to Edward Helgeson, Thomas Reyner Robb, Nicholas Sinclair-Brown, Marcel Szetś and Catherine-Zoi Varfis for helpful comments at various stages of preparation of the manuscript; to Wendy Cooke for assistance in many more ways than she might imagine; to the members of the Editorial Advisory Board for their advice and assistance; to the American Society of International Law, the International Joint Commission, the *International Law Reports*, and the staff of the Squire Law Library and Cambridge University Library for assistance and for kind permission to reproduce materials; and to the Commission of the European Communities and the Isaac Newton Trust for their financial support toward the project. Finally, our thanks go to Adrian Lee for his work on the index and to Finola O'Sullivan, Frances Nicholson, and Jayne Matthews, as well as everyone else at Cambridge University Press who has worked on the project and helped bring it to fruition.

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Editorial note

The *International Environmental Law Reports* contain decisions rendered by various national and international tribunals. The decisions have been reproduced to the greatest extent possible in the form in which they were originally reported or handed down. Some old punctuation has been modernised, and efforts have been made to standardise typefaces; otherwise the texts are as originally published. For this reason the reader will find that spellings, especially of place names, may vary.

In the first four volumes the policy has been to report decisions in full. On some occasions, however, detailed descriptions of facts and discussion of domestic, European or non-environment related international law has been omitted, especially in translated material. Omitted material is indicated by a series of dots in square brackets or, where appropriate, its content is indicated briefly in square brackets. The report from which the decision has been reproduced is cited at the end of each decision, and the bold page numbers in square brackets throughout a decision refer to the pagination of that report. Volume 5 contains only relevant extracts from decisions of the International Court of Justice.

Each case has been summarised. Sometimes it has been convenient to deal with more than one decision in the same summary. Each summary is preceded by italicised digest entries. The digest entries are collected together in the Digest at the beginning of the volume to give the reader an overview of the issues covered in the volume. The Summary summarises the facts and decision(s) in the case and aims to draw attention to those points which are or might be of environmental interest. *The facts* are taken from the decision itself unless otherwise indicated. The numbers in round brackets at the end of each item in the *Held* section indicate the corresponding pages in the *Reports*.

Immediately after the summary is list of the documents that follow, and the pages on which they commence. In addition to the decision(s) being reported this may include any relevant special agreement or other docu-

ment which formed the basis or background for such decision(s). Occasionally an editorial note concerning subsequent or related events is included at the end of a case.

The appendices are reserved for other more general documents that may be of interest to the reader.

Footnotes refer the reader to material in the Appendices, and cross refer to other cases in the *Reports* or in the *International Law Reports*. Such referencing is normally made only on the first mention within any particular document of the item being referenced. Where footnotes appear in a document, those with numbers are editorial insertions. Others are lettered, with their original designation in square brackets, and are part of the original text.

For the reader's convenience each volume contains tables of cases reported, a digest, a table of treaties and an index.

These cases may be cited as 1 *IELR* followed by the relevant page number e.g. 1 *IELR* 7.

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Abbreviations

AJIL	American Journal of International Law
Ann. Dig.	Annual Digest and Reports of Public International Law Cases
BFSP	British and Foreign State Papers
CanTS	Canada Treaty Series
CanYBIL	Canadian Yearbook of International Law
CTS	Consolidated Treaty Series
F.2d	United States Federal Reporter, Second Series
F.Supp.	United States Federal Supplement
Hertslet	Hertslet, Collection of Treaties and Conventions Between Great Britain and Other Powers, 1840–1925
IELR	International Environmental Law Reports
IJC	Canada–United States of America, International Joint Commission
ILM	International Legal Materials
ILR	International Law Reports
IUCN	The World Conservation Union
L.Ed.	United States Supreme Court Reports Lawyers' Edition
NDNY	Northern District, New York
PCIJ	Permanent Court of International Justice Reports
RECIEL	Review of European Community and International Environmental Law
RGDIP	Revue générale de droit international public
Traités	Recueil des traités de la France, 1713–1906
UKTS	United Kingdom Treaty Series
UNRIAA	United Nations Reports of International Arbitral Awards
UNTS	United Nations Treaty Series
US	United States Reports (Supreme Court)
US Treaties	Malloy, Redmond, Trenwith, Treaties Conventions, etc. Between the United States of America and Other Powers, 1776–1937
USTS	United States Treaty Series

Tables of cases reported

The tables of cases are arranged alphabetically, according to tribunal (international cases) and according to country (national cases). A chronological list of decisions is also provided. Decisions reproduced only in extract are indicated in the chronological list of decisions by the insertion of the word 'extract' in parenthesis after the page number of the decision.

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<i>International cooperation</i>	<i>Treaties</i>
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Air

Dispute between federal state and companies in neighbouring federal state – emissions from companies' mining and smelting operations – request by state for injunction to protect its quasi-sovereign right to be free from transboundary air pollution on a great scale and quasi-sovereign interest in all the air and earth within its domain – standard of proof – irrelevance of state's domestic situation – whether state more entitled to specific relief than private party – effect of injunction outside plaintiff state – impossibility of determining with certainty the reduction in the sulphur content of emitted gases necessary to render the territory of neighbouring state immune from injury – improvements required to diminish materially the present probability of damage to plaintiff's citizens – setting up of regime to reduce future emissions – United States of America, Supreme Court

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Coastal fisheries – right and duty of local sovereign to protect and preserve fishery – Permanent Court of Arbitration

North Atlantic Coast Fisheries Case 1 89

Fur-seals in Bering Sea – whether *res nullius* – whether common heritage of mankind – whether USA having right to protection or property in fur-seals on high seas – indiscriminate killing on high seas – risk of

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Difficulty in determining what constitutes an injurious act – guidance of decisions of national courts – relevance of scientific progress – case to be of serious consequence – injury to be established by clear and convincing evidence – Arbitral Tribunal

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Dispute between federal state and companies in neighbouring federal state – transboundary air pollution on a great scale – whether causing damage to forests, vegetation and health – standard of proof – irrelevance of state's domestic situation – whether state more entitled to specific relief than private party – effect of injunction outside plaintiff state – impossibility of determining with certainty the reduction in sulphur content of emitted gases necessary to render the territory of Georgia immune from injury – improvement required to diminish materially the present probability of damage to plaintiff's citizens – setting up of regime to reduce future emissions – United States of America, Supreme Court

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Dispute between federal states – diversion of interstate river – degree of injury caused by diversion – whether substantial interests of plaintiff state

being injured to the extent of destroying the equitable apportionment of benefits between riparian states – United States of America, Supreme Court

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Dispute between federal states – planned discharge of sewage by a state into bay shared with neighbouring state – threatened invasion of right must be of serious magnitude – evidence must be clear and convincing – United States of America, Supreme Court

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Dispute between federal states – pollution of interstate river – case ought to be of serious magnitude, clearly and fully proved – acts of plaintiff state providing a standard against which defendant state entitled to appeal – difficulties in proving case where multiple causes of nuisance – different standards for granting of equitable relief in actions between states and actions between individuals – United States of America, Supreme Court

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