The fifth and final volume of the International Environmental Law Reports collects together eighteen decisions from international tribunals. As well as decisions of the International Court of Justice, the volume includes decisions from the International Tribunal for the Law of the Sea, various arbitral tribunals and the United Nations Compensation Commission. The comprehensive case summaries are backed up by detailed cross-references to original sources. Covering four decades of legal proceedings, this volume brings the ‘classic’ decisions up to date with the major modern decisions of international tribunals.
International Environmental Law Reports

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978 0521 659642 PB

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978 0521 659680 PB
Contents

Preface ix
Editorial note xi
Members of Editorial Advisory Board xiii
List of abbreviations xiv
Tables of cases reported xvii
Digest xx
Table of treaties xxxiv

CASES

I International Court of Justice 1

Fisheries Jurisdiction Case (United Kingdom v. Iceland) 3
Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland) 71
Nuclear Tests Case (New Zealand v. France) 88
Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia) 124
Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case 149
Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by the World Health Organization for an Advisory Opinion) 212
Legality of the Threat or Use of Nuclear Weapons (Request by the United Nations General Assembly for an Advisory Opinion) 238
Case Concerning the Gabčíkovo–Nagymaros Project (Hungary/Slovakia) 272
Fisheries Jurisdiction Case (Spain v. Canada) 363
II International Tribunal for the Law of the Sea

Southern Bluefin Tuna Cases (New Zealand v. Japan) (Australia v. Japan) (Requests for Provisional Measures) 393

The MOX Plant Case (Ireland v. United Kingdom) (Request for Provisional Measures) 421

The ‘Volga’ Case (Russian Federation v. Australia) (Application for Prompt Release) 445

Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) (Request for Provisional Measures) 466

III Arbitral Tribunals

Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) 495

The MOX Plant Case (Ireland v. United Kingdom) 521

Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom) 552

IV United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim 607

Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims 626

Index 669
Preface

This is the fifth and final volume in this series of International Environmental Law Reports. As stated in the Preface to volume 1 (1999), it was intended 'to present [the] considerable and growing body of relevant jurisprudence' concerning international environmental law.

Volume 5 is in a sense a companion to volume 1 which began the series. Volume 1 covered in accessible form twenty-eight 'classic' decisions, many of them still cited as foundational to the subject: for example, *Behring Fur Seals*, *Trail Smelter*, *Diversion of Waters from the Meuse, Lac Lanoux*. The present volume brings the classics up to date, so to speak, with the major modern decisions of the International Court and the various tribunals which exercise jurisdiction under the 1982 UN Convention on the Law of the Sea. These cases – from *Fisheries Jurisdiction* through *Gabčíkovo–Nagymaros* and *Southern Bluefin Tuna* to *MOX Plant* and *Land Reclamation* – are now central to the subject. It is curious that none of them have yet generated, or perhaps are likely to generate, the immediate name recognition of *Trail Smelter*, and that none have associated with them a general principle of the *sic utere tuo* kind for which *Trail Smelter* is cited in a thousand academic articles and a million undergraduate essays. This prompts two questions – why do there seem to be no 'modern classics' of environmental law, and is this situation to be regretted?

As to the first question, the answer may simply be that name recognition takes time and repetition – often, it must be said, rather thoughtless repetition, of the kind that has for so long treated the *Corfu Channel* case as if it concerned an issue of environmental law or involved the application of the *sic utere tuo* principle, which it did not. Even with decisions which do involve issues of international environmental law, with time the case may come to stand straightforwardly for a proposition which tells only part of the story: the complex proceedings in *Trail Smelter* itself (set out in 1 *IELR* 231–331) provide an example. No doubt the modern cases may eventually acquire the status of 'classics', perhaps because they too will come to be treated as icons rather than as complex events. For – and this brings us to the second
question—international environmental law is almost always about complexity and uncertainty, about striking a balance between conflicting uses and potentially conflicting rights and interests, in which issues of fact and appreciation are dominant and there is no trump card. Issues concerning the environment have to be worked through, understood in a measure of detail, lived rather than encapsulated. That is yet another reason why *Corfu Channel*, with the trump card of Article 2(4) of the United Nations Charter and the prohibition of forcible intervention, is very far from the present field.

At any rate, the modern decisions show clearly enough the processes by which international courts and tribunals, often at an interlocutory stage, are confronted with environmental issues and with conflicting assertions of right as between States. There can be little doubt that the frequency with which these issues come before international courts has increased. The substantial jurisprudence of the WTO and of international human rights tribunals was presented in volumes 2 and 3, and here we have, as it were, the remainder or residue—the international claims dealt with on an interstate basis by courts applying general international law. They present a fascinating picture of a still emerging jurisprudence, filling out (with nuances and occasional backslidings) the law so prolifically set out in the great number of treaties.

Thanks are due to many people for their assistance in the preparation of this volume. We are particularly grateful to Dapo Akande, Susan Breau, Joshua Brien, Kylie Evans, Professor Christopher Greenwood CMG, QC, Edward Helgeson and Samuel Wordsworth for writing the summaries and to the Editors of the *International Law Reports* for their kind permission to adapt those summaries that were originally written for the *ILR*. Our thanks also go to Tara Grant for her invaluable general and secretarial assistance, to Miss Maureen MacGlashan CMG, for her thorough preparation of the index and the table of treaties, to Diane Ilott for her patience and attention to detail in copy-editing this volume and to Finola O’Sullivan and everyone else at Cambridge University Press who has helped to publish this volume.

James Crawford
Karen Lee

*Lauterpacht Research Centre for International Law*
University of Cambridge

2006
Editorial note

The five volumes of *International Environmental Law Reports* contain significant decisions pertaining to the field of international environmental law 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.

For reasons of space, the texts of the decisions of the International Court of Justice and other international tribunals in this volume have been heavily dissected and only relevant extracts relating to environmental issues broadly conceived are included. Report citations for omitted material are given in editorial footnotes in the list of documents following the summary where possible. Within the text omitted material is indicated by an ellipsis 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.

Each case has been summarised. Although only relevant extracts of the texts of decisions are reproduced, the summary sums up the facts and decision(s) in the case as a whole so that the highlighted points of environmental interest can be understood in the context of the case. 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.

Immediately after the summary is a 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 related decision. Occasionally an editorial note concerning subsequent or related events or decisions is included at the end of a case.
Footnotes in the summary cross-refer to other cases in the *Reports* or in the *International Law Reports* and provide other useful information. The original footnotes in the texts of the decisions have been renumbered for reasons of text extraction and every effort has been made to adapt the reproduced footnotes where appropriate. Any editorial footnotes in the texts of the decisions appear in square brackets.

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

The cases reported here may be cited as *IELR* followed by the relevant page number, e.g. *IELR* 1.
Editorial Advisory Board

MEMBERS

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## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADL</td>
<td>Arthur D. Little, consultancy</td>
</tr>
<tr>
<td>AFMA</td>
<td>Australian Fisheries Management Authority</td>
</tr>
<tr>
<td>BNFL</td>
<td>British Nuclear Fuels plc</td>
</tr>
<tr>
<td>BPC</td>
<td>British Phosphate Commissioners</td>
</tr>
<tr>
<td>CCAMLR</td>
<td>Commission for the Conservation of Antarctic Marine Living Resources</td>
</tr>
<tr>
<td>CCSBT</td>
<td>Convention for the Conservation of Southern Bluefin Tuna</td>
</tr>
<tr>
<td>CMLR</td>
<td>Common Market Law Reports</td>
</tr>
<tr>
<td>DEFRA</td>
<td>Department of the Environment, Food and Rural Affairs (UK)</td>
</tr>
<tr>
<td>DETR</td>
<td>Department of the Environment, Transport and the Regions (UK)</td>
</tr>
<tr>
<td>EA</td>
<td>Euratom Treaty</td>
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<tr>
<td>EAEC</td>
<td>European Atomic Energy Community</td>
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<tr>
<td>EC</td>
<td>European Community</td>
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<tr>
<td>ECE</td>
<td>Economic Commission for Europe</td>
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<tr>
<td>ECR</td>
<td>European Court Reports</td>
</tr>
<tr>
<td>EEZ</td>
<td>exclusive economic zone</td>
</tr>
<tr>
<td>EFP</td>
<td>experimental fishing programme</td>
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<tr>
<td>EFPWG</td>
<td>Experimental Fishing Programme Working Group</td>
</tr>
<tr>
<td>EIA</td>
<td>environmental impact assessment</td>
</tr>
<tr>
<td>EIS</td>
<td>environmental impact statement</td>
</tr>
<tr>
<td>ESSD</td>
<td>environmentally and socially sustainable development</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EURATOM</td>
<td>Treaty Establishing the European Atomic Energy Community</td>
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<tr>
<td>FAO</td>
<td>United Nations Food and Agriculture Organization</td>
</tr>
<tr>
<td>FMA</td>
<td>Australian Fisheries Management Act 1991</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>--------------</td>
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<tr>
<td>GIS</td>
<td>Geographic Information System</td>
</tr>
<tr>
<td>GOE</td>
<td>group of experts</td>
</tr>
<tr>
<td>HAST</td>
<td>highly active storage tank</td>
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<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<tr>
<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICSID</td>
<td>International Centre for the Settlement of Investment Disputes</td>
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<td>ICSU</td>
<td>International Council of Scientific Unions</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<tr>
<td>ILM</td>
<td>International Legal Materials</td>
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<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>ILR</td>
<td>International Law Reports</td>
</tr>
<tr>
<td>IPPNW</td>
<td>International Physicians for the Prevention of Nuclear War</td>
</tr>
<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
</tr>
<tr>
<td>IUU</td>
<td>illegal, unreported and unregulated [fishing]</td>
</tr>
<tr>
<td>JCP</td>
<td>Joint Contractual Plan</td>
</tr>
<tr>
<td>KOC</td>
<td>Kuwait Oil Company</td>
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<tr>
<td>KPC</td>
<td>Kuwait Petroleum Corporation</td>
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<tr>
<td>KPI</td>
<td>Kuwait Petroleum International Limited</td>
</tr>
<tr>
<td>LOS</td>
<td>Law of the Sea</td>
</tr>
<tr>
<td>MAFF</td>
<td>Ministry of Agriculture, Fisheries and Food (UK)</td>
</tr>
<tr>
<td>MOX</td>
<td>mixed oxide fuel</td>
</tr>
<tr>
<td>MSJCE</td>
<td>Malaysia–Singapore Joint Committee on the Environment</td>
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<tr>
<td>NAFO</td>
<td>North Atlantic Fisheries Organisation</td>
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<tr>
<td>NAFTA</td>
<td>North Atlantic Free Trade Agreement</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
</tr>
<tr>
<td>NLGC</td>
<td>Nauru Local Government Council</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<tr>
<td>OECC</td>
<td>Organization for European Economic Co-operation</td>
</tr>
<tr>
<td>OJ</td>
<td>Official Journal (of the European Union)</td>
</tr>
<tr>
<td>OSPAR Convention</td>
<td>Convention for the Protection of the Marine Environment of the North East Atlantic, 1992</td>
</tr>
<tr>
<td>PA</td>
<td>PA Consulting Group, London</td>
</tr>
<tr>
<td>PCA</td>
<td>Permanent Court of Arbitration</td>
</tr>
<tr>
<td>PCII</td>
<td>Permanent Court of International Justice</td>
</tr>
</tbody>
</table>
List of abbreviations

PNEs peaceful nuclear explosions
RIAA Reports of International Arbitral Awards
ROPME Regional Organization for the Protection of the Marine Environment
SAR Zone search and rescue zone
SBT southern bluefin tuna
SCOPE Scientific Committee on Problems of the Environment
SMP Sellafield MOX Plant
TAC total allowable catch
THORP Thermal Oxide Reprocessing Plant
TTAPS Turco, Toon, Ackerman, Pollack and Sagan
UNDP United Nations Development Programme
UNEP United Nations Environment Programme
UNIDIR United Nations Institute of Disarmament Research
UNIDO United Nations Industrial Development Organization
UNSC United Nations Security Council
UNSCAR United Nations Scientific Committee on the Effects of Atomic Radiation
UNSCR United Nations Security Council Resolution
UNTS United Nations Treaty Series
USD United States Dollars
USSR Union of Soviet Socialist Republics
VMS Vessel Management System
WBC Claim Well Blowout Control Claim
WHA World Health Assembly
WHO World Health Organization
WTO World Trade Organization
Tables of cases reported

The tables of cases are arranged alphabetically and chronologically by tribunal.

ALPHABETICAL

Commission of the European Communities v. Ireland (Case C-459/03) (2006) § 539 (note)
Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom) (2003) § 552
‘F4’ Claims, First Instalment (Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims) (2001) § 626, 632 (note)
Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland) (1974) § 71
Fisheries Jurisdiction Case (Spain v. Canada) (1998) § 363
Fisheries Jurisdiction Case (United Kingdom v. Iceland) (1972–4) § 3
Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) (Request for Provisional Measures) (2003–5) § 466, 483 (settlement note)
Legality of the Threat or Use of Nuclear Weapons (Request by the United Nations General Assembly for an Advisory Opinion) (1996) § 238
Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by the World Health Organization for an Advisory Opinion) (1996) § 212
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Tribunal/Proceedings</th>
<th>Year</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOX Plant Case (Ireland v. United Kingdom) [Arbitral Tribunal]</td>
<td>(2003)</td>
<td>521</td>
<td>539</td>
</tr>
<tr>
<td>MOX Plant Case (Ireland v. United Kingdom) (Request for Provisional</td>
<td>Measures) [International Tribunal for the Law of the Sea] (2001)</td>
<td></td>
<td>421</td>
</tr>
<tr>
<td>Nuclear Tests Case (New Zealand v. France) (1973–4)</td>
<td>$ 124, 143</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OSPAR Convention, Dispute Concerning Access to Information under Article</td>
<td>9 (Ireland v. United Kingdom) (2003)</td>
<td></td>
<td>552</td>
</tr>
<tr>
<td>Request for an Examination of the Situation in Accordance with</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paragraph 63 of the Court’s Judgment of 20 December 1974 in the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) [Arbitral</td>
<td>Tribunal] (2000)</td>
<td></td>
<td>495</td>
</tr>
<tr>
<td>Southern Bluefin Tuna Cases (New Zealand v. Japan) (Australia v. Japan)</td>
<td>(Requests for Provisional Measures) [International Tribunal for the Law of the Sea]</td>
<td></td>
<td>393</td>
</tr>
<tr>
<td>Well Blowout Control Claim (Report and Recommendations Made by the</td>
<td>Panel of Commissioners Appointed to Review the Well Blowout Control Claim) (1996)</td>
<td></td>
<td>607, 625</td>
</tr>
</tbody>
</table>

**Chronologically According to Tribunal**

**Arbitral Tribunals**

Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) (2000) $ 495

The MOX Plant Case (Ireland v. United Kingdom) (2003) $ 521, 539 (note)

Dispute Concerning Access to Information under Article 9 of the OSPAR
Convention (Ireland v. United Kingdom) (2003) $ 552

**International Court of Justice**

Fisheries Jurisdiction Case (United Kingdom v. Iceland) (1972–4) $ 3

Nuclear Tests Case (New Zealand v. France) (1973–4) $ 88

Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland) (1974) $ 71
Tables of cases reported xix

Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia) (1992) $ 124, 143 (settlement note), 145 (note)
Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by the World Health Organization for an Advisory Opinion) (1996) $ 212
Legality of the Threat or Use of Nuclear Weapons (Request by the United Nations General Assembly for an Advisory Opinion) (1996) $ 238
Case Concerning the Gabčíkovo–Nagymaros Project (Hungary/Slovakia) (1997) $ 272
Fisheries Jurisdiction Case (Spain v. Canada) (1998) $ 363

International Tribunal for the Law of the Sea
Southern Bluefin Tuna Cases (New Zealand v. Japan) (Australia v. Japan) (Requests for Provisional Measures) (1999) $ 393
The MOX Plant Case (Ireland v. United Kingdom) (Request for Provisional Measures) (2001) $ 421
Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) (Request for Provisional Measures) (2003–5) $ 466, 483 (settlement note)

United Nations Compensation Commission
Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (1996) $ 607, 625 (note)
Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims (2001) $ 626, 632 (note)
Digest

(Those headings for which there are entries in the present volume are printed in italics.)

<table>
<thead>
<tr>
<th>Air</th>
<th>Pollution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims</td>
<td>Powers and procedures of tribunals</td>
</tr>
<tr>
<td>Common heritage</td>
<td>Relationship between international law and national law</td>
</tr>
<tr>
<td>Compliance</td>
<td>Relationship between international law and national law</td>
</tr>
<tr>
<td>Conservation</td>
<td>Relationship between international law and national law</td>
</tr>
<tr>
<td>Damage and compensation</td>
<td>Responsibility and liability</td>
</tr>
<tr>
<td>Expropriation</td>
<td>Rights and interests</td>
</tr>
<tr>
<td>Hazardous activities and substances</td>
<td>Sources of international law</td>
</tr>
<tr>
<td>Human rights</td>
<td>Standing</td>
</tr>
<tr>
<td>Indigenous peoples</td>
<td>Treaty</td>
</tr>
<tr>
<td>International cooperation</td>
<td>Territory</td>
</tr>
<tr>
<td>International economic law</td>
<td>War and armed conflict</td>
</tr>
<tr>
<td>International humanitarian law</td>
<td>Waste</td>
</tr>
<tr>
<td>International organisations</td>
<td>Waters</td>
</tr>
</tbody>
</table>

Air

Pollution – transport and dispersion of air pollution – whether claims for reasonable monitoring and assessment activities compensable – United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims $ 626

Claims

Large claims – United Nations Compensation Commission – claim by the Kuwait Oil Company for the cost of extinguishing fires at the oil well-heads
Digest

in Kuwait – evidence of cause of damage – costs – evidence that costs actually incurred – attribution of costs to particular claims – use of expert accountancy reports to verify costs – United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim $607

Compliance

International environmental law norms – Treaty-based obligation to apply evolving environmental standards to protect water quality, nature and fishing interests – International Court of Justice

Case Concerning the Gabčíkovo–Nagymaros Project (Hungary/Slovakia) $272

Conservation


Southern Bluefin Tuna Cases (New Zealand v. Japan) (Australia v. Japan) (Provisional Measures) $393


The ‘Volga’ Case (Russian Federation v. Australia) $445


Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) (Award) $495

Damage and compensation

Damages – principles – claim by the Kuwait Oil Company for the cost of extinguishing fires at the oil well-heads in Kuwait – heads of damage – general principles of international law – mitigation of damages – interest – date from which interest to be awarded – date taken to be 19 October
1991 – use of different date for calculating interest in other claims – United Nations Compensation Commission

*Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim* § 607


*Case Concerning the Gabˇc´ıkovo–Nagymaros Project (Hungary/Slovakia)* § 272


*Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims* § 626


*Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia)* § 124

Submission of Germany that Iceland under an obligation to make compensation for interference with German fishing vessels – jurisdiction of International Court to award compensation – need for concrete submission as to existence and amount of damage – relief denied – International Court of Justice

*Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland)* § 71

Hazardous activities and substances

Alleged radioactive contamination arising from French underground nuclear weapons tests in South Pacific – whether unlawful to undertake tests before conducting an environmental impact assessment – Court’s ruling in 1974 that object of dispute had disappeared because of France’s undertaking in 1974 to cease atmospheric tests – assumption in 1974 that no risk of contamination
Digest

from underground testing – whether earlier proceedings and judgment limited to atmospheric nuclear testing or concerning all radioactive contamination caused by whatever means of testing – developments in scientific knowledge and international environmental law since 1974 – International Court of Justice

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case § 149

Atmospheric nuclear tests conducted by France in South Pacific causing deposit of radioactive fallout on territory of other States and on high seas – Court requested to declare tests unlawful and order France to cease conducting them – whether tests lawful – International Court of Justice

Nuclear Tests Case (New Zealand v. France) § 88

Nuclear weapons – effect of use of nuclear weapons upon the environment – International Court of Justice

Legality of the Threat or Use of Nuclear Weapons § 238

Nuclear weapons – whether use of nuclear weapons prohibited by international humanitarian law – protection of health and the environment in war and armed conflict – International Court of Justice

Legality of the Use by a State of Nuclear Weapons in Armed Conflict § 212

Human rights


Legality of the Threat or Use of Nuclear Weapons § 238

International cooperation

Duty to cooperate to prevent pollution of marine environment – Law of the Sea Convention, Part XII – International Tribunal for the Law of the Sea

Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) § 466

International humanitarian law

Relationship between international environmental law and international humanitarian law – Principle 24, Rio Declaration – United Nations
Digest


Legality of the Threat or Use of Nuclear Weapons $ 238

International organisations


Legality of the Use by a State of Nuclear Weapons in Armed Conflict $ 212


Legality of the Threat or Use of Nuclear Weapons $ 238


Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim $ 607

Jurisdiction


The MOX Plant Case (Ireland v. United Kingdom) $ 521

The MOX Plant Case (Ireland v. United Kingdom) 5 421

International Court of Justice – advisory jurisdiction – request by United Nations General Assembly – request for advisory opinion concerning whether the use or threat of use of nuclear weapons permitted under international law – whether within the jurisdiction of the Court – United Nations Charter, Article 96(1) – discretion of Court not to reply to question – Statute of the Court, Article 65(1) – whether question posed a legal question – whether motives for asking the question relevant – role of the Court in advisory proceedings – International Court of Justice

Legality of the Threat or Use of Nuclear Weapons 5 238


Legality of the Use by a State of Nuclear Weapons in Armed Conflict 5 212

International Court of Justice – Australian declaration under Article 36(2) of Statute of International Court of Justice – reservation attached to declaration – whether dispute within reservation – whether agreement between Nauru and Australia for recourse to other dispute resolution mechanism – International Court of Justice

Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia) 5 124

International Court of Justice – optional clause – Statute of the Court, Article 36(2) – declaration accepting jurisdiction of the Court – reservations – right of State making declaration to define scope of acceptance of jurisdiction – Whether reservations to be construed restrictively – distinction between substantive law and rules governing jurisdiction of the Court – principles
to be applied in interpretation of declaration and reservations – intention of State making declaration – principle of good faith – International Court of Justice

Fisheries Jurisdiction Case (Spain v. Canada) § 363

Locus standi – whether actio popularis exists in international law – International Court of Justice

Nuclear Tests Case (New Zealand v. France) § 88


Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) (Award) § 495

Request to International Court of Justice by New Zealand for resumption of proceedings begun in 1973 challenging legality of France’s nuclear tests – whether Request was outside scope of paragraph 63 of 1974 Judgment – paragraph 63 related exclusively to atmospheric nuclear tests – whether jurisdiction for Court to consider underground testing or developments in international environmental law since 1974 – International Court of Justice

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case § 149


Fisheries Jurisdiction Case (United Kingdom v. Iceland) § 3

Pollution

Environmental damage resulting from Iraq’s invasion and occupation of Kuwait – Security Council Resolution 687 – Iraq responsible for such damage – provision for claims by States and international organisations in respect of environmental damage – threat to environment caused by fires at oil well-heads
in Kuwait – claim by corporation – whether admissible – United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim § 607

Powers and procedures of tribunals

International Court of Justice – interim measures of protection – declaration that Icelandic Government not enforce new exclusive fishing zone against United Kingdom vessels by action inside disputed area or by measures in Icelandic waters against vessels fishing in the disputed area – limits on metric tons of fish permitted to be taken by British vessels in disputed area – whether measures sought were for protection of economic interests of private enterprises – interim measures granted – International Court of Justice

Fisheries Jurisdiction Case (United Kingdom v. Iceland) § 3


The 'Volga' Case (Russian Federation v. Australia) § 445


Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) (Award) § 495


Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) § 466

1982. Articles 290 and 297 – requirement of urgency – whether power of the Tribunal to order provisional measures different from that of the International Court of Justice – International Tribunal for the Law of the Sea

*Southern Bluefin Tuna Cases (New Zealand v. Japan) (Australia v. Japan) (Provisional Measures)* 5 393


*Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim* 5 607

Procedure – International Court of Justice – preliminary objections – whether objection possessing an exclusively preliminary character – duty of the Court in dealing with preliminary objections – International Court of Justice

*Fisheries Jurisdiction Case (Spain v. Canada)* 5 363


*The MOX Plant Case (Ireland v. United Kingdom)* 5 421

Provisional measures – conditions to be satisfied for granting provisional measures under Article 290 of the Law of the Sea Convention – change of circumstances since ITLOS provisional measures granted – relevant considerations – risk of serious harm to the marine environment – protection of rights of Parties – no urgent and serious risk of irreparable harm – Arbitral Tribunal

*The MOX Plant Case (Ireland v. United Kingdom)* 5 521

Suspension of proceedings on jurisdiction and merits – Rules of Procedure, Article 8 – Arbitral Tribunal

*The MOX Plant Case (Ireland v. United Kingdom)* 5 521
Relationship between international law and national law

OSPAR Convention – Article 9(1) of Convention – obligation on Contracting Parties to ensure disclosure of information – international obligation – meaning of obligation – obligation of result rather than provision of access to domestic regime obtaining result – no exclusion of responsibility for inadequacy of national system or failure of competent authorities to act as prescribed by international obligation – Arbitral Tribunal

Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom) § 552

Responsibility and liability

In general – atmospheric nuclear tests leading to deposit of radioactive fallout on territory of other States and on high seas – whether tests lawful – whether absolute responsibility for damage caused – International Court of Justice

Nuclear Tests Case (New Zealand v. France) § 88

Phosphate mining on Nauru – responsibility for rehabilitation of worked-out lands – administration of Nauru by Australia on behalf of itself, New Zealand and the United Kingdom – whether three States responsible for full extent of rehabilitation of worked-out lands – International Court of Justice

Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia) § 124

State of necessity as a ground for precluding wrongfulness – Article 33 of the Draft Articles on State Responsibility – essential interest – circumstances constituting an essential interest – whether safeguarding the ecological balance an essential interest of all States – grave and imminent peril – act having to constitute the only means of safeguarding the interest threatened – party having contributed to the occurrence of the state of necessity – International Court of Justice

Case Concerning the Gabčíkovo–Nagymaros Project (Hungary/Slovakia) § 272

State responsibility – losses occasioned by invasion of another State – Iraqi invasion of Kuwait – Iraqi responsibility for losses resulting directly from invasion and occupation – proof of causation – damage to oil wells – allegation by Iraq that damage caused by Coalition armed forces – whether relieving Iraq of responsibility – application of general principles of State responsibility by United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim § 607
Rights and interests

OSPAR Convention – right to information – Article 9(2) of Convention – scope of Article 9(2) – information sought not within scope – Arbitral Tribunal

Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom) § 552

Right to natural resources within territorial sea – estuary – semi-enclosed sea – right to integrity of marine environment – right to be consulted with respect to major land reclamation works – possible impact on maritime transit rights – International Tribunal for the Law of the Sea

Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) § 466

Sources of international law

Custom – conditions for existence of rule of custom – the law of the sea – 12-mile fishing limit – concept of preferential rights for coastal States outside 12-mile limit – underlying purpose of conservation – evolution into rules of customary international law since 1960 – difference between preferential rights and exclusive rights – Iceland failed to have reasonable regard for interests of other States – International Court of Justice

Fisheries Jurisdiction Case (United Kingdom v. Iceland) § 3


Legality of the Threat or Use of Nuclear Weapons § 238


Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom) § 552
Digest

Territory

Nature of territorial sovereignty – atmospheric nuclear tests causing deposit of radioactive fallout on territory of other States – whether an infringement of territorial sovereignty – International Court of Justice

_Nuclear Tests Case (New Zealand v. France) _§ 88

Treaties

Effect on third parties – treaty allegedly giving rise to rule of customary international law – Nuclear Test Ban Treaty, 1963 – International Court of Justice

_Nuclear Tests Case (New Zealand v. France) _§ 88

In general – form of international agreements – unilateral declaration – whether capable of amounting to assumption of legal obligation – French declaration that atmospheric nuclear tests would cease – International Court of Justice

_Nuclear Tests Case (New Zealand v. France) _§ 88

Successive treaties – priority – _lex specialis_ – _lex posterior_ – whether specialised agreement supersedes general agreement – Arbitral Tribunal

_Southern Bluefin Tuna Case (Australia and New Zealand v. Japan) (Award) _§ 495

Treaties for the protection of the environment – whether applicable to military operations in time of armed conflict – International Court of Justice

_Legality of the Threat or Use of Nuclear Weapons _§ 238


_Case Concerning the Gabčíkovo–Nagymaros Project (Hungary/Slovakia) _§ 272

War and armed conflict

Consequences – responsibility for damage occasioned by armed conflict – liability of aggressor – Iraqi invasion and occupation of Kuwait – responsibility of Iraq for losses resulting directly from invasion and occupation – damage to oil well-heads in Kuwait – whether attributable to sabotage by Iraqi forces –
whether caused by Coalition armed forces’ bombing campaign – whether Iraq responsible if damage caused by military operations of Coalition – United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim § 607

Iraq’s invasion and occupation of Kuwait, 1991 – environmental damage caused by setting light to oil wells and spilling oil into Persian Gulf – impact on environment of influx of refugees and involuntary migration caused by war – United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims § 626

Nuclear weapons – whether use of nuclear weapons prohibited in international humanitarian law – protection of health and the environment in war and armed conflict – International Court of Justice

Legality of the Use by a State of Nuclear Weapons in Armed Conflict § 212

Nuclear weapons – whether use or threat of use of nuclear weapons lawful – applicable law – relevance of law on the environment and human rights – International Court of Justice

Legality of the Threat or Use of Nuclear Weapons § 238

Waters

Depletion of water resources – damage to groundwater – damage to marine and coastal environment – whether claims for reasonable monitoring and assessment activities compensable – United Nations Compensation Commission

Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of ‘F4’ Claims § 626


The MOX Plant Case (Ireland v. United Kingdom) § 521


The MOX Plant Case (Ireland v. United Kingdom) § 421