

INTERNATIONAL
ENVIRONMENTAL
LAW REPORTS

Volume 3

HUMAN RIGHTS AND ENVIRONMENT

Volume 3 of the *International Environmental Law Reports* focuses on human rights and environment. Against a background of emerging rights to environment in national and international instruments, traditional human rights are being used to achieve environmental objectives. Globally, rights such as the right to private life, the right to life, the rights of minorities, the right to peaceful enjoyment of possessions and the right to a fair hearing are increasingly being invoked and interpreted in an environmental context. This volume brings together relevant decisions of the UN Human Rights Committee, the European Court, and former Commission, of Human Rights and the Inter-American Commission on Human Rights. It provides a summary or note of each case, the full legal text in the most important cases, and includes an invaluable digest of cases arranged by the human right relied upon. This is an essential reference work for those interested in human rights and environment.

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Volume 3

HUMAN RIGHTS AND ENVIRONMENT

edited by

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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 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 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 one 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 trade and environment. As the number of trade

regimes having to come to terms with this relationship increases, the volume focuses on the decisions touching on environmental matters taken in the context of the 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 GATT panels as well as more recent decisions of panels and the Appellate Body of the World Trade Organisation, 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. Summaries of decisions in disputes dealing with subjects other than the environment but which may have significance for principles applicable in an environmental context are also included.

Volume 3 focuses on the theme of human 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 United Nations, European and Inter-American 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 it relates 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 a number of people for their assistance in the preparation of Volume 3 of the *International Environmental Law Reports*.

We are extremely grateful to Emanuela Gillard for summarising the first four decisions of the European Court of Human Rights ('ECHR') reported in this volume, and for her generous assistance with other ECHR cases.

We are also grateful to Noelle L’Hommedieu for summarising the decisions of the United Nations Human Rights Committee, and for her valiant practical help with the preparation of the manuscript. Very warm thanks must go to Edward Helgeson for summarising the remaining ECHR decisions, the last three European Commission of Human Rights decisions, and the Inter-American Commission on Human Rights decision, as well as for providing invaluable technical and practical help with the preparation of the manuscript. The remaining summaries and the notes of cases were prepared by the Editor, as were the digest entries.

Additional thanks are extended to the members of the Editorial Advisory Board for their advice and assistance; to Pierre Bodeau, Susan Marks, Michael Anderson, Ralph Wilde, Neil Popović and Fiorentina Azizi for their time and valuable suggestions; to Torsten Englyst for help in more ways than he can ever imagine; to Anne Skinner for her kindness and secretarial support; to the staff at the Council of Europe, the European Social Charter, the *International Law Reports* and the Squire Law Library for their assistance; and the Commission of the European Communities and the Isaac Newton Trust for their financial support towards the project. Finally, once again, our thanks go 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, to Finola O’Sullivan for her dedication to the project, and to everyone else at Cambridge University Press who has worked on the project and helped bring it to fruition.

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Editorial note

Volume 3 of the *International Environmental Law Reports* contains decisions of the United Nations Human Rights Committee; of the European Court and Commission of Human Rights, which since the entry into force on 1 November 1998 of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, have become a new single European Court of Human Rights; and of the Inter-American Commission on Human Rights up to and including 1999. Whilst the quasi-judicial decisions of the above-mentioned human rights commissions and committee have been included, it was decided not to include the decisions of the supervisory bodies under the European Social Charter, 1961, on the grounds that they could not be considered even quasi-judicial. This is not, however, to underestimate the actual and potential use of various articles of the European Social Charter in the environmental field, and the reader is referred in that regard to the documentation of the Council of Europe.

The reader will find that for jurisdictions from which there are few relevant decisions a broad view has been taken of 'environment-related' cases. On the other hand, in the case of the European Court and Commission of Human Rights, and the new Court which replaced them, a more selective view had to be taken regarding which cases to include. For this reason the reader will find that only key decisions of the European Court of Human Rights dealing substantially with 'environment-related' issues throughout have been reproduced in full. Those cases are followed by notes and extracts of a selection of other cases which it was felt could satisfactorily be dealt with in that manner. Similarly only a selection of decisions of the European Commission of Human Rights have been reported. As with volume 2, we have included some cases which might more accurately be described as 'health-related' cases, but these have been included only where there is an obvious connection between health and environment, or where the case is particularly illustrative of how a more environment-focused case might be looked at in the future.

Further information on decisions from the jurisdictions covered in this volume can be found by following the links from the United Nations website at <http://www.un.org>, the Council of Europe website at <http://www.coe.fr> and the Organization of American States website at <http://www.oas.org>. For general information the reader is also referred to the Project on International Courts and Tribunals website at <http://www.pict-pcti.org>.

While some efforts have been made to standardise typefaces, decisions have been reproduced to the greatest extent possible in the form in which they were originally reported. The reader will thus find some inconsistencies in style and layout of decisions from the same jurisdiction as reporting style from that jurisdiction has changed over time. Omitted material is indicated by an ellipsis in square brackets, or is indicated in a footnote.

The source from which the decision has been reproduced is cited at the end of each decision. Where relevant, bold page numbers in square brackets indicate original page numbers.

Each case reported more fully has been summarised and each summary is preceded by italicised digest entries. 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 paragraphs or pages in the *Reports*.

Immediately after the summary is a list of the documents that follow, and the pages on which they commence. An editorial note concerning subsequent or related events or cases may be included at the end of a case.

For cases reported only in a note a brief summary of the facts is given, preceded by italicised digest entries, and followed by the relevant extracts from the text of the decision.

The appendices are reserved for other documents which may be of interest to the reader, or which the reader may find useful to have to hand. Chapters VIII and IX of the Report on Ecuador of the Inter-American Commission on Human Rights fall in the former category, and are contained in Appendix 1. They are included because they relate substantially to a well-known petition introduced before the Inter-American Commission on Human Rights which the Commission decided to treat within the framework of a general evaluation of the human rights situation in the area concerned. The inclusion of extracts from that particular report does not imply that there are no other United Nations or regional country reports in existence which may be of interest from the point of view of

human rights and the environment. Appendix 2 contains the substantive, and one or two other, provisions of the human rights treaties referred to in the reported cases, easy access to which the reader may find useful.

Footnotes cross-refer to other cases in the *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 roman numerals are editorial insertions. Others are part of the original text.

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

These cases may be cited as 3 *IELR* followed by the relevant page number, e.g. 3 *IELR* 7.

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Abbreviations

ACCA	Approved Municipal Hunters' Association
AECB	Atomic Energy Control Board
AICA	Approved Inter-Municipality Hunters' Association
ASPAS	Association for the Protection of Wildlife
AW(R)E	Atomic Weapons (Research) Establishment
BAA	British Airports Authority
BNTVA	British Nuclear Tests Veterans' Association
Bq/l	becquerels per litre
CCPR	International Covenant on Civil and Political Rights
CFB	Central Forestry Board
Doc.	document
DPR	Presidential Decree
DR	Decisions and Reports, European Commission of Human Rights
DSS	Department of Social Security
ECHR	European Court of Human Rights
ECHR Reports	European Court of Human Rights, Reports of Judgments and Decisions (follows on from ECHR Series A)
ECHR Series A	European Court of Human Rights, Series A: Judgments and Decisions
ECOSOC	United Nations Economic and Social Council
EEC	European Economic Community
ESP	Spanish pesetas
Eur. Court H.R.	European Court of Human Rights
FF	French francs
FUNAI	Fundação Nacional do Índio
GP	general practitioner (doctor)
HMS	Her/His Majesty's Service (ship)
IACHR	Inter-American Commission on Human Rights
IAEA	International Atomic Energy Agency

ICAO	International Civil Aviation Organization
IELR	International Environmental Law Reports
IR £	Irish pounds
ITL	Italian lira
LPG	liquid petroleum gas
MEP	Member of the European Parliament
MOD	Ministry of Defence
MRC	Medical Research Council
mSv	microsieverts
MTTP	Ministry of Transport, Post and Telecommunications
NATO	North Atlantic Treaty Organization
NNI	Noise and Number Index
NOK	Norwegian kroner
NRPB	National Radiological Protection Board
NTB	Norwegian News Agency
OSCE	Organization for Security and Co-operation in Europe
PAT	Pensions Appeal Tribunal
RAF	Royal Air Force
ROC	Anti-Hunting Movement
SCTA	Soil Cleaning (Temporary Provisions) Act
SEK	Swedish kronor
SNPN	National Society for the Protection of Nature
TNT	trinitrotoluene
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization

Tables of cases reported

The tables of cases are arranged alphabetically and by tribunal. 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 parentheses after the page number of the decision.

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