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

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# INTERNATIONAL LAW REPORTS

VOLUME 119

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*Lauterpacht Research Centre for International Law  
University of Cambridge*

# INTERNATIONAL LAW REPORTS

VOLUME  
119

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## PREFACE

A substantial part of the present volume is devoted to the decisions in the *Pinochet* proceedings from the English, Spanish, Belgian and Luxembourg courts. In view of the importance and complexity of this litigation, the Editors have taken the unusual step of including an Introductory Note (p. 1) reviewing the proceedings in their entirety, as well as the customary summary of each separate decision. This volume also includes a number of important and recent arbitral awards. The growing body of arbitral decisions given under Chapter 11 of the North American Free Trade Agreement is represented by the award in *Metalclad v. United Mexican States* (together with the decision of the Supreme Court of British Columbia in proceedings brought to challenge that award). Other awards in Chapter 11 proceedings will appear in volumes 120-122 later in the year. The awards of the arbitration tribunal in the *Southern Bluefin Tuna (Jurisdiction and Admissibility)* case and of tribunals constituted under the auspices of the Permanent Court of Arbitration in the cases of *Eritrea/Yemen (Phase Two)* and *Larsen v. The Kingdom of Hawaii* also appear in the present volume, together with a number of decisions from municipal courts.

As usual this volume has been the work of many, to all of whom the Editors wish to record their gratitude. Professor Greenwood undertook the major task of summarizing the English decisions in *Pinochet*, the three other English decisions in the volume, as well as the decisions in *Metalclad*, *Southern Bluefin Tuna* and *Larsen*. Ms Karen Lee, MA, Fellow of the Lauterpacht Research Centre for International Law, summarized the award in the *Eritrea/Yemen* case in addition to seeing the volume through the press and preparing the Tables of Cases and Digest. We are grateful to Dr Patrick Kinsch for supplying the text of the Luxembourg *Pinochet* decision, which was translated and summarized by Mr Andrew Oppenheimer, Associate Editor for Civil Law Jurisdictions, along with the decisions from Belgium and Spain. We are also grateful to Mr Michael Wood, CMG, Legal Adviser, Foreign and Commonwealth Office, for supplying the decisions in *Sankoh* and to Mr Christopher Whomersley, Legal Counsellor, Foreign and Commonwealth Office, for supplying the *Channel Tunnel* decision. Miss Maureen MacGlashan, CMG, prepared the Table of Treaties and the Index. Mrs Diane Iltt checked the copy and Mr Adrian Lee read the proofs. The Incorporated Council of Law Reporting for England and Wales kindly permitted the photographic reproduction of the text of the decisions from *The Law Reports* and *Weekly Law Reports*. Mrs Phyllis Hamilton of the Bureau of the Permanent Court of Arbitration kindly provided the copies of the *Eritrea/Yemen* and *Larsen* awards.

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We are also grateful to our publishers, the Cambridge University Press and its dedicated staff.

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FOR INTERNATIONAL LAW,  
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C. J. GREENWOOD

LAW DEPARTMENT,  
LONDON SCHOOL OF ECONOMICS  
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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 conventions on human rights will not be published unless they deal with a major point of substantive human



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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.

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*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 xvii.

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