

INTERNATIONAL
LAW REPORTS

VOLUME 200

*Volumes published under the title:***ANNUAL DIGEST AND REPORTS OF PUBLIC
INTERNATIONAL LAW CASES**

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| Vol. 1 (1919-22) | } | Edited by Sir John Fischer Williams, KC,
and H. Lauterpacht, LLD |
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| Vols. 169-200 | | Edited by Sir Christopher Greenwood, GBE, CMG, KC,
and K. L. Lee |

*Lauterpacht Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
200

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FOREWORD BY DAME ROSALYN
HIGGINS, GBE, KC

It is a commonplace today to observe that not only international decisions, but decisions of national courts, are important for our understanding of international law. And of course, Article 38(1)(d) of the Statute of the International Court of Justice refers, subject to the provisions of Article 59, to “judicial decisions ... as subsidiary means for the determination of rules of law”. The phrase “judicial decisions” is not qualified by the word “international”. While national courts are not the place we would immediately look to discern rules of international law on, for example, maritime law or the use of force, it is precisely within domestic courts that much of the practice on a handful of issues, such as State immunity and act of State, occurs.

The recognition that national decisions on international law—decisions of foreign courts as well of English courts—could be of importance has a long history. This is so even if the appreciation of the practical significance of this legal reality is more recent. The 1923, 1924, 1926 and 1928 volumes of the *British Yearbook of International Law* carried digests not only of decisions of international courts but also of English courts and overseas tribunals.

After 1945 it was no longer practicable for the *Yearbook* to provide annual coverage of national decisions in other countries. It was natural for the *Annual Digest* to assume sole responsibility for this task.

The *Annual Digest* has been published since 1929, and at the outset featured cases going back to 1919. This volume represents the 200th in the series “*Annual Digest*”, known since 1956 as the *International Law Reports*. The *Annual Digest/International Law Reports* can without hyperbole be described as a phenomenon in the field of international law publishing.

International lawyers, whether for academic purposes or reasons relating to practice, need to know and have access to treaties to which States and/or international organizations are party; decisions of international courts and tribunals; and decisions of national courts on matters of international law; and leading arbitration awards on matters of international law. All of these have exploded in the last half century. And the ILR provides, in constant and thus timely publication, such

decisions, as well as giving access to the way in which those treaties have been interpreted and applied by courts and tribunals.

Some of these decisions do appear, with greater or lesser delay, in their own publication series. But it is important for them to find a place here, because they will frequently form part, or indeed the leading part, of an international law issue, on which the reader needs to be able to find all the relevant parts together. And it is a source of pleasure, in which this volume plays a continuing example, to find that high-quality judgments appear in less well-known jurisdictions.

The ILR does not lay out its contents under headings of international law. A reader looking, for example, to see if a particular point on State immunity in an ICJ judgment was anticipated in national judgments, will not find the answer under a heading “State Immunity”. Rather, in any given volume, decisions of international courts and tribunals appear first, followed by national court decisions (each country listed in alphabetical order). The reader seeking judgments in a particular area of international law will initially be guided there by use of the Index and the bold letter headings collected for each volume in the Digest.

What also makes this series so important is that all the overseas judicial decisions, so systematically trawled, are translated into English, completing the criteria by which accessibility may be tested. The case reports, and the additional invaluable information, are also available electronically. The reader can find a Consolidated Table of Cases for volumes 1-125 and another (in the back of this volume) for volumes 126-200, a Consolidated Table of Treaties for volumes 1-160 and a consolidated subject-matter index for volumes 1-160 already exist and a fresh consolidation is under way.

This 200th volume reflects the elements described above. There are cases from the International Court of Justice, the African Court on Human and Peoples’ Rights, the Court of Justice of the European Union and the European Court of Human Rights, as well as from Australia, Austria, the Czech Republic, England, Germany, Ireland, South Africa, Switzerland and the United States, as well as a decision of the Committee on Human Rights under the Optional Protocol of the ICCPR. The international law topics there covered are varied, and include the jurisdiction of international tribunals, treaty interpretation and application, human rights (including the right to a fair trial), the legal personality of States under international law, act of State, State immunity and the right to self-determination.

I myself have over the years used the *Annual Digest* and *International Law Reports* not only when faced with the need for careful research in

practice, but as a teaching tool. What fun to show students the variety of actors in our subject, but perhaps even to zero in on a particular topic and bring out its complexities in varying jurisdictions.

It is clear that lying behind this accessible and important compendium, now standing at over 10,000 cases, is a vast amount of work by a dedicated team. In the early years the *Annual Digest* was greatly helped by the joint editorships of Sir Hersch Lauterpacht and Sir John Fischer Williams (volumes 1-2) and Sir Hersch Lauterpacht and Lord McNair (volumes 3-4), after which Sir Hersch Lauterpacht was the sole editor. The 24th volume may perhaps be regarded as special, being jointly edited by Sir Hersch Lauterpacht and Eli Lauterpacht. The preface to that volume contains a moving tribute by Eli to his father who died while the volume was being completed.

Eli took over as sole editor from volume 25, after his father's death in 1960, and was assisted between 1961 and 1975 by Gillian White, later Professor of International Law at Manchester University. Eli and Hersch (the latter posthumously) were awarded the American Society of International Law Certificate of Merit for the *Reports* in 1972.

Volume 82 (1990) sees Christopher Greenwood, who had been assisting Eli with this work since 1978, appear as Joint Editor with him. Karen Lee assisted them both from 1992 (volume 90), before herself becoming Joint Editor in 2012.

Volumes 151-68 were thus edited by Sir Eli, Sir Christopher and Karen Lee. Following Eli's death in 2017, volumes 169 onwards of this gold standard among international law reports for the English-speaking world have appeared under the editorship of Sir Christopher and Karen Lee.

As the ILR reaches its 200th volume, the deep knowledge and great dedication of its editors, and all those who have assisted them in this great project, merits our grateful acknowledgment. And there is keen demand for what the ILR will give to the world of international law in the years ahead

PREFACE

The present volume contains the 2019 judgment on preliminary objections of the International Court of Justice in *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*. International jurisprudence is also reflected in decisions from the African Court on Human and Peoples' Rights (*Goa alias Vedastus v. Tanzania*), the Court of Justice of the European Union (*Slovenia v. Croatia* and *Venezuela v. EU Council*), the European Court of Human Rights (*Democratic Republic of the Congo v. Belgium*) and the United Nations Human Rights Committee (*Nasheed v. Maldives*). National jurisprudence is reflected in decisions from the courts of Australia (*Ratu*), Austria (*US Embassy Employee Case*), the Czech Republic (*Premises of a Diplomatic Mission* and *State Immunity from Enforcement* cases), England (*Heathrow Airport* case), Germany (*Functional Immunity of Foreign State Officials and Crimes* case), Ireland (*Costello*), South Africa ("*Cherry Blossom*" case), Switzerland (*Country X*) and the United States (*OI European Group*).

The Editors wish to express their gratitude to the many people whose work has made this volume possible. Mr Darren Peterson summarized the cases from the Court of Justice of the European Union, Ireland and South Africa. Dr Massimo Lando undertook the task of preparing the summary of the case from the International Court of Justice. Ms Caroline Kimeu summarized the cases from the African Court on Human and Peoples' Rights, the United Nations Human Rights Committee and the United States. Dr Natalie Jones wrote the summary of the *Heathrow Airport* case and Mr Aaron Moss summarized the case from Australia. Ms Whitney-Martina Nosakhare, Ms Jerusha Asin Owino and Professor Claus Kreß prepared the summary and unofficial translation of the German case. Dr Klara Polackova Van der Ploeg translated and summarized the two Czech cases. Mr Philipp Janig (under the supervision of Professor Dr Stephan Wittich) prepared the summary and unofficial translation of the Austrian case. Ms Katja Achermann summarized the case from Switzerland. Ms Susannah Lewis translated the case from the European Court of Human Rights, which was summarized by Ms Karen Lee, who also saw the

volume through the press. Ms Emily Sharp, the ILR Editorial Assistant, prepared the Tables of Cases, Digest and the Consolidated Tables of Cases. Miss Maureen MacGlashan, CMG, compiled the Table of Treaties and Index. Mrs Diane Illott and Mrs Alison Tickner checked the copy and Mrs Jenny Macgregor read the proofs.

The Editors are very grateful to the International Court of Justice, the Court of Justice of the European Union (which owns the copyright in its material), the European Court of Human Rights, the United Nations Human Rights Committee, the Federal Court of Australia, the High Court of Ireland (which owns the copyright in its material) and the United States District of Columbia Court for kindly permitting these *Reports* to use the electronic files of the relevant judgments posted on their official websites. Their thanks also go to Brill publishers, for kindly permitting these *Reports* to publish the unofficial translation of the Austrian case prepared for the *Austrian Review of International and European Law*. The unofficial translation of the Swiss case, which is from the Swiss International Arbitration Decisions website, is also used with permission and thanks. The judgment from England published in this volume carries Crown copyright and contains public sector information licensed under the Open Government Licence v3.0; the electronic file was sourced from the United Kingdom Supreme Court website.

Finally, our thanks go to all the others who have worked to complete this volume, particularly our publishers, Cambridge University Press, and typesetters, Straive, and their staff.

C. J. GREENWOOD

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April 2022

SUPPLEMENTARY PREFACE

It has been the custom for what may be termed the “anniversary volumes” of the *International Law Reports* to include an additional preface written by the senior Editor who thus has the opportunity to make clear their gratitude to certain people who have been particularly closely involved with the preparation of the *Reports*. For volume 100 and volume 150 those prefaces were written by Sir Eli Lauterpacht, who had taken over the editorship on the death of his father, Sir Hersch Lauterpacht, in 1960. It was Sir Hersch who, with Lord McNair and Sir John Fischer Williams, had started what was then the *Annual Digest* in 1929, and Sir Eli who, during the fifty-seven years that he edited the series, kept it alive through difficult times and made it what it is today. Their work was honoured by the American Society of International Law in 1972 when it awarded them the Certificate of Merit in respect of the *Reports*. Although I never had the opportunity of knowing Sir Hersch, I had the enormous benefit of Sir Eli’s friendship and guidance for almost forty years.

Over the years so many people have worked on the ILR that it would be impossible for me to thank them all by name. Three people must, however, be singled out. Karen Lee, my co-editor, has given thirty years of service to the ILR. Her dedication to the series and the quality of her work shines through in every volume with which she has been associated, the first being volume 90, which appeared in 1992. For many years she has been the principal guiding hand in the editing of the *Reports*. Maureen MacGlashan has prepared the index with meticulous care for even longer. Her first index appeared in volume 76, which was published in 1988. She has made the index and tables of treaties the invaluable means of access to the wide range of issues covered in the cases reported here. Finally, Diane Illott has worked on the series since 1987; the first volume to have the benefit of her skills was volume 74. She has painstakingly checked the copy and proofs and has ensured that the vast range of material from numerous different sources appeared accurately and harmoniously.

To all of the above, as well as to the others who have contributed to the series, I would like to extend my warmest thanks; working with you has been a pleasure as well as a privilege.

C. J. GREENWOOD

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 Justice of the European Union). 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 Human Rights Committee. 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 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. Stephan W. Schill, 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

For reproduction of material in this volume, electronic files have been used wherever possible and their source acknowledged in the Preface. Citations of the reports in which the case may be found are listed in the “Report” section 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 where included.

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 p. xxiii.

CONSOLIDATED INDEX AND TABLES

A Consolidated Index and a Consolidated Tables of Cases and Treaties for volumes 1-80 were 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. A Consolidated Index, a Consolidated Tables of Cases and a Consolidated Table of Treaties for volumes 1-125 were published in 2004. A Consolidated Index and a Consolidated Table of Treaties for volumes 1-160 were published in 2017. Volume 200 contains Consolidated Tables of Cases for volumes 126-200.

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(Cases which are reported only in a note are distinguished from cases which are reported in full by the insertion of the word “note” in parentheses after the page number of the report.)

I. DECISIONS OF INTERNATIONAL TRIBUNALS

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(Those headings for which there are entries in the present volume are printed in italics. For a guide to the Digest, see the Editorial Note at p. xvii.)

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Canals	Lakes and Landlocked Seas
Claims	Nationality
<i>Comity</i>	<i>Recognition</i>
Conciliation	<i>Relationship of International Law and Municipal Law</i>
Consular Relations	Reprisals and Countermeasures
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<i>Economics, Trade and Finance</i>	Sources of International Law
<i>Environment</i>	Space
Evidence before International Courts and Tribunals	<i>State Immunity</i>
Expropriation	State Responsibility
Extradition	State Succession
General Principles of International Law	<i>States</i>
Governments	<i>Territory</i>
<i>Human Rights</i>	<i>Terrorism</i>
<i>International Court of Justice</i>	<i>Treaties</i>
<i>International Criminal Law</i>	<i>War and Armed Conflict</i>

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