

*Lauterpacht Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
139

Edited by

SIR ELIHU LAUTERPACHT, CBE QC
*Honorary Professor of International Law, University of Cambridge
Bencher of Gray's Inn*

SIR CHRISTOPHER GREENWOOD, CMG QC
*Judge of the International Court of Justice
Bencher of Middle Temple*

and

KAREN LEE
Assistant Editor
*Fellow of the Lauterpacht Centre for International Law, University of Cambridge
Fellow of Girton College, Cambridge*

GROTIUS PUBLICATIONS



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521114172

© Sir Elihu Lauterpacht 2011

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2011

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

ISBN 978-0-521-11417-2 Hardback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to
in this publication, and does not guarantee that any content on such
websites is, or will remain, accurate or appropriate.

PREFACE

The present volume contains international decisions from the International Court of Justice (the 2001 merits judgment in *Qatar v. Bahrain*) and arbitration tribunals constituted under Annex VII of the United Nations Convention on the Law of the Sea, 1982 (the 2006 and 2007 awards in *Barbados/Trinidad and Tobago* and *Guyana/Suriname* respectively).

There are many people, to all of whom the Editors are most grateful, whose work has made this volume possible. Sir Christopher Greenwood prepared the case summaries of *Barbados/Trinidad and Tobago* and *Guyana/Suriname*. Ms Karen Lee, Assistant Editor, wrote the summary of *Qatar v. Bahrain*. Ms Tara Grant prepared the Tables of Cases and Digest and provided general and secretarial assistance. Miss Maureen MacGlashan, CMG, compiled the Table of Treaties and the Index. Mrs Diane Ilott checked the copy and Ms Jenny Macgregor read the proofs.

In addition we would like to extend our thanks to all the others who have worked to complete this volume, particularly our publishers, Cambridge University Press, and typesetters, Aptara, and their staff.

LAUTERPACHT CENTRE
FOR INTERNATIONAL LAW,
UNIVERSITY OF CAMBRIDGE

E. LAUTERPACHT

THE PEACE PALACE,
THE HAGUE

C. J. GREENWOOD

September 2010

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 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. 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. Albert Jan Van den Berg, 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 the volume has been typeset for this volume. 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 in non-English cases indicate the pagination of the original report.

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. xvii.

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. Volume 135 contains Consolidated Tables of Cases for volumes 126-135.

DIGEST OF CASES

List of Main Headings

(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. xi.)

Air	Jurisdiction
Aliens	Lakes and Landlocked Seas
<i>Arbitration</i>	Nationality
Canals	Recognition
Claims	Relationship of International Law and Municipal Law
Comity	Reprisals and Countermeasures
Conciliation	Rivers
Consular Relations	<i>Sea</i>
Damages	Sources of International Law
Diplomatic Relations	Space
Economics, Trade and Finance	State Immunity
Environment	State Responsibility
Expropriation	State Succession
Extradition	States
Governments	<i>Territory</i>
Human Rights	Terrorism
International Court of Justice	<i>Treaties</i>
International Criminal Law	<i>War and Armed Conflict</i>
International Organizations	
International Tribunals	

CONTENTS

	<i>Page</i>
PREFACE	vii
EDITORIAL NOTE	ix
TABLE OF CASES (alphabetical)	xiii
TABLE OF CASES (according to courts and countries)	xv
DIGEST (main headings)	xvii
DIGEST OF CASES REPORTED IN VOLUME 139	xix
TABLE OF TREATIES	xxiii
REPORTS OF CASES	1
INDEX	719

DIGEST OF CASES REPORTED IN VOLUME 139

Page

Arbitration

Jurisdiction — Law of the sea — UNCLOS Part XV and Annex VII — Dispute settlement mechanism — Arbitration as default choice — Jurisdiction — Claims relating to State responsibility for use of force — Whether arbitration tribunal possessing jurisdiction to apply Charter of the United Nations and general international law — Arbitration Tribunal

Guyana/Suriname (Award) 566

Jurisdiction — Law of the sea — UNCLOS Part XV and Annex VII — Dispute settlement mechanism — Arbitration as default choice — Jurisdiction — Fisheries — Outer continental shelf — Arbitration Tribunal

Barbados/Trinidad and Tobago (Award) 449

Sea

Continental shelf — Exclusive economic zone — Contemporary international law — UNCLOS Articles 74 and 83 — Legal basis on which title to maritime territories based — Maritime boundaries — Single maritime boundary — Legal principles applicable to delimitation — Equidistance — Relevant circumstances — Conduct — Arbitration Tribunal

Guyana/Suriname (Award) 566

Continental shelf — Exclusive economic zone — Contemporary international law — UNCLOS Articles 74 and 83 — Legal basis on which title to maritime territories based — Maritime boundaries — Single maritime boundary — Legal principles applicable to delimitation — Equidistance — Relevant circumstances — Geographical prolongation — Regional considerations — Treaties with third States — Conduct — Fisheries — Method of adjustment of initial equidistance line — Arbitration Tribunal

Barbados/Trinidad and Tobago (Award) 449

Continental shelf — Outer continental shelf — Whether claim by State to continental shelf beyond 200 nautical miles relevant

Sea (cont.)

to boundary within 200 nautical miles — Claim by State to outer continental shelf overlapping with neighbouring State's claim to exclusive economic zone — Arbitration Tribunal

Barbados/Trinidad and Tobago (Award) 449

Disputes — Duties of States party to dispute over maritime boundary — UNCLOS Articles 74(3) and 83(3) — Duty to make every effort to enter into provisional arrangements of a practical nature — Duty to make every effort not to jeopardize or hinder the reaching of a final agreement — Arbitration Tribunal

Guyana/Suriname (Award) 566

Fisheries — Historic fishing rights — Proof — Whether historic rights established — Whether historic rights relevant to location of single maritime boundary — Regime of access to fish in waters of neighbouring State — Arbitration Tribunal

Barbados/Trinidad and Tobago (Award) 449

Maritime delimitation — Parties requesting Court to draw single maritime boundary in accordance with international law — Applicable law — Customary international law — Delimitation of territorial seas of Parties — Article 15 of United Nations Convention on the Law of the Sea, 1982 — Drawing of provisional equidistance line — Relevant baselines — Relevant coasts — Sovereignty over islands — Relevance of low-tide elevations — Applicable rules for determination of baselines — Equidistance/special circumstances rule — Whether any special circumstances making adjustment of provisional equidistance line necessary — Delimitation of continental shelves and exclusive economic zones of Parties — Applicable law — Drawing of provisional equidistance line — Equitable principles/relevant circumstances rule — Whether any circumstances making adjustment of provisional equidistance line necessary — Course of single maritime boundary — International Court of Justice

Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (Merits)

1

Territorial sea — UNCLOS Article 15 — Special circumstances justifying departure from the median line — Equitable principles — Practice of the parties — Navigation — Effect of one coastal State's sovereignty over the whole of river dividing territory — Arbitration Tribunal

Guyana/Suriname (Award) 566

Territory

Sovereignty — Whether Qatar or Bahrain having sovereignty over Hawar Islands — Nature of 1939 British decision — Legal effect — Whether constituting arbitral award — Whether Court having jurisdiction to decide dispute on 1939 British decision — Whether British Government having jurisdiction to decide Hawar Islands question — Validity of 1939 British decision — Whether binding on Parties — International Court of Justice

Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (Merits)

1

Sovereignty — Whether Qatar or Bahrain having sovereignty over Janan Island including Hadd Janan — Effects of 1939 British decision — Whether Janan Island part of Hawar Islands — 1936, 1937, 1938 and 1946 lists submitted by Bahrain to British Government — 1947 letters from British Government to Rulers of Qatar and Bahrain — Relevance — International Court of Justice

Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (Merits)

1

Sovereignty — Whether Qatar or Bahrain having sovereignty over Zubarah — Relevance of conventions — 1868 Agreement — Unratified Anglo-Ottoman Convention, 1913, Article 11 — Anglo-Ottoman Treaty, 1914, Article III — Whether Bahrain in position to engage in direct acts of authority — Whether Sheikh of Qatar having authority to tax Naim tribe in 1937 — Whether Great Britain regarding Zubarah as belonging to Bahrain — International Court of Justice

Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (Merits)

1

Treaties

Unilateral commitments — Statement made by agent of State before international tribunal — Whether creating binding legal obligation for State — Arbitration Tribunal

Barbados/Trinidad and Tobago (Award)

449

War and Armed Conflict

Force — Use or threat of force — Charter of the United Nations —
General international law — Nature of threat to use force —
Distinction between military action and law enforcement —
Countermeasures — Arbitration Tribunal

Guyana/Suriname (Award)

566

TABLE OF TREATIES

This table contains a list, in chronological order according to the date of signature, of the treaties referred to in the decisions printed in the present volume. It has not been possible to draw a helpful distinction between treaties judicially considered and treaties which are merely cited.

In the case of bilateral treaties, the names of the parties are given in alphabetical order. Multilateral treaties are referred to by the name by which they are believed commonly to be known. References to the texts of treaties have been supplied, including wherever possible at least one reference to a text in the English language. The full titles of the abbreviated references will be found in the list of Abbreviations and Sources printed in the volume containing the Consolidated Table of Treaties to Volumes 1-125.

1820

- Jan. 8 Great Britain–Trucial Sheikhdoms of Oman/Bahrain, General Treaty of Peace (70 CTS 463; 12 BFSP 499; 23 BFSP 1069; 11 Aitchison, 5th edn, 245; 26 Parl. Papers (1825) 66) 26-7, 154, 155, 272-3, 395

1835

- Great Britain–Trucial Sheikhdoms, Maritime Truce 26, 273

1853

- Aug. 24 Abu Dhabi, Ajman, Dubai, Sharjah, Treaty of Maritime Peace in Perpetuity 26-7, 273

1861

- May 31 Great Britain–Ruler of Bahrain, Perpetual Treaty of Peace and Friendship 27, 38-9, 155-6, 232, 275-6, 280-2, 283, 284, 288, 298, 316, 343-4, 395, 396

1868

- Sept. 6 Great Britain–Sheikh of Bahrain Peace Agreement (11 Aitchison, 1987 edn (Cambridge Archive Editions) 236) 27-8, 157, 279, 281-2, 284-8, 291-2, 298-9, 301, 302-3, 308-9, 311, 314, 316, 318, 321-2, 324, 334, 440

- Sept. 12 Great Britain–Qatar, Maritime Peace Agreement (11 Aitchison, 1987 edn (Cambridge Archive Editions), 255; 139 ILR 286 (summary)) 27-8, 279, 280, 284-8, 290, 291-2, 298-9, 301, 302-3, 308-9, 311, 314, 316, 318, 321-2, 324, 334, 440
 Art. 3 288, 290

1880

- Dec. 22 Great Britain–Bahrain, Exclusive Protection Agreement (11 Aitchison, 1987 edn (Cambridge Archive Editions), 237) 28-9, 56, 198, 211, 292, 296, 335, 343-4, 395, 396

1892

- Mar. 6/8 Great Britain–Trucial Sheikhdoms, Exclusive Agreements (or (176 CTS 457; 11 Aitchison, 5th edn, 256; 19 Hertslet 769;
 Mar. 13) 91 ILR 562-3 (extracts)) 29, 56, 198, 208, 211, 273, 292, 296, 335, 343-4, 395, 396

1899

- July 29 Hague Convention I for the Pacific Settlement of International Disputes (187 CTS 410; 26 Martens NRG, 2nd ser. 920; 91 BFSP 970; 2 US Treaties 2016; 21 RTAF 703; 23 Hertslet 509; USTS 392; 32 Stat 1779; JOF 1 December 1900, 306; 1 AJIL (1907) Supp. 107)
 Art. 15 50

1907

- Oct. 18 Hague Convention No I for the Pacific Settlement of Disputes (3 Martens NRG, 3rd ser. 360; 100 BFSP 298; 2 US Treaties 2220; UKTS 6 (1971), Cmnd 4575; 205 CTS 233; USTS 536; 54 LNTS 54; 25 Hertslet 590; 2 AJIL (1908) Supp. 43; JOF 8 December 1910)
 Art. 37 50

1913

- July 29 Anglo-Ottoman Convention relating to the Persian Gulf and Surrounding Territories (unratified) (139 ILR 330 (Articles 11-13)) 29-30, 39, 42-4, 161-3, 234, 235, 246, 290, 308, 314, 315, 316, 319, 322, 329-33, 334, 340, 341-2, 381, 385, 441

- Art. 3 397
 Art. 11 29, 40-1, 161-2, 165, 305, 330-2, 334, 441
 Art. 13 162-3, 165
 Annex V (maps) 255, 341-2
- 1914**
- Mar. 9 Anglo-Turkish Treaty concerning the Frontiers of Aden (139 ILR 331 (Art. III)) 29, 39, 163, 165, 171, 234, 246, 305, 315, 316, 319, 329-33, 334, 341-2, 441
 Art. III 29, 41, 42, 331-2, 385
- 1915**
- Dec. 26 Anglo-Saudi Treaty (Treaty with Bin Saud acknowledging his independence and agreeing to render aid) (11 Aitchison, 1987 edn (Cambridge Archive Editions) 206; 139 ILR 333 (Art. VI)) 161, 163-4, 316
 Art. VI 333
- 1916**
- Nov. 3 Great Britain–Sheikh of Qatar, Treaty undertaking obligations and accepting privileges similar to those of the Trucial Sheikhs (11 Aitchison, 1987 edn (Cambridge Archive Editions) 258; 139 ILR 398 (Articles X and XI)) 30, 39, 56, 134-5, 161, 164-6, 171, 198, 208, 211, 218, 288, 308-9, 316, 329, 333-5, 338, 341-2, 356, 389, 396-8, 440, 441
 Art. XI 164-5, 397-9
- 1927**
- May 20 Great Britain–King of Hejaz and Nejd, cancelling the Treaty of 26 December 1915 and defining afresh the relations between the two parties (11 Aitchison, 1987 edn (Cambridge Archive Editions) 227) 163-4
- 1945**
- June 26 Charter of the United Nations (9 Hudson 327; UKTS 67 (1946), Cmd 7015; 145 BFSP 805; USTS 993; 1 Peaslee 1288; 59 Stat 1031; 1 UNTS 16; 39 AJIL (1945) Supp. 190; JOF 13 January 1946; 3 Bevans 1153; Blackstone's *International Law Documents*, 8th edn 9 (amended version))

	Chapter I	
	Art. 2(3)	690
	Art. 2(4)	638, 691-9
	Art. 2(6)	694
	Chapter VI	
	Art. 33	639
	Art. 33(1)	637-9, 690
June 26	Statute of the International Court of Justice (9 Hudson 510; UKTS 67 (1946), Cmd 7015; USTS 993; 145 BFSP 832; 1 Peaslee 1322; 3 Bevans 1179; 1945 CanTS 7; 39 AJIL (1945) Supp. 215n; JOF 13 January 1946; 59 Stat 1031)	
	Chapter I	
	Art. 17	135
	Art. 31(3)	15
	Chapter II	
	Art. 38	364, 660
	Chapter III	
	Art. 40(2)	14
	Art. 41	178
	Art. 50	256
	Art. 59	70
1958		
Feb. 22	Bahrain-Saudi Arabia, Agreement concerning Rights in Off-shore Areas (7 ICLQ (1958) 519; Basic Oil Laws and Concession Contracts, Middle East, in <i>Petroleum Legislation</i> , vol. 1, <i>Bahrain A-1</i>)	190-2, 399-400, 419
Apr. 29	Geneva Convention on the Continental Shelf (499 UNTS 311; UKTS 39 (1964), Cmdnd 2422; 15 UST 471; TIAS 5578; ATS 12 (1963); JOF 4 December 1965; 1965 RTAF 100; 52 AJIL (1958) Supp. 858; 53 ILS 221; 87 JDI 512)	
	Art. 6	110-12, 114, 621
	Art. 6(1)	103
Apr. 29	Geneva Convention on the Territorial Sea and Contiguous Zone (516 UNTS 205; 52 AJIL (1958) 834; 15 UST 1606; TIAS 5639; 53 ILS 194; ATS 12 (1963); UKTS 3 (1965), Cmdnd 2511)	
	Art. 1(1)	657
	Arts. 3-11	104-5
	Art. 4	76
	Art. 4(3)	74, 76

Art. 10(1)	73, 186
Art. 11	98
Art. 11(1)	74
Art. 12	111-12
Art. 12(1)	67, 102, 183-4, 196, 646-7, 649
Art. 24	657

1969

May 23	Vienna Convention on the Law of Treaties (1155 UNTS 331; UKTS 58 (1980), Cmnd 7964; 1969 UNJYB 140; 63 AJIL (1969) 875; 8 ILM 679 (1969); 9 IndJIL 288; 29 ZaöRV 711; Blackstone's <i>International Law Documents</i> , 8th edn 128)
Art. 62	632

1971

Aug. 15	Bahrain–United Kingdom, Exchange of Notes concerning the Termination of Special Treaty Relations (UKTS 78 (1971), Cmnd 4827)	35, 46, 197, 208, 210, 399, 401-2
Sept. 3	Qatar–United Kingdom, Exchange of Notes concerning the Termination of Special Treaty Relations (UKTS 3 (1972), Cmnd 4849)	35, 46, 57, 197, 208, 210, 399, 401-2

1982

Dec. 10	UN Convention on the Law of the Sea (21 ILM 1261 (1982); Misc 11 (1983), 8941; 1833 UNTS 3 (1994); Brownlie, <i>Basic Documents in International Affairs</i> , 3rd edn 129)
	Part II, Section 2
	Art. 5 70-1, 180-1, 631, 678-9
	Art. 7(4) 74, 76, 408-9
	Art. 9 608, 611
	Art. 10 611
	Art. 13 411
	Art. 13(1) 74
	Art. 15 ... 67-8, 102-5, 196, 410-11, 413, 417-18, 607, 609, 621, 622, 631, 635, 644-5, 646, 647, 648, 649, 655
	Part II, Section 4(b)
	Art. 33 657
	Part IV 262-3, 403-5
	Art. 47(1) 69-70
	Art. 47(6) 493