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Edited by

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PREFACE

The present volume contains decisions from four international tribunals and the courts of four States. The decision of the United Nations Administrative Tribunal in *Mortished v. Secretary-General of the United Nations* (p. 305) is reported together with the subsequent Advisory Opinion of the International Court of Justice concerning this case (p. 330). Five decisions of the Iran-United States Claims Tribunal are reported in this volume. The *Iran-United States Claims Tribunal Reports*, from which these decisions have been taken, are, like the present *Reports*, published under the auspices of the Research Centre for International Law at the University of Cambridge. The existence of the *Iran-United States Claims Tribunal Reports* renders it unnecessary to reproduce all of the Tribunal's decisions in the *International Law Reports*. However, such is the importance of the Tribunal's jurisprudence for the development of international law that it would be wrong to exclude all its decisions from the present series. It has therefore been decided to include in these *Reports* only those decisions which are of particular significance for international law, while referring the reader to the specialist series for a comprehensive coverage of the Tribunal's jurisprudence. Finally, the growing body of human rights decisions is reflected by the inclusion of two further "views" of the United Nations Human Rights Committee.

The largest group of municipal cases comes from the Belgian courts, fifteen of whose decisions are reported in this volume. There are also cases from Australia, Canada and South Africa. The great increase in the number of decisions which merit inclusion in the *Reports* has inevitably led to an increase in the time before some decisions can be published. In an attempt to meet this problem, the size of the present volume has been increased to some 700 pages. We hope to sustain publication at this rate and thus significantly to reduce the delay before decisions appear in the *Reports*.

The Advisory Opinion of the International Court of Justice has been photographically reproduced from the *International Court of Justice Reports* by kind permission of the Court. We are also indebted to Butterworths (Australia) Ltd., the Canadian Law Book Company Ltd. and Juta and Co. for permission to reproduce the decisions from Australia, Canada and South Africa respectively.

The work of compiling the cases for publication in this volume and of writing the summaries has been undertaken by Mr H. E. Schade, upon whom most of this burden has fallen, Mr A. G. Oppenheimer, Mrs J. Arnold, Mr H. Paton and Mr S. Sarkar. Decisions from Australia and South Africa have been contributed by Professor James

Crawford and Professor John Dugard respectively. The index has been prepared by Mrs J. Kornhauser and the tables by Mr H. E. Schade. Miss A. Newman and Miss L. O'Neill have given general editorial assistance, and Mrs S. Rainbow has typed much of the manuscript. Mr C. J. Greenwood, who now becomes Assistant Editor of the *Reports*, has been principally responsible for the general editing of the volume. The volume has been printed with their customary care by the Gomer Press. To all the above, I express my warmest thanks.

E. LAUTERPACHT

RESEARCH CENTRE FOR
INTERNATIONAL LAW,
CAMBRIDGE

December, 1985

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 on 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 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 Editor 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.

Material photographically reproduced. This consists exclusively of reports originally printed in the English language. The material can usually be recognized by the differences between its type-style and the Baskerville type otherwise used in these *Reports*. The source of the material is identified by the reference to "Report" in square brackets at the end of the case. Where more than one citation is given, the report used is the one first listed. The bold type figures in square brackets in the inner margin of each page refer to the pagination of the original report. The smaller figures in square brackets in the margins of these cases are the indicators of footnotes which have been editorially introduced.

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.

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