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Volume

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EDITED

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## PREFACE

The present volume comprises over 700 pages of text containing some 130 decisions. Like Volume 73 it is devoted primarily to decisions of national courts. Particularly numerous are the decisions from the courts of the Federal Republic of Germany, France and the Netherlands. In addition, there are cases from England, Scotland, Jamaica, New Zealand, Sudan and Zambia. The decision to include so many national cases has meant a corresponding reduction in the decisions from international tribunals which might otherwise have been published. Nevertheless, the present volume includes the ruling of the Secretary-General of the United Nations in the *Rainbow Warrior* dispute between France and New Zealand, as well as the decision of the New Zealand court in the trial of two French agents involved in the sinking of the *Rainbow Warrior*. We also publish an important decision of the European Court of Human Rights.

The fact that we have been able to include so many decisions from the courts of the Federal Republic of Germany and France is due in large part to Mr Andrew Oppenheimer, Barrister-at-Law. His work in translating and editing many of these cases, as well as in the preparation of the Index, has made a very considerable contribution to this volume for which I am most grateful. A number of the German decisions were originally prepared, some time ago, by Dr Christoph von Katte and Dr Otto Lampe. Mr Horst Schade, Barrister-at-Law, whose work is evident in many of the other decisions in the volume, has also assisted with the German cases.

The English translations of decisions from the Netherlands have been extracted with permission from the *Netherlands Yearbook of International Law*. Concise statements entitled "The facts" appear in the *Netherlands Yearbook* before the text of the relevant part of each judgment and these statements have been reproduced, with some exceptions, in the summaries prepared for this volume. The texts of the judgments printed in this volume are normally the complete extracts published in the *Netherlands Yearbook*. The basic preparation of these cases was done by Mr Alan Stephens and Miss Klaske Visser, with the kind permission of the TMC Asser Institute in The Hague and its Director, Dr C. C. A. Voskuil. Subsequent editorial work was done by Mr Oppenheimer.

We are indebted to the Incorporated Council of Law Reporting for permission to reproduce cases from the *Law Reports* and *Weekly Law Reports*, to Lloyd's of London Press Ltd. for permission to reproduce a decision from *Lloyd's Law Reports* and to the Council of Law

Reporting of Zambia for allowing reproduction of a decision from the *Zambian Reports*.

In addition to those already mentioned, the following have made helpful contributions to the preparation of the volume: Miss Florence Lajeunesse, Mr Philippe Olivier and Mr Peter Xuereb, who assisted in preliminary work on the French cases; Miss Louise O'Neill, who contributed a number of summaries, prepared the Tables of Cases and Treaties and played a major part in general editorial work; Miss M. E. MacGlashan; Mr J. Adlam; Mrs D. Ilott; Mr D. Ross; Mrs J. Oppenheimer and my secretary, Mrs S. Rainbow. The volume has been printed with their customary care by the Gomer Press. To all the above, I extend my warmest thanks.

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UNIVERSITY OF CAMBRIDGE

*August, 1987*

## 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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