

# INTERNATIONAL LAW REPORTS

Volume

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EDITED

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## PREFACE

This volume, the second of more than 700 pages to appear in 1986, contains over sixty decisions from a wide range of national and international tribunals. The 1984 decision of the Chamber of the International Court of Justice in the *Gulf of Maine* Case is reproduced in its entirety together with the 1982 decision of the full Court establishing the Chamber. The burgeoning jurisprudence of international human rights tribunals is represented by five decisions of the European Court of Human Rights and six "views" adopted by the United Nations Human Rights Committee. In publishing eight decisions of the Iran-United States Claims Tribunal we continue our policy of publishing only selected decisions of that Tribunal which have a particular significance for public international law. For a full report of all the decisions of the Tribunal, the reader is referred to the *Iran-U.S. Claims Tribunal Reports* which, like the present *Reports*, are prepared for publication in the Research Centre for International Law of the University of Cambridge.

The decisions of national courts selected for this volume reflect our determination to clear the backlog of decisions from some jurisdictions. There are 13 cases from Austria, mainly from the period 1968-1972, one decision each from Belgium, Canada, Guyana, Madagascar, Northern Ireland, Norway, Poland and Sri Lanka all dating from the 1970s, three decisions from England (all concerning the Convention Relating to the Status of Refugees), four cases from Pakistan and two each from Papua New Guinea and Southern Rhodesia. Finally, there is a substantial batch of fifteen cases from the Italian courts reflecting their contribution to public international law during the period 1965-1972. Further decisions from these countries will appear in subsequent volumes.

We are indebted to the following for permission to reproduce photographically decisions from the reports which appear after each publisher's name: the International Court of Justice (*International Court of Justice Reports*); Butterworths Law Publishers Ltd. (*West Indian Law Reports*); the Canadian Law Book Co. (*Dominion Law Reports*); the Incorporated Council of Law Reporting (*Northern Ireland Law Reports*); Juta and Co. (*South African Law Reports*); the Council for Law Reporting, Papua New Guinea (*Papua New Guinea Law Reports*) and All Pakistan Legal Decisions (*Pakistan Legal Decisions*). We are also grateful to the Government of Zimbabwe for permission to reproduce the decision in *S v. Olsen*. The decisions of the Iran-United States Claims Tribunal are reproduced from the *Iran-U.S. Claims Tribunal Reports*.

Professor Antonio Cassese and his colleagues, Professor R. Barsotti, Dr A. Calamia and Mrs J. Manco have selected, translated and summarized most of the Italian cases. Some of these consist of English translations extracted with permission from the *Italian Yearbook of International Law*. Other Italian cases have been translated and summarized by Mr Andrew Oppenheimer. Mr Oppenheimer also translated, and prepared the summary of, the decision from Belgium, as well as preparing the summaries of many of the Austrian cases. The task of translating the Austrian cases was undertaken by Dr Friedl Weiss, Professor I. Seidl-Hohenveldern, Dr J. A. Weir, Mrs H. Morgan, Mr Oppenheimer, Mr H. E. Schade and Mrs D. Hitchcock. The three English decisions on the Refugees Convention were contributed by Dr R. Plender and the summaries are the work of Dr Plender and Mr Schade. The decisions from Guyana, Papua New Guinea and Pakistan were provided by Mr Sodipto Sarkar and Mr Schade. The summaries of the decisions of the Iran-United States Claims Tribunal are the work of Mrs Jenelle Arnold and Mr Schade. The decision from Madagascar was contributed by Mr P. Ollivier and that from Poland by Professor K. Skubiszewski. Mr H. E. Schade has been responsible for the very large task of writing the summaries of the *Gulf of Maine* Case and the decisions of the European Court of Human Rights and the United Nations Human Rights Committee. The significant extent of his contribution to this volume is thus evident.

The index has been compiled by Mrs J. Kornhauser and Mr A. Oppenheimer. The Tables of Cases are the work of Mr Schade and the Table of Treaties that of Miss L. O'Neill. My secretary Mrs Rainbow has again provided invaluable secretarial assistance, as has Miss Y. Zangmo of the Research Centre for International Law. General editorial work has been undertaken by Mr Schade and Mr C. J. Greenwood. The volume has again been printed by the Gomer Press. To all the above I express my warmest thanks.

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UNIVERSITY OF CAMBRIDGE

*December, 1986*

## 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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