

*Lauterpacht Centre for International Law
University of Cambridge*

INTERNATIONAL LAW REPORTS

VOLUME
140

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/9780521194518

© 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 978-0-521-19451-8 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 the awards in the *Bank for International Settlements* and *Iron Rhine Railway* arbitrations and the final awards of the Eritrea–Ethiopia Claims Commission in *Eritrea’s Damages Claims* and *Ethiopia’s Damages Claims*. National jurisprudence is reflected in decisions from the courts of Australia (*Thor Shipping*), England (*Gentle, AS and DD* and *Al-Sirri*), Norway (*Haraldsson*), Uganda (*Onyango-Obbo*) and the United States (*Al-Bihani*).

We are very grateful to those whose work has made this volume possible. Sir Christopher Greenwood prepared the House of Lords *Gentle* case summary. Ms Karen Lee, Assistant Editor, wrote the summaries of *Bank for International Settlements*, *Iron Rhine Railway*, *Eritrea’s Damages Claims* and *Ethiopia’s Damages Claims*. She also summarized *AS and DD*, *Al-Sirri* and the cases from Australia, Norway, Uganda and the United States, as well as seeing the volume through the press. Thanks are due to Justice Aage Thor Falkanger of the Norwegian Supreme Court for supplying and translating the Norwegian decision. Ms Tara Grant prepared the Tables of Cases, the Consolidated Tables of Cases and the Digest and provided general and secretarial assistance. Miss Maureen MacGlashan, CMG compiled the Table of Treaties and the Index. Mrs Alison Morley and Mrs Diane Illott checked the copy. 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

October 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. The present volume contains Consolidated Tables of Cases for volumes 126-140.

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
<i>Aliens</i>	Lakes and Landlocked Seas
<i>Arbitration</i>	Nationality
Canals	Recognition
<i>Claims</i>	<i>Relationship of International Law and Municipal Law</i>
Comity	Reprisals and Countermeasures
Conciliation	Rivers
Consular Relations	<i>Sea</i>
<i>Damages</i>	Sources of International Law
Diplomatic Relations	Space
Economics, Trade and Finance	<i>State Immunity</i>
<i>Environment</i>	<i>State Responsibility</i>
<i>Expropriation</i>	State Succession
Extradition	States
Governments	<i>Territory</i>
<i>Human Rights</i>	<i>Terrorism</i>
International Court of Justice	<i>Treaties</i>
International Criminal Law	<i>War and Armed Conflict</i>
<i>International Organizations</i>	
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 140	xix
TABLE OF TREATIES	xxxi
REPORTS OF CASES	1
INDEX	743
CONSOLIDATED TABLES OF CASES, VOLUMES 126-140	779

DIGEST OF CASES REPORTED IN VOLUME 140

Page

Aliens

Asylum claim — Appellant claiming asylum in United Kingdom — Refusal of asylum by Home Secretary — Refusal of asylum upheld by Asylum and Immigration Tribunal — Article 1F(c) of Refugee Convention, 1951 — Whether appellant guilty of acts contrary to purposes and principles of United Nations — Terrorism — The law of England

Al-Sirri v. Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening)

689

Immigration and deportation — Respondents deemed to be danger to national security — Respondents appealing against deportation orders — Whether respondents would face ill-treatment upon return to State of nationality — Whether deportation would breach respondents' rights under European Convention on Human Rights, 1950, Article 3 — Libya–United Kingdom Memorandum of Understanding — Whether Libya would act in breach of Memorandum — Decision of Special Immigration Appeals Commission allowing respondents' appeals against deportation orders — Whether Commission erring in law — The law of England

AS and DD (Libya) v. Secretary of State for the Home Department and Liberty

654

Arbitration

Dispute — Jurisdiction — Submission of dispute to Arbitral Tribunal — Belgium–Netherlands Arbitration Agreement 2003 — Applicable law — International law — Relevance of European law — Role of tribunal in relation to European Community law — EC Treaty, Article 292 — Arbitral Award — Allocation of costs — Committee of independent experts to quantify — Interpretation of Award — Arbitration Tribunal

Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway between the Kingdom of Belgium and the Kingdom of the Netherlands (Award) (Interpretation of Award)

130

Two phases — Tribunal concerning Bank for International Settlements — First phase of arbitration — Bank organized as company

Arbitration (*cont.*)

limited by shares — Whether Bank an international organization — Applicable law — Bank amending Statutes — Bank compulsorily recalling private shares — Legality of Bank's actions — Legality of recall of shares and procedures used — Amendment of Statutes by addition of Article 18A — Conformity with Bank's Statutes — Articles 57 and 58 of Statutes — Interpretation — Conformity with international law principles — Compensation — Adequacy — Valuation of compulsorily recalled shares — Applicable law — Final phase of arbitration — Determination of exact amount Bank owing per share — Valuation of real estate — Bank's counterclaim against second claimant — Arbitration Tribunal

Reineccius (Claim No 1), First Eagle SoGen Funds Inc. (Claim No 2), Mathieu and la Société de Concours Hippique de La Châtre (Claim No 3) v. Bank for International Settlements (Partial Award) (Final Award)

1

Claims

Eritrea–Ethiopia Claims Commission — Eritrean–Ethiopian war 1998-2000 — Eritrea's claims — Liability phase — Commission deciding on extent of Ethiopia's liability in Awards — Final phase — Damages phase — Eritrea claiming compensation for violations of international law — Nationality of claims — Eritrea also claiming on behalf of its nationals — Dual nationals and long-term residents — Lack of time and resources — State-to-State claims — Claims divided into two groups — Group Number One comprising war front, prisoner of war and displaced persons claims and preliminary issues — Group Number Two comprising all remaining claims including civilians or home front claims and six individual claims — Quantum of damage — Eritrea–Ethiopia Claims Commission

Eritrea's Damages Claims (Eritrea/Ethiopia) (Final Award)

235

Eritrea–Ethiopia Claims Commission — Eritrean–Ethiopian war 1998-2000 — Ethiopia's claims — Liability phase — Commission deciding on extent of Eritrea's liability in Awards — Eritrea's liability for violations of *jus in bello* and *jus ad bellum* — Final phase — Damages phase — Ethiopia claiming compensation for violations of international law — Scope of *jus ad bellum* damages — Quantum of damages for *jus in bello* and *jus ad bellum* liability — Lack of time and resources — State-to-State claims — Claims divided into two groups — Group Number One comprising war front, prisoner of war and displaced persons claims and

preliminary issues — Group Number Two comprising all remaining claims including civilians or home front claims — Quantum of damage — Eritrea–Ethiopia Claims Commission

Ethiopia's Damages Claims (Ethiopia/Eritrea) (Final Award)

376

Damages

Compensation — Adequacy — Whether amount paid by Bank for recalled shares adequate — Valuation of compulsorily recalled shares — Applicable law — Method of valuation — Valuation of real estate — Bank's counterclaim against Claimant No 2 — Whether Claimant No 2 breaching Article 54(1) of Bank's Statutes — Bank's request for declaratory relief — Interest — Costs and expenses — Arbitration Tribunal

Reineccius (Claim No 1), First Eagle SoGen Funds Inc. (Claim No 2), Mathieu and la Société de Concours Hippique de La Châtre (Claim No 3) v. Bank for International Settlements (Partial Award) (Final Award)

1

“Fast-track” damages phase — Monetary compensation — Satisfaction — Quantification of monetary damages — Function of compensation — *Chorzów Factory* test — Parties' economic positions — Relevance — Economic conditions — Applicable legal principles — Article 5(13) of Algiers Agreement of 12 December 2000 — Relevant international law rules — *Res judicata* — Role of evidence and burden of proof — Proof of facts — Causation — Factors in assessment of compensation — Nature, seriousness and extent of unlawful acts — Intention — Mitigating circumstances — Victim numbers — Implication of injuries for victims — Group Number One damages claims — Ethiopia liable for damage on Central and Western Fronts — Loss of personal and business property — Damage to or destruction of buildings — Consequential damages — Damage to cultural property — Mistreatment of prisoners of war — Rape — Displacement of population of Awgato — Group Number Two damages claims — Deprivation of nationality — Applicability of dominant and effective nationality rule — Wrongful expulsion — Harsh conditions of departure — Property losses by persons previously residing in Ethiopia — Property losses by non-residents — Other non-resident property — Unlawful detention of Eritrean civilians — Diplomatic claim — Individual claims — Compensation awarded to Eritrea for Ethiopia's violations of *jus in bello* — Eritrea–Ethiopia Claims Commission

Eritrea's Damages Claims (Eritrea/Ethiopia) (Final Award)

235

Damages (cont.)

“Fast-track” damages phase — Monetary compensation — Satisfaction — Scope of *jus ad bellum* damages — Quantum of damages for *jus in bello* and *jus ad bellum* liability — Function of compensation — *Chorzów Factory* test — Parties’ economic positions — Relevance — Economic conditions — Applicable legal principles — Article 5(13) of Algiers Agreement of 12 December 2000 — Relevant international law rules — *Res judicata* — Role of evidence and burden of proof — Proof of facts — Causation — Factors in assessment of compensation — Nature, seriousness and extent of unlawful acts — Intention — Mitigating circumstances — Victim numbers — Implication of injuries for victims — Moral damages claims — Fixed-sum *jus in bello* damages claims — Actual amount *jus in bello* damages claims — Other *jus in bello* compensation claims — Ethiopia’s claims for compensation for Eritrea’s violation of *jus ad bellum* — Eritrea–Ethiopia Claims Commission

Ethiopia’s Damages Claims (Ethiopia/Eritrea) (Final Award)

376

Environment

International environmental law — Development since 1972 Stockholm Conference — Duty to prevent or mitigate significant harm to environment — Need to reconcile economic development with protection of environment — Whether environmental protection measures integral part of reactivation project and costs — Arbitration Tribunal

Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway between the Kingdom of Belgium and the Kingdom of the Netherlands (Award) (Interpretation of Award)

130

Expropriation

Bank compulsorily repurchasing private shares — Legality of Bank’s actions — Whether contrary to international law of expropriation — Whether Bank’s actions meeting requirements — Public interest — Non-discrimination — Compensation — Arbitration Tribunal

Reineccius (Claim No 1), First Eagle SoGen Funds Inc. (Claim No 2), Mathieu and la Société de Concours Hippique de La Châtre (Claim No 3) v. Bank for International Settlements (Partial Award) (Final Award)

1

Human Rights

Freedom of speech and expression — Freedom of press — Definition — Democratic importance — Constitution of Uganda 1995 — Article 29 of Constitution guaranteeing freedom of speech and expression, including freedom of press — Section 50 of Penal Code Act making publication of false news a criminal offence — Limitation on enjoyment of constitutional right — Article 43(2)(c) of Constitution providing conditions for validity of limitation valid — Whether directed to prevent or remove prejudice to public interest — Whether acceptable and demonstrably justifiable in a free and democratic society — Whether limitation falling within parameters of Article 43 — Whether Section 50 valid limitation under Constitution — Whether Section 50 of Penal Code Act contravening Article 29 of Constitution — The law of Uganda

Onyango-Obbo and Another v. Attorney-General

566

Prohibition of torture — Whether substantial grounds for believing respondents would face a real risk of suffering torture on return to Libya — Whether Special Immigration Appeals Commission misunderstanding or misapplying proper test — Libya–United Kingdom Memorandum of Understanding — Whether assurances in Memorandum reducing risks of torture to acceptable level — Whether Libya would abide by terms of Memorandum — Extent of risk Libya would not comply — Whether Commission bound to accept view of expert witness — Whether Commission misdirecting itself in law — Article 3 of European Convention on Human Rights, 1950 — The law of England

AS and DD (Libya) v. Secretary of State for the Home Department and Liberty

654

Right to liberty — Aliens — Detention — Detention of aliens outside United States sovereign territory during wartime — Appellant detained at Guantánamo Bay Naval Base in Cuba — Appellant filing habeas petition with District Court challenging his detention — Whether detention lawful — Whether detention lawful under United States law — Whether detention lawful under international law — Whether defect in District Court's habeas procedure — *Boumediene* — Procedure due to military detainees challenging their detention in habeas corpus proceedings — Whether District Court improperly admitting hearsay evidence — The law of the United States

Al-Bihani v. Obama, President of the United States and Others

716

Human Rights (cont.)

Right to life — European Convention on Human Rights, 1950, Article 2 — Substantive and procedural obligations — Relationship between these obligations — Whether State obliged by Article 2 not to commit forces to armed conflict except in accordance with international law — Relationship between European Convention and Charter of the United Nations — Whether procedural obligation under Article 2 entitles relatives of service personnel killed in Iraq to independent investigation into steps taken by Government to determine whether military operation lawful — The law of England

Regina (Gentle and Clarke) v. Prime Minister, Secretary of State for Defence and Attorney-General

624

Torture — Evidence obtained by torture — Repudiation of torture as means of obtaining evidence — Whether appellant's Egyptian convictions obtained by torture — Weight to be given to evidence obtained by torture — Whether Asylum and Immigration Tribunal erring in law by giving weight to Egyptian convictions — The law of England

Al-Sirri v. Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening)

689

International Organizations

Bank for International Settlements — Legal character and status — Bank having private shareholders — Bank possessing Constituent Charter granted by Switzerland — Bank created by treaty — Whether Bank an international organization — Origins, functions and purpose — Bank's Constituent Instruments — 1930 Hague Agreement — Charter — Statutes — Law governing Bank and its relations with private shareholders — Whether Bank having sovereign powers — Legality of Bank's recall of shares and procedures used — Whether Bank having power to add Article 18A to Statutes — Whether Bank using correct valuation method for compensation — Arbitration Tribunal

Reineccius (Claim No 1), First Eagle SoGen Funds Inc. (Claim No 2), Mathieu and la Société de Concours Hippique de La Châtre (Claim No 3) v. Bank for International Settlements (Partial Award) (Final Award)

1

Relationship of International Law and Municipal Law

1930 Hague Agreement — Bank's Charter annexed to 1930 Hague Agreement — Swiss monist system — Switzerland granting

Constituent Charter to Bank — Creation of Bank — Whether Swiss law applicable — Whether international law applicable — Legality of recall of shares and procedures used — Conformity with Statutes — Interpretation of Statutes — Article 31(3)(b) of Vienna Convention on Law of Treaties, 1969 — Conformity with international law principles — Expropriation — Bank's Constituent Instruments — Status — Relationship of Constituent Instruments with international law — Arbitration Tribunal

Reineccius (Claim No 1), First Eagle SoGen Funds Inc. (Claim No 2), Mathieu and la Société de Concours Hippique de La Châtre (Claim No 3) v. Bank for International Settlements (Partial Award) (Final Award)

1

Article XII of Treaty of Separation, 1839 — Netherlands' obligations under Article XII — Measures envisaged by Netherlands for reactivation of Iron Rhine railway — Netherlands legislation — Whether Netherlands required to apply national legislation and policy with respect to Iron Rhine railway in more favourable way than to other railways in Netherlands — Whether such application amounting to denial of Belgium's transit right — Whether rendering exercise of transit right unreasonably difficult — Arbitration Tribunal

Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands (Award) (Interpretation of Award)

130

International laws of war — Nature — Relevance — Whether source of authority for United States courts — Whether limiting war powers granted by United States statutes — Whether United States statutes intending international laws of war to limit President's war powers — Powers of Congress — The law of the United States

Al-Bihani v. Obama, President of the United States and Others

716

Refugee Convention, 1951 — Convention having domestic force to extent adopted by national legislation — Convention given effect by European Community directive which was itself directly effective in domestic law — European Communities Act 1972 — Council Directive 2004/83/EC — Qualification of application of Section 1 of Terrorism Act 2000 to proceedings under Article 1F of Refugee Convention, 1951 — The law of England

Al-Sirri v. Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening)

689

Relationship of International Law and Municipal Law (cont.)

Svalbard Treaty, 1920 — Equal treatment requirement in Articles 2 and 3 of Treaty — Discrimination — Whether Norwegian regulation discriminating on basis of nationality — Whether regulation violating Articles 2 and 3 of Treaty — Traditional fisheries — International practice — Law of the Sea Convention, 1982 — The law of Norway

Public Prosecutor v. Haraldsson and Others

559

Vienna Convention on Diplomatic Relations, 1961 — Articles 31 and 39 — Diplomatic Privileges and Immunities Act 1967 (Cth) and Diplomatic Privileges Act 1964 (UK) giving legal effect to relevant provisions of Vienna Convention — The law of Australia

Thor Shipping AIS v. The Ship Al Duhaib

530

Sea

Jurisdiction — Fisheries — Sovereignty — Svalbard Fishing Protection Zone — Norway sovereign over Svalbard — Article 1 of Svalbard Treaty, 1920 — Norwegian regulation only permitting fishing by nationals of States traditionally fishing in Protection Zone — Icelandic defendants appealing illegal fishing conviction — Whether regulation violating Svalbard Treaty, 1920 — Whether outer limit of Protection Zone correct — Islands — Characteristics of an island — Whether small island “Abeloeya” baseline for Protection Zone — Whether island rock — Law of the Sea Convention, 1982 — Whether Icelandic vessels fishing outside Protection Zone — The law of Norway

Public Prosecutor v. Haraldsson and Others

559

State Immunity

Head of State immunity — Head of State acting in private capacity — Scope of immunity — Foreign States Immunities Act 1985 (Cth) — Diplomatic Privileges and Immunities Act 1967 (Cth) — Treatment of Head of State immunity based on approach taken in State Immunity Act 1978 (UK) — Decision of House of Lords in *Pinochet (No 3)* — Relevance — Australian and United Kingdom Acts virtually identical in practical effect — Acts of Head of State in private capacity regulated by Diplomatic Privileges and Immunities Act 1967 (Cth) following United Kingdom example — Vienna Convention on Diplomatic Relations, 1961, Articles 31 and 39 — Whether exceptions to immunity

applicable — Whether geographical limitation on diplomatic immunity — The law of Australia

Thor Shipping A/S v. The Ship Al Duhal 530

State Responsibility

Causation — Proximity — Extent of responsibility for damage caused by lawful acts of war resulting from breach of the *jus ad bellum* — Eritrea–Ethiopia Claims Commission

Ethiopia's Damages Claims (Ethiopia/Eritrea) (Final Award) 376

Causation — Proximity — Nationality of claims — Responsibility for violations of *jus in bello* — Eritrea–Ethiopia Claims Commission

Eritrea's Damages Claims (Eritrea/Ethiopia) (Final Award) 235

Territory

Sovereignty — Separation of Belgium from Netherlands — Communication link between Antwerp and Germany — Article XII of Treaty of Separation, 1839 — Iron Rhine Treaty, 1873 — Netherlands conferring on Belgium right of transit over Netherlands territory — Extent of Netherlands' sovereignty — Netherlands' exercise of jurisdiction over Iron Rhine railway — Whether limited by Netherlands' obligations under international law — Obligations of good faith and reasonableness — Whether Belgium's right of transit circumscribed by requirements in Article XII of Treaty of Separation, 1839 — Whether Netherlands violating Belgium's rights under Article XII of Treaty of Separation, 1839 — Netherlands designating the Meinweg as nature reserve — Whether legitimate exercise of Netherlands' sovereignty — Whether duty to consult — Financial consequences — Arbitration Tribunal

Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands (Award) (Interpretation of Award)

130

Terrorism

Respondents Islamist extremists with terrorist links — Respondents deemed to be danger to national security — Deportation of respondents to native Libya — Whether United Kingdom