

▷ D99-09/L389

**THE DEVELOPMENT
OF
INTERNATIONAL LAW
BY
THE INTERNATIONAL COURT**

SIR HERSCH LAUTERPACHT

**LONDON
STEVENS & SONS LIMITED**

PREFACE

THE purpose of this book is to provide the second edition of an essay composed of five lectures which I delivered in 1933 at the Geneva Graduate Institute of International Studies and which was subsequently published under the title "The Development of International Law by the Permanent Court of International Justice." The essay consisted of just over one hundred pages. The expansion of the size of the book is due largely to the fact that the period now to be covered has grown from ten to over twenty-five years, which include the first nine years of the activity of the International Court of Justice.

Like its predecessor, the present edition is not concerned primarily with giving a complete account of the substantive contribution of the Court to the various branches of international law. Its object is to present an assessment of the work of the Court—the two Courts—in terms of the persistent problems of the judicial function in general and of international tribunals in particular. The titles of the five Chapters of the original essay expressed well that purpose and I have decided for that reason to retain them. Unavoidably, while the present book examines mainly the general tendencies and methods of the Court, it does so by reference to the substantive law as formulated by it. However, primarily it is concerned with the more general aspects of judicial method and function. It is largely in that way that we can hope to appreciate the factors encompassing the contribution of the Court to the development of international law and the problems with which it has been confronted in administering a system of rules and principles which are often less clearly defined than those of the law within the State.

The manuscript of this book was almost complete when, at the end of 1954, I was elected one of the Judges of the Court. I have

come to the conclusion that, notwithstanding that event, which imposes a clear obligation of restraint, I ought to proceed with the publication of this edition in compliance with the wish, frequently expressed, that I should prepare a new and enlarged version of the essay which first appeared in 1934. That essay was intended to be mainly descriptive and informative. That feature I have attempted to preserve in the present edition. In any case I have considered it proper not to comment upon or to refer to any of the Judgments or Opinions given by the Court since I became one of its members. Clearly, any views expressed here are liable to change in the light of further study, reflection, or argument. I regret that, owing to circumstances outside my control, the publication of this second edition has been somewhat delayed.

I desire to express my warm thanks to Mrs. E. E. Jansen for her efficient secretarial assistance and her patience in copying the successive versions of the manuscript. I am grateful to Mrs. G. Lyons, B.SC.(ECON.), for the scholarly care which she bestowed upon reading the proof.

I am indebted to Messrs. Stevens & Sons and their printers and compositors for their co-operation.

H. LAUTERPACHT.

CAMBRIDGE,

January 1, 1957.

TABLE OF CASES

- Access to, or Anchorage in, the Port of Danzig, of Polish War Vessels, 29, 80, 119, 120, 304
 Acquisition of Polish Nationality, 11, 258, 261, 270
 Adams Case, 218
 Administration of the Prince of Pless Case, 79, 112, 114, 254, 357
 Admission Cases (United Nations). *See* Competence of the General Assembly, etc., and Conditions for Admission, etc.
Alabama Arbitration, 15, 17
 Alaska Boundary Arbitration, 17
 Ambatielos Case (Merits: Obligation to Arbitrate), 13, 32, 34, 52, 106, 107, 158, 238, 339, 341
 Ambatielos Case (Preliminary Objection), 126, 135, 237, 238, 239, 337
 Anglo-Iranian Oil Company Case (Preliminary Objection), 12, 34, 51, 52, 80, 98, 99, 100, 106, 111, 115, 205, 211, 212, 341, 344-347
 Anglo-Iranian Oil Company Case (Request for Interim Measures of Protection), 32, 38, 111, 112, 218, 253, 255, 256
 Anglo-Norwegian Fisheries Case, 3, 16, 33, 45, 46, 79, 83, 128, 163, 186, 190-199, 251, 362-372
 Asakura *v.* Seattle, 305
 Aspinwall Case, 305
 Asylum Case (Colombia *v.* Peru), 3, 9, 23, 26, 30, 43, 62, 77, 81, 82, 128, 142-148, 196, 205, 220, 318, 335, 374-377, 381, 382, 383, 384, 390
 Austro-German Customs Union Régime, 24, 47, 48, 49, 62, 345
 Awards of Compensation Made by the United Nations Administrative Tribunal. *See* Effect of Awards of Compensation, etc.
- Behring Sea Arbitration, 216, 218
 Brazilian Federal Loans Case, 87, 102, 318, 393
 British Guiana Arbitration, 17
- Cadenhead Case, 218
 Casablanca Case, 6
 Central Railroad Company *v.* United Mexican States, 25
 Certain German Interests in Polish Upper Silesia (Jurisdiction), 23, 91, 92, 113, 167, 168, 201, 250, 261
 Certain German Interests in Polish Upper Silesia (Merits), 9, 22, 32, 80, 92, 162, 163, 204, 205, 206, 245, 247, 251, 258, 308, 314, 315, 321, 393
 Chevreau Claim, 56
 Chinn Case (Great Britain *v.* Belgium), 28, 32, 36, 121, 262-265, 292, 318
 Chorzów Factory Case, 253
 Chorzów Factory Case (Jurisdiction), 10, 12, 15, 169, 246
 Chorzów Factory Case (Merits), 9, 10, 15, 78, 93, 105, 138, 167, 175, 201, 315, 316, 335, 341
See also Interpretation of Judgments Nos. 7 and 8.
 Clipperton Island Arbitration, 242
 Competence of the General Assembly for the Admission of a State to the United Nations, 12, 110, 122, 123, 127, 134, 164, 171, 249
 Competence of the International Labour Organisation (Organisation and Development of Methods of Agricultural Production), 11, 147, 171, 208, 268, 301
 Competence of the International Labour Organisation to Regulate, Incidentally, the Personal Work of the Employer, 11, 12, 78, 247, 268, 275, 276, 302

Conditions for Admission of a State to Membership in the United Nations (Article 4 of the Charter), 12, 19, 49, 50, 51, 54, 109, 110, 121, 122, 127, 148-152, 163, 164, 208, 249
 Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City, 107

Corfu Channel Case (Great Britain *v.* Albania), 13, 34, 35, 47, 48, 76, 83, 87, 88, 89, 90, 103, 104, 129, 168, 203, 240, 247, 293, 316, 317, 335, 336, 339, 342, 344, 348, 392

Costa Rica Packet, The, 15

Customs Union Case. *See* Austro-German Customs Union Régime.

Danube Commission Case. *See* Jurisdiction of the European Commission of the Danube.

Danzig and Membership of the International Labour Organisation, 43, 47, 107, 147, 313

Danzig Legislative Decrees Case. *See* Consistency of Certain Danzig Legislative Decrees.

Danzig Railway Officials Case. *See* Jurisdiction of the Courts of Danzig.

David J. Adams, The, 59

Delimitation of the Polish-Czechoslovak Frontier (Question of Jaworzina), 3, 24, 147, 168, 208, 232, 235, 274, 305

Delimitation of the Serbo-Albanian Frontier, 79, 235

De la Torre Case. *See* Haya de la Torre Case.

Denunciation of the Treaty of November 2, 1865, between China and Belgium, 93, 111, 252, 254

Diversion of Water from the Meuse, 23, 30, 31, 94, 135, 167, 206, 213, 233, 336

Eastern Carelia Case, 11, 20, 107, 108, 109, 158, 248, 249, 352, 353, 354, 355, 356, 358

Eastern Greenland Case. *See* Legal Status of the South-Eastern Territory of Greenland.

Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, 9, 33, 126, 135, 168, 222, 239, 276, 325, 326, 327, 328

Electricity Company of Sofia and Bulgaria Case, 32, 34, 97, 98, 102, 111, 164, 167, 168, 244, 252, 253, 340

Esterházy Case. *See* Pajzs, Csáky, Esterházy Case.

Exchange of Greek and Turkish Populations, 258, 302, 304

Factor *v.* Laubenheimer, 128

Fisheries Case. *See* Anglo-Norwegian Fisheries Case.

Francisca, The, 59

Free Zones of Upper Savoy and the District of Gex Case, 3, 9, 26, 28, 29, 61, 84, 85, 86, 128, 163, 204, 206, 208, 209, 211, 212, 213-217, 219, 221, 235, 236, 247, 262, 298, 304, 306, 307, 308, 315, 339, 340

Frontier between Turkey and Iraq Case. *See* Interpretation of the Treaty of Lausanne.

Genocide Convention Case. *See* Reservations to the Convention on . . . Genocide.

German Interests in Polish Upper Silesia. *See* Certain German Interests, etc.

German Settlers in Poland Case, 11, 24, 107, 257, 258, 260, 261, 314, 320, 321, 393

Greco-Bulgarian "Communities" Case, 43, 259, 262, 315, 332

Hardman Case, 218

Haya de la Torre Case (Colombia *v.* Peru), 43, 144-146, 219. *See also* Asylum Case.

Home Missionary Society Case, 218

Injuries Case. *See* Reparation for Injuries Suffered in the Service of the United Nations.

International Labour Organisation Cases. *See under* Competence of the International Labour Organisation.

International Status of South-West Africa, 23, 124, 167, 170, 176, 181, 182, 183, 220, 277-281, 290, 291, 292, 309, 322, 357

Interpretation of Judgment of November 20, 1950. *See* Haya de la Torre Case.
 Interpretation of Judgments Nos. 7 and 8...43, 81, 93, 146, 167, 206, 207, 251, 328. *See also* Chorzów Factory Case.
 Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase), 11, 82, 248, 249, 250, 272, 273, 285, 331, 353, 354, 355, 356, 358
 Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase), 9, 11, 12, 23, 42, 95, 108, 124, 155, 284-288, 290, 292, 354
 Interpretation of the Greco-Bulgarian Agreement of December 9, 1927...107, 250
 Interpretation of the Greco-Turkish Agreement of December 1, 1926...9, 60, 107, 147, 167, 168, 207, 208, 239, 240, 258, 259, 301
 Interpretation of the Statute of the Memel Territory, 49, 102, 118, 207, 234, 251, 324, 336, 337
 Interpretation of the Treaty of Lausanne (Frontier between Turkey and Iraq), 3, 43, 120, 158, 159, 160, 161, 171, 231, 232, 269, 302, 374, 393
 Interpretation of the Treaty of Neuilly, 203
 Interpretation of the Washington Convention of 1919 concerning Employment of Women During the Night, 10, 59, 116, 117, 267, 268, 269
 Ionian Ships Case, 59
 Iraq Boundary Case. *See* Interpretation of the Treaty of Lausanne.

Jaworzina Question. *See* Delimitation of the Polish-Czechoslovakian Frontier.
 Jordan *v.* Tashiro, 305
 Jurisdiction of the Courts of Danzig, 27, 169, 173-176, 177, 179, 181, 315, 332
 Jurisdiction of the European Commission of the Danube, 9, 79, 118, 138, 169, 233

Kronprins Gustaf Adolph, The, 28
 Kummerow Case, 305

Lederer *v.* German State, 57
 Legal Status of the South-Eastern Territory of Greenland, 3, 16, 17, 36, 46-47, 58-59, 94, 169, 210-211, 240-241, 252, 253, 336, 337
 Lighthouses Case between France and Greece, 33, 78, 120, 121
 Losinger Case, 13, 114
Lotus, The, 15, 20, 26, 28, 43, 44, 46, 55, 62, 117, 130, 217, 335, 359-361, 362, 378, 380, 384-386, 388, 393
Lusitania, The, 57

McGrath *v.* Kristensen, 25
 Mavrommatis Jerusalem Concessions Case, 92, 94, 105, 146, 336
 Mavrommatis Palestine Concessions Case, 10, 34, 78, 91, 93, 94, 158, 186, 200, 201, 206, 209, 210, 243, 244, 298, 321, 341, 377, 378
 Millar *v.* Taylor, 128
 Minority Schools in Albania Case, 11, 120, 259-260, 302
 Minority Schools in Upper Silesia Case. *See* Rights of Minorities in Upper Silesia.
 Minquiers and Ecréhos Case, 36, 83, 171, 242
 Monaco *v.* Monaco, 337
 Monastery at Saint Naoum Case. *See under* Delimitation of the Serbo-Albanian Frontier.
 Monetary Gold Case (Preliminary Objection), 34, 94, 102-103, 342-344
 Mosul Boundary Case. *See under* Interpretation of the Treaty of Lausanne.

Nationality Decrees Issued in Tunis and Morocco, 10, 78, 80, 136, 270, 271
 Naulilaa Case (Portugal *v.* Germany), 76
 Nielson *v.* Johnson, 128, 305

North Atlantic Fisheries Arbitration, 6, 191, 216, 218
 Norwegian Shipowners' Claim, 22, 39, 76
 Nottebohm Case (*Liechtenstein v. Guatemala*), 13, 15, 349

Oder Commission Case. *See* Territorial Jurisdiction of the International Commission of the River Oder.

Ottoman Debt Arbitration, 57, 322

Pacific, The, 28

Pajzs, Csáky, Esterházy Case, 31, 33, 113-114, 135, 237, 337

Palmas Island Arbitration, 241

Panevezys-Saldutiskis Railway Case, 32, 34, 81, 100, 101, 114, 184, 350, 351

Payment of Loans Contracted in France. *See* Brazilian Federal Loans Case and Serbian Loans Case.

Peace Treaties Cases. *See* Interpretation of Peace Treaties with Bulgaria, Hungary and Romania.

Perry *v.* United States, 306

Peter Pázmány University Case, 16, 33, 102, 161, 175, 258, 314

Phosphates in Morocco Case, 13, 32, 33, 96, 97, 340

Pinson Case, 28, 57

Pious Fund of the Californias Case, 15

Polish Agrarian Reform and the German Minority Case, 78-79, 111, 209, 253

Polish Postal Service in Danzig, 12, 15, 79, 235, 302, 303, 304

Polyxène Plessa *v.* Turkish Government, 56, 57

Railway Traffic between Lithuania and Poland Case, 78, 274, 275, 281, 293

Reparation for Injuries Suffered in the Service of the United Nations, 9, 12, 16, 27, 29, 45, 81, 124, 128, 131, 176-180, 181, 184, 275, 311, 312, 352

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 23, 27, 29, 62, 79, 81, 125, 134, 135, 180, 186-190, 191, 195, 196, 230, 249, 250, 277, 310, 313, 357, 372-374

Rights of Minorities in Upper Silesia (Minority Schools), 105, 201-203, 341, 348

Rights of Nationals of the United States of America in Morocco, 9, 31, 33, 79, 83, 94, 125, 126, 155, 164, 171, 217, 265-266, 388-392

Russian Indemnity Case, 38

Sarropoulos Case, 56

Serbian Loans Case, 10, 87, 102, 169, 175, 221, 222, 318, 393

Shingler *v.* Union Government, 322

Société Commerciale de Belgique Case, 3, 36, 86, 105, 169, 170, 207, 209, 217, 222, 235, 348

South-West Africa Case. *See* International Status of South-West Africa.

Taylor *v.* St. Helens Corporation, 303

Terrace *v.* Thompson, 128

Territorial Jurisdiction of the International Commission of the River Oder, 136, 137, 234, 235, 301, 303, 378

Timor Island Arbitration, 56

Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America *v.* Union of Soviet Socialist Republics), 104, 348

Treatment of Polish Nationals in Danzig, 10, 118, 119, 257, 262, 303, 304, 313, 315, 332

Tunis and Morocco Nationality Decrees Case. *See* Nationality Decrees Issued in Tunis and Morocco.

Table of Cases

XIX

United Nations Administrative Tribunal Case. *See* Effect of Awards of Compensation, etc.
United States *v.* Percheman, 319, 320

United States *v.* Texas, 128

United States *v.* Union of Soviet Socialist Republics. *See* Treatment in Hungary of Aircraft and Crew of the United States of America.

United States Nationals Case. *See* Rights of Nationals of the United States of America in Morocco.

Venezuelan Preferential Claims Case, 6

Vereeniging Municipality *v.* Vereeniging Estates, Ltd., 322

Von Pless Case. *See* Administration of the Prince of Pless.

West Rand Central Gold Mining Co., Ltd. *v.* The King, 322, 360

Wimbledon, The, 23, 24, 26, 29, 77, 300, 302, 303, 306, 309, 315, 335, 378, 393

CONTENTS

<i>Preface</i>	page xiii
<i>Table of Cases</i>	xv

PART ONE

THE LAW BEHIND THE CASES

1. THE INTERNATIONAL COURT AS AN AGENCY FOR DEVELOPING INTERNATIONAL LAW	3
1. The Court as an Agency of Pacific Settlement	3
2. The Part of International Tribunals as Agencies for the Development of International Law	
3. The Part of the International Court	6
4. Judicial Precedent in the Statute of the Court	8
5. Judicial Precedent in the Practice of the Court	9
6. Continuity of Precedent in the Permanent Court and in the International Court of Justice	11
7. The Significance of International Judicial Precedent	13
8. International Arbitral Precedent in the Practice of the Court	15
9. The Limits of Judicial Precedent	18
10. Judicial Precedent as a Source of International Law	20
11. The "Teachings of Publicists" as a Source of Judicial Decision	23
2. THE OCCASIONS FOR AND THE SUBSTANCE OF JUDICIAL PRO- NOUNCEMENTS	26
12. The Interpretation of Treaties	26
13. The Private Origin of Claims	31
14. Preoccupation with Pleas to Jurisdiction	33
15. Findings on Questions of Fact	35
3. THE REASONS BEHIND THE CASES	37
16. International Adjudication and Exhaustiveness of Judicial Reasoning	37
17. The Necessity for Cumulation of <i>rationes decidendi</i>	43
18. Elaboration of Reasons in Relation to Assessment of Facts and Contingencies. The <i>Customs Union</i> Case	47

3. THE REASONS BEHIND THE CASES— <i>continued</i>	
19. "The Natural Meaning of Terms"	49
A Note on the Doctrine of "Plain Meaning"	52
4. JUDICIAL TECHNIQUE AND THE DEVELOPMENT OF THE LAW	61
20. The Law behind the Legal Rule	61
21. The Method of Judicial Pronouncements	62
22. Collective Formulation of the Pronouncements of the Court	63
23. Individual Opinions. Dissenting and Separate	66
24. The Law behind the Cases and the Place of the Court in International Society	70

PART TWO

JUDICIAL CAUTION

5. MANIFESTATIONS OF JUDICIAL CAUTION	75
25. Reasons for Caution	75
26. Judicial Limitation of the Scope of the Decision	77
27. Combination of Restraint with Positive Contribution. Formulation of the Doctrine <i>rebus sic stantibus</i>	84
28. The Formulation of the Law of State Responsibility	87
29. Judicial Caution and Economy of Expression	89
6. JUDICIAL RESTRAINT. THE JURISDICTION OF THE COURT	91
30. Jurisdictional Issues before the Court	91
31. Past Disputes	95
32. Exhaustion of Legal Remedies	100
33. Examination of Questions of Jurisdiction <i>proprio motu</i>	102
34. The so-called <i>forum prorogatum</i>	103
35. Jurisdiction in the Matter of Advisory Opinions	107
36. Jurisdiction and Indication of Interim Measures of Protection	110
37. Joinder of Jurisdictional Objections to the Procedure on the Merits	113
7. JUDICIAL HESITATION. PREPARATORY WORK IN THE INTERPRETATION OF TREATIES	116
38. The Practice of the Permanent Court of International Justice	116

7. JUDICIAL HESITATION. PREPARATORY WORK IN THE INTERPRETATION OF TREATIES— <i>continued</i>	
39. The Practice of the International Court of Justice. The First Phase	121
40. The Practice of the International Court of Justice. The Second Phase	124
41. The Reasons for Judicial Hesitation in the Matter of <i>Travaux Préparatoires</i> :	
(a) The "Continental" and the "Anglo-American" Schools of Thought	127
42. The Same	
(b) Considerations of Economy in the Work of the Court	130
43. The Same	
(c) Question of Relevance of the Intention of the Parties	134
44. Preparatory Work in relation to Non-Signatory States	136
45. Conclusions. The Experience of the Two Courts Contrasted	138
8. APPEARANCE OF JUDICIAL INDECISION	142
46. Conflict of Legal Rights. The <i>Asylum</i> Case	142
47. The Political Background of the Issue. The Case of <i>Conditions for Admission of a State to Membership in the United Nations</i>	148

PART THREE

JUDICIAL LEGISLATION

INTRODUCTION	155
48. Occasions for Judicial Legislation in the International Sphere	155
9. JUDICIAL LEGISLATION THROUGH APPLICATION OF GENERAL PRINCIPLES OF LAW	158
49. The Principle <i>nemo judex in re sua</i>	158
50. The Doctrine of Abuse of Rights	162
51. The Completeness of International Law and the Legislative Application of General Principles of Law	165

9. JUDICIAL LEGISLATION THROUGH APPLICATION OF GENERAL PRINCIPLES OF LAW— <i>continued</i>	
52. The Form and Substance of Reliance upon General Principles of Law	167
10. JUDICIAL LEGISLATION BY REFERENCE TO PARALLEL DEVELOPMENTS IN INTERNATIONAL LAW	173
53. The Individual as a Subject of International Law. Rights Conferred by Treaty. The Case of the <i>Jurisdiction of the Courts of Danzig</i>	173
54. The Same. The Case of the <i>International Status of South-West Africa</i>	176
55. The Same. The <i>Injuries</i> Case	176
56. International Legislation and the Doctrine of International Status of Territories	180
57. Nationality of Claims	183
58. Judicial Legislation as Formulating Previous Changes in the Law	185
11. JUDICIAL LEGISLATION ON ACCOUNT OF ABSENCE OF GENERALLY ACCEPTED LAW	186
59. Diversity of Practice. The Case of the <i>Reservations to the Genocide Convention</i>	186
60. Universality or Predominance as a Test of Rules of International Law. The <i>Anglo-Norwegian Fisheries</i> Case	190
61. The Same. Development of Predominant Rules as Alternative to Denial of their Validity	192
62. The Same. The Limits of Judicial Legislation	196
12. JUDICIAL LEGISLATION AND THE JURISDICTION OF THE COURT	200
63. Judicial Legislation and the Flexibility of International Relations	200
64. Assumption of Jurisdiction on the Basis of Pleadings and Acts of Agents	201
65. Enlargement of the Basis of the Court's Pronouncements	205
66. Remedying Defects of Form in the Submissions of the Parties and Re-formulating Questions Submitted to the Court	206
67. Flexibility of International Relations and the Creation of International Obligations	210

13. JUDICIAL LEGISLATION AND ADJUDICATION EX AEQUO ET BONO	213
68. Adjudication <i>ex aequo et bono</i> and the Case of the <i>Free Zones</i>	213
69. Recommendations to the Parties	217
70. Expression of Judicial Opinion Short of Recommendation	220

PART FOUR

THE EFFECTIVENESS OF THE LAW

14. THE PRINCIPLE OF EFFECTIVENESS AND THE FUNCTION OF INTERPRETATION	227
71. The Effectiveness of the Law and the Intention of the Parties	227
72. The Limitations of the Maxim <i>ut res magis valeat quam pereat</i>	229
15. EFFECTIVENESS AND FINALITY OF INTERNATIONAL SETTLEMENT AND ADJUDICATION	231
73. Finality of Territorial Settlement	231
74. Finality of Arbitral and Judicial Adjudication	235
75. The Principle of Stability and Effectiveness in Acquisition of Territory	240
16. EFFECTIVENESS OF PROVISIONS CONFERRING JURISDICTION	243
76. Scope of the Jurisdiction of the Court. Cumulation of Jurisdictional Instruments	243
77. Jurisdiction to Award Compensation	245
78. Effectiveness of the Advisory Jurisdiction of the Court	248
79. Declaratory Judgments	250
80. Provisional Measures of Protection	252
81. Jurisdiction and Provisional Measures of Protection	254
17. EFFECTIVENESS OF EQUALITY CLAUSES	257
82. Protection of Minorities. Equality in Fact and Equality in Law	257
83. The Standard of Equality in the Treatment of Aliens. The <i>Oscar Chinn</i> Case	262
84. The Same. The Case of <i>Rights of Nationals of the United States of America in Morocco</i>	265

18. EFFECTIVENESS OF INTERNATIONAL INSTITUTIONS AND INTERNATIONAL ORGANISATION	267
85. The Competence of the International Labour Organisation	267
86. The Principle of Effectiveness in the Interpretation of the Covenant of the League of Nations. Matters of Domestic Jurisdiction	269
87. Matters of Domestic Jurisdiction in the Charter of the United Nations	272
88. The Principle of Effectiveness in the Interpretation of the Charter. The Implied Powers of the United Nations	274
89. The Effectiveness of the System of Mandates	277
19. THE LIMITS OF THE PRINCIPLE OF EFFECTIVENESS	282
90. Rule and Tendency in the Practice of the Court	282
91. Apparent Denial of the Principle of Effectiveness. The Advisory Opinion on <i>Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase)</i>	284
92. The Same. Deliberate Absence of Effectiveness	288
93. The Limits of Effectiveness and the Requirement of Good Faith	292

PART FIVE

THE COURT AND STATE SOVEREIGNTY

Section A

Restraints upon Claims of Sovereignty

20. IN GENERAL	297
94. International Law and Freedom of Action	297
21. THE PROVINCE OF TREATIES	300
95. The Doctrine of Restrictive Interpretation of Treaties	300
96. Conferment of Treaty Rights upon Third States	306
97. State Sovereignty and Imposition of Treaty Obligations upon Third States	310
98. Sovereignty and Reservations to Treaties	313

Contents

xi

22. STATE RESPONSIBILITY AND THE CLAIMS OF SOVEREIGNTY	314
99. The Plea of Non-Discrimination	314
100. Measure of Damages	315
101. State Responsibility in Relation to Action in Self-Preservation and Intervention	316
23. WIDER ASPECTS OF SOVEREIGNTY	319
102. State Succession	319
103. Divisibility of Sovereignty	322
104. The Sovereignty of the General Assembly of the United Nations	325
24. CONCLUSIONS	330
105. The Basis of Judicial Restraint upon Claims of Sovereignty	330

Section B

Recognition of Claims of Sovereignty

25. IN GENERAL	334
106. Sovereignty as Part of International Law. Form and Substance. Dignity of Sovereign States	334
26. PROBLEMS OF JURISDICTION	338
107. State Sovereignty and the Jurisdiction of the Court	338
108. Restrictive Interpretation of Jurisdictional Clauses	339
109. The Consistency of the Application of the Principle of Consent to Jurisdiction. The Case of <i>Monetary Gold Removed from Rome</i>	342
110. Restrictive Interpretation of Unilateral Declarations Accepting the Jurisdiction of the Court. The Case of the <i>Anglo-Iranian Oil Company</i>	344
111. Indirect Manifestations of Restraint in the Exercise of Jurisdiction	347
(a) Examination of Questions of Jurisdiction <i>proprio motu</i>	347
(b) Exhaustive Treatment of Unsubstantial Pleas to the Jurisdiction	348
(c) Exhaustion of Legal Remedies	350
(d) Nationality of Claims	350
112. The Principle of Consent in Relation to Advisory Jurisdiction	352

27. SOVEREIGN FREEDOM OF ACTION	359
113. Presumptive Freedom of Action of Sovereign States. The Case of <i>The Lotus</i>	359
114. The Test of Prohibition (as distinguished from Per- mission) as the Standard of International Obligations. The Burden of Proof. The <i>Anglo-Norwegian</i> <i>Fisheries Case</i>	362
28. STATE SOVEREIGNTY AND CUSTOMARY INTERNATIONAL LAW	368
115. Judicial Discretion and Ascertainment of Customary International Law. Universality and Generality of Practice. The <i>Anglo-Norwegian Fisheries Case</i>	368
116. The Same. Denial of Custom and the Completeness of the Law	371
117. The Same. The Case of the <i>Reservations to the</i> <i>Genocide Convention</i>	372
118. The Conditions of International Custom. The <i>Asylum case</i>	374
119. Treaties as an Element of Customary International Law	377
120. The Same. The Conditions of <i>opinio necessitatis juris</i>	379
121. Restrictive Interpretation of Custom and Regional International Law	381
122. Abstention as a Factor in the Creation of Custom. The Case of the <i>Lotus</i>	384
123. The Same. The Degree of Proof of Custom and the Sovereignty of States	386
124. The Same. The Case Concerning <i>Rights of Nationals</i> <i>of the United States of America in Morocco</i>	388
125. Normal Application of Customary International Law	392
29. CONCLUSIONS	394
126. The Rule of Law, Judicial Discretion and State Sovereignty	394
<i>Index</i>	401

PART ONE
THE LAW BEHIND THE CASES