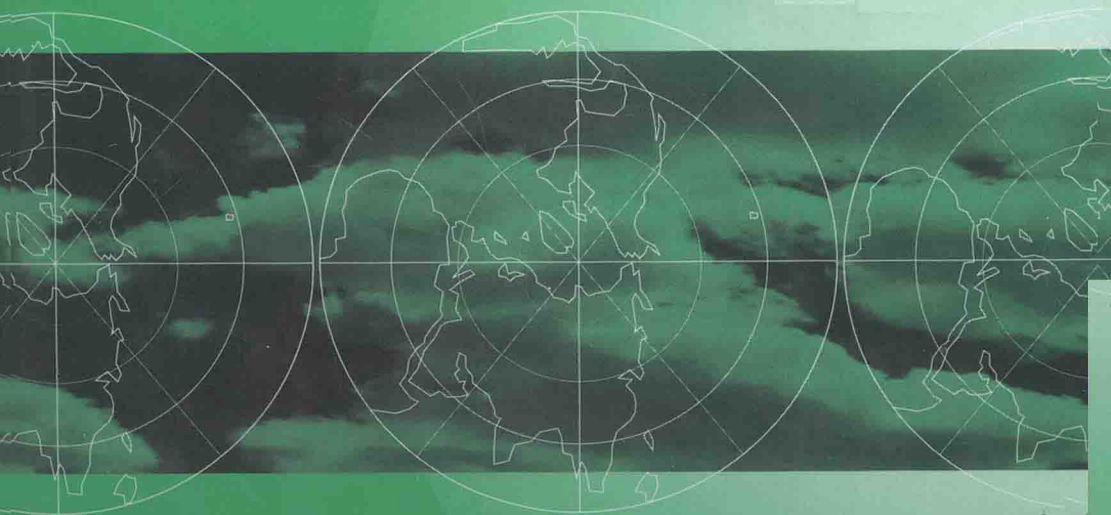


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CAMBRIDGE STUDIES IN INTERNATIONAL AND COMPARATIVE LAW

Local Remedies in International Law

Second Edition



CHITTHARANJAN FELIX AMERASINGHE

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Chittharanjan Felix Amerasinghe



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Local Remedies in International Law

Second Edition

This work examines the local remedies rule historically and particularly in modern international law. Not only is the customary international law discussed but the application, *inter alia*, of the rule conventionally to human rights protection and generally to international organizations is also covered. It is as comprehensive a treatment on the subject as can be. The law is dealt with in the light of State practice and the jurisprudence of international courts and tribunals. The author not only examines the jurisprudential basis of the rule and its established aspects but ventures into some important areas, such as the incidence of the rule, the limitations on its application, the burden of proof and the relevance of the rule to procedural remedies, in which the law is not so clear. The work also concerns itself with the interests of the international community and the interests of justice in relation to the rule. While there is a strict adherence to the requirements of juristic exposition and analysis, where the law has been more or less determined, the author does not hesitate to offer criticism and to make suggestions for the improvement of the law in the light of modern policy considerations. The work takes into account the recent reports of the International Law Commission which have not hitherto been examined in relation to the rule.

The second edition is a considerably expanded version of the first. There is not only updating and additional material, but additional subjects, such as State contracts and bilateral investment treaties, are included.

Chittharanjan Felix Amerasinghe was formerly Judge of the UN Tribunal in New York, and of the Commonwealth International Tribunal in London. He was also Professor of Law and later Honorary Professor of Law at the University of Ceylon, Colombo. He was Director of the Secretariat and Registrar of the World Bank Tribunal in Washington, and is currently a member of the Institut de Droit International. He has advised governments on international law and has written extensively on the subject.

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Preface

In the preface to the first edition of this book I wrote:

In the introductory chapter of this book I have attempted to justify its publication in spite of the apparently vast literature that already exists on the subject. It is hoped that it will not be regarded as yet another book on local remedies. The primary intention was to bring some element of clarification to and fresh insight into a rather confused but inviting area of the law of State Responsibility. This is all the more important now, particularly in view of the great increase of the flow of investment across national frontiers and the ease with which international travel is possible.

This still remains true for this second edition of the work. It must be emphasized that individuals as aliens, because of the ease of travel, are as much affected by the rule of local remedies as foreign legal persons.

The second edition, like the first, is concerned with the *rule of exhaustion of local remedies* which came into existence in the context of diplomatic protection of aliens. Like the first, again, therefore, this edition does not deal in general with the place of remedies given by national courts in settling disputes involving breaches of international law but is confined to investigating specifically the *rule of exhaustion of local remedies* as it has developed, first, in connection with the diplomatic protection of aliens and, secondly, by extension peripherally to other areas of international law, such as human rights protection and the law relating to international organizations.

Not only has there been updating and revision in the second edition in the light of developments since the publication of the first, but the format has been changed, as will be seen from a reading of the contents pages. Notably, (i) a new Chapter 5 has been introduced dealing with the all important subject of *contracts* involving aliens, (ii) the application

of the rule to human rights protection, as updated and revised, has been included in a single chapter (Chapter 13) rather than spread throughout the book, and (iii) the former Appendix, as updated and revised, dealing with international organizations in the context of the rule has been converted into Chapter 14. Moreover, the book has been divided into five parts, which makes the analysis and discussion more systematic and easier to understand. Further, comments made by some reviewers which were thought to be in need of treatment have been taken into account in this second edition.

The bibliography which appeared in the first edition has been omitted. As has been pointed out, a bibliography is unnecessary in a treatise of this nature which to a large extent did break and does break new ground. The references in the footnotes to other material is completely adequate. Indeed, the bibliography was unnecessary for the first edition. It is not proposed to continue to publish what is superfluous.

My thanks go to my friends, Laura and Emily Crow, who typed Chapters 5 and 13 and part of Chapter 10.

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