

ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES

Being a Selection from the Decisions of International and
National Courts and Tribunals given during the

YEARS 1941-1942

EDITED

BY

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PREFACE

THIS volume of the *Annual Digest and Reports of Public International Law Cases*—dedicated to the memory of a scholar to whom international case law was a matter of deep and active interest—is the tenth volume of the Series. These ten volumes cover nearly a generation—the years 1919 to 1942—of judicial activity of municipal and international tribunals in the field of international law. While the general scheme of the *Digest and Reports* has remained essentially unaltered since the first volume was published in 1929, the Series as a whole has been, in some respects, of an experimental character. The first volume was to a large extent in the nature of a digest and of a condensed and paraphrased report of decisions. The present tenth issue is predominantly—though not exclusively—a volume of, in most cases, complete law reports reproduced verbatim (in the case of reports in the English language) or in a translation. This is the principal explanation of the fact that, notwithstanding the absence of cases decided by international tribunals, the size of the present volume, after typographical changes have been taken into consideration, is nearly double that of the first volume to be published. In the policy of gradually transforming the *Digest* into *Reports* the Editorial Committee and the Editor have had the support, expressed emphatically and repeatedly, of the users of the Series. In view of this, it is proposed to continue and to expand that method until circumstances render feasible the final transformation of the present biennial publication into International Law Reports appearing at annual intervals.

Arrangements are being made for the present volume to be followed, in due course, by a companion volume which will include a cumulative Index and cumulative Tables of Cases for the entire period from 1919 to 1942. It is intended that that volume should contain reports of decisions which have previously been omitted owing to oversight, to the inaccessibility of the report, or to editorial decision which may be in need of revision. The supplementary volume will also provide an opportunity for rectifying mistakes and for substituting new reports for incomplete or not wholly accurate reports of cases. Any suggestions which the users of the *Digest and Reports* may make in this direction will be much appreciated and carefully examined.

The users of the *Annual Digest and Reports of Public International Law Cases*—teachers, students, and practitioners—have repeatedly given expression to the view that the value of this publication has grown progressively with each successive

volume. The extent of its actual use in the literature of international law and in forensic practice has supplied impressive evidence of this fact. This being so, the Editorial Committee and the Editor have no doubt as to the desirability of continuing the Series. My own hope is that, with the help of some public-spirited benefactor, it may be possible to cover in the same way the entire modern period of international law from, say, 1794—this being the year in which the Jay Treaty between Great Britain and the United States and its provisions for the establishment of mixed commissions heralded the beginning of the judicial settlement of international disputes. The compilation of a *corpus juris gentium* of these dimensions would require prolonged labour extending over a period of years. It is an undertaking which I believe to be an object worthy of further thought and effort.

The publication of the *Digest and Reports* has been made possible through the generous support, in respect of the early volumes, of the Governors and the Director of the London School of Economics and Political Science, of the Benchers of the Inns of Court, and of the Warden and Fellows of All Souls College, Oxford. In the case of the later volumes, the principal support has come from the Carnegie Endowment for International Peace (Division of International Law). The Trustees and the successive Directors of the International Law Division of the Carnegie Endowment have shown a full understanding of the objects of the *Digest and Reports* and of its importance for the development of international law. The Editorial Committee and the Editor take this opportunity of expressing to them their own sincere thanks and those of the entire profession of international lawyers.

I wish to express my gratitude for the encouragement and assistance which I have received throughout from the members of the Editorial Committee and, in particular, from Sir Arnold McNair, to whose initiative the *Digest and Reports* owes its existence, who was joint Editor of the first two volumes, and of whose ungrudging help and advice both in matters of editorial policy and of administrative detail I have availed myself to the full and as a matter of course. I am also deeply indebted to Sir John Fischer Williams, who was joint Editor of the two volumes for the years 1919-1922 and 1923-1924.

The *Digest and Reports* would not have been possible but for the selfless and devoted labours of its contributors. The examination of bulky law reports, the yield of which for the purposes of the *Digest and Reports* is often disappointing, is not in itself an attractive task. Neither is the selection of the relevant material an easy matter. Moreover, it is not always easy to see the point of the editorial decision to omit, or to reduce to a bare note, a case laboriously selected and abstracted. The contributors have borne these difficulties with patience

and forbearance. It is to them that the success of the *Digest and Reports* is primarily due.

This volume provides a suitable opportunity for an expression of thanks to the Incorporated Council of Law Reporting for England and Wales for their permission to reproduce portions of the Law Reports in this and in the preceding volumes; to Messrs. Longmans, Green & Co. for their share, at some financial sacrifice, in making possible the publication of the first five volumes; to Messrs. Butterworth & Co. for their most helpful co-operation in publishing the volumes of the *Digest and Reports* in time of war; to Messrs. R. & R. Clark, Printers, of Edinburgh, for their unfailing efficiency and courtesy; and to Mr. H. C. Scriven, Accountant of the London School of Economics and Political Science, for his advice and assistance in handling the finances.

The present volume is a "war volume" in a double sense. In the first instance, the Second World War has brought about the suspension of the activities both of the Permanent Court of International Justice and of other international tribunals. As a result, with minor exceptions belonging to the pre-war period, the volume does not contain reports of decisions of international tribunals. Secondly, cases arising out of the War occupy more than one half of the volume. They are not limited to the law of war and neutrality proper. They include such topics as the interpretation of treaties between the United States and certain Indian tribes in connection with the claims of the latter for exemption from compulsory military service; the liability of citizens of Eire to national service in Great Britain; the recognition of the decrees and, generally, of the legislation of the various governments in exile; jurisdictional rights of governments in exile and of their armed forces in Allied territory; the deportation of nationals of countries under enemy occupation. (It is also of interest to note that the volume contains a number of cases arising out of belligerent measures taken in the First World War—as in *Zachariassen v. United States*, decided by the United States Court of Claims, and in *Estate of Breitung v. The United States*, decided by a Special Arbitrator.) Prize cases have been included, and so have cases on Trading with the Enemy in so far as they bear on more general questions such as enemy character, nationality of corporations, belligerent occupation, and the like.

The number of countries represented in the present volume is smaller than in any of its predecessors. This is so, to some extent, for the reason that in the numerous countries which have been overrun by Germany there has probably been no judicial activity, in the sphere of international law, which calls for permanent record. Although it has been possible to include some reports from Germany and Italy, it is likely that, owing

to the interruption of normal communications, these reports are not complete. It is hoped to fill these gaps in the proposed supplementary volume. In the meantime the cases reported from accessible countries have been sufficient to provide what is the most bulky volume of the *Digest and Reports* since its appearance. For this fact the exhaustive contribution from the United States of America is largely responsible. Professor Herbert W. Briggs, of Cornell University, who has temporarily taken the place of Professor Preuss, has accomplished his task with a scholarly thoroughness which, I am sure, will be appreciated by all the users of the volume. It is to be hoped that Professor Briggs may be induced to continue his collaboration and to share with Professor Preuss the burden, which is proving increasingly exacting, of contributing reports of the decisions of courts in the United States of America. I am also much indebted to Professor Gordon Ireland for his painstaking labours in connection with the Latin-American countries.

I wish to express my thanks to His Excellency the Swiss Minister in London for offering the facilities of the diplomatic bag in respect of Professor Guggenheim's contribution from Switzerland—a venture in which the good offices of Professor William E. Rappard must be gratefully acknowledged.

Mrs. G. Lyons, B.Sc.(Econ.), and Dr. K. Lipstein have given valuable assistance in reading the proof. To Mrs. Lyons, who has been associated with the *Digest and Reports* almost from the beginning, I am also indebted for preparing the various Tables of Cases as well as for efficient secretarial help. Mr. C. J. Staines, Assistant Librarian of the Squire Law Library, has been responsible for much patient and accurate clerical work.

H. LAUTERPACHT

THE OLD SCHOOLS
THE UNIVERSITY OF CAMBRIDGE
1st December, 1944

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