Interpretation and Revision of International Boundary Decisions

This book seeks to examine a legal theme which occurs typically with respect to judgments and awards given by international courts and tribunals in the matter of boundary disputes. The theme in question is predicated on the fact that, from time to time, litigating States will find difficulties with these awards and judgments and seek to delay implementation of the decision or modify the alignment determined by the tribunal. The reason why dissatisfaction features prominently in boundary and territorial decisions is because questions of title and territorial sovereignty nearly always go to the very core of statehood, creating situations of unease at best and conflict at worst. Thus, while disputing States may resort to adjudication and arbitration for the settlement of a boundary problem, that alone is no guarantee that the dispute will thereafter terminate. Indeed, the author shows convincingly that the history of arbitration, going as far back as ancient Greece, is closely intertwined with problems of territorial claims and frontier disputes. Two remedies frequently relied on by litigating States in this context are those of interpretation and revision. The author sheds light on how, when and in what circumstances a tribunal is able to interpret or revise either its own or another tribunal's decisions on boundary problems. By exploring these issues, the author seeks to provide a rigorous analysis in an area of law which has escaped the attention of many international lawyers.

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In memory of my sister

Every question in the judgment relating to the moneys and boundaries of Apollo I will decide as is true to the best of my belief, nor will I in any wise give false judgments for the sake of favour, friendship or enmity; and the sentence passed in accordance with the judgment I will enforce to the best of my power with all possible speed, and I will make just restoration to the god. Nor will I receive gifts, neither I myself nor any one else on my behalf, nor will I give aught of the common moneys to any one or receive it myself. These things I will thus do and if I swear truly may I have many blessings, but if I swear falsely may Themis and Pythian Apollo and Leto and Artemis and Hestia and eternal fire and all gods and goddesses take from me salvation by a most dreadful doom, may they permit me myself and my race to enjoy neither children nor crops nor fruits nor property, and may they cast me forth in my lifetime from the possessions which I now have, if I shall swear falsely.

Oath taken by the Delphian Amphictiones, 117 BC (M. N. Tod, *International Arbitration Among the Greeks*, Oxford, 1913, p. 116)

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Preface

The genesis of this work started interestingly enough. I was invited by Scarborough College, then part of the University of Hull, to read a paper on the relation between geography and the international law of the sea. I began to research and write the paper, but noticed soon enough that far too much attention had been paid to just one aspect of the various issues identified for discussion and decided then to redress the matter and restore some balance to the project. The aspect in question dealt with the topic of dispute settlement, with particular emphasis on the difficulties attending the judicial and arbitral settlement of maritime delimitation disputes. The conference at Scarborough over, I went back to the work accumulated on dispute settlement and set upon re-examining the issues in greater detail, but once again realised that there were still a number of matters which warranted discussion at greater length, and that, importantly, these matters were not confined to maritime delimitation; indeed, they encompassed delimitation issues on land as well.

Nonetheless, I elected to focus on the problems attending the adjudication and arbitration of maritime delimitation disputes and went on to publish my work in the periodical *The Law and Practice of International Courts and Tribunals*, but the fact that there was still a significant gap in the literature on related matters proved to be a strong catalyst for further investigation. Eventually, after more writing and research, the decision was taken to provide a detailed account of just two important but relatively unexplored aspects of the powers generally exercised by international tribunals, namely, the powers of interpretation and revision of judgments and arbitral awards. This decision was prompted by two facts. In the first place, the interpretation and revision of decisions of such tribunals were, as between themselves, sufficiently related in juridical terms as to constitute a doctrinal unity. In the second place, and as against other areas of

the law, these two categories were sufficiently discrete and self-contained to justify rigorous examination at length. It was convenient therefore to separate them from other aspects of the scrutiny already carried out with a view to producing a sustained monograph on the selected topics.

Certainly, in some ways, the scope of the subject-matter is narrow in that the powers of revision and interpretation examined in this study are limited to decisions adopted by international courts and arbitral tribunals with respect to boundary disputes. This, of course, reflects in part the original survey referred to above. It is evident that a piece of work, which has its genesis in a conference paper devoted to the geographical and legal aspects of the maritime territory of coastal States, would be limited by one underlying feature of this topic, namely, questions of title to territory.

The fact, however, is that, despite the limited scope of the subject-matter examined, there is a good amount of international law to be investigated, discussed and analysed within the area of territorial and boundary disputes. It is of interest that, on the one hand, as Felix Frankfurter and James M. Landis wrote in 1925 on the Compact Clause of the United States Constitution and interstate adjustments, boundary disputes are so obstinate to litigious treatment that the more complicated interstate controversies are less amenable to court control. On the other hand, territorial entities frequently opt for the settlement processes of arbitration and adjudication (indeed, as this work attempts to show, the history of arbitration is clearly entwined with such disputes). But it is also the case that, from time to time, States seek nevertheless to revisit matters decided by international tribunals, and, on occasion, seek even to claim that the award or judgment is null and void. The simple fact is that, given the enormity of the interests at stake, a theme constantly to be found in this area of law and politics is the perenniality not only of boundary and territorial problems but also of disputes with respect to settled disputes. This theme, importantly, exists not only at the national level between disputing provinces and the states of a federation or confederation but also at the international plane between sovereign nations. In a nutshell, boundary disputes and decisions provide a fertile ground for the study of the international tribunal's powers of revision and interpretation.

While it constitutes a significant reason for keeping the subject-matter within its narrow confines, this theme does not constitute the main argument for choosing this topic of international concern. The essence of the matter is that this book is not primarily dedicated to scrutinising the law and practice of international tribunals with specific reference to the powers of revision and interpretation. It is primarily intended to

contribute to the body of learning in the law of title to territory. In an important sense, then, this book is an attempt to reflect upon issues of law relating to matters dealing with territory and international boundaries in the context of dispute settlement by way of adjudication and arbitration. It was this fact which informed the decision to exclude consideration of revision and interpretation on a universal basis, for that would have required examining the jurisprudence of all the global and regional international tribunals in the international legal system, including those dealing with matters of international trade, human rights and economic integration.

This, it is easy to see, would have altered fundamentally not only the character of the book but also its essential object and purpose as outlined above. It is for this reason that this study is prefaced by a legal account of some of the salient difficulties associated with the settlement of boundary and territorial disputes by way of treaties. The point of interest is that these difficulties, which include those arising from the succession of States to treaties and the unilateral denunciation and rejection of boundary treaties, judgments and awards, are treated separately from a discussion regarding the legal aspects of the dissatisfaction experienced by States in connection with the arbitration and adjudication of boundary and territorial disputes. A significant aspect of this relates to the discussion of the nullity of boundary awards and judgments.

The fundamental premise of this analysis is that a core area of the law of title to territory is comprised of the settlement of boundary and territorial disputes by way of adjudication and arbitration and accordingly that due attention must be paid to the powers of international tribunals to interpret and revise their judgments and awards. This approach is highlighted, *inter alia*, by the fact that these two judicial remedies are not always *incidental* to the main case and that therefore applications for the interpretation and revision of boundary treaties can, in some circumstances, be treated as the main case itself. There is, of course, no profit in pre-empting matters here beyond identifying another salient feature of this study. Thus, although the latter is concerned with the interpretation and revision of boundary decisions, the law regarding the purpose, scope, interpretation and application of these remedies is not confined to boundary or territorial issues, and it follows therefore that the law on the matter is of universal application.

Acknowledgments

It would not have been possible for me to write this book without the help of colleagues, friends and family members. I wish, therefore, to take advantage of these pages to record a few words of gratitude. In the Law Library on Palace Green in Durham, I have received enormous help, co-operation and indeed indulgence from a number of members of staff. Out of many, Miss Sheila Doyle, Mrs Anne Farrow, Ms Sally Hoddy, Ms Barbara Johnson and Ms Judy McKinnell have been particularly kind to and co-operative with me on every occasion. Patiently helping me with my queries and requests, the Law Library staff has been a great pillar of support. I am also grateful to Mr Shaun Hunter for his advice and help on a number of occasions. Despite having repeatedly to teach me how to work the microfilm machine, Mr Hunter seemed to embody the very notion of equanimity. Among the varied student staff, my sense of gratitude extends in particular to Miss Lucy Carey and Ms Fiona Tolan for their co-operation and assistance regarding book loans and returns over a number of years.

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I must also mention several members of the Department of Law with a view to thanking them for their unstinted support, and I therefore express my gratitude to Miss Helen Hewitson, Mrs Sheila Jobling and Ms Claire Purdue for helping me in a variety of ways, including helping me with typing, photocopying, the ordering of books and general co-operation; and to Mr Rupert Prudom, the computer officer, for advice and assistance in information technology. For compiling the bibliography, I am very thankful to Miss Joanne Emerson, and, I must add, for her pointing out various eccentricities in several footnotes which her careful eye for detail was quick to notice.

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whole process, Professor James Crawford, the Series Editor, provided useful suggestions and incisive comments for which I am extremely grateful. It is, however, important for me to add that, despite all the help received by me from various persons, including those mentioned above, I alone stand responsible for all the flaws and weaknesses present in this book.

It would be remiss of me not to express my thankfulness to several postgraduate students and research assistants, all of whom were courteously helpful in a large number of ways, including the photocopying of articles, securing print-outs of documents and articles, tracing books and instruments from electronic databases and for providing informal translations of documents. Here, I have to thank Dr Eleni Katselli, now lecturer at the University of Newcastle, and Mr Zeray Yihdego, Mr Francis Oni and Mr Jacques Hartman. Ms Sangeeta Shah, now at the University of Nottingham, deserves a special word of thanks for the meticulousness and conscientiousness with which she responded to all my requests and for twice helping me to procure a large set of documents after she had left the Law Department in Durham.

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Durham
March, 2006.

Table of cases

International Court of Justice

Permanent Court of International Justice

Permanent Court of Arbitration

Arbitral decisions

European Court of Human Rights

Switzerland

United States

Abbreviations

AJIL	*American Journal of International Law*
BFSP	*British Foreign and State Papers*
Hazard	*Historical Collections; Consisting of State Papers, and Other Authentic Documents; Intended as Materials for an History of the United States of America*, Philadelphia, 1792, vol. 2
ICJ	International Court of Justice
ILM	*International Legal Materials*
ILR	*International Law Reports*
Moore	*History and Digest of the International Arbitrations to Which the United States Has Been a Party*, Washington DC, 1898, vols. 2 and 5
PCIJ	Permanent Court of International Justice
UNRIAA	*United Nations Reports of International Arbitral Awards*
Wetter	*The International Arbitral Process*, New York, 1979, vols. 1 and 2