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978-1-107-06339-6 - Fraudulent Evidence Before Public International Tribunals:
The Dirty Stories of International Law

W. Michael Reisman and Christina Parajon Skinner

Frontmatter

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Fraudulent Evidence Before Public International Tribunals

The Dirty Stories of International Law

Domestic lawyers are, above all, officers of the court. By contrast, the public international lawyer representing states before international tribunals is torn between loyalties to the state and loyalties to international law. As the stakes increase for the state concerned, the tension between these loyalties can become acute and lead to practices that would be condemned in developed national legal systems but have hitherto been ignored by international tribunals in international legal scholarship. They are the ‘dirty stories’ of international law.

This detailed and contextually sensitive presentation of eight important cases before a variety of public international tribunals dissects some of the reasons for the resort to fraudulent evidence in international litigation and the profession’s baffling reaction. Fraudulent evidence is resorted to out of greed, moral mediocrity or inherent dishonesty. In public international litigation, by contrast, the reasons are often more complex, with roots in the dynamics of international politics.

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For
Judge Stephen M. Schwebel

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It is of course a commonplace that government officials dissemble. Reasons of States are often thought to justify statements which are incomplete, misleading or contrary to fact. Covert operations, by their nature, are intended to provide cover, to lend credibility to “deniability” . . .

Nevertheless, there can be no equation between governmental statements made in this Court and governmental statements made outside of it. The foundation of judicial decision is the establishment of the truth. Deliberate misrepresentations by the representatives of a government party to a case before this Court cannot be accepted because they undermine the essence of the judicial function.

Judge Stephen Schwebel (*Military and Paramilitary Activities in and Against Nicaragua* [*Nicaragua v. United States*])

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Preface

In “Dirty Story,” Eric Ambler’s celebrated *roman noir*, the British Vice-Consul in Athens pronounces judgment on one Arthur Abdel Simpson: “You’re a disgusting creature, Mr. Simpson. Your life is nothing but a long, dirty story.”¹ In fact, Simpson, struggling on the margins of society, is, at his worst, a petty criminal; the Vice-Consul’s contempt derives in no small measure from a rap sheet that contains no great crimes, no memorable violations, only a serialization of sleazy misdeeds.

Much as it is thought indecorous to recite a dirty story in polite company, international law’s custodians of etiquette seem to have decreed that their dirty stories, questionable uses or abuses of evidence before international tribunals, are not to be mentioned. Indeed, in spite of the serious forgery discovered in the *Qatar v. Bahrain* case,² the International Court’s judgment does not call attention to it and the eighty-two forgeries, which Qatar withdrew, are not to be found anywhere in the court’s records. It is as if the massive forgery never happened. But any short-term gains in revisionism came at a cost. A character in a novella says, “The past is never past. If you corrupt your past, you corrupt the present and everything you do in the future. You lie and your soul lies forever.”³ We leave it to our readers to decide whether, in narrating these international dirty stories, we have succeeded in provoking a useful discussion or merely breached *courtoisie internationale*.

¹ E. Ambler, *Dirty Story: A Further Account of the Life and Adventures of Arthur Abdel Simpson* (New York: Charles Scribner’s Sons, 1967), p. 11.

² See Chapter 8 this volume.

³ D. Shai, “Foolsbus” in *American Spectacles and Other Cultivated Illusions* (New Haven Press, 1993), p. 78.

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Certainly, compared to the horrendous violations of international law committed in the past decades, cases of fraudulent evidence which have been practiced on public international courts and tribunals are, like the entries in Arthur Abdel Simpson's pathetic dossier, only dirty stories. But, for all that, we believe that they are not unimportant. They mar the noble vision and ennobling practice of sovereign States voluntarily submitting their disputes to courts and tribunals for peaceful resolution in accordance with international law; in raising doubts about the accuracy of international decision, they diminish the future willingness of States to resort to tribunals. Moreover, corruption of the truth often extends beyond the hearing room of a single case: in an interdependent world, lies which manage to distort judicial or arbitral decision in one case can contaminate many others. Judge Schwebel, to whom this book is respectfully dedicated, put it concisely: "they undermine the essence of the judicial function."

We firmly believe that the improvement of law and its procedures is an appropriate function of legal scholars, but we confess, at the outset, that we have no "magic bullet" to defeat the practice of fraudulent evidence practiced on international courts and tribunals. But we hope that recounting and analyzing these lamentable dirty stories and detailing the injury which fraudulent evidence can cause will provoke a more intense demand for clarifying the responsibility of counsel, for effectively policing and sanctioning the use of fraudulent evidence in public international tribunals, and in particular, for expanding the powers of international courts and tribunals to deal with it.

The text of this book is based on a Lauterpacht lecture which was delivered by one of the authors who was also counsel in *Qatar v. Bahrain*. The authors acknowledge with gratitude the assistance of the staff of the Yale Law Library, in particular Teresa Miguel-Stearns and the insightful comments on the manuscript of Eyal Benvenisti, Sir Elihu Lauterpacht, Robbie Sabel, and Jan Paulsson. Ms. Cina Santos supervised the production of the manuscript with her customary skill, patience, and good humor.

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