

INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE

BY

Dr. J. H. W. VERZIJL

*Emeritus Professor of International Law
Utrecht University*

PART VIII

INTER-STATE DISPUTES AND
THEIR SETTLEMENT

A. W. SIJTHOFF—LEYDEN
1976

TABLE OF CONTENTS

Preface	1
Introduction	3
Chapter I. Classification of international disputes	5
Notes to Chapter I	27
Chapter II. Differing attitudes of the parties in dispute towards pacific settlement	33
A. MEASURES SHORT OF WAR	37
Chapter III. Main measures: retorsion, reprisals and pacific blockade	37
Section 1. Retorsion	37
Section 2. Reprisals	37
Section 3. Pacific blockade	43
B. MODES OF SETTLEMENT RESULTING IN NON- BINDING FINDINGS OR SUGGESTIONS	49
Chapter IV. Main modes: good offices and mediation, interna- tional inquiry and conciliation	49
Section 1. Good offices and mediation	49
Section 2. International inquiry	56
Section 3. Conciliation	62
C. MODES OF SETTLEMENT RESULTING IN BINDING DECISIONS	71
1. <i>General. Arbitration and judicial settlement</i>	71
Chapter V. Growth of the idea of international arbitration and justice. Difficulties of its realization	71
Section 1. Growth of the idea of international arbitration and justice	71
I. The <i>Obligatorium</i> and the reservations and exceptions attached thereto	74
II. The dividing line between international arbitration and justice	86
III. Clarification of the distinction between legal and other controversies	90
IV. The law to be applied by arbitrators and Courts of	

Justice	105
V. The execution of arbitral awards	109
Section 2. The difficulties of its realization. The present stagnation and decline	112
Chapter VI. Delimitation of international arbitration towards mediation and adjudication	128
Section 1. Arbitration v. mediation	131
Section 2. Arbitration v. international justice	140
Chapter VII. Interconnection between the means of settlement <i>sub B and C</i>	154
2. <i>International arbitration</i>	161
Chapter VIII. General. Essential and marginal functions. Isolated and institutional variants. <i>Obligatorium</i>	161
Chapter IX. Synopsis of the history of the institution. Last century developments, four periods	180
A. A synopsis of arbitral settlement in the course of history	180
The establishment of arbitral tribunals	187
The composition of arbitral tribunals	190
The task of arbitral tribunals	195
The types of dispute submitted to arbitral tribunals	196
The rules applied by arbitral tribunals	198
Admissibility or inadmissibility of appeal	200
The efficacy of arbitral awards	202
B. Last century developments	222
The first period, 1875-1899	222
The second period, 1899-1920	225
The third period, 1920-1940	240
The fourth period, since 1945	249
Notes to Chapter IX	261
Chapter X. Composition of arbitral tribunals	263
Arbitration by Heads of State, diplomats, judges, lawyers, etc.	263
The constitution of Mixed Commissions	275
The constitution of normal arbitral tribunals	282
Chapter XI. Different domains of international law in which arbitration has played a rôle	290
Introduction	290
Section 1. Principal legal questions of a general nature	291
Questions of procedure	298
Section 2. Diverse fields of arbitral awards	300
State territory	300
The individual	310
International delinquencies	312
Treaties	314

War, neutrality and prize law	315
Varia.	320
3. <i>International justice</i>	324
Chapter XII. Problems of an international judiciary	324
Section 1. The composition of a permanent international Court	324
Section 2. The competence of a permanent international Court	332
Section 3. The rules and principles to be applied by a permanent international Court	337
Section 4. The procedure before a permanent international Court	339
Notes to Chapter XII	341
Chapter XIII. One short lived regional court and four abortive potentially world-wide courts	342
A. The Central American Court of Justice	342
B. Four abortive international courts	344
(i) The projected Court of Arbitral Justice of the Second Hague Peace Conference of 1907	344
(ii) The projected International Prize Court of the Second Hague Peace Conference of 1907	345
(iii) The projected International Penal Court against Terrorism of 1937	348
(iv) The projected Court for the Trial of the Perpetrators of International Crimes	349
Annex to (iii)	350
A. Convention for the Prevention and Punishment of Terrorism	353
B. Convention for the Creation of an International Criminal Court	356
Notes to Chapter XIII	363

The World Court

Introduction to Chapters XIV-XVI	368
Chapter XIV. The jurisdiction of the World Court	370
(a) Wording of the clause of bilateral or multilateral acceptance of the compulsory jurisdiction of the International Court	390
(b) The operation of the System of the Optional Clause	402
Note to Chapter XIV	432
Chapter XV. The procedure of the Court	433
(a) The Statute	433
(b) The Rules of Court	435
Access of "outsider" States to the Court	436

Legal consequences of the demise of the Permanent Court	440
The requirement of the existence of a legal interest	442
(c) The internal judicial practice of the Court	444
Composition of the Court	444
The Presidency, the Vice-Presidency, the Registry, Judges	444
(a) Challenge of Judges	445
(b) Designation of Judges <i>ad hoc</i>	446
Assessors	449
Chambers	449
Occasional rules	451
Contentious proceedings before the full Court	461
Judgments	462
Advisory proceedings	466
Notes to Chapter XV	469
Chapter XVI. Jurisprudence of the Court	471
A. The pronouncements of the Court	471
I. Judgments	473
1. Appeal relating to the jurisdiction of the I.C.A.O. Council	473
2. (Icelandic) fisheries jurisdiction cases	478
3. Nuclear tests cases	488
II. Advisory Opinions	501
1. Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 275 (1970)	501
2. Application for review of Judgment No. 158 of the United Nations Administrative Tribunal	514
3. Western Sahara	517
III. Orders	520
(a) Indication of interim measures of protection	520
1. Fisheries jurisdiction cases	520
2. Nuclear tests cases	522
3. Cases concerning trial of Pakistani prisoners of war	523
(b) Intervention in pending proceedings	523
B. The influence of the Court's case law on the development of international law	524
Notes to Chapter XVI	530
4. <i>Subjects common to international arbitration and adjudication</i>	532
Chapter XVII. The basis of international judgments in the course of history	532
Notes to Chapter XVII	558
Chapter XVIII. The force or value of international judgments	564

Section 1. Final character of the decision. No appeal. Possibility of revision	565
Section 2. Asserted nullity of an award	574
Section 3. <i>Res judicata inter partes</i>	583
Section 4. Further legal effects vis-à-vis third States and in the internal legal order	591
Section 5. Actual effectiveness of the decision	597
Section 6. Impact on the development of international law	601
Notes to Chapter XVIII	606
Abbreviations	609
List of Treaties	612
Index of Names	628
Index of Subjects	635