

## FOREWORD

In 1997, the arbitral tribunal established to resolve a dispute between Eritrea and Yemen invited the Permanent Court of Arbitration (PCA) to act as its Registry. This first major international arbitration to be administered by the PCA in decades marked a watershed in the process of revitalizing the nearly century-old organization. A mere eight years later, the PCA has a full and varied docket, not limited to disputes between sovereign States, involving parties of many different nationalities. These include a dispute between the Swiss-based Bank for International Settlements and its private shareholders, two tribunals established under the OSPAR and UNCLOS Conventions in a dispute between Ireland and the United Kingdom, an investment dispute involving a subsidiary of a major Japanese concern and the Czech Republic, and the Boundary and Claims Commissions established by the peace treaty between Eritrea and Ethiopia.

By the time the second Eritrea-Yemen award was delivered in December 1999, the PCA had celebrated its centenary and effectively transformed itself from “the sleeping beauty of the Peace Palace” into a dynamic institution for the resolution of all types of inter-governmental and international disputes, with an expanded staff representing over ten different nationalities.

The importance of the Eritrea-Yemen Arbitration, however, extends far beyond its contribution to the “comeback” of the PCA. As Professor Queneudec writes in his insightful introduction to this volume, the Eritrea-Yemen Arbitration “is one of the most significant international arbitrations of the end of the 20<sup>th</sup> century”, in large part because it “solved the thorny problem of ownership of the southern islands of the Red Sea . . . the solution of which had been awaited since the end of the First World War.” Much of this is attributable to the quality of the tribunal itself, composed of Judges Rosalyn Higgins and Stephen M. Schwebel, Dr. Ahmed El-Kosheri and the late Keith Highet, and presided over by the late Sir Robert Jennings.

Despite an increasingly debilitating illness, Keith Highet worked tirelessly throughout the proceedings, his characteristic meticulousness and incisiveness never faltering. He was particularly committed to seeing the case through to completion of the second-stage award. It was, unfortunately, to be the last major case of his unparalleled international legal career, and he will be sorely missed, particularly here in his second home, the Hague Peace Palace. It is especially fitting that this edition of the Eritrea-Yemen awards dedicated to his memory is *bilingual*. Not only was Keith remarkably proficient in the French language, he also had a particular affection and affinity for it.

The international legal community has yet to recover from the loss, in August 2004, of Sir Robert Jennings. There are but few of its members who do not claim him as an inspiration and – in the case of those most fortunate – a mentor. Sir Robert’s unparalleled curriculum vitae as an educator, academic, practitioner, and member and president of the International Court of Justice is well known, and needs no further elaboration here. Perhaps less well known is the pivotal role he played in the

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revitalization of the PCA in the 1990s. He was the first in decades to entrust important international arbitrations, including the Eritrea-Yemen case, to PCA administration, thereby laying the groundwork for subsequent developments. Robbie – as he usually insisted on being called, despite his impressive titles – will long be remembered by the staff of the PCA as a staunch supporter and trusted sounding board.

The decision to translate the two Eritrea-Yemen awards into French for publication in this bilingual edition was prompted, *inter alia*, by France’s pivotal role in the negotiations leading up to the agreement between the governments of Eritrea and Yemen to submit their territorial dispute to arbitration. The sole purpose of the translations is to make the text of the awards more easily accessible to the francophone community worldwide; they in no way constitute an official French version of the awards.

The awards as reproduced here contain one official amendment and a handful of minor editorial rectifications. In November 1998, the arbitral tribunal agreed to a modification of paragraph 198 of the first-stage award. The new text is printed in italics and accompanied by a footnote. Minor typographical errors and mistakes in certain page and date references have been indicated in footnotes as “editorial corrections” and do not form part of the official text of the award. To the extent that cross-references refer to pages rather than paragraphs, these have been adapted to the pagination of this volume and are indicated in italics. Internal inconsistencies in capitalization and punctuation have been corrected without further indication. Some effort has been made to apply a consistent citation style in footnotes, while endeavoring insofar as possible to retain the integrity of the original texts. In addition, the lists of appearances on the caption pages of the two awards have been supplemented to include counsel; the originals referred only to the agents and co-agents of the parties.

The PCA would like to express its immense gratitude to Jean-Pierre Queneudec, Professor emeritus at the University of Paris I, for agreeing to provide a substantive introduction to this volume. It is difficult to imagine an international legal scholar more capable of synthesizing and distilling the essence of the awards and their contribution to international legal discourse.

Special mention must also be made of the two Deputy Secretaries-General of the PCA who served successively as Secretary to the arbitral tribunal: Ms. Bette E. Shifman in the first stage, and Ms. Phyllis Hamilton in the second. The challenging task of translating the awards into French fell to Ms. Nicole Perlstein and Mr. Jean-Roch Dartis, while Ms. Sarah Adams provided the excellent English translation of Professor Queneudec’s introduction.

The Hague, October 2004

Tjaco T. van den Hout  
Secretary-General, Permanent Court of Arbitration