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IN INVESTMENT
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J. ROMESH WEERAMANTRY



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TREATY INTERPRETATION IN INVESTMENT ARBITRATION

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OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: LOUKAS MISTELIS

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Queen Mary, University of London*

TREATY INTERPRETATION IN
INVESTMENT ARBITRATION

OXFORD INTERNATIONAL ARBITRATION SERIES

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The aim of this series is to publish works of quality and originality on specific issues in international commercial and investment arbitration. The series aims to provide a forum for the exploration of important emerging issues and those issues not adequately dealt with in leading works. It should be of interest to both practitioners and scholarly lawyers.

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FOREWORD

Government representatives take extraordinary care in the crafting of international agreements. Teams of lawyers and diplomats, each charged with often opposed instructions, bargain over exchanges and labour over text. Even as their negotiations proceed, drafts are regularly dispatched to capitals for consultation and further instructions. If agreement is reached and a draft is initialled, a different cast of actors, operating in the respective capitals of each of the states, commences a process of internal analysis and approval as a prerequisite to ratification and entry into force.

With all of these precautions, uncertainties about the intentions of the parties' commitments may still arise in the course of subsequent applications. It should be no surprise. In international agreements, negotiators for each side often think in different languages, even if they operate in a single working language. They usually derive from different legal systems in each of which the same term may have a different meaning. Final texts are redacted in the language of each party and each is as authentic as the other. And, whether in domestic or international law, no matter how much care was taken to express commitments with precision and to anticipate all the factual scenarios which those commitments were to govern, unanticipated situations may still arise. There will, in short, be disputes about the application of international agreements.

If agreements are indispensable for longer-term cooperative behaviour, a corollary indispensability is the expectation that those agreements will be applied faithfully. Indeed, the success of the exercise to establish a framework for cooperative behaviour depends upon a commonly accepted canon of interpretation and its faithful application, whether by the parties in the course of performance or by judges and arbitrators resolving a dispute about that framework. Every legal system has a canon of interpretation, but, given the difficulties of stabilizing expectations in the volatile political and economic environment with which international legal arrangements contend, diplomats and international legal scholars have given greater attention to prescribing the canons of interpretation.

In this important contribution to the conversation about the law and practice of international interpretation, Dr Romesh Weeramantry has focused intensively on the interpretation of investment agreements. This area of international law is particularly fertile for a study of interpretation, for investment agreements, unlike

simple executory contracts, are drafted for a wide range of activities over extended periods. Because the parties negotiating investment treaties can know only in the most general sense the transactions to which the treaties will apply and the types of issues that will arise, large parts of these treaties have to be drafted in very general terms, requiring interpretation. And because investment treaties are a distinct genre, comprised of nearly 3,000 treaties with similar if not identical language, their interpretations by hundreds of different tribunals allow for meaningful comparative analyses. Substantively, this area is especially fascinating because of an inherent tension between the interests of the different parties: it is one in which stability of expectation based upon agreements is urgent for investors as well as for the transnational economic and financial community of which they are part. At the same time, investment law acknowledges that governments are a unique species of political actor; the special requirements of the host state to an investment frequently lead to demands for some adjustment to accommodate unanticipated exigencies.

Treaty Interpretation in Investment Arbitration is marked by the most meticulous examination of an extensive case law and scholarly literature. As a result, Dr Weeramantry's examination of interpretation practice will be consulted by tribunals and practitioners of investment law. But that is not the limit of his contribution and the applicability of his book. He concludes his study with the statement that 'any significant international law discourse on treaty interpretation practice in the future will be incomplete without reference to' investment practice. One may add that any future international law discourse on treaty interpretation practice will be incomplete without reference to Dr Weeramantry's important book.

W. Michael Reisman
Yale Law School
New Haven, Connecticut
January 3, 2012

GENERAL EDITOR'S PREFACE

This series of monographs is dedicated to specific issues in international arbitration law and practice, and gives authors the opportunity and the challenge of a more in-depth treatment than is possible in leading generalist works. It also provides an international forum for the profound exploration of important practical and theoretical matters and will further the development of arbitration as a self-luminous academic discipline and major international legal practice area.

This fifth book in this series addresses the significant topic of treaty interpretation by foreign investment arbitration tribunals. While there are a few well-established books on treaty interpretation, this is the first book bringing together treaty interpretation and investment treaty arbitration. In this respect this book makes a contribution to the scholarship and practice of both traditional public international law and investment arbitration.

Indeed, the emergence and continuous growth of investment treaty arbitration brought to the forefront the high volume of bilateral investment treaties ('BITs'), Free Trade Agreements ('FTAs'), various multilateral agreements with investment chapters, such as NAFTA, CAFTA, Energy Charter Treaty, and ICSID Convention. The development of investment treaty arbitration had as a direct consequence the unprecedented frequent use of international law by arbitration tribunals. Some of these arbitration tribunals possess significant public international law expertise and experience; others do not. However, treaty interpretation is a process which requires a high level of consistency and is to be informed by international law. It has an important role in investment arbitration but the related rules have not taken a highly predictable form. The International Law Commission aptly commented about the provisions which became Articles 31 and 32 of the Vienna Convention on the Law of Treaties that interpretation is 'an art, not an exact science'. The rules on treaty interpretation are not always applied consistently and, on occasion, there is not much discussion as to how the interpretative task is performed. Frequently, the only reference is to the effect that the rules on treaty interpretation in the Vienna Convention were used by the arbitral tribunal.

This monograph is divided into seven chapters: the first, introductory, chapter states the book's objectives, nature, and scope and provides a concise description of treaty law and investment treaties; Chapter Two provides the historical context and current status of the international law rules on treaty interpretation; Chapters Three

and Four offer a masterful analysis of the treaty interpretation rules in Articles 31 and 32 of the Vienna Convention; Chapter Five discusses other supplementary means of interpretation not expressly specified in the Vienna Convention; Chapter Six is dedicated to some salient features of investment arbitration tribunals practice that specifically relate to the interpretation of treaties; and Chapter Seven draws conclusions from the preceding chapters, addresses the question as to whether the Convention Rules are suitable for application in investment arbitration, and assesses the contribution of investment arbitration to the corpus of international law on treaty interpretation.

Romesh Weeramantry's overall conclusion drawn from the awards reviewed for this book is that many investment arbitration tribunals expressly recognize the Vienna Convention Rules and attempt to apply them (although to varying degrees) when interpreting treaties. He also demonstrates that the Convention Rules are in considerable measure suitable for application in investor-State treaty disputes, perhaps with two exceptions: (a) there is lack of access to *travaux préparatoires* and (b) one could observe a pro-investor bias emerging from the application of the object and purpose criterion to interpret investment treaties. Of course, it goes without saying that some, if not most, of these problems can be attributed to the wording of investment treaties, which are susceptible to many divergent interpretations.

The author of this book combines profound knowledge of public international law, admirable experience in international adjudication, and an excellent skill in writing and analysing complex issues; he assumed a challenge and comprehensibly succeeded in his task. The book is evidence of a significant amount of work, rich in research and accurate in analysis. At the same time it is accessible, academically original, and of remarkable practical relevance and value.

I am delighted with this book, the second one in the Oxford International Arbitration Series to have emerged from research conducted in the School of International Arbitration, at the Centre for Commercial Law Studies, Queen Mary University of London.

Loukas Mistelis
London
10 January 2012

PREFACE

For thought is a bird of space, that in a cage of words may indeed unfold its wings but cannot fly.

(Kahlil Gibran, *The Prophet* (London: Penguin Classics, 2002 reprint), at 68)

A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.

(Justice Holmes, *Towne v Eisner*, 245 US 418 (1918), at 425)

This book is based on my PhD thesis at the Queen Mary School of International Arbitration, University of London. The primary well-spring of inspiration behind it was provided by my father. I will always be in awe at his inexhaustible passion for the rule of international law, his erudition in areas well beyond the law, and his unlimited ability to write works of the highest order. Independently of him, I started upon my research and writing on treaty interpretation. But a wonderful surprise came my way after discovering that he too had given serious thought to writing on the subject. He subsequently found in his files a handwritten outline of the contents of a book on treaty interpretation. It is a loss to all of us that he did not continue this endeavour, as he would have—in his inimitable style—produced a majestic work brimming with vision and inspiration.

Another source of deep inspiration was Aristotle's *Politics*. His assiduous study of constitutions more than 2,000 years ago has struck me as nothing short of monumental. If this could be achieved with the rudimentary materials and research tools available to him, it is almost inexcusable for modern scholars—the beneficiaries of the breakthroughs made by Gutenberg, Gates, and Google—to create major works without a high degree of research. This thought helped to push me through the long hours spent in libraries and in front of computers.

Without the extraordinary and unconditional support from all my family and the finest of friends, I would not have been able to finish my thesis and produce this book. To the best of my ability, I set out here a list of those who deserve special mention. There is a risk that I have made some omissions and, of course, this has not been intentional. Profound thanks must first be given to my mother and father for their love, concern, kindness and financial assistance; Ravi, Shala, Nil, Rosh, their beautiful families, Uncle Trevor, Aunt Yvonne, Danthi, and all at Littleton Street for their constant interest, care, and support; Manu for her special relief packages sent from around the globe; Andy and Rach for boosting my spirits by

making me share their incredible adventures; Shane and Ios for making my London accommodation feel like home; and Jules for the friendship and the coffee.

I am indebted to my PhD supervisors, Professors Julian Lew, QC, and Loukas Mistelis, for their expert guidance on various drafts of the thesis and their unfaltering support. I must also thank my thesis examiners, HE Judge Christopher Greenwood, VV Veeder, QC, and Professor Malgosia Fitzmaurice for their helpful comments and encouragement to publish the thesis. Special appreciation also needs to be recorded for the help and wise advice received at various stages from (in alphabetical order) Professor Georges Abi-Saab, Dr Femi Elias, Dr. Nils Eliasson, Professor Judd Epstein, Professor Thomas Franck, Professor Alejandro Garro, Craig Harrison SC, Dr Veijo Heiskanen, Professor Michael Reisman, Silja Schaffstein, and Tim Sowden. Additionally, I am grateful for the research funds made available by the City University of Hong Kong, as well as the research and editorial assistance of Samantha Fernando, Claire Wilson, Jeff Yiu, Kinsey Kang, and Eric Ng. Sincere thanks must also go to the professional and diligent staff at Oxford University Press, particularly Vicky Pittman, Jessica Huntley, and Matthew Humphrys for the extraordinary interest and support they have given to publication of this book.

The research for the thesis and book was carried out at the following libraries, which provided first-class facilities and resources: City University of Hong Kong; Columbia Law School, New York; L'Institut de hautes études internationales et du développement (HEI), Geneva; Institute of Advanced Legal Studies, University of London; London School of Economics; Monash University Faculty of Law, Melbourne; New York University School of Law; the Peace Palace Library, The Hague; the United Nations Library, Palais des Nations, Geneva; and the Yale Law School Library.

I alone am answerable for any inaccuracies or deficiencies in the text. As a result of my common law training, I am also answerable for any distortions created by any disproportionate use of common law references or analogies. It is hoped that shortcomings that may be produced by this narrowness of perspective will be rectified by scholars who have a far greater understanding of the world's other legal systems and traditions.

All the investment arbitration awards and decisions cited in this book, unless otherwise indicated, are available at <<http://ita.law.uvic.ca>> or <www.investmentclaims.com>. To be economical with words, I have refrained from mentioning these websites when citing awards.

Finally, for the motivation to wrap up my work with many sources and avenues yet unexplored and to desist from including everything possibly relevant in the book, I am indebted to the observation of Barry Humphries in his autobiography *My Life as Me* (London: Michael Joseph, 2002): 'Voltaire was right when he defined a bore as a man who leaves nothing out.'

J. Romesh Weeramantry
November 2011

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- Aguas Provinciales de Santa Fe S.A., Suez, Sociedad General de Aguas de Barcelona S.A. and InterAguas Servicios Integrales del Agua S.A. v Argentine Republic, ICSID Case No. ARB/03/17, Order in Repsonse to a Petition for Participation as amicus curiae (17 March 2006). 5.47

Alpha Projektholding (Award)

- Alpha Projektholding GmbH v Ukraine, ICSID Case No. ARB/07/16, Award (8 November 2010). 2.32

Amco (Annulment)

- Amco Asia Corporation v Republic of Indonesia, ICSID Case No. ARB/81/1, Annulment (16 May 1986) 1 ICSID Rep 509. 1.31, 2.31, 3.54, 3.145, 4.14, 4.31, 5.13–5.14, 5.17, 5.21, 5.47, 5.57, 6.18

Amco (Award)

- Amco Asia Corporation v Republic of Indonesia, ICSID Case No. ARB/81/1, Award (20 November 1984) 1 ICSID Rep 413. 6.102

Amco (Jurisdiction)

- Amco Asia Corporation v Republic of Indonesia, ICSID Case No. ARB/81/1, Decision on Jurisdiction (25 September 1983) 1 ICSID Rep 376. 1.07, 3.21, 3.28, 3.78–3.79, 3.85, 3.91, 5.08, 5.77, 6.18, 6.57, 6.102–6.103, 6.108, 6.108, 6.124

Amco (Resubmitted Jurisdiction)

- Amco Asia Corporation v Republic of Indonesia, ICSID Case No. ARB/81/1, Resubmitted Case: Decision on Jurisdiction (10 May 1988) 1 ICSID Rep 543. 2.30, 4.31, 5.47

American Manufacturing (Award)

- American Manufacturing & Trading v Republic of Zaire, ICSID Case No. ARB/93/1, Award (21 February 1997) 5 ICSID Rep 11. 3.64, 3.82, 4.40

American Manufacturing (Opinions)

- American Manufacturing & Trading v Republic of Zaire, ICSID Case No. ARB/93/1, Individual Opinions (21 February 1997). 3.41, 3.91, 5.40, 5.78, 5.96

Anderson v Costa Rica

- Alasdair Ross Anderson and others v Republic of Costa Rica, ICSID Case No. ARB(AF)/07/3, Award (19 May 2010). 3.41

Aucoven (Award)

- Autopista Concesionada de Venezuela v Bolivarian Republic of Venezuela, ICSID Case No. ARB/00/5, Award (23 September 2003). 5.58

Aucoven (Jurisdiction)

- Autopista Concesionada de Venezuela v Bolivarian Republic of Venezuela, ICSID Case No. ARB/00/5, Decision on Jurisdiction (27 September 2001) 6 ICSID Rep 417. 3.37, 3.78, 3.88, 3.157, 5.58–5.60, 6.18