

courts; in the former the incidents of the principle were rather more exiguous, but the principle applied with no less force for that reason. Inferences from principle are, perhaps, more typical of the Civil than of the Common Law. Crawford shows the breadth of his range by embracing this type of reasoning, and he does so in the manner of the open-minded common lawyer, showing how those principles have broadened slowly down from precedent to precedent. The marrying of these two registers is how one avoids international law ending up by being no more than a sum of so many incidents of state and judicial practice.

The general part of the law of state responsibility is no longer 'a code-less myriad of precedents'. By expertly and elegantly bringing out the principles under-girding the law, Crawford in *State Responsibility: The General Part* shows us that the law of state responsibility is so much more than a Tennysonian 'wilderness of single instances'. Perhaps that is why one finds it impossible not to like it *so much*?

EIRIK BJORGE

UNIVERSITY OF OXFORD

DOI: 10.7574/cjicl.03.02.207

Basic Documents on the Settlement of International Disputes.

Edited by CHRISTIAN J TAMS AND ANTONIOS TZANAKOPOLOUS.

Hart, Oxford, 2012. 838 pp. £45.00 (paperback).

As a general rule, the study of law centres on the study of texts. Within municipal legal systems this realization has long resulted in the production of the statute book, a helpful resource that collects the core documents of a certain discipline—contract law, tort law, public law, etc.—in the one place. Within such series, 'international law' is frequently the subject of a single volume (see e.g. M Evans, *Blackstone's International Law Documents* (10th edn, 2011)) and whilst this may be helpful at an undergraduate level, the international law academic or practitioner must often roam wider afield. Moreover, in the past 20 years or so, the notion of a coherent 'international law' has begun to break down, and the field is subjected to the same kind of specialization—terrorism, law of the sea, investment law, etc.—that has long been the hallmark of domestic legal systems. As such, the idea of a single volume of documents concerning international law generally is no longer helpful in more than an introductory capacity.

For this reason, the reviewer has been delighted in the past few years to observe the emergence of Hart's collection of specialized international law

statute books, *Documents in International Law*. Although such volumes have existed previously (particularly when considering human rights: see e.g. S Ghandi, *Blackstone's International Human Rights Documents* (8th edn, 2012)), Hart's efforts—to the best of the author's knowledge—are the first contemporary attempt to produce a coherent series along these lines. There are presently six volumes in the series, with more presumably to follow. This review focuses on one of the most recent and admirable of these, *Basic Documents on the Settlement of International Disputes*.

A word first on the topic itself. In the early 1980s, one might have been forgiven for thinking that the core texts of international dispute settlement could be arranged in a clear, bright line beginning with the Statute of the International Court of Justice (*ICJ Statute*) and stretching back to the Statute of the Permanent Court of International Justice (*PCIJ Statute*) and the 1899 and 1907 Hague Conventions on the Pacific Settlement on International Disputes (*Hague Conventions*). More esoteric or obsessive editors might even have allowed their memories to recede gracefully into the darkness with the 1871 Treaty of Washington that led to the *Alabama Claims (US v UK)* (1871) 29 RIAA 125, and the 1794 Jay Treaty that settled a range of disputes between the UK and US—even if after its conclusion it was so unpopular that Chief Justice Jay is said to have remarked that he could have ridden from Boston to Philadelphia solely by the light of his burning effigies. But the modern reality of international dispute settlement is different. In the past three decades, international law has seen an explosion of international courts and tribunals with the advent of dispute settlement under the UN Convention for the Law of the Sea (*UNCLOS*), the creation of the World Trade Organization (*WTO*) and its Dispute Settlement Understanding (*DSU*) and the vast expansion of investment treaty arbitration under a range of bilateral and multilateral investment agreements. Although on the one hand this has created apprehension as to the possible 'institutional fragmentation' of international law (see e.g. the results of the *MOX Plant* series of cases: R R Churchill, 'MOX Plant Arbitration and Cases', in R Wolfrum (gen ed), *Max Planck Encyclopedia of Public International Law* (online edn, 2007)), on the other it has enabled the study of international dispute settlement as a unified system and prompted the development of a range of specialist texts and other materials in the area (see e.g. J Collier & A V Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (1999); J G Merrills, *International Dispute Settlement* (5th edn, 2011); J Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012) ch 32).

In *Basic Documents on the Settlement of International Disputes*, Tams and

Tzanakopolous seek to aid and enhance the study of that system. As they acknowledge in their preface (v), such an aid has not previously existed beyond the two-volume (and extremely expensive) collection prepared by the Max Planck Institute in 2001 (K Oellers-Frahm & A Zimmermann (eds), *Dispute Settlement in Public International Law*, 2 vols (2nd edn, 2001)). The volume is divided into two broad parts: Part A on international dispute settlement in general, including the documents pertaining to the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA) and their predecessors; and Part B, which examines selected sectoral regimes.

Part A is divided into four further sections, the first of which deserves special comment. Entitled 'Foundational Documents', Section I helpfully sets out some of the earliest agreements pertaining to international dispute settlement, including the aforementioned Jay Treaty (Doc 1; 3) and Treaty of Washington (Doc 2; 7). Particularly encouraging is the inclusion of the Convention for the Establishment of the Central American Court of Justice (Doc 4; 35), the world's first permanent and international tribunal of plenary jurisdiction. The Court has been largely forgotten by modern international law, but proved particularly influential in the drafting of the PCIJ Statute (see further R R Cortado, 'Central American Court of Justice', in R Wolfrum (gen ed), *Max Planck Encyclopedia of International Law* (online edn, 2013)). The Section further includes the 1907 (though not the 1899) Hague Convention (Doc 3; 20), the 1928 General Act for the Pacific Settlement of International Disputes (Doc 5; 40), a series of General Assembly Resolutions concerning the settlement of international disputes, such as the Friendly Relations Declaration (Doc 7.a; 57), and a number of other influential instruments, such as the 1948 Pact of Bogotá (Doc 8; 69). However, a number of documents that might have been included were omitted—doubtlessly due to considerations of length. The Section does not include the PCIJ Statute itself—although given the similarities between the PCIJ and ICJ Statutes, this is understandable. In addition, and given its significance, one could perhaps complain that the procedural ordinances of the Central American Court of Justice were not included (see 1911 Regulations of the Central American Court of Justice (1914) 8 *AJIL Supp* 179; 1912 Procedural Ordinance of the Central American Court of Justice (1914) 8 *AJIL Supp* 194). A further potential addition might have been an example of the 1925 Locarno Treaties concluded between Germany and various Allied powers that influenced the 1928 General Act (further: J Lindley-French, 'Locarno Treaties', in R Wolfrum (gen ed), *Max Planck Encyclopedia of Public International Law* (online edn, 2007)). But on the whole, the Section is an excellent introduction to the early years of international dispute settlement, and any

attempt by the reviewer to suggest additions could fairly be described as captious.

Section 2 of Part A contains a collection of documents pertaining to the settlement of international disputes by diplomatic means (i.e. through conciliation or fact-finding commissions of inquiry) and has a particular focus on the various Rules produced by the PCA (Docs 10 and 14; 87 and 104). Curiously, although the Section includes the 1904 Agreement of Submission between the UK and Russia that led to the *Dogger Bank* inquiry (Doc 11; 92), it does not an example of the arguably more influential series of peace treaties concluded between the US and other nations at the instigation and direction of US Secretary of State William Jennings Bryan (further: G A Finch, 'The Bryan Peace Treaties' (1916) 10 *AJIL* 882; H-J Schlochauer, 'Bryan Treaties (1913–1914)', in R Wolfrum (gen ed), *Max Planck Encyclopedia of Public International Law* (online edn, 2007)), although this could be because these were activated only once and possessed little in the way of practical impact (see *Re Letelier and Moffitt (Chile v US)* (1992) 88 ILR 727). The Section also includes the full suite of documents concerning conciliation produced by the Organization for Security and Co-operation in Europe (Docs 16.a–d; 111–35).

Sections 3 and 4 concern the ICJ and PCA respectively. Section 3 is impressively thorough, including not only the Court's Statute (Doc 17.a; 137), Rules of Procedure (Doc 17.b; 148), Practice Directions (Doc 17.c; 177) and other framework documents, but examples of the ways in which the ICJ's jurisdiction might be activated. The Section includes the Special Agreements used in *Gabčíkovo-Nagymaros Project (Hungry/Slovakia)*, ICJ Reports 1997 p 7 (Doc 18.a; 188) and *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, ICJ Reports 1969 p 3 (Doc 18.b; 190) and three examples of compromissory clauses, namely the 1971 Montreal Convention (Doc 19.a; 193), the 1961 Optional Protocol to the Vienna Convention on Diplomatic Relations (Doc 19.b; 194) and the 1955 US–Iran Treaty of Amity, Economic Relations and Consular Rights (Doc 19.c; 195). It further includes a number of Optional Clause declarations, some recently contested (Docs 20.a – e; 195–199), and several requests for advisory opinions (Docs 21.a–c; 201–203). With respect to the latter, Tams and Tzanakopolous might be chastised slightly for not including more recent examples—neither the reference giving rise to *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004 p 136 nor *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, ICJ Reports 2010 p 403 have been included. The editors should, however, be praised for including the two requests underpinning *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, ICJ Reports 1996 p 66 and *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports

1996 p 226, giving readers the opportunity to contrast the failure of the former with the success of the latter.

Section 4 on the PCA has already been rendered sadly out of date by the conclusion of the 2012 PCA Arbitration Rules (<pca-cpa.org/> [accessed 27 October 2013]), but the editors cannot be held responsible for this given the likely publication deadline and at any rate, the Rules are easily accessed electronically. The Section is commendable, however, for its inclusion of two agreements activating the PCA's jurisdiction under the 1907 Hague Convention and concluded some 78 years apart: the 1925 agreement that led to the celebrated decision of Arbitrator Huber in *Island of Palmas (US v Netherlands)* (1928) 2 RIAA 829 (Doc 23.a; 219) and the 2003 submission on which the award in *Iron Rhine (Belgium v Netherlands)* (2005) 27 RIAA 35 was based (Doc 23.b; 222). These, in their own way, subtly demonstrate the longevity of the PCA, as well as its resurgent relevance after a long period of hibernation.

Part B of the volume concerns the various sectoral regimes that underpin concerns surrounding the fragmentation—substantive and institutional—of international law (see J Crawford, *Chance, Order, Change: The Course of International Law* (2013) ch 9). The Part comprises eight Sections, each dealing with a different field, and it is here that the reviewer senses that the editors' task in determining which texts to include became truly invidious. Section 5, concerning human rights, reflects this quandary. Subsection (a) includes documents pertaining to the investigative frameworks under the major universal human rights conventions (International Covenant for Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights et al) (Docs 26.a–30.b; 232–284), When considering the major regional mechanisms, subsection (b) includes documents pertaining to the European Convention on Human Rights (Docs 31.a–c; 285–337), the African Charter on Human and People's Rights (Docs 32.a–b; 337–48), and the American Convention on Human Rights (Doc 33; 348–57), but there appears to have been insufficient space to include documents detailing the procedure of the African Court on Human and Peoples' Rights or the Inter-American Court of Human Rights. Subsection (c), for its part, contains those documents establishing and elaborating on the UN Human Rights Council (Docs 34.a–b; 358–78).

Sections 6–8 delve into issues concerning international economic law and regional integration. Section 6 contains the expected range of documents concerning the WTO and DSU (Docs 35.a–d; 379–419), whilst Section 7 concerns international investment law. Focus in this respect is properly placed on the documents surrounding the International Centre for the Settlement of Investment Disputes (*ICSID*) (Docs 36.a–e; 421–71), but the reviewer was surprised to see that the ed-

itors included only the 2010 iteration of the Arbitration Rules of the UN Commission on International Trade Law (*UNCITRAL Rules*) (Doc 37; 471) when the original 1976 version remains embedded in a large number of bilateral and multilateral investment agreements. Whilst it is to be expected that the editors would be somewhat forward-looking in selecting documents, it seems likely that the 1976 *UNCITRAL Rules* will continue their dominance as the default procedural ordinance in non-ICSID investment arbitration for some time to come—absent the contrary agreement of the parties in individual cases (see e.g. *Philip Morris Limited Asia Limited (Hong Kong) v Australia*, PCA Case No 2012-12 (Procedural Order No 1, 7 June 2012) para 4.1). The Section also includes excerpts from the major multilateral investment agreements—the North American Free Trade Agreement (Doc 38; 487) and the Energy Charter Treaty (Doc 39; 498)—but understandably excludes other, less well-arbitrated regimes. Less understandable is the decision to exclude from the series of examples of dispute settlement provisions in bilateral investment agreements (*BITs*) (Docs 40.a–d; 509–26) any excerpt from the 1997 Netherlands Model BIT that has underpinned a large number of subsequent agreements. But such omissions are on the whole inconsequential, and in any event, readers requiring greater depth in investment law may be directed to the equally excellent collection in the same series, M Paparinskis (ed), *Basic Documents on International Investment Protection* (2012). Section 8 concerns dispute resolution in regimes of regional and sub-regional integration. Unsurprisingly, this includes the basic documents on the European (Docs 42.a–c; 531–54) and African Unions (Docs 43.a–b; 554–66), as well as those relating to the Economic Community of West African States (Docs 44.a–b; 566–72) and the Gulf Cooperation Council (Docs 45.a–b; 572–4).

Sections 9 and 10 contain a broad range of documents concerning dispute resolution in the law of the sea and environmental law. The former contains the optional dispute settlement protocol connected to the 1958 Geneva Conventions produced at the First UN Conference on the Law of the Sea (Doc 46; 575), as well as excerpts from *UNCLOS* concerning the International Tribunal for the Law of the Sea (*ITLOS*), and arbitration under Annexes VII and VIII (Docs 47.a–f; 576–638). It further includes excerpts from the Straddling Stocks Agreement (Doc 48; 638) as an example of an agreement bestowing jurisdiction on *ITLOS* per *UNCLOS* Article 288(2), as well as an agreement that frustrated the jurisdiction of an Annex VII tribunal (see *Southern Bluefin Tuna (Australia v Japan; New Zealand v Japan)*, Jurisdiction and Admissibility (2000) 119 ILR 508), the Convention for the Conservation of Southern Bluefin Tuna (Doc 49; 640). As with the Section on investment law, readers seeking a more detailed understanding on

the area should refer to A V Lowe and S A G Talmon (eds), *The Legal Order of the Oceans: Basic Documents on the Law of the Sea* (2009). Section 10 contains excerpts concerning dispute resolution for a number of relevant environmental law regimes, including on climate change (Docs 50.a–d; 645–66), the ozone layer (Docs 51.a–d; 666–72), the trade in endangered species (Docs 52.a–d; 672–83) and the marine environment (Docs 53.a–b; 683–97).

Finally, Sections 11 and 12 concern disarmament, arms control and non-proliferation and the aftermath of crises. As might be expected, the former is concerned with the various treaty regimes concerning the control of forbidden and otherwise regulated arms, i.e. biological weapons (Doc 54; 699), chemical weapons (Docs 55.a–b; 700–15) and land mines (Doc 58; 753). The bulk of the Section, however, is given over to the various documents concerning nuclear non-proliferation (Docs 56.a–57.b; 715–53). The latter Section deals with *inter-state* dispute resolution following conflict—for this reason the constituent documents of the signal international criminal tribunals and the International Criminal Court have been excluded, perhaps to the benefit of another volume in the series. Encouragingly, the Section includes the relevant provisions of the 1919 Treaty of Versailles that established the inter-war mixed arbitral tribunals that influenced modern investor-state arbitration (Doc 59; 759). Beyond this, the Section largely concerns the influential international claims and compensation bodies, i.e. *ad hoc* bodies established to assess claims and compensation between states arising out of a specific situation of conflict (*Brownlie's Principles*, above, 733–4). The Section accordingly addresses, *inter alia*, the Iran-US Claims Tribunal (Docs 62.a–b; 766–89), the UN Compensation Commission (Docs 63.a–c; 789–805) and the Eritrea-Ethiopia Claims and Boundary Commissions (Docs 64.a–c 805–28).

What then, to conclude? Put simply, the reviewer acknowledges the difficult task with which the editors of *Basic Documents on the Settlement of International Disputes* were faced—how to deal with a newly-emergent and cross-cutting discipline within international law in a manner that is comprehensive but not unwieldy? In the reviewer's opinion, Tams and Tzanakopolous have succeeded admirably in their task. No substantive area of international dispute settlement has been left untouched, and one is left with the impression that a considered expertise has been brought to bear in the selection of the material.

The reviewer—who spends a not inconsiderable amount of time engaged in a similar field—is happy to have this volume within arm’s reach, and encourages others interested in the field to do the same.

CAMERON MILES
UNIVERSITY OF CAMBRIDGE
DOI: 10.7574/cjicl.03.02.195

