

Arbitrating for Peace: The Seminar

Introductory remarks by the Moderator, Professor Ove Bring
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Dear Participants,

Most international arbitrations are commercial and involve private enterprises. But we have now entered the scene of public international law and inter-State relations. The international community has used arbitration, mediation and other peaceful methods of dispute settlement for centuries. I hope you will forgive me for in the following lifting forward the Swedish and Scandinavian contributions to the history of arbitration.

Already in 1343 the kings of Sweden and Denmark, Magnus Eriksson and Valdemar Atterdag, concluded an arbitration agreement. They established a tribunal consisting of 24 bishops and knights – 12 to be appointed by each king. The Archbishop of Lund was to act as a super-arbitrator. But, as far as we know, this system was never used.

A modern origin of inter-State arbitration was the Jay Treaty of 1794, named after the US Secretary of State John Jay. This Treaty between Great Britain and the United States set up an arbitral body that dealt with unsettled issues after the American War of Independence. It rendered over 500 awards up to the year 1804.

But the real modern breakthrough for arbitration occurred in 1872 when the Alabama Claims between the US and Britain were settled by a commission in Geneva. This was a great inspiration for the emerging international peace movement. And – as a consequence – two non-governmental bodies for the development of international law were established the following year. I am thinking of the *Institut de droit international* and the *International Law Association*, which were both founded in 1873.

The Alabama claims arose from the British failure to respect the law of neutrality during the American civil war and concerned compensation for sunken ships. 64 US vessels had been sunk by the *CSS Alabama* and 12 other ships launched from shipyards in England. The British Government was ordered to pay a huge sum of money – not even matched by the Yukos cases of 2014. In fact, the Yukos arbitration and its award of 50 billion dollars make a modest impression in comparison. But the Alabama claims were special, because at the time they produced a real threat to international peace and security. This explains why the award was accepted and the money paid – and paid immediately.

The Swedish author August Strindberg, in 1884, incorporated the success of the Alabama case in one of his short stories. In the text he lets an Englishman, on vacation at Lake Geneva, lift a glass of champagne and, as fireworks light up the evening sky, he announces the following:

Ladies and gentlemen, I have just been informed that the international tribunal at Geneva has concluded its work. A war is prevented. Hundreds of thousands of Englishmen and Americans may have to celebrate this day due to the fact that they are still alive. The Alabama conflict has been settled, not to the advantage of America but to the benefit of international justice, and not to the injury of England, but for the good of future generations [unquote].

The short story in question, called *Remorse*, was translated and published in a number of publications in Europe in the late 1800's and the early 1900's. Much later, in September 1988, at the conclusion of the Taba arbitration between Egypt and Israel, the words of August Strindberg were quoted in the Alabama room in the Hotel de Ville in Geneva. Not surprisingly, this literary initiative in a judicial setting was taken by the Swedish president of the tribunal, the famous judge Gunnar Lagergren. He had a keen listener in the Egyptian arbitrator, Professor Hamid Sultan. Sultan obviously informed his foreign minister Boutros Boutros-Ghali on what he had heard. Boutros-Ghali, later to become the Secretary-General of the United Nations, told reporters that the Taba award is [quote] "not a victory for one side and a loss for the other, but a consolidation of the peace process" in the interest of both Egypt and Israel. So, here we may find a Swedish contribution to the *rhetoric* of peaceful settlement of disputes, a confirmation of the *usefulness* of what Gunnar Lagergren has called "the noble art of international arbitration".

An early contribution to the *practice* of interstate arbitration was made by Sweden and Norway in the wake of the Hague Peace Conferences of 1899 and 1907. These conferences established the Permanent Court of Arbitration (PCA) with its Secretariat in the Hague. Already in 1908 Sweden and Norway submitted a maritime boundary dispute to the Hague. It was the Grisbådarna dispute concerning the right to lobster fishing in certain areas. The following year an award was delivered. The tribunal assigned the Grisbådarna banks to Sweden and a smaller area to Norway. The award was complied with by both parties.

The principle of peaceful settlement of disputes was to develop as a norm of international law. Since 1945 the United Nations Charter, in Article 33, provides for the settlement of disputes by arbitration, mediation, fact-finding, or other peaceful means.

At the time when I was a young law student, I one day read a newspaper story that interested me. I cut it out of the paper. This was in December 1965 and the article was about the Rann of Kutch dispute between India and Pakistan. The Secretary General of the United Nations had appointed a national judge, the President of the Court of Appeal for Western Sweden in

Gothenburg, to chair an arbitration tribunal. It was the first time I came across the name of Gunnar Lagergren. The Rann of Kutch arbitration was successfully concluded here in Stockholm in 1969.

In 1981 the Iran – United States Claims Tribunal was established in The Hague. We will soon hear about the background. The Tribunal was to consist of three Americans, three Iranians and three neutral judges. The first set of neutral judges was Pierre Bellet of France and two Swedes, Nils Mangård and Gunnar Lagergren. Lagergren was appointed the first president. The Iran – US Claims Tribunal has successfully handled about 3 700 cases and it may soon have concluded its work.

This Seminar will first deal with two famous arbitrations and we will hear two student reporters give us a summary of them. One is the Iran – US Claims Tribunal, but we will start with the Taba arbitration. After each summary we will listen to an eminent expert giving his comments. Dr. Elaraby will comment on the Taba case and Dr. Kazazi will comment on the Iran – US Claims Tribunal.

After that we will have a break. After the break we will hear a panel discussing the potential, the experiences and the future of inter-State arbitration. Our theme this morning is, as you know, “Arbitrating for Peace.”