Foreword

Settling disputes lies at the heart of the legal enterprise. Law seeks to structure, order and facilitate the interactions between those subject to its reach. Providing means and mechanisms for resolving the inevitable conflicts and difficulties which such regulation generates is an essential attribute of an effective legal system. Yet all too often the question of what comprises an effective system of dispute resolution in the international arena becomes focussed on the presence—or on the absence—of courts; on the scope—or on the restrictions on the scope—of their jurisdiction; and on the capacity to enforce—or, more usually, the lack of capacity to enforce—their decisions or judgments. All of the above, and more besides, are of course vitally important questions which contribute to a critique of international dispute settlement. However, there is very much more to be considered and the work of Professor Merrills has played a seminal role in broadening our understanding of the processes of dispute settlement. These Essays honour that work by further illustration and illumination of the complexities involved.

At one level, that complexity is reflected in the forms of dispute settlement available—the political, the non-judicial, the quasi-judicial and the judicial itself. In this the international legal system follows domestic systems, all of which have variants of such approaches nuanced to reflect the nature of the disputes in question and the subjects which they serve. However, the consensual and dispersed nature of the sources of international legal obligation pose an additional challenge which is not faced in so stark a fashion by municipal systems. States have proven adept at constructing bespoke systems of dispute resolution concerning particular forms of subject matter or which are operable within particular treaty regimes, or within particular regional contexts or within international organisations. Overlaying all of this are the more general principles of State responsibility and means of accountability, both through international claims and, ultimately, the threat or use of a coercive or forceable response.

Those unfamiliar with international law sometimes point to the dearth of judicial fora having a general and compulsory jurisdictional reach as evidence of its poverty as a system of legal control. An alternative view is that the nature of the international legal enterprise is such that issues of 'dispute resolution' pervade all of its aspects and are already embedded in its systems of norm generation, of patterns of obligation and responsibility, of its interface with domestic legal systems, both public and private, and of course with political agencies, national and international.

A further complexity arises from a changing understanding of what might be called the purpose of international law. From being generally understood as a fairly static system which primarily spoke to the interactions between States and operated to fill what would otherwise be the vacuums between, it has become a venue for the generation of forms of international public policy which reach back into the States themselves. Just as the public policy of States exists to inform the regulation of the private, so does international law increasingly concern itself with matters previously thought well beyond its practical reach. As international legal discourse increasingly becomes a venue for policy debate and social control, the need becomes all the greater for appropriately nuanced and suitably affective means of addressing the disputes which are the product of the constraints which are generated.

Settling disputes is not just about 'settling disputes'. It is also about how issues are addressed, regulated and engaged with. It is about *how* law is generated, about *what* law is generated and about the manner in which it is engaged with and responded to. It is also about the means and mechanisms for solving problems and adjudicating outcomes, of securing remedies and securing the interests of those who it is there to serve. All of these themes, and more besides, permeate the work of Professor Merrills and are properly and appropriately reflected in the contributions to this collection in his honour, which it is an honour to introduce.

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July 2009

Preface

Professor John Merrills has a worldwide reputation as a scholar of international law. His impressive writing and work in international law is itemised towards the end of this book. His reputation was built from Sheffield University, where he started as an Assistant Lecturer in 1964, becoming Professor of Public International Law in 1985 until his retirement in 2007. John Merrills remains active within the Law School as an Emeritus Professor. It is fitting that a collection of essays in his honour should combine contributions from international lawyers both from Sheffield and elsewhere. Sheffield's reputation as a centre for international legal research owes a great deal to John Merrills.

Professor John Merrills has written widely on International Law and Human Rights Law, but is probably best known for his work on the settlement of international disputes, evidenced by the enduring appeal of his leading text *International Dispute Settlement* published by Cambridge University Press and now in its fourth edition. In this book Professor Merrills divided dispute settlement up into diplomatic and non-judicial methods (negotiation, mediation, inquiry, conciliation), and legal or judicial methods such as (arbitration and international tribunals). Later chapters examined the delicate relationship between legal and diplomatic methods in the law of the sea and in international trade. The book finishes with a review of political institutions (the UN and regional organisations) and their roles in dispute settlement.

The idea behind this collection of essays is not to reproduce Professor Merrills' seminal text on dispute settlement—that would not be possible—but in a way to try to complement it by further exploring by means of a number of different perspectives the area of legal and judicial means and methods of settling disputes, specifically new problems and new techniques in these areas. It re-considers the role of international courts and tribunals, but also looks at other quasi-judicial methods (trade disputes under the WTO, the human rights committees, even the Security Council) as well as alternative processes of dispute resolution involving third parties such as ombudsmen and inspection panels. In so doing it inevitably raises wider issues of responsibility, accountability and access to justice, all themes that Professor Merrills has contributed significantly to during his academic career.

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