Part II

Generalities
The first question that may face an international arbitral tribunal after it has been constituted is whether it has jurisdiction (compétence) to determine its own jurisdiction (compétence), i.e., whether it has power to decide whether it may proceed with the judicial settlement of the particular case (la compétence de la compétence). It is not a question that generally must be decided unless the matter is raised. Indeed, in many cases, tribunals have simply decided on their jurisdiction.

History

As early as 1796 in the proceedings in the Betsey Case, decided under the Jay Treaty of 1794 between Great Britain and the USA there arose for the first time a difference of opinion especially as to the power of the Commission to determine for itself to what cases its jurisdiction extended.¹ While there was disagreement among the Commissioners the Lord Chancellor of Great Britain expressed the view that any doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd and that they must necessarily decide whether cases are within or without their competency.² The matter did not go any further and the tribunal on the basis that the disagreement did not exist anymore whether among the commissioners or between the parties proceeded to settle the question of its jurisdiction.³ However, the principle itself that a tribunal has jurisdiction to decide on its own

¹ See Moore, 4 International Adjudications, Modern Series (1931) p. 82.
² Moore, ibid. p. 85.
³ In an earlier arbitration under the Jay Treaty the issue of la compétence de la compétence had arisen and resulted in arbitrators withdrawing because of disagreement: see Moore, 3 History and Digest of International Arbitrations (1898) p. 2277. In the Betsey Case the two American Commissioners expressed views in favour of la compétence de la compétence.