5. INTERNATIONAL LAW AND TERRITORIAL BOUNDARIES

1. INTRODUCTION

Few issues strike so profoundly at the heart of national sovereignty than the determination of conflicting territorial claims by states and of the land boundaries that lie between them.\(^1\) It is therefore unsurprising that territorial and boundary disputes have been a primary stimulant to the evolution of international law itself. The major international courts, the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ), along with international arbitral tribunals, have identified and articulated legal principles to delimit boundaries and decide on the relative strength of disputed claims; principles that derive from customary and treaty-based law and have a general application well beyond individual disputes. The docket of the ICJ has been and continues to be occupied by what Oxman (2006:830) has termed the irresistible ‘territorial temptation’ both to land claims and to an extended maritime jurisdiction. Indeed, it has been estimated that about one third of the contentious cases before the ICJ have dealt with boundary disputes of one kind or another (Ratner 1996:814).

This chapter is concerned with the legal principles applicable to territorial, as distinct from maritime, boundary delimitations that have evolved from the decisions of international courts and tribunals. While the aim is to search for the core legal principles of international law, it should be admitted at the outset that many boundaries established during the colonial period were drawn by ‘a blue pencil and a rule’ (Anene 1970:3). As the British Foreign Minister Lord Salisbury was reported to have said in *The Times* on 7 August 1890:

> We have been engaged... in drawing lines upon maps where no white man’s feet have ever trod; we have been giving away mountains and rivers and lakes to each other, but we have only been hindered by the small impediment that we never knew exactly where those mountains and rivers and

The imprecision of these early colonial boundaries has led to contemporary disputes that international tribunals have been called upon to resolve on international legal principles, the Iraq-Kuwait conflict being a typical example. Delimitation will usually be 'contextually appropriate' (Reisman 1999:679). This means that, in determining the content of this body of law, tribunals will examine the jurisprudence developed by earlier courts, the treaty and other practices of states and the views of jurists. Tribunals will also apply general principles of law such as equitable concepts of acquiescence and estoppel and will take into account geographical, ethnographical and economic factors. More recently, developed norms such as the right to self-determination and the rights of indigenous peoples also have a contemporary influence on the application of traditional approaches to questions of sovereignty and boundaries.

While the object of this chapter is to identify the normal rules that determine the outcome of territorial boundary disputes, it is recognized that overwhelmingly the allocation of boundaries is achieved through diplomatic negotiations that are subsequently reflected in treaties or in consensus-based state practice (Ratner 1996:813). Of 348 territorial disputes between 1919 and 1995, only 30 were submitted for adjudication (Allee & Huth 2006:219-212). The legal principles that are employed by international tribunals may not therefore determine where states successfully negotiate a frontier for themselves or where mediation has unlocked an impasse over claimed rights. Rather, factors such as history, culture, perceptions of 'rightfulness', prior administrative lines, presence in the area of tribal and language groups, access to natural resources and respective political power may be significantly more influential in facilitating agreement on the final line. For these reasons, this chapter presents a relatively narrow aspect of boundary delimitation; that is, the legal jurisprudence that is part of wider state practice that has been set out in the earlier chapters.

While a dispute about the location of a boundary is, in principle, different from a question as to ownership of title to territory, a determination that sovereignty lies with one state rather than another has necessary consequences for the location of the frontier between them. In practice, disputes almost always arise in the broader context of territorial sovereignty in the region of the claimed boundary. In the Cameroon v Nigeria (2002) case, for example, the ICJ was asked to decide not only which state had the better title to territory but also to delimit the boundary in the disputed Bakassi Peninsula. The court delimited the boundary by reference to detailed evidence going to the issue of sovereignty. As the law governing title to territory has implications for the delineation of boundaries, it is therefore important additionally to consider the international rules that govern the acquisition of territorial sovereignty.

The following aspects of international law as they relate to boundary disputes are discussed: