

PREFACE

For the academic year 1986–1987 the University of Utrecht honoured me with an invitation to serve in its Institute of International Law as the Belle van Zuylen Professor in the Humanities. One of my duties there was to give a course of lectures and seminars on the International Court of Justice, within the context of the syllabus of *capita selecta*. I decided to make use of the excellent library facilities available in The Netherlands to undertake my own study of the phenomenon of intervention in the International Court of Justice. This had recently come into prominence as a result of the requests for permission to intervene submitted by third States in the complicated proceedings concerning the delimitation of the continental shelf of Libya. A series of decisions by the Court since 1973, on both Article 62 and Article 63 of the Statute of the Court, had given rise to a great deal of controversy, at times emotional.

I had waited before completing and publishing the results of my researches until the dust had settled, and this book was ready for publication when Nicaragua's intervention in the *Land, Island and Maritime Frontier Dispute* case between El Salvador and Honduras before a Chamber of the International Court raised a number of new issues and required the production of the book to be suspended. The proceedings leading up to the admission of that intervention and the subsequent proceedings and judgment on the merits made it necessary for me to re-examine the whole work, and in effect led to a thorough revision of my original text.

In approaching the subject, I soon reached two conclusions. The first was that in order to understand the attitude of the Court today in applying the provisions of Articles 62 and 63 of the Statute, considerable importance attaches to their legislative history. In the *Barcelona Traction* (Preliminary Objections) case the Court referred to the "drafting records" of certain provisions of the Rules of Court under consideration there.¹ The second conclusion was that examination of the decisions of the Court in intervention proceedings incidentally and in isolation from the case as a whole could

¹ [1964] ICJ Rep. 6, 19.

put the material out of focus. The Court's position in a case of intervention can only be fully assessed in the context of the proceedings as a whole, when the real influence of the intervention phase on the final decision comes into the open.

In addition, I have felt, from my participation in the United Nations Conferences on the Law of Treaties (1968–1969) and on the Law of the Sea (1973–1982), that the manner in which those Conferences faced the issue of third party intervention in international judicial and analogous proceedings for the pacific settlement of disputes which were being envisaged in those negotiations could add a new dimension, that of modern diplomacy, to an understanding of the difficulties posed – for the Court, for individual States, and for their legal advisers – by the institution of intervention.

Most of the initial research for this book was undertaken at Utrecht, in the very complex of buildings in which the Treaty of Utrecht of 1713 was negotiated. I owe a special word of thanks to Professor Wybo P. Heere, amongst his other duties he is also Librarian of the International Law Library at Utrecht, and to his colleagues for their unfailing and willing assistance to me. Professor Heere also rendered a great service in helping to prepare the Index, and I am grateful to him for agreeing to include this work in the distinguished series of *Nova et vetera juris gentium* of the University of Utrecht. I also take this opportunity to express my deep appreciation for the long-time and cheerful aid that I have received from the Librarians and staff of the Peace Palace Library at The Hague. My association with that Library, both professional and academic, goes back to the early 1950s. The later research was conducted mainly in the International Law Library of the University of Virginia, in Charlottesville.

Research in the Royal Netherlands Archives, with particular reference to the T.M.C. Asser papers, was undertaken by my research assistant at Utrecht, Mr. Philip Nieuwenhuizen, to whom I am grateful. I also enjoyed the helpful company and friendship of Dr. T. Gill, Assistant Professor of International Law in the University of Utrecht, and of other friends and colleagues of the Faculty.

A very preliminary version of the outcome of my researches in Utrecht was published in my article "Some Reflections on Intervention in the International Court of Justice" in 34 *Netherlands International Law Review* 75 (1987). That was a lecture delivered in the Peace Palace under the auspices of the T.M.C. Asser Institute, on 12 December 1986. Later developments have rendered parts of that lecture obsolete. I need make no excuses if further examination of the problem has caused me to refine my own opinions.

I am also grateful to Mr Alan Stephens and Ms Annebeth Rosenboom, of Martinus Nijhoff Publishers B.V., for their care in seeing this book through the press.