Table of Contents

Foreword xv
Judge Shigeru Oda: Biographical Note xvii
Judge Shigeru Oda: Select Bibliography xix
List of Contributors xxi
List of Abbreviations xxix

VOLUME I

I. A Tribute to Judge Oda

Judge Gilbert Guillaume
President of the International Court of Justice, on behalf of the Court
Tribute of the International Court of Justice to Judge Shigeru Oda 3

II. The International Judge

Kinji Akashi
Japanese Predecessors of Judge Oda in the World Courts: Works and Method 9

Karl Doehring
Zur Befangenheit internationaler Richter 23

Yoichi Higuchi
Le problème de la légitimité du juge international à la lumière de la comparaison avec le problème de la légitimité du juge constitutionnel national 31

Edward McWhinney
The Many Capacities of Shigeru Oda as International Law-Maker: Publicist, Jurisconsult and Judge 41

Michael Reisman
Judge Shigeru Oda: Reflections on the Formation of a Judge 57
**Table of Contents**

**Hugh Thirlway**  
Judicial Activism and the International Court of Justice 75

**N. Valticos**  
Pratique et éthique d’un juge *ad hoc* à la Cour internationale de Justice 107

**III. The International Court of Justice and International Law: Development, Doctrines and Sources**

**M. A. Fitzmaurice**  
The Corfu Channel Case and the Development of International Law 119

**Hazel Fox**  
The International Court of Justice’s Treatment of Acts of the State, and in Particular the Attribution of Acts of Individuals to the State 147

**Ko Swan Sik**  
The Attitude of Asian States Towards the International Court of Justice Revisited 165

**R. St. J. Macdonald**  
A Short Note on the Interpretation of the Charter of the United Nations by the International Court of Justice 177

**Onuma Yasuaki**  
The ICJ: An Emperor Without Clothes? International Conflict Resolution, Article 38 of the ICJ Statute and the Sources of International Law 191

**Betsy Röben**  
Judge Shigeru Oda on the Making of International Law 213

**Takane Sugihara**  
The International Court of Justice – Towards a Higher Role in the International Community 227

**Toshiya Ueki**  
Responsibility of International Organizations and the Role of the International Court of Justice 237
Sir Arthur Watts
The International Court and the Continuing Customary International Law of Treaties 251

IV. Individual Judgments of the International Court of Justice

Vaughan Lowe
Shareholders' Rights to Control and Manage: From Barcelona Traction to ELSI 269

Brigitte Stern
Les questions de succession d'États dans l'affaire relative à l'Application de la Convention pour la prévention et la répression du crime de génocide devant la Cour internationale de Justice 285

Prosper Weil
Les hauts-fonds découvrants dans la délimitation maritime À propos des paragraphes 200-209 de l'arrêt de la Cour internationale de Justice du 16 mars 2001 en l'affaire de la Délimitation maritime et questions territoriales entre Qatar et Bahreïn 307

José A. de Yturriaga
The ICJ's Judgment on the Fisheries Jurisdiction Case 323

Karl Zemanek
Re-examining the Genocide Opinion: Are the Object and Purpose of a Convention Suitable Criteria for Determining the Admissibility of Reservations? 335

V. The Jurisdiction of International Tribunals

Charles N. Brower and Pieter H. F. Bekker
Understanding “Binding” Advisory Opinions of the International Court of Justice 351

Rudolf Bernhardt
Vorbehalte bei völkerrechtlichen Verpflichtungserklärungen und die gerichtliche Kontrolle derartiger Vorbehalte 369
Christian Dominicé
La compétence *prima facie* de la Cour internationale de Justice aux fins d'indication de mesures conservatoires 383

J. A. Frowein
Reciprocity and Restrictions Concerning Different Optional Clauses 397

Giorgio Gaja
Deliberating on Questions of Jurisdiction in the International Court of Justice 409

Mariko Kawano
The Optional Clause and the Administration of Justice by the Court 419

J. G. Merrills
The Optional Clause at Eighty 435

Kaoru Obata
The Relevance of Jurisdiction to Deal with the Merits to the Power to Indicate Interim Measures: A Critique of the Recent Practice of the International Court of Justice 451

Francisco Orrego Vicuña
The Legal Nature of the Optional Clause and the Right of a State to Withdraw a Declaration Accepting the Compulsory Jurisdiction of the International Court of Justice 463

Alain Pellet
La CIJ et les réserves aux traités
Remarques cursives sur une révolution jurisprudentielle 481

Shabtai Rosenne
Provisional Measures and Prima Facie Jurisdiction Revisited 515

Renata Szafarz
The Modification of the Scope of ICJ Jurisdiction in Respect of Poland 545

Peter Tomka
The Special Agreement 553
VI. The Proliferation of International Tribunals

*Hugo Caminos*
The Creation of Specialised Courts: The Case of the International Tribunal for the Law of the Sea 569

*Hisakazu Fujita*
Chevauchements juridictionnels et tribunaux internationaux 575

*Gerhard Hafner*
Der Internationale Gerichtshof und der Internationale Strafgerichtshof: Konkurrenz oder Ergänzung? 587

*Jean-Pierre Quéneudec*
Coup d'œil rétrospectif sur les origines du Tribunal International du Droit de la Mer 621

*Mohamed Shahabuddeen*
Consistency in Holdings by International Tribunals 633

*Rüdiger Wolfrum*
Konkurrierende Zuständigkeiten internationaler Streitentscheidungsinstanzen: Notwendigkeit für Lösungsmöglichkeiten und deren Grenzen 651

VII. The International Tribunal for the Law of the Sea and Related Maritime Dispute Settlement Procedures

*P. Chandrasekhara Rao*
The International Tribunal for the Law of the Sea: An Evaluation 667

*Günther Jaenicke*
The Interpretation of the Law of the Sea Convention in the Jurisprudence of the International Tribunal for the Law of the Sea 683

*Barbara Kwiatkowska*
The Southern Bluefin Tuna Award (Jurisdiction and Admissibility) 697
Table of Contents

Yoshio Otani
Quelques réflexions sur la juridiction et la recevabilité vis-à-vis de l'Affaire du thon à nageoire bleue 731

Stephen M. Schwebel
The Southern Bluefin Tuna Case 743

Tullio Treves

Chusei Yamada
Priority Application of Successive Treaties Relating to the Same Subject Matter: The Southern Bluefin Tuna Case 763

Alexander Yankov
Irregularities in Fishing Activities and the Role of the International Tribunal for the Law of the Sea 773

VOLUME II

VIII. International Litigation: Strategies, Rules and Procedures

David Anderson
Trust Funds in International Litigation 793

Sir Franklin Berman
The Uses and Abuses of Advisory Opinions 809

Ian Brownlie
Why Do States Take Disputes to the International Court? 829

Jean-Pierre Cot
Appearing “for” or “on behalf of” a State: The Role of Private Counsel Before International Tribunals 835

Yoram Dinstein
Deprivation of Property of Foreigners under International Law 849

Yuji Iwasawa
Third Parties Before International Tribunals: The ICJ and the WTO 871
Sir Robert Jennings
The Differences Between Conducting a Case in the ICJ and in an ad hoc Arbitration Tribunal - An Inside View 893

Akira Kotera
On the Legal Character of Retaliation in the World Trade Organization System 911

Roy S. Lee
Towards a More Proactive System of Dispute Settlement 923

François Rigaux
Les demandes reconventionelles devant la Cour internationale de Justice 935

Henry G. Schermers
Exhaustion of Domestic Remedies 947

Christian Tomuschat
The 1928 General Act for the Pacific Settlement of International Disputes Revisited 977

Santiago Torres Barnárdez
Bilateral, Plural and Multipartite Elements in International Judicial Settlement 995

IX. Land and Maritime Boundaries, International Watercourses and Other Waters

Jonathan I. Charney
International Maritime Boundaries for the Continental Shelf: The Relevance of Natural Prolongation 1011

Hungdah Chiu
The Problem of Delimiting the Maritime Zone Between China (Mainland and Taiwan) and Japan 1031

Ryuichi Ida
The Role of Proportionality in Maritime Delimitation Revisited: The Origin and the Meaning of the Principle from the Early Decisions of the Court 1037
Table of Contents

Stephen C. McCaffrey
International Watercourses in the Jurisprudence of the World Court 1055

Maurice Mendelson
On the Quasi-Normative Effect of Maritime Boundary Agreements 1069

Masahiro Miyoshi
Considerations of Equity in Maritime Boundary Cases Before the International Court of Justice 1087

Kazuhiro Nakatani
Oil and Gas in the Caspian Sea and International Law 1103

M. C. W. Pinto
Maritime Boundary Issues and Their Resolution: An Overview 1115

Walter Rudolf
Deutsche Seegrenzen 1143

Oscar Schachter
Linking Equity and Law in Maritime Delimitation 1163

Ignaz Seidl-Hohenveldern
The Austrian Continental Shelf 1169

Bruno Simma and Daniel-Erasmus Khan
Peaceful Settlement of Boundary Disputes under the Auspices of the Organisation of African Unity and the United Nations: The Case of the Frontier Dispute Between Eritrea and Ethiopia 1179

Jon M. Van Dyke
Judge Shigeru Oda and Maritime Boundary Delimitation 1197

X. The Law of the Sea

Milenko Kreća
A Few Remarks on the Theoretical Basis of the New Law of the Sea 1207
Chiyuki Mizukami
Changes in Japan’s Policy on the Law of the Sea 1217

L. D. M. Nelson
The Continental Shelf: Interplay of Law and Science 1235

Jordan J. Paust
Waves Within and Outside the Law of the Sea: Traversing Gaps, Ambiguities and Priorities 1255

Natalino Ronzitti
Coastal State Jurisdiction over Refugees and Migrants at Sea 1271

Sompong Sucharitkul
The Intertemporal Character of International Law Regarding the Ocean 1287

Budislav Vukas
The Definition of the Law of the Sea 1303

XI. The Environment and the Law of the Sea

Elisabeth Mann Borgese
The Common Heritage of Mankind: From Non-living to Living Resources and Beyond 1313

Michael Bothe
Das Seerecht als Motor des internationalen Umweltrechts Gedanken zu neueren Entwicklungen im Bereich des Tiefseebergbaus 1335

William T. Burke
Evolution in the Fishery Provisions of UNCLOS 1355

Vladimir-Djuro Degan
The Common Heritage of Mankind in the Present Law of the Sea 1363

L. Yves Fortier
From Confrontation to Cooperation on the High Seas: Recent Developments in International Law Concerning the Conservation of Marine Resources 1377
### Table of Contents

**Thomas A. Mensah**  

**XII. Human Rights**

*Nisuke Ando*  
The Follow-Up Procedure of the Human Rights Committee’s Views 1437

*Héctor Gros Espiell*  
Les droits de l’homme et la Cour internationale de Justice : une vision latino-américaine 1449

*Alexandre Kiss*  
The Impact of Judgments and Advisory Opinions of the PCIJ-ICJ on Regional Courts of Human Rights 1469

*C. G. Weeramantry*  
Cultural and Ideological Pluralism in Public International Law 1491

**XIII. Defence, the Use of Force and the Law of Armed Conflict**

*L. C. Vohrah, Kelly Dawn Askin and Daryl A. Mundis*  
Contemporary Law Regulating Armed Conflict at Sea 1523

*Shinya Murase*  
The Relationship Between the UN Charter and General International Law Regarding Non-Use of Force: The Case of NATO’s Air Campaign in the Kosovo Crisis of 1999 1543

*Myron H. Nordquist*  
A Review of the Debate in the United States Senate over the Deployment of Ground Troops to Kosovo 1555

*Sreenivasa Rao Pemmaraju*  
International Organizations and Use of Force 1575

*Daniel Vignes*  
Réflexions sur l’intégration européenne dans les domaines des relations extérieures et de la défense 1609