Mapping in Support of Frontier Arbitration

Dennis Rushworth

Introduction

This is the first of a series of articles on the practical application of surveying and mapping techniques to the arbitration of land frontier disputes and to the consequent delimitation and demarcation of the boundaries arising from the arbitration.

International boundary disputes only proceed to a formal arbitration process when diplomacy has failed to resolve disagreements about the location of the boundary. At this stage the lawyers, quite rightly, take control, since arbitration tribunals are invariably requested to give a decision in accordance with international law. Although legal arguments will form the framework of the case, the lawyers representing the parties to the dispute, and those who are members of the tribunal considering the dispute, will inevitably have to consider a great deal of geographic evidence, mainly in the form of published maps, but also in many cases as numerical or textual data obtained from topographical and other field surveys.

This geographical evidence will often be the only concrete information on the location of the disputed boundary so that, if the outcome of the tribunal's deliberations are to be as fair and unequivocal as possible, it is vital that all the lawyers in the case understand the geographic evidence and use it to its full extent. To achieve this it is essential that:

- Both tribunals and the parties in land boundary disputes employ professional surveying and mapping advisers from the start of the case.
- These advisers are regarded as an essential part of the team and are privy to all discussion of the case.
- The survey and mapping advisers appreciate the lawyers requirements and present their evidence and opinions in a way that an intelligent layman can understand, without jargon or acronyms.

This article examines how the composition of land frontier arbitration tribunals can affect the way in which geographic evidence is treated. Future articles will look at specific survey and mapping techniques to explore how better preparation and exposition by technical advisers, and greater understanding of the potential value of technical evidence by lawyers for tribunals and parties, can speed litigation and provide a higher quality result. The articles will concentrate on topographical surveying and mapping because these subjects tend to predominate in boundary cases, but surveys from such disciplines as geomorphology, geology, hydrology and land use can also provide evidence of great significance. When these other disciplines assume great importance an appropriate expert adviser will be needed on the team.

The Composition of Arbitration Tribunals

Formal arbitration of frontiers does not happen particularly often, with only approximately twenty land boundary cases since 1920. Of these cases, the International Court of Justice has only dealt with four. The remainder have fallen to *ad hoc* tribunals set up by an independent arbitrator (usually the sovereign of a disinterested state) or by agreement of the two parties to the dispute. As a result the composition of the tribunals and their *modus operandi* has varied greatly.

Until about 1950 tribunals in frontier cases typically consisted of a lawyer (usually as President), a geographer and a surveyor. Since about 1970 such tribunals have generally consisted entirely of lawyers. This significant, but unchallenged, change does not seem to have been due to any deliberate review of policy or consideration of the effectiveness of the tribunals. The change appears to have happened by chance, the main impetus probably being the International Court of Justice's first boundary case in 1962.

The Court's procedures are governed by very detailed Statutes and Rules which do not permit any variation in composition of the Court to meet

special needs so that this case was heard by a panel of lawyers. As the International Court sets the pattern in such matters, *ad hoc* tribunals have followed their lead and have consisted entirely of lawyers. (There is provision for an Expert to sit with the Court but the only frontier case where that has been invoked was a maritime boundary when both parties requested the appointment of a particular expert and paid for him.)

In my view this change in the composition of tribunals has, at least in some cases, had an adverse influence on the efficiency of the tribunals proceedings and on the quality and effectiveness of the resulting judgement. Because recent tribunals do not have any built-in geographic expertise, the members find it difficult to understand the significance and meaning of geographic evidence, so that it is not always given its correct weight. The tribunals are also unaware of the wide range of geographic techniques that can assist the work of tribunal in understanding, evaluating and applying the geographic evidence. Judgements are usually addressed mainly to lawyers (to justify the legal decisions that have been taken), whereas the most important recipients of the judgement are the diplomats and geographers who have to demarcate and administer the boundary. The latter need the clear, graphically-based delimitation of a unique, practical, workable boundary, which does not always seem to be the top priority of tribunals.

It may be that the trend towards international law tribunals being composed entirely of lawyers is so well established that it is irreversible. If that is so, it is all the more important that such tribunals, including the International Court, always include a survey and mapping expert from the beginning of any frontier case. It does not matter greatly that such an expert will not vote on the Judgement, provided he, or she, has participated fully in the preparatory work of the tribunal, the oral proceedings, the evaluation of the evidence and the drafting of the judgement. In further articles I hope to show that doing this can improve the quality and speed of delivery of tribunal judgements in land frontier cases.

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NEW TITLE

The Peaceful Management of Transboundary Resources

Edited by Gerald Blake, William Hildesley, Martin Pratt, Rebecca Ridley and Clive Schofield

Graham & Trotman/Martinus Nijhoff
International Environmental Law & Policy Series
London, 1995, £80

The apparently inexorable demand for natural resources in an increasingly overcrowded world is widely recognised as among the most serious threats to the ecological and political stability of our planet. A large part of the problem stems from the fact that the distribution of natural resources rarely coincides with the world's political boundaries, creating great tension between the need for effective management of resources as natural units and the desire of individual states to take full advantage of resources within their jurisdiction.

The papers in this volume represent an important contribution to the debate about how natural resources which cross international boundaries can be managed as effectively and peacefully as possible. Four types of resource are considered: hydrocarbons and minerals, fisheries, shared water resources and the natural environment. Contributions from legal, diplomatic and technical experts covering a wide range of case studies from around the world examine the problems faced by governments and institutions, and suggest ways in which progress can be made in this critical area.

This collection represents the proceedings of the International Boundaries Research Unit's Third International Conference, *The Peaceful Management of Transboundary Resources*, which was held in Durham on 14-17 April 1994 and was attended by over 130 participants from 33 countries.

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