FOREWORD

Government representatives take extraordinary care in the crafting of international agreements. Teams of lawyers and diplomats, each charged with often opposed instructions, bargain over exchanges and labour over text. Even as their negotiations proceed, drafts are regularly dispatched to capitals for consultation and further instructions. If agreement is reached and a draft is initialled, a different cast of actors, operating in the respective capitals of each of the states, commences a process of internal analysis and approval as a prerequisite to ratification and entry into force.

With all of these precautions, uncertainties about the intentions of the parties' commitments may still arise in the course of subsequent applications. It should be no surprise. In international agreements, negotiators for each side often think in different languages, even if they operate in a single working language. They usually derive from different legal systems in each of which the same term may have a different meaning. Final texts are redacted in the language of each party and each is as authentic as the other. And, whether in domestic or international law, no matter how much care was taken to express commitments with precision and to anticipate all the factual scenarios which those commitments were to govern, unanticipated situations may still arise. There will, in short, be disputes about the application of international agreements.

If agreements are indispensable for longer-term cooperative behaviour, a corollary indispensability is the expectation that those agreements will be applied faithfully. Indeed, the success of the exercise to establish a framework for cooperative behaviour depends upon a commonly accepted canon of interpretation and its faithful application, whether by the parties in the course of performance or by judges and arbitrators resolving a dispute about that framework. Every legal system has a canon of interpretation, but, given the difficulties of stabilizing expectations in the volatile political and economic environment with which international legal arrangements contend, diplomats and international legal scholars have given greater attention to prescribing the canons of interpretation.

In this important contribution to the conversation about the law and practice of international interpretation, Dr Romesh Weeramantry has focused intensively on the interpretation of investment agreements. This area of international law is particularly fertile for a study of interpretation, for investment agreements, unlike

simple executory contracts, are drafted for a wide range of activities over extended periods. Because the parties negotiating investment treaties can know only in the most general sense the transactions to which the treaties will apply and the types of issues that will arise, large parts of these treaties have to be drafted in very general terms, requiring interpretation. And because investment treaties are a distinct genre, comprised of nearly 3,000 treaties with similar if not identical language, their interpretations by hundreds of different tribunals allow for meaningful comparative analyses. Substantively, this area is especially fascinating because of an inherent tension between the interests of the different parties: it is one in which stability of expectation based upon agreements is urgent for investors as well as for the transnational economic and financial community of which they are part. At the same time, investment law acknowledges that governments are a unique species of political actor; the special requirements of the host state to an investment frequently lead to demands for some adjustment to accommodate unanticipated exigencies.

Treaty Interpretation in Investment Arbitration is marked by the most meticulous examination of an extensive case law and scholarly literature. As a result, Dr Weeramantry's examination of interpretation practice will be consulted by tribunals and practitioners of investment law. But that is not the limit of his contribution and the applicability of his book. He concludes his study with the statement that 'any significant international law discourse on treaty interpretation practice in the future will be incomplete without reference to' investment practice. One may add that any future international law discourse on treaty interpretation practice will be incomplete without reference to Dr Weeramantry's important book.

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