

LUISS Guido Carli

- Dottorato di Ricerca in Diritto dell'Arbitrato Interno e Internazionale-

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THE INTERNATIONAL PUBLIC ARBITRATION:

THE ERITREA- ETHIOPIA CASE

Dottoranda: Luisa Castagnetti

Abstract

This work wants to show the characteristics of International arbitration as an instrument of disputes settlement between States. Its purpose is to point out the advantage of arbitration in respect to different disputes resolution methods.

It is known that in international law the use of force is prohibited by the art. 2 par. 4 of the UN Charter, as States must solve any disputes by pacific methods (art.2 par. 3 of the UN Charter). Among these, the arbitration is particularly relevant.

The international arbitration is very different from commercial arbitration between private persons, as it does not concurs with national jurisdiction.

In spite of that, the characteristics of this instrument are the same: the dispute resolution is devolved to a third body, appointed by the parties, because of an agreement between them, and the final award is binding.

The competence of the arbitrators is exclusively assigned by the parties' will. The consensual base of arbitration is particularly evident in public international arbitration, because of the structure itself of the international community, which does not have a hierarchic structure and all the State have the same position.

International arbitral tribunals are different from permanent tribunals, because the parties are not able to appoint judges and to chose procedure rules. In arbitral procedures the parties are free to chose their arbitrators, the rules of procedures and the applicable law.

This works aims to point out the principal characteristics of International public arbitration throughout a case study about the recent arbitration between Eritrea and Ethiopia.

After a boundary dispute which developed in an armed conflict (1998-2000), two arbitral tribunals were established by Eritrea and Ethiopia, in the Algiers Peace Agreement of 12th December 2000. The first tribunal was the Boundary Commission (art.4), with a mandate to delimit and demarcate the boundary between the two States based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The second one was the Claims Commission (art.5), whose mandate was to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.

Both the Commissions consist in impartial bodies of five judges, appointed according to the Agreement, with the mandate to pronounce binding awards. It is important to underline that, in spite of the fact that the Agreement is the same, the commissions are distinct and independent bodies.

The Boundary Commission pronounced its Decision on 13th of April 2002, but Ethiopia did not accept the delimitation made by the Commission, and opposed to the demarcation. The Claims Commission completed the examination of the claims submitted by the Parties in 2005, but the compensation phase is still to be completed.

The Eritrea-Ethiopia case study seems to be significant to evaluate the efficiency of arbitration for the settlement of disputes in public international law, also in issues particularly sensitive as boundaries and violations of international humanitarian law.

The analysis of the work of the two Commissions shows the characteristics of the institution of arbitration and of its procedure. International arbitration is confirmed to be a flexible instrument, which the parties can easily adapt to their own exigencies, as regards the appointment of arbitrators, applicable law and the rules of procedure. Particularly the rules of procedure are often shaped on general rules of commercial arbitration, as UNCITRAL Arbitration Rules.

Nevertheless, it the public nature of the parties can not be forgotten. The International awards are not directly executing, but can be implemented only throughout general

instruments of international law. The efficiency of international arbitration seems, indeed, to be in crisis anytime the parties refuse to conform to the awards emitted.