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CASE COMMENTS

WORLD COURT—CAMBODIA V. THAILAND— BOUNDARY DISPUTE

By CHRISTOPHER R. BRAUHLI*

On June 15, 1962, the International Court of Justice rendered a decision¹ resolving a boundary dispute between Cambodia and Thailand concerning the question of which of the two countries had territorial sovereignty over the Temple of Preah Vihear. This Temple is situated on a promontory belonging to the Eastern sector of the Dangrek range of mountains which in a general way constitutes the boundary separating Cambodia and Thailand. The dispute arose out of a boundary settlement entered into by France² and Siam³ between 1904 and 1908. The settlement evolved in the following manner: February 13, 1904, a treaty was entered into by Siam and France which, *inter alia*, defined that part of the boundary between Siam and French Indo-China encompassing the Temple. Article 1 of the treaty stated that the boundary would be marked by the water shed line. Article 3 of the treaty provided, in addition, that delimitation of the frontier between the two countries would be carried out by mixed commissions composed of officers appointed by Siam and French Indo-China, and should relate among other things to the frontier "determined" by Article 1. After the mixed commission had completed its survey of the border as provided in Article 3, the French, at the request of the Siamese who lacked adequate technical facilities, agreed to prepare maps of the frontier as the final stage of the delimitation. The maps were completed in 1907 and copies furnished to the Siamese government. The maps thus prepared placed the Temple of Preah Vihear on the French Indo-China side of the border and the dispute between Cambodia and Thailand arose from the fact that the Thais asserted that had the water shed line designated in Article 1 been followed, the Temple would clearly have been in Thai territory. After lengthy argument by both sides, the court concluded that the boundaries shown in the map were controlling and awarded the Temple to Cambodia. The court ruled that it was unnecessary to decide whether placement of the boundary in such a way as to effect a departure from the water shed line was so insignificant as to fall within the discretionary powers of the mixed commission and further held that it was unnecessary to decide whether Article 1 or Article 3 of the treaty should control. It held instead that the governments involved

* Associated with the Denver firm of Gorsuch, Kirgis, Campbell, Walker and Grover; Member C.B.A. Committee on World Peace Through Law, and the Committee on International Courts of the A.B.A. Section on International and Comparative Law. Mr. Justice Leonard v. B. Sutton is chairman of the C.B.A. Committee on World Peace Through Law. A function of this Committee is to bring to the attention of the Bar and laity of Colorado present instances of effective world and international law in order to foster understanding of the rule of law among nations.

¹ Case concerning Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of June 15, 1962; International Court of Justice Reports 1962, p. 6.

² Before Cambodia obtained its independence in 1953, it was a part of French Indo-China.

³ Siam became known as Prathet-Thai or Thailand subsequent to May 11, 1949.

had the authority to adopt departures from Article 1 of the treaty if they saw fit so to do and concluded that Siam and subsequently Thailand had in fact adopted the boundaries set forth in the treaty.⁴ In support of its holding, the court traced events since the maps were initially given to the Siamese government and concluded from an examination of these matters that Siam had had ample opportunity since the initial publication of the maps to dispute their validity insofar as placement of the Temple was concerned but had never done so.⁵ The court held that when the parties by treaty provided both the water shed would govern and that there would be a delimitation of the boundary line by a mixed commission, they must have regarded the water shed line as sufficiently certain to be relied upon without any further delimitation. The court pointed out that for fifty years Thailand had enjoyed stable frontiers through accepting the benefits the treaty of 1904 conferred upon it and stated that Thailand could not now, having claimed and enjoyed the benefits of the settlement, deny that it had consented to it. The court further concluded that the acceptance of the map by the parties caused the map to enter the treaty settlement and was evidence of the interpretation the two governments gave to the delimitation required by Article 3 of the treaty.

It should be noted that Thailand did not willingly submit itself to the jurisdiction of the World Court. In 1961, it submitted preliminary objections to that body stating that it had never accepted the compulsory jurisdiction of the International Court of Justice.⁶ The court ruled against Thailand, stating that through its actions prior to the dispute it had indicated a willingness to be subject to the jurisdiction of the court. Although Thailand accepted this ruling and proceeded with its presentation of the case on the merits, it took certain steps after the final decision was announced which are as noteworthy as the decision itself, and reflect its dissatisfaction with having been compelled to submit to the court's jurisdiction. It boycotted meetings of the Southeast Treaty Organization (SEATO) for approximately one month after the decision was rendered;⁷ it cut off trade with Poland, as reason therefore stating that the court which had decided against it was headed by a Polish judge; and finally, it recalled its ambassador to France, the apparent reason for this move being that two French lawyers were on the Cambodian legal team.⁸ It is to be hoped that this reaction

⁴ The award in favor of Cambodia was nine to three, two judges not participating. It is interesting to note that in the majority opinion no authority is cited for the decision rendered by the court in contrast to the concurring and dissenting opinions which cite considerable authority both in support of and in contravention of the court's decision.

⁵ Among other things, the court pointed out that in 1946 a Franco-Siamese conciliation commission was set up to make recommendations in regard to any complaints or proposals for revisions Thailand might wish to make as to, among other things, the frontier settlements of 1904 and 1907. The commission met in 1947 and although Siam made complaints about the frontier line in a number of regions, no mention was made of the region wherein the Temple is situate. The court further observed that in 1949 and on numerous occasions thereafter, notes were filed by the government of France and later by the government of Cambodia to the Siamese and Thai governments requesting that the keepers or "police" placed by Siam and Thailand in the Temple be withdrawn. None of these notes was answered and the court concluded that although Thailand was willing to place such keepers in the Temple it was unwilling to deny at the diplomatic level the claim of the French and later the Cambodians that the Temple belonged to Cambodia.

⁶ Article 36.2 of the Statute establishing the World Court provides as follows: "The state parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. The interpretation of a treaty. . . ."

⁷ N.Y. Times, July 19, 1962, p. 2, col. 3.

⁸ N.Y. Times, June 23, 1962, p. 2, col. 1. The author wrote both the Polish and French embassies in Washington, D. C. to inquire whether normal relations have been resumed but no replies had been received from either of these embassies as of the date this article was prepared.

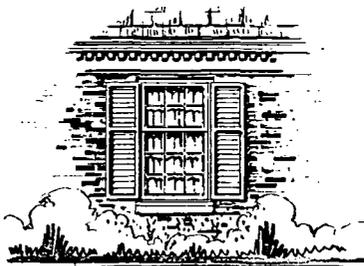
to the decision of the World Court will not set a precedent to be followed by other nations against whom decisions are rendered. It is almost too obvious to warrant mention that if it became a practice for countries to threaten or take retaliatory action against countries who have judges on the court or counsel arguing before the court, its efficacy would be sharply curtailed. The judicial objectivity of the court could rapidly give way to politically inspired decisions designed to curry favor with one of the parties to a dispute. Under the present set-up there is little which can be done to prevent this type of action and it can only be hoped that other countries accepting the jurisdiction of the court will avoid using political pressures to influence the court or to retaliate for unfavorable decisions.⁹

DAMAGES – PERSONAL INJURIES – PER DIEM ARGUMENT TO BE ALLOWED

In an action for damages for bodily injuries, the trial court refused to allow plaintiff's counsel to suggest a per diem argument to the jury on the elements of past and future pain and suffering. On appeal, seeking a reversal and remand for a new trial on the issue of damages only, *Held*: Inasmuch as both the total amount claimed and the plaintiff's life expectancy may be argued in Colorado, so also may counsel illustrate the mathematical process of computing the gross amount sought for pain and suffering by reducing it to the units by which it is endured, i.e., segments of time. *Newbury v. Vogel*, 15 Colo. Bar Ass'n. Adv. Sh. 11 (1963).

The propriety of using a per diem or time segment theory in counsel's closing argument was of first impression in the principal case, although it has been the subject of decision and discussion in

⁹ Keeping in mind Thailand's reaction to this decision the recent suggestion that World Court judges should be made world citizens rather than citizens of individual countries assumes new meaning and it is possible that in the future this will be the most desirable step to take to avoid the perils to the efficacy of the court seen by the author as a result of actions such as those taken by Thailand. The world citizenship proposal has been advanced in a preliminary draft plan for changes in the International Court of Justice submitted by Eberhard P. Deutsch to the American Bar Association Committee on Peace and Law Through United Nations.



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