

Case Comment

Decisions of International and Foreign Tribunals

International Court of Justice

India vs. Pakistan

This case was summarized in the issue of *The International Lawyer* for January, 1971, (p. 201) and, as there reported, concerns a question of whether the Council of the International Civil Aviation Organization (a specialized agency of the United Nations) has jurisdiction to deal with the complaint by Pakistan against the decision of India, in February 1971, no longer to permit the overflying of its territory by Pakistani aircraft.

Subsequent to the course of action in the proceeding covered in that earlier report, the time-limit for the filing of India's Memorial, originally fixed at 16 December (see I.C.J. Communiqué No. 71/12), was extended to 22 December 1971, at the request of the Indian Government, by an order entered by the Vice-President of the Court (Judge Ammoun) on 3 December. The Memorial was filed by India on the extended date.

By a further order, dated 19 January 1972, the Vice-President has fixed the time-limits for the filing of the remaining pleadings as follows:

- Counter-Memorial of the Government of Pakistan: 29 February 1972;
- Reply of the Government of India: 30 March 1972;
- Rejoinder of the Government of Pakistan: 28 April 1972.

In accordance with Article 31 of the Court's Statute, the Government of India has chosen to sit as judge *ad hoc* in this case, Dr. Nagendra Singh, Secretary to the President of India, and a Member of the Permanent Court of Arbitration and of the International Law Commission. The Government of Pakistan has indicated that it has no objection to this appointment.

Article 31 of the Statute provides that a party may choose a person to sit

*B.A. (1940) and LL.B (1942), Tulane University; partner, Deutsch, Kerrigan & Stiles, New Orleans; member, American, Inter-American, Louisiana State, New Orleans, and Federal Bar Associations. American Judicature Society and Maritime Law Association; president (1972-). New Orleans Chapter, Federal Bar Association; president (1957-1959), Phi Delta Phi International Legal Fraternity.

as judge *ad hoc* if the Court includes upon the Bench a judge of the nationality of the other party. This position arises in the present case, inasmuch as the President of the Court, Sir Muhammad Zafrulla Khan, is a national of Pakistan. This is also the reason why, in accordance with Article 13 of the Rules of Court, the Vice-President is acting as President for the case, and in that capacity entered the orders discussed above.

United Kingdom vs. Iceland

On 14 April 1972, the Government of the United Kingdom filed an Application instituting proceedings against Iceland, arising from the decision of the Government of Iceland to extend, as from 1 September 1972, its exclusive fishery limits to a distance of fifty nautical miles from the baselines.

The British Government contends that in international law:

(a) the decision of the Icelandic Government is without foundation and invalid, and that Iceland is not entitled unilaterally to exclude the fishing vessels of other countries from the further area over which it claims to extend its jurisdiction; and

(b) questions concerning the conservation of fish stocks in the waters around Iceland are not susceptible to regulation by the unilateral extension of exclusive-fisheries jurisdiction, but may be regulated, as between Iceland and the United Kingdom, by agreement between those two countries.

The British Government relies, for the purpose of the proceeding, on the jurisdiction vested in the Court by Article 36, paragraph 1, of the Statute of the Court and by an Anglo-Icelandic exchange of Notes dated 11 March 1961.

United Kingdom

In *Regina vs. Governor of Pentonville Prison, Ex Parte Teja* (1971) 2 W.L.R. 816 (Queen's Bench Div., January 19, 1971) [Petition for leave to appeal to House of Lords dismissed sub nom. *Teja vs. Governor of Pentonville Prison* (1971) 1 W.L.R. 678 (Feb. 24, 1971)], an Indian national instituted a habeas corpus proceeding challenging his detention pending his extradition to India, on a charge of committing a breach of trust through conversion to his own use, of funds belonging to the company of which he was chairman.

Petitioner had fled India to Costa Rica because suspicion as to his activities had arisen, but India's extradition request was denied by Costa Rica, which then appointed petitioner as economic adviser to the Costa Rican Ministry of Industry and Commerce. He held a diplomatic passport, with a general letter of credence, pursuant to which he made two trips to

the United Kingdom, on the second of which he was arrested by reason of India's extradition request. After a hearing, it was held that a prima facie case had been made, so that petitioner was being held properly for extradition.

In his application to the Queen's Bench Division for writ of habeas corpus, petitioner argued that he could not be detained in the United Kingdom because he enjoyed diplomatic immunity, contending that his possession of the letter of credence, attached to his diplomatic passport, conferred on him the status of head of mission and that, as soon as he entered the United Kingdom, he should have been assured of his enjoyment of diplomatic immunity according to Article 39(1) of the 1961 Vienna Convention on Diplomatic Relations.

Noting that the Vienna Convention was obviously designed to apply to permanent diplomatic missions, in view of the conclusion in 1970 of the Convention on Special Missions (Cmnd. 4300, cited by court), and that petitioner was apparently engaged in commercial negotiations rather than negotiations with governments, the court concluded that he was not protected by Article 39(1) of the former, nor was he protected by the latter as it was not in force for the United Kingdom.

Alternatively, it was suggested by the accused that he qualified for diplomatic immunity under Article 40 of the Vienna Convention, which provides that "if a diplomatic agent passes through, or is in the territory of, a third state, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third state shall accord him inviolability and such other immunities as may be required to ensure his transit or return." ([1971] 2 W.L.R. 816 at 824, quoted by the court.)

The letter of credence, attached to petitioner's diplomatic passport, indicated that he was going to be accredited as economic counselor to the Costa Rican Embassy in Switzerland, and he had come to the United Kingdom from Geneva and proposed to return there. Lord Parker found, however, that applicant had not as yet been accredited as economic counselor to the Costa Rican Embassy in Switzerland, and added: "In fact Costa Rica has no embassy in Switzerland, and there is no evidence of any form of diplomatic position he could be said to be going to in Geneva; there is no evidence that he had been accepted as such by the Swiss Government." (*Ibid.*, 835.) It was held, therefore, that applicant had no claim under Article 40 of the Vienna Convention, and the application was dismissed.