Decisions of International Tribunals

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Outlined hereunder are summaries of recent decisions of interest in the field of international law.

Pious Fund Settlement

The Pious Fund controversy between Mexico and the United States stemmed from donations made by Spanish subjects to the Society of Jesus in the 17th and 18th centuries, for propagation of the Catholic faith in the Californias. Administration of the fund passed to the Crown when the Jesuits were expelled from the Spanish dominions in 1767, and to the Mexican Government which independence was achieved. In 1842, President Santa Anna ordered the fund's properties converted into cash, which was deposited in the national treasury subject to payment of interest at 6% per annum for the purposes of the fund.

After the cession of upper California to the United States by the treaty of Guadalupe Hidalgo in 1848, the Mexican Government refused any further payments to the prelates of the Church in California. The prelates enlisted the aid of the State Department, and a mixed commission was formed in 1868 to decide the matter. The commissioners being divided, Sir Edward Thornton, as umpire, rendered an award in 1875, ordering Mexico to pay 21 annuities of $43,050.99 (Mexican) each for the years 1849-69. After payment of this amount, the Mexican Government contended that the claim was extinguished, while the prelates maintained that the annual payments should continue in perpetuity.

Further negotiations resulted in a referral, by agreement dated May 22, 1902, to the Permanent Court of Arbitration at the Hague, which held on October 14, 1902, that the Thornton award was *res judicata,* and ordered Mexico to pay $1,420,682.67 of arrears and to continue the $43,050.99 annual payments in perpetuity. *Pious Fund Case,* 1 Hague Court Reports (Scott) 1 (1902). Payments were again interrupted in 1914, in consequence of the church-state controversies following the revolution against the Diaz regime.

On August 1, 1967, a final settlement was reached by the Mexican and United States Governments, providing for a lump-sum payment of $719,546 (U.S.) by the former to the latter, on behalf of the Archbishop of San Francisco and the Bishop of Monterey, covering all past and future payments due. The amount was based on 53 unpaid annual installments, taking into consideration the currency exchange rate on the due date of each installment, and the present capital value of annual installments in perpetuity based on a 6% interest rate and the present currency conversion rate. 57 Dept. of State Bulletin 261.

English Courts

A

On May 23, 1967, the House of Lords decided *Indyka v. Indyka,* [1967] 3 A11 E.R. 689. At issue was the validity of a foreign divorce decree granted to the wife. The parties were Czechoslovakians, married in Czechoslovakia, where the wife had lived all her life. After World War II, the husband came to England and established his domicile there. In 1949, the wife, still in Czechoslovakia, obtained a divorce in that country. The husband remarried in England, and, in opposition to his second wife's divorce action in England, pleaded the nullity of his second marriage by reason of the nullity in England of the Czech divorce decree. This plea was successful in the trial court, but that court's dismissal of the second wife's divorce petition was reversed by the Court of Appeal, and the husband's appeal to the House of Lords was dismissed.

In *seriatim* opinions, their lordships traced the judicial and statutory evolution of English law on recognition of foreign divorce decrees. Three of the five concluded that a rule of reciprocity should be followed, and that, since English law authorizes a wife to sue for divorce after three years' residence, the Czech decree rendered in the factual circumstance of three years' residence by the first wife in Czechoslovakia, should be recognized in England on this ground (even though the Czech court did not base its jurisdiction on that ground). All of their lordships concurred on a further, broader, ground for the decision, described by one as a return to the rule of the "matrimonial home" applied to both husband and wife, under which a divorce decree rendered in a country in which the petitioning spouse resides, and with which that spouse has a "real and substantial connexion," should be recognized in England.

B

In *Angelo v. Angelo,* [1967] 3 A11 E.R. 314 (Probate, Divorce and Admiralty Division), Ormrod, J., applied this same broad rule in recognizing the validity of a German divorce granted to a German wife who, after marrying in England and living with her English husband in France, left him and returned to Germany (where she had lived only a few months when the divorce was granted).*

C

Din v. National Assistance Board, (1967) 1 A11 E.R. 750, was a proceeding brought by the Board against the appellant to establish his liability to support his wife and children. His defense was that when he had married the wife in question in Pakistan, he already had a living wife by a prior undissolved marriage. Finding that the second marriage was valid in Pakistan, the Queen's Bench Division, on November 21, 1966, dismissed the appeal from an order of the magistrate's court that the appellant should contribute to his family's support. The Court held that the question of recognition of a foreign marriage depends on the purpose of recognition and the object of the statute involved, and found no reason why the appellant should throw on the public the entire burden of supporting his family. Decisions refusing matrimonial relief in cases of foreign polygamous marriage were distinguished on the ground that England's matrimonial laws are not geared to the problems of plural marriage. Analogous support for the holding was found in an earlier decision annulling an English marriage on the ground of a prior undissolved polygamous marriage which was valid when contracted in India.

D

The House of Lords held, on May 18, 1966, that a decision by the Federal Supreme Court of (West) Germany, that the *Carl-Zeiss Stiftung,* an East-German charitable foundation, was not properly represented in an action in a West-German court by the Council of the District of Gera (which acted as the plaintiff's board), was not *res judicata* as to a later action in England.

The decision was based on the rather technical grounds that (a)

* *Cf.* Hague Conference: Draft Convention on Recognition of Foreign Divorces and Legal Separations, reproduced at 5 International Legal Materials 389. The result in *Indyka* would be justified by Article 2, clauses (7)(a) and (b) of the Draft Convention, and that in *Angelo* by Article 2, clause (9) (assuming the wife had retained her German nationality, *cf.* Articles 6 and 13 [alternative text B]).

since the question on this issue was whether the plaintiff's solicitors

since the question on this issue was whether the plaintiff's solicitors were maintaining the action without authority, the solicitors must be considered as the opposing parties on this issue, and they had had no interest in the German litigation; and (b) since the plaintiff had been held, in the German case, not to have been before the court properly, it had not been a party to the German litigation either.

On the merits of the issue, it was held that the Courts of England are bound by the Government's decisions as to sovereignty of a foreign state; that information provided by the Government in this regard is conclusive; that since the Foreign Secretary had certified that the Government recognizes the USSR as *de jure* entitled to exercise governing authority in East Germany, the declaration in a Foreign Ministers' communiqué that England, France and the United States consider the Federal Republic as the government entitled to speak for Germany in international affairs could be given no countervailing weight, especially since the communiqué also stated that it did not constitute recognition of the Federal Republic as the *de jure* government of all Germany; and that, accordingly, East German judgments (rendered by courts acting pursuant to authority of the USSR) as to the right of the Council of Gera to act as the plaintiff's board must be given controlling weight, as opposed to the West German decision to the contrary.

By adopting the view that the (East) German Democratic Republic (which the United Kingdom has not recognized) is a lawfully acting subordinate authority established by the USSR, their lordships avoided the disruptive consequences which would have ensued from judicial refusal to give effect to acts of the East German government. *Carl-Zeiss Stiftung v. Rayner and Keeler Ltd.*, [1966] 2 A11 E.R. 536, 5 International Legal Materials 769.

E

Sharif v. Azad, [1966] 3 A11 E.R. 785, 6 International Legal Materials 128, involved the enforceability of currency transactions under the Bretton Woods Agreements, incorporated into English law by the Bretton Woods Agreement Act, 1945, and the Bretton Woods Agreements Order in Council, 1946. "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member" are made unenforceable in the territories of any other member of the International Monetary Fund. Both Pakistan and England are members of the Fund.

A Pakistani resident had rupees in a Pakistani bank which could not, under Pakistani regulations, be exchanged for sterling without

official permission which was not obtained. On a visit to England he gave the plaintiff, a Pakistani residing in England, a check on this bank for 6,000 rupees in exchange for 300 pounds in cash. The plaintiff gave the rupee check to the defendant, another Pakistani resident in England, in exchange for the latter's post-dated check for 300 pounds. The defendant sent the rupee check to his brother in Pakistan who attempted to cash it, but the rupees were simply transferred to a blocked account, whereupon the defendant stopped payment on the pound check, and the plaintiff sued.

The Court of Appeal dismissed the defendant's appeal from a judgment in favor of the plaintiff. The Court found that the Pakistani regulations apply only to transactions between Pakistani residents, or to transactions occurring in Pakistan; and that, in any event, a transaction in violation of the regulations is merely unenforceable in England, not illegal, and does not "affect with illegality" (within the meaning of the Bills of Exchange Act, 1882) a check issued in connection therewith. The Master of the Rolls commented that "this enforcement will teach the defendant a sharp lesson not to engage in transactions of this kind," an observation which might well have been made of the plaintiff had the case gone the other way, and which perhaps, furnishes an interesting clue to the judicial process.

French Courts

A

In *Crédit Foncier d'Algérie et de Tunisie v. Narbonne,* 86-1 Gazette du Palais 263, 5 International Legal Materials 473, the Court of Appeals of Aix-en-Provence, on December 2, 1965, dismissed the CFAT's appeal from a judgment that by virtue of an Algerian nationalization decree expropriating the defendant partnership's assets and transferring all of its obligations to a new national Algerian partnership, the defendant's obligations to the CFAT (contracted in Algeria during the French régime) had effectively been extinguished.

The Court held that the principle of non-recognition of foreign nationalization laws which do not fix prior and fair compensation is inapplicable, because the Algerian decree did provide for compensation and the method of determination thereof, although prior evaluation was impracticable because of the lengthy accounting procedures involved. The Court noted that the Algerian decree seemed contrary to the Evian Agreements requiring compensation to be fixed in advance, but held that it was not competent to decide the point in view of the French Government's acquiescence in the decree.

The CFAT had previously been advised by the Prefect of Algiers, in response to its demand for payment by the new Algerian firm, to prosecute its claim against the defendant partnership; but subsequently the (French) Secretary of State for Algerian Affairs had undertaken to obtain satisfaction of the claim from the Algerian Administration.

B

On May 22, 1965, the Court of Appeals of Paris affirmed an order appointing a temporary administrator for a French subsidiary of a United States corporation, to enable it to fulfill a contractual commitment to another French company. The U.S. Treasury Department had ordered the parent corporation not to proceed under the contract on the ground that it violated the Transaction Control Regulations. *Fruehauf Corporation v. S. A. des Automobiles Berliet,* 85-2 Gazette du Palais 86, 5 International Legal Materials 476.

C

On January 25, 1966, the Cour de Cassation held, in *Société Koninkligke Nederlandsche Petroleum Maatschappy v. Cassan,* 1966 Recueil Dalloz Sirey 390, 55 Revue Critique de Droit International Privé 238, 5 International Legal Materials 931, that recognition must be accorded a Dutch decree requiring revalidation, by a specified date after the end of World War II, of claims to be shareholders of Dutch companies, and that the French plaintiff's action to compel the defendant Dutch company to deliver to him new shares issued to the Dutch Government pursuant to the decree to replace his original canceled shares, must be dismissed in view of the decision of the Dutch courts rejecting his claim for failure to revalidate his claim as a shareholder before the cut-off date. The Court held that the Dutch decree and judgment conformed to the distinction, recognized in the Declaration of London of January 5, 1943, and the Bretton Woods Agreements of July 1944, between expropriation without compensation on the one hand, and reasonable measures designed to remedy the effects of wartime spoliations by an occupying power on the other.

Dutch Courts

In *NV Cabolent v. National Iranian Oil Co.,* 5 International Legal Materials 477, the District Court of the Hague held, on April 15, 1965, that the defendant, as an organ of the Iranian Government, is immune from suit to enforce an arbitration award, even though it had agreed to the arbitration.

Philippine Courts

The Court of First Instance of Manila, Sixth Judicial District, has decided the two following cases involving claims of exemption of American-owned corporations from the Philippine Nationalization of the Retail Trade Law.

A

In *Philippine Packing Corporation v. Reyes,* 6 International Legal Materials 124, the petitioner was a Philippine corporation wholly owned by a New York corporation. Although the Law provides that nothing therein impairs rights of American entities under the Executive Agreement of July 4, 1946, which forbids discrimination by the Philippines against any form of United States enterprise, the Court, on December 16, 1966, denied the exemption on the ground that the prohibited discrimination referred to is that in favor of other aliens, not that in favor of Philippine citizens. The non-discrimination provision of the Laurel-Langley Agreement of 1955 was held not to affect the Nationalization Law which, having been enacted earlier, could not have contemplated the provisions of the later Agreement.

B

The same result was reached, on a different approach, in *Esso Standard Eastern, Inc. v. Reyes,* in which another branch of the Court, on October 12, 1967, held that the non-discrimination provisions of the 1946 and 1955 Agreements apply in favor only of enterprises wholly owned by United States citizens, and accordingly denied exemption to a subsidiary of a United States corporation having alien shareholders. 6 International Legal Materials 1068.

Eritrea

In *Tringali v. Maltese,* the Supreme Court of Eritrea, on November 7, 1962, annulled the record of a 1958 marriage celebrated in Eritrea according to the rite prescribed by the 1929 Concordat between the Holy See and Italy. Italian sovereignty over Eritrea had terminated in 1947, and in 1952 Eritrea had joined in a federation with Ethiopia. The Court held that under the state-succession rule, the new government could not be bound to recognize, and had not recognized, any treaty obligations of the Italian government, particularly since the federation empowered Ethiopia to represent Eritrea in international agreements.

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All ABA activities shown in boldface

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October 7-25	11th Quadrennial Session, Hague Conference on Private International Law, The Hague, Netherlands	66A, Zeestr., The Hague, Netherlands
October 18-21	5th International Law Symposium, Brussels, Belgium	c/o European Insurance Committee 2, Rue de la Chaussee d'Antin, Paris, 9, France
December 10-16	6th International Congress of Catholic Jurists, Dakar	Father Faidherbe 35, Rue de la Glaciere, 75 Paris, 13, France
1969		
(Date not yet selected)	International Congress of Criminal Law, Europe	Pierre Bouzat, Secretary General, International Association of Penal Law, 43 Ave. Aristide Briand, Rennes, France
(Date not yet selected)	23rd Congress, International Association of Lawyers, London, England	Andre De Bluts, General Secretary, 51 Av. F. D. Roosevelt Brussels 5, Belgium
(Date not yet selected	9th Congress, International Association of Democratic Lawyers	49, Av. Jupiter Brussels 19, Belgium
January 18-19	**Council Meeting of International and Comparative Law Section, ABA, New Orleans, Louisiana**	Katherine Drew Hallgarten, Secretary 1521 New Hampshire Avenue N.W., Washington, D. C. 20036
March 3-	2nd Session, U.N. Commission on International Trade Law	Palais des Nations Geneva, Switzerland
March 30-April 6	29th Conference, International Maritime Committee, Tokyo, Japan	c/o Japanese Maritime Law Association, The Faculty of Law, University of Tokyo, 7 Hongo, Bunkyo-ku, Tokyo, Japan
April 9-May 21	2nd Session, Diplomatic Conference on the Law of Treaties, Vienna, Austria	United Nations, New York
June	21st Session, U.N. International Law Commission, Geneva, Switzerland	United Nations, New York
June 23-28	16th Conference, Inter-American Bar Association, Rio de Janeiro, Brazil	John O. Dahlgren, Secretary General, 1730 K Street, N.W. Washington, D. C. 20006

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September 25-29	United Nations Advisory Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation for International Law, New York, New York	United Nations, New York
1970		
May	5th Congress, International Society for Military Law and Law of War, Dublin, Ireland	Prof. J. Leaute, Secretary-General Faculte de Droit, Institut des Sciences Criminelles et Penitentiaires, Esplanade, Strasbourg, France
July	13th Conference, International Bar Association, Tokyo, Japan	c/o Japan Federation of Bar Associations, Hoso Kaidan Bldg. 1-1 Kasumigaseki, Chiyoda-ku, Tokyo, Japan
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August 3-10	**Section Meetings of International and Comparative Law Section, ABA, Washington, D.C.**	Katherine Drew Hallgarten, Secretary 1521 New Hampshire Avenue, N.W., Washington, D.C. 20036

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