Lao International Law Newsletter

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EDITORIAL

In this fifth issue of 2007 we shall focus on the pacific settlement of dispute, also known as the peaceful settlement of conflict, the major theme of the 19th of November 2007 International Law Forum during which M. Gilbert Guillaume (former president of the International Court of Justice ICJ) and Mr Tjaco van den Hout (Secretary General of the Permanent Court of Arbitration PCA) shall deliver key-note addresses.

1907-2007
ONE HUNDRED YEARS UPON THE 1907 DISPUTE RESOLUTION CONVENTION

The 1907 Peace Conference in The Hague revised and refined (and certainly reaffirmed) the 1899 Convention for the Pacific Settlement of International Disputes. The latter Convention was probably the most important result of the 1899 Peace Conference: a firm basis for dispute resolution was duly established. *Inter alia*, it was agreed to set up a Permanent Court of Arbitration. The 1907 Convention should be seen as an improved version of its predecessor. The 1899 Conference had been convened at the initiative of Czar Nicolas II of Russia "*with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments*."

The PCA is the first global mechanism for the settlement of disputes between states. The Permanent Court of International Justice followed in 1922 (its Statute, dated December 1920 was amended in 1929); this PCIJ was in 1945 replaced by the International Court of Justice, the ICJ, a United Nations organ. The ICJ focuses on 'judicial settlement'; the PCA on 'arbitration', two sides of the same coin, and the two institutions are (logically?) based in the same building: the Peace Palace in The Hague.

INTRODUCTION: TWO RECENT CASES AND ONE OLDER ONE

AAA: **ICJ** (BBC, 8 October 2007)
Nicaragua-Honduras sea border set; the International Court of Justice has drawn a new maritime border between Honduras and Nicaragua to end a long-standing dispute between them.
The Central American neighbours have argued for years over their maritime boundary in the Caribbean Sea. The ICJ's binding ruling demarcated a new maritime boundary midway between the two countries' rival claims. It means both countries will have equal access to the fish-rich waters and to oil and gas exploration in the area.
The decision by the UN's highest court, which both countries have agreed to abide by, ends an eight-year dispute over the line of the maritime boundary. Tensions over the issue had at times flared with both countries seizing one another's fishing vessels.
The argument had surfaced in 1999 shortly after Honduras ratified a treaty with Colombia, which has itself been in dispute with Nicaragua over the sovereignty of several small islands in the Caribbean. The Nicaraguans argued that this treaty infringed their territorial waters. The Honduran government argued that the maritime boundary had been set by the king of Spain in 1906, with Honduran territory beginning at the 15th parallel.
Nicaragua argued that the maritime border followed the line of its coast to the north-east as far as the 17th parallel. They asked the ICJ to set a valid maritime border between Nicaragua and Honduras. As well as resolving the issue of the borderline, the ICJ's ruling granted Honduras sovereignty over four small Caribbean islands.
Nicaraguan President Daniel Ortega and his Honduran counterpart, Manuel Zelaya, were to meet in the border town of Las Manos to show their mutual acceptance of the ICJ ruling.

BBB: **PCA** (Press Release dd 20 september 2007)
The Arbitral Tribunal constituted to establish a maritime boundary between Guyana and Suriname under the 1982 United Nations Convention on the Law of the Sea ("1982 Convention") today made its Award public. The Award, which includes a finding of jurisdiction to consider the Parties' maritime delimitation claims, establishes a single maritime boundary between Guyana and Suriname that differs from the Boundaries claimed by each of the Parties in their pleadings before the Arbitral Tribunal.
The boundary for the most part follows the equidistance line between Guyana and Suriname. However, in the territorial sea, the boundary follows a N10°E line from the starting point to the three nautical mile limit, and then a diagonal line, from the intersection of the N10°E line and the three nautical mile limit, to the intersection of the twelve nautical mile limit and the equidistance line (…).
The Arbitral Tribunal additionally held that both Guyana and Suriname violated their obligations under the 1982 Convention to make every effort to enter into provisional arrangements of a practical nature and not to hamper or jeopardize the reaching of a final agreement. Moreover, Suriname was found to have acted unlawfully when it expelled a drilling rig licensed by Guyana from the disputed area.

Background
The arbitral proceedings were initiated by Guyana on 24 February 2004 pursuant to Articles 286 and 287 and Annex VII of the 1982 Convention. Written pleadings were filed pursuant to the Rules of Procedure adopted by the Arbitral Tribunal on 30 July 2004, and hearings were held in Washington, D.C. in December 2006. The Arbitral Tribunal constituted to decide the dispute [was] composed of H.E. Judge L. Dolliver M. Nelson (President), Professor Thomas M. Franck, Dr. Kamal Hossain, Professor Ivan Shearer, and Professor Hans Smit. **The Permanent Court of Arbitration serves as registry for the Arbitral Tribunal** (…).

CCC: Preah Vihar (also spelt: Prah, Phra and/or Vihear) (Press release dd 15 June 1962)
In June 1962, the ICJ delivered its judgement in the case concerning the Temple of Preah Vihar between Cambodia and Thailand. The case had been instituted by Cambodia in 1959. The Temple, an ancient sanctuary, partially in ruins, stood on a 'promontory' of the Dangrek range of mountains which constituted the boundary. The dispute was about the relevance and validity of the boundary settlement made in the period 1904-1908 between France, then conducting the foreign relations of Indo-China, and Siam. That Treaty established the general character of the frontier; the exact boundary had to be delimited by a French-Siamese Mixed Commission. The final stage of the delimitation was the preparation of maps. The Siamese Government, which did not dispose of adequate technical means had requested that French officers should map the frontier region. These maps were completed in the autumn of 1907 by a team of French officers and were communicated to the Siamese government in 1908. On these maps the Temple was located in Cambodia.
Thailand during the ICJ case, contended (1) that the map, not being the work of the Mixed Commission, had no binding character; (2) that the frontier indicated on it was not the true watershed line and that the true watershed line would place the Temple in Thailand; (3) that the map had never been accepted by Thailand or, alternatively, that if Thailand had accepted it, she had done so only because of a mistaken belief that the frontier indicated corresponded with the watershed line.
The Siamese Government and later the Thai Government had raised no query about the map prior to its negotiations with Cambodia in Bangkok in 1958. In 1934-1935 a survey had established a divergence between the map line and the true line of the watershed, and other maps had been produced showing the Temple as being in Thailand; Thailand had nevertheless continued also to use and indeed to publish maps showing Preah Vihar as lying in Cambodia.
Thailand stated also that having been, at all material times, in possession of Preah Vihar, she had had no need to raise the matter; she had indeed instanced the acts of her administrative authorities on the ground as evidence that she had never accepted the 'map'.
The Court nevertheless felt bound to pronounce in favour of the frontier indicated on the map concerned and it became unnecessary to consider whether the line as mapped did in fact correspond to the true watershed line. For these reasons, the Court upheld the submissions of Cambodia concerning sovereignty over Preah Vihar. Thailand was also found to be under the obligation to restore to Cambodia any artifacts which might have been removed from the temple area by Thai authorities.

ICJ & PCA

Both the International Court of Justice and the Permanent Court of Arbitration have over the years solved a great number of border conflicts.

ICJ: This year alone, apart from the Nicaragua-Honduras case, other border conflicts with the ICJ concerned:
- Maritime Delimitation in the Black Sea (Romania *v.* Ukraine)
- Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/ Singapore) - Schedule of the public hearings which will open on Tuesday 6 November 2007
- Territorial and Maritime Dispute (Nicaragua *v.* Colombia) - Conclusion of the public hearings on the Preliminary Objections.

Other 2007 ICJ cases deal with:

- Pulp Mills on the River Uruguay (Argentina *v.* Uruguay)
- Ahmadou Sadio Diallo (Republic of Guinea *v.* Democratic Republic of the Congo)
- The Republic of Rwanda applies to the International Court of Justice in a dispute with France Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Serbia and Montenegro)

Lao PDR is a member of the ICJ since 1955: it became a member by joining the United Nations. The UN Charter reads in art. 93.1 that all members of the UN are *ipso facto* parties to the Statute of the ICJ.

PCA: *the PCA focuses now on the following cases*:

- Eurotunnel
- Ireland v. United Kingdom (MOX Plant Case)
- Saluka Investments B.V. v. Czech Republic
- Eritrea-Ethiopia Boundary Commission
- Eritrea-Ethiopia Claims Commission
- Ten investor-state arbitrations under bilateral or multilateral investment treaties

Three arbitrations under contracts between private entities and states or state-controlled entities

Past PCA cases include
- Barbados/Trinidad and Tobago (2006)
- Telekom Malaysia Berhad/Government of Ghana (initiated 2003)
- Malaysia/Singapore (initiated 2003)
- Belgium/Netherlands ("Iron Rhine Arbitration", 2005)
- Netherlands/France (2004)
- Bank For International Settlements (2002 and 2003)
- Ireland v. United Kingdom (OSPAR Arbitration, 2003)
- Larsen/Hawaiian Kingdom (2001)
- Eritrea/Yemen (1998 and 1999)

Lao PDR is a 'member' of the PCA since July 1955. The PCA goes back to 1899/1907 the years of the Hague Conventions. There are now 106 'members'.
In official language, Lao PDR is on *the List of the Signatory and Contracting Powers of The Hague Conventions of 1899 and 1907*. The century-old Permanent Court of Arbitration (PCA) was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The Conference was convened at the initiative of Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments."
The most concrete (and therefore important) achievement of the Conference was the establishment of the PCA: the first global mechanism for the settlement of inter-state disputes. The 1899 Convention, which provided the legal basis for the PCA, was revised at the second Hague Peace Conference in 1907.
As indicated, there are currently 106 States which are parties to one or both of the Conventions. Each Member State may designate up to four arbitrators, known as "Members of the Court." Parties to dispute resolution may, but are not obliged to, select arbitrators or other adjudicators from among them.
The following Lao are on this list
Mr. KET KIETTISAK, LL.M, Vice-Minister of Justice; former President of the people's Supreme Court;
Mr. KISINH SINPHANNGAM, LL.M Vice-Minister of Justice; formerly Vice-Prosecutor General;
Dr. BOUNTHONG VONGSALY, Lao PDR Ambassador to Germany.
Parties using PCA facilities or support pay no overheads, but only those costs directly involved in their own case. The Member States of the PCA help offset the expense of the organization's operations through annual contributions to its budget. Rather than adhering to a rigid fee schedule, the PCA adopts a flexible approach in fixing the amount of adjudicators' remuneration, taking into account the particular circumstances of the case.

PEACEFUL SETTLEMENT OF CONFLICT

It is the main obligation of the UN members to seek peaceful solutions to conflict.
That has been stated in various articles of the Charter, including the ones on goals and purposes, like art. 1.1 and art. 2.3: member states shall settle their international disputes by peaceful means and in such a manner that international peace and security, and justice, are not endangered.
Probably that is why article 33 of the Charter takes centre-stage.
This article lists a number of instruments towards conflict resolution.
Art. 33 reads in full:

> ***1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.***
> ***2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.***

Indeed, negotiation, mediation, conciliation are the preferable methods. But if many years of mediation of negotiations prove to yield hardly any progress, regard may have to be had to the instruments of arbitration and/or judicial settlement.
In fact many countries have benefited from these conflict resolution devices. Maybe they not always got what they wanted, but at least solutions were found and decisions were taken so that many a page could be turned.

Apart from art. 33, there are other instruments dealing with the issue of peaceful settlement of conflict:

- **Convention for the Pacific Settlement of International Disputes, The Hague, 29 July 1899; (establishing the Permanent Court of Arbitration)**
- **Convention for the Pacific Settlement of International Disputes, The Hague, 18 October 1907;**
- **General Act for the Pacific Settlement of International Disputes, Geneva, 26 September 1928;**
- **Statute of the International Court of Justice (in force for all UN members as per UN Charter art. 93.1);**
- **Declarations recognizing as compulsory the jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court;**
- **Revised General Act for the Pacific Settlement of International Disputes, New York, 28 April 1949;**
- **Manila Declaration on the Peaceful Settlement of International Disputes (GA Res 37/10), 1982;**

UN Model Rules for the Conciliation of Disputes between States (GA Res 50/50), 1995;
And of relevance for ASEAN:

- **Treaty of Amity and Co-operation in Southeast Asia, Denpasar, 24 February, 1976 (Chapter IV of this Treaty deals with the Pacific Settlement of Disputes) (Lao PDR: party since 1992),**
  - **Protocols/Amendments, Manila, 15 December 1987 and 25 July 1998;**
  - **Protocol on Dispute Settlement Mechanism, Manila, Philippines, 20 November 1996;**
  - **Amended, Subang Jaya, 23 July 1997;**

Zone of Peace, Freedom and Neutrality Declaration, Kuala Lumpur, 27 November 1971.

Since the Second World War, the United Nation Charter has been generally recognized as the basis of the international legal order. With the definition of international law as a conflict device, it is tempting to describe Article 33 as the most important one in the Chapter. It deals with the peaceful settlement of conflicts, or, in the world of the Chapter, the 'pacific settlement of dispute'.

Declarations Recognizing the Jurisdiction of the Court as Compulsory

The International Court of Justice acts as a world court. The Court has a dual jurisdiction : it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in contentious cases); and it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request (advisory jurisdiction). The States parties to the Statute of the Court 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" (Art 36, para. 2 of the Statute).

Each State which has recognized the compulsory jurisdiction of the Court has in principle the right to bring any State which has accepted the same obligation before the Court by filing an application instituting proceedings with the Court, and, conversely, it has undertaken to appear before the Court should proceedings be instituted against it by one or more such other States.

The Declarations Recognizing as Compulsory the Jurisdiction of the Court take the form of a unilateral act of the State concerned and are deposited with the Secretary-General of the United Nations.

65 States have submitted an art.36.2 declaration. In fact some more have done so, but have meanwhile retreated or withdrawn that declaration (France, USA).

Among the 65:

Australia (2002); Cambodia (1957); Japan (2007); New Zealand (1977); Pakistan (1960); Philippines (1972); United Kingdom (2004).

PEACE PALACE

Both the ICJ and the PCA are housed in the Peace Palace in the Hague, which was completed in 1913 and originally built to accommodate the PCA. The Peace Palace hosts not only the PCA and the ICJ but also the Carnegie Foundation, the Hague Academy of International Law, and the renowned Peace Palace International Law Library.

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Two more Arbitration Features

- UNCITRAL

The 1976 UNCITRAL Arbitration Rules entrust the Secretary-General of the Permanent Court of Arbitration with the task of designating, upon request of a party to arbitration proceedings, an "appointing authority" for the purpose of appointing the members of an arbitral tribunal and ruling on challenges to arbitrators. Parties may also designate the Secretary-General himself as appointing authority under the UNCITRAL Rules or other instruments..

UNCITRAL 's origin, mandate and composition:

Origin

The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966 (GA Res 2205(XXI) of 17 December 1966). In establishing the Commission, the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles.

Mandate

The General Assembly gave the Commission the general mandate to further the progressive harmonization and unification of the law of international trade. The Commission has since come to be the core legal body of the United Nations system in the field of international trade law.

Composition

The Commission is composed of sixty member States elected by the General Assembly (the Lao PDR is not among them). Membership is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems. Members of the Commission are elected for terms of six years, the terms of half the members expiring every three years.

- ICSID

On a number of occasions in the past, the World Bank has been involved in mediation or conciliation of investment disputes between governments and private foreign investors. In 1966 the International Centre for Settlement of Investment Disputes (ICSID) was created to formalize such activities. ICSID, specially designed to facilitate the settlement of investment disputes between governments and foreign investors, helps to promote increased flows of international investment.

ICSID was established under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the Convention). ICSID has an Administrative Council and a Secretariat. The Administrative Council is chaired by the World Bank's President and consists of one representative of each State which has ratified the Convention.

ICSID is an autonomous international organization, but has close links with the World Bank. Pursuant to the Convention, ICSID provides facilities for the conciliation and arbitration of disputes between member countries and investors who qualify as nationals of other member countries. Recourse to ICSID conciliation and arbitration is entirely voluntary. However, once the parties have consented to arbitration under the ICSID Convention, neither can unilaterally withdraw its consent. Moreover, all ICSID Contracting States, whether or not parties to the dispute, are required by the Convention to recognize and enforce ICSID's arbitral awards.

Lao PDR is not (yet) a party to ICSID, although it is a party to all other World Bank institutions.

Gilbert Guillaume (1930), **Judge at the ICJ from 1987 to 2005 (President from February 2000 – February 2003)**

- Alumnus of the Ecole nationale d'administration.
- Chairman of the Conciliation Commission, OECD (1973-1978); Member of the European Space Agency Appeals Board (1975-1978); Director of Legal Affairs, OECD (1979).
- Director of Legal Affairs, Ministry of Foreign Affairs (1979-1987).
- Counsel for France in the arbitration proceedings between France and the United States over the Franco-American air agreement (1978); Agent for France in the arbitration proceedings between France and Canada over the Franco-Canadian fisheries agreement (1986); Agent for France in numerous cases before the Court of Justice of the European Communities and the European Commission and Court of Human Rights; French Representative on the Central Commission for the Navigation of the Rhine (1979-1987); French Representative on the Asian-African Legal Consultative Committee (1980-1987).
- French delegate to the UN GA Sixth Committee (1982-1987); Head of the French delegation to the Third United Nations Conference on the Law of the Sea (1982), the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Vienna, 1983) and the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 1986).
- Member of the Permanent Court of Arbitration (since 1980); Member of the Court of Arbitration of the OSCE; Designated arbitrator by the International Telecommunications Satellite Organization and by ICAO, the International Chamber of Commerce and ICSID.
- Author of numerous works and articles, among which : *Les grandes crises internationales et le droit* (1994).

Tjaco van den Hout (1949), **Secretary General, PCA**

Van den Hout was educated in The Netherlands, studying law at the University of Leiden. He graduated in 1973 (with honors) and joined the Dutch diplomatic service the following year. He has served abroad at various bilateral and multilateral posts, the last of which was at ambassadorial rank.
Mr. Van den Hout was deputy SG at the Netherlands Ministry of Foreign Affairs at the time he was elected to the post of Secretary-General of the Permanent Court of Arbitration for a five-year term (May 1999). He was re-elected to this post in May 2004.
He has lectured on aspects of international dispute resolution at various universities, diplomatic institutes and public international law associations around the world, and is the author of several articles in law journals and newspapers on inter-state arbitration and the Permanent Court of Arbitration.