

State of Peleliu v. State of Koror, 6 ROP Intrm. 91 (1997)
STATE OF PELELIU,
Appellant,

v.

**STATE OF KOROR, in its own behalf and as
successor in interest to the Municipality of Koror,**
Appellee.

CIVIL APPEAL NOS. 3-96 and 14-96
Civil Action No. 180-95

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: March 18, 1997

Counsel for Appellant: Douglas F. Cushnie

Counsel for Appellee: Johnson Toribiong, Antonio L. Cortes

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate
Justice; LARRY W. MILLER, Associate Justice

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NGIRAKLSONG, Chief Justice:

INTRODUCTION

This appeal involves a boundary dispute between the States of Koror (“Koror”) and Peleliu (“Peleliu”). Appellee, Koror, claims that its boundaries are those contained in the Koror State Constitution, which are the same as the boundaries of the former Municipality of Koror. Appellant argues that Peleliu’s boundaries extend to its traditional limits, which Peleliu claims are set forth in the Peleliu Constitution. Peleliu’s “traditional” boundaries are larger than the boundaries of the former Municipality of Peleliu, and encroach on Koror’s boundaries.¹ The trial court found that under the Palau Constitution, the States were to adopt the same boundaries as the former municipalities, and granted summary judgment in favor of Koror. We affirm.

Appellant also appeals a subsequent order forfeiting \$2000 of the \$5000 security posted by appellant in connection with the preliminary injunction issued by the trial court. The trial court found that although Koror had not presented sufficient evidence of injury to marine resources to warrant a damage award, Koror nevertheless had been injured by its ‘inability to govern.’ We reverse the award of damages to Koror State.

¹ The boundaries of the former municipalities of Koror and Peleliu are undisputed and not in conflict.

DISCUSSION

Peleliu initially contends that the trial court erroneously failed to exercise jurisdiction over the boundary dispute between Koror and Peleliu. We disagree. The judgment entered December 28, 1995, clearly indicates that the trial court held in favor of Koror, and declared the boundaries of Peleliu to be limited by the Koror State boundaries set forth in the Koror Constitution. At no point did the trial court decide that it lacked the authority to interpret the Palau Constitution with respect to the appropriate boundaries between the States.

As noted by the trial court, the Constitution is silent with respect to the matter of state boundaries.² Peleliu interprets **L93** this silence to mean that the Constitution permits the States to choose their own boundaries. The mere absence of controlling language in the Constitution, however, does not give rise to the inference that the States may do anything that is not prohibited by the Constitution.

Rather, it is well-established that where there is no controlling language, the Court must look to the intent of the Framers to give effect to the Constitution. 16 Am. Jur.2d *Constitutional Law* § 91 at 418 (1979). Unfortunately, the legislative history of the Constitution sheds little light on what the Framers intended with respect to the adoption of boundaries by the States.³ Thus, to determine whether the interpretation embodies the Framers' intent, the Court must look

² The constitutional language that bears on the Framers' intent regarding the boundaries of the States is § 6 of Article XV, which provides that:

All municipal charters existing on the effective date of this Constitution shall remain in force and effect until the state governments are established pursuant to this Constitution which shall take place not later than four (4) years after the effective date of this Constitution.

Appellant correctly points out that this language indicates that the Trust Territory municipal boundaries will remain in effect until the municipality becomes a state but that the language fails to address precisely what the state boundaries should be.

In addition, Article IX of the Constitution, § 5(18), gives the OEK the power to "create or consolidate states with the approval of the states affected." However, it is impossible to infer anything about the boundaries of the original states from this language.

³ Neither the Constitutional Convention Reports ("CCR") nor the Constitutional Convention Summary Journal ("CCSJ") explain what the Framers intended with respect to state boundaries. In the CCSJ, however, the terms "municipality" and "state" are used interchangeably to refer to the 16 political subdivisions of Palau. Moreover, the Convention decided that the term "beluu" was the appropriate Palauan term to signify either a state or a municipality. *See* Palau Constitutional Convention, Fifty-First Day Summary Journal, at p. 39, and Fifty-Fifth Day Summary Journal, at p. 3. It is possible to infer from the Convention's usage of the terms state and municipality interchangeably that the Framers intended that the borders of the States be the same as the municipalities' boundaries.

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to the reasonableness of the result: “it must be assumed that [the Framers of the Constitution] achieve[] an effective and operative result.” 2A Singer, *Sutherland Statutes and Statutory Construction* § 45.12 at 54 (Sands 4th ed. 1984).

194 We find that Peleliu’s reading of the Constitution to permit the States to adopt their “traditional” boundaries is unsound, because the court has no meaningful way of determining what the “traditional” boundaries of the States are. As appellant concedes, the boundaries of the States have fluctuated with time. Appellant has failed to pinpoint the particular period or date--much less shown that a particular date was intended by the Framers--that the Court should use to establish Peleliu’s traditional boundaries. Given this uncertainty, Peleliu’s interpretation of the Constitution would simply result in confusion. We therefore hold that the boundaries of the States, at the time of their creation, were confined to the boundaries of the former municipalities.⁴

We reverse the trial court’s award of \$2,000 to the State of Koror, based on injury to Koror by virtue of its inability to govern. Peleliu contends that there is no basis for the award because no “right of governance” exists. Appellee conspicuously failed to submit a brief opposing appellant’s argument. Without holding whether a Koror has a “right of governance,” in this case it is clear that the trial court erred because Koror failed to show any damages as a result of the preliminary injunction.

⁴ There may yet be cases where two or more States have a legitimate boundary dispute based on an unresolved conflict between the former municipalities as to the appropriate boundaries. The Court makes no decision about such cases today.