

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK 1983

Part Three. Judicial decisions on questions relating to the United Nations and related
intergovernmental organizations

Chapter VIII. Decisions of national tribunals



Copyright (c) United Nations

CONTENTS (*continued*)

Page

- | | |
|---|-----|
| 60. Question of the application of section 205 of the United States Foreign Missions Act of 1982 to the permanent missions accredited to the United Nations | 220 |
| 61. Tax exemptions granted in New York to officers of a permanent mission to the United Nations—Distinction between members of a mission with diplomatic rank and members of the administrative and technical staff | 226 |
| 62. Status of the Observer Mission of the South West Africa People's Organization to the United Nations—Question whether it enjoys immunity from suit in an action brought in a court of the United States | 227 |

Part Three. Judicial decisions on questions relating to the United Nations and related intergovernmental organizations

CHAPTER VII. DECISION AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS 231

CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS

1. *Republic of the Philippines*

Intermediate Appellate Court

United States Lines, Inc., v. World Health Organization: Judgement of 30 September 1983

Claim by an ocean shipping company against WHO for demurrage on cargo shipped by the company—Immunities of international organizations from local jurisdiction 232

2. *Italy*

Pretura di Roma

Aziz v. Caruzzi: Order of 12 November 1983

Eviction order on expiry of the private dwelling lease of a senior staff member of IFAD—Headquarters Agreement between Italy and IFAD of 26 July 1978—Immunity of the diplomatic agent from civil Italian jurisdiction and his exemption from any measures of execution in the sense of the Vienna Convention on Diplomatic Relations 232

Part Four. Bibliography

LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL

- | | |
|--|-----|
| 1. <i>General</i> | 238 |
| 2. <i>Particular questions</i> | 240 |

B. UNITED NATIONS

- | | |
|--|-----|
| 1. <i>General</i> | 241 |
| 2. <i>Particular organs</i> | 241 |
| General Assembly | 241 |
| International Court of Justice | 241 |
| Secretariat | 243 |
| Security Council | 243 |

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Republic of the Philippines

INTERMEDIATE APPELLATE COURT

UNITED STATES LINES, INC. v. WORLD HEALTH ORGANIZATION: JUDGEMENT OF 30 SEPTEMBER 1983

Claim by an ocean shipping company against WHO for demurrage on cargo shipped by the company—Immunities of international organizations from local jurisdiction

The plaintiff claimed that a sum of money was payable by WHO owing to the latter's failure to withdraw its cargo from the port after 10 working days following arrival. WHO moved to dismiss the complaint on the ground that it was a specialized agency of the United Nations and was not subject to the jurisdiction of the court under the provisions of the Host Agreement between the Philippines and WHO of 1951. The plaintiff claimed (1) that the Host Agreement was not binding for lack of proper ratification in accordance with national requirements and (2) that WHO had waived any immunity by appearing voluntarily in court.

The court of the first instance dismissed the action and this was upheld on appeal on the grounds that (1) regardless of the status of the Host Agreement WHO was immune from all form of Philippine legal process because of the ratification by the Government *inter alia* of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations and (2) the appearance of WHO in the court of first instance to plead its immunity from legal process could not be construed as a waiver of its immunity.

2. Italy

PRETURA DI ROMA

AZIZ v. CARUZZI: ORDER OF 12 NOVEMBER 1983

Eviction order on expiry of the private dwelling lease of a senior staff member of IFAD—Headquarters Agreement between Italy and IFAD of 26 July 1978—Immunity of the diplomatic agent from civil Italian jurisdiction and his exemption from any measures of execution in the sense of the Vienna Convention on Diplomatic Relations

The written evidence submitted to this Court, especially the official note from the Italian representative to FAO and IFAD, makes it quite clear that Mr. Sartaj Aziz is a senior official of the International Fund for Agricultural Development and also, as the head of protocol for IFAD has declared in a document of 15 July 1983, the Acting Director whenever the Director is absent.

Besides, according to article XV, section 33 (b), of the Agreement between IFAD and the Italian Government, signed in Rome on 26 July 1978, and approved by law No. 289 of 23 May 1980, the said official has the rank of ambassador and his status—as laid down in the Vienna Convention on Diplomatic Relations signed at Vienna on 18 April 1961 and ratified and implemented by law No. 804 of 9 August 1967—implies complete immunity from criminal and civil jurisdiction (art. 31, para. 1) and also immunity from all measures of execution.

Furthermore, these privileges are not subject to exception in the case at hand, in which Mr. Sartaj Aziz received an injunction to vacate the house in which he lived (the subject of the present suit), based on an order cancelling his tenancy agreement, for the following reasons: first, article XV of the aforementioned Agreement between IFAD and the Italian Government grants—and this is expressly laid down in section 36—the privileges in the interests of the Fund and not for the personal advantage of the interested persons; secondly, article 31, paragraph 1, of the Vienna Convention allows jurisdiction in civil suits when it is a case of “a real action relating to private immovable property situated in the territory of the receiving State . . .” On this last point it is worth noting the reference to the teleological element of immunity: if, on the one hand, it is not sufficient to exclude the privileges due to diplomatic agents and consisting in the protection afforded to their persons and their property on the territory of the receiving State, so as to allow them to be free to perform official business (*ne impediatur legatio*), on the other hand, it is the premise on which is based the power of the director of the international institution to waive the immunity of any agent who may take undue advantage thereof, thereby confirming the effects of diplomatic immunity until such time as it is waived by a decision taken within the organization itself. A “real action” should be taken to mean, in accordance with the terminology of Roman law, a claim for the protection of a right of property or usufruct, whereas the claim objecting to an eviction order relates to a tenancy agreement and therefore is of a personal nature.

In view of all these considerations, the Court finds that there are serious reasons for quashing the injunction.¹

NOTE

¹ The summary is taken from *The Italian Yearbook of International Law*, vol. VI, 1985, p. 193. The original text was published in 107 *Il Foro Italiano* (1984), I, p. 601.