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Part Three. Judicial decisions on questions relating the United Nations and related inter-governmental organizations

Chapter VIII. Decisions of national tribunals



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CHAPTER VIII

DECISIONS OF NATIONAL TRIBUNALS

1. FRANCE

LOWER COURT OF THE SEINE

Essayan v. Jouve: Judgement of 1 October 1962.^{1/}

Officials of the United Nations are immune from legal process only in respect of acts performed by them in their official capacity (article V, section 18 (a), of the Convention on the Privileges and Immunities of the United Nations) - The ordinary law of diplomatic immunity does not apply.

In an action relating to the occupation of a private dwelling the defendant, a French national and a representative of the United Nations High Commissioner for Refugees, had contested the jurisdiction of the court on the ground that, as a diplomatic agent in France of an international body, he enjoyed diplomatic immunity which he could not waive and which according to judicial authority even covered acts done by an agent as a private person. He cited in particular an agreement of 18 February 1953 between the French Government and the United Nations High Commissioner for Refugees in which the Government had granted to the High Commissioner's representatives in France the benefits and immunities conferred by the Convention on the Privileges and Immunities of the United Nations.

In its judgement the court rejected this plea, pointing out that the immunity from legal process granted to representatives of the High Commissioner by article V, section 18 (a), of that Convention, which had been ratified by France, was expressly restricted to their official acts and thus clearly differed from the total immunity granted to the envoys of foreign governments by the decree of 13 Ventôse, year II. The court stated further that the granting of a special immunity to United Nations officials obviously implied that they could not, simply as such, be equated with envoys of foreign governments, and that such equality of treatment was also precluded by the fact that the United Nations was constituted quite differently from a foreign government.

^{1/} Gazette du Palais, 16-19 February 1963.

2. SYRIA

COUNCIL OF STATE (ADVISORY SECTION)

Exemption of the United Nations Relief and Works Agency for Palestine
Refugees in the Near East from municipal construction licence fees:
Opinion of 16 December 1962. 1/

Taxes (impôts) and fees (taxes), direct taxes and indirect taxes:

interpretation of article II, section 7 (a), of the Convention on the Privileges
and Immunities of the United Nations - Primacy of international law over domestic
law in the interpretation of these provisions.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) asked leave of the municipality of Homs to build within the municipal limits, and the municipality demanded payment of the construction licence fee payable under Act No. 151 of 8 January 1938 concerning municipal taxation. The Agency objected, citing the Convention on the Privileges and Immunities of the United Nations, applied to Syria by Legislative Decree No. 12 of 3 August 1953, as amended by Act No. 196 of 13 June 1960. The Ministry of Municipal and Rural Affairs sought the opinion of the Council of State. The Council, in an opinion of 16 December 1962 delivered by the plenary assembly of its advisory section, held that the fee was one of the "direct taxes" referred to in article II, section 7 (a), of the Convention, and that the Agency was therefore exempt. The Council pointed out that this term should not be interpreted according to Syrian law only but that account must also be taken of the meaning which the United Nations had attributed to it in drafting the Convention, since otherwise the text might be interpreted differently in different States Parties. Syrian legislation itself did not always draw a very clear distinction between a tax and a fee, and the municipal construction licence fee was a direct tax because it was levied directly for the benefit of the public funds, and the payer could not recover it from a third person. The draftsmen of the Convention on the Privileges and Immunities of the United Nations had intended to treat fees as, in principle, identical with direct taxes; since, after stipulating in article II, section 7 (a), that the United Nations and its property should be "exempt from all direct taxes", they had added:

1/ Text kindly furnished by the Agency.

"it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services". Even if under Syrian law the construction licence fee was not a direct tax, the term at issue must be interpreted in accordance with international law.

3. UNITED ARAB REPUBLIC

OFFICE OF THE STATE COUNSEL, FORT SAID

Memorandum of 21 November 1962 relating to Case No. 3526 of 1962, Eastern Division

Status of United Nations Emergency Force in Egypt - Criminal charge against member - Exchange of letters constituting an Agreement between the United Nations and the Government of Egypt, 8 February 1957.

A member of the Indian contingent of the United Nations Emergency Force stationed on territory of the United Arab Republic was accused of wilfully uttering a counterfeit United States five-dollar note.

The Exchange of letters constituting an Agreement between the United Nations and the Government of Egypt, 8 February 1957,^{1/} paragraph 11, provides in relation to criminal jurisdiction that members of the Force shall be subject to the exclusive jurisdiction of their respective national States in respect of any criminal offences which may be committed by them in Egypt.

The State Counsel for the division therefore ruled that no proceedings in respect of the alleged acts could be instituted in a criminal court of Egypt.

^{1/} United Nations, Treaty Series, vol. 260, p. 61.

4. UNITED STATES OF AMERICA

COURT OF GENERAL SESSIONS, NEW YORK COUNTY

People of the State of New York v. Nicholas Coumatos:
Judgement of 19 January 1962 1/

Distinction between governmental representatives and United Nations staff members for purposes of immunities - Jurisdiction over acts committed within the premises of the United Nations - Interpretation of articles III, V and VI of the Headquarters Agreement.

The defendant, an American citizen employed at the United Nations Headquarters as an inventory clerk on the payroll of the United Nations, had been arrested by the New York City Police outside the United Nations Headquarters and indicted for grand larceny committed in the United Nations Headquarters. He objected to the proceeding on the ground that the Court lacked jurisdiction by virtue of his position as a United Nations employee and in view of the fact that the alleged crime had taken place on the United Nations premises.

By a judgement of 19 January 1962, the Court of General Sessions sustained the indictment and found the defendant guilty. The Court (James E. Mulcahy, J.) pointed out that, while diplomatic immunity was extended to some categories of resident representatives of Member States to the United Nations under article V of the Headquarters Agreement of 26 June 1947 between the United States and the United Nations, officers and employees of the United Nations could only rely on the International Organizations Immunities Act of 1945,^{2/} whose provisions on immunity from suit and legal process (section 7 (b)) are limited to acts performed by them in their official capacity.

Noting that the defendant's claim to immunity rested upon article III, sections 8 and 9 of the Headquarters Agreement, the Court addressed itself to the

1/ 224 N.Y.S. 2d 507. See also Gen. Sess., 224 N.Y.S. 2d 504.

2/ United Nations Legislative Series, Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations, vol. 1 (ST/LEG/SER.B/10), p. 128.

question whether it had jurisdiction over the acts as committed within the premises of the United Nations. It summarized the relevant provisions of articles III and VI of that Agreement and concluded:

"Accordingly, it would appear from this agreement that the local law shall have jurisdiction over any acts done or transactions taking place within the Headquarters District which are in violation of such laws and the courts of the appropriate American authorities shall have jurisdiction to try and determine issues between the parties. However, such Federal, State or local laws shall, of course, not be inconsistent with any regulation that has been authorized by the United Nations. ...

"For the Court to recognize the existence of a general and unrestricted immunity over suits or transactions, as proposed by defendant, would be to establish a large preferred class of people within our borders who would be immune to punishment inasmuch as the United Nations has no tribunal for the control and punishment of defendants among its personnel. It can at best expel or eject them from the Headquarters District and such persons would escape trial and punishment completely. Such a blanket immunity is contrary to our sense of justice and cannot be supported by any reference to the United Nations Charter, Acts of Congress or executive orders of the President."

The defendant also argued, on the basis of article III, section 9 (a) of the Headquarters Agreement, that even if he was not immune from legal process, the United Nations had to give its consent prior to the indictment and, since its consent was obtained after the indictment, such consent had no effect. The Court held that that section of the Headquarters Agreement was not applicable in the case since the defendant had been arrested outside the United Nations Headquarters.