

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1969

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

Chapter VII. Decisions of international tribunals



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CONTENTS (continued)

	<i>Page</i>	
14. Exclusive authority of the Secretary-General as regards permission to execute the waivers of privileges and immunities required by a Member State from staff members maintaining or seeking permanent resident status in that State—Policy of the United Nations in that respect	224	
15. Issuance of visas to members of the families of United Nations officials assigned in the United States	225	
16. Income tax exemption of United Nations staff members under the Convention on the Privileges and Immunities of the United Nations—The emoluments paid by the United Nations should not be taken into account in setting the rate of tax on non-exempt income	226	
17. Question whether the Secretary-General could agree to a request by a Member State that its nationals be appointed only on a temporary basis and with the prior approval of the governmental authorities	228	
 B. LEGAL OPINIONS OF THE SECRETARIATS OF INTER-GOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS		
<i>International Labour Office</i>	229	
 Part Three. Judicial decisions on questions relating to the United Nations and related inter-governmental organizations		
 CHAPTER VII. DECISIONS OF INTERNATIONAL TRIBUNALS		
<i>Arbitration case</i>		
Starways Limited v. United Nations: Decision of the arbitrator dated 24 September 1969	233	
 CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS		
1. <i>Austria</i>		
Vienna Regional Court for Civil Cases		
Melanie Höffer v. Arthur Walligura: Judgement of 9 October 1969		
Extraterritorial privileges of IAEA officials holding the grade P-5 and above under section 40 of the Headquarters Agreement between Austria and IAEA		235
2. <i>Belgium</i>		
Brussels Appeals Court		
Manderlier v. United Nations and Belgian State: Decision of 15 September 1969		
The immunity from every form of legal process granted to the United Nations under the Convention on the Privileges and Immunities of the United Nations is unconditional and is not limited by article VIII, section 29 of the Convention in question, or by article 10 of the Universal Declaration on Human Rights, or by Article 105 of the United Nations Charter		236

Chapter VII

DECISIONS OF INTERNATIONAL TRIBUNALS

Arbitration case

STARWAYS LIMITED V. UNITED NATIONS: DECISION OF THE ARBITRATOR DATED 24 SEPTEMBER 1969¹

In 1961, the United Nations contracted with Sabena for the charter of several aircraft to be operated by the carrier or any contractor of the latter on flights directed by the United Nations in connexion with the United Nations mission in the Congo. Among the aircraft so provided by Sabena was one belonging to and operated by Starways Limited, sub-contractors of Sabena. This aircraft was destroyed by fire, having been attacked while on the ground by a plane in the service of rebel Katanganese forces hostile to the United Nations mission in the Congo. A claim was presented by Starways Limited to the United Nations, the former requesting compensation from the latter for damages suffered as a result of the destruction of the aircraft, as well as for other incidental damages.

On 21 March 1966, the United Nations (hereinafter referred to as "Respondents"), being immune from suit, and the solicitors of Starways Limited (hereinafter called "Claimant") agreed to submit the question of the liability for the loss of the aircraft to arbitration. The arbitration agreement stipulated that the question of contractual liability was excluded from the terms of reference and that the applicable law was that of the (former) Belgian Congo remaining in force in the Democratic Republic of the Congo pursuant to article 2 of the *Loi fondamentale* of 19 May 1960.

Before dealing with the merits, the Arbitrator had to render a decision with respect to a preliminary objection raised by Respondents which, if sustained, would defeat the claim submitted to arbitration. In this preliminary objection, Respondents denied the *locus standi* of Claimant on the basis of information to the effect that Starways Limited no longer existed as a corporate entity.

The Counsel for Claimant conceded that Respondents were entitled to their preliminary objection though he argued that it was technical in character and contended that in the exercise of his discretion, the Arbitrator should grant a motion by Claimant for leave to amend. The Arbitrator however decided that he should not exercise his discretion as urged by Counsel for Claimant. He stressed in that respect that according to articles 61 and 1005 of the Belgian Code of Civil Procedure an arbitration agreement shall state the name of the plaintiff or claimant and that the motion for leave in the instant case was not one endeavouring to correct a mere ministerial mistake in the description of a party: it involved the claim of a corporation owned by interests different from those that owned the company at the time of the loss and disclosed the existence of parties different from Claimant as being entitled to the whole or to a part of the proceeds.

¹ Howard H. Bachrach, arbitrator.

The Arbitrator stressed in that respect that in arriving at the decision to enter into an agreement to arbitrate, Respondents were entitled to know who were the real parties. One of the reasons was that a party, prior to entering into an agreement to arbitrate, must have the means of deciding whether the proceedings in which it is about to engage will have the effect of adjudicating the issue definitively and as regards all possible claimants, especially as arbitral awards may not be opposed to third parties. That consideration had all the more strength in the instant case as one of the parties was the United Nations which ordinarily would enjoy immunity from being sued. If it be deemed to be in the public interest to encourage such immune international bodies to consent to arbitration, the required corollary was surely not to use judicial fiat or discretion to compel an international organization to litigate directly or indirectly with a party or parties whose identity or even existence could not have been anticipated when the agreement to arbitrate was made.

For these reasons, the Arbitrator sustained the Respondents' preliminary objection and granted their motion to dismiss the action.²

² The United Nations subsequently offered to enter into a new arbitration agreement with the Liquidator of the successor to Starways Limited as claimant—British Eagle (Liverpool) Ltd.—to arbitrate the question whether, subsequent to the landing of the aircraft at Kamina airport on 16 September 1961, the United Nations breached any duty of care for the safety of the aircraft. In the event, the parties reached a compromise settlement under which the United Nations assumed a portion of the costs of the arbitration proceedings, namely US \$10,000 and the Liquidator agreed to discharge and hold harmless the United Nations from any claims by British Eagle (Liverpool) Ltd. arising out of the destruction of the aircraft and his undertaking to obtain and deliver similar discharges from certain other interested parties.