

## ニッサン事件

事実 ( 貴族院判決 *Nissan v. Attorney-General*, [1970] AC 179 による )

[Nissan] is a British subject being a citizen of the United Kingdom and Colonies. In 1963 he was the tenant of the Cornaro Hotel near Nicosia in Cyprus. On December 29, 1963, British forces then operating in Cyprus took possession of his hotel. The British Government have refused to pay him compensation and he has brought the present action.

The said hotel was a luxury hotel classified as First A and the accommodation for hotel guests consisted, inter alia, of 19 bedrooms each with its own private bathroom and various public rooms. The said hotel was decorated and equipped by the plaintiff at a cost to him of oe32,000 or thereabouts, including oe4,450 spent in structural alterations necessary for the purpose of carrying on the said business. In addition to accommodation for guests the said hotel included a self-contained flat on the first floor thereof which was occupied by the plaintiff and his family as a residence.

Prior to and following on the completion of the said hotel the plaintiff carried on the said business and developed the same as a luxury hotel catering for customers of higher income groups and up to the time of the events hereinafter described the plaintiff had built up a substantial goodwill for the said business and the said hotel was well known in Cyprus as a luxury hotel.

During the years 1963 and 1964 Her Majesty's Forces from the United Kingdom were operating in Cyprus with the consent of the Government of Cyprus for the purpose of assisting in the maintenance of peace as between the Greek and Turkish sections of the population of Cyprus. The said operations by Her Majesty's Forces did not constitute an engaging in war nor was any act carried out by them in the course of such operations in contemplation of any war in which the Sovereign was or has subsequently been engaged.

On December 29, 1963, a contingent of British troops forming part of Her Majesty's Forces [...], without the consent of the plaintiff, took possession of the whole of the said hotel and its furniture and equipment and all the food and stores in the said hotel and all the other chattels of the plaintiff therein with the exception of the plaintiff's said private flat and three stores situate on the ground and second floors, and thenceforth the said hotel was continuously occupied by units of Her Majesty's said Forces in succession, which said troops damaged or destroyed the whole of the furniture and equipment of the said hotel so that the same were no longer fit for use and damaged or destroyed the interior decoration of the hotel and consumed the whole of the stock of food and stores therein and the plaintiff's said

business and the goodwill thereof were thereby wholly destroyed.

**第一審判決** Nissan v. Attorney-General, [1968] 1 Q.B. 286, 294 (Stephenson, J.).

The Secretary-General issued directives, including instructions from the principal organs of the United Nations, to the Commander of the Force appointed by the Secretary-General to exercise in the field full command of the Force, and the Commander is operationally responsible for the performance of all functions assigned to the Force by the United Nations and may delegate his authority to the commanders of national contingents [...] [T]he Force [is] a subsidiary organ of the United Nations, and its members, although remaining in their national service, are temporarily international personnel under the authority of the United Nations and subject to the instructions of the Commander, through the chain of command. [...]

I cannot think that the authority of the United Nations over their Force can differ from the authority of an independent sovereign state over its armed forces [...] That may raise, or depress, the status of the United Nations, an organisation in which a number of independent sovereign states are for some purposes united, to the level of an independent sovereign state and may require that "acts of state" be extended or altered to "acts of the United Nations." But as the United Nations can make agreements with such states and by such agreements establish an armed force in their territories, I find nothing surprising in that.

**控訴審判決** Nissan v. Attorney-General, [1968], 1 Q.B. 286, 327.

Lord Denning:

On March 27, 1964, the British troops became part of the United Nations Force. They were under the command of the United Nations Commander. They flew the United Nations flag. They wore the berets and arm flashes to denote they were no longer the soldiers of the Queen, but the soldiers of the United Nations. They were acting as agents for the United Nations, which is a sovereign body corporate. Their actions thenceforward were not to be justified by virtue of the royal prerogative of the Crown of England. They were to be justified only by virtue of the United Nations. I do not think the Crown can be expected to pay compensation thereafter. It must be paid by the United Nations themselves or perhaps by the Cyprus Government who agreed to provide all necessary premises. At any rate, it is not payable by the British Crown.

[Danckwerts L.J. および Winn L.J. も同意見]

上告審判決 Attorney-General v. Nissan, [1970] AC 179.

Lord Morris of Borth-y-Gest

The United Nations is not a state or a sovereign: it is an international organisation formed (inter alia) to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to peace [...]

From the documents it appears further that, though national contingents were under the authority of the United Nations and subject to the instructions of the commander, the troops as members of the force remained in their national service. The British forces continued, therefore, to be soldiers of Her Majesty. Members of the United Nations force were subject to the exclusive jurisdiction of their respective national states in respect of any criminal offences committed by them in Cyprus.

[他の 4 人の裁判官も同意見]