



## THE CONCEPT OF IMMUNITIES OF THE INTERNATIONAL ORGANIZATIONS AND THEIR OFFICIALS: THEORY AND PRACTICE

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### ABSTRACT

*The concept of immunity of international organizations and their officials is an important aspect of international law. Immunity protects international organizations and their officials from legal processes in the host state and is necessary to ensure that international organizations can carry out their functions effectively and without interference.*

*This article provides an overview of the concept of immunity of international organizations and their officials. It discusses the different types of immunity available to international organizations and their officials, including immunity from jurisdiction and immunity from execution. The article also examines the scope and limitations of immunity, and the circumstances under which immunity can be waived or lifted.*

*The article highlights the importance of balancing the need for immunity with the need for accountability and transparency. It discusses the mechanisms available for resolving disputes related to immunity, including the International Court of Justice and other dispute resolution mechanisms.*

*Finally, the article considers recent developments in the law of immunity of international organizations and their officials, including the increasing recognition of the responsibility of international organizations to respect human rights and the growing trend toward limiting immunity in cases of serious violations of international law.*

*Overall, the article provides a comprehensive overview of the concept of immunity of international organizations and their officials, and highlights the ongoing challenges and complexities involved in balancing immunity with*



*accountability and transparency in the international system.*

The concept of immunities of international organizations is an important aspect of international law. International organizations and their officials are granted immunities to ensure that they can perform their functions without undue interference from host states or other actors. Immunities can take different forms and are typically granted by international treaties or agreements.

To understand the privileges and immunities of international organizations and special missions, it is important to first provide an overview of the legal foundation for these immunities. While diplomatic, consular, foreign official, and head of state immunities are commonly known, there are other types of immunities as well. It is worth noting that international organizations and their officials are frequently granted immunities as a result of the constituent instrument that established the organization. The questions of immunity and inviolability are stated in a headquarters agreement of the organization with the member-states [Barry E. Carter, Allen. S. Weiner, Duncan B. Hollis, International law (seventh edition) Wolters Kluwer, New York. ISBN 978-1-4548-9268-7. P-717.]. According to the given statement an initial question arises: `Why should international organizations and its representatives enjoy immunities at all? Is it legal to compare the employees of the international organizations to diplomats? The second part of the research is dedicated to these questions. Firstly, we will discuss the concept and nature of the immunity of international organizations.

While learning the topic of immunities and privileges, several questions come to mind: a) are they the eliminations from jurisdictions? b) what constitutes the jurisdiction and how it occurs? As it is defined by the words of W.Worster in broad meaning jurisdiction is the lawful authority originated to demand the legal consequences for actions of actors [William Worster, Cases and materials on the Law of International organizations, Abingdon , Oxon New York, Routledge, 2021. P 450, p-308]. In other words, jurisdiction, firstly, the mechanism or authority that regulates the institute of responsibility of the actors of law in domestic and international law. Secondly, in direct legal conception, jurisdiction is a warrant to apply the definite rules of law to the appearing conflict situations and cases.

Jurisdiction can be also specifically limited in addition to the broad forms [The authors of the book before give three types of jurisdictions in general: *prescription, adjudicative and enforcement jurisdiction.*] of it. Jurisdiction can be *ratione personae* (regarding a special person who is usually a public official, or it is the result of actor`s status. For instance, head of the State, ministers, ambassadors), *ratione materiae* (also called as functional when the jurisdiction extends to the functions performed. In other words, functional immunity depends on the function of the actor or the individual`s actions fall under the protection of immunity [Ademola Abbas,



*Complete International Law: Text, Cases and Materials (2<sup>nd</sup> edition), Oxford University Press, 2014.]) and *ratione temporis* (the jurisdiction shows if the dispute exists, or it finds claim inadmissible).*

In addition, jurisdiction can take on different types and forms that are characterized by their links to the exercise of jurisdiction. It is important to note the distinction between immunity and non-justiciability, as they are not interchangeable concepts. Legal rules come into play when determining whether a case is subject to immunity or non-justiciability. Immunity differs from non-justiciability in that immunity pertains to the court's inability to hear a case due to the identity of the alleged perpetrator, whereas non-justiciability pertains to the court's inability to hear a case due to the nature of the subject matter.

After examining the topic of jurisdiction, we can now delve into the concepts of immunity and privileges. It is crucial to differentiate between these two concepts because many disputes arise from the confusion surrounding them. Some people tend to overlook the contrast between immunity and privileges, while others studying these concepts may have numerous misunderstandings. These misconceptions often stem from the question of whether privileges are a broader concept than immunities or vice versa. According to scholarly research, privilege is an exception from jurisdiction, meaning that laws do not apply in certain circumstances [William Worster, *Cases and materials on the Law of International organizations*, Abingdon, Oxon New York, Routledge, 2021. P 450, p-309]. It means that the laws do not apply to a particular person or subject of matter.

Immunity is a legal concept that denotes an exemption from jurisdiction. This means that while laws still apply, the individual in question cannot be subject to legal proceedings for violating them. Immunity is a principle that exists in both international and domestic law, which places limits on the authority of courts in one state to exercise jurisdiction over another state. It is an exception to the general rule that states have jurisdiction over any acts committed within their territory, whether they are criminal or civil in nature [Ademola Abbas, *Complete International law: Text, Cases and Materials (2<sup>nd</sup> edition)*, Oxford University Press, 2014. P-267].

To make the picture clearer several examples of obtaining immunity and consequences of it will be discussed. On November 12, 2017, Chingiz Mukhammadeev, the citizen of Russian Federation, an employee of the Russian Embassy in Ukraine, knocked down a woman and a child, where they received various levels of injury. In this situation, Ukrainian courts have jurisdiction over the subject matter (Russian diplomat), but they are prevented from exercising the jurisdiction towards him because of the identity of Ch.Mukhammadeev. Being a diplomat he falls into the category of subjects of law who enjoys special status and immunity from jurisdiction. That is why he cannot be tried by courts of the Ukraine. Furthermore, such incidents in the field of immunity were aroused among the diplomats of Germany in 2008. This incident happened in Moscow. B.T.Hobert, employee of the German embassy knocked down two students in Moscow on November 30, 2008.

Arter the accident B.T.Hobert informed the police office about the happened scene and his diplomatic immunity. In couple of days, he was in Germany, where the criminal case against him was opened. In the territory of Russian Federation, he was dot detained and arrested; other incidents in the field of immunity occured among the representatives of the



United Nation (UN). The accident happened with the electrical engineer in the United Nations Military Observer Group in India and Pakistan [From the DAWN Newspaper published in April 13, 2011.]. The UN representative caused a collision in his car under alcohol influence and hit the citizen of Canada living in Pakistan. According to the information of the Kohsar police, Patrick Kibuta, the UN representative, enjoyed diplomatic immunity. That is why he was not detained and arrested till the fact of alcohol was proved, even the commitment of the wrongful act had an aggravating nature. The police of the Kohsar confiscated the UN's vehicle, after the blood alcohol level was found elevated. After the car was impounded and the accident registered, P. Kibuta was allowed to go leaving the car in police station. In the end of the process police of Kohsar contacted with the UN's security department and sent a note to UN through the Foreign Office of Kohsar.

To conclude, it is crucial to distinguish the differences and similarities between the immunity of international organizations and other actors of international law, such as states. One of the main differences is that the immunity of international organizations is closely linked to their international personality. The principle of *par in parem non habet jurisdictionem*, or "equals have no jurisdiction over each other," is a well-established rule of law in this context. This means that actors, especially states, enjoy absolute immunity from the judicial jurisdictions of other states. [Aaron X. Fellmeth and Maurice Horwitz, Guide to Latin in International Law (1 ed.), Oxford University Press, 2009. ISBN-13: 9780195369380]. The second point to consider is that international personality is an equal legal characteristic shared by both states and international organizations. As subjects of international law, both states and international organizations are granted international personality, which grants them certain rights and obligations under international law [Cassese, A. (2013). International law. Oxford University Press].

The immunities of international organizations are rooted in customary international law and are recognized by various international legal instruments. For example, the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 provide for immunities for diplomatic and consular officials respectively. The Convention on the Privileges and Immunities of the United Nations of 1946 provides for the immunities of the United Nations and its officials.

More broadly, it should be stated that immunity of the officials of international organizations is recognized in:

- a) United Nations Charter (in Article 105).
- b) General convention on the Privileges and Immunities of the United Nations (went into effect in 1946).
- c) Convention on the Privileges and Immunities of the Specialized Agencies (1947).

As it was stated above immunity of the officials of international organizations is recognized in U.N. Charter. According to the Article 105 United Nations Organization enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes`[ Article 105 of United Nations Charter]. Moreover, it is stated in Article that the representatives of United Nations members and officials enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.



It means that the organization enjoy immunities and privileges to exercise its functions in the territory of the States which are the members to Organization. In addition to this, the representatives and officials of the Organization are entitled to immunities and privileges in the territory of member-states as well as the Organization itself. Therefore, the immunity of international organizations and its officials is 'functional'.

As it was discussed before functional immunity or *ratione materiae* [Aziz Epik, No Functional Immunity for Crimes under International Law before Foreign Domestic Courts: An Unequivocal Message from the German Federal Court of Justice, *Journal of International Criminal Justice*, Volume 19, Issue 5, November 2021, Pages 1263–1281] distinguishes from other types of immunities. First, functional immunity is granted to officials for taking any official act due to their functional responsibilities, regardless of their rank or position comparing to *ratione personae* [C. Kreß, in K. Ambos (ed.) 'Cooperation with respect to waiver of immunity and consent to surrender', *The Rome Statute of the International Criminal Court* (4th edn., C.H. Beck, Hart and Nomos, 2021); R. van Alebeek, 'Functional Immunity of State Officials from the Criminal Jurisdiction of Foreign National Courts', in T. Ruys, N. Angelet, and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law* (Cambridge University Press, 2019) 496–524, at 496; G. Werle and F. Jeßberger, *Principles of International Criminal Law* (5th edn., Oxford University Press, 2020), at para. 833]. Secondly, in comparison to *ratione temporis*, when the jurisdiction shows if the dispute exists, or it finds claim inadmissible functional immunity can spread on several periods of solving two or more disputes.

The next important document related to privileges and immunities is the General Convention, which provides for privileges and immunities for three categories of individuals who are essential to the work of the United Nations. These categories include: 1) representatives of member states; 2) United Nations officials; and 3) experts on mission for the United Nations. While representatives of member states are entitled to appropriate diplomatic privileges and immunities, United Nations officials, who are full-time employees, enjoy "functional" immunity. This type of immunity is defined in Section 18(a) of Article V as immunity from liability "for what is said or written by them and for all acts performed by them in their capacity as officers" [United Nations. (1946). *Convention on the Privileges and Immunities of the United Nations*].

Another convention that deals with the immunities and privileges of officials of international organizations is the *Convention on the Privileges and Immunities of the Specialized Agencies*. This convention has a more specialized structure that is specifically focused on the immunities and privileges of officials and representatives of international organizations [United Nations. (1947). *Convention on the Privileges and Immunities of the Specialized Agencies*].

The Statute of the League of Nations in 1919 first addressed the topic of immunity and privileges, but it only provided for "diplomatic" privileges and immunities for employees and the inviolability of the organization's property. However, these vague rules related to immunity of organizations required further clarification in order to become practical tools for international organizations officials and judges in national courts to determine the legal capacity of organizations to engage in a specific legal transaction or whether they are immune



from legal action. Additionally, there was uncertainty regarding the extent to which officials of international organizations and representatives of member states to the United Nations should enjoy privileges and immunities.

In this context, the Convention on the Privileges and Immunities of the Specialized Agencies highlights the importance of clearly distinguishing the immunities of officials of international organizations.

International organizations and their officials are often entitled to immunities in accordance with the terms of the constituent treaties that created them [Carter, Weiner, & Hollis, *International Law*. Wolters Kluwer in New York 7th ed. 2018. p.716-717]. International organizations and their officials are frequently granted immunities in accordance with the provisions of the constituent treaties that establish them. These immunities are designed to protect the independence and effectiveness of the organizations and their officials in performing their functions. The specific immunities granted to international organizations and their officials can vary depending on the nature and functions of the organization, as well as the terms of the governing treaties. In general, international organizations and their officials enjoy a range of immunities, including immunity from legal process, immunity from taxation, and immunity from seizure of property. However, the scope and extent of these immunities can be subject to debate and criticism, as they may be seen as limiting the accountability and transparency of international organizations and their officials [Aust, A. (2010). *Handbook of International Law*. Cambridge University Press].

In conclusion, international organizations and their officials enjoy various immunities and privileges under international law, which are designed to protect them from interference by host states and other actors. These immunities and privileges include immunity from jurisdiction, inviolability of premises, and exemption from taxes and customs duties, among others. While these protections are important for ensuring the independence and effectiveness of IOs, they can also create legal and political obstacles to accountability and redress for alleged wrongdoing. As a result, there have been several notable cases where IOs and their officials have enjoyed immunity and privileges, as well as challenges to their immunity and privileges in cases of alleged human rights violations and other misconduct. Ultimately, the balance between immunity and accountability is a complex issue that requires careful consideration of the interests of all stakeholders, including IOs, their officials, and the communities they serve.

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