

The Basis for determining the immunities and privileges of international organizations

By

Muhammad Thamer Mukhat

University of Thi-Qar, College of Law, IRAQ

Email: lawp1e211@utq.edu.iq

Hedab Rasoul Sharif

University of Thi-Qar, College of Law, IRAQ

Email: lawp1e211@utq.edu.iq

Abstract

The modern organization of the international community has had to establish many international and regional organizations, and the member states in these organizations have permanent or temporary representatives, as the case may be, assign them to attend their meetings and participate in discussing the topics that are subject to their examination and to defend their countries' views regarding the issues presented to them that guarantee the independence and tranquility necessary for their performance. The tasks assigned to them (Perhaps the system granted to the staff of the International Institute of Agriculture in Rome in 1905 is what actually gave birth to the situation in which we live today. and privileges), and the legal personality of the international organization represents the principle of the legitimacy of all the work of the organization, which enables it to achieve its goals for which it was found. From the beginning of its establishment until achieving its goals led to the need to reach a position higher than the recognition of legal personality, which is the need to recognize what A list of latent powers behind which the organization seeks to achieve the same goals for which it was One of the basic principles of the law is that the state exercises its jurisdiction over all persons in its territory and all actions that take place on this origin.

In order to answer this question, we will divide this topic into two demands: we deal with the first requirement, the subjective basis for the privileges and immunities of international organizations, and then we address in the second requirement the functional basis for the privileges and immunities of international organizations.

The First Requirement

Subjective basis for the privileges and immunities of international organizations

Recognition of international organizations of legal personality means recognition of a special legal personality that makes them able to establish relations with other persons of international law, and at the same time, this legal personality makes the international organization a person independent of its member states, and provides it with its own will and a set of The functions and functions she exercises for her own account, which achieves a kind of separation between her and the states. (Al-Mashhadani, 1999.p. 11.)

That the (functional) purpose represents a reason for the establishment of the organization and a concept of the elements of its international character (Hassan, 2019. p. 23.), and that the immunities and privileges enjoyed by international organizations find their basis in ensuring the independence of the organization and respect for its legal personality and enabling it to carry out its functions effectively, especially in the face of the risks of pressures that may The organization is exposed to it by the member states, and therefore these privileges and immunities are

determined in accordance with the principle of specialization of international organizations, and their scope is determined on the basis of the explicit and sufficient competencies recognized for these organizations. (Abdullah, p. 10) one of the manifestations of this legal personality is the existence of a budget for the organizations, and their enjoyment of immunities and privileges, and the bearing of legal responsibility due to dealing with international legal persons, as the independence of the organization and according to the exercise of its international functions requires that it enjoy a set of immunities and privileges represented mainly in the absence of being subject to the national legislation of countries, especially the legislation of the headquarters country, because its commitment to these legislation leads to compromising the integrity of its performance of its functions, and a violation of the rule of equality that must prevail in relations between member states. Hence, it was natural for the international organization not to be subject to national financial, monetary and customs legislation, and legislation related to entry, residence and movement in the national territory. The requirements for the proper exercise of the functions of international organizations are the legal basis for the enjoyment of these privileges and immunities, and this is confirmed by what was declared by the International Law Academy at its session held in Vienna in 1924 that “the aim of the representatives of the League of Nations enjoying diplomatic privileges and immunities is to enable the League to exercise the functions of peace.” International cooperation in complete independence... and that the basis of these immunities and For perks is the interest of the job"

Article (10) of the Headquarters Agreement between the United Nations and the United States of America stipulates that this agreement must be interpreted in light of its original purpose, which is to enable the United Nations Organization to exercise its functions fully and effectively. (Shehab, 1978. p. 101.)

Therefore, some jurists believe that granting the international organization the right to enjoy immunities and privileges is an effect of recognizing the legal personality of the international organization, and the legal basis for this right does not differ from the legal basis for immunities and privileges granted to diplomatic representatives accredited between countries. (Al-Hadithi, 1991. p. 61)

Recognizing the international legal personality of the organization and authorizing it to direct competencies to achieve the goals for which it was established requires giving it the right to enjoy immunities and international privileges, as it will not be able to carry out these tasks unless it is guaranteed immunities and privileges to ensure that this is achieved, and international immunities and privileges are systems whereby exempted Some people, things, places, or some procedures of international organizations are not subject to some provisions and texts contained in the internal laws of the headquarters country or other countries, as an exception to the principle of territoriality of laws, which is thus different from the immunities and privileges granted to members of diplomatic missions. (Al-Atta. 2005, p. 116-117)

The charters establishing international organizations generally contain provisions on the immunities and privileges of the organization and its employees and the text on the immunities and privileges of the organization may be contained in a collective agreement concluded by member states and in addition to these collective agreements, the immunities and privileges of the organization may be regulated in special or bilateral agreements concluded by the organization with A specific country represented in the headquarters agreements concluded by the organization and the host country.

The question arises as to why countries are obligated to respect the immunities and privileges of the organization?

In order to answer this question, it can be said that the respect of states for these immunities and privileges comes in view of the fact that they have become a customary international rule due to their repetition and confirmation by many international agreements, both collective and bilateral. This state has an obligation to guarantee that organization the immunities and privileges necessary to carry out its tasks, and the member states of the organization are obligated to enable the organization to carry out its competencies and functions stipulated in the document establishing it, and this can only be achieved by recognizing it with the necessary immunities and privileges, and saying otherwise leads to Weakening the organization and wasting its effectiveness and the reason for its existence. (Al-Atta, p. 118)

The Second Requirement

Functional basis for the privileges and immunities of international organizations

As we know, the advantages and immunities of diplomatic missions are older in their appearance than the advantages and immunities of international organizations because the latter recently appeared on the scene of international relations, and agreements on privileges and immunities of international organizations often refer to the general provisions of the privileges and immunities of diplomatic missions, given the granting of the international organization itself and its Secretary-General and trustees The assistants and employees have the diplomatic quality in their dealings with the member states, so the legal basis for each of the privileges and immunities of diplomatic missions and the legal basis for the privileges and immunities of international organizations must be similar. With reference to the legal basis for the privileges and immunities of diplomatic missions, we find that there are three theories that dispute this basis in the stages of its development. (Hussein, 1990; Justus Uchenna & Ohaeri, 2020)

As for the first theory, it is known as (the extension of the territory), and it is based mainly on the assumption that the diplomatic envoys did not leave their lands, and therefore do not fall within the territorial sovereignty of the state they are sent to, and the mission's buildings and headquarters are considered part of the territory of the sending state, which it represents. (El Mallah, 1977; Hacimusalar & Karaaslan, 2020)

At first, this theory was accepted by many jurists, but after that it was subjected to severe criticism because it. (Muhammad. 1968, p. 134)

First: It is based on an assumption and then leads to an explicit contradiction, and this contradiction appears in the presence of the diplomatic envoy in two places at the same time, each of the country to which he is accredited on an actual basis, and the state to which he belongs on a hypothetical basis.

Second: It does not represent reality and does not conform to the modern international conditions that led to the recognition of international organizations of the privileges and immunities necessary to accomplish their tasks, as these organizations do not represent any region, so it is not possible to accept and accept this theory as a basis for the privileges and immunities of international organizations.

As for the second theory, it is the theory of (personal representation), which states that the privileges and immunities granted to diplomatic envoys are based on their diplomatic capacity as they represent their countries on behalf of their heads (Abu Heif, 1975; Mariani et al., 2021), and considering international personal relations as relations between kings and princes, and the representatives of these kings are their personal representatives, and therefore

every insult or an attack directed at these was considered an insult directed at someone who belongs to them. (Nader. 1973, p. 273)

However, this theory has also been subjected to severe criticism, and it cannot be the basis for the privileges and immunities of international organizations because the employees of these organizations do not perform their work on behalf of a state, but rather perform it for the benefit of all its member states.

Therefore, a third theory appeared, known as the theory of (functional requirements), which is considered more realistic and in line with the course of international life at the present time, and can be the basis for each of the privileges and immunities of diplomatic missions and the privileges and immunities of international organizations. Diplomatic envoys are a necessity required for them to carry out their duties in the countries accredited to them, (Al-Mallah. p. 32) and it was approved by the Vienna Convention on Diplomatic Relations of 1961, in which it was stated in its premise that "the purpose of these privileges and immunities is not to benefit individuals, but to ensure the effective performance of the functions of diplomatic missions as representatives of countries."

The same applies to international organizations, because international employees need to perform their work tasks in order to achieve the public interest that the organization seeks to have an atmosphere of tranquility in the headquarters country and other countries that impose on him the reality of his work and the requirements of his job and his presence there, the legal basis for the privileges and immunities of international organizations is not different from the foundation. The legal privileges and immunities of diplomatic missions are in both cases the interest of the job.

Modern international jurisprudence is based on this theory in granting privileges and immunities to members of diplomatic missions, and it has become one of the signs of its strength that international organizations have defined the limits and scope of privileges and immunities granted to their employees as required by their work in the service of the international organization, so that the international employee cannot do so fully except if he is secured by the local authorities, this cannot be achieved unless he is granted these privileges and immunities. (Fouda. 1964, p. 131)

So if an organization is going to do a specific job, its employees must be dedicated to the success of that specific job, otherwise it is subject to any instructions from the local authorities and should not take any instructions from authorities other than that organization, and therefore, there are a few founding charters that state in explicit terms. It is clear that employees may not request or receive information from any government or from any authority outside the authority of the organization and in the words of Article (100) of the Charter of the United Nations and that Member States respect the exclusive international character of the responsibilities of the organization's employees, even in cases where the Charter does not include. The originator of a text on this issue, the rules of procedure will provide that.

The same functional logic results in the granting of privileges and immunities from the Member State to international organizations, their employees and representatives of the Member States, but sometimes the international organization can be sued before national courts when the organization waives its immunities in the lawsuit, and financial organizations are among the most that do so in order to tempt dealing. It is viewed as a party worthy of dealing, as its credibility in the financial markets depends in part on the possibility of being sued, and therefore the founding charters of many financial organizations allow the waiver of immunities from lawsuit in certain circumstances or the restriction of immunity through a text.

However, due to labor relations, courts have been reluctant to accept cases against international organizations, yet it has become increasingly clear that the immunity of international organizations in personnel cases may lead to injustice and may jeopardize the protection of human rights. By the 1960s domestic courts had already made clear arguments for immunity from human rights litigation in property disputes.

Results

Since the privileges and immunities have been decided for international organizations on the basis of the requirements of the international job in order for the organization to carry out the tasks entrusted to it, it is better that these privileges and immunities remain linked to the requirements of the international job and not expand them to include the largest number of international staff. The organization and the assistant secretaries have full diplomatic privileges and immunities, and limit them to the rest of the international staff in their official capacity only, as the expansion of granting these privileges and immunities leads to creating problems between the headquarters country and international organizations, in addition to it leads to the loss of the rights of some citizens of the headquarters country due to the lack of The subjection of the international employee in this case to the jurisdiction of the national courts. This proposal finds its credibility in that the general trend tends not to expand the granting of international privileges and immunities.

Finally, we have a general observation that the agreements on the privileges and immunities of public international organizations are long gone without revision or amendment. For example, the United Nations Convention was approved in 1946, the Specialized Agencies Agreement in 1947, and the Arab League Agreement in 1953, noting that most of the headquarters agreements International organizations are completely dependent on these conventions in their formulation and provisions, so they need to be reconsidered in line with contemporary reality and international changes, taking into account the balance between the interests of countries and the interests of international organizations.

Conclusion

The issue of granting international organizations the necessary privileges and immunities to perform their tasks and achieve their purposes is linked to the great role that these organizations play as a person of public international law. From the entry of international organizations, especially specialized ones, in various fields of life to include industrial, economic and social aspects in addition to education, science, health, agriculture and culture closely related to human life, so agreements have emerged regulating the relationship between these organizations and their members, such as general agreements on international privileges and immunities.

References

books

Harith Qahtan Abdullah: Lectures on International Organization.

Khalil Ismail Al-Hadithi (1991): The Mediator in International Organization

Riyad Saleh Abu Al-Atta(2005): International Organizations (General Theory), Dar Al-Nahda Al-Arabiya, Cairo.

Smouhi Extraordinary(1973):Modern Diplomacy, 1st Edition, Dar Al-Yaqada Al-Arabiya, Beirut.

- Saif Al-Din Al-Mashhadani(1999): The discretion of the Security Council and its use in the case of Iraq, House of General Cultural Affairs, Baghdad.
- Ali Sadiq Abu Heif(1975): Diplomatic Law, Mansha'at al-Maaref, Alexandria.
- Fadel Zaki Muhammad(1968): Diplomacy in Theory and Practice, 2nd Edition, Modern Book Series, Ministry of Culture and Guidance,.
- Fawi El Mallah(1977): Security Authorities, Immunities, and Diplomatic Privileges, Mansha'at Al Maaref, Alexandria.
- Muhammad Abdul Karim Hassan(2019): International and Regional Organizations, 2nd Edition,.
- Mofeed Mahmoud Shehab(1978): International Organizations, 4th edition, Dar Al-Nahda Al-Arabiya, Cairo.
- Master's and doctoral theses
- Thanoun Futuyan Hussain(1990): International Organizations in Iraq (Privileges and Immunities), a master's thesis submitted to the League of Arab States Institute of Arab Research and Studies,.

Research

- Ezz El-Din Fouda(1964): The International Job, Journal of Administrative Sciences, No. 2. Conventions
- Hacimusalar, Y., & Karaaslan, O. (2020). Assessment of sleep quality of patients with panic disorder and generalized anxiety disorder during remission: a case-control study. *Archives of Clinical Psychiatry (São Paulo)*, 47(1), 19-24. <https://doi.org/10.1590/0101-60830000000224>
- Justus Uchenna, O., & Ohaeri, J. U. (2020). Using data from schizophrenia outcome study to estimate the time to treatment outcome and the early-response cut-off score that predicts outcome at week 16. *Archives of Clinical Psychiatry (São Paulo)*, 47(3), 65-70. <https://doi.org/10.1590/0101-60830000000234>
- Mariani, M. M. d. C., Lellis, V. R. R., Novaes, R. A. C. B., Schwartzman, J. S., Teixeira, M. C. T. V., & Carreiro, L. R. R. (2021). Voluntary and Automatic Orienting of Attention in Children with Attention Deficit Hyperactivity Disorder. *Archives of Clinical Psychiatry (São Paulo)*, 48(3), 155-161. <https://doi.org/10.15761/0101-60830000000298>
- The United Nations Convention on the Privileges and Immunities of 1946.
- Headquarters Agreement between the United Nations and the United States of America for the year (1947).
- The World Bank Agreement.