

Lesson 8

PRIVILEGES AND IMMUNITIES

International Institutional Law
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ISSUES

1. Immunity of the IO from civil jurisdiction of States
2. Immunity of the IO from executive jurisdiction
3. Privileges of the IO
4. Immunity and privileges of IO's officials
5. Immunity of experts on mission
6. Immunity and privileges of representatives of the member States

SOURCES

- Constituent treaty
- Specific conventions (e.g. 1946 Convention on the privileges and immunities of the United Nations)
- Headquarters agreements
- Domestic legislation

1. IMMUNITY OF THE IO FROM CIVIL JURISDICTION

1) Usually IOs enjoy “functional immunity”

e.g. Art. 105 UN Charter: “The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”.

- Immunity may be waived (art. 2 of the 1947 UN Convention)
- Immunity encompasses also activities performed on the territory of a third State (e.g. ECHR, Mothers of Srebrenica case: immunity of UN from civil jurisdiction of Dutch courts encompasses also activities of UN in Former Yugoslavia)

1. IMMUNITY OF THE IO FROM CIVIL JURISDICTION

2) In principle, immunity applies also to employment related claims

Waite and Kennedy and Beer and Regan cases
-> equivalent protection

3) Does immunity apply also when the IO is suspected of having perpetrated serious crimes under international law?

Focus: Mothers of Srebrenica case

2. IMMUNITY OF IOS FROM EXECUTIVE JURISDICTION

- Usually absolute
- According to Article II(2) of the 1947 UN Convention, no waiver of immunity shall extend to any measure of execution

3. PRIVILEGES OF IOs

- Inviolability of premises and archives
- Exemption from direct taxes, custom duties etc.

4. IMMUNITY AND PRIVILEGES OF IOs OFFICIALS

- 1) Exemption from national service obligations
- 2) Exemption from direct taxes
- 3) Immunity from suit for acts performed in an official capacity
 - May be waived by the Organization

5. IMMUNITY AND PRIVILEGES OF EXPERTS OF MISSION FOR THE UN

- 1) Immunity from personal arrest or detention and from seizure of personal baggage
- 2) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind
 - May be waived by the Organization

5. IMMUNITY AND PRIVILEGES OF EXPERTS OF MISSION FOR THE UN

- **Who is an expert on mission?**

“persons (other than UN officials) to whom a mission has been entrusted by the organization” (members of peacekeeping forces, technical assistants, members of commissions and committees...)

ICJ, Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion of 15 December 1989 [Mazilu case], para. 52

5. IMMUNITY AND PRIVILEGES OF EXPERTS OF MISSION FOR THE UN

- **When is an act to be considered as performed in an official capacity?**

- ❖ The Secretary-General, as the chief administrative officer of the Organization, has the authority to clarify whether an act was performed in an official capacity or not
- ❖ The opinion of the S-G “creates a presumption which can only be set aside for the most compelling reasons”

ICJ, Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion of 28 April 1999 [Cumaraswamy case], para. 61.

6. IMMUNITY AND PRIVILEGES OF REPRESENTATIVES OF THE UN'S MSs

- 1) Immunity from arrest and detention
- 2) Immunity from seizure of their baggage
- 3) Immunity from legal process in respect of acts done in their capacity as representatives
 - 1) MSs must waive the immunity of their representatives if immunity would impede the course of justice, and waiving it would not impede the function for which immunity was granted
 - 2) Principle of nationality discrimination: immunity does not apply if the representative of a State is a national of the host state
- 4) Inviolability of papers and documents
- 5) Exemption from immigration restrictions