CHAPTER 1

International Organizations: The Untouchables?

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Abstract

Immunity rules belong to the traditional standard rules of international organizations. It has long been accepted that international organizations and their staff need to enjoy immunity from the jurisdiction of national courts. This understanding is generally founded on the principle of functional necessity: international organizations need immunity in order to be able to perform their functions. However, the principle of the immunity of international organizations is increasingly criticized: if national courts cannot exercise jurisdiction over international organizations, who can? After outlining the intentions behind convening this compilation, this chapter will discuss the origin of the immunity rules of international organizations. Next, it will give a brief overview of the codification of such rules, both in the 1940s and in recent years. Finally, it will present some observations on the question of whether there is a need to ‘update’ or revise the current immunity rules of international organizations.

Keywords

immunity – international organizations – functional necessity

1 Introduction: The Theme of This Compilation

In a period in which both international and municipal lawyers tend to think increasingly in terms of the elimination or limitation of all forms of immunity it is important to grasp clearly the basic institutional function of international immunities and the importance of that function at the present stage of development of world organization.

These words could have been written today, but they were not. They were written more than half a century ago by C. Wilfred Jenks,¹ one of the pioneers in

what was at the time a new field within international law, the law of international organizations.

Immunity rules belong to the traditional standard rules of international organizations. It has long been accepted that international organizations and their staff need to enjoy immunity from the jurisdiction of national courts. The rationale for this immunity is different from that for state immunity. While state immunity is based on the *par in parem non habet imperium* principle, the immunity of international organizations is generally founded on the principle of functional necessity: international organizations need immunity in order to be able to perform their functions. They would not be able to do so if a national court could interfere in their work. Member states would not accept the exercise of jurisdiction by a court of one of them over acts or activities of ‘their’ organization.

Traditionally considered as being one of the pillars of this field of law, the principle of the immunity of international organizations has become increasingly criticized. If national courts cannot exercise jurisdiction over international organizations, who can? Whereas in the field of state immunity, states can always be sued in their own courts, most international organizations do not have their own courts. Why exclude acts and activities of international organizations from judicial review, while this is not the case for similar activities of states? These are uneasy questions, which have been raised ever since it was decided that international organizations should enjoy immunity. But now they are raised in a climate in which the activities of international organizations are increasingly under fire. In recent years, national courts have been confronted with a wide variety of cases brought against international organizations not only by insiders (primarily the staff of the organization), but also by outsiders (such as victims of United Nations peace operations and individuals challenging decisions of the European Patent Organization).

From the early days in which immunity rules became part of the law of international organizations, it has been recognized that such immunity should not leave complainants without a remedy. Therefore, mechanisms have been created to deal with staff disputes, and arbitration was seen as a proper way to deal with disputes of a private law character. However, it is increasingly questioned whether these remedies suffice. Perhaps this is partly because of the current criticism and skepticism towards international organizations. But it is also true that international organizations have mushroomed, and that more of their activities directly affect the life and work of private parties. In some cases, national courts have rejected the immunity claims of international organizations.

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2 ‘An equal has no power over an equal.’