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Balancing Jurisdictional Immunity and Responsibility of International Organisations – Challenges and Reforms[3]

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Abstract

International organisations (hereinafter referred to as "IOs") have evolved and expanded their roles across sectors, enjoying absolute jurisdictional immunity that raises concerns regarding the adequacy of rules governing their operations – especially in the area of modern justice needs. This paper addresses the debates surrounding the scope of jurisdictional immunity of IOs against legal responsibility, evaluating its rationale and contrasting it with the lack of appropriate legal redressal forums for violations of IOs. The authors have adopted a qualitative analysis method to examine judicial opinions and controversies involving major IOs like the UN, WHO, and NATO, revealing legal barriers that undermine efforts to hold these organisations accountable for violations of international law. The paper argues for a balanced approach that preserves the essential functions of IOs while establishing effective mechanisms for legal redress and accountability. The authors propose limiting the scope of immunity in specific cases and enhancing alternative dispute resolution mechanisms to uphold the rule of law principles.

Keywords: international organisations, immunity, responsibility, access to justice.

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Dążenie do równowagi pomiędzy immunitetem jurysdykcyjnym i odpowiedzialnością organizacji międzynarodowych – istniejące wyzwania i niezbędne reformy[4]

Streszczenie

Rozwój wielu organizacji międzynarodowych (OM) szedł – i wciąż idzie – w parze nie tylko z coraz szerszym zakresem ich działania w różnych sektorach, ale też w połączeniu z niemal absolutnym immunitetem jurysdykcyjnym, co budzi obawy co do adekwatności zasad i przepisów regulujących ich działalność – zwłaszcza w kontekście współczesnych potrzeb wymiaru sprawiedliwości. Niniejszy artykuł stanowi analizę debaty dotyczącej zakresu immunitetu jurysdykcyjnego udzielanego OM w obszarze ich odpowiedzialności prawnej, oceniając jego zasadność i zestawiając go z brakiem odpowiednich mechanizmów prawnych umożliwiających dochodzenie roszczeń w przypadku naruszeń ze strony OM. Autorzy zastosowali metodę analizy jakościowej, skupiając się na przeglądzie opinii sądowych i kontrowersji dotyczących największych OM, takich jak ONZ, WHO i NATO, ukazując bariery prawne utrudniające pociągnięcie tych podmiotów do odpowiedzialności za naruszenia prawa międzynarodowego. Autorzy postulują przyjęcie bardziej zrównoważonego podejścia, które pozwoli zachować kluczowe funkcje OM, jednocześnie wprowadzając skuteczne mechanizmy dochodzenia roszczeń i odpowiedzialności prawnej. Proponują ograniczenie zakresu immunitetu w określonych przypadkach oraz wzmocnienie alternatywnych mechanizmów rozstrzygania sporów w celu zapewnienia poszanowania zasad praworządności.

Słowa kluczowe: organizacje międzynarodowe, immunitet, odpowiedzialność, dostęp do wymiaru sprawiedliwości.

[4] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

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Introduction

International organisations (IOs) have become increasingly significant in contemporary times, established by states to achieve collective objectives and deal with global challenges through international cooperation.[5] They possess a unique legal status and are granted jurisdictional immunity to safeguard their operations from undue influence by individual member states' legal systems.[6] While jurisdictional immunity is essential for preserving IOs' functional independence, it often presents significant challenges in addressing accountability for violations of international law.

The granting of jurisdictional immunity has sparked controversy due to its perceived conflict with the notion of access to justice, which is a fundamental human rights principle. The foremost concern remains the outright denial of justice or situations where the aggrieved is left remediless. Even when dispute resolution mechanisms are available, questions arise regarding their adequacy and fairness for resolving the dispute. Balancing the immunity of IOs with their responsibility is imperative to ensure effective remedies for the aggrieved and prevent the occurrence of situations that undermine accountability and the rule of law. Achieving this delicate balance calls for a nuanced legal analysis and consideration of evolving international norms. It requires respecting the functional independence of IOs while upholding the human rights of the individuals affected by their misconduct or negligence. Identifying plausible solutions to these challenges will enhance the efficiency and legitimacy of the overall international legal framework.

This paper aims to explore the complexities surrounding IOs' jurisdictional immunity, particularly in cases where their actions or omissions cause injury to individuals, communities, or entire states. By examining specific instances of misconduct or negligence involving prominent IOs such as the United Nations (UN), the World Health Organization (WHO), and the North Atlantic Treaty Organization (NATO), we seek to uncover the limitations of existing legal frameworks in holding these organisations responsible for their wrongful conduct.

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5 M. De Serpa Soares, *The Necessity of Cooperation between International Organizations*, [in:] *Good Governance and Modern International Financial Institutions*. Leiden 2019.

6 E.C. Okeke, *Jurisdictional immunities of states and international organizations*, Oxford 2018.

Evolution of the concept of immunity of IOs

The concept of jurisdictional immunity of IOs has evolved, reflecting a progression from simple practicality to complex legal frameworks. The mid-nineteenth century marked the establishment of the first IO, the adoption of absolute immunity mirrored the protections afforded to states.[7] Initially rooted in the need to shield organisations from undue state interference, this approach drew parallels with the diplomatic immunities granted to states and their representatives.

The evolution of IOs' immunity has progressed following three main stages:

a. Neutrality and independence: Initially, certain riparian commissions were granted neutral status and independence, primarily to facilitate trust and prevent host states from interfering with their functions. It was largely based on practicality and convenience.[8] The Panama Congress of 1826 witnessed for the first time conferring diplomatic immunities to non-diplomatic functionaries, when Mexico granted diplomatic status to its Commissioners on the Mixed Claims Commission established by the United States--Mexico Convention,1839.[9] Similarly, Greece's International Finance Control Commission members were extended diplomatic powers by the Hellenic Statute of 1898. The Central Commission for the Navigation of the Rhine first enjoyed "independence and neutrality" that eventually was permanently accorded to the European Danube Commission.[10] The judges of the Permanent Court of Arbitration also enjoyed diplomatic privileges and immunities. [11]
b. Diplomatic privileges and immunities: the League of Nations era saw IOs being accorded diplomatic privileges and immunities, akin to those granted to diplomatic representatives of states. This phase marked a formalisation of IOs' status under existing legal frameworks.[12] Under Article 19 of the Permanent Court of International Justice (PCIJ), judges were granted diploma-

7 *Historical Background: League of Nations*. Available from: https://www.ungeneva.org/en/about/league-of-nations/background#:~:text=Although%20the%20first%20international%20organizations,Measures%20(1875)%2C%20and%20 the (accessed: 7.03.2025).

8 G.H. Glenn, M.M. Kearney, D.J. Padilla, *Immunities of International Organizations*, "Virginia Journal of International Law" 1982, 22(2), p. 247, 256.

9 J.L. Kunz, *Privileges and Immunities of International Organizations*, "The American Journal of International Law" 1947, 41(4), pp. 828, 828–862.

10 T. Pajuste, *The Evolution of the Concept of Immunity of International Organizations*, "East-West Studies" 2018, 8, p. 7.

11 Article 24 of the 1899 Convention for the Pacific Settlement of International Disputes, Article 46 of 1907 Convention for the Pacific Settlement of International Disputes.

12 Article 7 para 4 of the Covenant of the League of Nation (1919).

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tic privileges and immunities while performing their duties and travelling beyond their home nations. Later in 1919, the LON under Article 7(4) recognised this right. The UN Charter also recognises the privileges and immunities under Article 78 of the instrument.

c. Functional immunity under the UN: The UN introduced the notion of functional immunity for IOs. Article 105 of the UN Charter enshrines the privileges and immunities of the organisation and its officials, aimed at enabling the organisation to set up offices and assets overseas and enhance its global operations. This was introduced to ensure the protection of the organisation and its officials when performing functions in their official capacity. PCIJ's successor – the International Court of Justice (ICJ) – under Article 19 of the ICJ statute recognises diplomatic privileges and immunities of members of the court. Privileges and immunities have also been extended to agents, counsel, and advocates of parties appearing before the court. The provisions of privileges and immunities appear also in the constitutions and treaty agreements of many specialised agencies like the International Labour Organization (ILO)[13], the International Monetary Fund (IMF), and the United Nations Relief and Rehabilitation Administration (UNRRA).[14]

The evolution of IOs' immunity reflects a shift from practical necessities to a well-thought-out legal system. Each stage reflects a unique perspective, ranging from ensuring freedom from host states to aligning with the immunities of diplomatic agents and culminating in the adoption of functional immunity within the modern international legal framework.

The rationale behind jurisdictional immunity

IOs are a creation of states as a means of international cooperation to achieve shared objectives. They enjoy a separate legal personality recognised by the International Court of Justice (ICJ) in the *Reparations for Injuries*.[15] However, one must remember they are neither sovereign states nor "super states".[16] They are purposive vehicles to reach the destination set out by their founders. The jurisdictional

13 Article 40 ILO Constitution.

14 J.L. Kunz, *op. cit.*, p. 834.

15 P. Gautier, *The Reparation for Injuries Case Revisited: The Personality of the European Union*, "Max Planck Yearbook of United Nations Law Online" 2000, 4(1), pp. 331–332.

16 E.C. Okeke, *The Tension between the Jurisdictional Immunity of International Organizations and the Right of Access to Court*, [in:] *The Role of International Administrative Law at International Organizations,* Leiden 2020.

immunity enjoyed by organisations is often derived from their constituent instruments. It may also be derived from multilateral agreements like the Convention on Privileges and Immunities, bilateral agreements between host nations, or national legislation.[17]

Member states often grant privileges and immunities to IOs to enable them to effectively fulfill their functions. Jurisdictional immunity prohibits national courts from hearing cases involving IOs or resolving their legal conflicts. When operating in their official capacity, IO staff members are equally protected – with their immunity waived only by explicit consent.

The rationale behind granting immunity to IOs is twofold: first, it preserves their operational autonomy by shielding them from undue interference by member state's legal systems. Second, it promotes uniformity in the application of international law across state territories, preventing fragmentation of IOs' operations from diverse national laws.[18]

Therefore, jurisdictional immunity allows the effective, efficient, and economical functioning of IOs by protecting them from unilateral interference by member states' legal systems.[19] It ensures that IOs can fulfil their functions impartially and equitably across all member states' territories, based on uniform legal principles.[20]

Privileges and immunities of international organisations

When the UN was founded in 1945, there emerged the need for it to possess international legal personality under the domestic jurisdictions of its member states. This attribution of personality was necessary to enable the organisation to manage practical matters such as procurement contracts, property acquisition, and the capacity to pursue legal rights in national courts.[21]

Article 104 of the UN Charter recognised the legal personality of the UN under the domestic jurisdiction of its member states to fulfil its functions and purposes.

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17 R.J. Oparil, *Immunity of International Organizations in United States Courts: Absolute or Restrictive*?, "Vanderbilt Law Review" 2021, 24, p. 689. Available from: https://scholarship.law.vanderbilt.edu/vjtl/vol24/iss4/3 (accessed: 7.03.2025). Also refer C. Wickremasinghe, *The Immunity of International Organizations in the United Kingdom*, [in:] *Immunity of International Organizations,* Leiden 2015.

18 N. Blokker, *Jurisdictional Immunities of International Organisations – Origins, Fundamentals and Challenges*, [in:] T. Ruys, N. Angelet, L. Ferro (eds.), *The Cambridge Handbook of Immunities and International Law*, Cambridge 2019, pp. 185–200.

19 E.C. Okeke, *The Tension…*, p. 28.

20 UN Juridical Yearbook 1980, p. 228.

21 A. Reinisch, *The Conventions on the Privileges and Immunities of the United Nations and its Specialized Agencies.* United Nations Audiovisual Library of International. Available from: https://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html (accessed: 7.03.2025).

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Similarly, under Article 105 of the Charter, the organisation enjoys privileges and immunities within the member states to be able to fulfil its purposes.

The most important convention dealing with the privileges and immunities of the UN was adopted in 1946. The Convention on Privileges and Immunities of the UN defined its legal personality as an entity being able to enter into contracts, acquire and dispose of property, and institute legal proceedings.[22] Regarding the immunity from jurisdiction, the Convention established that the UN, its property, and assets would benefit from immunity from legal proceedings – with certain exceptions where immunity is expressly waived.[23]

The Convention also grants "inviolability" to the UN premises, property, and archives – protecting them from third-party interference.[24] Moreover, the UN officials enjoy fiscal privileges including exemption from direct taxes, custom duties, and quotas for goods used for official UN purposes.[25]

Sections 9 and 10 of Article III of the UN Convention on Privileges and Immunities of 1946 deal with the communication freedoms of the organisation. These freedoms include a wide range of rights like the absence of censorship over official communications, the right to use codes, couriers, and secure bags, and the requirement for national administrations to treat UN communication on par with that accorded to any other member state. Similar provisions have been adopted under Sections 11 and 12 of Article IV of the Convention on the Privileges and Immunities of the Specialized Agencies.

Though the UN body overall enjoys a set of privileges and immunities, the Convention mentions an important provision regarding the establishment of a dispute resolution mechanism.[26] A complete blanket on the organisation from legal proceedings will curtail the rights of the aggrieved to a legal remedy. Although there has been no dedicated legal adjudicatory body to examine cases against the UN bodies, they are usually governed by arbitration clauses, whereas cases of torts like peacekeeping operations or vehicular accidents by UN officials are covered under specific dispute procedures.[27]

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22 Article 1, the Convention on Priviliges and Immunities of the United Nations.

23 Article 11, the Convention on Priviliges and Immunities of the United Nations.

24 Article,Section 4 the Convention on Priviliges and Immunities of the United Nations.

25 Article 11, Section 7 the Convention on Priviliges and Immunities of the United Nations.

26 Article VIII,Section 29 the Convention on Priviliges and Immunities of the United Nations. Similar provision found under Article IX, section 31 of the Convention on Priviliges and Immunities of the Specialized Agencies.

27 A. Reinisch, *The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals*, "Chinese Journal of International Law" 2018, 7(2), pp. 285–306.

The UN personnel, including member state representatives and UN officials, benefit from tailored privileges and immunities, with higher-ranking officials enjoying full diplomatic status.

The Convention on Privileges and Immunities became a yardstick for subsequent treaties concerning the privileges and immunities of IOs. On 21 November 1947, the General Assembly approved the Convention on Privileges and Immunities of the Specialized Agencies of UN which came into effect on 2 December 1948. This treaty applies to the UN's specialised bodies like the Civil Aviation Organization, the World Health Organization, the Food and Agriculture Organization, UNESCO, the IMF, etc. This convention is almost identical to the previous convention.

Despite the importance and relevance of jurisdictional immunity of IOs, there are challenges in terms of their ability to uphold the human right of effective relief in light of injuries sustained due to the acts or omissions of the organisation. In the subsequent part of the paper, we discuss how access to court is manifested in the presence of jurisdictional immunity of IOs and offer a judicial opinion on this critical issue.

Jurisdictional immunity of international organisations vs. access to court

The right to a fair trial before a court or tribunal that is independent and impartial is widely recognised and discussed in several international agreements. The right has been enumerated in the Universal Declaration of Human Rights (UDHR),[28] the International Covenant on Civil and Political Rights (ICCPR),[29] the European Convention on Human Rights,[30] and the American and African Charters of Human Rights.[31] The member nations of these institutions have an obligation to comply with provisions of access to court to all. However, a conflict emerges when state parties who are also members of IOs benefiting from jurisdictional immunity under treaties face a contradiction between their conventional commitments, their right to access courts, and the immunity of IOs.

It is difficult to resolve this conflict as the right to access to courts is not a jus cogens norm nor has it attained the status of customary international law. In light of access to court not being a fundamental right, should IOs' jurisdictional immunity

28 Aricle 10 UDHR.

29 Article 14 ICCPR.

30 Article 6 ECHR.

31 Article 8 American Convention on Human Rights, Article 7 African Charter on Human Rights.

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be dependent on the availability of an alternative dispute resolution mechanism? There are instruments under which IOs need to provide alternative modes of dispute resolution – such as the Convention on Privileges and Immunities of the UN and the Convention on Specialized Agencies. For instance, the UN incorporates arbitration clauses into its commercial agreements to resolve disputes that cannot be settled through negotiation. This practice permits the UN to maintain immunity as well as respect the right to access to court for providing adequate remedy.

However, the problem is the aggrieved party is usually a "weaker" individual seeking access to justice to pursue claims against the "stronger" IO, shielded by immunity. Despite the guidelines of dispute settlement provisions in the Conventions and treaties, there is no treaty obligation on these organisations to provide fair, independent, and impartial hearings. These organisations are not parties to any multilateral conventions requiring adherence to principles of fair hearing. Moreover, the decision on the provision of waiving immunity rests with the organisation itself and no review can be made for such a decision by any national and international body. These implicit limitations of absolute jurisdictional immunity call for a right to access a judicial or quasi-judicial dispute resolution mechanism to ensure justice.

Judicial views on the jurisdictional immunity of international organisations

Courts have not yet reached a unanimous ground on either maintaining jurisdictional immunity or choosing the right to access courts. Judges have opted to tread cautiously while delivering judgments that may be considered too bold and liberal.

In *Waite and Kennedy v. Germany*, the European Court on Human Rights (ECHR) (1999) upheld the jurisdictional immunity of IO stating that such immunity is pivotal for their effective functioning and independence from individual governments' inference.[32] A similar approach was followed in *Stichting Mother of Srebrenica and Others v. The Netherlands*, where the ECHR declined to override the UN's jurisdictional immunity in a case concerning the Srebrenica massacre, emphasising the fundamental mission of the UN in securing international peace and security.[33] In *Georges v. United Nations*, the United States Court of Appeals highlighted that

[32] Waite and Kennedy v. Germany, Para. Available from: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58912%22]} (accessed: 7.03.2025).

[33] Stichting Mothers of Srebrenica and Others v. the Netherlands (2013). Available from: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7604%22]} (accessed: 7.03.2025).

the UN's obligation to provide alternative dispute resolution mechanisms is not a condition precedent for its jurisdictional immunity.[34]

The Belgian court adjudicating in *Lutchmaya v. General Secretariat of the African, Caribbean, and Pacific Group of States*(ACP) took a diverging opinion, ruling that ACP's jurisdictional immunity did not prevent the enforcement of a decision against it, emphasising the need for effective dispute resolution mechanisms within IOs.[35] Similarly, in *Siedler v. Western European Union*, the Belgian court ruled that WEU's internal dispute resolution mechanism did not meet the standards of fairness required by the ECHR, thereby denying jurisdictional immunity to WEU.[36]

These cases illustrate the complex interplay between the jurisdictional immunity of IOs and an individual's right to access the court. It highlights the evolution of legal standards and principles, with national courts having a general aversion towards taking a stand against the long-followed jurisdictional immunity of IOs.

Controversies and legal implications regarding the jurisdictional immunity of international organisations

In this part of the paper, we delve into the controversies involving IOs accused of harm while shielded by jurisdictional immunity, leaving aggrieved parties without effective remedies.

UN's peacekeeping operations

The formalisation of global politics has been a welcome change in reducing impunity for those affected by humanitarian abuses, but the same has had a paradoxical effect. Peacekeeping operations are one of the most controversial examples of this.

In 2010, the UN Peacekeeping forces inadvertently spread cholera, which resulted in a terrible epidemic in an already struggling Haitian population. The international community called for justice for the population of Haiti, with activists demanding reparations for the victims and demanding the UN to take responsibility. However, these efforts were stymied by the structures of public international

[34] US Court of Appeals for the Second Circuit, *Georges v United Nations* 2016. Available from: https://law.justia.com/cases/federal/appellate-courts/ca2/15-455/15-455-2016-08-18.html (accessed: 7.03.2025).

[35] E. Gaillard, I. Pingel-Lenuzza, *International Organisations and Immunity from Jurisdiction: To Restrict or to Bypass*, "The International and Comparative Law Quarterly" 2002, 51(1), 1–15. Available from: http://www.jstor.org/stable/3663269. J. Wouters, C. Ryngaert, P. Schmitt, *Western European Union v. Siedler; General Secretariat of the ACP Group v. Lutchmaya; General Secretariat of the ACP Group v. B.D.*, "American Journal of International Law" 2011, 105(3), pp. 560–567.

[36] J. Wouters, C. Ryngaert, P. Schmitt, *op. cit.*, p. 562.

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law, particularly UN immunity, which shield the organisation from taking accountability. Legal activists called out to the UN to take responsibility and secure compensation for the victims. However, after the initial denial of the source of the spread of cholera, the UN received severe backlash, but upon the emergence of evidence, the fault became rather undeniable, which left no option but to acknowledge it. The UN then chose to shield itself under the immunity provisions of the Convention on Privileges and Immunities.[37] The Haiti case challenges prevailing notions about the efficacy of international law in addressing accountability. This case prompts a critical reevaluation of the role of law in addressing global challenges and ensuring fairness in international law.

Apart from triggering an epidemic in Haiti, the UN Peacekeeping has often been accused of sexual abuse and exploitation. One of the early cases of sexual abuse and exploitation was raised in Cambodia in 1993. Later similar incidents came to light from Congo, Bosnia-Herzegovina, the Central African region, and, again, Haiti.[38] They involved abusing many women from already downtrodden parts of society, from extremely volatile environments, who were often left remediless against the atrocities of UN Peacekeepers.[39] Despite the zero-tolerance policy of the UN, these violations continue to occur leaving the world to believe that "UN peacekeeping has a sexual abuse problem".[40]

There is a lack of clear mechanisms to hold the UN responsible for the misconduct of its forces and personnel due to the absolute immunity granted to them. The only viable option that the UN has in case of the commission of misconduct is to repatriate the offender, prosecute them in their home country, or other disciplinary action. Most of the time, however, the offenders go unpunished.[41]

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37 M. Pillinger, I. Hurd, M.N. Barnett, *How to Get Away with Cholera: The UN, Haiti, and International Law*, "Perspectives on Politics" 2016, 14(1), pp. 70–86.

38 *Global: Ending impunity for crimes committed by UN peacekeepers.* Available from: https://www.ibanet.org/article/CEBC5F69-A238-49BB-B85A-5E8D878FE485#:~:text=Members%20of%20peacekeeping%20forces%20and (accessed: 7.03.2025).

39 Women's Congressional Policy Institute, *Panel Examines Human Rights Abuses by UN Peacekeepers*. Available from: https://www.wcpinst.org/source/panel-examines-human-rights-abuses-by-un-peacekeepers/ (accessed: 7.03.2025).

40 S. Wheeler, *UN Peacekeeping has a Sexual Abuse Problem*, Human Rights Watch, 2020, January 11. Available from: https://www.hrw.org/news/2020/01/11/un-peacekeeping-has-sexual-abuse-problem (accessed: 7.03.2025).

41 A.L. Comstock, *Report exposes U.N. camp abuses, but research shows justice is elusive. Washington Post*, 2022, September 28. Available from: https://www.washingtonpost.com/politics/2022/09/28/un-camp-south-sudan-abuse/ (accessed: 7.03.2025).

UN economic sanctions

The UN Security Council has been authorised to impose sanctions on states under Chapter VII of the UN Charter if a state violates or threatens to violate international peace and security. The Security Council imposes sanctions to deal with crises and the sanctions can be in the form of arms embargoes, travel bans, asset freezing, and trade restrictions.[42]

These sanctions have shown to be particularly detrimental to the human rights of the civilian populations. An early examination was initiated by the Center for Economic and Social Rights (CESR) in 1996 to evaluate the consequences of UN sanctions imposed on Iraq. The objective was to determine if the sanctions infringed human rights of individuals. The study pointed out why sanctions may not be a good alternative to war. CESR suggested that the UN Security should be held responsible for the violation of its human rights obligations. The report suggested the Council look for better alternatives without burdening the most disadvantaged segments of society.[43]

Sanctions by the UN Security were considered to be illegitimate in different parts of the world. They included severe health and economic ramifications in Haiti in 1993–94. Similar effects were observed in Iraq and Iran, where the shortage of clean drinking water caused an increase in mortality. Sanctions by the Security Council have also resulted in impacting women's rights and the rights of children and other disadvantaged groups in Syria from 2011–16. The absolute immunity of the UN presents a practical challenge in bringing justice to the aggrieved and upholding the rule of law.[44]

World Health Organization

The WHO is the central organisation to maintain and promote the health and well-being of all human beings worldwide. The organisation was established in 1948 to foster, uphold, and guide the countries to better health standards. It has

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42 K. Onishi, *The relationship between international humanitarian law and asset freeze obligations under United Nations sanctions*, "International Review of the Red Cross" 2022, February 18. Available from: https://international-review.icrc.org/articles/the-relationship-between-international-humanitarian-law-and-asset-freeze-obligations-916 (accessed: 7.03.2025).

43 S.P. Marks, *Economic sanctions as human rights violations: reconciling political and public health imperatives*, "American Journal of Public Health" 1999, 89(10), pp. 1509–1513.

44 K.E. Boon, *The United Nations as Good Samaritan: Immunity and Responsibility*, "Chicago Journal of International Law" 2016, 16(2).

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been equipped to deal with various challenges, build health infrastructures in countries, and navigate the world during global health crises.[45]

The past actions of the organisation have been challenged and considered unfit for their purpose. During the 2009 swine flu outbreak, the WHO was found to be ineffective in dealing with the health crisis, and there was an inherent lack of transparency.[46] At the time of the Ebola outbreak, the organization, instead of taking swift action, chose to blame the economic and cultural challenges prevailing in the West-African region.[47] The major outburst against the organisation happened during the COVID-19 pandemic, as the intensity of the spread of the disease was much larger than it had ever been witnessed in this century. The newly-discovered coronavirus claimed millions of lives around the globe. Its impact went far beyond health-related matters, impacting all aspects of human life. The world came to a standstill with no sight of relief. The WHO was considered at the time to be a torchbearer for recovery and handling the crises. However, the delayed response and lack of transparency of the organisation at such a critical hour were severely criticised. Moreover, the organisation faced accusations of being biased towards some member states and not acting independently.[48]

The impending question that remains is what remedy the millions of people have against the failure of the World Health Organization. There are no provisions for attributing responsibility to the organization, and the presence of privileges and immunities under the Convention on Privileges and Immunities of Specialized Agencies makes it even more challenging.[49]

North Atlantic Treaty Organization (NATO)

NATO was established in 1949 as an international military alliance to provide collective defence and security to its member states. One of the aims of the organi-

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45 World Health Organization. (n.d.). *What we do.* Available from: https://www.who.int/about/what-we-do (accessed: 7.03.2025).

46 A. Kamradt-Scott, *What Went Wrong? The World Health Organization from Swine Flu to Ebola*, "Political Mistakes and Policy Failures in International Relations" 2017, October 9, pp. 193–215.

47 M. Eccleston-Turner, S. McArdle S., *The Law of Responsibility and the World Health Organisation: A Case Study on the West African Ebola Outbreak*, "Infectious Diseases in the New Millennium: Legal and Ethical Challenges" 2020, 82, pp. 89–109. doi: 10.1007/978-3-030-39819-4_5.

48 A. Alexander, *Balancing Responsibility and Immunity of the World Health Organisation in times of COVID-19*, "International Law Blog" 2020, May 26. Available from: https://internationallaw.blog/2020/05/26/balancing-responsibility-and-immunity-of-the-world-health-organisation-in-times-of-covid-19/ (accessed: 7.03.2025).

49 Article 1,Section 1(g), the Convention on Privileges and Immunities of the Specialized Agencies.

sation is to handle crisis management in conflict areas. It aims to promote security and establish democratic governance in such territories.[50]

Similar to the UN, the NATO-led forces have also been accused of sexual abuse and exploitation – including among minors. The organisation has been criticised for not taking sufficient action against the perpetrators of such acts.[51]

NATO was also severely criticised for its illegal bombing in Kosovo in 1999.[52] The bombing took civilian lives and damaged civilian property, thereby violating the principles of international humanitarian law.[53] The organisation has also been subject to criticism for not conforming with the requirement of authorisation from the Security Council under Chapter VII of the UN Charter before intervention in conflict areas. Moreover, critics highlight that NATO-led operations also fail to justify the ground of self-defense as contained under Article 51 of the UN Charter.[54] It is important to note here that the use of force is not supported by the principles of international law and should be used sparingly in exceptional situations justifying such use.[55] Many scholars have been skeptical of the actions of NATO and consider their interventions as illegal.[56] However, NATO also enjoys significant privileges and immunities, making attributing responsibility difficult and leaving the aggrieved remediless.[57]

The above discussion highlights significant challenges and shortcomings in holding the aboventioned IOs accountable for their wrongdoing. The legal barriers

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50 J.S. Morton, *The Legality Of NATO's Intervention In Yugoslavia in 1999: Implications For The Progressive Development Of International Law*, "ILSA Journal of International and Comparative Law" 2002, 9, pp. 75–101. Ch. Chinkin, *The legality of NATO's action in the former republic of Yugoslavia (FRY) under international law*, "International & Comparative Law Quarterly" 2000, 49(4). pp. 910–925; A.Schwabach, *The Legality of the NATO Bombing Operation in the Federal Republic of Yugoslavia*, "Pace International Law Review" 1999, 11(405).

51 NATO launched a military intervention in Kosovo in 1999 to end the conflict, and Kosovo Forces (KFOR) was established as a multinational peacekeeping force responsible for maintaining security and stability in the region. In 1999, NATO launched a military intervention in Kosovo to end the conflict, leading to the establishment of KFOR as a multinational peacekeeping force responsible for maintaining security and stability in the region. KFOR engaged in sexual abuse and exploitation of locals.

52 M. Mandelbaum, *A Perfect Failure: NATO's War against Yugoslavia*, "Foreign Affairs" 1999, 78(5), pp. 2–8.

53 T. Voon, *Pointing the Finger: Civilian Casualties of NATO Bombing in the Kosovo Conflict*, "American University International Law Review" 2001, 16(4), pp. 1083–1113.

54 P. Hilpold, *Humanitarian Intervention: Is There a Need for a Legal Reappraisal?*, "European Journal of International Law" 2001, 12(3), p. 450.

55 S.T. Godec, *Between rhetoric and reality: exploring the impact of military humanitarian intervention upon sexual violence – post-conflict sex trafficking in Kosovo*, "International Review of the Red Cross" 2010, 92(877), pp. 235–258.

56 J.I. Charney, *Anticipatory Humanitarian Intervention in Kosovo*, "The American Journal of International Law" 1999, 93(4), p. 834. doi: 10.2307/2555348; C.M. Chinkin, *Kosovo: A "Good" or "Bad" War?*, "The American Journal of International Law" 1999, 93(4), pp. 841–847; L. Henkin, *Kosovo and the Law of "Humanitarian Intervention."*, "The American Journal of International Law" 1999, 93(4), pp. 824–828; B. Simma, *NATO, the UN and the use of force: legal aspects*, "European Journal of International Law" 1999, 10(1), pp. 1–22.

57 Article 15, Agreement on the status of the North Atlantic Treaty Organisation, National Representatives and International Staff.

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involving immunity provisions often shield them from accountability. There is a clear lack of mechanism that leads to undermining trust in these organisations when it comes to upholding human rights and respecting international humanitarian principles. The ramifications of IOs' faults leave a broader question about the efficiency of global governance and international law.

Balancing functional independence and responsibility of international organisations – reforms for the future

The issues covered in the paper highlight the challenges of an absolute jurisdictional immunity granted to IOs, which often obstructs the right to seek effective remedies. When individuals are aggrieved by IOs' actions, they find themselves without a way to present their grievances. To foster sustainable growth and maintain trust in these organisations, there is a critical need to establish mechanisms for enforcing IOs' accountability. While states also enjoy jurisdictional immunity, its scope is not unlimited, and states are often called upon to take responsibility for their violations under relevant – and executable – procedures. A similar approach could benefit IOs, but the arguments asserting that IOs require absolute immunity due to their lack of territorial sovereignty are contentious and historically unjustified.

Narrowing the scope of immunity will be helpful but one must distinguish between disputes affecting an organisation's essential and other functions. In *Beer and Regan v. Germany*, the ECHR emphasised the need to balance immunity with access to justice for individuals affected by an organisation's actions. The court recognised the necessity of organisational immunity, but also highlighted the importance of ensuring effective recourse to be offered to aggrieved individuals.[58] To implement limitations on jurisdictional immunity, two key considerations must be addressed: the method of limitation and the substantive principles.

There is a need to establish an appropriate extent of immunity for IOs that protects their functional independence without compromising the right to access justice for individuals affected by their activities. Essential functions of IOs can be distinguished from other functions, and absolute jurisdictional immunity can only be claimed in the case of the former. As for the method of limitation, two approaches can be considered. The first involves establishing a multilateral convention applicable across all categories of organisations. This will ensure predictability

[58] Para 49 and 50, Beer and Regan v. Germany (1999). Also refer A. Reinisch, *Waite and Kennedy v. Germany, Application No. 26083/94; Beer and Regan v. Germany, Application No. 28934/95*, "The American Journal of International Law" 1999, 93(4), 935.

and could contribute to an enhanced theory of IOs. However, some argue against such a standardization, pointing to the diversity of IOs and their varying immunity needs. Also, the UN Law Commission decided to halt its work on this topic, making it a rather distant matter. Secondly, the issue can be addressed by limiting immunity through founding agreements or treaties regulating the privilege of immunity – like the UN Convention on Privileges and Immunities.

Secondly, limiting immunity on the substantive level will help in resolving two problems. Firstly, matters involving staff members can be distinguished from those involving third parties. A more custom solution can be arrived at depending on the nature of the relationship between the individual and the organisation. Secondly, exemption against immunity in specific disputes may be required when there are third parties involved. Such content-specific immunity provisions will be particularly helpful in ensuring accountability while safeguarding an organisation's functional independence.

Given the existing lack of comprehensive codification, it seems reasonable to look at alternative dispute resolution mechanisms instead of turning to national courts. Alternative dispute resolutions (ADR) provide a viable solution to complex problems of the immunity and accountability of IOs. In the absence of clear dispute resolution mechanisms, ADRs can be particularly useful as they can be customised considering the specific needs of the parties involved.

Two sets of reforms can be proposed concerning ADR as an option to balance immunity with the responsibility of IOs. Firstly, enhancing the internal dispute resolution mechanisms – most IOs have an internal dispute mechanism for disputes involving their staff members. They may be in the form of permanent entities, set with the idea of addressing disputes within larger organisations. These bodies include administrative tribunals of entities like the UN, IMF, or Council of Europe, or broader competence bodies – like the Court of First Instance of the European Communities. To counterbalance jurisdictional immunity, the entities resolving disputes must provide sufficient guarantees to claimants. This involves ensuring that resolving bodies are both independent and impartial. Particular attention should be given to the appointment of judges to ensure their impartiality.

Secondly, efforts should be made to strengthen the recourse to arbitration for disputes involving third parties. Where a third party is involved, the organisation could amicably determine the procedure for settlement of the dispute through arbitration. Arbitration can serve as a genuine counterbalance to jurisdictional immunity if it guarantees impartiality and upholds the principles of international law.

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Therefore, enhancing internal dispute resolution mechanisms and strengthening the recourse to arbitration for disputes involving third parties will be crucial steps toward effectively balancing jurisdictional immunity with IOs' responsibility.[59]

Conclusion

The idea of absolute jurisdictional immunity poses significant challenges for the aggrieved seeking justice for the injuries sustained due to the acts or omissions of IOs. While the need for IOs to be immune from national jurisdiction is undeniable for impartial operation across member states, this immunity can lead to impunity and denial of justice when IOs violate fundamental human rights.

The controversies surrounding the responsibility of prominent IOs like the UN, WHO, and NATO highlight the urgent need for reforms by not shielding the wrongdoer. To address these challenges, a balanced approach is required – one that respects the functional independence of IOs while ensuring justice for individuals affected by their wrongful conduct.

To counterbalance the immunity of IOs, certain reforms can be adopted. First, reforms limiting the scope of immunity by distinguishing between essential functions of an organisation from its other functions. This can be achieved either by way of introducing a multilateral agreement covering all categories of IOs or by amending the founding treaty or existing treaties governing privileges and immunities. Secondly, reforms aimed at a more personalised approach can be implemented at the substantive level by distinguishing between disputes involving staff members of an organization, which can be resolved by an independent impartial internal body, and disputes between an organisation and a third party. For disputes involving third parties, the organisation may need to waive its immunity and the matter may be addressed through alternative dispute mechanisms. The third type of reforms points to the need to consider ADR over national courts, as this will ensure functional independence of organisations and provide access to justice to the aggrieved parties.

These reforms will make it possible to achieve a balance between immunity and responsibility of IOs by ensuring transparency and the rule of law within the framework of international law. By enhancing accountability mechanisms and promoting fair and accessible dispute resolution, we can reinforce the effectiveness and legitimacy of the international legal framework governing IOs, thereby ensuring justice and protection for individuals affected by their actions.

[59] E. Gaillard, I. Pingel-Lenuzza, *op. cit.*

References

Alexander A., *Balancing Responsibility and Immunity of the World Health Organisation in times of COVID-19*, "International Law Blog" 2020, May 26). Available from: https://internationallaw.blog/2020/05/26/balancing-responsibility-and-immunity-of-the-world-health-organisation-in-times-of-covid-19/ (accessed: 7.03.2025).

Boon E.K., *The United Nations as Good Samaritan: Immunity and Responsibility*. Available from: https://cjil.uchicago.edu/print-archive/united-nations-good-samaritan-immunity-and-responsibility.

Charney J.I., *Anticipatory Humanitarian Intervention in Kosovo*, "The American Journal of International Law" 1999, 93(4). doi: 10.2307/2555348.

Chinkin Ch., *The legality of NATO's action in the former republic of Yugoslavia (FRY) under international law*, "International & Comparative Law Quarterly" 2000, 49(4). pp. 910–925. doi: 10.1017/S0020589300064733.

Chinkin C.M., *Kosovo: A "Good" or "Bad" War?*, "The American Journal of International Law" 1999, 93(4), pp. 841–847. doi: 10.2307/2555349.

Comstock A.L., *Report exposes U.N. camp abuses, but research shows justice is elusive*. *Washington Post*, 2022, September 28. Available from: https://www.washingtonpost.com/politics/2022/09/28/un-camp-south-sudan-abuse/ (accessed: 7.03.2025).

De Serpa Soares M., *The Necessity of Cooperation between International Organizations*, [in:] *Good Governance and Modern International Financial Institutions,* Leiden 2019. doi: 10.1163/9789004408326_011.

Eccleston-Turner M., McArdle S., *The Law of Responsibility and the World Health Organisation: A Case Study on the West African Ebola Outbreak*, "Infectious Diseases in the New Millennium: Legal and Ethical Challenges" 2020, 82, pp. 89–109. doi: 10.1007/978-3-030-39819-4_5

Gaillard E., Pingel-Lenuzza I., *International Organisations and Immunity from Jurisdiction: to Restrict or to Bypass*, „International and Comparative Law Quarterly" 2002, 51(1), 1–15. doi: 10.1093/iclq/51.1.1.

Gautier P., *The Reparation for Injuries Case Revisited: The Personality of the European Union*, "Max Planck Yearbook of United Nations Law Online" 2000, 4(1), pp. 331–332. doi: 10.1163/187574100x00124.

Godec S.T., *Between rhetoric and reality: exploring the impact of military humanitarian intervention upon sexual violence – post-conflict sex trafficking in Kosovo*, "International Review of the Red Cross" 2010, 92(877), pp. 235–258. doi: 10.1017/s1816383110000159.

Glenn G.H., Kearney M.M., Padilla D.J., *Immunities of International Organizations*, "Virginia Journal of International Law" 1982, 22(2).

Global: Ending impunity for crimes committed by UN peacekeepers. Available from: https://www.ibanet.org/article/CEBC5F69-A238-49BB-B85A-5E8D878FE485#:~:text=Members%20of%20peacekeeping%20forces%20and (accessed: 7.03.2025).

Henkin L., *Kosovo and the Law of* "Humanitarian Intervention.", "The American Journal of International Law" 1999, 93(4), pp. 824–828. doi: 10.2307/2555346.

Hilpold P., *Humanitarian Intervention: Is There a Need for a Legal Reappraisal?*, "European Journal of International Law" 2001, 12(3). doi: 10.1093/ejil/12.3.437.

Historical Background: League of Nations. Available from: https://www.ungeneva.org/en/about/league-of-nations/background#:~:text=Although%20the%20first%20international%20organizations,Measures%20(1875)%2C%20and%20the (accessed: 7.03.2025).

Kamradt-Scott A., *What Went Wrong? The World Health Organization from Swine Flu to Ebola*, *Political Mistakes and Policy Failures in International Relations*, pp. 193–215. doi: 10.1007/978-3-319-68173-3_9.

Kunz J.L., *Privileges and Immunities of International Organizations*, „American Journal of International Law" 1947, 41(4), 828–862. doi: 10.2307/2193092.

Blokker N., *Jurisdictional Immunities of International Organisations – Origins, Fundamentals and Challenges*, [in:] T. Ruys, N. Angelet, L. Ferro (eds.), *The Cambridge Handbook of Immunities and International Law*. Cambridge 2019, pp. 185–200.

Kamradt-Scott A., *What Went Wrong? The World Health Organization from Swine Flu to Ebola*, "Political Mistakes and Policy Failures in International Relations" 2017, October 9, pp. 193–215. doi: 10.1007/978-3-319-68173-3_9.

Mandelbaum M., *A Perfect Failure: NATO's War against Yugoslavia*, "Foreign Affairs" 1999, 78(5), pp. 2–8. doi: 10.2307/20049444.

Marks P., *Economic sanctions as human rights violations: reconciling political and public health imperatives*, "American Journal of Public Health" 1999, 89(10), pp. 1509–1513. doi: 10.2105/ajph.89.10.1509.

Morton J.S., *The Legality Of NATO's Intervention In Yugoslavia in 1999: Implications For The Progressive Development Of International Law*, "ILSA Journal of International & Comparative Law" 2002, 9(1). Available from: https://nsuworks.nova.edu/ilsajournal/vol9/iss1/3 (accessed: 7.03.2025).

Okeke E.C., *Legal status of international organizations*, [in:] *Oxford University Press eBooks*, Oxford 2018. doi: 10.1093/oso/9780190611231.003.0007.

Okeke E.C., *The Tension between the Jurisdictional Immunity of International Organizations and the Right of Access to Court*, [in:] *The Role of International Administrative Law at International Organizations,* Leiden 2020. doi: 10.1163/9789004441033_003.

Onishi K., *The relationship between international humanitarian law and asset freeze obligations under United Nations sanctions*, "International Review of the Red Cross" 2022, February 18). Available from: https://international-review.icrc.org/articles/the-relationship-between-international-humanitarian-law-and-asset-freeze-obligations-916 (accessed: 7.03.2025).

Oparil R.J., *Immunity of International Organizations in United States Courts: Absolute or Restrictive*?, "Vanderbilt Law Review" 2021, 24. Available from: https://scholarship.law.vanderbilt.edu/vjtl/vol24/iss4/3 (accessed: 7.03.2025).

Pajuste T., *The Evolution of the Concept of Immunity of International Organizations*, "East-West Studies" 2018, 8.

Pillinger M., Hurd I., Barnett M.N., *How to Get Away with Cholera: The UN, Haiti, and International Law*, "Perspectives on Politics" 2016, 14(1), pp. 70–86. Available from: http://www.jstor.org/stable/43867176 (accessed: 7.03.2025).

Reinisch A., *Convention On The Privileges And Immunities Of The United Nations Convention On The Privileges And Immunities Of The Specialized Agencies*. Available from: https://legal.un.org/avl/pdf/ha/cpiun-cpisa/cpiun-cpisa_e.pdf (accessed: 7.03.2025).

Reinisch A., *The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals*, "Chinese Journal of International Law" 2018, 7(2), pp. 285–306. doi: 10.1093/chinesejil/jmn020.

Reinisch A., *Waite and Kennedy v. Germany, Application No. 26083/94; Beer and Regan v. Germany, Application No. 28934/95*, "The American Journal of International Law" 1999, 93(4), 935. doi: 10.2307/2555358.

Schwabach A., *The Legality of the NATO Bombing Operation in the Federal Republic of Yugoslavia*, "Pace International Law Review" 1999, 11(405). doi: 10.58948/2331-3536.12406.

Simma B., *NATO, the UN and the use of force: legal aspects*, "European Journal of International Law" 1999, 10(1), 1–22. doi: 10.1093/ejil/10.1.1.

Voon T., *Pointing the Finger: Civilian Casualties of NATO Bombing in the Kosovo Conflict*, "American University International Law Review" 2001, 16(4), pp. 1083–1113.

Wickremasinghe C., *The Immunity of International Organizations in the United Kingdom*, [in:] *Immunity of International Organizations*, Leiden 2015. doi: 10.1163/9789004296060_011.

Wheeler S., *UN Peacekeeping has a Sexual Abuse Problem*, Human Rights Watch, 2020, January 11. Available from: https://www.hrw.org/news/2020/01/11/un-peacekeeping-has-sexual-abuse-problem (accessed: 7.03.2025).

Women's Congressional Policy Institute, *Panel Examines Human Rights Abuses by UN Peacekeepers*. Available from: https://www.wcpinst.org/source/panel-examines-human-rights-abuses-by-un-peacekeepers/.

Wouters J., Ryngaert C., Schmitt P., *Western European Union v. Siedler; General Secretariat of the ACP Group v. Lutchmaya; General Secretariat of the ACP Group v. B.D.*, "American Journal of International Law" 2011, 105(3), pp. 560–567. doi:10.5305/amerjintelaw.105.3.0560.