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FACILITIES, PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL OFFICIALS

International organizations represent the creations of recent times and respond to the needs of the modern world. Achieving awareness of the need for international cooperation is conditioned by economic and technological development. Bilateral interstate relations, from occasional contact to permanent interchange by diplomatic envoys, could meet the needs of the times of moderate international exchange and poor means of ties. International organizations have a special significance for tackling the contradiction between the existence of a number of sovereign states and the demands of those human activities that have global or regional exchanges and seek for a basis broader than the territory of an individual state. The simplest definition of an international organization is that they are established by an international treaty, which is ratified in accordance with the constitution established by the Member States. In addition to rare exceptions, the creation of an international organization begins with convening a conference of proxies of states, where the status of the organization is signed after the negotiations have been completed. Such conferences can precede a period in which countries agree on the important issues of a future organization. These can be raised through diplomatic channels, or negotiations at one or more previous meetings with the participation of all or some of future founders of the organization. The privileges and immunities of international organizations themselves, as subjects of international law, include the following forms: immunity from jurisdiction, inviolability of premises and archives, fiscal and currency privileges, freedom of communication.

Key words: international organization, cooperation, states, diplomacy, privileges.

1. THE CONCEPT OF INTERNATIONAL ORGANIZATION

Since international organizations came to the forefront of scientific interest, many definitions of the term «international organization» have been offered. After the great initial differences, some agreement has shown up in terms of the definition and the main elements that such a creation usually has or must have.

The simplest definition is that international organizations are established by an international treaty, which is ratified in accordance with the established procedure of the member states, and have their statutes that the constitutive elements would be reduced to the «state» and «international agreement» contained in the statute of the organization. According to another older definition, an international organization established by an international treaty, achieves international cooperation in order to meet some common interest and is directly subject to international law [1, p. 120].

A number of definitions, however, take into account another element of the term «international organization», the existence of permanent organs. It is thus claimed that an international organization is a «form of cooperation of sovereign states, based on a multilateral international treaty, which includes a relatively stable circle of participants and whose basic characteristic is the

existence of permanent organs with certain competencies and powers to act on the implementation of common goals» (Morawiecki).

An international organization often needs to have a «legal personality» and / or «will» in itself, which the theoreticians have a lot of debate about. According to some authors, on the basis of contracts, organizational cooperation is organized within an independent institutionalized community, which can have the subjectivity, possibly the formal recognition of international legal subjectivity» (Ibler); secondly, the term «international organization» means the «collectivity of states established by contract, with the statute and common authorities, which has an identity different from the identity of the member states and which is a subject of international law with the ability to conclude a contract» (Ficmoris Fitzmaurice); thirdly, it is «the union of states founded by a treaty, which has a statute and common authorities and has a legal personality different from the personality of the Member States» (El Erian).

The definitions that take into account the specific «will», presume that international organizations are «collective bodies, established by several states, whose joint declaration of will, expressed in accordance with international law, conferred on that collectivity a certain jurisdiction, which, between members produce certain

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legal consequences «(Anzilotti); or, even more clearly: the term «organization» means that it is a group capable of continuously manifesting its «will» other than the will of the member state (Reuter).

According to the first draft of the rules of responsibility of international organizations of the International Law Commission, the term «international organization» refers to «an organization founded by a contract or other instrument governed by international law, which also has its own international legal subjectivity. International organizations can, as members, include other entities, in addition to states».

A group of authors from Serbia (Dimitrijević, Račić, Đerić, Papić, Petrović, Obradović) see the main elements of the definition of an international organization: it is a permanent form of international cooperation, it is a member of the state, although it is possible that it is another subject, it arises with the consent of the will of the states (by international treaty or other form of consent); and it has a certain autonomy in relation to members [2, p. 105].

1.1. The emergence of an international organization

Unlike states that arise as soon as certain concrete conditions (territory, population, government) are implemented, and where recognition by other states is of a predominant opinion, whereas there is no constitutive but only declarative character, an international organization arises from the acquisition of legal and factual conditions. As follows from the constituent elements of the term «international organization», the legal requirement is multilateral international treaty coming effective, and in fact the creation of the statute of the foreseen bodies that start to operate.

Apart from rare exceptions, the creation of an international organization begins with convening a conference of proxies of states, where the status of the organization is signed after the negotiations are completed. Such conferences can precede a period in which countries agree on the important issues of a future organization. These can be raised through diplomatic channels, or negotiations at one or more previous meetings with the participation of all or part of future founders of the organization. Thus, the United Nations Charter, after the adoption of the London Declaration (1941), the Atlantic Charter (1941) and the United Nations Declaration (1942), was gradually formed at the Moscow Conference (1943) and the Conference in Dambarton Oaks (1944, where a draft was adopted. Finally, the final text was signed at the San Francisco Conference (1945), with the participation of all the founding states of the United Nations.

1.2. Statute of an international organization

The Statute of an international organization can be adopted at an international conference convened to resolve other issues (thus the Pact of the Peoples' Party was part of the Peace Treaty ending the First World War), or at a conference whose sole task was the adoption of an organization's statute (e.g. the San Francisco Conference, 1945, a hotspot in Hot Springs, 1943, at which the

Statute of the Food and Agriculture Organization of the United Nations was adopted and signed, a conference in Bretton Woods, 1944, which adopted the statutes of the International Bank for Reconstruction and Development and the International Monetary Fund). Finally, the statute of an international organization can be adopted through an international organization and at a conference convened for this purpose (for example, the creation of the International Atomic Energy Agency in Vienna, 1956, International Finance Corporations and the International Development Association, 1955, or 1960). Regardless of the circumstances, the Statute shall be signed by the authorized representatives of the States [3, p. 89].

By signing the Statute, however, the formal conditions for the existence of an international organization have not yet been met. For this end, the statute must be ratified. Ratification is done in accordance with the laws of each state. The statute of an organization comes into force when it is ratified by a predetermined number of states.

The statutes of limited membership organizations usually enter into force when ratified by all signatory states (eg European Communities Statutes). However, this requirement is for an organization of a wider membership, especially those with a tendency toward universalism, which is difficult to achieve. Moreover, the statute's coming into force is conditioned by the ratification of a certain number or percentage of States Parties. Thus, for example, the UNESCO Statute coming into force was conditioned by the ratification by 20 state parties; the World Health Organization – by 26 States Parties; the Statute of the Organization of African Unity coming into force – by the ratification by two thirds of the signatories; and the International Bank for Reconstruction and Development and the International Monetary Fund – by ratification by those who had a total of 75 % of the capital of the respective organization. There are also cases when the statute coming into force is conditioned by the ratification by a number of states, with the number of countries with special significance in a given area found in that number.

Thus the United Nations Charter came into force after it was ratified by half of the signatories, including the five great powers of the World War II winners. The the statute coming in force fulfills the legal requirements for the emergence of an international organization. To come in force, it is necessary to fulfil a factual condition, the formation of bodies that will operate in the statute of the foreseen area. It is normal that, after the entry into force of the Statute, the highest authority comes to a meeting within a reasonable time, and then the other bodies set up by the statute start to form. However, in cases where it is considered necessary for the organization to start immediately, it is possible to create a temporary body (such as the Provisional Organization for International Civil Aviation) before the entry into force of the statute, which will operate until the final establishment of the mechanism envisaged by the statute.

2. PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS

By means of all these instruments, privileges and immunities can be summarized in the following groups: privileges of international organizations, officials of international organizations and representatives of states with international organizations [4, p. 299–300].

The privileges and immunities of international organizations themselves, as subjects of international law, include the following forms: immunity from jurisdiction, inviolability of premises and archives, fiscal and currency privileges, freedom of communication.

2.1. Immunity from jurisdiction

Immunity from jurisdiction is one of the essential elements for independent functioning of international organizations. The reasons for the recognition of this institution lie in the fact that, unlike states, it cannot be defended by reciprocity measures from biased proceedings or the unjustified interference of the authorities of another state with international legal guarantees of this kind. Therefore, it is customary for international organizations and their property, regardless of where they are and who is holding them, to have «immunity from all forms of legal proceedings» [5, p. 200]. In an individual case, an international organization may waive immunity from jurisdiction: the waiver, however, must be «explicit». It does not mean consent to the compulsory execution of a court decision.

Acceptance of immunity from jurisdiction was greatly facilitated by the latest development in the course of which it created the obligation of an international organization to provide an international procedure that would achieve legal certainty at another level. In this sense, with some differences in relation to individual organizations, several procedures are envisaged. First, it is envisaged that an international organization cooperates with the appropriate authorities of the member states to facilitate the achievement of justice, the respect of police regulations, and the prevention of the abuse of the privileges and immunities of the international organization. Secondly, it is envisaged that the organization provides appropriate ways of resolving disputes arising from contracts or other disputes of a private legal character, as well as those relating to an official of an organization that enjoys immunity, unless there is a waiver of immunity.

Thirdly, with regards to officials and experts of the organization, the right, but also the duty of the Chief Administrative Officer, to waive immunity in cases where, in his opinion, the preservation of immunity would prevent the course of justice, and this waiver would not harm the interests of the organization.

2.2. Inviolability of rooms and archives

The inviolability of premises and archives undoubtedly finds its root in diplomatic and consular prisons and immunities. The needs for this institution stem from the necessity of protecting the freedom to consider the issues that the organization deals with, preserving the confidentiality of confidential negotiations and

correspondence, and enabling international officials to perform their functions completely independently of the interference of authorities outside the organization. The inviolability of the premises and the archives of the organization is usually proclaimed in the agreements on privileges and immunities, while the details are left to the headquarters agreements [6].

On the one hand, the state of the headquarters is obliged to ensure the smooth functioning of the organization, which means that it is obliged to take measures to protect the premises of the premises from all external influences that could act negatively. It must be taken into account, that the property of an organization is immune from search, confiscation, expropriation and other forms of disturbance, regardless of whether these are administrative, judicial or legislative measures. Finally, the organization's archive, like all its documents, is inviolable no matter where it is. It is obvious that all this is aimed at ensuring the functioning of the organization, including all forms of multilateral diplomacy within its framework, without interference by any external authority [7, p. 213–214].

On the other hand, since the authorities of the state of the country can not enter the premises of the organization, except in the case of consent and under the conditions set by the responsible person of the organization, the issue of jurisdiction in criminal matters remains open, as well as the problem of providing asylum. Regarding criminal proceedings, international organizations do not have criminal jurisdiction, nor a criminal justice organization that could pronounce and enforce criminal sanctions; Moreover, the crimes that could be encountered in the premises of an international organization in most cases would not have much to do with the law of the state of the seat. As far as the rights of asylum are concerned, agreements on privileges and immunities do not normally contain certain provisions; only a certain number of seat agreements relate to this problem, but as in the case of a seat agreement between the United Nations and the United States - it obliges the organization not to become a refuge for persons seeking to evade regulations of the host countries, the extradition that the host country should enforce or disable the normal course of legal proceedings in that country. Although usually an international organization is obliged to cooperate with the authorities of the host country in order to facilitate legal procedures that would not harm the interests of the organization, the issues of criminal jurisdiction and asylum remain partially open. In this way, the eventual conflict between the interests of the absolute inviolability of the premises of the organization and the justified interests of the host state can be solved by official contacts that will seek to reconcile both interests.

2.3. Fiscal and currency privileges

Fiscal and currency privileges arise from the need to make funds of an organization that are sometimes significant, bearing in mind the core business, as in the case of the International Bank for Reconstruction and Development and the International Monetary Fund,

or technical assistance activities, primarily the United Nations and the major the number of specialized institutions of protection against measures that could impose their mobility and possible financial control of the state of the headquarters over the funds provided by the Member States for the corresponding purposes.

Under the General Convention on the Privileges and Immunities of the United Nations, whose provisions are in principle followed by the instruments of many other international organizations, the United Nations may keep funds, gold and currency of any kind and keep accounts in any currency, and are free to «gold or currencies from one country to another ... without restrictions which may be subject to financial control, regulations or moratoria of any kind». In addition, the fiscal immunities of international organizations include the exemption from direct taxation; exemption from customs and import prohibitions and restrictions, and exemption from indirect taxes to the extent feasible.

2.4. Freedom of communication

Given the breadth of international organizations in geographical terms, but also in relation to competencies, freedom of communication is necessary for international organizations, as well as for diplomatic relations between states.

Almost all agreements on the privileges and immunities of international organizations, as well as seat agreements, in accordance with that commonly recognized need, follow the provisions of the General Convention on the Privileges and Immunities of the United Nations. In accordance with these instruments, international organizations enjoy immunity from every form of censorship of official correspondence and other forms of official communications; have the right to use the code and diplomatic valise, with the treatment being the same as in diplomatic law. Finally, the organization enjoys, in the territories of the Member States, in relation to its official communications, equally favorable treatment that is accorded to governments, including their diplomatic missions, in terms of priority and price for mail, telegrams, radiograms, telephones and telephone services, or any other form of communication. However, it should be kept in mind that some agreements, including the Agreement on the Privileges and Immunities of Specialized Institutions, foresee that these provisions will not prevent the adoption of appropriate «security measures» by the state in relation to the use of the code and diplomatic valise, but which will be determined by an agreement between states and related international organizations.

3. PRIVILEGES AND IMMUNITIES OF OFFICIALS OF INTERNATIONAL ORGANIZATIONS

International officials are persons who, in accordance with the basic principles of international organizations, should, although they are nationals of individual members, act exclusively in the interest of the organization itself. In order to carry out their functions independently of the influence of the governments of the states of those whose

citizens, the state of the organization's headquarters or others are granted privileges and immunities and, as expressly indicated, in order to ensure the performance of their functions. The current international instruments, although somewhat different in formulations, contain essentially similar provisions [8, p. 250]. They are consequences of the consent of the states in terms of scope and methods of protection that are given to officials of international organizations in order to ensure the independent exercise of their duties.

The basic problem in the statutes of international organizations is dealt with similarly to Article 100 of the Charter of the United Nations: in the performance of his duties, the Secretary General and the staff will neither receive instructions from any government nor any authority outside the Organization; on the other hand, each member undertakes to respect only the international character of the responsibilities of the Secretary-General and the staff and will not seek to influence them during the performance of their duties.

Although this principle is generally accepted, in practice there are some difficulties that are reflected in the insufficiently balanced provisions of the privileges and immunities agreements and the headquarters agreements of individual organizations. The main problems do not arise so much from the unwillingness of states to gain international privileges and immunities, but rather from how many of them are difficult to accept the exemption from jurisdiction and tax privileges of their own citizens.

3.1. Immunity from jurisdiction

As a rule, they are recognized as the highest officials of international organizations (chiefs of administrative bodies, their deputies and assistants), and they are, in fact, very close to those who, under international law, are recognized as diplomatic representatives of the states. As for other officials of the administrative bodies of international organizations, immunity from jurisdiction is somewhat more limited in terms of substance. The great difference between the immunity from the jurisdiction of the highest officials and others, however, does not relate to the extent of the guaranteed immunity, or whether the act was committed in any period or during the performance of official functions.

Namely, the immunity from jurisdiction protects the most senior officials of international organizations regardless of whether they are moving within the domain of official duties or not; the immunity of other officials of administrative bodies, however, protects them only as they move within the domain of their official duties. Specifically, the highest officials of the administrative bodies of international organizations can not be held accountable before the authorities of the state in which they are located, regardless of whether they committed any offense or criminal offense during their official duties or in their free time (e.g during recreation on weekends); lower-ranking officials, however, are covered by immunity only while performing official duties.

The problem is even more complicated due to the fact that seat agreements do not regulate this matter

uniformly; sometimes, the provisions of valid agreements on privileges and immunities are taken over (as in the case of United Nations agreements Switzerland or the International Civil Aviation Organization of Canada), or the problem is left open (as in the case of the United Nations Headquarters Agreement), thereby opening the way for diverse interpretations [9, p. 199].

The fact that the situation is not regulated in the best way, and that the practice demonstrates uneven behavior is shown by the resolution of the UN General Assembly adopted at its 41st session. By the resolution of this body 41/205, namely, it was noted with concern that there is a tendency of increased violation of the privileges and immunities of the official of the United Nations, specialized agencies and related organizations, and therefore calls on the Member States to strictly adhere to the privileges and immunities of international organizations.

3.2. Exemption from taxation

Exemption from taxation of salaries and other benefits that officials of international organizations receive for their work privileges which, similar to the decision adopted in the conventions on privileges and immunities of the United Nations and specialized institutions, is contained in a substantial part of the contracts on the seats of the international organizations. In a large part, it aims to avoid some of the funds that all members give to the organization to cover its costs to the host country. Exceptions to this principle are seat agreements between the United Nations and the United States, where nothing is said about this privilege, a seat agreement between the International Civil Aviation Organization and Canada, where this privilege is expressly excluded in relation to nationals of the country of the seat, and an agreement about NATO in which it is possible to conclude bilateral agreements under which a particular state pays its own citizens employed in that international organization and thus significantly undermines the conception of special positions of international officials.

When it comes to officials of international organizations, then in the issues that may appear peripheral as a problem of income taxation, there is a need to solve the problem uniquely. There is no doubt that it is necessary to avoid discrimination between the officials of the country's nationals and those other Member States. The solution accepted within European communities seems to be the best: according to the protocols on the privileges and immunities of the European Economic Community and Euratom, namely, the exemption from the taxation of the income of international officials by the state is envisaged, but also the possibility that their income will be taxed in accordance with the decision of the competent organs, by the organization and in its favor.

3.3. Exemption from the duty of the national service

This exemption is even a more controversial aspect of the privileges and immunities of international

organizations. While the United Nations Convention on the Privileges and Immunities of the United Nations stipulates, without limitation, that United Nations officials will be exempted from this obligation in relation to their own State, the Convention on the Privileges and Immunities of Specialized Institutions is far less categorical and allows the obligations of the National Service to be postponed, at the request of the relevant institution and on the basis of its needs. While this example is followed by the Arab League, a number of regional organizations, especially European organisations (Council of Europe, European Community, NATO), leave this issue open [10, p. 130].

While an agreement concluded between the International Civil Aviation Organization and Canada appears to be the only one providing full exemption from the national service without exception, even in relation to Canadian citizens; exceptions are usually related to the country's citizens, in the sense of the principle contained in the Convention on the Privileges and Immunities of Specialized Institutions.

It seems that the problem of protecting officials of international organizations from the government of their own state is the greatest in the area of privileges and immunities. If it is understood that the aim of the immunity of the officers of international organizations is to ensure their complete independence of government, and of the state. Outside the organization, immunities must also include protection from the power of their own states.

The international travel documents of international organizations (*laissezpasser*) are partly in the issue of privileges and immunities. Their goal is to facilitate official trips of officials of international organizations across the territories of the member states, without national travel documents (passports and visas). The first attempt, which in practice has not led to the expected results, is still from the Society of Nations. According to the Convention on the Privileges and Immunities of the United Nations, these may issue travel documents to the authorities of the Member States as valid travel documents and, on the basis of them, timely issue visas. A similar possibility exists for officials of specialized institutions. However, agreements on the headquarters of international organizations differently address the issue of international travel documents. In practice, there is still no universally accepted solution according to which international travel documents in the territories of the member states will completely replace passports and visas. Nevertheless, they facilitate obtaining diplomatic and official visas and, consequently, the application of the privileges and immunities of officials of international organizations.

CONCLUSION

Unlike diplomatic privileges and immunities in respect of which there used to be a lot of theoretical

debates on the nature of the necessary protection of international organizations based on the demands of the administrative, legislative and judicial authorities of the states, there was a consensus on the basis of the privileges and immunity of international organizations. Given that international organizations do not have their own territory, their privileges could not be tied to the function of extraterritoriality. Since they were not sovereign, it was obvious that they were not based on the representation theory. By contrast, with the adoption of the Charter of the United Nations, functional theories of the privileges and immunities of international organizations have been rooted. Namely, privileges and immunities are recognized in order to protect the independent exercise of functions entrusted to international organizations.

Apart from theoretical, there are also practical needs of handling the privileges and immunities of international organizations from those that have been respected in the bilateral (i.e. diplomatic) relations since ancient times. The main difference stems from the fact that the diplomatic and cosmic relations between the states are bilateral, while in the case of international organizations (including the conference), these relations, apart from multilateral lines, include a three-way relationship: a member state is an international organization of the headquarters of an international organization. The State Party sends its official representatives to represent them permanently (in the case of permanent state missions by international organizations) or occasionally (when it comes to meetings of individual bodies of international organizations or conferences held under their auspices).

In contrast to diplomatic relations of states, privileges and immunities, they are primarily given to protect from the intervention of the receiving State, with the diplomatic staff remaining fully under the jurisdiction of their own state, so that international organizations are required to extend the institution of privileges and immunities to the protection of international staff organizations from their own states. It is often emphasized that in order to independently perform their functions, international

officials need more protection from the possible efforts of the state whose citizens are to perform their duties exclusively in the interest of the international organization for which they work.

These are also the main reasons (with a series of individual ones) which have made many countries to ratify (draft) the Convention on the Relations of States and International Organizations. In other words, the countries on whose territories there are headquarters of international organizations, believe that their burden is too heavy and that there is no sufficiently effective way to protect their interests against possible misconduct.

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ЛЬГОТЫ, ПРИВИЛЕГИИ И ИММУНИТЕТЫ ПРЕДСТАВИТЕЛЕЙ МЕЖДУНАРОДНЫХ ОРГАНИЗАЦИЙ И МЕЖДУНАРОДНЫХ ДОЛЖНОСТНЫХ ЛИЦ

Международные организации представляют собой творения последних времен и отвечают потребностям современного мира. Достижение понимания в вопросах необходимости международного сотрудничества обусловлено экономическим и технологическим развитием. Двусторонние межгосударственные отношения, от случайного контакта до постоянного обмена дипломатическими посланниками, могут удовлетворять потребности временного международного обмена. Международные организации имеют особое значение для преодоления противоречия между существованием ряда суверенных государств и требованиями тех видов человеческой деятельности, которые имеют глобальные или региональные обмены, и стремятся к более широкой основе, чем территория отдельного государства. Простейшим определением международной организации является то, что они устанавливаются международным договором, который ратифицирован в соответствии с конституцией, установленной государствами-членами. В дополнение к редким исключениям создание международной организации начинается с созыва конференции прокси государств, где статус организации подписывается после завершения переговоров. Такие конференции могут предшествовать периоду, когда страны соглашаются с важными вопросами будущей организации. Они могут быть подняты по дипломатическим каналам или переговорам на одном или нескольких предыдущих встречах с участием всех или некоторых будущих основателей организации. Привилегии и иммунитеты самих международных организаций как субъектов международного права включают следующие формы: иммунитет от юрисдикции, неприкосновенность помещений и архивов, налоговые и валютные привилегии, свобода общения.

Ключевые слова: международная организация, сотрудничество, государства, дипломатия, привилегии.

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