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Abstract

This thesis considers the jurisdictional immunities of the international organisations and their officials and how the immunities of the international organizations have been treated in the United Kingdom. Presumably, the international organizations are among the significant social innovations of the relationship between States and in the last 50 years, their growing role has brought the question of can international organisations be accommodated within the system of international law which allocates jurisdictional competence to States.

It has long been accepted that the international organizations and their staff need to enjoy immunity from the jurisdiction of national courts. However, the principle of the immunity of the international organizations is increasingly criticized: if national courts cannot exercise jurisdiction over international organizations, who can? What are the sources and scope of the immunities of the international organizations and what are the sources and scope of the relationship between their competing or conflicting standards?

This thesis therefore seeks to outline the intentions behind rules and discuss the origin of the immunity rules of the international organizations and application of the rules both by international and national courts. Moreover, it seeks to discuss the immunities of international officials that how it is considered as an extension of the immunities of their employer organisations' and how does application of their immunities before national courts has more uniformity. In the last chapter, this thesis describes how the United Kingdom has approached the privileges and immunities of the international organizations and how United Kingdom courts have treated immunities in the important cases.

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I. INTRODUCTION

As the process of the globalization of World raising day by day, states are more interconnected to each other than in the past centuries. Now national issues are cause international concerns because of possible effects on other countries. Growing governmental state functions unable to sustain individually, such as trade, development, human rights, maintenance of peace and security have crossed the national borders and have become the subject of international regulations.¹ Although first international organizations have emerged from 19th Century, the number of those has risen after the Second World War in order to accomplish international cooperation.²

The enhancement of international organisations and the increasing importance of their positions in several subjects has led concern about their governance, particularly related to the needs of modern justice.³ Particularly, the scope of the immunity from the jurisdiction of international organisations is one of the main issues of some dispute.⁴ Due to their acts on the international scene, their enjoyed immunities might differ from the immunities of the States and not yet fully crystallized.⁵ These immunities emerge at the point at when international organisations or their officials encounter a municipal legal system. This could be the result of their relations with States where they operate, or with private persons whose activities are subject to the jurisdiction of such States.⁶

The jurisdictional immunities of the international organizations and their officials can be seen as precautions which ensure the protection of their functions from interference or control by individual State to achieve the collective purposes of its member States. Thus, usually, International organizations are governed by all its member States and independent from an unwarranted effect of any member State, which are created by and governed by international law depends on the individual constitution.

¹ Niels M. Blokker and Henry G. Schermers, *Proliferation of International Organizations. Legal Issues* (Hague, Kluwer, 2001) 1–50.

² Corson Young, 'The Limits of International Organization Immunity: An Argument for a Restrictive Theory of Immunity Under the IOIA' (2017) 95 Texas Law Review 890.

³ Emmanuel Gaillard and Isabelle Pingel-Lenuzza, 'International Organisations and Immunity from Jurisdiction: To Restrict Or to Bypass' (2002) 51 International and Comparative Law Quarterly 1, 15.

⁴ *ibid.*

⁵ Cedrig Ryngaert, 'The Immunity of International Organizations before Domestic Courts: Recent Trends' (2010) 7(1) International Organizations Law Review 121, 123.

⁶ Chanaka Wickremasinghe, 'The Jurisdictional Immunities of International Organizations and Their Officials', (PhD Thesis, London School of Economics and Political Science 2003).

However, the recent trend from absolute immunities of the States to functional bases is influencing to considering of the international organizations' immunities.

Although international organizations established under the international law, there are two main addressed rules related to international organizations. One of them is their protection rely upon law and legal techniques. Another one is their foundation comes from legitimacy. This thesis will try to examine immunities of the international organizations and its officials in terms of scope of the privileges and immunities, and how the recent trend of functional doctrine has an effect on them.

In the first chapter, the intention will be to explain the legal status of international organizations in both national and international law. Particularly, the concept of their personality which is accepted by international law and the national law will be considered because of this personality give them to act their functions. Basically, international organizations are strictly reliant upon their constitutional instruments which rule their relations with the member States. These instruments represent their rights and duties and balance between these and individual member State's rights. As mentioned above privileges and immunities which ensure acting independently from member states also derived from international organizations' personality and their own institutional laws.

In chapter two, it will seek to examine the rationale for the immunities of the international organizations, how they interpreted by national courts, their limitations, new trend of a functional approach to these immunities and the examples from treaty provisions with their implementation by international and national courts.

Chapter three considers the jurisdictional immunities of the international organizations' officials. How they enjoy the immunities, *ratione materiae* or *ratione persona*, how their immunities are interpreted by the courts in related to their conflicts with international organizations themselves and third parties.

The last chapter considers the status in the United Kingdom. Contrast to most countries, the United Kingdom has special Act for international organizations, most of International organizations' privileges and immunities are formed by the International Organizations Act 1968. Besides that, there are some headquarters agreements and treaties also include provisions for their status and immunities. Also in this chapter, some important cases will be examined.

II. CHAPTER I

The Legal Status of International Organizations

An international organization is usually constituted by the agreement of States but sometimes by involving other international organizations as well. The institutional instruments of international organizations set forth their functions and aims, their structures and powers to achieve these aims. Usually, international organizations have their own organs, such as assemblies or councils, representative organ of the international organization. However, it is a fact that some of the international organizations have most complex structures and separated powers between their organs.

The precise relationship between an international organization and a State is complex and multifaceted. International organizations serve to their member States which have established and fund them collectively and give direction to their policies. Although, after the constitution of an international organization, its member States need to protect collective aims instead of specific aims of a member State. In this case, member States should respect to acts of IO in the way of achieving collective aims.

Within this scope, international organizations are created in legal terms to act in its own name, to represent member States collectively, instead of representing individual member State which means institutional autonomy of an international organization. However, the autonomy of an international organization differs from sovereignty and independence of countries because they are limited by politics and collective aims of all member States. Likewise, it is limited with powers of international organization which endowed and granted functions of the international organization. Thus, international organizations are quite different to States and can also be quite different from each other.⁷

1- Status of International Organizations in International Law

The international organization is a product of diplomacy. In this extent, since Congress of Vienna in 1815 multilateral treaty developed as international law-making, then it gave rise to negotiation between States. When these diplomatic conferences became common, the necessity of secretariat to arrange congress can be seen as a first permanent international cooperation. However,

⁷ Philippa Webb, 'Should the 2004 UN State Immunity Convention Serve as a Model/Starting Point for a Future UN Convention on the Immunity of International Organizations?' (2013) 10 International Organizations Law Review 319-21.

these conferences were far away from modern international organizations. Although they provide communication between States, they had no authorisation and independence.

At the same century, communication and commerce between States rose rapidly which led to the requirement of collaboration and coordination between them. Therefore, first international administrative bodies emerged. International river commissions were seen as most developed administrative bodies of them. The Congress of Vienna called for establishment of an international commission to manage navigation for the Rhine river. The Commission for Navigation of the Rhine was established under the Mainz Convention in 1831.⁸ Likewise, The European Danube Commission was established by the Paris Peace Treaty in 1856.⁹ These commissions had regulatory powers on navigations on the rivers, with later treaties they endowed independent jurisdiction on civil and criminal matters, last extend their officials enjoys privileges being accepted as a foreign diplomatic mission.¹⁰

Besides these river commissions, other kinds of international administrative bodies were established in the same century but they were not in the political area, they were on technical area of governmental activities such as railways, postal services etc. Thus, lack of political decisions on these technical bodies, member States allow administration of these bodies to their host States and consequently, these bodies did not need and receive any kind of immunities.¹¹

When it comes to the 20th century, in during World War I, the Allies for coordinating policies through war get together by Inter-Allied Councils which led to the inspiration for establishing the League of Nations. The structure of the League of Nations was more complex than other organizations which were established before, in terms of an Assembly and a Council. Although most of the decisions had to be adopted by all member States in the League, there were still some decisions could have been accepted by qualified or majority of the States. Moreover, the League had powers to adjudicate on disputes with the non-member States.

Then, the League established a permanent Secretariat which had appointed members by Secretary-General. This was the birth of international civil services distinct from conference diplomacy.

⁸ Dale S. Collinson, 'The Rhine Regime in Transition-Relations Between the European Communities and the Central Commission for Rhine Navigation' (1972) 72(3) Columbia Law Review 485.

⁹ Edward Krehbiel, 'The European Commission of the Danube: An Experiment in International Administration' (1918) 4 International Conciliation 841.

¹⁰ Webb (n 7).

¹¹ Charles H. Brower, 'International Immunities: Some Dissident Views on the Role of Municipal Courts' (2001) 41(1) Virginia Journal of International Law 9, 92.

The Covenant between members of the League did not have many provisions about officials of Secretariat status, but Article 7(4) said that staff of Secretariat enjoy diplomatic privileges and immunities in their official works.¹² The Covenant provided to officials of the League the full range of diplomatic immunities, but which limited application to the period of an official's appointment.¹³

However, the Covenant of the League did not have any provisions to its personality neither in international law nor in municipal law. But, then after it has started to accept it has international personality, for instance, Swiss Government made temporary headquarters agreement with the League in 1926.¹⁴ The first article of this agreement set forth that the League had international personality and judicial capacity. Besides due to its daily existence, the personality of the League in municipal law more easily conferred, so it was able to own property and was able to make contracts in its own name otherwise member States would have to be part of every agreement of the League.

The example of the international personality of international organizations in the municipal courts in these days was the Italian case of *International Institute of Agriculture v. Profili*.¹⁵ The court decided that Institute had international personality because of ability to the power of self-determination or autonomy which gave it also immunity from suit before the municipal courts. It was very important in this case that the court accepted that organization was an international person in both international and domestic law.

The League of Nations inspired States to the establishment of the United Nations. The Charter of the United Nations had more strict and detailed obligations to guarantee the independence of the Secretariat. Article 100 provided that, member of Secretariat General shall not seek or receive instructions from any of member States' government. Also in the second paragraph of the same article obligated to member States to respect 'international character' of the members of the Secretariat and not try to influence them to their responsibilities. Moreover, Article 105(2) officials of the Secretariat enjoy privileges and immunities for the independent exercise of their functions.

In addition, Article 104 set forth that, the Organization shall have the legal capacity to perform its functions and achieve its purposes. Although Charter of the United Nations did not mention about legal personality in any provision, some of the articles had interpreted as the United Nations need to legal personality in national laws for making agreements, holding or disposing properties and being the party of legal proceedings. The personality of the United Nations then decided by the International

¹² The Covenant of the League of Nations art. 7.

¹³ *Brower* (n 11) 11.

¹⁴ Legislative Texts and Treaty Provisions Concerning the Legal Status, Privileges and Immunities of International Organisations (UN Doc. ST/LEG/SER.B/11) Vol. II at p.134.

¹⁵ *International Institute of Agriculture v. Profili*, 5 ILR 413, 1 February 1930.

Court of Justice in Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations.¹⁶ The Court said that the organization was able to bring an international claim against both either a government of member State and a government of non-member State. The court initially considered the international personality of the UN although General Assembly had not asked for this to the court's opinion. The court took into consideration of organs and duties of the UN, its relation between member States, provisions of the Charter related to privileges and immunities and treaty-making power of the UN.

However, the court's opinion cannot give international personality all other organizations because of unique structure of the UN. Nevertheless, it is undeniable that, most of the international organizations enjoy international personality. Usually, institutional instruments of international organizations have reference to their personality in municipal laws but it is rarely mentioned to their international personality. In practice, three key features of international organizations discussed to decide international personality of organizations which are treaty making power, ability to diplomatic relations and ability to suit international claims.¹⁷

2- Status of International Organizations in Municipal Law

It is a fact that, the international organizations need another legal personality to perform their functions different from public international personality because they need to employ officials, purchase some goods and accommodate. Therefore, being able to operate their functions effectively, international organizations should be able to do its daily works by own selves without intervention of its member States. The legal frameworks of the international organizations generally contain declared personality of an international organization since 1945.¹⁸ In the case of doubtful provisions, it is widely accepted that international personality of organizations includes its reflection also in municipal laws.¹⁹

The legal personality of international organizations in the member States of the organization is related to implementation of international law in municipal law. When the international personality of organization is accepted in international law, it is reflected in municipal law in member States of that organization because of their legal framework usually implement international law into their municipal law without any special mechanism. In the States that accepted dualist system which needs

¹⁶ ICJ Reports 1949, 174

¹⁷ *Wickremasinghe* (n 6)

¹⁸ August Reinisch, 'Transnational Judicial Conversations on the Personality, Privileges and Immunities of International Organizations-An Introduction' in August Reinisch (eds), *The Privileges and Immunities of International Organizations in Domestic Courts* (OUP Press 2013) 4.

¹⁹ *ibid.*

special legislation to implement international law into their municipal law, International organizations gain their personality with treaty provisions or in domestic legislations.

In general, institutional instruments of international organizations use two different certain formulations about legal personality in municipal law. One of them, for example, in the Charter of the UN article 104: “shall enjoy such capacity in municipal law as is necessary for the exercise of its functions and the fulfilment of its purposes”.²⁰ Another is, “shall possess full legal or juridical personality, including capacities (a) to contract, (b) to acquire and dispose of moveable and immovable property, and (c) to institute legal proceedings”.²¹ Although they have separated formulations, functional necessity is essential in both types.²²

Juridical status of the international organizations in municipal law in the member States have not difficulties. Namely, in monist States provisions of the international organizations could be applied directly in the national legal system but the dualist States re-enact treaty provisions in their municipal legislation. In the United States, the International Organizations Immunities Act 1945(IOIA)²³ provides that, the President enable international organizations to contract, to acquire and dispose of property and participate in legal proceedings by Executive Order.

However, in the United Kingdom, the International Organizations Act 1968(IOA) provides that an international organization of which the UK is a member may have conferred upon it, by secondary legislation, “the legal capacities of a body corporate”. This formula influenced also the some of Commonwealth States.²⁴ This phrase is criticised because it ignores the intergovernmental nature of

²⁰ See more examples, International Telecommunication Convention 1982 Art. 17, WHO Constitution 1945 Art. XV, World Intellectual Property Organization Convention 1967 Art. 12 etc.

²¹ See more examples, African Development Bank Art. 51, Asian Development Bank Art. 49, Council of Europe, General Agreement of the Privileges and Immunities of the Council of Europe Art. 1 etc.

²² Reinisch (n 18) 5.

²³ International Organization Immunities Act, Pub. L. No. 79-291, 59 Stat. 669 (1945) (codified as amended in scattered sections of Titles 8, 22, 26, and 44 U.S.C.); H.R. 4489, 79th Cong. (1945) (enacted).

²⁴ See more examples, Barbados - s.6(2)(a) Diplomatic Immunities and Privileges Act 1967 (1967 UNJYB); Canada - s.5 Foreign Missions and International Organisations Act 1991 (c.41 1991); Fiji - s.6(2)(a) Diplomatic Privileges and Immunities Act 1971 (1971 UNJYB 7); Guyana - ss.10(2)(a) and 12(2)(a) Privileges and Immunities (Diplomatic, Consular and International Organisations) Act 1970 (1970 UNJYB 12); Jamaica - s.6(2)(a) Diplomatic Immunities and Privileges Act 1964 (1964 UNJYB 5); Kenya - s.9(2)(a) Privileges and Immunities Act 1970 (1970 UNJYB 18); Malawi s.691(a) Immunities and Privileges (Extension and Miscellaneous Provisions) Ordinance 1964 (1964 UNJYB 13); Malta - s.5(2)(a) Diplomatic Immunities and Privileges Act 1966 (1966 UNJYB p.6); New Zealand - s.9 Diplomatic Privileges and Immunities Act 1968 (1969 UNJYB 4); Seychelles - s.12(2)(a) Privileges and immunities (Diplomatic, Consular and International Organisations) Act 1980 (1980 UNJYB 8); Singapore - s.2(2)(a) International Organisations (Privileges and Immunities Act (1985 ed Statutes c.145); Trinidad and Tobago - s.7(2)(a) and 8(2)(a) Privileges and Immunities (Diplomatic, Consular and International Organisation) Act 1965 (1965 UNJYB 10); and Zambia - s.4(2)(a) Diplomatic Privileges and Immunities Act 1965 (1965 UNJYB 15).

international organizations.²⁵ The phrase was first in the predecessor of the 1968 Act which was Diplomatic Privileges Extensions Act 1944.²⁶

In the International Tin Council litigation, this phrase considered in great details in the English courts.²⁷ It was held that an international organization was different person from its member State and responsible for its own debts in English Law because of enjoying capacities of body corporate by virtue of an Order in Council under the IOA. In the House of Lords, Lord Oliver said that "the effect of the 1972 order was to create the ITC (which, as an international legal persona, had no status under the laws of the United Kingdom) a legal person in its own right, independent of its members"²⁸. Considering the institutive treaty of ITC, Lord Oliver's concern was the question of justiciability, treaty provisions which are not incorporated into UK law by legislation can infringe rights of individuals.

In the non-member States of international organizations, legal personality in municipal law use the source of international law more importantly.²⁹ In the terms of treaty between organization and forum State and incorporated treaty provisions in municipal law, personality of an international organization usually does not lead to problem. International organizations have been accepted as a party in the most national courts of non-member State. For example, the United States case *ITC v. Amalgamet*³⁰ and the French case *CEDAO v. BCCI*³¹.

However, the same issue has been more subject in the English Courts. In the case of *Arab Monetary Fund v. Hashim (No.3)*³² defendant claimed that AMF had no capacity to bring proceeding in the English Courts because the UK is not a member of organization and there was not any statutory instrument to create its personality in English Law. The constitutive treaty of Arab Monetary Fund had a provision that "the Fund shall have an independent juridical personality and shall have, in particular, the right to own, contract and litigate". Moreover, Fund had its own organs, functions and administrative autonomy. It was expected that, because of international personality of the Fund, the court would have accepted legal personality. However, judgement in the ITC cases was abandoned. The court held that Fund has personality in UAE law which recognised by the UK, but this could create a personality in English law by analogy with the conflicts rules on foreign corporations. Leading judgment had given by Lord Templeman whose reasoning relied on "comity" instead of private

²⁵ Wickremasinghe (n 6).

²⁶ Geoffrey Marston, 'The Origin of the Personality of International Organisations in United Kingdom Law' (1991) 40(2) International and Comparative Law Quarterly 403,424.

²⁷ [1989] 3 All ER 523.

²⁸ [1989] 3 All ER 523 p. 549.

²⁹ Reinisch (n 18) 5.

³⁰ *ITC v. Amalgamet* (1988) 77 ILR 30.

³¹ *CEDAO v. BCCI* 1993 JDI 353.

³² [1991] 1 All ER 871.

international law. Although, private international law approach is permissible for recognition of personality of international organizations, creating organization by foreign municipal law is ignoring international character of legal person.³³

In the *Westland Helicopters v. AOI*³⁴ case, House of Lords held that, unlike *AMF* case, when the foreign municipal law gives personality to international organization, English Courts recognise that same personality. The late Lord Coleman said that it was unnecessary that to discuss *AMF* case or conflicts of laws rules, institutional treaty under foreign law is proper source of public international law. Courts can consider the treaty of an international organization even if it has been established under foreign municipal law and non-justiciability principle is not an obstacle in front of it. However, unlike English Courts, it was not a problem for other States.

It is usually accepted in practice, international organizations have legal capacities to contract, own properties and involve legal proceedings in municipal laws. Nevertheless, such International organizations still can use these legal capacities even if they do not have full international personality. For example, subsidiary bodies of the United Nations can make contracts and own properties but they do not have the capacity to participate in legal proceedings or have limited powers to defend their own selves.³⁵

International organizations' capacity to contract is significant for their daily existence. It is important that which law would be applied to their contract whether their recognised municipal law of State where their functions are made or other. In practice, for example in the UN's specialised agencies, they prefer none of the municipal law instead of general principles of laws.³⁶ Moreover, because of jurisdictional immunities of these, their contracts usually have arbitration clauses. Arbitration is important because it cuts connection factor between contract and national legal system regarding both choice of laws and jurisdictional issues. But otherwise could be possible, for instance, Headquarters Agreement of the UN with the US have provision that, law of the US shall apply in the headquarters district unless agreement provides otherwise.³⁷ However, this provision has never been interpreted by organization, organization choose general principles of law in their contracts because being multinational and avoiding possible difficulties and confusions.³⁸ Contracts of international

³³ *Wickremasinghe* (n 6).

³⁴ [1995] 2 All ER 387.

³⁵ *Wickremasinghe* (n 6).

³⁶ UN Secretariat's study to the ILC, "The Practice of the United Nations, the specialised agencies and the International Atomic Energy Agency concerning their status, privileges and immunities", [1985] Vol.II pt.I YBILC 145 at pp. 152-160 and 182-4.

³⁷ UN Doc ST/LEG/SER.B/10, Art/III, section 7 (b) at p.204

³⁸ The Practice of the United Nations, the Specialised Agencies and the International Atomic Energy Agency concerning their Status, Privileges and Immunities

organizations with their employees lead to growing international administrative law which governs their relationship without containing any formally written rule. This international administrative law coupled with jurisdictional immunities which prevent interference of any municipal legal systems in their employment relationships.

The international organizations enjoy the capacity of having and dispose of moveable and immoveable properties in any States which they carry out their functions. This capacity is rarely denied, in some States, for instance, in Mexico instead of owning it, they make agreements with the host States for using them. In terms of participating in legal proceedings, international organizations have right to involve legal proceeding as mentioned above. However, this is usually happening when they bring the claim because they usually enjoy and claim jurisdictional immunities at the position of defence.

Regarding the United Nations and its special agencies, municipal courts usually recognise their capacity to bringing proceedings. In general, the UN and its special agencies use arbitration in the case of conflicts. Notwithstanding, there have been some cases that, the UN and its specialist agencies brought proceedings in national courts.³⁹ In the case of international organization brings proceedings in municipal courts, it would be threatened as same as other litigants. Nevertheless, Jenks claims, if international organization brings proceeding in municipal courts, it cannot raise immunity defence against counter-claim or set-off which relates to the same transaction as the organization's claim.⁴⁰ However, even in this situation, rules on disclosure or discovery of evidence may have to amend inviolability of the international organization's archives. Moreover, immunities of the officials may still have to be amended by courts when giving evidence.⁴¹ In the terms of criminal jurisdiction, international organizations usually do not exercise it by own selves.

Consequently, the necessity of cooperation between States has led to establishment of international organizations which are represent their common wishes. Functions of international organizations provide to achieve their collective benefits instead of act by individual State. In legal frameworks, international organizations enjoys their legal capacity as a personality usually by their own institutional instruments. Therefore, they have legal personality in international law which has found its mean also in municipal laws. In virtue of this personality, international organizations can act

<http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_l383.pdf&lang=EF> accessed 03 September 2017.

³⁹ *UNRRA v. Daan*, 16 ILR 337; *UN v. B* 19 ILR 490; *UN v. Canada Asiatic Lines* 26 ILR 622; *Balfour Guthrie and Co v. US* 17 ILR 323; *IBRD and IMF v. All America Cables and Radio Inc. and others, in the Matter of*, 22 ILR 705; *WHO and Verstuyft v. Aquino and other* 52 ILR 389; *IRO v. Rep. SS Corp.* 189 F2d 858.

⁴⁰ Clarence Wilfred Jenks, *The Proper Law of International Organizations* (Stevens, 1962) 230.

⁴¹ *Maclaine Watson v. ITC (No. 2)* 77 ILR 160 and 80 ILR 211, *Shearson Lehman v. Maclaine Watson* 77 ILR 107

by own names and have some legal capacity to act as a legal person such as make contracts, own properties and participate in legal proceedings.



III. CHAPTER II

Jurisdictional Immunities of International Organizations

1- Nature of Jurisdictional Immunities

In general, immunities of the international organizations principally derived from treaty law. These provisions can be in the institutional instruments of the international organization or continued agreements between member States or headquarters agreements between international organizations and host States.⁴² Treaty provisions are usually sufficient to scope of immunities of international organizations. However, to understand it, it is essential to examine underlying rationale and approaches to immunities of international organizations.

Treaty provisions about jurisdictional immunities are reflected in many international organizations' treaty sources as an "immunity from jurisdiction" or "immunity from every legal process". These immunities are a sort of restriction to jurisdiction of national courts but not an exemption from substantive laws.⁴³ Thus, it is mean that substantive laws are still applicable to international organizations but national courts are not right forum to apply them. Although in diplomatic law, logical and practical problems tried to sort out with concept of functional approaches.

Reinisch suggested that this functional approach should be adopted to international organizations.⁴⁴ He claims that, when exemptions established from national laws, the courts should examine and decide which local law can be applied to international organizations but with jurisdictional immunities, courts are prevented from application. For example, some certain issues such as fiscal immunities clearly expressed at the substantive laws and these are often the subject of specific treaty provisions.⁴⁵

2- Status and Functional Necessity

International organizations often argue that immunities are necessary for to achieve international organizations' functions regarding their international character. In spite of the fact that, international organizations do not have their own territory or population, unlike States, they are vulnerable and dependent position. They can pursue their functions on a territory which a State owns and people who have ties with that States in form of nationality. Thus, immunity of international organizations guarantees the accommodation of international organizations in that States and in international system. Because the immunities prevent international organizations from interference of authorities of States which they operated and cut the nationality ties of States on their employees.

⁴² Reinisch (n 18) 5.

⁴³ Wickremasinghe (n 6).

⁴⁴ August Reinisch, *International Organizations before National Courts* (Cambridge University Press, 2000) 369.

⁴⁵ Sam Muller, 'International Organizations and their Officials: to tax or not to tax?' (1993) 6(1) *Leiden Journal of International Law* 47, 72.

The concept of reciprocity is essential to the source of diplomatic immunities when direct relations between States. Because every receiving States guarantee and ensure proper treatment of foreign diplomats so they can expect the same treatment to their diplomats. The United Nations 2004 State Immunity Convention⁴⁶ tried to provide uniform rules for the immunities of the States but it argued it is not possible to apply same rules for international organizations.⁴⁷ Of course, it cannot be directly applied to international organizations, but its albeit in a more tempered form is important to understand immunities of international organizations. Namely, institutional treaties of an international organization have provisions to its goals, administration of it and distribution of costs, benefits between its member States equally. Thus, violation of these rules by individual State means also violation of other member States' equality. Therefore, immunities of international organizations are essential to ensure their international status and achievement of their collective functions.

International organizations need to pursue their functions efficiently, this efficiency can be possible without being subject to jurisdiction of any State which they operate. Otherwise, international organizations should participate in legal proceedings of many States, they should hire local lawyers and need to be defended separately.⁴⁸ In addition, possible different application of national laws can lead to inconsistent decisions which can also lead to change of policies of the international organizations in various States. All these problems may cause to possible expense on their operations.⁴⁹

Immunities from local courts, therefore, essential for the achievement of the collective goals, if any conflict, international arbitration would be more suitable for solutions with general principles of law.⁵⁰ Moreover, these immunities provide to costs of common resources of member States in the international organizations to ensure efficiency to the reach to the purposes for which they are established.

3- Doctrinal Approach to Extension of Immunities

The immunities of international organizations, regarding various decisions about them, has led to different suggestions upon on its extension. In the period during after World War II, many

⁴⁶ United Nations Convention on Jurisdictional Immunities of States and Their Property <http://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf> accessed 14 September 2017

⁴⁷ *Webb* (n 7).

⁴⁸ *Jenks* (n 40) 41.

⁴⁹ *Wickremasinghe* (n 6).

⁵⁰ *ibid.*

international organizations have emerged, at the same period, other types of immunities in the international law have seen rationalising movements. These movements resulted with Conventions such as the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and 1969 UN Convention on Special Missions. These all conventions accept immunities at different extends but all are basically accepted functional concept which is immunities are granted to organization and its staff necessary to carry out their functions in the international area.

Many of States have adopted the same approach, limited doctrine of immunity, in relation to foreign States in that period because of similar reasons.⁵¹ The Foreign States have immunities of actions in the public area but not in relations to their private law activities. Acts of foreign States in public areas, *acta iure imperii*, basically related to organisations and administration of the State and dispersion of public goods. These policies and acts are immune from jurisdiction of other States' courts because of independence and equality of sovereign States in international law. In other respects, their private law activities, *acta iure gestionis*, do not need to immunity, when a State chooses to trade in market place, it should be accepted as another trader.⁵²

With regard to international organizations immunities, there are many different suggestions to proper extension of immunities. Although, most of the authors claim functional basis of immunities, limits of it continued as a debate. In broad terms, there are three different idea identified: (1) International organizations need to enjoy absolute immunity from local jurisdictions, (2) International organizations immunities need to be limited like State immunity and particularly commercial activities need to be exemption, (3) immunities of international organizations should be restricted by the way of functional standard.⁵³

a) Absolute Immunity

⁵¹ *ibid.*

⁵² *Trendtex Trading Corp. v. Central Bank of Nigeria* [1977] QB 529

⁵³ *Reinisch, Transnational Judicial Conversations on the Personality, Privileges and Immunities of International Organizations-An Introduction* (n 18) 8.

Some of the authors view is international organizations immunities are absolute. The authors such as Lalive,⁵⁴ Cahier,⁵⁵ Jenks,⁵⁶ Dominice,⁵⁷ and Seidl-Hohenveldern⁵⁸ argued that, position of International organizations is different from position of States. They argued that provisions of treaties that, international organizations enjoy "immunity from every legal process" and their position of not to have their own territory and population, needs absolute immunity. Thus, they need wider immunities than States because of their responsibility for their every member States.

However, absolute immunity of international organizations increasingly criticised and being under consideration because of rising public authorities' inspection in public law in municipal laws and sometimes in terms of human rights violations in international law level. It is pointed out by the United Nations itself, alteration of doctrinal approach to State immunities will influence the national courts when they consider international organizations.⁵⁹ Although critics about this opinion, proponents of absolute immunities argue that, immunities from national courts does not mean total immunity from justice.⁶⁰ They suggest that international organizations need to be obligated to establish alternative dispute resolution systems for the cases of when they enjoy immunities. This kind of alternative settlement of disputes usually depends on consent of one party. Therefore, international organizations may assert immunities to prevent judicial supervision on the alternative resolution procedures which may cause more difficulties.⁶¹ In addition, it is asserted that, where the rulings of the local courts do not affect the functions of the international organizations and interests, waiver of the immunities of international organizations could be practical solution as well.⁶²

In this case, in the European context, right access remedies guaranteed by Article 6 of ECHR and well-known cases of the European Court of Human Rights that *Waite and Kennedy* and *Beer and Regan* cases⁶³, Court found that claims against international organizations before domestic courts,

⁵⁴ Jean-Flavien Lalive, 'L'immunité de juridiction des états et des organisations internationales' (1953) 84 Recueil des cours 205-396.

⁵⁵ Philippe Cahier, *Etude des accords de siège conclus entre les organisations internationales et les états ou elles résident* (Milan: Giuffrè, 1959) 231-241.

⁵⁶ Jenks (n 40) 40,41.

⁵⁷ Christian Dominice, 'L'immunité de juridiction et de exécution des organisations internationales' (1984) 145 Recueil des cours 178

⁵⁸ Ignaz Seidl-Hohenveldern, *Corporations in and under International Law* (Cambridge University Press, 1987) 81

⁵⁹ UN Yearbook of International Law Commission (1985) Vol. II pt.1 at p.161.

⁶⁰ Dominice (n 57) 157.

⁶¹ *Groupement d'Entreprises Fougere v. CERN*, 21 December 1992, 102 ILR 209.

⁶² Webb (n 7) 319,329.

⁶³ *Beer and Regan v. Germany*, 18 February 1999, ECtHR, Appl. No. 28934/95, para. 59; *Waite and Kennedy v. Germany*, 18 February 1999, ECtHR, Appl. No. 26083/94, para. 68.

such courts can limit the rights of accessing to court if reasonable alternative means allow for the protection of the claimants' rights.⁶⁴

b) Restrictive Immunity

In the second view, it is claimed that restrictive doctrine of State immunity should be applied to interpreting international organizations' immunities, but this view is supported by minority of the author as well as implemented by a few States such as the US and Italy. This view suggests implementing treaty provisions about immunities from jurisdiction only in the matters of *acte iure imperii* of international organizations. The proponents of this opinion emphasize that, international organization acts in relation to commercial and private law activities cannot be sustainable because of increasing adoption of the restrictive doctrine of State immunity.

For instance, Gaillard and Pingel-Lanuzza argued that, while it is accepted that an international organization has immunities from local jurisdictions to prevent their autonomy from infringement, this immunity cannot be applied to their private law and commercial acts.⁶⁵ Moreover, they claim that, if States can accept the foreign court's jurisdiction over their own private law activities without infringing their independence and sovereignty, the municipal courts should be able to assert jurisdiction over private law activities of international organizations without infringing their independence as well.⁶⁶ In addition to this, they argue it was true that international organizations were much more vulnerable than States in the 1950s and 1960s but now these organizations are acknowledged by international law and their constitutional structure do not need to override other considerations.⁶⁷

Ebenroth also strictly supports this opinion and he emphasizes that if the immunities of international organizations were much more extensive than States' immunities, States can abuse the personality of international organizations.⁶⁸ He suggests that States can provoke to international organizations to carry out certain acts of an *iure gestionis* and can combine their aims to international organizations' functions in order to enjoy enhanced immunities of international organizations. Besides, Schröer suggests the variation of these views which that international organizations shall enjoy immunities from jurisdiction in customary international law for their acts *iure imperii* but not their acts

⁶⁴ Ryngaert (n 5) 121, 132.

⁶⁵ Gaillard and Pingel-Lanuzza (n 3).

⁶⁶ *ibid* 5.

⁶⁷ *ibid* 15.

⁶⁸ Charsten Thomas Ebenroth, 'Shareholders' Liability in International Organisations - The Settlement of the International Tin Council Case' (1991) 2(2) Leiden Journal of International Law 171,183.

iure gestionis.⁶⁹ This can provide advantage to international organizations because customary immunities may not be favour of non-member States.⁷⁰

Nevertheless, it must be considered that distinction between acts *iure imperii* and acts *iure gestionis* has its problems in relation to State immunity, in practice, national courts' applications are varying.⁷¹ Also, as mentioned above, situations of international organizations and States differ from each other in terms of having own territory and population. It is questioned that; can international organizations act *iure imperii* acts really?

c) Functional Criteria for Restrictive Immunity

Thirdly, it is argued that the international organizations' immunities can be restricted on basis of functional criteria. Bekker takes this opinion.⁷² He suggests, the difficulties of unclear functional standard can be solved by limiting immunities of an international organization with their "official activities". He defined these official activities: 'activities carried out by an organisation in the course of the actual exercise of its function in fulfilment of its purposes and should be a normal consequence of the organization's functions and purposes to such an extent that they could be said to logically arise from its functions and purposes, rather than being merely 'useful' to the pursuit of the latter'.⁷³

He supports his view with arbitral award of *European Molecular Biological Laboratory Award* which determines the extent of the immunities of it.⁷⁴ However, it can be said that this Award differs from cases before national courts by extent of jurisdiction immunity's basis. Firstly, it did not take into consideration jurisdictional immunities, it considered fiscal immunities. Secondly, the parties of the arbitration were Germany and EMBL which makes it international dispute. Thirdly, in this international tribunal, to settlement of dispute international lawyers interpreted institutional treaty of EMBL and its Headquarters Agreement on sensitive issues.⁷⁵

Therefore, while this functional basis of limiting international organizations' immunities be seen as convenient, in practice, it would be difficult to the courts when exercising limits of jurisdictional

⁶⁹ Friedrich Schröer, 'De l'application de l'immunité juridictionnelle des états étrangers aux organisations internationales' (1971) 75 *Revue Generale de Droit International Public* 712.

⁷⁰ *ibid* 717.

⁷¹ Kibrom Tesfagabir, 'The State of Functional Immunity of International Organizations and Their Officials and Why It Should be Streamlined' (2011) 10(1) *Chinese Journal of International Law* 97,128.

⁷² Peter Henri Fredericus Bekker, *The Legal Position of Intergovernmental Organisations*, (Martinus Nijhoff Press, 1994).

⁷³ *ibid* 235.

⁷⁴ *European Molecular Biological Laboratory(EMBL) v. Federal Republic of Germany*, Arbitration Award of 29 June 1990, 105 ILR 1.

⁷⁵ *Wickremasinghe* (n 6).

immunities. It is criticised to be uncertain standard of application and put into sensitive basis in the approach of national courts.⁷⁶ Moreover, it considers purposes of the acts rather than nature of acts. It is a fact that, during application of restrictive doctrine of State immunity, many courts refused to purpose approach in favour of nature of acts.⁷⁷ To take into consideration of purpose can be only subjective criterion which related to motivation of one the parties, which would tend to undermine restrictive doctrine.⁷⁸

In addition, capacities of international organizations entitled to achievement of their certain functions. Thus, their all acts can be referred to their functions and achievements of the aims. This functional criterion emphasis relation between acts and functions of international organizations rather than putting an objective criterion to separating each other. The concept of functional necessity, therefore, stresses functional aspect at the expense of the concept of the necessity.⁷⁹

Another difficulty of the objective functional standard of application of the courts in immunities of international organizations, determining the acts of international organizations' officials whether they for international organizations' functions or not. Bekker suggestions in this cases determination of international organization should be acceptable because of international organizations' closeness and familiarity to dispute. However, after this opinion was publicized, the ICJ's opinion was, international organizations opinions in the case of the scopes of their officials' and experts' functions can be persuasive in most cases but final decisions made by local courts.⁸⁰

4- A Step Forward Answer – *ratione materiae*

The Doctrinal approaches to immunities of international organizations take the subject in general level but some of common law States take into individuated approach to decide which activities of international organizations can be considered acts *iure gestionis* to proper identification.⁸¹ This approach suggested by Reinisch to aim to consider deeply the jurisdiction of national over certain acts of international organizations.⁸² He suggests, specifically thinking of immunities of international organizations in the terms of (1) they should enjoy immunities from local jurisdiction in their internal governance and administration⁸³ and in other cases, national law and jurisdiction can be applied. Thus,

⁷⁶ Schröder (n 69) 739,740.

⁷⁷ US Foreign Sovereign Immunities Act 1976, 28 USC § 1603(d); the case of *Trendtex Trading Co. v. Central Bank of Nigeria* (n 52)

⁷⁸ *Trendtex Trading Co. v. Central Bank of Nigeria* (n 52).

⁷⁹ *Wickremasinghe* (n 6).

⁸⁰ *Cumaraswamy* case [1999] ICJ Rep. 62 at p.87 §61

⁸¹ James Crawford, 'International Law and Foreign Sovereigns: Distinguishing Immune Transactions' (1983) 54(1) *British Yearbook of International Law* 75, 118.

⁸² Reinisch, *International Organizations before National Courts* (n 44) 369-388.

⁸³ *ibid* 377-382.

he argued (2) in the case of insufficient substantive competence is likely to operate where employment cases are brought in national courts.⁸⁴ However, national courts should be fully able to apply its private law, especially in (3) contract, (4) tort and (5) property cases or its private international law.⁸⁵

a) Internal Governance of International Organization

Although jurisdictional immunities of international organizations obstacle to jurisdiction of local courts, there may also be specific lack of ability to apply national law to international organizations by national authorities which can be called incompetence *ratione materiae*.⁸⁶ This kind of inability may occur with jurisdictional immunity in some cases, but they are different from each other in that, international law or internal law of international organizations rules the disputes, national courts unable to determine it by implementing national law.

In certain matters, States may accept exemption of an international organization from national rules by treaty provisions. For instance, in treaties' immunities and privileges sections, international organizations are usually exempted from taxation and custom regulation.⁸⁷ Moreover, in some cases, beyond question of jurisdictional immunities, national courts feel unable to decide some disputes. In particular, when the cases of internal governance of international organization, national courts unable to apply proper substantive law.⁸⁸ In general, international personality of organizations is argued to reason for inapplicability of national laws. That is to say, because of enjoying international personality and having rights and duties in international law, international organizations cannot be subject of same issues in national law. Otherwise, being subject of national law of host State makes international organizations' international character "national".⁸⁹

b) Employment

Another issue is that the employment disputes of international organizations are generally limited to application of local law. It is a fact that, employment is important subject to international organization in the terms of their integrity, independence and autonomy. Frequently, employment law of international organizations is called international administrative law because of its public law character. Moreover, employment issues are most common disputes of international organizations.⁹⁰

⁸⁴ *ibid* 383-385.

⁸⁵ *ibid* 386.

⁸⁶ *Wickremasinghe* (n 6).

⁸⁷ *Muller* (n 45).

⁸⁸ *Westland Helicopters v. AOI* [1995] 2 All ER 387.

⁸⁹ *Jenks* (n 40) 134.

⁹⁰ *Wickremasinghe* (n 6).

Generally, international organizations have three different type of employment relationship with their employees. Firstly, highest category of employment is international civil services, which the officials permanently employed by international organizations. It is mostly accepted in the cases that this kind of employees are governed under internal law of organization instead of local law. The second category is short-term or temporary employees, consultants and experts who also assist an organization in accomplishment of various tasks. Furthermore, their employment contracts are usually subject to internal law of international organization but they are different from international civil service because they not often fully integrated into employer organization such as their limited authority and limited powers to represent organization. Thirdly, the last category is local staffs who employed by organization in local law to assist other employees or to do other support services of organization.⁹¹

The relationship between international civil service and an international organization is usually accepted subject of the international administrative law out of application of national law and national jurisdiction. Because of being public law character of these relationships, national labour courts and national standards are inappropriate to apply these relationships. Although treaty provisions have limited rules on immunities from national jurisdiction, local courts frequently refuse jurisdiction over them.⁹²

The decisions of national courts which support this approach, based on inapplicability particularly from European civil law courts.⁹³ However, common law jurisdictions do not explicitly follow this approach but their decisions come to same decisions by a different process of reasoning. Common law courts take conflict of laws rules into consideration and frequently decide inapplicability of foreign public law and accept non-justiciability in relation to the rights and duties of international persons under international law.⁹⁴

Employees of the international organizations have strict ties with their policies and it is significant to determine right employees to achieve functions. To this extent, officials of the international organization need to act favour of it, not to interest of any individual State. Therefore, independence of international civil services is fundamental principle from the beginning of

⁹¹ *ibid.*

⁹² The US Case *Mendaro v. IBRD* (1983) 99 ILR 92

⁹³ The Netherlands Case *Eckhardt v. EUROCONTROL*(No 2) (1983) 94 ILR 331, French cases, *Chemidlin v. International Bureau of Weights and Measures* (1945) 12 ILR 281; *Klarsfeld v. Office Franco-Allemand pour la Jeunesse* (1968) ILR 191; *Hinterman v. WEU* (1995) 1997 JDI 141, Italian cases *Mazzanti v. HAFSE* (1955) 22 ILR 758; *ICEM v. Chiti* (1973) 77 ILR 577; *ICEM v. Di Banella Schirone* (1975) 77 ILR 572; *Scivetti v. Bari Institutue* (1975) 77 ILR 609; *Christiani v. IL-AI* (1981) 87 ILR 21; *Galasso v. IL-AI* (1987) RDIPP 827, Belgium case *Devos v. SHAPE and Belgium* (1985) 91 ILR 242.

⁹⁴ *Mukoro v. EBRD and Others*, Employment Appeal Tribunal, [1994] 107 ILR 604.

international organizations⁹⁵ and it is frequently guaranteed in the institutional instruments of the international organizations. It is a fact that, international status of international organizations would negatively be affected, if international civil services are subject to national jurisdictions.⁹⁶

Moreover, it also important to proper management and cohesiveness of international organizations officials to achievement of the functions. Possible different decisions of different national courts about these officials can harm their uniformity and cause different treatment every State where they perform their functions. Therefore, international organizations provided with having a separated administration of their international civil services from every national court to favour of their functions. But it should be noted, while being separated from national jurisdictional systems inhibits unwanted influences of States, it is also caused to international civil services debar from protection which offered by national courts. Thus, it is emphasised that it is important to international organizations administrative law should be objective, not only protective from interference of States but also should ensure fair treatment to employees.⁹⁷

Hence, international administrative law has legal framework with written sources such as treaty provisions, employment rules and regulations, employment contracts. In addition, these sources supplemented by other unwritten sources including the practice of international organizations, the general principles of law and decisions of tribunals. These legal frameworks in many international organizations enforced by judicial organs, mostly administrative tribunals whose judicial nature are now widely be accepted. If these judicial organs well-established and serve international organizations officials enough protection, national courts will easily refuse jurisdiction over these issues for this reason.⁹⁸

The second category of short term or temporary staff of international organizations is usually employed by contracts. If the contract provisions do not express it, it would be unclear to international administrative law applicable to their employment relationship. It is obvious that provision should give the ability to apply international administrative law and should point to jurisdiction of international administrative tribunal but it has not expressed clearly it cannot be said that this system can operate automatically. For instance, in the case of *Rebek v. WHO*⁹⁹ there was a conflict between parties had risen from non-renewal of a contract. The contract between parties did not have any

⁹⁵ Jacques Lemoine, *The International Civil Servant - An Endangered Species* (Kluwer Academic Publishers, 1995) 104-106.

⁹⁶ *Reparation* case (n 16) 183.

⁹⁷ Chittharanjan Felix Amerasinghe, *Principles of the Institutional Law of International Organisations*, (Cambridge University Press, 1996) 330.

⁹⁸ *Wickremasinghe* (n 6).

⁹⁹ ILOAT Judgement No 77 of 1 December 1964, 1965 ILO Bulletin 126-30.

provision to applicable law or jurisdiction but parties agreed to arbitration at ILOAT. ILOAT held that WHO's administrative law could not be applied to the contract because it was not employment contract subject to the internal law of the WHO tribunal. Tribunal decided that it was a service contract with an independent professional and this contract governed by choice of law of parties or law system of the Tribunal which responsible for deciding case. Thus, the Tribunal applied general principles of the law to this case.

Finally, situation of local staffs of international organizations is differentiated from others because of not to have a direct relation to achieving international organizations' functions. Unless the contracts of this kind employees provide otherwise, their contracts governed by local laws instead of international administrative law in that they have relatively low degree of responsibility. Thus, the local law generally applied to their contract by national courts unless international organizations assert jurisdictional immunity. International organizations can waive immunity expressly but in some cases, courts may be willing to find an implied waiver. Therefore, international organizations put rules to the contracts of employees that, governed by international administrative law or providing alternative dispute resolution system to their contracts if they want to avoid jurisdiction of local courts.¹⁰⁰

c) Contracts for Goods and Services

As mentioned above, the capacity of international organizations to enter into contractual relationship is usually accepted both by expressed provisions and interpreting personality of them. However, it causes to unclarity that, in the case of absence of expressed relation to contract to specific national system, can national system can be applied to contract or same national system can determine the applicable law to contract by its conflict of laws issues. Moreover, is it can be said that international status of international organizations let their contracts out of scope of any national law system.¹⁰¹

It is mostly argued that every type of contracts should be considered in its circumstances by taking into account the intensions of the parties, nature of contract and terms of contracts.¹⁰² Analysis of the case by case flexibility brings with considering intentions of parties related to national systems of conflict of laws.¹⁰³ It must be noted that many of international organizations include arbitration clauses to resolve possible conflicts. Although this arbitration clauses may not be enough to put out of

¹⁰⁰ *Wickremasinghe* (n 6).

¹⁰¹ *ibid.*

¹⁰² *Jenks* (n 40) 147-155.

¹⁰³ *ibid* 148.

application of local jurisdiction in terms of supervisory involvement, it can allow choice of laws rules to be applied to contracts.¹⁰⁴

Usually, international organizations do not express choice of law rules in their contracts exempt European Communities seek to law of its member States to govern their contracts with also providing arbitration of ECJ. There are three main reasons not to express choice of law rule for international organizations. Firstly, they concern about their international status and they concerned about letting their contracts to subject of national laws. Secondly, relationship of international organizations with their member States must be based on equal respect. Thus, avoiding discrimination between contractors and ensure fairness and uniformity, applicable law should be out of the law of member States. Last reason is to ensure convenience and efficiency although it contradicts second reason. Therefore, International organizations seek to apply certain legal system to their all contracts usually their home State law instead of different legal systems because they are familiar with that system and usage of resources to settlement of disputes, for example, lawyer costs would be efficient.¹⁰⁵

d) Torts

State's responsibility for torts is developing area for comparative law and their immunities and privileges about non-contractual liability are replacing with modern conception of rule of law.¹⁰⁶ Nevertheless, possible tort liability has wide range of subjects in States. In general, because of this variety and relation with public functions, State's immunities be restricted by in some type of torts. For instance, the UK State Immunity Act 1978¹⁰⁷ provides that, foreign States are not immune from proceedings of personal injury or death and any damage to properties in UK territory.

However, the situation of international organizations is different. Usually, international organizations have not any own internal rules on their tort liability and complaints are tried to be solved by general principles of law. Some of the cases, for example, road traffic accidents or occupier's liability, situation is not controversial but in other complex cases, liability ruled by local law may not be suitable for public functions of international organizations.¹⁰⁸

¹⁰⁴ Wickremasinghe (n 6)

¹⁰⁵ *ibid.*

¹⁰⁶ John Bell and Anthony W. Bradley, *Governmental Liability A Comparative Study*, (United Kingdom Comparative Law Series Vol. 13, 1991).

¹⁰⁷ Section 5 of the State Immunity Act 1978.

¹⁰⁸ Wickremasinghe (n 6).

In the case of abusing human rights, some authors claim that immunities of international organization from jurisdiction should be restricted.¹⁰⁹ Some author suggested in parallel that, also State immunities should be restricted in the case of allegations of human right abuses.¹¹⁰ However, both have not been limited in that way yet. It is a fact that, international organizations act in international law and need to respect human rights, but proper strategy would be developing their own law about human rights and establishing their own remedial systems.¹¹¹

e) Immovable Properties

The principle of *lex situs* governs immovable properties is widely accepted in private international law and in practice, the same principle is valid for international organizations as well.¹¹² Generally, international organizations lease their Headquarters and other sites from local public authorities and local law governs their contracts. Moreover, international organizations seek to take under guarantee to their rights by registration of their rights to local registry.¹¹³ However, in relation to immovable properties, when international organizations have entered relation with another organization, it is suggested that this relation would be in the scope of international law rather than national law.¹¹⁴

5- Treaty Provisions for Immunities

Most of the jurisdictional immunities of the international organizations are based on provisions of treaty law and due to variety of international organizations their provisions are now varying also rather than uniform structure. As mentioned above, most of the universal organizations which have broad political functions enjoy broad immunities while others may have more limited jurisdictional immunities.

The most important example of universal organizations is the United Nations whose jurisdictional immunities formed as “every form of legal process”. The United Nations Charter article 105 provides that;

“(1) The organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

¹⁰⁹ Michael Singer, ‘Jurisdictional Immunity of International organizations: Human Rights and Functional Necessity Concerns’ (1995) 36(1) Virginia Journal of International Law 53.

¹¹⁰ Andrea Bianchi, ‘Denying State Immunity to Violators of Human Rights’ (1994) 46 Austrian Journal of Public and International Law 195; Jurgen Brohmer, *State Immunity and the Violation of Human Rights* (Kluwer, The Hague, 1997).

¹¹¹ Wickremasinghe (n 6).

¹¹² Jenks (n 40) 135-146.

¹¹³ ibid 135-38.

¹¹⁴ ibid 141-44.

(2) Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of the functions in connection with the Organisation.

(3) The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose convention to the Members of the United Nations for this purpose.”

It is obvious that in paragraph (1) organization have immunities on functional basis. Nevertheless, as provided in paragraph (3), General Assembly adopted the Convention on the Privileges and Immunities of the United Nations in 1946 (hereafter General Convention). The General Convention sets forth rules on personality of organization, jurisdictional immunities of organization, fiscal immunities and its inviolability of its archives and premises. Moreover, it has provisions about immunities of representatives of the member States and immunities of the staffs and experts of the organization.

Although General Convention not taken up by some member States, UN Legal Counsel's opinion about it is not simply agreement and need to be respected by all member States. Thus, they said that General Convention specifies the immunities and privileges that what organization need to. Moreover, its provisions are accepted by not only non-party member States of the organization but also some non-member States.¹¹⁵

The General Convention provides that;

“Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.”

This provision means organization enjoys absolute immunity not only national judicial administrative law but also executive functions of national laws.¹¹⁶ However, when considering

¹¹⁵ The statement made by the Legal Counsel at the 1016th meeting of the Sixth committee of the General Assembly on 06 December 1967 (1967 UNJY 311-314).

¹¹⁶ *Dominice* (n 57) 180.

General Convention's provision with Article 105(1) of the Charter, some authors¹¹⁷ and exceptional cases¹¹⁸ interpreted the absolute immunities of organization is unlimited solely to fulfilment of its purposes. Therefore, immunity from every form of legal process limited by functional necessity of Article 105(1). But as mentioned above, this approach may cause to different judgement of national courts and give flexibility to national court to determine which is functional necessity.

However, there are two circumstances to limits of immunities of the UN. First, General Convention Section 2 provides, national courts will have jurisdiction if the organization waives its immunity. The second one is road accidents which the UN's cars or drivers involved. In the conflicts rises from road accidents, the United Nation can waive its immunity in order to enable insurers to take part in defence of proceedings.

The Specialised Agencies, likewise United Nations, also enjoy immunities and privileges under The Convention on the Privileges and Immunities of the Specialised Agencies in 1947¹¹⁹. Its provisions are similar to General Convention although it has some specific provisions for each organization.¹²⁰ Most of the member States widely accepted that Convention but only Italy reserved its position favour of supplementary agreements with host States rather than extension of these immunities to Specialised Agencies.

Same formed immunities which immunity from every form of legal process be applied to some other political organizations such as Council of Europe¹²¹, the WEU¹²², the Arab League¹²³, NATO¹²⁴ and IAEA¹²⁵. However, their individual constitutional documents will make provision that, their Secretary-General can make supplementary agreement to adjust their provisions with host States. For example,

¹¹⁷ Chanaka Wickremasinghe and Guglielmo Verdirame 'Responsibility and Liability for Violations of Human Rights in the course of UN Field Operations' in Craig Scott (ed), *Torture as Tort* (Hart Publishing, 2001) 476-478.

¹¹⁸ Belgian case of *Manderlier v. ONU* (1972) 69 ILR 139,

¹¹⁹ Convention on the Privileges and Immunities of the Specialised Agencies (21 November 1947) 33 UNTS 261.

¹²⁰ ILO (Art. 40 Constitution of the ILO 1946, 15 UNTS 40); UNESCO (Art. 12 Constitution of UNESCO, 4 UNTS 275); WHO (Art. 67(2) Constitution of the WHO, 14 UNTS 186); WMO (Art. XIX(b)(i) Constitution of WMO, 77 UNTS 144); WTO (Art. VIII(2)); UNIDO (Art. 21 of UNIDO Constitution, 18 ILM 667)

¹²¹ General Agreement on the Privileges and Immunities of the Council of Europe (1949 reprinted in UN Doc. ST/LEG/SER.B/11 at p.390).

¹²² Agreement on the Status of WEU, National Representatives and International Staff (1955 and reprinted in UN Doc. ST/LEG/SER.B/11 at p. 421).

¹²³ Convention of the Privileges and Immunities of the League of Arab States (1953 - reprinted in UN Doc. ST/LEG/SER.B/11 at p. 414).

¹²⁴ Art. 5 and 24 of the 1951 Ottawa Agreement on the status of the NATO, National Representatives and International Staff, 200 UNTS 3.

¹²⁵ Agreement on the Privileges and Immunities of the IAEA (1959 - reprinted in UN Doc. ST/LEG/SER.B/11 at p. 357).

the NATO have different agreements about qualifications in its Headquarter Agreements. Thus, their juridical immunities modified by incorporation of the Status of Forces Agreements(SOFA) relating to conflicts and brings special system for the resolution of the non-contractual claims. In addition, most of these organizations enjoy absolute immunities unless they expressed waiver but they generally do not. Instead of waiving they prefer to establish alternative modes of dispute settlement such as arbitration.

It is obvious that, besides these political organizations, the other important international organizations are international courts and tribunal whose judicial function must be carried out in full independence under the rules of universal principles. Thus, International Court of Justice(ICJ) enjoys immunity under article 105 of the Charter. Moreover, article 19 of the Statue of the Court provides its members have "diplomatic immunities" and article 42 provides that, the agents, councils and advocates before the Court have privileges and immunities limited to independent exercise of their duties.

In addition, other international courts which have legal personality also have immunities for their selves and for the persons who involve judgements. For example, Article 5 of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea (ITLOS), sets forth for an unlimited immunity of itself and immunity of its property, assets and funds. Likewise, Article 6 of the Agreement on the Privileges and Immunities of the International Criminal Court, sets forth immunity of the Court and property, funds and assets from "every form of legal process". Other International judicial/arbitral bodies provide make similar provision.¹²⁶

On the other hand, unlike these political and judicial international organizations, some international organizations institutional instruments contain provisions that grant limited jurisdictional immunities. Especially, economic organizations and limited or regional organizations have some qualifications on their immunities and have these immunities only to some functions. For instance, the World Bank Group, i.e. the IBRD, the IFC and the IDA enjoys some immunities limited by regional, they may involve proceeding where they have an office or appointed agents and their properties and assets, wherever they located and by whomsoever held immune from any executive or legal action.¹²⁷

¹²⁶ Wickremasinghe (n 6).

¹²⁷ Section 3 and 4 of Article VII of IBDR Articles of Agreement 2 UNTS 134.

Similarly, other regional economic organizations such as African Development Bank¹²⁸ and African Development Fund¹²⁹ have limited immunities on only their borrowing or receiving loans functions. The reason underlying behind the restrictions of immunities of these organizations is their involvement in the market-place with private persons. Thus, accountability of these organizations give confidence the persons who want to contract with them because their primary function needs to operate with private parties. Although, IMF also operate in economic sphere, their immunities not much limited because of their functions related to intergovernmental bodies rather than private parties.¹³⁰

Regarding international commodity organizations, their immunities usually provided by their Headquarter Agreements with host States. The UK is the host State of a number of these organizations and they may be involved the proceeding when (1) they waive their immunity, (2) when they responsible for road accidents and (3) when in the case of enforcement of arbitral awards. But the collapse of International Tin Council led to arguments against these broad immunities of organizations which involve market-place. It is argued, more limited immunities could have been provided to an early awareness of ITC's inability to meet its debts.¹³¹

Another organizations which specialised to some specific areas such as regulation of air traffic and scientific researches, varies a grant range. Therefore, granted immunities are also varying for each other. Some of them enjoys absolute immunity, for example, European Centre for Nuclear Research (CERN)¹³². Others may have limited or functional immunities such as European Molecular Biology Laboratory¹³³ and European Centre of Medium Range Weather Forecasts¹³⁴. It should be noted that some of them do not enjoy any immunities but they may be immune from execution.¹³⁵

6- Decisions of International Courts

¹²⁸ Art. 52 of the Agreement establishing the African Development Bank, <<https://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement%20Establishing%20the%20ADB%20final%202011.pdf>> accessed 07 September 2017

¹²⁹ Art. 43 of the Agreement establishing the African Development Fund, <<https://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement%20Establishing%20the%20ADF%20ANG%20FINAL%202011.pdf>> accessed 07 September 2017

¹³⁰ Art.IX of the Articles of Agreement of the IMF <<https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf>> accessed 07 September 2017

¹³¹ *Wickremasinghe* (n 6)

¹³² General Convention on the Privileges and Immunities of the CERN 200 UNTS 149.

¹³³ Article 6 of its HQ Agreement with Germany of 10 December 1974.

¹³⁴ Article 3 of the Protocol on the Privileges and Immunities of the Centre for Medium Range Weather Forecasts.

¹³⁵ International Mobile Satellite Organisation UKTS 73 (1999): And International Maritime Satellite Organisation (INMARSAT) Art.6 of HQ Agreement with the UK, UKTS 44 (1980).

It is undeniable fact that, due to nature of jurisdictional immunities from national courts, it rarely has been subject to international courts and tribunals. Legal relations which have taken subject to international organizations' immunities can be divided as relationship between organization and forum State, relationship between organization and private parties and relationship between forum State and individual which have international character.

Decisions of the International Court of Justice in direct relation with immunities of international organizations in the dispute between forum State and organization are rare. The most important ones are *Mazilu*¹³⁶ and *Cumaraswamy*¹³⁷ cases. Both cases about the experts on the missions of the UN and their privileges and immunities under Article VI, Section 22.

In *Mazilu* case, it is concerned that, a Special Rapporteur to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities and whether he had immunities of an expert on the mission under Convention. The Court held the purposive approach and organizations intent and interests can ensure the independence of experts. Founding was, status of the experts whether they are able to carry out their tasks not related the State of his nationality's claim, this can be decided by organization itself. Court stated that;

"It is sufficient for it [i.e. the Court] to note, first that it was for the United Nations to decide whether in the circumstances it wished to retain Mr. Mazilu as a special rapporteur, and secondly to take note that decisions to that effect have been taken by the Sub-Commission."¹³⁸

In the *Cumaraswamy* case, there was a dispute between Malaysia and the UN that Special Rapporteur's immunity from action for defamation proceedings of national courts. The UN Secretary General had certified that impugned words of Rapporteur were said when he was carrying out his official functions. The Court held that Special Rapporteur had been acting in the performance of his functions when he made his impugned comments and were therefore immune.¹³⁹ Moreover, Court found that Malaysian National Courts failed to determine the issues of immunity *in limine litis*.

Another form of disputes which have been subject to the international courts or international tribunals even rarer than others due to private parties and international organizations conflict settlement process does not need to asserted immunities by international organizations.¹⁴⁰

¹³⁶ 1989 ICJ Rep. 177.

¹³⁷ 1999 ICJ Rep. 62.

¹³⁸ 1989 ICJ Rep. 177 p. 198.

¹³⁹ 1999 ICJ Rep. 62 § 56.

¹⁴⁰ *Wickremasinghe* (n 6)

7- Application of Immunities in National Laws

The privileges and immunities of the international organizations aim to prevent international organizations from interference by any member States' national court to ensure their international status and independent functioning. In the late Professor Brownlie's¹⁴¹ agenda, when a dispute arises before national courts, courts need to consider;

- (1) Are the treaty provisions of international organizations expressing immunity from jurisdiction *ratione personae* and has it its limits?
- (2) In the case of any expression of immunities in treaty provisions, shall international organizations enjoy immunities under customary international law?
- (3) Is the subject of the dispute raised from internal governance of the international organization which national court cannot properly determine?
- (4) Can subject of the conflict be accepted as qualifications of immunity provisions and able to determine by courts.

In monist States, treaty provisions of immunities applied and interpreted directly while dualist States interpret treaty provisions with incorporation of legislation which may cause to inaccuracy reformulation or difficulties of hierarchy between rules.¹⁴² However, in broad terms treaty based interpretation of immunities of international organizations accepted by national courts, focus of national courts is usually their limitations.

Waiver of immunities by an international organization as a limitation of immunities can be found all the treaty provisions. It is obvious that waiver must be expressed by the organization in subject of the dispute by a senior officer. However, as noted above international organizations do not tend to waive their immunities. Even the United Nations involves some lawsuits as *amicus curiae* but it has been stressed that it was not submission to the local jurisdiction.¹⁴³

The waiver must be expressed in particular case and the UN's General Convention article II section 2 precludes the possibility of contractual waiver of immunities advance. This interpretation comes from State immunity rules that, waiver had to be express and in relation to conflict which has risen. Moreover, contractual waiver must be interpreted restrictively that, waiver from jurisdictional

¹⁴¹ Ian Brownlie, *The Principles of Public International Law* (5th edn. Clarendon Press 1998) 334

¹⁴² *Wickremasinghe* (n 6)

¹⁴³ *US v. Palestine Liberation Organization* (1988) 27 ILM 1055; *Broadbent v. OAS* (1980)(63 ILR 162 and 337); UN amicus brief, 1980 UNJY 224

immunity does not entail waiver from execution. For example, in *Arab Banking Corp. v. ITC*¹⁴⁴ case the Court held that the clause of contracts may have waived immunity from jurisdiction but it did not waive immunity from execution.

In the contracts of international organizations, if a choice of law of national law clause exists, the question can arise that, whether it can be accepted the waiver of the immunity. It has been discussed in some cases. For instance, in the Italian case of *Maida v Administration for International Assistance*¹⁴⁵ the dispute was about employment contract which had included Italian Chamber of Advocates arbitration clause. The Court held that employment type of plaintiff was public international status, not private employment and public international functions of international organization immune from local jurisdiction unless it waived. Court also found that arbitration clause of the contract was ineffective because it had not any provision to the number of appointments of arbitrators and thus, appropriate forum to be the civil labour court. Same decision held in the French case of *International Institute for Refrigeration v. Elkaim*¹⁴⁶ although Cour de Cassation reversed this finding later.¹⁴⁷ Due to this kind of possibility of interpretation, international organizations usually do not include any choice of law clause of national law in their contracts.¹⁴⁸

However, alternative dispute settlement methods are obligation to most of the international organizations due to enjoying jurisdictional immunity. International arbitration of private law character disputes between international organizations and private parties aims to prevent interference of national courts but it also may require the support of the local legal systems. This supports related to supervision of arbitration processes, recognition of decisions and enforcement of awards.

Firstly, the question arises from arbitration decisions under the control of local jurisdiction supervisory. In French case *Beaudice v. ASECNA*¹⁴⁹ the court held that provision for arbitration of employment dispute in Administrative Tribunal of Paris was choice of law of French law and French Law governs the arbitration. Although in that case immunity of international organization was not question because organization had not immunity in France due to membership. Similarly, in the case of *ITC v. Amalgamet*¹⁵⁰ the arbitration clause provided that, arbitration should be governed by New

¹⁴⁴ *Arab Banking Corp. v. ITC* [1986] 77 ILR 1

¹⁴⁵ *Maida v Administration for International Assistance* [1955] 23 ILR 510

¹⁴⁶ *International Institute for Refrigeration v. Elkaim* (1988) 77 ILR 498

¹⁴⁷ (1989) 35 Annuaire Francais de Droit International 876

¹⁴⁸ Nicholas Valticos, 'Les contrats conclus par les organisations internationales avec des personnes privees' (1977) 1 Ann. IDI 37.

¹⁴⁹ *Beaudice v. ASECNA* (1977) [1979] JDI 128

¹⁵⁰ *ITC v. Amalgamet* (1988) 524 NYS 2d 971, 77 ILR 30.

York law. New York Supreme Court held that the ITC had not immunity in New York and its immunities derived from its Headquarters agreement with the UK which had no effect outside the UK.

However, in the Swiss case of *Groupement d'Entreprises Fougierolle v. CERN*¹⁵¹, dispute arises from increased costs of the work and plaintiffs brought conflict before arbitration. CERN has immunity from "every form of legal process" in their Headquarter Agreement and provisions of contract with plaintiffs included arbitration clause. The plaintiffs applied the Swiss Federal Court for the cancellation of arbitration award and CERN asserted their immunities from national courts. The court found that organization enjoys immunities from their constitutional treaty provisions instead of customary international law and immunity of organization was absolute, regardless of *acta iure imperii* and *iure gestionis* distinctions, unlike State immunities.¹⁵² The Court held that obligation of providing alternative dispute settlement methods had been done and arbitration clause does not mean that organization waived its jurisdictional immunity even if it was about appeal of arbitration decision.¹⁵³

Despite recent trend of restrictive doctrine of State immunity which accepted by States after World War II, majority of the States do not apply restrictive doctrine to international organizations practically. However, in Italy and in the US some different cases arise. In Italy, national legal system is the first system that adopted restrictive doctrine of State immunity¹⁵⁴ and national courts in some decisions applied restrictive doctrine of State immunity rules for international organizations, for example, in the case of *FAO v. INPDAI*.¹⁵⁵ Nevertheless, the criticism and effect of this case provoke to Italy to access to the 1947 Convention on the Privileges and Immunities of the Specialised Agencies of the UN then courts decided that alternative methods of dispute settlement not lead infringement of right to judicial protection.¹⁵⁶

Similarly, restrictive doctrine of State immunity sometimes applied to international courts in the US courts. That is because the Foreign Sovereign Immunities Act 1976(FSIA) formulated restrictive doctrine of State Immunities and the interpretation of the FSIA affects interpretation of the IOIA which provides same immunities to international organizations which granted to foreign States. For instance, in the *Dupree Associates Inc. v. OAS*¹⁵⁷ case, the court found that, in a dispute brought concerning a construction contract, international organizations enjoy only same immunities as States. Nevertheless,

¹⁵¹ *Groupement d'Entreprises Fougierolle v. CERN*, (21 December 1992) 102 ILR 209.

¹⁵² *ibid* 211.

¹⁵³ *ibid* 213.

¹⁵⁴ *Brownlie* (n 141) 330.

¹⁵⁵ Italian case of *FAO v. INPDAI* (1982) 87 ILR 1

¹⁵⁶ *FAO v. Colagrossi*, (1992) 101 ILR 386

¹⁵⁷ *Dupree Associates Inc. v. OAS* (1977) 63 ILR 92

most of the cases, particularly in relation to employment disputes, the Courts have not decided the degree of international organizations immunities whether limited or absolute.¹⁵⁸

Besides treaty provisions provides immunities from jurisdiction to international organizations, as mentioned above it is suggested that the rules of customary international law can provide same immunities to international organizations in the non-member States as well.¹⁵⁹ However, many domestic courts do not recognize the immunities of international organization in the lack of any provision that provides any immunities from jurisdiction to it.¹⁶⁰ For example, the Belgian Supreme Court held that there is no general principle of public international law to the effect of there being immunity from jurisdiction, this can be established by treaty provisions between State and organization.¹⁶¹ Similarly, in the Italian case of *EUI v. Piette*¹⁶², court found that customary rules on immunity only apply to States, not to international organizations, such entities enjoying only limited international legal personality.

However, if the State is a member of international organization, national courts of member States will tend to examine their competence to apply their national laws. For example, in employment disputes, national courts accepted that employment relationships governed by independence function and autonomy of organization and out of the scope of national laws.¹⁶³

Similarly, in the event of forum State is not a member State of international organization, national courts seek determine firstly subject matter of dispute. National courts willing to decide non-justiciable or not assert jurisdictional competence over the issue if the subject-matter would rise from international law between organization and member State or between member States. For instance, Supreme Court of the Netherlands in the case of *AS v. Iran-United States Claims Tribunal*¹⁶⁴ held that the immunities of an organization on the basis of customary law.

¹⁵⁸ *Broadbent v. OAS* (1980) 63 ILR 162, *Morgan v. IBRD* (1990) 752 F.Supp. 492, *Tuck v. PAHO* (1981) 668 F 2d 547, *Mendaro v. IBRD* (1983) 99 ILR 92 and *De Luca v. UN* (1994) 841 F Supp 531

¹⁵⁹ *Dominice* (n 57) 219-24.

¹⁶⁰ *Ryngaert* (n 5) 121-24.

¹⁶¹ *League of Arab States, Re, League of Arab States v. TM*, Appeal Judgment, Cass No S.99.0103.F, ILDC 42 (BE 2001), 12th March 2001, Belgium; Court of Cassation

¹⁶² *EUI v. Piette* (1999) Italian Yearbook Of International Law 156

¹⁶³ *European School Employee Bonus* case 29 October 1992, 108 ILR 664.

¹⁶⁴ 20 December 1985, 94 ILR 321.



IV. CHAPTER III

The Independence and Jurisdictional Immunities of International Officials

1- Historical Developments

It is obvious that, that is because they are a legal person, international organizations carry out their functions by their officials. Thus, regarding their performance on favour of the international organization, officials acts need to be protected from personal liability. It is surprising that, in the 19th

century, before the recognition of international personality of international organizations, immunities provided for international officials rather than international organizations.¹⁶⁵ That is why, they have seen as the main international duties the carry out functions of international organizations instead of organizations themselves.

At the beginning of the 20th century, international organizations have participated in the political arena and during the Conference diplomacy, employees of this international bodies enjoyed diplomatic immunity. Indeed, diplomatic law generated by States has provided inspiration for the immunities of the international officials.¹⁶⁶ Thus, the Covenant of the League of Nations provided that, officials of the League, when engaged on business of the League shall enjoy diplomatic privileges and immunities.¹⁶⁷ After the establishment of Secretariat, officials status needed some innovation because their positions should be neutral and loyal to League and their political attitudes and relationship with their own nationalities proved some difficulties.

In the terms of jurisdictional immunities, while a foreign diplomatic agent immune from the jurisdiction of receiving State, s/he remained to be sued before the courts of sending State.¹⁶⁸ In other respects, if immunity from jurisdiction was granted to agents in both receiving and sending State, there would be no national courts assert jurisdiction over these persons. It was argued that, States should treat these international organizations' officials as a foreign diplomatic agent even if in their own State of nationality.¹⁶⁹

However, this claim, namely principle of equal treatment to all international officials whether nationals or non-national of member States, refused by some States. Switzerland and Netherlands which had most of international organizations' home State at that times, particularly in the terms of jurisdictional immunities, granted only limited immunity to their nationals in respect of their official capacities and limits of their official duties.¹⁷⁰

2- Officials of the United Nations

a) Holders of the Immunities

i) High Officials

¹⁶⁵ Wickremasinghe (n 6).

¹⁶⁶ Chanaka Wickremasinghe, 'Immunities enjoyed by officials of states and international organizations' in Malcolm Evans (ed.), *International Law* (3rd ed. Oxford University Press, 2010) p. 398.

¹⁶⁷ Art.7(4) of the Covenant of the League of Nations.

¹⁶⁸ Webb (n 7) 319-31.

¹⁶⁹ Jacques Secretan, 'The independence granted to agents of the international community in their relations with national public authorities' (1935) 16 BYIL 56, 71.

¹⁷⁰ Martin Hill, *Immunities and Privileges of International Officials - The Experience of the League of Nations* (Carnegie Endowment for International Peace, 1947) 14-57

The Secretary-General and Assistant Secretaries-General and their families enjoy full diplomatic status under international law.¹⁷¹ Their immunities and privileges can be considered with provisions of the Vienna Convention on Diplomatic Relations¹⁷² and they enjoy personal inviolability, absolute immunity from criminal jurisdiction and immunity from civil jurisdiction in most respects.¹⁷³

ii) Other Officials

The second category of the officials who designated by the Secretary-General, "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity."¹⁷⁴ In addition, they are to be exempted from taxes, they have not obligated to national service obligations, they are immune from immigration restrictions and some other rights of diplomatic representatives. Although the broadness of officials in this second category, the UN General Assembly Resolution exempts locally-recruited staff who paid hourly rates from protection. However, this kind of staffs is very small because local-recruited staffs like drivers, clerks and secretaries are usually salaried instead of paying on hourly rates.¹⁷⁵

iii) Experts on Mission

Another the UN personnel who enjoys immunities and privileges under General Convention is experts on missions. These persons explained by Legal Counsel of the UN, in 1956, as persons who perform a mission for the UN or a Specialised Agency.¹⁷⁶ Their exercises of their functions need to be independent of governments because of connection with the organization. For example, members of commissions and committees of the UN or Specialised Agencies namely military observers, headquarters staff of peacekeeping missions, members of bodies like the UNAT and the ILC, in this status.

The International Court of Justice found in the *Mazilu* case that,

“to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organisation, and to guarantee them ‘such privileges and immunities as are necessary for the independent exercise of their functions’. The experts thus appointed or elected may or may not be remunerated, may or may not have a contract, may be given a task requiring work over a lengthy

¹⁷¹ General Convention, Article V, section 19

¹⁷² The case of the ICJ of *Tehran Hostages* (1980) ICJ Rep. 3 para. 45-62

¹⁷³ Vienna Convention on Diplomatic Relations, Art 29 and 31

¹⁷⁴ General Convention, Article V section 18

¹⁷⁵ *Wickremasinghe* (n 6).

¹⁷⁶ (1967) YBILC Vol. II p. 284

period or a short time. The essence of the matter lies not in their administrative position but in the nature of their mission.”¹⁷⁷

These experts on mission immune from arrest and detention and seizure of their baggage. Moreover, they have right to communication and inviolability of documents, they have right to receive documents by courier or sealed bags.¹⁷⁸ In addition, for their jurisdictional immunities, General Conventions sets forth that;

“In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from the process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on mission for the United Nations.”¹⁷⁹

b) Nature of Immunities

The Secretary General’s and the Assistant Secretaries-General enjoyed jurisdictional immunity as *ratione personae* like diplomatic immunity. This provided by Section 19 of the General Convention and not only for their official activities but also for their most of private actions. This immunity can be waived by Secretary General for Assistant Secretaries General and by Security Council for Secretary General himself.

The second category of officials enjoys limited immunity by “word spoken or written and acts performed by them in their official capacity.” similar to *ratione materiae*, their immunity determined by the nature of their acts rather than status of person who performs it. In addition, these immunities of second category officials can be waived by organization provided by Section 20. In this provision, Secretary General entitled and sometimes obligated to waive official immunity without prejudice to interests of the organization. Nevertheless, even the staff himself request waiver, practically, the UN is not waiving immunity.¹⁸⁰ Thus, if the UN’s official wants voluntarily to be subject to Court, this is not sufficient to waiver of immunity without organization declaration.

3- Officials of the Other Organizations

Compared to jurisdictional immunities of international organizations, their official's immunities from jurisdiction seems to be more uniform. Most of their treaty provisions are similar to the General Convention and their acts performed in their official capacity enjoy jurisdictional

¹⁷⁷ (1989) ICJ Rep. 177, p. 194 para 47

¹⁷⁸ General Convention, Article VI section 22

¹⁷⁹ General Convention, Article VI section 22(b)

¹⁸⁰ *Wickremasinghe* (n 6)

immunity. In the 1947 Convention on the Privileges and Immunities of the Specialised Agencies of the UN, officials of the Specialised Agencies enjoy jurisdictional immunity as well as second category of the UN under the General Convention. Moreover, the executive heads of each agency enjoy full diplomatic immunity.

Moreover, similar uniformity of provision on jurisdictional immunities can be seen for other regional international organizations' officials. For example, the OAS¹⁸¹, the OAU¹⁸², the Council of Europe¹⁸³, the OECD¹⁸⁴ and WEU¹⁸⁵ provides in their constitutional instruments same provisions as General Convention.

4- Immunities of the Officials in Practice

a) Officials of the First Category

The officials of the first category, as mentioned above, enjoys full "diplomatic" status and national courts usually apply the diplomatic immunities law.¹⁸⁶ Moreover, these immunities extended to most of the private acts of the international officials. However, in contrast to diplomatic immunities, international officials enjoy these immunities even in their State of nationality, diplomatic representative of a State generally enjoys immunities in receiving State.¹⁸⁷

In particular, family law disputes have been problem about officials of the first category. Regarding official of the first category involving a proceeding, official would be immune unless the organization waives immunity. In practice, complainant should apply to the organization to waive the respondent's immunity. When considering the Section 20 of General Convention, the organizations are most likely to waive immunities of official in family law issues because the waiver probably not prejudice the interests of the organization. Moreover, in some cases jurisdiction over officials established by based on counterclaim. For example, In *Re RFN* case¹⁸⁸, Austrian court held that, when international official had petitioned the court for his child's custody, was subject to the jurisdiction of court in relation to cross-petitions by his former wife.

¹⁸¹ Agreement on the Privileges and Immunities of the OAS 15 May 1949, Art. 8 and 10, ST/LEG/SER.B/11 p. 377

¹⁸² General Convention on the Privileges and Immunities of the OAU, 25 October 1965, Art. VI, Section D

¹⁸³ General Agreement on the Privileges and Immunities of the Council of Europe 5 May 1949, Art.16-19, ST/LEG/SER.B/11 p.390

¹⁸⁴ Protocol No.1 to the Convention for European Economic Co-operation, 16 April 1948, Art. 13-17, ST/LEG/SER.B/11 p.369

¹⁸⁵ Agreement on the Status of the WEU, National Representatives and International Staff, 11 May 1955, Art. 19-25, ST/LEG/SER.B/11 p. 421

¹⁸⁶ *Wickremasinghe* (n 6).

¹⁸⁷ Vienna Convention on Diplomatic Relations, Art.40

¹⁸⁸ *Re RFN* (1977) 77 ILR 452

b) Officials of the Second Category and Experts on Mission

The jurisdictional immunities of second category officials are more problematic because scope of the immunities extended to acts performed in official capacity. Thus, this may cause to difficulties in judgements in terms of the proper limits of immunities and characterization of the acts which performed by the officials. Initially, courts need to define clearly the act of an official which is an issue and in which capacity it performed.

In related to criminal proceedings, some acts of officials of an international organization may be clearly not performed in an official capacity. Therefore, in these cases, role of an international organization is limited but they may make own inquiries to confirm official's acts were not performed in official capacity. Moreover, international organizations can seek to functional protection of its officials and seek assurance for official that will be treated in the general principle of law.

Considering to solely civil claims against the officials of the second category, national courts find little barriers to establish jurisdiction. For example, courts found that acts of an official on lease for the private property for residence were not immune from jurisdiction due to non-official character of the act.¹⁸⁹ However, when the property rented in the name of an official for use by the organization, these acts usually be found an official act which immune from jurisdiction.¹⁹⁰

In addition, if acts of an international official can be clearly identified in official capacity, national courts again easily take the approach of inviolability of autonomy of the international organization. Therefore, in employment cases which brought against the superiors of employee, national courts usually accept the superiors' immunity from jurisdiction. For instance, in the case of *Donald v. Orfila*¹⁹¹, former employee suit former Secretary General of the OAS for wrongful termination of his employment contract and defendant assert its immunity and acts what his performed were in his official capacity. The court found that, personnel management of an international organization was one of the functional duty of the Secretary General and the questioned motivation of his official acts would undermine the nature of this immunity.

¹⁸⁹ *Essayan v. Jouve* (Tribunal de Grande Instance de la Seine) (1962) 42 ILR 241

¹⁹⁰ *Askir v. Boutros Ghali and others* (United States District Court) (1996) 113 ILR 516

¹⁹¹ US District Court, District of Columbia (1985) 618 F.Supp 645



V. CHAPTER IV

Particular Situation of the Immunities of the International Organizations in the UK

1- Personality of International Organizations in the UK

Unlike monist States, international legal personality of international organizations does not automatically be reflected in the domestic law of the United Kingdom as a matter of UK law.¹⁹² In addition, to become a member of an international organization is not sufficient to provide legal personality even if it had treaty provision to grant it. Instead, the UK government must adopt an Order in Council that provides an international organization with legal personality pursuant to the International Organization Act 1968. Generally, the formula of this will be 'have the legal capacities of a body corporate'.

The IOA makes a distinction between International organizations which the UK is a member or not and which the UK serves as a host State of international organizations. The reason for it is that, Parliament seeks to ensure compliance of the UK's international organizations deriving from the UK's ratification of the constitutive treaty of an organization or a headquarter agreement.¹⁹³ However, the situation of the international organizations is different in relation to international organizations which are not a member or which the UK does not serve as a host State because in some cases there are no international obligations for the UK to provide domestic legal personality to the international organizations.

a) Organization of Which the UK is a Member and/or Host State

If the United Kingdom is a member and/or host state of an international organization, the process of designation is clearly described as empowering the executive to make an Order in Council which "confers on the organization the legal capacities of a body corporate" in section 1(2) of the IOA. Moreover, The IOA also empowers the executive to confer on the legal personality of an organization which the UK is not a member when organization 'maintains or proposes to maintain an establishment in the UK' and 'for the propose of giving effect to any agreement made in that behalf between the UK or Her Majesty's Government in the UK and that organization'.¹⁹⁴ After the Order in Council has conferred 'the legal capacities of a body corporate' on an organization, an international organization has acquired legal personality under the UK' law and therefore, can hold property, can make contract, can sue and be sued in the UK courts and other benefits of being legal person.

In the litigation of International Tin Council(ITC) before UK courts, the question of legal personality of an international organization arose importantly. The ITC was established by the International Tin Council Agreements to regulating the international production, consumption, and

¹⁹² Dan Sarooshi and Antonuos Tzanakopoulos, 'United Kingdom' in August Reinisch (eds), *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford University Press 2013)

¹⁹³ *ibid.*

¹⁹⁴ Section 4 of the International Organization Act.

price of tin in the international markets.¹⁹⁵ After forced to cease trading without any more funds to satisfy its debts, it declared finishing its trading and it had about £150 million debts. The creditors sought recovery by suing mainly in the domestic courts of the UK where ITC had its headquarters.

In the case of *In re International Tin Council*¹⁹⁶ one of the creditors who had arbitral award against the ITC sought to have the ITC compulsorily wound up accordance with section 665 of the Companies Act 1985. The creditor aimed to recourse against member States of the organization which appeared to be liable to contribute to the debts and liabilities of the Council under section 671 of Companies Act. The High Court held that, the ITC was not an unregistered company because it has conferred on 'the capacities of a body corporate' and it was creation of treaty that neither an English nor a foreign corporation.¹⁹⁷ Thus, it could not compulsorily wound up under the Companies Act¹⁹⁸. Moreover, such winding up can go beyond the enforcement of the arbitral award and can be an infringement of the immunities of the ITC.¹⁹⁹ With relation to the ITC, another attempt was the unravel the legal personality of the ITC in order to force to member States to meet Council's liabilities. Brought action by Maclaine Watson was seeking to execute arbitral awards against the ITC's assets. The High Court refused to claim on the grounds of non-justiciability²⁰⁰ and this decision confirmed by Court of Appeal²⁰¹ and House of Lords.²⁰² Lord Oliver stated that:

"... the effect of the grant of the legal capacities of a body corporate was that, in United Kingdom law, the ITC, though not formally incorporated, was invested with a legal personality distinct from its members, with the consequence that, when it entered into engagements, it and not the membership was the contracting party."

The last attempt was the ignoring the organizational status of the ITC and make responsible member States for its debts that, creditors claimed (i) ITC was not separate legal person from its member States and its contracts was the contracts of member States, (ii) the status of the ITC entailed responsibility of both the ITC and member States and (iii) the ITC was separate legal person but had contracted as an agent for its member States.²⁰³ The High Court dismissed all three claims because

¹⁹⁵ Sixth International Tin Agreement (26 June 1981) Article 1 and 3, 1982 UNTS 205.

¹⁹⁶ [1987] Ch 419; 77 ILR 18.

¹⁹⁷ *ibid* p. 267.

¹⁹⁸ *ibid* p. 27.

¹⁹⁹ *ibid* p. 40.

²⁰⁰ *Maclaine Watson Co Ltd v. International Tin Council (No 1)* [1988] Ch 1, 77 ILR 41.

²⁰¹ *Maclaine Watson Co Ltd v. International Tin Council (No 1)* [1989] Ch 253, 80 ILR 191.

²⁰² *JH Rayner(Mincing Lane) Ltd v. Department of Trade and Industry and Others and Related Appeals; Maclaine Watson Co Ltd v. Department of Trade and Industry; Maclaine Watson Co Ltd v. International Tin Council (No 1)* [1990] 2 AC 418, 81 ILR 670.

²⁰³ *Sarooshi and Tzanakopoulos* (n 192) 286.

claimant had no cause of action,²⁰⁴ and this decision confirmed by Court of Appeal²⁰⁵ and House of Lords.²⁰⁶

From the point of legal personality of international organizations, the ITC litigations emerged two points. First, conferral of legal personality on an organization under the IOA is a *sui generis* personality that, organization is not established as a body corporate under UK law while it has given the capacities of a body corporate to implement an international obligation of the UK.²⁰⁷ The second point is, trying to ignore legal personality of an international organizations bound to fail before UK courts because this argument based on under UK law cannot implement to *sui generis* legal personality of the international organizations. Moreover, this argument is based on the relation of organization with its member States which governed by international law that non-justiciable for UK courts. Marston argued that, the ITC litigation was not clear for the personality of the international organizations which the UK is a member and absent legislation although it has stated that the ITC has some degree of personality.²⁰⁸

b) Organization of Which the UK is not a Member or Host State

The IOA has no provision about the conferral of domestic legal personality on the international organizations which the UK is not a member or host State. In the important case of *Arab Monetary Fund v Hashim (No 3)*²⁰⁹ this issue was considered. The Arab Monetary Fund (AMF) was established by twenty-one Arab States and headquarter was in Abu Dhabi. The AMF sought to bring the claim against the defendant who former director who was resident at that in the UK. Defendant argued that the AMF was not legal person under UK law and could not bring claim before UK courts. The AMF argued that, the AMF constituted and had personality under the law of the United Arab Emirates and this foreign law entity should be recognized by UK law and High Court accepted that court can recognize the personality of Fund under the basis of English conflict of laws rules.²¹⁰ Although Court of Appeal approach was strictly upon on ITC decisions that, recognizing foreign law cannot give personality to an organization without domestic legislation²¹¹, House of Lord decision reversed Court of Appeal decision

²⁰⁴ *JH Rayner v. DTI* [1987] 3 BCC 413, 77 ILR 55

²⁰⁵ *Maclaine Watson Co Ltd v. Department of Trade and Industry; JH Rayner(Mincing Lane) Ltd v. Department of Trade and Industry and Others and Related Appeals* [1989] Ch 72, 80 ILR 47

²⁰⁶ *JH Rayner(Mincing Lane) Ltd v. Department of Trade and Industry and Others and Related Appeals; Maclaine Watson Co Ltd v. Department of Trade and Industry; Maclaine Watson Co Ltd v. International Tin Council* [1990] 2 AC 418, 81 ILR 670

²⁰⁷ *Sarooshi and Tzanakopoulos* (n 192) 286.

²⁰⁸ *Marston* (n 26) 424

²⁰⁹ *Arab Monetary Fund v. Hashim (No 3)* [1990] BCC 52, 83 ILR 243

²¹⁰ *ibid* 251.

²¹¹ *Arab Monetary Fund v. Hashim (No 3)* [1990] 3 WLR 139, 83 ILR 255.

to that, English conflict of laws rules allowed the UK courts to recognize legal personality of an international organization when it was conferred on an international organization by under a foreign law.²¹²

2- The Immunities of International Organizations in the UK

It argued that, English law would be advantageous for international organizations which seeking to assert privileges and immunities because at least in theory their privileges and immunities under customary international law may be directly relied on by UK courts regardless to any executive or legislative act.²¹³ That is because, UK courts approach is application of customary international law rules as a part of common law.²¹⁴ However, the IOA express certain rules in Schedule 1 that, Government designates immunities and privileges of international organizations. The general rule on this is UK government's adoption of an 'Order in Council' pursuant to sections 1(2)(b)-(d) of the IOA to grant privileges and immunities to international organizations. These privileges and immunities expressed in Part I, II and III of the Schedule 1 of the IOA and mainly have same provisions with 1961 Vienna Convention.²¹⁵

Although ITC Order 1972 granted broad immunities both ITC and its officials, section 6(1)(c) set forth an exemption 'in respect of the enforcement of an arbitration award made under' articles 23 or 24 of the UK-ITC Headquarters Agreement. Thus, the litigation that mentioned above brought before English courts to enforce arbitral awards which the ITC could not assert immunity. Moreover, in some other cases, claimants brought cases under the expressed waiver of the immunity of the ITC which also established exemption from suit by section 6(1)(a) of the 1972 Order. In the case of *Standard Chartered Bank v. International Tin Council and others*²¹⁶ the court held that, expression of a waiver of immunity be given effect by English courts, so with rejecting ITC's claim that it had absolute immunity like foreign States at the time of enactment of the 1972 Order.

However, another claim, like this ITC's claim, was accepted by the US Court of Appeal in the case of *Atkinson v. Inter-American Development Bank et al.*²¹⁷ the court held that, immunity of an organization under the IOIA 1945 was explicitly linked with State immunity and absolute, later changes in state immunity under customary international law or Foreign Sovereign Immunities Act 1976 which

²¹² *Arab Monetary Fund v. Hashim (No 3)* [1991] 2 AC 114, 85 ILR 1.

²¹³ *Sarooshi and Tzanakopoulos* (n 192) 290.

²¹⁴ *Ex Parte Pinochet (No 3)* [2001] 1 AC 147, 119 ILR 135

²¹⁵ See detailed privileges and immunities Part I, II and III of the Schedule 1 of the International Organization Act 1968; and *Sarooshi and Tzanakopoulos* (n 192) 290-291

²¹⁶ [1987] 1 WLR 641, 77 ILR 8

²¹⁷ *Atkinson v. Inter-American Development Bank et al.* 156 F.3d 1335 (DC Cir 1998)

accepted restrictive approach, cannot affect the organizations' immunity because it was frozen in 1945. The same ruling had been made by another US court too.²¹⁸ However, this approach left in the recent case of *OSS Nokalva*²¹⁹ and court held that the language of the IOIA suggests the opposite of the ruling of the *Atkinson* case and later changes about the extent of the immunities of foreign sovereigns should be reflected immunities of the international organizations.

The decisions of the UK courts also affected by the decisions of European Court of Human Rights (ECtHR) decisions in terms of organizations immunities due to influence of Human Rights Act 1998. Thus, UK courts take into consideration the jurisprudence developed by the ECtHR. However, regarding immunities of the international organizations, in the case of *Entico Corp Ltd v. UNESCO and Another (Entico case)*²²⁰ High Court did not follow the *Waite and Kennedy*²²¹ case of the ECtHR. Entico's argument based on the immunity of UNESCO from jurisdiction should be interpreted in the light of *Waite and Kennedy* case and fair trial guaranteed by article 6 of the ECHR. Court held that, immunities of the UNESCO which derived from 1947 Convention²²² did not offer criteria for the appropriateness of alternative dispute settlement mode, effectiveness of the resolution system and any case found the question to be non-justiciable.²²³ Moreover, with referring the related sovereign immunity cases²²⁴ the court held that, limitation of the right to access justice was pursuit in of a legitimate aim and proportional to that aim. However, specific fact of the case that, Entico had option to under the contract with UNESCO to bring dispute before the arbitration under UNCITRAL rules and this option was sufficient to ensure right to access justice.

VI. CONCLUSION

The international organizations have emerged to accomplishment of the functions which their member States have designated to them and believed that, it can more easily be achieved collectively

²¹⁸ *Bro Tech Corp, Stefan Brodie, and Don Brodie v European Bank for Reconstruction and Development*, 2000 US Dist LEXIS 17049

²¹⁹ *OSS Nokalva, Inc v. European Space Agency*, 617 F.3d 756 (3rd Cir 2010)

²²⁰ [2008] 1 CLC 524

²²¹ *Waite and Kennedy* (n 63)

²²² (n 119)

²²³ *Entico Case* (n 220) para. 17.

²²⁴ *Al-Adsani v. United Kingdom*, App No 35763/97, 21 November 2001; *Fogarty v United Kingdom*, App No 37112/97, 21 November 2001; *McElhinney v Ireland*, App No 31253/96, 21 November 2001

than individually. Therefore, the immunities of the international organizations are important to guarantee its capacity to accomplish its functions without unwarranted effect of any one of its member States by exercising its national law over the international organizations. The jurisdictional immunities of the international organizations are important means of existence of an organization in international sphere because it does not have its own territory or population, unlike States.

However, their immunities are not uniform and depend upon the functions of the organization in question. The systems of the other types of immunity regimes such as State immunities and diplomatic immunities, cannot directly be transferred to the international organizations because situation of States needs to be treated equally in legal terms by the concept of reciprocity. Moreover, immunities granted to the international organizations are appropriate to the achievement of its own functions which lead to differences between them. Nevertheless, certain formulations have emerged in terms of their functional area. For instance, the UN and many specialised agencies and many of other political and military organizations whose functions are accepted as 'political' in relation to exercised functions between States enjoy broad immunities from 'every form of legal process'. In addition, broad immunities granted to the international courts which obviously need to be independent of any influence of States related to their judicial functions. On the other hand, the international organizations in the economic area which exercise its functions in the market places and regional or scientific research organizations enjoys limited immunities for some of their activities or not enjoy immunity from jurisdiction.

The nature of functional approach to international immunities considered in the cases with different interests. Limits of the immunities of the international organizations based on duties of good faith and cooperation and interests between an organization and its member States should be balanced against each other. For instance, the ICJ in the *Cumaraswamy* case²²⁵, tried to draw solution to question of who should decide the acts of an official whether performed according to his official functions or not. In other respects, ECtHR in the *Waite and Kennedy* and *Beer and Regan* cases²²⁶ considering individuals' right to access justice, upheld the immunity unless it is not balanced with the reasonable alternative remedies.

Regarding national courts, it can be said that uniformity to application of treaty based immunities has been accomplished generally. Although the application of the US courts and formerly Italian courts, it is obvious that direct application of State immunities into international immunities is inappropriate due to their position in terms functions and capacities. However, there is an idea of

²²⁵ (n 80)

²²⁶ (n 63)

application of additional limitations to the international organizations based on functional immunity standards by both law commissions and authors. The reason behind this idea is, absolute immunities granted at the time of international organizations were more small and fragile but now they are increased in number and performing areas.

It seems that it is unnecessary to grant absolute immunities to acts of the international organizations do not relate to their foundational purposes, like travel arrangements, office supplies or food. Indeed, proper application of functional approach would benefit both the international organizations and public. It can increase the confidence of contracting parties with international organizations and reduce the costs derived from business risks and increase the accountability of the international organizations. Moreover, potential abuse of the international organizations functions by member States can be prevented. The way forward should be the application of functional approach to international organizations immunities, to examine functions and contracts of international organizations considering *ratione materie*. Thus, acts related to internal governance of the international organizations should be immune from jurisdiction of national courts such as employment relations and internal decision-making process. On the other hand, merely private contracts and torts do not need to absolute immunities.

In this context, reasonable alternative remedies to access justice, as emphasised in the *Beer and Regan* case by ECtHR, can provide proper justice and adequate solution in general principles of law. Therefore, supervisory jurisdiction power over alternative resolution systems or improvement of the arbitration systems to be effective can prevent criticism against the immunities of the international organizations. Another argument, exemption of absolute immunity that waiver of the immunity, can be seen as useful but it is a fact that the international organizations tend to avoid waiver because of potential vulnerability even if it is obligation for them in their treaty provisions.

The immunities of the international officials of the international organizations for their official acts are usually accepted and applications of the national courts can be said have uniformity rather than application of immunities of the international organizations. That is why, application of immunities of the international officials have similar rules with diplomatic immunities and became frequently the rule of customary law. The immunities granted to them have functional and constitutional directions and aim to ensure prevention of functions of the organizations from possible unwarranted intervention because functions of the international organizations performed by these officials.

As having a dualist system and application of customary law directly by the national courts, immunities of the international organizations in the United Kingdom differ from other States. That is

why, argument that, English law would be advantageous for international organizations which seeking to assert privileges and immunities because regardless to any executive or legislative act, UK courts tend to apply customary international law rules as a part of common law. The international legal personality of international organizations does not automatically be reflected in the domestic law because the UK government must adopt an Order in Council that provides an organization with legal personality pursuant to the International Organization Act 1968.

The ITC litigations have a significant importance in the context of international personality of international organizations. Therefore, conferral of legal personality on an organization under the IOA is a *sui generis* personality which is the organization is not established as a body corporate under UK law but 'the capacities of a body corporate' given to it to implement an international obligation of the UK. Another important point is, trying to ignore legal personality of international organizations bound to fail before UK courts because this argument based on the relation of organization with its member States which governed by international law that non-justiciable for UK courts.

On the other hand, due to effect of customary international law and English conflicts of law rules, in the *AMF* case, personality of an organization which was established under a foreign law can be recognized in English courts. In addition, although ECtHR decisions have effect on the decisions of English courts, well-known case of the ECtHR, *Waite v. Kennedy*, does not affect the decisions at the same degree of other national courts. In the *Entico* case, English court refused to take into consideration of the efficiency of the alternative dispute resolution system by considering non-justiciability.

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Diplomatic Privileges Extensions Act 1944

Foreign Missions and International Organisations Act 1991 (c.41 1991) (Canada)

Foreign Sovereign Immunities Act 1976 (US)

Immunities and Privileges (Extension and Miscellaneous Provisions) Ordinance 1964 (1964 UNJYB 13) (Malawi)

International Organizations Act 1968

International Organization Immunities Act, Pub. L. No. 79-291, 59 Stat. 669 (1945) (US)

Privileges and Immunities Act 1970 (1970 UNJYB 18) (Kenya)

Privileges and Immunities (Diplomatic, Consular and International Organisation) Act 1965 (1965 UNJYB 10) (Trinidad and Tobago)

Privileges and immunities (Diplomatic, Consular and International Organisations) Act 1980 (1980 UNJYB 8) (Seychelles)

International Organisations Privileges and Immunities Act (1985 ed Statutes c.145) (Singapore)

Privileges and Immunities (Diplomatic, Consular and International Organisations) Act 1970 (1970 UNJYB 12) (Guyana)

State Immunity Act 1978