

The Penal Status of International Employees in Relation to The Maintenance of International Relations

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Abstract:

To uphold the essential foundations necessary for international organizations to effectively carry out their responsibilities, it is crucial for international employees to have a distinct penal status. This status is established through the provision of specific privileges and immunities, which empower them to perform their international functions freely and independently, without being subject to external pressures or conspiracies from states. Such international immunity is a direct consequence of recognizing organizations as entities with international legal personality, which signifies their independence and that of their employees in relation to sovereign nations. This unique penal status reflects the demands of their roles and the necessity of ensuring the smooth operation of international relations. However, this judicial privilege may be limited in certain circumstances to prevent potential abuses, necessitating that states implement all available measures to address any misuse of these privileges effectively.

key words: Penal Status; International Employee; Judicial Immunity; International Organization; Judicial Privilege.

Introduction:

One of the key expressions of state sovereignty is its authority to exercise criminal jurisdiction over all offenses committed within its borders, regardless of the offender's nationality. This holds true whether the perpetrator is a citizen or a foreign national. Nonetheless, an exception arises in the form of immunity granted to certain individuals, particularly those representing their states in foreign countries or international organizations. Such immunity is essential to ensure this.

individuals can perform. Such immunity is essential to ensure these individuals can perform their duties effectively by protecting them from

the jurisdiction of local courts. Without this exemption, holding them accountable through national legal systems would undermine the principle of state sovereignty and independence, which is a cornerstone of international

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public law.

In this context, the presence of international staff is a fundamental aspect enabling international organizations to fulfill their missions. Their effectiveness hinges on a set of privileges and immunities that guarantee these employees the freedom to carry out their roles without external interference or pressure, whether from the host country or their country of origin. This form of protection, known as international immunity, is distinct from the diplomatic immunity granted to state representatives. It underscores the independence of both the organization and its staff from national authorities and is a direct consequence of recognizing the organization's international legal personality. The basis for such immunity is found in the charters and foundational documents of international organizations. However, this immunity does not imply that international employees are above the law or have the right to violate legal provisions.

Amid this complex and often conflicting intellectual and legal landscape, the significance of the study's subject matter becomes clear, prompting us to frame the central research question as follows: What is the scope of criminal immunity for international employees under international law, from both a jurisprudential standpoint and in light of international practice?

To address this issue, we have adopted a descriptive-analytical approach. This method enables us to thoroughly describe and critically analyze the subject, providing a comprehensive exploration of the theoretical foundations governing criminal immunity. Our goal is to elucidate the legal principles that define its scope, while also examining its key legal and practical applications concerning the criminal accountability of international employees in the global arena.

To tackle the research problem, we have adopted a descriptive-analytical approach, as the topic requires both detailed description and thorough analysis. This method will allow us to present a comprehensive view of the subject, focusing on the theoretical foundations governing criminal immunity, while seeking to clarify its provisions and explore its key legal and practical applications concerning the criminal responsibility of international employees in the international sphere.

With this approach in mind, our study aims to achieve several key objectives. First, we will examine various jurisprudential views and analyze legal frameworks defining the status of international employees, with the goal of clarifying the scope of their criminal immunity.

Additionally, we will examine international practices by analyzing both the legal and practical dimensions of the unique criminal status of international employees. In this context, we will explore potential methods and strategies to strike a balance between the necessity of maintaining criminal immunity for these employees and the obligation of states to address criminal

offenses and prevent abuses by individuals benefiting from such immunity.

To provide clarity and structure to our approach, we will systematically address the study to effectively answer the research question, organized as follows:

1. *The Substantive Aspects Defining the Status of International Employees.*
2. *Penalties and Procedures for Addressing the Misuse of Criminal Judicial Immunity by International Employees.*
3. *The Substantive Aspects Defining the Status of International Employees*

The criminal status of international employees is defined by the obligations inherent to their international duties and the necessity of preserving the integrity of international relations. In this regard, the scope of criminal judicial immunity is encapsulated by two primary considerations.

First, it reflects the autonomy of the legal framework governing the international function, whereby international employees are exempt from the jurisdiction of domestic courts in the host state (section 1.1). This immunity is essential to ensuring the independence and impartiality of international employees in carrying out their duties, free from external interference.

Second, this immunity does not serve as a blanket justification for misconduct or a license for international employees to contravene the laws of the host state. Although immunity is intended to secure the full independence of international employees from local authorities, it remains circumscribed in its application, ensuring that it cannot be exploited to evade legal accountability (section 1.2).

I. Determining the Legal Status of the International Employee

International organizations depend on a diverse array of personnel entrusted with tasks of varying nature and significance. These individuals can be classified into two primary categories: the first category comprises representatives of foreign states, while the second category encompasses the employees of the organization itself. Despite this distinction, both categories may collaborate on shared responsibilities, particularly in representing the organization and executing its mandates. In this context, it becomes essential to differentiate between these two categories by thoroughly examining the concept of the international employee and delineating the scope of their job responsibilities. This differentiation is crucial for understanding the legal status of international employees and the specific immunities and obligations that pertain to their roles within the framework of international law.

1. The Concept of the International Employee

International organizations engage a diverse workforce, comprising technicians, administrators, and experts, some of whom are in permanent positions while others serve on a temporary basis. These individuals are commonly referred to as international employees or international agents in legal terminology.

However, legal scholars make a distinction between the terms "international employee" and "international agent." They contend that the assignment of specific tasks to individuals by an international organization does not necessarily grant them the status of employees; instead, they may simply be considered users of the organization. Therefore, while every employee qualifies as a user, not all users are deemed employees of the organization. This distinction is crucial for understanding the specific rights, obligations, and legal implications associated with the status of international employees within the framework of international law.¹

In this context, Professor Talat Al-Ghanimi asserts that an individual executing an international mission on behalf of their country does not qualify as an international employee. This distinction is exemplified by police officers working for the international security organization Interpol. Despite their role in conducting missions on a global scale, these officers operate under the authority of their home country and, therefore, should not be classified as international employees.²

The International Court of Justice examined the definition of employees or staff of international organizations in its advisory opinion dated April 11, 1949. It defined such individuals as any person, whether compensated or not, who is appointed by an organ of the organization to perform specific functions or assist in executing those functions, regardless of whether their engagement is permanent or temporary. In essence, these individuals are those through whom the organization carries out its operations.³

This definition notably distinguishes between two categories of personnel: international employees and international staff. International employees are individuals who engage with the organization temporarily or for specific assignments, whether compensated or not. This group includes experts, observers, international arbitrators, and members of committees formed for research and study on particular topics. In contrast, international staff refers to those who are employed by an international organization on a continuous and permanent basis, operating under the organization's charter and regulations to further its interests and objectives.⁴

The charters of international organizations and the foundational regulations governing their employees often fail to clearly define the term "international employee." In some instances, these documents conflate the terms or introduce a third category, such as "international aid," which serves little purpose beyond facilitating the application of their regulations.

To be classified as an international employee, an individual must meet several specific criteria, which include:

- Specifically, the individual must work for an international administrative body that fits the definition of an international organization or one of its agencies or branches. Consequently, anyone employed solely by a

single country or by an institution that does not meet the criteria of an international organization cannot be regarded as an international employee.⁵

- The employee must perform his duties independently within an international organization, acting in its interest. This means that he should focus on advancing the organization's objectives rather than the interests of a single nation, even if that nation is not his own. The fulfillment of this requirement is not compromised by the employee carrying out his activities within the regional framework of a specific member state, as long as the goal of the work is to achieve a common international interest.⁶

- The employee must perform his duties under the supervision and oversight of the organization or one of its agencies, in accordance with its charter and regulations. Consequently, an individual who is bound by the laws and directives of his home country in the execution of his responsibilities cannot be classified as an international employee.

The legal framework governing the employee's status must be established through an international agreement or defined by the international organization itself.⁷

- An international employee must fully commit to his role within the international organization, dedicating the majority of his time and efforts to it, thereby leaving a lasting and continuous impact.

- The employee is required to receive a fixed and ongoing salary, signifying that anyone who performs their duties without compensation cannot be classified as an international employee.

- These characteristics collectively define the legal framework for international employees, allowing us to distinguish them from other groups who serve the international organization on a temporary basis. Furthermore, this framework underscores the clear differences between international employees and representatives of member states within the organization and its various bodies.

Initially, we note that two categories of individuals operate within international organizations: the first category comprises representatives of foreign states, while the second includes the organization's employees, such as agents, advisors, experts, technicians, and administrators, all of whom are subject to the organization's directives.⁸

The United Nations stands as one of the largest international organizations, comprising representatives from various states appointed by their respective governments. These representatives are supported by assistant delegates, advisors, technical experts, and secretaries affiliated with the delegations.⁹ A crucial question arises: Are these representatives governed by the same legal framework as the organization's employees, and can they be classified as such? Addressing this inquiry necessitates a clear distinction between international employees and the representatives of member states

within the organization.

2. Defining the Scope of Job Responsibilities

The role of a member state representative begins with the voting process and extends throughout the discussions on a specific agenda item, during which they follow their government's directives. In contrast, the responsibilities of an international employee commence after the voting concludes, specifically once the representatives have cast their votes and decisions have been made. At this point, the employee's task is to implement those decisions.¹⁰

The hierarchical relationship is evident in terms of both appointment and accountability. Member states retain the autonomy to appoint their representatives to the organization, while the international organization itself is responsible for appointing its employees. This appointment may occur through direct selection by the organization or via nominations submitted by the member states' governments.¹¹

As a result, a state representative is accountable only to their home government, while an international employee is responsible for their professional conduct to the organization they serve. However, an exception exists within the framework of the technical assistance program, where international organizations engage employees specializing in administrative work and guidance, referred to as "OX." In this case, these employees fall under the oversight of the contracting state and are held accountable to that state.¹²

The fundamental principle dictates that the actions of state representatives within the organization primarily impact their respective governments or countries. However, these actions can also affect the organization itself, particularly when representatives are involved in voting on organizational decisions. Conversely, the actions of an international employee carry direct implications for the organization, especially when they participate in voting on decisions made by the organization.¹³

II. Defining the Scope of Criminal Immunity for International Employees

International organizations have long recognized distinctions among their employees concerning the extent of their criminal judicial immunity. The Convention on the Privileges and Immunities of the United Nations provides full judicial immunity to the Secretary-General and Assistant Secretaries-General, similar to the immunity granted to diplomats under international law.¹⁴ This principle has been adopted by most regional international organizations and specialized agencies.

Nevertheless, some organizations are shifting toward a more expansive interpretation of who qualifies for full judicial immunity. A notable example is the Food and Agriculture Organization (FAO), which, through an agreement with Italy (the host country), has extended judicial immunity to a significant

number of its employees. Furthermore, this organization has approved the continuation of such immunity even after the termination of their international employment.¹⁵

Given these variances in the application of criminal judicial immunity for international employees, it is essential to establish a clear framework for its scope of application, as follows:

1. Defining the Personal and Objective Scope of Immunity

Representatives of States at the United Nations enjoy judicial immunity for actions performed within the scope of their official duties.¹⁶ Likewise, Assistant Secretaries-General, along with their spouses and children, benefit from the same level of judicial immunity as diplomatic envoys.¹⁷ This provision grants State representatives absolute judicial immunity in criminal matters, extending to their family members and mission staff.¹⁸

The Secretary-General, Assistant Secretaries-General, and principal employees, along with their spouses and minor children, are entitled to the privileges and immunities typically accorded to diplomatic envoys under international law, with the extent of these protections varying according to their rank.¹⁹

However, this ruling has sparked a jurisprudential dispute, with some legal scholars arguing that state representatives enjoy limited immunity that applies solely to themselves and does not extend to their family members. In cases where representatives exceed their assigned duties, the host state retains the authority to take measures that may conflict with this immunity in order to safeguard its national security.²⁰

Judicial immunity for international employees is specifically granted to them and does not extend to their family members. This immunity is strictly limited to their official duties and excludes unofficial actions.²¹ Furthermore, it is categorized into different classes based on the level of the employees.

First Class: This category includes high-ranking officials such as secretaries, assistant secretaries, and judges of the International Court of Justice. Members of this class enjoy the same immunities and privileges as those granted to diplomatic personnel.²²

Second Class: This group comprises international employees who work under the supervision of the first class and are appointed by decisions made within the international organization. They are afforded immunity solely for the performance of their official responsibilities.²³

Third Class: This category consists of clerks and junior employees, who, as a general rule, do not possess any form of immunity.²⁴

Therefore, the majority of international organizations have followed a similar approach in distinguishing between their employees regarding the extent of judicial immunity they enjoy in relation to crimes committed by them.

Some²⁵ contend that protection for unofficial activities is unwarranted

for overseas personnel within this framework. Consequently, they should be unable to invoke such immunity unless it is specifically conferred. The relationship between the organization and the host country is not anticipated to deteriorate to the extent that the country misinterprets such immunity. Should this transpire, it would be advantageous for the firm to transfer its headquarters to a different country.

The jurisprudence supports this by asserting that confining immunities to their functional scope aids the state in preventing the provocation of public opinion and authorities in the host country, which could jeopardize the relationship between the organization and that state.²⁶

One rationale for opposing the extension of judicial immunity for foreign employees is that they occupy a more advantageous position than diplomatic employees. The host state might demand that the sending state recall a diplomatic staff, a procedure that lacks an equivalent for an international employee. Furthermore, the host state's apprehension regarding reciprocal treatment or reprisal lacks a counterpart in the domain of international immunity.

It is important to observe that jurisprudence has not tackled the question of the gravity or insignificance of the crime, as it has with diplomatic immunities. The issue with foreign immunities is resolved, with the distinction relying exclusively on the nature of the conduct, whether official or personal.

Immunity functions solely as a barrier to the implementation of the law, specifically obstructing the execution of its procedural elements. Consequently, it does not confer immunity from the law, as it does not nullify the illegal nature of an act when all its parts are present. Instead, it solely inhibits the prosecution or arrest of the culprit within the host state.²⁷

Consequently, the immunity afforded to foreign personnel under global regulations is regarded as a derivative of the immunity of international organizations. This precludes the potential for judicial proceedings in the national courts of the host state.²⁸

The immunities and advantages conferred upon international personnel must not impede the judicial authorities of states in prosecuting perpetrators of crimes and offenses. Any breach of host agreements established by the United Nations or its specialized agencies with host governments encompasses not only the aggressor and the victim but also implicates the specialized agency and the United Nations as a whole. Such infractions undermine its reputation and impede its effectiveness.²⁹ Absolute immunity for international employees effectively provides impunity for individuals committing crimes, which contradicts the evolving trend in international criminal law that seeks to strengthen accountability and diminish judicial immunity in criminal cases.

International personnel, such as diplomats, are not universally acknowledged, as asserted by the jurist Montesquieu, due to their role as

representatives of a sovereign power. Consequently, crimes may be ascribed to them if it is justifiable to hold them liable for such transgressions.³⁰

The criminal immunity conferred upon international employees is not warranted in contemporary international jurisprudence only by the demands of their foreign duties. It has been closely associated with the necessity for optimal international representation to facilitate the effective management of international relations.

Traffic laws are restrictions designed to uphold public security, order, and safety. Commonly transgressed regulations by overseas employees include operating a vehicle while intoxicated, excessive speeding, and driving without a legal license or requisite insurance. Such infractions sometimes lead to several severe offenses, including hit-and-run occurrences that inflict physical injury on victims³¹. Consequently, immunity must not be conferred at the detriment of others.

In line with this approach, U.S. courts have frequently criticized and challenged the tendency of UN employees to excessively assert their judicial immunity against traffic violations. These courts have emphasized a growing inclination to disregard this immunity in the United States, particularly in light of the dangers posed by traffic accidents that jeopardize the lives and safety of citizens. This situation has the potential to provoke public opinion in the U.S. and may lead to a diminished respect for immunity in such cases.³²

The Branallo case, involving the personal driver of former United Nations Secretary-General Mr. Trygve Lie, is regarded as the inaugural and most renowned case concerning immunity from traffic law infractions. Branallo was charged with speeding while conveying the Secretary-General to a General Assembly session on October 7, 1946. At that time, the Secretary-General claimed judicial immunity for his personal driver.³³

However, the U.S. court ruled that immunity should be limited to those whose activities are essential to the proceedings of the General Assembly. This does not extend to servants who are responsible for the comfort of the delegates and staff of the Secretariat.³⁴

Consequently, freedom from traffic norms and legislation undermines their original purpose, as infractions might jeopardize public safety and health. Consequently, a balance must be maintained between the gravity of the infraction and the acknowledgment of the international standing and immunity of global personnel. When immunity is relinquished or revoked by the appropriate authority within the organization for an employee with full immunity, or if the infraction transpires outside official responsibilities for other international employees³⁵, the actions taken against them may encompass the temporary or permanent suspension of their driving license or the issuance of a warning.

In contrast, Swiss courts annulled an administrative ruling that revoked

the driving license of a World Health Organization employee who possesses immunity from criminal, civil, and administrative jurisdiction. The courts underscored that immunity pertains to all activities executed in the fulfillment of his responsibilities.³⁶

However, immunity wanes when the actions of an overseas employee compromise public security or impact public health by contravening traffic regulations and laws. It also diminishes in instances necessitating testifying before criminal courts.

2. Defining the Spatial and Temporal Scope of Immunity

An international employee is entitled to claim immunity from all member states of the organization, including his home country. This immunity is granted to facilitate the effective performance of his international duties, serving the interests of the organization rather than those of the individual employee.³⁷

The immunity begins when the employee assumes his international role, as established by much of the jurisprudence. This provision aims to ensure the employee's independence while performing his responsibilities.³⁸

In summary, the right to judicial immunity is directly linked to the exercise of the international role and commences upon appointment. However, this immunity is not permanent; it ends once the conditions for its termination are met. Therefore, the international employee enjoys immunity from the moment of appointment until the conclusion of his employment. Nevertheless, immunity related to official functions continues even after employment ends, as it is designed to safeguard the integrity of the international role.³⁹

Courts likewise do not acknowledge immunity for overseas personnel beyond the scope of their official responsibilities. An instance of this is the decision rendered by a New York court in the matter of "Jobichek," a Russian expatriate employed by the United Nations. The court determined that he did not possess complete criminal immunity on the espionage charge, as espionage was not connected to his official activities at the United Nations and was beyond his professional obligations.⁴⁰

International practice frequently fails to acknowledge judicial immunity for state officials in international bodies. In the 1979 case of *Papas v. Francisci*, the New York court rejected judicial immunity for the observation member of the Italian mission to the United Nations, citing that the Host Country Agreement did not provide for legal immunity for observers.

In 1980, the U.S. government urged the Czechoslovak government to expedite the deportation of Miroslav Nakvolak, a member of the Czechoslovak permanent mission to the United Nations, who was confronted with specific charges. The Czechoslovak government contended that this step jeopardized the autonomy of United Nations delegations and highlighted the potential for moving the UN headquarters to a different nation.⁴¹

On September 10, 1946, two Korean staff members of the United Nations Commission in Korea were apprehended by the Korean police on allegations of terrorism, homicide, armed robbery, sabotage, and espionage. This was executed without previous authorization or communication to the Secretary-General of the Commission. The Secretary-General submitted a protest and notified the United Nations Secretary-General, who then dispatched a protest telegram to the Korean Ministry of Foreign Affairs. The communication cited Article 105 of the United Nations Charter and General Assembly Resolution 76/01. The nationality of an international employee does not affect their legal standing, as they retain immunity even while operating within the territory of their nationality. The United Nations emphasized the significance of following legal protocols.⁴²

Milik, a Soviet native and United Nations Secretariat employee, accused of breaching U.S. espionage laws, asserted protection under Article 105 of the United Nations Charter and basic international law principles. The U.S. judiciary dismissed the assertion of immunity. The court emphasized that espionage is not regarded as a function of a United Nations member, and that such an individual does not possess immunity for these actions.⁴³

The apprehension and prosecution of International Monetary Fund (IMF) Managing Director Dominique Strauss-Kahn, commonly referred to as DSK, by New York police due to allegations of sexual assault against a hotel employee, ignited much discourse among international law specialists. The judiciary determined that the immunity of the IMF Managing Director is exclusively linked to the execution of his official responsibilities. It was established that Dominique Strauss-Kahn did not possess diplomatic immunity protecting him from prosecution, but rather retained functional protection conferred by the IMF's founding charter.⁴⁴

The employee retains immunity within member states and can assert this immunity against his home country, as it is not limited to a specific geographical area. Judicial immunity does not apply in cases of forgery, as determined by the Supreme Court of Argentina on November 24, 1944, nor in instances of fraud and deception, which have been noted among United Nations employees in New York.⁴⁵

Furthermore, Article 23 of the Vienna Convention of 1975 ensures the immunity of the premises of the permanent mission, mirroring provisions in other international organizations. In the event of an attack on mission premises, the host state is obligated to take appropriate measures to prosecute and punish the offender. Article 25 of the same convention grants inviolable sanctity to the mission's archives and documents at all times and in any location, not just within the mission's premises.⁴⁶

In 1948, following a coup, Czechoslovakia intended to prosecute several international employees working at the United Nations headquarters in

Prague on charges of espionage and subversive activities. This prompted the Secretary-General of the United Nations to send a protest to the Czech Ministry of Foreign Affairs on June 1st, 1949, objecting to the security police's violation of the sanctity of the United Nations offices and the immunity of international employees against arrest. As a result, the Czech government issued an apology to the United Nations for its actions.⁴⁷

According to international practice, immunities are not absolute, as there are no uniform and universal norms that confer absolute immunities to members or employees under customary international law. This is especially applicable in instances of the abuse of criminal immunity, regarded as a transgression of the boundaries of international obligations. Possessing immunity does not, under any circumstances, entail contravening domestic laws.

III. Penalties and Procedures for Addressing the Misuse of Criminal Judicial Immunity by International Employees

International organizations are committed to preventing any abuse or misuse of the privileges and immunities granted to international employees. The agreements established for this purpose outline the penalties, procedures, and solutions to be implemented. These may involve unilateral actions (as outlined in the first section), or bilateral measures and other procedures initiated by the will of the states (as detailed in the second section).

1. Unilateral Actions by the International Organization

These procedures refer to the actions an international organization may take against an employee who has abused or misused the immunity granted to him. These actions may involve lifting the employee's immunity or, alternatively, the employee voluntarily agreeing to waive it in cooperation with the organization.

1.1 Lifting Immunity

Most international employment systems and agreements governing the privileges and immunities of international organizations and their employees contain provisions addressing this matter. These provisions typically grant the Secretary-General of the organization the authority to lift the immunity of an international employee, provided that doing so does not harm the interests of the organization.

The texts grant the administrative head the discretion to assess whether lifting the immunity could negatively impact the organization. This is clearly outlined in Article 1/8 of the United Nations Staff Regulations, which specifies that the privileges and immunities conferred under Article 105 of the UN Charter are intended for the benefit of the organization. These privileges do not exempt employees from fulfilling their private obligations or adhering to local laws and regulations. Whenever the issue of privileges or immunities arises, the employee must immediately notify the Secretary-General, who

alone holds the authority to determine whether to lift the immunity.⁴⁸

This agreement also reaffirmed the United Nations Privileges and Immunities Agreement, where Article 20 clearly states that the Secretary-General alone has the authority to lift the immunity of Secretariat staff. He is obligated to do so whenever he determines that immunity obstructs the course of justice and that its removal would not harm the interests of the organization. However, the authority to lift the Secretary-General's immunity lies with the Security Council.

The Agreement on the Privileges and Immunities of the Specialized Agencies follows a similar approach, assigning the responsibility for lifting the immunity of agency staff to the agency itself. Likewise, the Agreement on the Privileges and Immunities of the League of Arab States, in Article 23, mirrors the provisions found in the United Nations Cultural Privileges and Immunities Agreement, stating that the authority to lift immunity from League staff falls under the jurisdiction of the Secretary-General. However, for the Secretary-General, Assistant Secretaries-General, and senior staff, immunity may only be lifted with the approval of the League Council.

Therefore, according to Article 23, the Secretary-General of the League does not have the power to lift the immunity of the individuals mentioned in Article 22. Instead, the League Council holds the authority to lift immunity if any employees from this category violate the laws.⁴⁹

At the International Court of Justice, the process of lifting immunity from administrative staff requires a decision by the head of the administrative body, which must then be approved by the president of the court to become final. In contrast, lifting the immunity of judges falls under the jurisdiction of the court as a whole, as outlined in Article 18 of the Court's Statute.

Moreover, most of the agreements referenced above stress the importance of ongoing cooperation between international organizations and the relevant authorities of member states. This cooperation is essential for ensuring justice, adhering to regulatory oversight, and preventing the misuse of the privileges and immunities granted to international employees. (This has been stipulated in numerous agreements, including Article 21 of the United Nations Privileges and Immunities Agreement and Article 24 of the League of Arab States Privileges and Immunities Agreement).⁵⁰

This provision differs from the system governing diplomatic representation, where each state retains the ultimate authority to uphold or waive the immunity of its diplomatic envoys at its own discretion, without being bound by external factors or considerations.⁵¹

A critical question arises in this context: if legal provisions grant the head of the administrative body the power to lift an employee's immunity, does this mean that an international employee has no right to challenge his superior's decision, even if it has adverse consequences?

By default, immunity is granted to the administrative body, represented by its head, rather than directly benefiting the employee. Consequently, the authority to lift immunity rests with the head of the administrative body, even though such a decision may indirectly impact the employee by depriving him of certain rights, protections, and benefits. Therefore, it is essential to scrutinize the legitimacy of the decision to lift immunity and evaluate its consequences under the oversight of the Administrative Court and its legislative body. This process ensures the protection of both the organization's interests and the rights of the international employee.⁵²

1.2 Waiving Immunity:

The waiver of immunity is a voluntary decision made by the international employee, as previously mentioned, in conjunction with the international organization for which he works. It is crucial for the waiver to be explicit, as an implicit waiver does not effectively negate immunity. The sole exception occurs when the international employee initiates a lawsuit and appears before the court; in this situation, his appearance constitutes a waiver of immunity specifically for that case.

This provision does not extend to envoys, as the sending state retains the exclusive authority to decide whether to uphold or waive the immunity of its envoys, based on its own assessment of the circumstances, without being subject to any external authority.

2. Additional Measures Initiated by the Will of States

These procedures encompass all legal actions taken at the discretion of states, typically formalized in general agreements and treaties between the organization and the concerned state. These agreements establish the competent court to adjudicate disputes arising from the interpretation of provisions related to privileges and immunities, as well as any resulting misuse by the international employee. If these initial procedures prove ineffective, they also include actions initiated unilaterally by the state where the international employee is located, particularly in cases of arbitrariness or misuse of the privileges or immunities granted to him.

2.1. Bilateral Procedures

The procedures in this section are conducted through general agreements and treaties established between the organization and the relevant state. These agreements specify the competent court responsible for addressing disputes related to the interpretation of provisions concerning privileges and immunities, as well as any resulting misuse of those privileges.

The General Convention on the Privileges and Immunities of the United Nations, established in 1946, outlines in Article 29 the process for resolving disputes through direct negotiations. If such negotiations fail to produce a resolution, Article 30 of the Convention directs that the matter be referred to the International Court of Justice for an advisory opinion for both parties.

In contrast, the agreements of the specialized agencies approach this issue with greater assurance, stating that if a member state suspects an abuse of immunities and privileges, consultations must occur between the state and the relevant agency. If these consultations do not yield satisfactory results, the matter is escalated to the International Court of Justice. Should the court determine that an abuse has indeed occurred, the state may revoke the immunities misused by the specialized agency. This provision specifically targets abuses committed by the agency itself.⁵³

In the context of dispute resolution, the agreement between the United Nations and Switzerland stipulates that any disputes concerning its application or validity between the organization and the Federal Council will be referred to an arbitration panel consisting of three representatives. Likewise, the agreement between the International Labor Organization and Switzerland establishes that disputes will be resolved by a court made up of three judges.

Furthermore, the agreement between the United Nations and the United States specifies that if differences in interpretation and application cannot be settled through negotiations or other mutually agreed-upon means, the matter will be referred to a tribunal of three arbitrators, whose decision shall be final.

Additionally, the headquarters agreement between the International Civil Aviation Organization and France states in Article 20 that disputes will be handled by a single arbitrator appointed by both parties. If they are unable to agree on an appointment, the International Court of Justice will designate the arbitrator.

In contrast, some general agreements pertaining to international organizations, such as those associated with the European Common Market and the Council of Europe, do not outline a specific method for resolving disputes. In these instances, the parties may agree to establish a mixed arbitration court, with each side represented by a judge and an additional presiding judge chosen either by the two judges or appointed by one of the international courts, or directly by the parties involved.⁵⁴

The Host Country Agreement between the International Civil Aviation Organization (ICAO) and France specifies in Article 20 that any disputes resulting from this agreement should be referred to a single arbitrator designated by both parties. Should the parties be unable to reach a consensus on the arbitrator, the International Court of Justice will designate one.

Conversely, several general agreements pertaining to specific international organizations, such as the European Common Market and the Council of Europe, lack a defined mechanism for dispute resolution in these instances. The resolution in these cases is the formation of a mixed arbitration tribunal, comprising a judge representing each state and the relevant organization, along with a presiding third judge. The third judge is appointed either by the two judges representing the disputing parties, by one of the

international courts, or directly by the parties themselves.⁵⁵

2.2. Deportation of the International Employee

Deportation of an international employee occurs when he commits an act that constitutes an abuse of the rights and privileges granted to him or results in the misuse of those immunities. In such cases, the concerned state may have no choice but to deport the offending international employee and terminate his service, provided that certain guarantees outlined in the relevant headquarters agreements are met.

States may attempt to remove an international employee from public service by drawing an analogy to the legal framework governing diplomatic relations. However, this analogy is flawed. Under international law, governments have the authority to declare a diplomatic representative persona non grata without providing justification. In contrast, international employees are not granted the same latitude as diplomatic representatives; they are expected to respect local laws and refrain from interfering in the private affairs of the host state. Consequently, the host state cannot threaten to revoke the immunities and privileges of international employees as a means to compel their departure from the country.⁵⁶

Many legal scholars contend that the procedure for removing an international employee from public service cannot be applied in the same manner as it is for diplomatic representatives. This is because the conditions for such a procedure are rooted in the principles of reciprocity and the necessity of accrediting diplomatic envoys, conditions that do not apply to international employees within a host state.⁵⁷

However, Article 25 of the General Convention on the Privileges and Immunities of Specialized Organizations provides that if an international employee abuses their right to residence by engaging in activities outside the scope of their official duties, the host government may request their departure from its territory. It is important to note that, for employees enjoying specific immunities and privileges under the Convention, the order to leave the territory must be approved by the state's Minister of Foreign Affairs. This approval can only be granted after consulting the executive head of the relevant agency. Additionally, if deportation measures are initiated against an employee, the executive head of the agency may intervene to support the employee facing such actions.⁵⁸

2.3. Revocation of Provisions Granting Privileges and Immunities

A state may unilaterally terminate the agreement governing the privileges and immunities of an international official if it perceives that those privileges are being arbitrarily or improperly used. By doing so, the state asserts its right to revoke any treaty it considers harmful to its interests. However, this perspective is subject to criticism. The process of unilaterally canceling an international agreement is governed by specific conditions and

rules outlined in international law, necessitating caution in its application.⁵⁹

Moreover, the General Convention on the Privileges and Immunities of the United Nations does not provide for such a procedure. While the Convention on the Privileges and Immunities of Specialized Agencies initially suggested this possibility—allowing member states to cancel provisions related to privileges and immunities while retaining their membership—concerns about the implications of ongoing membership in light of such cancellations led to the exclusion of this provision in the final drafting of the agreement.⁶⁰

Conclusion:

The parameters defining the privacy of an international employee's penal status are shaped by the demands of their international role, ensuring the smooth operation of global relations. The immunities bestowed upon international employees serve the interests of the international organization rather than their personal agendas. Therefore, it is imperative that international employees refrain from actions that could compromise this purpose or infringe upon legitimate public and private interests. Should they act otherwise, the immunity granted to them does not shield them from penalties nor does it preclude the possibility of their immunity being revoked.

Our analysis has led us to several key conclusions, which inform our recommendations as follows:

- *Limiting Criminal Judicial Immunity:* The scope of judicial immunity should be restricted, particularly concerning serious crimes that threaten the international political, economic, or social order or endanger the lives of citizens. Crimes committed by one individual with immunity against another with the same status should also be excluded. Judicial immunity for organization members should be confined to what is necessary for them to fulfill their duties without compromising the national security of the host country.

- *Prohibiting Unilateral Cancellation of Privileges:* A country cannot unilaterally annul the privileges and immunities associated with an international role. Nations wishing to cancel such agreements must withdraw from the international body, unless the headquarters of that body is located within their territory; in this case, the headquarters must be relocated outside their jurisdiction.

- *Exceptional Deportation Procedures:* Deportation of an international employee should be treated as an exceptional measure, initiated only after consultation with the Secretary-General of the organization and upon request from the host state's Minister of Foreign Affairs. Deportation executed without adherence to these protocols allows the head of the administrative body to intervene and protect the rights of the employee in question.

In light of these findings, we propose the following measures:

- Create a two-tier judicial system within international organizations to broaden the legal protection of international employees, particularly regarding the waiver of immunity. In return for this judicial privilege, the organization should implement legal mechanisms within its administrative framework to enforce international duties. This can be accomplished by regulating the conduct of international employees, with an emphasis on utilizing technological advancements to improve monitoring and oversight. These measures would seek to minimize the abuse of immunity and ensure the proper fulfillment of their responsibilities.

- The principle of comprehensiveness should be embraced when creating laws related to international duties, aiming to unify the legal framework governing the relationship between international employees and the organization. This approach should prevent conflicts with other international legal obligations. Achieving this can be done through the creation of an international agreement that strikes a balance between the immunity afforded to certain individuals and the protection of the rights of affected parties. The agreement should provide both judicial and diplomatic avenues for individuals to assert their rights through straightforward procedures that avoid unnecessary difficulty or complexity.

- Create a recognized international council composed of legal scholars and practitioners to address the evolving challenges in international relations. This council would focus on amending international agreements that pertain to the penal status of international employees, ensuring the rights of all parties are respected without hindering international operations.

- Foster collaboration between this council and international human rights organizations, as well as domestic and international judicial bodies. Through collective efforts, an agreement can be reached on mechanisms that uphold the rights of individuals covered by judicial immunity, as well as the rights of others affected by their actions.

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