

PRACTICAL LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS
A Global Administrative Law Perspective on Public/Private
Partnerships, Accountability, and Human Rights

Drazen Petrovic¹

***Privileges and immunities of UN Specialized Agencies in field activity
(Preliminary paper)***

Introduction

In the years between the two World Wars, the traditional public image of an international organization was that of a large, mysterious building in which important meetings took place and from which highly specialized officials occasionally travelled to the rest of the world. Indeed, this may have been true for the League of Nations, the Universal Postal Union, the International Telegraph Union and the International Labour Organization during this period.²

The situation created by the Second World War gave new impetus to the development of international organizations. Not only was the Organization of the United Nations created with a general political mandate, but the then international community saw the need to expand global international cooperation into more focused fields. This resulted in the creation of several international organizations which later became specialized agencies of the United Nations system. In 1944, the International Civil Aviation Organization (ICAO), the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF) were created; in 1945, the Food and Agriculture Organization (FAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) and, in 1948, the World Health Organization (WHO) and the International

¹ Principal Legal Officer, International Labour Office, Geneva. All opinions expressed are personal and are not necessarily endorsed by the ILO.

² Other institutions in existence during the same period were extremely specialized, such as the International Bureau of Weights and Measures (BIPM) or the International Wine Office (IWO).

Maritime Organization (IMO). Some time later, the World Meteorological Organization (WMO), the World Intellectual Property Organization (WIPO), the International Fund for Agricultural Development (IFAD), and the United Nations Industrial Development Organization (UNIDO) were established, as was, relatively recently, the World Tourism Organization (UNWTO).

In their constitutive instruments these organizations focused on the composition and functioning of their main organs. The idea of a presence outside headquarters was tentatively mentioned, mostly in terms of possible “technical assistance” (for example, in the Constitutions of the FAO, ILO, ITU, WHO, or WIPO). Furthermore, some regional structure, including regional offices, was foreseen by the WHO.

The 1950s saw an increased awareness of the need for specialized agencies to establish a more definitive local presence and provide advice closer to the place it was needed. This was particularly true for newly created States. The UN and the specialized agencies were requested by the Economic and Social Council, by its Resolution No. 222 A (IX) of 15 August 1949 to participate in and coordinate their respective activities within an expanded programme of technical assistance for the economic development of under-developed countries. The purpose of the programme was to strengthen national economies through the interchange of technical knowledge, in particular by having experts visiting those countries.

On the basis of that Resolution, several specialized agencies, together with the United Nations, concluded so-called Basic Agreements for the provision of technical assistance with developing countries. These Agreements provided a general legal framework for technical assistance, mostly with the idea of sending experts for periods of limited duration to the States concerned.

A further step was taken with the creation of local offices on the regional, sub-regional or country level. Currently, the United Nations and its specialized agencies sustain a permanent presence in most countries around the world. For

example, the WHO has six regional offices, while the ITU and ILO each have five. In 2006, the ILO, with five regional offices, had nearly 1,900 persons employed in the field

This trend of being situated close to the needs of the world population is not without consequences for the organizations. While they are already well settled in the countries where their headquarters are, a presence in a new country is always a challenge from logistical and legal point of view.

I A global approach to privileges and immunities

While diplomatic law is a result of a well-established customary law which has been codified relatively late, the privileges and immunities of international organizations result originally from international treaties. Prior to the end of the Second World War, the concept of privileges and immunities of international organizations had not been widespread. They have often been determined on a bilateral basis through headquarters agreements. As Jenks concluded,

“historically, the present content of international immunities derives from the experience of the League of Nations as developed by the International Labour Organisation when submitted to the test of wartime conditions, reformulated in certain respects in the ILO-Canadian wartime arrangements, and subsequently reviewed by the General Assembly of the United Nations at its First Session in 1946.”³

To avoid possible fragmentation that new organizations may be tempted to develop on their own, the UN General Assembly approached it as a global issue. The idea of setting up a comprehensive global system of privileges and immunities resulted in two international treaties.

The first was the *Convention on the privileges and immunities of the United Nations* (the “1946 Convention”), adopted by the UN General Assembly on

³ C. W. Jenks, *International Immunities*, London, Stevens&Sons, 1961, p. 12.

13 February 1946. It entered into force on 17 September 1946. This Convention was legally based on Articles 104 and, in particular, 105 of the UN Charter. The latter article reads as follows:

- “1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.
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 conventions to the Members of the United Nations for this purpose.”

There are currently 157 States Parties to the 1946 Convention, out of 192 Member States of the United Nations (more than 80%).

The second treaty is the *Convention on the privileges and immunities of the Specialized Agencies*⁴ (the “1947 Convention”) which the UN General Assembly approved on 21 November 1947 and which came into force on 2 December 1948. It has a total of 116 States Parties. The number of States Parties, however, may be misleading. Each State Party has to indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention.⁵

Taking into account the specificities of each specialized agency and the fact that they were created by international treaties using different formulations and defining different needs, the 1947 Convention has two major parts. The first part consists of so-called “standard clauses”, and the second part is composed of 18 annexes relating to particular organizations. While the standard clauses were

⁴ United Nations, *Treaty Series*, Vol. 33, p. 261.

⁵ Section 43 of the Convention.

adopted by the UN General Assembly, the text of each annex was approved by the specialized agency concerned in accordance with its constitutional procedure.

The annexes are as follows:

| | |
|-------|--|
| I | ILO, |
| II | FAO, |
| III | ICAO, |
| IV | UNESCO, |
| V | IMF, |
| VI | IBRD, |
| VII | WHO, |
| VIII | UPU, |
| IX | ITU, |
| X | International Refugee Organization, |
| XI | WMO, |
| XII | IMO, |
| XIII | International Finance Corporation (IFC), |
| XIV | International Development Association (IDA), |
| XV | WIPO, |
| XVI | IFAD, |
| XVII | UNIDO, and |
| XVIII | UNWTO. |

The approach of “standard clauses” was determined by the UN General Assembly in its Resolution 22(1) dated 13 February 1946, noting that there were many advantages in the unification, as far as was possible, of the privileges and immunities of the UN and those of its specialized agencies. To strengthen this point the General Assembly also adopted, upon a proposal of its Sixth Committee, a resolution inviting international organizations to rely on the Convention⁶ rather than to develop in their future constitutional instruments detailed provisions relating to privileges and immunities.

⁶ This position was not unanimously supported. For example, the delegation of the Union of Soviet Socialist Republics considered that the privileges and immunities be applied in accordance with the laws and regulations of the country concerned, citing the example of Switzerland as “a country that has a wide experience with specialized agencies”. UN General Assembly, Official Records, 123rd plenary session, 21 November 1947, p. 1309.

The standard clauses reflect the functional approach to privileges and immunities.

⁷ International organization need to enjoy a certain number of them in order to be able to fulfill the mandate assigned to them by the founding treaties.

The “standard clauses” of both Conventions cover three types of privileges and immunities:

1. those accorded to the organization itself;
2. those accorded to the representatives of Member States;
3. those accorded to the staff of the secretariat.

1. Privileges and immunities accorded to the organization itself

The first group addresses immunity in every form of the legal process relating to organizations’ property and assets “wherever located and by whomsoever held”. This covers search, requisition, confiscation, expropriation and all instances of interference, whether by executive, administrative, judicial or legislative authorities.

This part of the standard clauses was drafted in rather absolute terms. Domestic authorities can exercise their jurisdiction only if the immunity is waived by the organizations. This immunity is the very essence of the guarantees of the organizations’ independence. It has been a *conditio sine qua non* of headquarters agreements and *ad hoc* arrangements dealing with the issue of privileges and immunities. Some authors go as far as declaring it a rule of customary

⁷ This “functional approach” to the question of privileges and immunities differs from the one that was determined in more absolute terms in Article 7 of the Covenant of the League of Nations, which provided that representatives of the Member States and the officials “shall enjoy diplomatic privileges and immunities” “when engaged on the business of the League” and that “the buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.”

international law,⁸ which would mean that it would be applicable even in absence of an agreement or if an existing agreement is silent on this point.

The absolute nature of this type of immunity is today questioned by some scholars.⁹ There is an attempt to extend concepts that have limited the immunity of States, such as distinction between *acta iure imperii* and *acta iure gestionis*, to the international organizations. Although such an approach may sound appealing in light of frequent calls for accountability of international organizations, it cannot be justified in law. The mandate of international organizations is functional and all activities they undertake, within the limits of its express or implied powers, represent official activities - what would be the equivalent of *acta iure imperii*. When an organization buys chairs, it is for its offices or conference rooms; when it does construction work, it is to host its bodies and operations; when it has a dispute arising from employment with one of its staff members, the organization is exercising its mandate.

There is also a question of territoriality. The idea of immunities of foreign States was born from the fact that these States do not normally act outside their territorial jurisdiction and that they have to enjoy immunity in exceptional cases when they do. Exercising territorial jurisdiction over acts of another State is even more limited and is determined by the rules of international private law. It is the diversification of public power and its involvement in traditionally private, mostly commercial relationship that triggered the necessity to limit the absolute immunity of States. The situation of international organizations is totally different. First of all, they act always on a “foreign” territory as they do not possess their own. Even

⁸ *International Law Reports*, Elihu Lauterpacht, C. J. Greenwood, p. 97, quoting cases *International Institute of Agriculture v. Profili* (Italy 1931), *Chemidlin v. International Office of Weights and Measures (BIPM)* (France 1945), and *Dame Adrien and others* (France 1931). Contrary, Ernesto S. Martinez Gondra who, after having presented views of Seidl-Hohenveldern, Dominicé, Schermers and Lalive in favor of the existence of customary law, arrived at conclusion that there is no sufficient proof of customary law in this matter, *Privilegios e Inmunidades de las Organizaciones Internacionales*, Nuevohacer, Buenos Aires, 2004, p. 57.

⁹ See Benedetto Conforti, *Diritto internazionale*, Editoriale Scientifica, Napoli, VII edizione, 2006, p. 235: See also somehow restricted theory of August Reinisch, *International Organizations Before National Courts*, Cambridge University Press, 2000, pp. 258-262 and 392-393.

within Host States, they act both on the level of international and private law. Their acts within one State are not a mere exception but the rule. If these decisions could be examined and questioned by the Host State, it would de facto control the organization. In this case, the question of the place of the organization's headquarters risks to become crucial and potentially controversial.

However, the theory of absolute immunity of jurisdiction based on the very personality of the organization is seriously put in question by a recent practice. This immunity can be limited by the headquarters agreements. Some host country agreements concluded with European States have excluded from the immunity the damages arising out of traffic accidents. This relatively recent trend only confirms that for all other acts the States still consider, as a matter of positive international law, that international organizations continue to enjoy the immunity from legal process. If tribunals in Member States would be able to question this immunity, possibly even inconsistently, there would be a shift whereby international law would be created rather by national tribunals than by governments.

Finally, there is also a practical problem: if the organizations would not have immunity from legal process, they would need to create a system of legal representations in Member States. As at least theoretically, but often also in practice, international organizations operate in all member States, such a level of legal representations will be very costly and will have to be included in the budget of each organization.

Immunity of legal process does not mean that individuals dealing with the international organizations would be deprived of any legal remedy. We will discuss this point further below, but it is necessary to keep in mind that the immunity of jurisdiction can be waived.

It is, however, specifically provided in the 1947 Convention that even though the immunity from legal process may be expressly waived by the organization

concerned, it cannot waive its immunity regarding measures of execution.¹⁰ On this point also, the approach to the immunities of States and those of international organizations diverge. This is because a judgment against an international organization can only be executed against its budget. This budget is, however, financed by all Member States and the decision how to finance and spend the budget belongs to all of them. That is why the international organizations have to be very careful when lifting their immunity of jurisdiction. As the measures of execution cannot be implemented by the national authorities, the organizations have to make a voluntary commitment to execute the judgment¹¹ each time where they decide to lift their immunity from legal process. Otherwise, their reputation could be put in question. Given that a judgment can substantively affect the budget, it may be prudent to involve several bodies of the organization in decisions regarding lifting of immunity.

Within the first group of immunities are also important immunities relative to premises and archives, but these are mostly parallel to those of diplomatic premises. In the same manner as for the diplomatic premises, it may be argued that those immunities have to be protected, even in the absence of a specific treaty, on the basis of customary international law.¹²

A particular section deals with financial issues: the organizations may hold funds, gold or currency of any kind and operate accounts in any currency without being restricted by financial controls, regulations or moratoria of any kind. They can also freely transfer, as well as convert, these assets from one country to another or within any country.

Immunities from all direct taxes, customs duties, and prohibitions and restrictions on imports and exports are of great importance. While these immunities may be

¹⁰ It seems that Jenks has a contrary view, see Jenks, *op. cit.*, p. 39.

¹¹ Such a decision is similar to the one regarding lifting the immunity concerning the measures of execution and produces, at the end, the same effects. Instead of letting an external body execute a judgment, the organization may decide itself to give it a full effect.

¹² See, René-Jean Dupuy, *Manuel sur les organisations internationales/A Handbook on International Organizations*, Académie de droit, 2nd edition, p. 842.

unpopular with the local public opinion, they have a strong *raison d'être*. The idea behind these immunities is again that one member State should not create an additional burden to the budget of an organization financed by other States, and that that State should not profit more from operations of an organization within its territory. The necessity of respecting this type of immunity also regarding indirect taxes, such as value added taxes seems obvious, but it still encounters some problems in practice.

There are also privileges regarding official communications, use of codes and diplomatic mail. They are also inspired by diplomatic law, to which the 1947 Convention makes direct reference.

2. Privileges and immunities accorded to the representatives of Member States

Representatives of Member States who attend a meeting convened by a specialized agency enjoy significant privileges and immunities both during their journey to and from the place venue of the meeting, and also while exercising their functions.¹³ These include, in particular, immunity from personal arrest or detention and from seizure of personal baggage, and in respect of words spoken or written and all acts performed in their official capacity, as well as immunity from legal process of every kind. It also comprises inviolability for all papers and documents.

This type of immunities has been subject to some modifications. In several centers of multilateral diplomacy, such as in Addis Ababa, Bangkok, Geneva, New York, Rome or Vienna, representatives of Member States do not merely come for one meeting, but have established permanent missions. They also represent their States to more than one organization. Given that organizations do not have system of accreditation equivalent to the receiving state in diplomatic relations, these representatives are accredited by the Host State. In case of violation of their privileges and immunities, the system of protection is based on

¹³ Members are not bound to guarantee these privileges and immunities to their nationals or representatives.

traditional diplomatic relations rather than on privileges and immunities of international organizations. This is reinforced by the fact that at least three major Host States, namely, Ethiopia, Switzerland and the United States, have not acceded to the 1947 Convention. Practically, this state of affairs means that the sending state has to resolve its problems with the receiving state,¹⁴ without any clear indication as to how the organizations are involved.

3. *Privileges and immunities accorded to the staff of the secretariat*

All officials of the organization enjoy functional immunity from legal process in respect of words spoken or written and in respect of all acts performed by them in their official capacity, as well as immunity from immigration restrictions and alien registrations. They are exempt from taxation on their salaries and emoluments paid to them by an organization, and have privileges in respect of exchange and repatriation facilities in times of international crises. Officials have the right to import their furniture and effects free of duty at the time of first taking up their post in the country in question. A limited category of officials is also accorded the privileges, immunities, exemptions and facilities granted to diplomatic envoys in accordance with international law. As the text of the Conventions indicates that these privileges are not limited to headquarters, but also cover “regional offices” (section 39), there should be no surprise that the heads of offices in the field claim status equal to diplomatic envoys. They represent the organization in a State in the same manner as the heads of diplomatic mission represent their countries.

A major difference between diplomatic privileges and immunities of States and privileges and immunities of international organizations is that, with respect to the latter, States cannot exercise jurisdiction over their own nationals. Although some States considers this to be problematic¹⁵ the rational is very simple: all officials,

¹⁴ A case raising this issue before the ICJ was withdrawn by Dominica, See *Case concerning the status vis-à-vis the Host State of a diplomatic envoy to the United Nations (Commonwealth of Dominica v. Switzerland)*, Order of 9 June 2006, General List No. 134, can be found at <http://www.icj-cij.org/docket/files/134/11039.pdf> accessed on 25 May 2009.

¹⁵ There are practical and legal problems. Some legal problems may even be of a constitutional nature. On the practical side, some diplomats have difficulties accepting that their compatriots working for international organizations enjoy privileges and immunities even in their own country.

regardless of their nationality have to be protected so that the Organization can act independently. Otherwise, officials risk being treated in a discriminatory manner by the local authorities and being subject to unequal treatment for which organizations would be responsible as employers.

Although this may seem obvious, it may be worth recalling that privileges and immunities of specialized agencies do not operate without corresponding obligation of States. The texts do not mention this specifically as they are addressed to States as Parties to the Convention where organizations are beneficiaries. However, there is an obligation of the receiving State to protect international organizations and to guarantee their privileges and immunities are respected. This is particularly important in States where there exists a division of powers. As the International Court of Justice reaffirmed “a well-established rule of international law” and “a customary rule” is that such an obligation binds any organ of a State. Quoting the International Law Commission, the ICJ held that such an obligation existed regardless of “whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinated position in the organization of the State.”¹⁶

II Practical problems

Although many problems regarding the privileges and immunities are the same in headquarters and field offices, the extent to which they can be implemented may not be the same. Headquarters with a huge number of officials and many meetings may represent a considerable economic and political interest of the Host State. These States also acquire a considerable experience in dealing with international organizations. Consequently, it may be inclined to better guarantee privileges and immunities which are necessary for the performance of the organization’s mandate. The situation is different when a few officials execute a technical cooperation project in the country having no experience with international civil servants. They may find that the guarantee of providing

¹⁶ ICJ, *Rec.* 1999, para. 62 at p. 69.

privileges and immunities by a Host State is more difficult to obtain and that several practical problems may arise.

1. Problem of ratification (or rather non-ratification)

The state of ratification of the 1947 Convention is not satisfactory. There are still too many States that are members of the specialized agencies but that failed to ratify this Convention and accede to one of its annexes. While the specialized agencies have almost universal membership, the number of States recognizing their privileges and immunities through the 1947 Convention does not echo this universal character. For some older agencies the number of Parties attain almost two thirds of Member States: for the ICAO this number is 106; for the WMO and ITU it is 109, for the ILO, FAO, UNESCO it is 113; for the UPU 120. However, some other agencies, especially those created later, have their privileges and immunities recognized by fewer less States: UNIDO by 18, IFAD by 29, WIPO by 36, IMO by 47, IDA by 62, IFC by 72, IMRD by 92, and IMF by 95.

The absence of ratification creates considerable problems for the functioning of organizations. They must negotiate ad hoc agreements to establish an office, organize a meeting, or implement a technical cooperation project. This is often time consuming – often frustrating - for both sides and results in compromises eroding general standards. An additional difficulty may rise from the fact that specialized agencies' point of reference is often a corresponding national ministry which may not have competence for questions of privileges and immunities. As a consequence, negotiations may become lengthy and require the involvement of other ministries, such as the ministry of foreign affairs, or even parliaments.

Conscious of the fact that specialized agencies need to enjoy “at the earliest possible date”, the privileges and immunities “essential for an efficient exercise of their respective functions”, the UN General Assembly adopted a resolution recommending that Member States accord “as far as possible”, and pending their formal accession to it, the benefits of the privileges and immunities provided in the

Convention. This recommendation of the General Assembly is still in force and has been repeated by some organs of the specialized agencies.¹⁷

This invitation, however, does not make the legal situation more certain. Consequently, the decision whether to be active in States that do not provide minimum guarantees of privileges and immunities represents a political and legal challenge. While the political assessment of risk may be different than the legal one, there seems to be a general understanding of the necessity of having a written commitment from the host government, pending accession to the 1947 Convention.

2. Imposition of certain taxes

Several Member States have tried to impose taxes on international organizations. The most common is the Value Added Tax (VAT), an imposition which the United Nations and specialized agencies consider contrary to the Conventions.¹⁸ Other examples include stamp, car or road taxes, as well as parking or landing fees. While national organs rely on the general territorial applicability of those taxed, the UN and specialized agencies consider that they are exempted under the Conventions. The rationale for arguing that such taxes should not be imposed on the UN or specialized agencies is that no Member State should derive any national financial advantage by levying fiscal charges on common funds.¹⁹

3. Taxation of revenue of officials

In the absence of accession to the 1947 Convention, some States may attempt to reduce through ad hoc negotiations the level of privileges and immunities recognized by the Conventions or by customary international law. For example, they may try to exclude locally recruited staff who are either their nationals or permanent residents from the scope of traditionally recognized privileges and immunities. This is particularly sensitive in relation to taxation of income gained from employment within an organization or the exception from national military

¹⁷ For example, by the International Labour Conference in 1948.

¹⁸ See, two opinions published in *UN Juridical Yearbook* 1990, pp. 288 and 289.

¹⁹ See, Jenks, *op. cit.*, p. 17.

service.²⁰ Here again, there is reason for the organizations to resist. Firstly, such an approach is discriminatory between officials of different nationalities, and is therefore contrary to the very idea of an independent international civil service. Secondly, it also raises the issue of increased costs imposed on the organization through compensation that is due to its officials who may be forced to pay taxes on their income.

4. Perception of impunity

There is still at times a perception that, by granting privileges and immunities, a State creates a situation in which there is *de facto* impunity of the organization and its officials. This is far from reality.

First of all, Conventions specifically provide that:

“privileges and immunities are granted to officials in the interests of the specialized agencies only and not for the personal benefit of the individuals themselves. Each specialized agency shall have the right and duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialized agency”,

and that:

“each specialized agency shall co-operate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned in this article.”

The determination, however, as to which acts performed fall within the scope of official duties and hence the opportunity to waive immunity, is within the exclusive competence of the organization itself, presumably its executive head. It is neither

²⁰ This point was already raised as problematic during the discussion on the proposed text by the delegation of the United States.

within the competence of the government or a national court of any Member State.²¹

However, it does not mean that officials can simply ignore judgments of local courts. In recent years, some specialized agencies have created legal precedent in their internal systems by rescinding immunities for the purpose of execution of national judgments in some areas, such as family pension alimony. In many other cases, international organizations lifted immunity ad hoc, either upon request of the staff member or of the competent national authority.

5. Personal security of officials

While the privileges and immunities that officials of an international organization enjoy do not automatically guarantee their safety and security, the lack of respect of these privileges and immunities can at times result in the perception of a threat against personal security. For example, recognition of a UN *Laissez-Passer* as a valid travel document is an obligation established by both Conventions, and States that are not Parties do not have an obligation to extend any privileges to officials traveling with this document. In instances where immunity from national jurisdiction is not recognized and the official is detained, this could be interpreted as an action which prevents officials from discharging their mandate within the meaning of Article 7 of the *Convention on the safety of United Nations and associated personnel*, and therefore could also be considered a violation of that Convention.

A few concluding remarks

The voices for transparency and accountability of international organizations, which were raised by their Member States, have been heard. A handful of unfortunate examples of irresponsible individuals hiding behind privileges and immunities have caused considerable damage to the image of the UN System. Many organizations have changed their administrative practices and introduced

²¹ See, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, I.C.J. reports 1999, p. 62 et seq., in particular paras. 50 and 60.

new rules such as those regarding fraud, ethics and additional audit functions. This, however, should not lead to the point where the privileges and immunities may be eliminated.

What if privileges and immunities did not exist? The UN and specialized agencies would be subject to more than 160 national laws and judicial systems. National governments and courts would direct the work of the organizations, staff would feel unprotected and the financial burden on the organizations' budgets would increase.

Although many arguments may be made to support the premise that the privileges and immunities enjoyed by international organizations are no longer exclusively based on international treaties but on customary law,²² it may still be preferable for specialized agencies to ensure that, before commencing operations in a country, there is a written agreement on privileges and immunities. This is of particular importance in determining the exact scope of privileges and immunities, as many disagreements have arisen from such minor issues as specific taxes.

Some States have no objection in referring to the 1947 Convention in the context of an ad hoc treaty, but they still refuse to ratify the Convention. Unless it is due to the date of the Convention preceding the creation of many States, it is difficult to comprehend why this would be problematic. In particular, why do States which are bound by the 1946 Convention and which have developed an important collaboration with specialized agencies, still fail to accede to it?

Could this reason be found in the somewhat inert position of specialized agencies themselves? Instead of approaching their Member States in a coordinated manner, they continue to prefer negotiating ad hoc arrangements which may result in a different level of privileges and immunities. Apart from being

²² J-F. Lalive spoke already in 1953 of "l'existence d'une véritable coutume Internationale ... ou en tout cas d'un commencement de coutume", J.-F. Lalive, "L'immunité de juridiction des Etats et des organisations internationales", *Recueil des cours de l'Académie de droit international de La Haye* (1953-III) (Leyde, Sijthoff, 1955), vol. 84, pp. 304-305. See also Maastricht District Court in *Eckhardt v. Eurocontrol (no 2)*, 12 January 1984, 94 *ILR* 331, at 338, which recognized immunity of jurisdiction under customary international law.

problematic from the practical point of view, such an approach goes against the very idea of a universal system of privileges and immunities of international organizations belonging to the United Nations system. It is to be hoped that a conference such as this one may help to identify the problems and achieve practical solutions.

25 June 2009