İSTANBUL ÜNİVERSİTESİ YAYINEVİ

İstanbul Hukuk Mecmuası

İstanbul Hukuk Mecmuası, 82 (4), 1289-1315

DOI: 10.26650/mecmua.2024.82.4.0002
https://dergipark.org.tr/pub/ihm
http://mecmua.istanbul.edu.tr/tr/_

Submitted: 07.09.2023
Revision Requested: 10.09.2023
Last Revision Received: 19.08.2024
Accepted: 27.08.2024
Online Published: 06.11.2024

ARAŞTIRMA MAKALESİ / RESEARCH ARTICLE

When Angels Misbehaved: Justiciability of the United Nations for the Cholera Outbreak in Haiti

Muhammet Celal Kul*

Abstract

The justiciability of international organizations has recently sparked considerable debate and interest. Among these comes the debate whether the United Nations (UN) was acting within its rights when hiding behind its immunity in the Cholera Outbreak in Haiti. Another point of contention is whether immunity is necessary vel non for the independence of the UN from member states, even in extreme cases where human rights are violated. In this paper, the justiciability of the UN is discussed over the concepts of immunity, autonomy, and responsibility of international organizations along with the moral obligations of the UN and the effective use of the alternative systems to compensate victims.

The UN's role resembles that of God, as He bears no responsibility for His actions besides being above law. Similarly, troops or personnel participating in UN operations are expected to work for the good of humanity, such as angels. Nevertheless, the UN angels sometimes commit violations or cause damage, which stimulates further discussion of the matter.

To put these theoretical questions and metaphors into practice, the Cholera Outbreak in Haiti is chosen as it provides a contemporary example that is a developing story paving the way for understanding the immunity, responsibility, and justiciability of the UN. In this article, the immunity of the UN has been analyzed along with that of other international organizations to demonstrate the special position of the UN. Finally, a waiver of immunity was tested with some extreme examples in which violations of human rights and jus cogens norms were involved.

Keywords

Immunity of The United Nations, Responsibility of International Organizations, Autonomy of the UN, Justiciability of the UN, Waiver of Immunity

Melekler Hata Yapınca: Birleşmiş Milletler'in Haiti'deki Kolera Salgını Sebebiyle Yargılanabilirliği

Öz

Birleşmiş Milletler Teşkilatı da dahil olmak üzere, uluslararası örgütlerin yargılanabilirliği önemli miktarda akademik tartışmayı beraberinde getirmiştir. Bunlar arasında, Birleşmiş Milletler'in Haiti'deki kolera salgınındaki tutumu ve karşılaştığı iddialar da mevcuttur. Acaba Birleşmiş Milletler yargı bağışıklığından feragat etmemekle hukuka uygun mu davranmıştır? Bir başka nokta-i nazar ise bağışıklığın Birleşmiş Milletler'in üye devletlerden bağımsız olabilmesini temin ettiği ve gerekli olduğu yönündedir. Buna göre, Birleşmiş Milletler'in yargı bağışıklığı Haiti kolera salgınında ve başka uç örneklerde olduğu gibi daima gereklidir ve feragat edilemez niteliktedir.

Bu çalışmada Birleşmiş Milletler'in yargılanabilirliği, feragat ve işlevsellik açısından bağışıklık, hukuki sorumluluk, bağımsızlık gibi kavramlar üzerinden çok yönlü olarak ele alınmak suretiyle uluslararası hukuk bakımından incelenmiş ve BM'nin alternatif zarar giderim yollarını etkin kullanması ve gerektiği takdirde yargı bağışıklığından feragat etmesi gereği değerlendirilmiştir. Bağışıklık zırhının ardına sığınan ve böylece hukuki sorumluluğu bertaraf eden Birleşmiş Milletler'in bu durumu layüsel ve hukukun üstünde bulunması bakımından Tanrı'ya ve insanlığın yararına çalıştıkları ön kabulünden

* **Corresponding Author:** Muhammet Celal Kul (Asst. Prof. Dr.), Bolu Abant Izzet Baysal University, School of Law, Department of International Law, Bolu, Turkiye. E-mail: muhammetcelal.kul@ibu.edu.tr ORCID: 0000-0002-9294-3086

To cite this article: Kul MC, "When Angels Misbehaved: Justiciability of the United Nations for the Cholera Outbreak in Haiti" (2024). İstanbul Hukuk Mecmuası xx. https://doi.org/10.26650/mecmua.2024.82.4.0002

hareketle Birleşmiş Milletler operasyonlarına katılan kişilerin durumu da meleklere benzetilmiştir. Bu çalışmada Birleşmiş Milletler adına çalışırken ihlalleri gerçekleştirenler Melek metaforuyla karşılandığı için çalışmanın adında bu metafor tercih edilmiştir.

Bu teorik benzetmeler ve sorulara uygulamada işaret edebilmek için bu makalede Birleşmiş Milletler'in bağışıklık, sorumluluk ve yargılanabilirliği konularına benzer durum ve davalar bakımından dair duruşuna ışık tutan ve gelişmekte olan güncel bir mesele olarak Haiti örneği tercih edilmiştir. Makalede Milletlerin bağışıklığı diğer uluslararası örgütlerin bağışıklığı karşılaştırmalı olarak incelenmiş olup Birleşmiş Milletler'in bu konudaki özel konumu ortaya konmaya çalışılmıştır. Ayrıca, bağışıklıktan feragat meselesi insan haklarının ve ius cogens normların ihlal edildiği örneklerle ele alınmıştır.

Anahtar Kelimeler

Birleşmiş Milletlerin Yargı Muafiyeti, Uluslararası Örgütlerin Sorumluluğu, Birleşmiş Milletlerin Bağımsızlığı, Birleşmiş Milletlerin Yargılanabilirliği, Bağışıklıktan Feragat

Extended Summary

The justiciability of international organizations has been a topic of debate, particularly regarding the United Nations' role in the cholera outbreak in Haiti. The UN's role is often compared to that of a god who bears no responsibility for actions beyond being above the law. This article discusses the concepts of immunity, autonomy, and responsibility of international organizations, including the effective use of alternative systems to repair the damage caused. The role of personnel working for the UN is compared to that of angels, who are expected to work for the good of humanity. The Haiti Cholera Outbreak serves as a contemporary example through which to understand the UN's stance towards immunity, responsibility, and justiciability in similar situations or cases. This article analyzes the immunity of the UN and compares it with other international organizations to demonstrate the special position of the UN. Waiver of immunity is tested with extreme examples in which human rights were involved.

When the UN was created, there was no legal framework to hold international organizations responsible for damage they could cause. The law developed later through several court decisions and other legal instruments when the personality of international organizations became clear. The law of international responsibility was shaped to hold states to account as the primary actors of international relations. However, this led to some discrepancies in the responsibility of international organizations. To be more specific, jurisdiction of international courts was already developed to hear the cases between states, not covering international organizations.

According to section 29 of the Convention on the Privileges and Immunities of the United Nations, immunity is waivable (by the UN Secretary General). However, waiver of immunity by the UN is uncommon. What would really happen if the UN did not hide behind its veil of immunity and face liability? Would this lead to more actions against the UN all over the world and render the UN's functions disrupted?

Considering the fact that UN peacekeepers have been involved in sexual abuse of local people in many host states, including Haiti, one can conclude that the UN might have ended up in great trouble if it had no immunity at all.

It can be argued that the UN is a vulnerable organization as evidenced by Congo peacekeeping operations. Therefore, the UN needs a shield of immunity to operate properly. In a similar vein, immunity is necessary to ensure that the troop-contributing nations send their contingents more willingly; otherwise, the UN mission might dysfunction and even end up failure. Yet, the UN has expressed its "deep regret" and "moral responsibility" over the cholera outbreak and the subsequent human loss on a number of occasions and finally recognized moral obligation in a Security Council resolution in 2016. However, this has not reached the level of waiver of immunity, acceptance of legal responsibility, and compensation of any damages caused by the UN angels. By failing to undertake legal responsibility as such, the UN will undermine its own legality and sustainability.

It was also argued that even in extreme circumstances, the UN should preserve its immunity for the sake of ensuring the UN's independence from the member states. This argument provokes the question of to what extent the UN is independent of the member states? Independence, or, in other words, autonomy is a natural consequence of international personality. Today, it is undisputedly agreed that the UN has international legal personality, as first evidenced by *Reparation for Injuries* Advisory Opinion of the International Court of Justice. As such, the UN has the right to operate at the same level as states at the international forum, with similar but not identical rights with those of the states. Thus, the UN is able to enjoy rights and bear responsibilities as a result of its personality. These rights and obligations include the capacity to bring claims before international tribunals, immunity from national jurisdictions as well as the burden to face responsibility for the wrongful acts of its agents.

One can argue for the limits of immunity that the UN should have. It follows that should the UN have immunity even when its agents have violated a norm of jus cogens character? Is it necessary for the UN to stick to its immunity even in such extreme circumstances? The question seems to have been answered positively by the European Court of Human Rights (ECtHR) in *Stichting Mothers,* where the UN has been found to have the shield of immunity even in the face of a breach of a norm of jus cogens character. The ECtHR relied on the argument that since the UN was acting under chapter VII, it would be an interference to deny its immunity. Since its establishment the UN as an international organization, in shaping the world order, was trying to reach the goal of peace and security. However, it was hard for the UN to create a balance between peace and justice, which remained an unsolved dilemma. This decision of the ECtHR reaffirms the dichotomy between peace and justice.

In conclusion, not waiving its immunity and sticking to its God role the UN, might be said to have staged a non-existent God role by not making any visible alterations to the world to hold those who might be responsible to account. To avoid this image of a non-existent God, the UN should recalculate well when and where to resort to a waiver of immunity, considering its moral obligations and values that it was established to protect.

Introduction

This study aims to elucidate the justiciability of the UN as an international organization by primarily relying on Haitian claims against the UN. In that regard, the present author does not seek to prove that the UN should or should not have immunity in a specific case but rather sits on the fence by gathering pros and cons. This paper relies on *the angels' metaphor* to better illustrate concepts and discussions surrounding the justiciability of the UN as an international organization.

In the first place, it may be necessary to shed light on the use of the angels' metaphor. In this paper, the angels' metaphor is used for the UN and its people who work for it. The angels are supposed to be positive or at least cause no harm to people. Similarly, the UN and its personnel are working for the good of humanity, as set forth in the preamble of its Charter. Second, angels are believed to have no "free will" thus only do what is ordered. As a result, they bear no responsibility for their actions and omissions. As such, they cannot be regarded as enemies or targeted in armed conflicts. UN angels are often remembered to wear blue helmets and drive white SUVs in conflict zones where they help to establish peace and security.

The critical question is Do angels misbehave? Or what will happen when they do that? The story of the Devil or Satan represents a cardinal example where an angel misbehaved and even went astray. Likewise, UN personnel may cause unavoidable, inadvertent, or even deliberate harm. Angels are supposed to be held accountable by the Almighty when the World ends. But, what about UN Angels? What will happen when they misbehave or cause harm to people or the environment? Who is to blame and to be held responsible? Where do people file complaints, and how do they sue wrongdoers? Who will hold them accountable and who will bear responsibility for the wrongful actions? These are the questions to be addressed throughout this paper.

In the Angels' Metaphor as described in this article, the UN organs and people in their service represent angels acting for the well-being of humanity. Another role is the role of God in this metaphor, as He is above the law and cannot be held responsible for His deeds. Similarly, the UN acts in the name of humanity to protect the peace and order of the world. Therefore, it is supposed to favor not a State or a group of states but the whole world. By invoking immunity and avoiding legal responsibility, the UN seems to be acting like a God or using God-like powers. In this role, the UN can hold the wrongdoers to account or simply do not care about wrongdoings and damages. Can God waive his position of being God? It follows that the UN, if waived its immunity, can be held legally responsible for the wrongdoings committed under its service. Obviously, waiver of immunity will be the point where the UN loses its role as a God. Waiver of immunity is a major decision to be made by the UN, which emphasizes the *sui generis* character of the privileges of the UN as a God in the international arena.

Lastly, to put theoretical questions into practice, in this article, the Cholera Outbreak in Haiti is chosen as the Haitian example provides a contemporary example, which is a developing story paving the way for understanding the UN stance towards immunity and responsibility and precedents on these matters.

1. Involvement of the UN in Haiti and a Summary of Events

Haiti is a country of dramatic importance as the second nation to gain independence in the America after three centuries of colonization and slavery[1]. Moreover, the country became the first modern state governed by people of African descent[2]. However, the volatile political situation in Haiti continued after the world order was reshaped by the UN Charter, which calls for respect for territorial integrity, non-interference with domestic affairs, and human rights[3] as enshrined in the preamble of the Charter. On September 30, 1991, President J. B. Aristide was toppled by a *coup d'Etat*[4]. Unhappy with the political situation in Haiti, the Clinton Administration sought economic sanctions against the military regime in Haiti. Soon after, on June 16, the UN voted for a petroleum sales ban in Haiti[5]. In the meantime, the United States arranged the signing of the Governors Island Agreement, which set forth the return of Aristide and amnesty for the officials who had participated in the military coup against him. The Governors Island Agreement also promised the establishment of a new Haitian police force and modernization of the Haitian Army. However, there were clear indications that the military administration in Haiti was backing away from the Agreement. The Clinton Administration jogged to guarantee a resolution against the military regime in Haiti[6], and by Resolution 875 of 16 October 1993, the UN Security Council imposed a naval blockade on Haiti to secure the implementation of the Governors Island Agreement. Ultimately, the UN Security Council, for the first time in history, authorized member states to use force against a member State (Haiti) to restore democracy[7]. Intervention was carried out by the "Operation to Uphold Democracy" under the UN mandate which was mainly comprised of US forces. After a successful invasion, Aristide returned to Haiti on October 15, 1994. The Operation

1 See David Malone, *Decision-Making in the UN Security Council: The Case of Haiti 1990-1997* (Clarendon Press 1998) 37.

2 'History of Haiti' (*One World Nations Online*) <http://www.nationsonline.org/oneworld/History/Haiti-history.htm> accessed 9 February 2023.

3 See Mari Katayanagi, *Human Rights Functions of United Nations Peacekeeping Operations* (Martinus Nijhoff Publishers 2002) 259.

4 Cf Michel Chossudovsky, 'US Sponsored Coup d'Etat: The Destabilization of Haiti', (Global Research, 26 February 2013) <http://www.globalresearch.ca/us-sponsored-coup-detat-the-destabilization-of-haiti/5323726> accessed 9 February 2023. See also Sebastian von Einsiedel and David M. Malone (eds), *Haiti in the UN Security Council: From the Cold War to the 21st Century* (Lynne Reinner Publishers 2004) 467.

5 Office of the Historian, 'Intervention in Haiti, 1994–1995'< https://history.state.gov/milestones/1993-2000/haiti > accessed 26 July 2024.

6 US Department of State Office of the Historian (n 5).

7 See UNSC Res 940 (31 July 1994) UN Doc S/RES/940. It should be noted that the UN authorization to use force to restore democracy is not allowed for individual states to use force against other states. See Christine Gray, 'The Use of Force and the International Legal Order' in Malcom D. Evans (ed), *International Law* (Oxford University Press 2010) 620.

to Uphold Democracy was conducted successfully while UNMIH was charged with the duty of establishing law and order to secure elections and a democratic regime between September 1993 and June 1996[8].

Despite the presence of the UN Mission in Haiti, political instability remained unchanged in the country for years[9]. UN mission (UN Stabilization Mission in Haiti, hereinafter MINUSTAH) was there in Haiti when an earthquake occurred in 2010. To help the country recover from the damage caused by the earthquake, the UN chose to enlarge its mission by forming emergency forces. By acting within a limited time, the UN failed to properly examine the health of the emergency forces[10]. It was also submitted that the UN only screened soldiers who appeared to carry active symptoms of a disease. Since 75% of Nepalese soldiers did not appear to carry the symptoms of cholera, the UN did not screen them for the disease[11]. Due to the faulty infrastructure of UN facilities, raw sewage infected a river that Haitians use as drinking water[12]. Thus, a cholera outbreak spread across the country after peacekeepers from Nepal arrived. Reaching up to 10.000[13], death toll was huge. The fact that cholera had not been observed in Haiti for nearly a century before its outbreak is one of the main indicators of the factual responsibility of the UN. Moreover, laboratory analysis showed that the cholera pattern was identical to that observed in Nepal. However, factual responsibility is not enough to establish legal responsibility since the UN does not opt out of its immunity[14].

In 2013, the UN was sued in the United States for its *prima facie* liability for failure to prevent the infection from spreading and causing the death of 10,000 people before the New York Court (*Georges v UN*), where permanent headquarter of the UN is located[15]. Claimants asked for damages amounting to millions of dollars to be compensated by the UN whereupon fears were expressed that if the litigation were successful, it might cause the UN to go bankrupt[16].

---

8 See Haiti United Nations Documents <https://peacekeeping.un.org/en/mission/past/unmihres.html > accessed 7 June 2023 for a set of resolutions held by the UN Security Council on UNMIH.

9 See Erica de Wet*, Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004) 158-162.

10 This was done via the Security Council Resolution allowing humanitarian relief tasks to be carried out in the country. See UNSC Res 1908 (19 January 2010) UN Doc S/RES/1908.

11 See Renaud Piarroux *et al*, 'Understanding the Cholera Epidemic, Haiti' (2011) 17 EID 1161.

12 'UN Accepts Blame but Dodges the Bill in Haiti' (*The New York Times,* 21 March 2017) <https://mobile.nytimes.com/2017/03/21/opinion/un-accepts-blame-but-dodges-the-bill-in-haiti.html?emc=edit_th_20170321&nl=todaysheadlines&nlid=26585494&referer=> accessed 9 February 2023.

13 Nigel D White, *Law of International Organisations* (3rd edn, Manchester University Press 2017) 268.

14 Cf Report of the United Nations in Haiti 2010 Situation: Challenges and Outlook, <http://www.un.org/en/peacekeeping/missions/minustah/documents/un_report_haiti_2010_en.pdf> accessed 9 February 2023.

15 See *Delema Georges v United Nations* (The United States District Court, Sothern District of New York, 09 January 2015).

16 See UN Doc A/71/367 (n 22) 17. See also Rashmee Roshan Lall and Ed Pilkington, 'UN will not compensate Haiti cholera victims, Ban Ki-moon tells president' (*The Guardian*, 21 February 2013) <https://www.theguardian.com/world/2013/feb/21/un-haiti-cholera-victims-rejects-compensation> accessed 26 July 2023.

The UN invoked section 29 of the Convention on the Privileges and Immunities of the United Nations 1946[17] (hereinafter CPIUN), which provides the UN for 'immunity from every form of legal process except in any particular case it has expressly waived its immunity'. In addition, the UN has relied on the status of forces agreement[18] (MINUSTAH SOFA), which stipulates that any dispute or claim of a private law character shall be settled by a standing claims commission to be established[19].

In view of binding legal provisions regarding immunity of the UN, the New York Court rejected the claims and decided that the UN has immunity. The claimants appealed in 2016 whereupon the Court upheld the immunity of UN by stating that the immunity of the UN, which emanates from section 2 of the CPIUN, is not dependent on the condition that it fulfils its obligations under section 29 of the Convention[20].

In August 2016, not waiving its immunity and thus avoiding legal responsibility, the UN Secretary General declared a $400 million new approach to the cholera outbreak in Haiti, which can be construed to go beyond the former approach, allowing the UN to mobilize more resources to compensate the victims and transparently consult with the victims and the Haitian authorities. As part of this approach[21], a revised policy on the matter was put into place that again lacked the acceptance of legal responsibility while accepting its moral responsibility for the cholera outbreak in Haiti. The new approach avoided proper remedy and legal responsibility in a deliberate and subtle manner[22]. Until 2020, the UN only managed to raise 5 % of the amount declared as part of the new approach to Haiti, and likewise, has not paid any compensation to cholera victims[23]. As of April 2017, the UN Security Council decided to withdraw from Haiti after 13 years of operations, leaving behind a small follow-on mission[24]. However, in April 2023, the UN again declared a greater campaign for Haiti worth $720 million as part of humanitarian assistance to a country that the UN called a place "where gangs, hunger, and cholera have plunged nearly half the population into humanitarian need"[25] . By treating the Haiti Cholera Outbreak like a charity and, thus,

[17] The Convention on the Privileges and Immunities of the United Nations (adopted 13 Feb 1946, entered into force17 September 1946) 1 UNTS 15.

[18] For the nature and function of status of forces agreements see Muhammet Celal Kul, *Uluslararası Hukukta Kuvvetler Statüsü Anlaşmaları* (*Status of Forces Agreements in International Law*) (On İki Levha Yayıncılık 2020) generally and for the status of forces regime of the UN see *ibid* 296-320.

[19] See MINUSTAH SOFA (n 40) para 55.

[20] For the full argument and its foreclosure see Simon Chesterman *et al* (n 48) 572. See also Rashkow (n 109) 332-348 for other claims against the UN and how they were responded.

[21] For the 'New Approach to Cholera in Haiti' see UNGA Res 71/161 (16 December 2016) UN Doc A/RES/71/161 and UNGA Res 71/161 B (18 July 2017) UN Doc A/RES/71/161 B.

[22] See UNGA Res 71/367 (26 August 2016) UN Doc A/71/367 and UN Doc A/RES/71/161 (n 21).

[23] Beatrice Lindstrom, 'Seeking overdue reparations for UN-caused devastation in Haiti' (*Harward Law Today*, 24 June 2020) <https://hls.harvard.edu/today/seeking-overdue-reparations-for-u-n-caused-devastation-in-haiti/> accessed July 2023.

[24] Somini Sengupta, 'UN Votes Unanimously to End Peacekeeping Mission in Haiti' (*The New York Times*, 13 April 2017) <https://www.nytimes.com/2017/04/13/world/americas/un-peacekeeping-haiti-cholera.html> accessed 9 February 2023.

[25] 'Haiti: $720 million plan to support millions facing gangs, hunger and cholera' (*UN News*, 14 April 2023) <https://news.un.org/en/story/2023/04/1135647 > accessed 9 February 2023.

leaving the situation to compete with other humanitarian situations[26], the UN might be said to have shown its final stance towards cholera outbreak in Haiti by giving an indirect and late response and by failing to provide alternative dispute settlement mechanisms and avoiding legal responsibility while sticking firm to its immunity. In summary of the policy and principles of the UN towards Haiti, it can be argued that the UN seems to be creating a precedent in which it may never accept legal responsibility regardless of the facts of any situation, even in extreme circumstances regarding human rights violations and in the absence of alternative dispute settlement mechanisms[27].

2. Immunity of the UN

Foundations of the law on immunity is first developed for states, and there has been a shift from absolute immunity of states to restrictive immunity for states, which basically provide immunity for acts performed within the sovereign capacity of states (*acta iure imperii*) while denying immunity for acts of a private law character (*acta iure gestionis*). Until 1950, absolute immunity had remained largely untouched. However, over time, absolute immunity for states began to create unfair situations, especially in the case of the commercial vessels of communist states causing damage to other commercial vessels, thus preventing state-owned commercial vessels from being sued before a local court. The immunity of states evolved and underwent different interpretations by states over time, while the immunity of international organizations remained reliant on treaties where it was developed. The question arises Can the law on state immunity be simply applied to international organizations by analogy? Scholars claim that all international organizations have absolute immunity for their actions before national courts, while others create a *sui generis* category to spare those that were established before the second half of the 20th century. According to the latter view: international organizations that were established before the second half of the 20th century (subject to the intertemporal law doctrine) must benefit from absolute immunity for all kinds of acts regardless of *acta iure imperii* or *acta iure gestionis*. It was claimed that this approach towards international organizations can prevent differing stances and practices among national courts and serve the UN better by not opening the door to hostile campaigns in states[28].

[26] Lindstrom (n 23).

[27] See UN Doc A/71/367 (n 22) 21.

[28] See Michael Barton Akehust, *The Law Governing Employment in International Organizations* (Cambridge University Press 1967) 12.

There are some undeveloped examples that go against absolute immunity for the UN, such as in *Askir v Boutros-Ghali & Others*[29] and in the case of *Brzak v UN*[30], yet these examples did not amount to sufficient state practice to deny the absolute immunity of the UN emanating from concrete legal texts. Although there is a tendency among domestic courts in different states to treat international organizations like states in the matter of immunity, thus denying their immunity for acts of a private law character, many spare the UN[31] for its *sui generis* position as the universal organization acting for the good of the international community. Therefore, the UN has a *sui generis* God-like status compared to states and other international organizations. In summary, under this legal reasoning, the UN is given unprecedented absolute immunity, which is neither available for states nor for other international organizations, as under this approach the UN benefits from absolute immunity and the distinction between acts of private character and of sovereign character does not apply to the UN. However, according to many scholars, the UN Charter provides for functional immunity, not absolute immunity by stipulating that:

> [T]he Organization (the United Nations) shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes[32]. 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 connection with the Organization[33].

This provision has been seen as a natural consequence of the legal personality of the UN, and its formulation is based on necessity[34]. Thus, in the absence of a special provision, peacekeepers will benefit from the status referred to in article 105, paragraph 2 of the UN Charter. This general provision is, however in practice, implemented by the CPIUN or further confirmed and detailed by the specific status of forces agreements agreed between the host states and the UN. The immunities and privileges enshrined in the CPIUN as a rule apply to the peacekeeping operations[35] and are generally acknowledged to regulate absolute immunity for the UN. It says:

---

29 In *Askir v Boutros-Ghali* 933 F Supp 368 (SDNY 1996), a Somalian citizen sued the UN before a US court, for possessing private property unlawfully during UN Operations in Somalia. The Court has made clear that since the exceptions arising from the Foreign Sovereign Immunities Act do not apply, the UN shall continue to have absolute immunity for acts committed during a military activity.

30 *Brzak v United Nations* Docket no 08/2799 (2d Cir 2010), in which the US Court of Appeals for the Second Circuit followed a reasoning similar to that of *Askir v Boutros-Ghali* (n 29), concluded that the UN holds absolute immunity.

31 For example, see *Groupement d'Entreprises Fougerolle et consorts c CERN* (1ère Cour de droit civile du Tribunal fédéral Suisse, 21 décembre 1992) 102 ILR 20 where the Court distinguished between *acta iure imperii* and *acta iure gestionis* of an international organization and thus went on to provide alternative dispute resolution methods. See also Rosa Freedman, 'UN Immunity or Impunity? A Human Rights Based Challenge' (2014) 25 EJIL 239 fn 19; Zahid Ali Akbar, 'Problems with and Solutions for the Absolute Immunity of the UN' in Emel Parlar Dal *et al* (eds), *Global Governance, Security and Actors: UN at 70* (TASAM Yayınları 2016) 69-72.

32 Charter of the United Nations (signed 26 June 1945, entered into force17 24 October 1945) 1 UNTS XVI, article 105(1).

33 *ibid* article 105(2).

34 Bothe M and Dörschel T, 'The UN Peacekeeping Experience' in Dieter Fleck (ed), *The Handbook of the Law of Visiting Forces* (Oxford University Press 2003) 496.

35 See Annex F of the Model Status-of-Forces Agreement for Peacekeeping Operations (n 38) fn 4.

> [T]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity[36].

In summary, in 1945, immunity of the UN was formulated as *functional* with the UN Charter, and after a year, it was regulated to be absolute by the CPIUN.

Considering that some states are not parties[37] to the CPIUN, the UN developed a Model Status of Forces Agreement to be agreed upon by the host state and itself[38]. Specific status of forces agreements agreed between host state(s) and the UN may enlarge or elaborate on the immunities and privileges provided for in the Convention.

Below is the relevant law invoked by the UN to prevent any legal responsibility arising from the cholera outbreak in Haiti: CPIUN, which provides for absolute immunity, and the MINUSTAH SOFA.

The provisions of the CPIUN on the settlement of disputes are as follows[39]:

> [T]he United Nations shall make provisions for appropriate modes of settlement of:
>
> a. disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
>
> b. disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Regarding the settlement of disputes, Article VII, Section 55 of the Agreement Between the United Nations and the Government of Haiti concerning the Status of the United Nations Operation in Haiti[40] (MINUSTAH SOFA) states that:

> [E]xcept as provided in paragraph 57, any dispute or claim of a private-law character, not resulting from the operational necessity of MINUSTAH, to which MINUSTAH or any member thereof is a party and over which the courts of Haiti do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose.

---

36 The Convention on the Privileges and Immunities of the United Nations (n 17) section 2.

37 As of this writing, 162 states are parties to this Convention. See the United Nations Treaty Collection, Status of Treaties, <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-1&chapter=3&clang=_en >accessed 14 May 2023.

38 Model Status-of-Forces Agreement for Peacekeeping Operations (9 October 1990) UN Doc A/45/594.

39 See The Convention on the Privileges and Immunities of the United Nations (n 17) article VIII, section 29.

40 Accord entre l'Organisation des Nations Unies et le Gouvernement haïtien concernant le statut de l'opération des Nations Unies en Haïti (entrée en vigueur 9 juillet 2004) 2271 UNTS 235.

2.1. Haitian Claims of Private Law Character

For disputes and claims of a private law character, section 29 of the Convention on the Privileges and Immunities of the United Nations and section 55 of the MINUSTAH SOFA provide for the immunity of the UN. On the other hand, section 29 of the CPIUN reads that the UN "shall make provisions for appropriate modes of settlement of … disputes arising out of contracts or other disputes of a private law character" and section 55 of MINUSTAH SOFA refers to the establishment of a claims commission to hear and resolve such claims of private law character. Unfortunately, the UN has neither established a claims commission nor waived its immunity to reach a justiciable conclusion in Haiti. It can be argued that section 55 of the MINUSTAH SOFA is equally binding on the parties, which is one of the two fundamental binding legal texts applicable to Haitian claims for the cholera outbreak. Nevertheless, immunity renders the case inadmissible before the discussion of the obligations of the parties arising from legally binding texts or agreements.

3. Responsibility of International Organizations and the *Sui Generis* Position of the UN

"Every wrongful act entails responsibility of the wrongdoer" is a well-established general principle of law found in many domestic legal systems[41]. This rule has also found its place in international custom and treaties. Thus, responsibility for an entity that holds international legal personality can be established on different grounds. The International Law Commission Articles on State Responsibility[42] state that: "Every internationally wrongful act of a state entails the international responsibility of that State". The International Law Commission Draft on the Responsibility of International Organizations adopted the same rule[43]. Once it was determined that an international organization has a separate legal personality, rights and obligations entail including responsibility for its acts and omissions[44].

When the UN was created, there was no legal framework to hold international organizations responsible for damage they could cause[45]. The law developed

[41] For example, *Mecelle-i Ahkam-ı Adliyye* (Seçkin Yayıncılık 2019) codifies the general principles of law applicable to civil and procedural matters in the Ottoman legal system.

[42] International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) <https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> accessed 9 February 2023.

[43] International Law Commission Draft Articles on the Responsibility of International Organizations (2011) <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf> accessed 9 February 2023.

[44] Rosalyn Higgins, Legal Consequences for Member States for the Non-Fulfillment by International Organization of their Obligations towards their Parties (1995) 66(1) AIDI 254.

[45] See Guenter Weissberg, *The International Status of the United Nations* (Oceana Publications 1961) 170 *et seq.*

later through several court decisions[46] and other legal instruments[47] when the personality of international organizations [48] became clear in international law. The law of international responsibility was shaped to hold the states to account for their wrongdoings as the primary actors of international relations. However, this led to some discrepancies in the responsibility of international organizations. To be more specific, jurisdiction of international courts was already formulated to hear the cases between states, not covering international organizations. The International Court of Justice has admitted that international organizations can legally be held responsible according to general international law[49]. Nevertheless, some modifications need to be made to hold international organizations responsible for almost every scenario under the already established international legal order. In line with this, United Nations Law of the Sea Convention's Annex IX was adopted to hold the European Union (European Economic Community at that time) and other international organizations responsible when they violated the Convention[50]. Moreover, the European Union has orchestrated necessary adjustments to become a party to the European Convention on Human Rights. To make this possible, reformulation of article 17 of the 14th Protocol to the European Convention on Human Rights and article 59 of the Convention was needed. Similar amendments were made concerning the World Trade Organization to cover the responsibility of international organizations[51].

The law of international responsibility was further developed with ILC articles on State responsibility in 2001. A decade later, the ILC developed a version of the responsibility of international organizations. Although being not yet binding, the draft articles of the International Law Commission on the responsibility of international organizations (DARIO) restate a well-established rule that has long been accepted for states[52]. The International Law Commission adopted a similar wording to the articles on State responsibility[53]. It reads: "Every internationally wrongful act of an international

---

[46] See for example *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174.

[47] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (adopted 21 March 1986, not yet in force) <http://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf> accessed 9 February 2023.

[48] Simon Chesterman, Ian Johnstone and David M Malone, *Law and Practice of the United Nations: Documents and Commentary* (Oxford University Press 2016) 555.

[49] Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion) [1999] ICJ Rep 62, para 66.

[50] Ulaş Gündüzler, 'United Nations Convention on Law of Sea as A Mixed Treaty of EU: A Headache for Turkey?' (2013) 12 AAÇD 61, 71.

[51] James Crawford and Simon Olleson, 'The Nature and Forms of International Responsibility' in Malcom D Evans (ed), *International Law* (Oxford University Press 2010) 443.

[52] The doctrine to spare states from national jurisdiction is sovereign immunity. For the evolution of the content of the doctrine see Thomas F Holt, 'Sovereign Immunity: A Statutory Approach to a Persistent Problem' (1977) 1 BCICLJ 223, 224 *et seq.*

[53] International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) <https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> accessed 9 February 2023.

organization entails the international responsibility of that organization[54]". However, the UN protects its special position by resisting to adapt to the changing laws on the responsibility of international organizations. By reference to this situation, it can be concluded that the UN is detaching itself from the very well-established general principles of law[55] and general international law. Invocation of the shield of immunity in every case, even when its actions caused thousands of civilian losses (as in the Cholera Outbreak in Haiti), is a clear indicator to infer that the UN has not yet adapted to the recent developments on the law of responsibility[56]. Nevertheless, the UN has not been subjected to the same set of rules applied to other international organizations which emphasizes the God-like *sui generis* position of the Organization. In that, the UN was devised with privileges to apply limitations and exclusions in terms of claims and compensation[57].With these privileges, financial liability of the UN for its wrongful action has been limited to $50,000 [58]. This monetary threshold applies to the tortious liability of the UN, as in the Cholera outbreak in Haiti, without prejudice to the contractual liability of the Organization which is subject to different legal rules[59].

4. Discussion about Waiving the Immunity of the UN

The Belgian Court of Appeals established a pathway for the UN to follow regarding when to disrobe its absolute immunity. The formula generated by *Manderlier c Organisation des Nations Unies et l'État Belge* contained a change in the understanding of the legal texts that created the Organization. Not being a sovereign power the UN,

> …[c]annot invoke rights of sovereignty different from the similar, but partial, rights which the Conventions have expressly and with limited effect given to it. Immunity from jurisdiction is the absolute privilege of whoever enjoys it. It can be withdrawn only by a properly effected change in the law which granted it…[60]

Nevertheless, reform in a constituting document of an international organization may not be achieved too soon; thus, it might be a quicker solution if the UN introduced

[54] See Article 3 of the International Law Commission Draft Articles on the Responsibility of International Organizations (2011) <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf> accessed 9 February 2023.

[55] "Every… wrongful act… entails responsibility…" This principle is also found in many domestic legal systems as a general principle of law. See for example *Mecelle-i Ahkâm-ı Adliyye* (n 41) which codified the general principles of law and was in force in the former legal system of Türkiye.

[56] See Henry G Schermers and Niels M Blokker, *International Institutional Law: Unity within Diversity* (5th revised edn, Martinus Nijhoff 2011) 1006.

[57] See UNGA Res 52/247 (17 July 1998) UN Doc A/RES/52/247.

[58] This excludes the cases of gross negligence and willful misconduct by the UN agents in which case above-mentioned financial limit does not apply. In addition, the UN has the right to recover the amount it has paid for the injured party from the culpable individual or from the relevant troop-contributing State. See Wellens (n 113) 163.

[59] See *ibid* 156.

[60] *Manderlier c Organisation des Nations Unies et l'Etat Belge* (ministère des Affaires étrangères), (Cour d'appel de Bruxelles, 15 septembre 1969) 69 ILR 139.

alternative approaches to its immunity within itself. Waiving immunity for certain situations might be deemed one of the beneficial tools to this end.

According to section 29 of the CPIUN, immunity is waivable by the UN Secretary General. However, resort to waiver of immunity by the UN is uncommon. What would really happen if the UN did not hide behind its veil of immunity and face liability? Would this trigger more actions against the UN all over the world and render the UN's functions disrupted? Considering the fact that UN peacekeepers have been involved in sexual abuse of local people in many host states[61], along with the Cholera outbreak in Haiti, one can conclude that the UN might end up in trouble if it had no immunity at all. Similarly, it was claimed that the UN played an efficient role in destabilization of Former Yugoslavian Republic[62]. Although UN peacekeeping missions are supposed to help states recover from conflict and establish peace and stability[63], sometimes it might be argued quite the opposite, especially when action or inaction of the UN decides the fate of a specific state[64]. These kinds of situations usually bring back the discussion of the rule of law and the reform of the UN Security Council[65]. By the very nature and *raison d'être* of the UN, it has been advocating the rule of law[66], good faith[67] and democratic values[68], however, in many cases, the UN has avoided democratic accountability[69] or legal responsibility going against its own values and not practicing what it has been preaching[70].

In view of the fact that the UN, as an international organization, came about as a result of a concession between international security and justice, it can be concluded that some justice was sacrificed to establish the security of the international system. In this way, some extraordinary powers and immunities were legally, but not necessarily fairly, granted to the UN through its Charter and additional agreements. Thus, the UN

---

61 See for example Human Rights Watch, *Sexual Violence in the Sierra Leone Conflict: We'll Kill You If You Cry* (2003) Vol 15 <https://www.hrw.org/report/2003/01/16/well-kill-you-if-you-cry/sexual-violence-sierra-leone-conflict> accessed 9 February 2023.

62 See Ian Brownlie, *Principles of Public International Law* (Oxford University Press 2003) 575.

63 Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (2008) 18.

64 See for example Berdal Aral, 'The Conundrum about the United Nations Security Council: A Guardian of Peace or Cause for Concern?' (2010) 3 EJEPS 163, 166-167 where the author compares different reactions of the UN Security Council against Indonesia, Iraq, Sudan and Iran by underlying double standards against states which refuse to align with Western hegemonic powers.

65 See Victor Yves Ghebali, 'United Nations Reform Proposals since the End of the Cold War' in Maurice Bertrand and Daniel Warner, *A New Charter for a Worldwide Organisation?* (Kluwer Law International 1997) 79. See also Nadin (n 79) for further discussion on the topic.

66 See, for example, Clemens A Feinäugle, 'The UN Declaration on the Rule of Law and the Application of the Rule of Law to the UN: A Reconstruction from an International Public Authority Perspective' (2016) 7 GJIL 157, 161.

67 See Gillian White, 'The Principle of Good Faith' in Vaughlan Lowe and Colin Warbrick (eds), *The United Nations and the Principles of International Law* (Routledge 1994) 231-250.

68 For example, see Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Martinus Nijhoff 2009) 18, 25.

69 See Marten Zwanenburg, *Accountability of Peace Support Operations* (Martinus Nijhoff Publishers 2005) 241 *et seq.*

70 See Nico Schrijver, 'Beyond Srebrenica and Haiti: Exploring Alternative Remedies against the United Nations' (2013) 10 IOLR 588.

can also be said to have acted on its rights when it invoked immunity in the case of the cholera outbreak in Haiti. The CPIUN regulates the absolute immunity, whereas UN Charter article 105[71] provides for functional immunity[72]. In its general practice, the UN grounds its arguments on the former (absolute immunity) to reject claims against itself[73]. However, the problem remains in the face of the conflict between what is legal and what is fair and justiciable.

It can be argued that the UN is a vulnerable organization as evidenced by Congo peacekeeping operations. Therefore, the UN needs a shield of immunity to operate properly[74]. In a similar vein, immunity is necessary to ensure that the troop-contributing nations send their contingents more willingly; otherwise, the UN mission might dysfunction and may even fail[75]. Unlike peace enforcement operations under Chapter VII of the UN Charter, in peacekeeping operations the UN may have command and control over the contingents or troops sent by troop- contributing nations[76]. Since command and control involve disciplinary powers over troops, many states like the United States, are too cautious to send their troops when the operation is commanded by the UN. There are many factors affecting the military contribution of the nations: The most important is the concern to subject its personnel to another nation or international organization's command where the criminal responsibility of its own troops might be falsely invoked. For the above reasons, it can be concluded that the UN's principal role and ability in responding to a violation of or threat to peace, and thus the security of the world might be undermined when most states act unwillingly in contributing troops to UN peacekeeping operations. In addition, the fact that the UN has no permanent military force therefore relies solely on troop-contributing nations reinforces the conclusion reached above.

5. Moral Obligations of the UN

The UN expressed its "deep regret" and "moral responsibility"[77] over the cholera outbreak and the subsequent human loss on a number of occasions and finally recognized moral obligation by a Security Council resolution in 2016. However, this does not reach to the level of waiving immunity and, thus accepting legal responsibility

[71] The UN '*shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes*'. See the UN Charter (n 32) article 105, para 1.

[72] See Bruno Simma *et al* (eds) *The Charter of the United Nations: A Commentary* (Oxford University Press 2002) vol 2, 1320-1321. See also Leland M Goodrich, Edward Hambro and Anne P. Simons (eds), *Charter of the United Nations: Commentary and Documents* (Colombia University Press 1969) 620-621.

[73] See White (n 13) 270.

[74] See Robert C Johansen, 'Enhancing United Nations Peace-Keeping' in Chadwick F Alger, *The future of the United Nations System: Potential for the Twenty-first Century* (United Nations University Press 1998) 115-117.

[75] For examples of failed UN missions, see Paul F Diehl, *International Peacekeeping* (John Hopkins University Press 1993) 95 *et seq.*

[76] For examples where troop-contributing nations have command and control over their own troops, see United Nations, *The Blue Helmets: A Review of United Nations Peace-keeping* (2nd edn, United Nations Publications 1996) 297 *et seq.*

[77] See UNGA Res 71/367 (n 22).

and compensating for any damage caused by its agents[78]. By failing to undertake legal responsibility as such, the UN will undermine its own legality and sustainability. These can lead to the dilemma of *peace versus justice* or the reformulation of the decision-making system of the UN, which is questionable in terms of fairness[79]. Moreover, in the very worst-case scenario, this may result in the total failure of the UN system because of the loss of faith in the international system created by the UN Charter. It might be important to note that some states have already voiced concerns implicating the unfair structure of the existing decision-making system of the UN Security Council and the dead locks created by it, such as the Syrian internal war[80]. Furthermore, the fact that the UN does not face consequences for its deeds does more harm than good, as evidenced by repeated sexual abuse by UN peacekeepers[81].

Since there is no judicial or administrative body to review the resolutions[82] of the UN Security Council emanating from Chapter VII, for example, Iran has no opportunity to challenge the resolutions of the UN Security Council in relation to sanctions because the UN Security Council resolutions are of political in nature rather than legal. Similarly, there is no court or organ to hold the UN accountable. Likewise, the International Court of Justice has asserted that it has no judicial review power and is neither a place of appeal for the actions of UN agents or other concerned organs[83]. Similarly, International Court of Justice cannot interfere with the political discretion of the Security Council[84].

6. Autonomy and Funding of the UN

It has been argued that even in extreme circumstances, the UN should preserve its immunity for the sake of ensuring the UN's independence from the member states. This argument raises the question of to what extent is the UN independent of the member states?

---

78 See UNGA Res 71/161 (n 21).

79 See Peter Nadin, *UN Security Council Reform* (Routledge 2016) 116 *et seq.*

80 See for example, Beril Dedeoğlu, 'The world is bigger than 5' (*Daily Sabah*, 28 September 2016) https://www.dailysabah.com/columns/beril-dedeoglu/2016/09/28/the-world-is-bigger-than-5 (accessed 9 February 2023). For the nature and classification of armed conflicts in Syria see Muhammet Celal Kul, *Exploring the Anatomy of the Syrian Armed Conflicts* (Adalet Yayınları 2020).

81 Joseph Ax, 'US urges judge to dismiss cholera lawsuit against United Nations', (*The Guardian*, 23 October 2014) https://www.amnesty.org/en/latest/news/2017/03/un-report-on-sexual-abuse-paves-way-for-meaningful-reform/ accessed 9 February 2023.

82 Joined Cases C–402/05 P and C–415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I–6351, paras 97–134. See also Juliane Kokott and Christoph Sobotta, 'The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?' (2012) 23 EJIL 1015, 1024.

83 Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970), (*Namibia Opinion*) 1971 <http://www.icj-cij.org/docket/files/53/5595.pdf> accessed 9 February 2023.

84 See Danesh Sarooshi, *The United Nations and the Development of Collective Security* (Clarendon Press 1999) 47.

Independence, or, in other words, autonomy is a natural consequence of international personality. Today, it is undisputedly agreed that the UN has an international legal personality, as first evidenced by the *Reparation for Injuries* Advisory Opinion of the International Court of Justice[85]. As such, the UN has the right to operate at the same level as states at the international forum, with similar but not identical rights to those of the states. Thus, the UN can enjoy rights and bear responsibilities because of its personality[86]. These rights and obligations must include the capacity to bring claims before international tribunals, immunity from national jurisdictions as well as the burden to take responsibility for the wrongful acts of its agents[87].

The funding of an international organization effects the autonomy of that entity, which is also true for the UN. Thus, funding and budgetary issues are at stake when the UN is asked to compensate for its actions. The UN should calculate the amount of compensation based on its own budget. Therefore, the amount of the compensation claimed might be a factor that can be considered by the UN when invoking immunity.

There was one example where the UN paid compensation for an accident that occurred in the UN buffer zone while the UN mission was fire-watching between Greek and Turkish Cypriots[88]. The UN paid for damages when operating in the UN buffer zone (between Northern Cyprus and Southern Cyprus) in 1966[89]. However, when faced with damages reaching up to tens of billions of dollars in total, the UN plausibly invokes immunity due to the lack of funding. Since the UN budget is reliant on the member states, it apparently has difficulty meeting such claims. This makes clear that the founding fathers of the UN did not consider the viability of the UN system, especially in terms of financial matters and compensation. Likewise, it is also true that at the time of the establishment of the UN, there was no clear law on the responsibility of the international organizations not to mention their international personalities.

The costs of the UN as an organization are not equally distributed, which would otherwise be overwhelmingly burdensome for some small economies. Unsurprisingly, the United States is the biggest financial contributor to the UN[90]. It originates from

85 *Reparation for Injuries Suffered in the Service of the United Nations* (n 46).

86 Jan Klabbers, *An Introduction to International Organizations Law*, (3rd edn, Cambridge University Press 2015) 46; White, (n 13) 114.

87 White (n 13) 117.

88 See Alan M James, 'Unit Veto Dominance in UN Peace-Keeping' in Lawrance S Finkelstein (ed), *Politics in the United Nations System* (Duke University Press 1988) 98-101.

89 The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established in 1964. See United Nations Peacekeeping 'United Nations Peacekeeping Force in Cyprus' <http://www.un.org/en/peacekeeping/missions/unficyp/> accessed 9 February 2023. For more on the practice of the UN in Cyprus see Ekaterina Michos-Ederer, 'Conflicts, Cyprus' in Rüdiger Wolfrum (ed), *United Nations: Law, Policies and Practice* (Martinus Nijhoff Publishers 1995) vol 1, 233-242; Alejandro J Rodriguez Carrion, 'United Nations Force in Cyprus: Uncertain Case of Peace-keeping' in Antonio Cassese (ed), *United Nations Peace-keeping: Legal Essays* (Sijthoff and Noordhoff Publishers 1978) 155.

90 Schermers and Blokker (n 56) 646.

the fact that the United States is one of the founding fathers of the New World Order (i.e.: the legal regime presented by the UN Charter), and it plays a major role through its influence on the UN and the military and political capabilities all over the world, not to mention its role as one of the "*permanent five*" members of the UN Security Council. Similarly, the United States has taken a position to urge the dismissal of Haitian claims before the New York Court[91] because it appears to be the most powerful supporter of the *status quo* created by the UN system.

Funding of the UN has been of cardinal importance to establish real independence of the UN from the member states where concerns regarding financial corruption of the UN have been voiced[92]. Currently, the Lion's share of the UN budget remains dependent on the United States' contribution[93]. The United States has reserved its right to cut off its financial contribution to the UN when one of the UN agencies acts against the interests of the United States and its allies. The Congress threatened to punish the UN by cutting off finance over a UN General Assembly vote against Israel regarding the status of Jerusalem[94]. This vote condemned the US recognition of Jerusalem as the capital of Israel. The United States' Ambassador to the UN at the time Nikki Haley said "When we make generous contributions to the UN, we also have a legitimate expectation that our goodwill is recognized and respected" [95] while Donald Trump threatened to cut foreign aid to countries that voted in favor of the said UN General Assembly Resolution rejecting the US recognition of Jerusalem as Israel's capital[96]. The United States' reaction to the UN General Assembly Resolution shows the vulnerability of the funding system of the UN.

Financial matters should not obstruct the future viability and independence of the UN from the member States. Similarly, the biggest financial contributors to the UN should be prevented from being in a position to expect to affect the UN policy and decisions. Necessary amendments should be made to the UN Charter to secure its funding and make the UN a more accountable and fair institution. Being responsible for the peace and security of the world and as the lawgiver of the international community[97], the UN should respect its own principles and should not count itself above the law.

---

91 See Ax (n 81).

92 See UN Doc A/71/367 (n 22) 17.

93 See Jeffrey Laurenti, 'Financing the United Nations' in Jean A Krasino (ed), *The United Nations: Confronting the Challenges of a Global Society* (Lynne Reinner Publishers 2004) 271.

94 See UNGA Res ES-10/19 (21 December 2017) UN Doc A/RES/ES-10/19 on the Status of Jerusalem.

95 Bryant Harris, 'Congress threatens to cut UN funding for voting against Israel' (*Al Monitor*, 27 March 2017) <https://www.al-monitor.com/originals/2018/03/congress-threatens-cut-un-agencies-israel.html#ixzz7uB1yFXuy> accessed 24 February 2023.

96 Peter Beaumont, 'Trump threatens to cut aid to countries over UN Jerusalem vote' (*The Guardian*, 21 December 2017) <https://www.theguardian.com/us-news/2017/dec/20/donald-trump-threat-cut-aid-un-jerusalem-vote> accessed 24 February 2023.

97 See Christopher C Joyner, 'The United Nations as International Law-Giver' in Christopher C Joyner (ed), *The United Nations and International Law* (Cambridge University Press 1997) 432.

7. Immunity of the UN in Extreme Situations

One can argue for the limits of immunity that the UN should have. Should the UN have immunity even when its agents have violated a norm of jus cogens character[98]? Is it necessary for the UN to stick to its immunity, even in such extreme circumstances, especially when human rights are at stake? These questions seem to have been answered positively by the European Court of Human Rights (hereinafter ECtHR) in *Stichting Mothers of Srebrenica* [99] where the UN has been found to have the shield of immunity even in the face of a breach of a norm of jus cogens character. The ECtHR relied on the argument that since the UN was acting under Chapter VII, it would be an interference to deny the immunity of the UN. This decision by the ECtHR [100] regarding Srebrenica reaffirms the dichotomy between peace and justice, a major problem that emerged in the making of the UN Charter to reach the target of peace and stability. However, the ECtHR has not attempted to solve 'the peace versus justice dilemma' by deciding so.

Another question was raised in *Al Jedda* case regarding the hierarchy of norms and the position of the UN, particularly the Security Council and its resolutions. In *Al Jedda*, the right in question was fair trial, and the case centered around the continued detention of a citizen of the UK, in Iraq, without any trial. In *Al Jedda*, conflicting or competing obligations and hierarchy of norms were also at stake where the Government of the UK contended that its obligation (emanating from article 103 of UN Charter[101]) to comply with a UN Security Council Resolution overrode the obligations flowing from the European Convention on Human Rights (hereinafter ECHR) [102]. The Court refrained from dealing with this hierarchical problem explicitly and decided that the UK's obligations arising from the ECHR were not in conflict with the UN Security Council Resolution[103]. Consequently, the ECtHR concluded that the UK was obliged to apply the Convention rights[104]. Judge Lauterpacht, on the other hand, opined that, in the case of a conflict between article 103 obligations of the UN Charter and a jus cogens norm, compliance with jus cogens norm prevails over obligations arising from article 103[105]. However, this opinion has yet to make any changes in the existing understanding of international law on this issue.

98 See *Stichting Mothers of Srebrenica and Others v The Netherlands* App no 65542/12 (ECtHR, 27 June 2013) paras 154-156. See also White (n 13) 243.

99 *Stichting Mothers of Srebrenica and Others v The Netherlands* (n 98) paras 154-156.

100 Cf *The State of Netherlands v Hasan Nuhanovic* App no 12/03324 (Supreme Court of the Netherlands, 6 September 2013; *Agim Behrami and Bekir Behrami v France* App no 71412/01 (ECtHR, 02 May 2007). See also Anna R Jay, 'The European Convention of Human Rights and the Black Hole of State Responsibility' (2014-2015) 47 NYUJILP 207; Kjetil Mujezinovic Larsen, *Human Rights Treaty obligations of Peacekeepers* (Cambridge University Press 2012) 136.

101 UN Charter (n 32) article 103 states that: '*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail'*.

102 *Al Jedda v UK* App no 27021/08 (ECtHR, 07 July 2011) paras 9-13.

103 *Ibid* para 105.

104 Cf *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* (n 82) paras 307, 308.

105 See Separate Opinion of Judge Lauterpact on the *Application of Genocide Convention* <https://www.icj-cij.org/public/files/case-related/91/091-19930913-ORD-01-05-EN.pdf> accessed 25 September 2023, paras 99-100.

The stance of the ECtHR towards the hierarchy of norms and competing obligations regarding human rights did not change in *Nada v Switzerland*. The Court carefully drafted its decisions to respect the powers and privileges of the UN. In *Nada v Switzerland*, the ECtHR accepted the legality and legitimacy of the obligations created by the UN Security Council resolutions, while adding that Switzerland had to comply with human rights in implementing these resolutions[106]. Thus, the ECtHR reconciled the obligations of states regarding human rights with the obligations emanating from UN Security Council resolutions[107]. Thus, it can be argued that the ECtHR did not attempt to handle the difficult task of leaving aside the special position of the UN even when human rights were violated; to the contrary, it acknowledged, in every case, that there was no conflict between the human rights obligations of states and the UN Security Council resolutions. Similarly, in *Srebrenica*[108], the Court did not disregard the immunity of the UN when its agents violated a norm of jus cogens character to underscore the God-like special position of the UN above all other international organizations.

Conclusion

In view of the situation in Haiti and other examples such as Srebrenica, where the UN refused to take legal responsibility, it may be argued that the UN seems to have cast doubt on its credibility regarding its function, operation, and purposes[109]. What might make the UN non-credible[110] is not the mere fact that it acted wrongfully but the fact that it denied its legal responsibility by invoking immunity in Haiti example. It can be argued that the UN should have waived its immunity, at least where it was deemed to be responsible. In the case of the cholera outbreak in Haiti, the UN accepted moral responsibility[111] for what had happened while denying the results of being responsible by hiding behind a shield of immunity. The UN, by avoiding legal responsibility and thus going against the values that established itself, might lose trust and legitimacy in the eyes of the international community. When the community loses faith in something, they feel that they no longer need it, and this leads to the possibility of dereliction.

In order to avoid the worst scenario, which is the dereliction or dissolution of the Organization, the UN should observe a balance between (a) the aims of the UN,

[106] *Nada v Switzerland* App no 10537/08 (ECtHR, 12 September 2012).

[107] White (n 13) 196. For more on the relationship between human rights obligations and obligations arising under Security Council resolutions, see also Erica de Wet, 'From Kadi to Nada: Judicial Techniques Favouring Human Rights over United Nations Security Council Sanctions' (2013) 12 CJIL787.

[108] See Robert C R Siekmann, 'The Legal Responsibility of Military Personnel' in Charlotte Ku and Harold K Jacobson (eds), *Democratic Accountability and the Use of Force in International Law* (Cambridge University Press 2003) 107.

[109] See Bruce C Rashkow, Immunity of the United Nations: Practice and Challenges (2013) 10 IOLR 332, 348.

[110] See UN Doc A/71/367 (n 22) 21.

[111] Michelle Nichos, 'UN chief: Moral responsibility to help Haiti cholera victims' (*Reuters*, 19 August 2016) <http://www.reuters.com/article/us-haiti-cholera-un-idUSKCN10U1S5> accessed 22 July 2023.

namely the peace and security of the world, and (b) the immunity of the UN, which should not be undersold. However, in an environment in which (a) and (b) are *prima facie* in conflict, one should follow the results of preferring (a) to (b) or vice versa through careful analysis. When (b) is preferred to (a), i.e.: When the immunity of the UN is waived, it follows that the UN may not function properly, and the peace and security of the world might be at stake. On the other hand, when (a) is preferred to (b), in other words, when the immunity of the UN is not waived, the UN loses ground for its legitimacy, thus paving the way for the dissolution or dereliction of the UN. Moreover, this may put the world into anarchy, a situation that the UN has been established to prevent. Therefore, the UN should calculate well to observe the aforementioned balance and waive its immunity when it deems necessary.

In the absence of any judicial remedy, i.e.: when the UN has not waived its immunity, the UN should either establish or effectively make use of alternative means such as independent claims commissions or by the establishment of a guarantee fund[112]. Moreover, it is also submitted that the successive or simultaneous use of legal and non-legal means can help claimants maximize accountability of the international organizations[113]. Otherwise, the UN should decide whether to waive or restrict its immunity, as it deems necessary. Other recommendations might include holding member states (to the UN) responsible, expanding the competence of the UN Administrative Tribunal, an ombudsperson charged with hearing claims against the UN[114]. It can be concluded that invoking immunity and sticking to an approach of "sterile legal formalism[115]" cannot always serve the aims and interests of the UN, the member states and justice.

As can be inferred from the practice of the UN, fearing the continuity of future UN missions, the UN neither holds the troop-contributing nations nor itself legally responsible for the wrongdoings committed under the auspices of the UN. For the wrongdoings that were supposed to be blessings by the UN Angels, the UN is sticking to its God role by not waiving its immunity and stages a non-existent God role by not making any visible alterations to the world to hold those who might be responsible to account. In compliance with its God role, maybe the UN is waiting for the doomsday for justice to be served; otherwise, one might assume that it simply does not care about wrongdoings. To avoid this image of a non-existent God, the UN should recalculate well when to waive its immunity, considering its moral obligations and values that it was established to protect.

[112] See Pierre Klein, *La responsabilité des Organisations Internationales dans les Ordres Juridiques Internes et en Droit des Gens* (Éditions Bruylant 1998) 112.

[113] Karel Wellens, *Remedies Against International Organisations* (Cambridge University Press 2002) 198.

[114] See Nico Schrijver (n 70) 593 *et seq.*

[115] See UN Doc A/71/367 (n 22) 21.

Peer-review: Externally peer-reviewed.
Conflict of Interest: The author has no conflict of interest to declare.
Grant Support: The author declared that this study has received no financial support.

Bibliography

Books, Journal Articles, and Reports

Akbar ZA, 'Problems with and Solutions for the Absolute Immunity of the UN' in Emel Parlar Dal *et al* (eds), *Global Governance, Security and Actors: UN at 70* (TASAM Yayınları 2016).

Akehust MB, *The Law Governing Employment in International Organizations* (Cambridge University Press 1967).

Aral B, 'The Conundrum about the United Nations Security Council: A Guardian of Peace or Cause for Concern?' (2010) 3 EJEPS 163.

Bothe M and Dörschel T, 'The UN Peacekeeping Experience' in Dieter Fleck (ed), *The Handbook of the Law of Visiting Forces* (Oxford University Press 2003).

Brownlie I, *Principles of Public International Law* (Oxford University Press 2003).

Carrion AJR, 'United Nations Force in Cyprus: Uncertain Case of Peace-keeping' in Antonio Cassese (ed), *United Nations Peace-keeping: Legal Essays* (Sijthoff and Noordhoff Publishers 1978).

Chesterman S, Johnstone I and Malone DM, *Law and Practice of the United Nations: Documents and Commentary* (Oxford University Press 2016).

Crawford J and Olleson S, 'The Nature and Forms of International Responsibility' in Malcom D. Evans (ed), *International Law* (Oxford University Press 2010).

De Wet E, 'From Kadi to Nada: Judicial Techniques Favouring Human Rights over United Nations Security Council Sanctions' (2013) 12 CJIL787.

De Wet E, *Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004).

Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (2008).

Diehl PF, *International Peacekeeping* (John Hopkins University Press 1993).

Einsiedel S and Malone DM (eds), *Haiti in the UN Security Council: From the Cold War to the 21st Century* (Lynne Reinner Publishers 2004).

Fassbender B, *The United Nations Charter as the Constitution of the International Community* (Martinus Nijhoff 2009).

Feinäugle CA, 'The UN Declaration on the Rule of Law and the Application of the Rule of Law to the UN: A Reconstruction from an International Public Authority Perspective' (2016) 7 GJIL 157.

Freedman R, 'UN Immunity or Impunity? A Human Rights Based Challenge' (2014) 25 EJIL 239.

Ghebali VY, 'United Nations Reform Proposals since the End of the Cold War' in Maurice Bertrand and Daniel Warner, A New Charter for a Worldwide Organisation? (Kluwer Law International 1997).

Goodrich LM, Hambro E and Simons AP (eds), *Charter of the United Nations: Commentary and Documents* (Colombia University Press 1969).

Gray C, 'The Use of Force and the International Legal Order' in Malcom D Evans (ed) *International Law* (Oxford University Press 2010).

Gündüzler U, 'United Nations Convention on Law of Sea as A Mixed Treaty of EU: A Headache for Turkey?' (2013) 12 AAÇD 61.

Higgins R, Legal Consequences for Member States for the Non-Fulfillment by International Organization of their Obligations towards their Parties (1995) 66(1) AIDI 254.

Holt TF, 'Sovereign Immunity: A Statutory Approach to a Persistent Problem' (1977) 1 BCICLJ 223.

James AM, 'Unit Veto Dominance in UN Peace-Keeping' in Lawrance S. Finkelstein (ed), *Politics in the United Nations System* (Duke University Press 1988).

Jay AR, 'The European Convention of Human Rights and the Black Hole of State Responsibility' (2014-2015) 47 NYUJILP 207.

Johansen RC, 'Enhancing United Nations Peace-Keeping' in Chadwick F Alger, *The future of the United Nations System: Potential for the Twenty-first Century* (United Nations University Press 1998).

Joyner CC, 'The United Nations as International Law-Giver' in Christopher C. Joyner (ed), *The United Nations and International Law* (Cambridge University Press 1997).

Katayanagi M, *Human Rights Functions of United Nations Peacekeeping Operations* (Martinus Nijhoff Publishers 2002).

Klabbers J, *An Introduction to International Organizations Law* (3rd edn, Cambridge University Press 2015).

Klein P, *La responsabilité des Organisations Internationales dans les Ordres Juridiques Internes et en Droit des Gens* (Éditions Bruylant 1998).

Kokott J and Sobotta C, 'The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?' (2012) 23 EJIL 1015.

Kul MC, *Exploring the Anatomy of the Syrian Armed Conflicts* (Adalet Yayınları 2020).

Kul MC, *Uluslararası Hukukta Kuvvetler Statüsü Anlaşmaları* (*Status of Forces Agreements in International Law*) (On Iki Levha Yayıncılık 2020).

Larsen KM, *Human Rights Treaty obligations of Peacekeepers* (Cambridge University Press 2012).

Laurenti J, 'Financing the United Nations' in Jean A Krasino (ed), *The United Nations: Confronting the Challenges of a Global Society* (Lynne Reinner Publishers 2004).

Malone D, *Decision-Making in the UN Security Council: The Case of Haiti 1990-1997* (Clarendon Press 1998).

Mecelle-i Ahkam-ı Adliyye (Seçkin Yayıncılık 2019).

Michos-Ederer E, 'Conflicts, Cyprus' in Rüdiger Wolfrum (ed), *United Nations: Law, Policies and Practice* (Martinus Nijhoff Publishers 1995) vol 1.

Nadin P, *UN Security Council Reform* (Routledge 2016).

Piarroux R *et al*, 'Understanding the Cholera Epidemic, Haiti' (2011) 17 EID 1161.

Rashkow BC, Immunity of the United Nations: Practice and Challenges (2013) 10 IOLR 332.

Sarooshi D, *The United Nations and the Development of Collective Security* (Clarendon Press 1999).

Schrijver N, 'Beyond Srebrenica and Haiti: Exploring Alternative Remedies against the United Nations' (2013) 10 IOLR 588.

Siekmann RCR, 'The Legal Responsibility of Military Personnel' in Charlotte Ku and Harold K. Jacobson (eds), *Democratic Accountability and the Use of Force in International Law* (Cambridge University Press 2003).

Simma B *et al* (eds), *The Charter of the United Nations: A Commentary* (Oxford University Press 2002) vol 2.

United Nations, *The Blue Helmets: A Review of United Nations Peace-keeping* (2nd edn, United Nations Publications 1996).

Weissberg G, *The International Status of the United Nations* (Oceana Publications 1961).

Wellens K, *Remedies Against International Organisations* (Cambridge University Press 2002).

White G, 'The Principle of Good Faith' in Vaughlan Lowe and Colin Warbrick (eds), *The United Nations and the Principles of International Law* (Routledge 1994).

White ND, *Law of International Organisations* (3rd edn, Manchester University Press 2017).

Zwanenburg M, *Accountability of Peace Support Operations* (Martinus Nijhoff Publishers 2005).

Online Resources

Ax J, 'US urges judge to dismiss cholera lawsuit against United Nations' (*The Guardian*, 23 October 2014) <https://www.amnesty.org/en/latest/news/2017/03/un-report-on-sexual-abuse-paves-way-for-meaningful-reform/>accessed 9 February 2023.

Beaumont P, 'Trump threatens to cut aid to countries over UN Jerusalem vote' (*The Guardian*, 21 December 2017) <https://www.theguardian.com/us-news/2017/dec/20/donald-trump-threat-cut-aid-un-jerusalem-vote> accessed 24 February 2023.

Chossudovsky M, 'US Sponsored Coup d'Etat: The Destabilization of Haiti' (*Global Research*, 26 February 2013) <http://www.globalresearch.ca/us-sponsored-coup-detat-the-destabilization-of-haiti/5323726> accessed 9 February 2023.

Dedeoğlu B, 'The world is bigger than 5' (*Daily Sabah*, 28 September 2016) https://www.dailysabah.com/columns/beril-dedeoglu/2016/09/28/the-world-is-bigger-than-5 (accessed 9 February 2023).

Haiti United Nations Documents <https://peacekeeping.un.org/en/mission/past/unmihres.html > accessed 7 June 2023.

'Haiti: $720 million plan to support millions facing gangs, hunger and cholera' (*UN News*, 14 April 2023) <https://news.un.org/en/story/2023/04/1135647 > accessed 9 February 2023.

Harris B, 'Congress threatens to cut UN funding for voting against Israel' (*Al Monitor*, 27 March 2017) <https://www.al-monitor.com/originals/2018/03/congress-threatens-cut-un-agencies-israel.html#ixzz7uB1yFXuy> accessed 24 February 2023.

'History of Haiti' (*One World Nations Online*) <http://www.nationsonline.org/oneworld/History/Haiti-history.htm> accessed 9 February 2023.

Human Rights Watch, Sexual Violence in the Sierra Leone Conflict: We`ll Kill You If You Cry (2003) Vol 15 <https://www.hrw.org/report/2003/01/16/well-kill-you-if-you-cry/sexual-violence-sierra-leone-conflict> accessed 9 February 2023.

Lall RR and Pilkington E, 'UN will not compensate Haiti cholera victims, Ban Ki-moon tells president' (*The Guardian*, 21 February 2013) <https://www.theguardian.com/world/2013/feb/21/un-haiti-cholera-victims-rejects-compensation> accessed 26 July 2023.

Lindstrom B, 'Seeking overdue reparations for UN-caused devastation in Haiti' (*Harward Law Today*, 24 June 2020) <https://hls.harvard.edu/today/seeking-overdue-reparations-for-u-n-caused-devastation-in-haiti/> accessed July 2023.

Nichos M, 'UN chief: Moral responsibility to help Haiti cholera victims' (*Reuters*, 19 August 2016) <http://www.reuters.com/article/us-haiti-cholera-un-idUSKCN10U1S5> accessed 22 July 2023.

Report of the United Nations in Haiti 2010 Situation: Challenges and Outlook, <http://www.un.org/en/peacekeeping/missions/minustah/documents/un_report_haiti_2010_en.pdf> accessed 9 February 2023.

Sengupta S, 'UN Votes Unanimously to End Peacekeeping Mission in Haiti' (*The New York Times*, 13 April 2017) <https://www.nytimes.com/2017/04/13/world/americas/un-peacekeeping-haiti-cholera.html> accessed 9 February 2023.

Separate Opinion of Judge Lauterpact on the Application of Genocide Convention <https://www.icj-cij.org/public/files/case-related/91/091-19930913-ORD-01-05-EN.pdf> accessed 25 September 2023.

The United Nations Treaty Collection, Status of Treaties, <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-1&chapter=3&clang=_en >accessed 14 May 2023.

'UN Accepts Blame but Dodges the Bill in Haiti' (*The New York Times*, 21 March 2017) <https://www.nytimes.com/2017/03/21/opinion/un-accepts-blame-but-dodges-the-bill-in-haiti.html?emc=edit_th_20170321&nl=todaysheadlines&nlid=26585494&referer=> accessed 25 September 2023.

United Nations Peacekeeping, 'United Nations Peacekeeping Force in Cyprus' <http://www.un.org/en/peacekeeping/missions/unficyp/> accessed 9 February 2023.

US Department of State Office of the Historian, 'Intervention in Haiti, 1994–1995' <https://history.state.gov/milestones/1993-2000/haiti> accessed 7 June 2023.

Treaties and other International Law Documents

Accord entre l'Organisation des Nations Unies et le Gouvernement haïtien concernant le statut de l'opération des Nations Unies en Haïti (entrée en vigueur 9 juillet 2004) 2271 UNTS 235.

International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) <https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> accessed 9 February 2023.

International Law Commission Draft Articles on the Responsibility of International Organizations (2011) <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf> accessed 9 February 2023.

Model Status-of-Forces Agreement for Peacekeeping Operations (9 October 1990) UN Doc A/45/594.

The Convention on the Privileges and Immunities of the United Nations (adopted 13 Feb 1946, entered into force17 September 1946) 1 UNTS 15.

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (adopted 21 March 1986, not yet in force) <http://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf> accessed 9 February 2023.

Charter of the United Nations (signed 26 June 1945, entered into force17 24 October 1945) 1 UNTS XVI.

Cases, Decisions, and Resolutions

Agim Behrami and Bekir Behrami v France App no 71412/01 (ECtHR, 02 May 2007).

Al Jedda v UK App no 27021/08 (ECtHR, 07 July 2011).

Askir v Boutros-Ghali 933 F Supp 368 (SDNY 1996).

Brzak v United Nations Docket no 08/2799 (2d Cir 2010).

Delema Georges v United Nations (The United States District Court, Sothern District of New York, 09 January 2015).

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion) [1999] ICJ Rep 62.

Groupement d'Entreprises Fougerolle et consorts c CERN (1ère Cour de droit civile du Tribunal fédéral Suisse, 21 décembre 1992) 102 ILR 20.

Joined Cases C–402/05 P and C–415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I–6351.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970), (*Namibia Opinion*) 1971 <http://www.icj-cij.org/docket/files/53/5595.pdf> accessed 9 February 2023.

Manderlier c Organisation des Nations Unies et l'Etat Belge (ministère des Affaires étrangères), (Cour d'appel de Bruxelles, 15 septembre 1969) 69 ILR 139.

Nada v Switzerland App no 10537/08 (ECtHR, 12 September 2012).

Reparation for Injuries Suffered in the Service of the United Nations (*Advisory Opinion*) [1949] ICJ Rep 174.

Stichting Mothers of Srebrenica and Others v The Netherlands App no 65542/12 (ECtHR, 27 June 2013).

The State of Netherlands v Hasan Nuhanovic App no 12/03324 (Supreme Court of the Netherlands, 6 September 2013).

UNGA Res 52/247 (17 July 1998) UN Doc A/RES/52/247.

UNGA Res 71/161 (16 December 2016) UN Doc A/RES/71/161.

UNGA Res 71/161 B (18 July 2017) UN Doc A/RES/71/161 B.

UNGA Res 71/367 (26 August 2016) UN Doc A/71/367.

UNGA Res ES-10/19 (21 December 2017) UN Doc A/RES/ES-10/19.

UNSC Res 875 (16 October 1993) UN Doc S/RES/875.

UNSC Res 940 (31 July 1994) UN Doc S/RES/940.

UNSC Res 1908 (19 January 2010) UN Doc S/RES/1908.