

TABLE OF CONTENTS

Foreword by His Excellency Sir Robert Yewdall Jennings	V
--	---

Preface	IX
---------	----

List of Abbreviations	XVII
-----------------------	------

PART ONE	
INTRODUCTION	1

1. Purpose and Scope of this Study	3
------------------------------------	---

2. The Work of the International Law Commission on Relations between States and International Organizations (1962-1992)	9
--	---

2.1. The Early Stages	9
-----------------------	---

2.2. The First Part of the topic	12
----------------------------------	----

2.2.1. The work of Special Rapporteur El-Erian	12
--	----

2.2.2. Codification and Progressive Development of International Law: the 1975 Vienna Convention	20
---	----

2.3. The Second Part of the topic	23
-----------------------------------	----

2.3.1. The work of Special Rapporteur El-Erian continued	23
--	----

2.3.2. Díaz González: a New Special Rapporteur – a New Approach?	25
---	----

2.4. Current Status: the 1992 Report of the ILC's Planning Group	30
---	----

PART TWO	
A THREE-STEP FUNCTIONAL NECESSITY ANALYSIS	37

STEP ONE: IDENTIFICATION – Functional Necessity in Legal Status: subject-matter and scope <i>ratione personae</i>	39
--	----

1. Introduction	39
-----------------	----

2. The Concept of Function	42
----------------------------	----

TABLE OF CONTENTS

XIII

	3. The Elements of Legal Status	51
3.1.	Introduction	51
3.2.	A Division into Three Elements	53
3.2.1.	The <i>First</i> Element: Personality	54
3.2.1.1.	Introduction	54
	(i) Legal Personality under International Law	54
	(ii) Legal Personality under Domestic Law	61
3.2.2.	The <i>Second</i> Element: Capacity	63
3.2.2.1.	Introduction	63
	(i) Legal Capacity under International Law	63
	(ii) Legal Capacity under Domestic Law	71
3.2.3.	The <i>Third</i> Element: Competence	75
4.	Draft Articles on Legal Status by the International Law Commission	85

STEP TWO: SELECTION

	1. Introduction	94
2.	<i>Why</i> : Basic Considerations in Granting Organizational Immunities	98
2.1.	Introduction	98
2.2.	(i) Political Independence of the Organization	99
2.3.	(ii) Impartiality of the Organization	103
2.4.	(iii) Equality of the member States	104
2.5.	(iv) Avoidance of Undue National Financial Advantage: Financial Independence	105
2.6.	(v) Precedent and Equality of Status with Other Organizations	106
2.7.	(vi) Prestige and Authority of the Organization	107
2.8.	(vii) The Need for Special Protection in Initial Stages	108

2.9.	Conclusion	109
3.	<i>What</i> : Functional Necessity as a <i>Basis</i> for Selecting Organizational Immunities	109
3.1.	Introduction	109
3.2.	A List of Organizational Immunities	117
4.	<i>Where</i> : Legal Bases of Organizational Immunities	122
4.1.	Introduction	122
4.2.	Treaties	123
4.2.1.	Constituent Instruments of International Organizations	123
4.2.1.1.	Introduction	123
4.2.1.2.	Article 105 UN Charter	125
4.2.1.3.	A Special Case: International Monetary Organizations	127
4.2.1.4.	Constituent instruments <i>not</i> containing any provisions on the subject	129
4.2.2.	General Multilateral Agreements	129
4.2.2.1.	Introduction	129
4.2.2.2.	A Model: the United Nations Family	131
4.2.2.3.	Regional Multilateral Conventions	134
4.2.3.	Bilateral Agreements	134
4.2.3.1.	Introduction	134
4.2.3.2.	Headquarters Agreements	135
4.2.3.3.	Relationship between General Agreements and Headquarters Agreements	138
4.2.3.4.	Conference Agreements	139
4.3.	Domestic Legislation	140
4.4.	Customary International Law	144
4.5.	Conclusion	150

STEP THREE: EXTENT – Scope <i>ratione materiae</i> The Role of Functional Necessity as a Yardstick for Determining the <i>Extent</i> of Organizational Immunities	152
1. Introduction	152
2. Organizational Immunities versus Other Types of Immunities	152
3. Organizational Immunities are neither ‘Absolute’ nor ‘Restrictive’	156
4. ‘Official activity’ versus ‘Commercial activity’	160
4.1. The ‘official activity’ criterion applied: the EMBL Award	168
4.2. Interpretation of ‘official activity’: by whom?	173
5. Conclusion	179
6. Methods of Counterbalancing Organizational Immunities	181
6.1. Introduction	181
6.2. Settlement of Disputes concerning Alleged Abuse of Immunities	185
6.2.1. Introduction	185
6.2.2. Abuse Procedures: a Classification	190
6.3. General Settlement of Disputes Procedures	191
6.3.1. Introduction	191
6.3.2. Waiver of Immunity	192
6.3.3. International Judicial Settlement; Arbitration	194
6.3.3.1. Introduction	194
6.3.3.2. Settlement of Disputes with Staffs	194
6.3.3.3. Settlement of Disputes with Third Persons	196
6.3.3.4. Differences Arising out of the Interpretation of a Certain Instrument	199
6.4. Additional Procedures	202
6.5. Conclusion	205

<i>PART THREE</i>	
THE FUNCTIONAL CONCEPT APPLIED:	
THE INTERNATIONAL TIN COUNCIL	209
1. Introducing: The Tin Crisis	211
2. Step One: The Status of the ITC as an Organization	213
3. Step Two: The Immunities of the ITC	221
4. Step Three: The Extent of the Immunities of the ITC	223
<i>PART FOUR</i>	
GENERAL CONCLUSION	233
SELECTED BIBLIOGRAPHY	241
Books	241
Articles and Periodicals	243
Documents, Official Publications, Cases	249
INDEX OF SUBJECTS	255