Jeffrey Liang (Huefeng) v. People of the Philippines: Rethinking the Immunities of International Organizations

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I. INTRODUCTION/BACKGROUND

Immunity is a well-recognized principle of international law by which certain persons are exempted from the jurisdiction of the courts and authorities within certain countries. This concept of immunity finds its roots not only in civilized society, but in ancient times as well. It originated with members of ancient tribes who, in order to exchange information from tribe to tribe, allowed messengers to bring news (whether good or bad) with nary a fear of being injured or harmed.[1]

It is this need to permit certain tasks be carried out unhindered and unhampered that has triggered countries to grant certain immunities. Among the immunities granted by different countries are state immunity, diplomatic immunity, consular immunity, and international immunity.[2] It is this last type of immunity that has been under the public eye in recent years.

Prior to the dawn of the new millennium, the Supreme Court consistently recognized the immunity of certain international organizations in the Philippines, including the Asian Development Bank of the Philippines. Also, up to such point in time, the Supreme Court has regarded the determinations as to immunity made by the Executive branch, particularly the Department of Foreign Affairs, with great weight. However, on January 28, 2000, the Supreme Court completely changed its paradigm. In *Jeffrey Liang v. ADB*,[3] the Court made pronouncements miles apart from earlier decisions on the same subject matter. This is where the issues evolve.

This discussion intends to thresh out the issues involved in the *Liang* case and assess whether the decision made by the Court is in accordance with law and jurisprudence. It is this writer's proposition that when the Court began to rethink the concept of immunity and the proper party to make a determination of immunity, it denigrated the Executive branch and departed from established principles regarding immunity, which the Court itself enunciated in the past.

1. Fact Sheet on Diplomatic Immunity prepared by the U.S. Department of State, Office of the Legal Adviser , *available at* <http://www.state.gov/www/About_state/diplomatic_immunity> (last visited January 13, 1997) [hereinafter Fact Sheet on Diplomatic Immunity].
2. Another term for immunity granted to international organizations.
3. 323 SCRA 692 (2000) [hereinafter *Liang*].

II. IMMUNITY IN GENERAL

A. General Purpose Behind the Grant of Immunity

"Privileges and immunities are the handmaidens of international relations."[4] The concept behind immunity is in no way novel, as it finds its roots deeply embedded not only in civilized society, but in ancient times as well. Since time immemorial, immunity was found to be indispensable to the well-being, if not survival, of ancient communities. Ancient tribes found the need to be freed from the fear of being injured or harmed in the course of exchanging information from tribe to tribe or in the course of bearing news.[5]

Currently, these privileges and immunities pervade numerous aspects of international relations. They are hinged, generally, on the sovereignty and independence of States and on the need of international subjects to function effectively, uninterrupted by legal processes, and uninfluenced by the States receiving them. As more and more tasks for the progress and development of nations arose, the need for unhindered action increasingly became a top priority.

This broadened relevance of privileges and immunities may be gleaned from a discussion of the kinds of immunities in existence today.

B. Kinds of Immunity

1. State Immunity

i. General Concept and Rationale

All States, regardless of size or wealth, are equal before international law. No State is above any other; neither can any claim jurisdiction over any other. This principle of international law stems, fundamentally, from the sovereignty and independence of each State. As a result, the exercise by a State of its jurisdiction within its own territory is put in abeyance in cases where another State is a party who does not consent to the jurisdiction of the former.[6] Another State, although within the territorial jurisdiction of another, is removed from the grasps of legal processes therein. Translated loosely, jurisdiction may not be assumed by one state over another.[7] Thus, State

4. CAROL MCCORMICK CROSSWELL, PROTECTION OF INTERNATIONAL PERSONNEL ABROAD: LAW OF PRACTICE AFFECTING THE PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS [hereinafter CROSSWELL].
5. Fact Sheet on Diplomatic Immunity, *supra* note 1.
6. Sompong Sucharitkul, *Immunity of States*, in INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 327 (Mohammed Bedjaoui, ed., 1991).
7. JOVITO SALONGA & PEDRO YAP, PUBLIC INTERNATIONAL LAW 98 (1992).

immunity may be expressed in the maxim *par in parem non habet imperium* (an equal has no authority over an equal).[8]

The purpose of state immunity in modern international law, however, does not rest merely to coddle the sensitivities of rulers and heads of State. Rather, it exists in order that governments may function unfettered by lawsuits brought by virtue of its public acts.[9]

This is not to say that there is, in all cases, no instance whereby a State may be subject to the jurisdiction of a co-equal. After all, any right, such as the right to be free from the long arms of another sovereign, is subject to waiver. Hence, if a State consents to be sued or voluntarily submits to the jurisdiction of the courts of another State, it may be subject to the judicial processes therein.[10]

However, in the absence of such consent or waiver, there is no manner whereby a State may be sued in the jurisdiction of another. To hold otherwise would be to reject the time-honored equality between States, and to trample upon their sovereignty and independence.

ii. Extent and Limitations of the Grant

The immunity of States used to be regarded as absolute; thus, a State could rely on its protection for almost any activity. Through the years, however, the activities of States broadened to include more and more commercial activities giving birth to a restrictive or qualified doctrine of sovereign immunity. Under this new doctrine, a State could no longer find shelter under the blanket of immunity for activities of commercial or private nature.[11] Thus, a distinction came to be drawn between *acta jure imperii* (governmental acts), for which sovereign immunity could be invoked, and *acta jure gestionis* (commercial acts), which fell outside the cloak of sovereign immunity.[12]

The Supreme Court of Belgium discussed the distinction between public and commercial or private acts in 1903, in its decision on the *Societé Anonyme des Chemins de Fer Liègeois Luxembourg v. The Netherlands*. The Court said:

> Sovereignty is involved only when political acts are accompanied by the State; .... However, the State is not bound to confine itself to a political role, and can, for the needs of the collectivity, buy, own contract, become creditor or debtor, and engage in commerce .... In the discharge of these functions, the State is *not* acting as public power, but does what private persons do, and as such, is acting in a civil and private capacity. *When after bargaining on a footing of equality with a person or incurring a responsibility in no way connected with the political order, the state is drawn in litigation, the litigation concerns a civil right, within the sole jurisdiction of the courts, by article 92 of the Constitution, and the foreign state as civil person is like any other foreign person amenable to the Belgian courts.* [1903][13]

8. D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 243 (1983).
9. JOSEPH MODESTE SWEENEY, COVEY T. OLIVER & NOYES E. LEECH, THE INTERNATIONAL LEGAL SYSTEM – CASES AND MATERIALS 309 (2d ed. 1981).
10. JORGE COQUIA, INTERNATIONAL LAW 226 (1993).
11. SALONGA & YAP, *supra* note 7, at 98.
12. *Id.*

By 1952, most States had started to apply the restrictive theory. Because of the growing trend towards the new doctrine, Jack B. Tate, then Acting Legal Adviser of the U.S. Department of State, wrote a letter to the U.S. Department of Justice. He said that "the widespread and increasing practice on the part of governments of engaging in commercial activities makes necessary a practice which will enable persons doing business with them to have their rights determined in the courts." Hence, he stated that the U.S. Department of State would thenceforth apply the restrictive theory of sovereign immunity when considering requests for the grant thereof.[14]

Since the Tate Letter, absolute immunity has been on the road to complete dissolution. Most States now follow the restrictive theory of state immunity, by which immunity is granted a foreign State only for acts *jure imperii*.

The Philippines likewise follows the restrictive theory of state immunity. In a case for specific performance or damages against the United States, the Supreme Court categorically held that the United States could not be sued without its consent on the contract since said contract related to the exercise of its sovereign functions. The Court recognized the constant development of the rules of international law, as well as the resulting necessity of distinguishing between sovereign and governmental acts (*jure imperii*) with private, commercial, and proprietary acts (*jure gestionis*). It emphasized:

> The result is that State immunity now extends only to acts *jure imperii*. A State may be said to have descended to the level of an individual (and) can thus be deemed to have tacitly given its consent to be sued only when it enters [in]to business contracts. It does not apply where the contract relates to the exercise of its sovereign functions. In this case, the projects relate to an integral part of the Subic Naval Base devoted to the defense of the United States and the Philippines, undoubtedly, a sovereign function.[15]

This application of the restrictive theory of state immunity, however, created a barrage of problems, especially as regards the arduous task of distinguishing between governmental acts on the one hand, and commercial activities on the other. Nowadays, some States base the distinction on the nature of the act, while others use the purpose of the act.[16]

13. SWEENEY, OLIVER & LEECH, *supra* note 9, at 289 (emphasis supplied).
14. *Id.* at 303-04.
15. U.S. v. Ruiz, 136 SCRA 487(1985).
16. SALONGA & YAP, *supra* note 7, at 100.

Lord Wilberforce in the case of *I Congreso del Partido*[17] laid down a number of guidelines to make the process of distinction more manageable. He said that the court must consider the entire context, determine the relevant acts, and make the determination on that basis.

In the case of *Holland v. Lampen-Wolfe,*[18] the U.K. House of Lords had occasion to rule on whether the acts complained of were covered by sovereign immunity or not. Holland, a U.S. citizen and civilian professor at a military base in England, sued Lampen-Wolfe, a civilian education service officer at the same base. Holland claimed that the memorandum written by Lampen-Wolfe criticizing his job performance was defamatory. Lampen-Wolfe contended that the action would implead the U.S. Hence, the case was set aside. Holland then appealed to the U.K. House of Lords arguing that the defamation action against Mr. Lampen-Wolfe did not "touch the sovereign immunity or dignity" of the U.S. The appeal was rejected.

The House ratiocinated that by virtue of the U.K. State Immunity Act of 1978, common law provisions for sovereign immunity were applicable. It then noted that the test, under common law, was whether the act in question was *jure imperii* or *jure gestionis*. It found that the educational services at the base were "designed...to serve the needs of the U.S. military authorities." The House concluded that "the standard of education which the U.S. afforded its own servicemen and their families" could not be made subject to the jurisdiction of another State. Lord Cooke of Thorndon conceded that such educational services were not "traditionally regarded" as *jure imperii* activity. He said, however, that immunity was applicable because "a state may reasonably claim to have welfare and educational responsibilities towards the members of its armed forces," and such could not be subjected to the interference of another State. Hence, it denominated the memorandum as *acta jure imperii*, thereby dismissing the action for want of jurisdiction.

Some rulings of the Philippine Supreme Court likewise shed some light on the factors that may be employed in distinguishing between acts *jure imperii* and acts *jure gestionis*. In two cases, one involving the dismissal of a barracks boy in Camp Donnell (which was an extension of Clark Air Base) for the commission of a crime (violation of R.A. No. 6424), and the other involving the arrest of certain individuals for theft, the Court upheld the immunity from suit of U.S. military officials stationed in the Philippines.[19] Contracts for barbering services bidded out by the U.S. Air Force Services at Clark Air Base were determined by the Court as not purely governmental.[20] The defense of immunity by the U.S. Air Force was also denied in a suit involving a Filipino cook dismissed

17. *Cited in* HARRIS, *supra* note 8, at 254-5.

18. July 20, 2000.

19. U.S. v. Guinto, 182 SCRA 644 (1990).

20. *Id.*

from service at Camp John Hay. The Court said that the restaurant services at the Camp were in the nature of a business enterprise entered into in a proprietary capacity, especially since it was open to the public.[21]

iii. Immunity of Heads of State

It has been held that a head of State enjoys immunity from suit when found within the jurisdiction of another State.[22] The immunity accorded to a State attaches to the head of its government. A head of State enjoys immunity from suit by virtue of his office in the territorial jurisdiction of another State. Thus, in a leading case, the Sultan of Johore, who was certified by the British Minister as head of State, was held immune from the jurisdiction of English Courts.[23]

There is no problem or uncertainty as regards the operation of criminal law statutes over heads of State. A visiting head of State is regarded as absolutely immune from the criminal law of the territorial State.[24] The uncertainty devolves, however, from the question of the immunity of a head of State from civil law. In this regard, State practice and the case law of the national courts is hardly illuminating. Certain States believe that a head of State enjoys no greater immunity than the State itself, while others consider that he can be afforded no less immunity than that granted to the highest ranking diplomatic agent, or ambassador.[25]

A better approach to the problem is making the grant of immunity dependent upon the status of the head of State's visit. Undoubtedly, a head of State must be accorded sufficient immunity to prevent him from being inconvenienced by court proceedings during a State visit. Therefore, distinctions should be made depending on the nature and purpose of his visit, whether it was by virtue of his office, and whether it was announced or otherwise.[26]

As has already been held, there is no difficulty when it comes to State visits where immunity is absolutely recognized. Hence, when a sovereign is in a foreign country in his capacity as such, he is immune from all legal processes thereat. No action may be set up against him. The most the receiving State can do is expel him, in the event that the safety of the nation requires it.[27]

21. U.S. v. Rodrigo, 182 SCRA 644 (1990).

22. COQUIA, *supra* note 10, at 247.

23. Mighell v. Sultan of Johore, 1 Q.B. 149 (1894). It is important to note, however, that in this case the Sultan engaged entered the jurisdiction of the other State unannounced.

24. N.A. MARYAN GREEN, INTERNATIONAL LAW: LAW OF PEACE 129 (1973).

25. *Id.*

26. *Id.*

27. EDWARD HALL, A TREATISE ON INTERNATIONAL LAW 175 (1895).

When it comes to non-state visits, however, a line must be drawn between announced and unannounced entries. When a visit is officially announced, immunity will cover all official acts. If the permission of the receiving State's authorities is sought, a head of State is accorded with extensive immunity for acts whether official or unofficial.[28] In the second instance, the receiving State, in effect, waives jurisdiction over the head of State amidst the fact that the visit made by the latter is not official.

Incognito visits, however, are an entirely different matter. There is hardly any State practice regarding visits unknown to the authorities of the receiving State. Commentators cite only one existing case shedding light, albeit ever so dimly: *Mighell v. Sultan of Johore*.[29] In this case, the Sultan of Johore was sued for breach of promise to marry. When the suit was filed, the plaintiff had no inkling of the Sultan's real name and status as head of State. Nonetheless, the Sultan was accorded "sovereign immunity" by virtue of such capacity.[30] This ruling, however, must be considered in the light of the fact that the sovereignty of States entitles them to accord greater immunity to visiting heads of State, than what is required by international law. The situation involved is akin to that which results when a head of State asks permission from the receiving State; the latter, in effect, waives jurisdiction over the former. Verily, without such waiver of jurisdiction, a head of State who visits the territory of another unannounced cannot claim immunity accorded to his ambassador.[31]

Apart from the acceptance by the receiving State of the immunity of a head of State, which is considered by this author a waiver of its own jurisdiction, the waiver of immunity of a head of State cannot be made except by the head of State himself.[32]

2. Diplomatic Immunity

i. General Concept and Rationale

Diplomatic immunity is a principle of international law removing designated foreign officials from the jurisdiction of the receiving State.[33] Former U.S. Secretary of State of the United States, Cordell Hull, observed that diplomatic immunity is a creation of international law intended "to allow governments to

28. GREEN, *supra* note 24.

29. 1 Q.B. 149 (1894).

30. GREEN, *supra* note 24, at 129-30.

31. *Id.* at 130.

32. *Id.*

33. Fact Sheet: Diplomatic Immunity, *supra* note 1.

transact official business free from interruption which might flow from molestation of or interference with their representatives."[34]

Since time immemorial, special privileges and immunities have been accorded to diplomatic representatives in order to allow free and untrammeled exercise of their functions, in addition to the recognition of their dignity as representatives of the States whom they represent. To ensure effective functioning, diplomatic representatives are shielded as much as possible from proceedings which could hamper the performance of their duties.

Hence, diplomatic immunity rests on two layers. On one hand, it permits a diplomatic agent unhampered performance of his duties. On the other hand, it protects the person and upholds his dignity.[35]

The modern law on diplomatic immunities has been codified in the Convention on Diplomatic Relations, adopted on April 18, 1962 by a conference in Vienna under the auspices of the United Nations. Most of the provisions of the Convention codified existing customary international law on diplomatic immunities."[36]

ii. Extent and Limitations of the Grant

Generally, diplomatic agents possess immunity from criminal jurisdiction. This means that agents cannot be prosecuted for violations of law.[37] He cannot be arrested, prosecuted, or punished for failure to observe the law; rather, the receiving State should demand his recall, or expel him, in extreme cases. This was enunciated by Clyde Eagleton, in his treatise entitled, *The Responsibility of the State for the Protection of Foreign Officials*. There, he proclaimed that the above-mentioned principle was deemed established in the cases of the *Bishop of Ross*, and *Gyllenborg*, in England, and in the case of *Cellamare* in France. In those cases, ambassadors found guilty of conspiracy were merely sent back to their respective States. This immunity from criminal jurisdiction is deemed absolute, as enshrined in Article 41 in the Vienna Convention.

Immunity from civil jurisdiction is also accepted by State practice. For as long as a diplomatic agent remains attached to his office as such, local courts are without authority to try any civil case against him.[38] Unlike immunity from criminal jurisdiction, however, this immunity is not absolute. The exceptions

34. Letter from Secretary Hull to Senator Pittman, *quoted in* Preuss, *Protection of Foreign Diplomatic and Consular Premises Against Pickeeting*, 31 AM. J. INT'L. L. 705, 708 (1937).

35. SWEENEY, OLIVER & LEECH, *supra* note 9, at 852.

36. SALONGA & YAP, *supra* note 7, at 101-02.

37. Clyde Eagleton, *Responsibility of the State for the Protection of Foreign Officials*, 19 AM. J. INT'L. L. 296 (1927).

38. JOSE M. ARUEGO, PUBLIC INTERNATIONAL LAW 126 (1975).

expressed in Article 31 of the Vienna Convention on Diplomatic Relations[39] are: in real actions, in actions relating to succession where the diplomatic agent is not involved on behalf of the State, and in any action relating to any professional or commercial activity not comprising his official functions.

In addition, diplomatic representatives are entitled to the following privileges and immunities: personal inviolability,[40] inviolability of premises and archives,[41] right of official communication,[42] exemption from subpoena as a witness, and exemption from taxation.[43] Private acts, however, are beyond the realm of the grant of immunity to diplomatic agents or officials.[44]

The Philippines, like other States, has enacted legislation for the protection of diplomatic agents. Republic Act No. 75 punishes any person who assaults, strikes, wounds, imprisons, or in any other manner commits violence against an ambassador or public minister with imprisonment of not more than three years, and a fine, apart from the penalties imposable under the Revised Penal Code, in cases where the country of the diplomatic representative affected has provided for similar protection to duly accredited diplomatic representatives of the Philippines.[45] This law demonstrates the high regard the State accords the office of a diplomatic agent. The counterpart of this protection takes form in the immunity granted to such officials. While R.A. No. 75 protects their physical well-being, the immunity granted protects them from interruptions and hindrances in the performance of their functions.

The privileges and immunities enjoyed by diplomatic agents commences from the moment they enter the territory of the receiving State and take up their post. The same is true from the moment the Department Foreign Affairs or such other ministry as may be agreed upon, is notified of their designation, in cases wherein the diplomatic agent is already in its territory. The enjoyment of these immunities is co-terminus with the office that the diplomatic agent fills. Once his functions cease, so do the immunities. After all, the immunity arises from his function as a dignitary. The only leeway accorded him at this point is the continuance of the immunities for a reasonable period of time, in order to depart from the receiving State.[46]

39. UKTS 19 (1965) cmnd. 2565; 500 UNTS 95, *reprinted in* 55 AM. J. INT'L. L. 1064 (1961).
40. *Id.* arts. 29 & 31.
41. *Id.* arts. 22 & 30.
42. *Id.* art. 27.
43. SALONGA & YAP, *supra* note 7, at 105-10.
44. SWEENEY, OLIVER & LEECH, *supra* note 9, at 867-68.
45. SALONGA & YAP, *supra* note 7, at 106.
46. *Id.* at 112.

When it comes to official acts, however, these immunities survive the cessation of his diplomatic character and functions. He cannot be made liable for acts he carried out in his official capacity even when he no longer possesses such capacity. The reason is obvious: the immunity attaches not to his person but to the sending State itself.[47] For this same reason, waiver of diplomatic immunity cannot be made by the diplomatic agent himself.[48] It is the sending State that should make the waiver or the chief of mission, as the case may be.[49]

3. Consular Immunity

i. General Concept and Rationale

Until the start of the 20TH Century, the practice of States was to withhold most of the privileges and immunities from consuls. This changed only when the careers of diplomats and consuls merged. Thereafter, States realized that consuls needed special protection as well.[50] This degree of protection is accorded to a consul because of his public character.[51]

ii. Extent and Limitations of the Grant

In the past, consuls were concerned only with commercial matters. The Vienna Convention on Consular Relations of 1963, however, enumerates the functions of consular officials. These functions are: the promotion of commerce, supervision of shipping, protection of nationals, and representational functions.

Consuls, unless expressly vested with diplomatic character in addition to their ordinary functions, are not entitled to diplomatic privileges and immunities. They are thus subject to the laws and regulations of the receiving State.[52] However, this does not mean that no form of protection is accorded to them. On the contrary they are entitled to privileges and immunities, but only when deemed essential to the performance of their functions.[53]

This grant of immunity, however, is far from absolute, unlike in the case of diplomatic agents. Corollary to this, a consul enjoys merely a relative immunity

47. *Id.*
48. GREEN, *supra* note 24, at 138.
49. SALONGA & YAP, *supra* note 7, at 113. If it concerns the privileges and immunities of the chief of mission, the government of the sending State should make the waiver; in other cases, the waiver may be made either by the government of the sending State or by the chief of mission.
50. Nascimento e Silva, at 445.
51. Eagleton, *supra* note 37, at 308.
52. *Ex parte* Biaz, 135 U.S. 403.
53. SALONGA & YAP, *supra* note 7, at 118.

from the criminal jurisdiction of the receiving State.[54] Hence, if the crime charged against him is grave, he may be arrested and detained during the pendency of the proceedings; otherwise, a final judicial decision is necessary to deprive him of freedom.[55] However, when the act is executed in the performance of his consular functions, Article 43 of the Vienna Convention on Consular Relations provides that the consul shall enjoy immunity from the civil, criminal, and administrative jurisdiction of the receiving State.[56] The reason behind this, as in the case of diplomatic agents, is the need to allow consuls to function uninterrupted by court litigation.

With respect to the civil and administrative jurisdiction of the receiving State, however, consuls are amenable for their private, but not for their official acts.[57] Hence, like diplomatic agents, consuls may not be prosecuted for acts, undertaken in their official capacity. A consul is immune only from suits, which stem from transactions undertaken in his official capacity.[58] This character of immunity granted to consular officials is now enshrined in the Vienna Convention on Consular Relations, signed in 1963. Article 43 of this Convention provides: "[c]onsular officers and employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect to acts performed in the exercise of consular functions."

In the Philippines, the Supreme Court had the occasion to characterize the immunity of a consular officer. In the case of *Schneckenburger v. Moran,*[59] the Supreme Court enunciated the principle that a consul is not entitled to the same privileges and immunities of an ambassador, and that he is subject to the jurisdiction of the receiving State. This is true if the functions concerned are unofficial.

III. International Immunity and the Immunity of International Officials

A. General Concept and Rationale

International organizations are agencies conferred with international status, which is analogous to a corporate personality designed by agreement to carry

54. Nascimento e Silva, *supra* note 50, at 446.

55. Vienna Convention on Consular Relations, art. 41, 19 UKTS cmnd 2565 (1965), 500 U.N.T.S. 95, *reprinted in* 55 Am. J. Int'l. L. 1064 (1961).

56. Salonga & Yap, *supra* note 7, at 118-19.

57. Green, *supra* note 24, at 146-7.

58. 244 F. 2d 958 (1957), *cited in* Henkin, Pugh, Schacter & Smit, International Law: Cases and Materials 943 (2d ed. 1987).

59. 63 Phil. 249 (1936).

out specific functions.[60] Traditionally, international organizations are established by treaty. Such treaties take the form of host agreements or headquarters agreements. These agreements comprise the law of international immunities.

There are different international organizations, differing in size and importance, as well as purpose. The United Nations is naturally the largest and most important. This does not necessarily mean, however, that smaller international organizations are not as notable, for there is no necessary correlation between size and importance.[61] Today, international organizations permeate a broader arena; they are involved in a host of activities ranging from the development of thoroughfares to the stabilization of the economy of nations. The area where international organizations dip their pens into spans the globe.

With the increase in the number of international organizations worldwide, an escalating concern for privileges and immunities accorded to them has arisen. From 1919 to 1939, the immunity granted to international organizations was patterned after the privileges and immunities granted to diplomats. Because of this, there arose the problem of extending diplomatic immunity to non-diplomats.[62]

Subsequently, the standard transformed into the necessity of immunity for the fulfillment of the purposes of the international organizations concerned. As more international organizations emerged in different fields of national and international development, the recognition of their importance intensified. Coupled with this, international organizations became increasingly concerned with the need for protection to enable them to carry out their functions. Nowadays, the grant of privileges and immunities to an international organization is deeply rooted in the need to secure the legal and practical independence needed to fulfill its task.[63] Thus, immunity became a requirement for these organizations to be able to perform specific functions uninterrupted, much in the same way that heads of State, diplomats, and consuls are protected. However, unlike sovereigns, the immunities of international organizations are granted without concern for the status and dignity of individuals.

60. Crosswell, *supra* note 4.

61. Green, *supra* note 24, at 54.

62. Josef L. Kunz, *Privileges and Immunities of International Organizations*, 41 Am J. Int'l. L. 836, 839 (1947).

63. Clarence Wilfred Jenks, International Immunities 3, 4, 18, & 19 (1961).

B. Extent and Limitations of the Grant, in General

When one speaks of international immunities, a distinction must be made between the immunities that attach to the international organization itself, and those that are carried by the officials and employees of such organization.[64]

As a general rule, international organizations are subject to the local law of the receiving State. Exemption therefrom must be expressed in the constituent treaty, since there is no rule of customary international law that such organizations are immune from local law.[65] Furthermore, international organizations may be equipped with various specific immunities: jurisdictional immunity, inviolability of premises, protection of property and assets, the inviolability of archives, currency immunities and facilities, fiscal immunities, and facilities in respect of communications. The actual extent and nature of the immunity of an international organization will, however, depend upon the organization involved, its purpose, its needs, and the agreement between the organization and the host State.[66]

C. Immunities of Officials of International Organizations

When exercising his functions, an international official is not subject to the sovereignty and public law of the receiving State. However, outside the functions of his office, he has no legal right to any form of immunity over and above that extended to him by favor.[67] The reason behind this is that the privileges and immunities that attach to him are not personal but organizational. They attach not because of the individual, but because of the organization of which he is an official or employee. Provisions for the immunity of an international official from jurisdiction for official acts are generally found in the constitution of the international organization. The salient characteristic, however, is that it is limited to official acts.[68]

Hence, the immunities accorded to him are functional rather than diplomatic.[69] He is granted immunity to secure the independence needed to allow him to fulfill his duties unhampered.[70] It can be said, therefore, that for as long as an official or employee of an international organization is acting in his capacity as such, he is immune from suit.

64. Ralph Zacklin, *Diplomatic Relations : Status, Privileges and Immunities*, *in* A HANDBOOK ON INTERNATIONAL ORGANIZATIONS 183 (Matinus Nijhoff, ed., 1988).

65. GREEN, *supra* note 24, at 57.

66. MALCOLM N. SHAW, INTERNATIONAL LAW 618 (1986).

67. GREEN, *supra* note 24, at 75.

68. Zacklin, *supra* note 64, at 193.

69. *Id.* at 190.

70. SALONGA & YAP, *supra* note 7, at 114.

In assessing the immunity of a particular official, it is of utmost importance to understand the nature of his work and the role he plays in the organization, in relation to the objectives of the organization itself. Only in this manner will one be able to draw a conclusion as to whether an official or employee should be covered by immunity. After all, such immunity is, in the words of Jenks, "a *sine qua non* of the effectiveness of the immunities of the organizations themselves."[71] Hence, the grant of immunities to such officials is not just a fringe benefit that comes with the office he occupies. Rather, such immunity must be taken as being at the very heart of the survival of the organization itself.

As regards actions by employees arising out of the employee-employer relationship, the case of *Susan Mendaro v. World Bank*[72] proves enlightening. In this case, Susan Mendaro was a researcher working in the employ of the World Bank. She filed sexual harassment charges against other employees of the same bank. The U.S. Supreme Court declared that the most important protection granted to officials and employees of international organizations is the immunity from employee actions, which arise from the employment relationship. The purpose of this immunity, according to the Supreme Court, stems from the need to shield such organizations and their officers from "unilateral control by a member-state" over the activities of the international organization within such member-state's territory. This is a clear recognition of the reality that the purposes of an international organization would be defeated if its officers were not free to perform their duties. Ultimately, to deny immunity is tantamount to denying the international organization every opportunity to achieve its objectives.

D. Similarities and Differences with Other Kinds of Immunity

The basis for the immunities of international organizations differs from that of State immunity. Like States, international organizations require immunities to function without interference. Unlike States, however, they do not have in their favor a long history of respect for authority.[73] Hence, a head of State enjoys immunities not only to function uninterruptedly, but also because of his status and dignity as such official. In contrast, officials of international organizations enjoy immunities only to effectively carry out their functions. They do not possess the same status and dignity a head of State possesses; hence, their immunity cannot be based on that.

As regards diplomatic immunities, certain differences and similarities also hold true. Diplomatic immunity is a right of the sending State under customary international law, whereas, those granted to international officials are found in

71. JENKS, *supra* note 63.

72. 717 F. 2d 610.

73. HENKIN, PUGH, SCHACTER & SMIT, *supra* note 58, at 969.

treaty or conventional law. There is nothing in customary international law which requires a State to grant an international official any jurisdictional immunity.[74]

Another difference lies in the relationship between an ambassador and the receiving State, compared to the relationship between the international official and the receiving State. The former is impelled by reciprocity; in the latter, reciprocity does not arise, by virtue of the fact that such would be contradictory to the basic principle of equality of States, because an international organization does not work in the interest of only one State. Rather, an international organization works in the interest of numerous States.[75]

Further difference can be found in the functions of diplomats and international officials. On one hand, a diplomat carries out his office in the interest of the nation he represents. On the other hand, an international official does not represent the interest of any State. Rather, his functions are carried out "in the international interest,"[76] or of several States at a time.

E. Immunity of International Organizations in the Philippines

As mentioned earlier, the immunities granted to an international organization will depend on the extent granted in its constitution, or in the treaty, or host agreement entered into by the organization concerned and the receiving State. Hence, the immunities granted to a particular international organization may differ from that of another. Thus, in order to understand and acquire a working concept of the extent of such immunities as recognized in the Philippines, there is a need to discuss court decisions touching on the matter. This is the heart of the discussion in the succeeding chapters.

IV. Survey of Supreme Court Decisions on the Recognition of the Grant of Immunity and the Principles Applied Thereto

To understand the developments as regards the recognition of the grant of immunity to international organizations, decisions rendered by the Supreme Court on the matter prove enlightening. The cases concerned are presented here chronologically, in order that a trend, if any, may be established. An analysis of these decisions and their repercussions on the subject at hand is presented in the succeeding chapters.

74. John Kerry King, The Privileges and Immunities of the Personnel of International Organizations 25, 26 (1949).

75. D.W. Bowett, The Law of International Institutions 345 (4th ed., 1982).

76. King, *supra* note 74, at 256.

A. World Health Organization, et. al. v. Benjamin Aquino, et al. (1972)[77]

1. Facts of the Case

Dr. Leonce Verstuyft was an official of the World Health Organization (WHO). In 1972, the Constabulary Offshore Action Center (COSAC) sought a warrant for the search and seizure of ten crates, entering the country as unaccompanied baggage. Said crates were consigned to Dr. Vertuyft and stored at the Eternit Corporation warehouse. The COSAC claimed that the contents of those crates were "large quantities of highly dutiable goods" beyond Dr. Verstuyft's official needs. When a warrant was issued, Dr. Verstuyft sought to have it quashed. He claimed that he was entitled to immunity, being an officer of an international organization duly recognized by the Executive branch of the government.

It was not disputed in the record that Dr. Verstuyft was assigned by the WHO to the Regional Office in Manila as Acting Assistant Director of Health Services, and that he was entitled to immunity as such official, as stated in the Host Agreement entered into between the WHO and the Philippine government in July 22, 1952. In fact, the Department of Foreign Affairs advised the judge that Dr. Verstuyft could not be the subject of summons by virtue of the Host Agreement, and that to proceed with the case would be to violate obligations under international law.

The issuing judge refused the quashal, choosing to rely, instead, on the COSAC's allegations of likely abuse of diplomatic immunity by Dr. Verstuyft. As a result, Dr. Verstuyft filed an original action for *certiorari* and prohibition to set aside the judge's refusal to quash the warrant.

Under said Agreement, the immunity accorded to Dr. Verstuyft included, among others, personal inviolability and inviolability of his properties.

2. Decision of the Supreme Court

In a decision penned by the late Justice Claudio Teehankee, the Honorable Court ruled in favor of the nullification of the search warrant. It categorically stated that Dr. Verstuyft should be accorded diplomatic immunity (a term used by the Court to mean international immunity). First, the Supreme Court stated that the Executive department, through the Department of Foreign Affairs, had expressly recognized that Dr. Verstuyft was entitled to immunity. Second, the Court stated that the lower court should have relied on the Solicitor-General's assurance that Dr. Verstuyft did not abuse his immunity, to wit:

> [T]he Philippine Government is bound by the procedure laid down in Article VII of the Convention on the Privileges and Immunities of the Specialized Agencies of the

77. 48 SCRA 242 (1972).

> United Nations for consultations between the Host State and the United Nations agency concerned to determine, in the first instance the fact of occurrence of the abuse alleged, and if so, to ensure that no repetition occurs and for other recourses. This is a treaty voluntarily assumed by the Philippine Government and as such, has the force and effect of law.[78]

The Supreme Court said that the lower court should have acceded to the quashal and deferred to the "exclusive competence" of the Executive department, and forwarded his preliminary findings to the Department of Foreign Affairs for action in accordance with the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations.

In sum, the Supreme Court held that the lower court judge acted with grave abuse of discretion in not ordering the quashal of the search warrant.

B. International Catholic Migration Commission v. Calleja (1990)[79]

1. Facts of the Case

This case is a consolidation of two actions: the International Catholic Migration Commission (ICMC) case and the International Rice Research Institute (IRRI) case.

In the *ICMC* case, after the Vietnam War, refugees from South Vietnam confronted the international community. In response, an agreement was reached between the Philippine Government and the United Nations High Commissioner for Refugees, whereby a Refugee Center would be established in Bataan, to serve as a processing center for Indo-Chinese refugees who would later be resettled to other countries. ICMC was accredited by the Philippine Government to operate said refugee processing center.

The ICMC is an international organization involved in humanitarian and voluntary work, incorporated in the United States at the request of the Holy See, and duly registered with the Economic and Social Council (ECOSOC) of the United Nations.

In 1986, the Trade Unions of the Philippines and Allied Services (TUPAS) filed a petition for certification election for ICMC's rank and file employees before a Med-Arbiter in the then Ministry of Labor and Employment. The ICMC objected to the petition, stating that it enjoys immunity, being an international organization registered with the United Nations.

The Med-Arbiter ruled in favor of ICMC, from which TUPAS appealed. In the meantime, ICMC requested recognition as a specialized agency from the Department of Foreign Affairs. When the request was still pending, then

78. *Id.* at 249.

79. 190 SCRA 130 (1990).

Bureau of Labor Relations Director Pura Calleja reversed the Med-Arbiter's decision and ordered the certification election.

ICMC filed a petition for *certiorari*, claiming that its grant of immunity extended to immunity from application of Philippine labor laws. To support its contention, the ICMC cited the Memorandum of Agreement it entered into with the Philippine Government which granted it the status of a specialized agency; the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations, which was concurred in by the Philippine Senate in 1949; and Article II, § 2 of the Constitution, which declares that the Philippines adopts the generally accepted principles of international law as part of the law of the land.

The Department of Foreign Affairs upheld the immunity of the ICMC, stating that the order for certification election was violative of said organization's immunity. On the other hand, Director Calleja cited the constitutional policy on Labor.[80] Furthermore, she claimed that a certification election was merely an investigation of a non-adversarial character, that it was not a suit against ICMC, and that it was not concerned with the organization itself, but merely its workers.

In the *IRRI* case,[81] the Philippine government executed a Memorandum of Understanding with the Ford and Rockefeller Foundations to establish IRRI. The organization intended to be "autonomous, philanthropic, tax-free, non-profit, [and] non-stock. Its main objective involved research for improvement in the quality and quantity of rice, in order to attain nutritive and economic advantage for Asians."[82]

The Kapisanan ng Manggagawa at TAC sa IRRI (Kapisanan), a union, filed a petition for direct certification among the employees of IRRI. The latter opposed the petition claiming that it was an international organization, and that by virtue of P.D. No. 1620, it possessed immunity from all civil, criminal, and administrative proceedings under Philippine laws.

As in the *ICMC* case, the Med-Arbiter dismissed the petition for direct certification; but as it did in the *ICMC* case, the Bureau of Labor Relations Director upheld the petition. Director Calleja cited Article 243 of the Labor Code and Section 3 of Article XIII of the Constitution, arguing that "the immunities and privileges granted to IRRI do not include exemption from coverage of our Labor Laws."[83] Upon reversal of the Director's decision by the

80. PHIL. CONST., art. II, § 18 & art. III, § 8.

81. Kapisanan ng Mangagawa at TAC sa IRRI — Organized Labor Association in Line Industries and Agriculture v. Secretary of Labor and Employment and International Rice and Research Institute (G.R. No. 89331, September 28, 2000) [hereinafter *IRRI* case].

82. *ICMC*, 190 SCRA at 135.

83. *Id.* at 136

Secretary of Labor, Kapisanan filed a Petition for *Certiorari* with the Supreme Court. Kapisanan claimed that P.D. No. 1620 was unconstitutional, insofar as it granted IRRI the immunities of an international organization, for it deprived its workers of their constitutional right to form unions.

In each of the two cases, the Department of Foreign Affairs issued a statement recognizing the immunity of ICMC, on one hand, and IRRI, on the other.

2. The Decision of the Supreme Court

Justice Ameurfina Melencio-Herrera upheld the grant of immunity to ICMC and IRRI. She ratiocinated that it was clear from the Memorandum of Agreement between ICMC and the Philippine Government, as well as Sections 4 and 5 of the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations,[84] that the ICMC was to enjoy the status of a specialized agency.

In the case of IRRI, the Court stated that Article 3 of P.D. No. 1620 explicitly granted immunity to IRRI. Hence, the BLR should have relied on the categorical recognition by the Executive branch (through the Department of Foreign Affairs) of the immunity of ICMC and IRRI.

The Court noted that international organizations may take the form of specialized agencies which function in particular fields, and that their proliferation ushered in the concept of international immunities. It found that under contemporary international law, international organizations are endowed with a degree of legal personality; the *raison d' être* of such immunities being the assurance of unhampered performance of their functions.

With these concepts as its springboard, the Court declared that the grant of immunity accorded to ICMC and IRRI was necessary to achieve their objectives.

Furthermore, the Court pronounced that these immunities did not deprive laborers of their constitutional rights since modes of settling disputes were included in the respective Agreements of ICMC and IRRI, and in the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations.

84. Article III, Section 4. The specialized agencies, their 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 they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 5. The premises of the specialized agencies shall be inviolable. The property and assets of the specialized agencies, wherever located and by whomsoever held shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action.

Finally, the Court found that the immunity granted to ICMC and IRRI existed with respect to every kind of legal process, unless a waiver was made. On this basis, it declared as erroneous the contention that a certification election was beyond the scope of the immunity granted. The Court reasoned that such a proceeding could ignite a spark that would set off a chain of events that could lead to legal proceedings; hence, the petition came under the scope of the immunity in this regard.

C. Southeast Asian Fisheries Development Center-Aquaculture Department v. National Labor Relations Commission (1992)[85]

1. Facts of the case

The Southeast Asian Fisheries Development Center-Aquaculture Department (SEAFDEC-AQD) is part of an international organization, the Southeast Asian Fisheries Development Center (SEAFDEC), organized by different Asian countries, including the Philippines. Its aim is to engage in the development and improvement of the fisheries in the Southeast Asian Region.

In 1975, Juvenal Lazaga was employed, on a probationary basis, as a Research Associate by SEAFDEC-AQD. Several years later he was promoted and received a corresponding raise in his salary and allowance. He was promoted once more and received the same salary and benefits.

Thereafter, the Chief of SEAFDEC-AQD notified Lazaga about the department's financial difficulties which constrained them to remove him from office, with the payment of separation benefits.

SEAFDEC-AQD, however, failed to pay the separation benefits it promised. Because of this, Lazaga filed a complaint for non-payment of separation benefits plus moral damages against SEAFDEC-AQD. In their reply, SEAFDEC-AQD asserted that the National Labor Relations Commission (NLRC) had no jurisdiction over the case since it was an international organization. The Labor Arbiter granted Lazaga's petition, ordering SEAFDEC-AQD to pay him separation benefits.

2. The Decision of the Supreme Court

The Court ruled that SEAFDEC-AQD was beyond the jurisdiction of the NLRC, being an international organization created by various Asian countries with the purpose of contributing to the promotion of fisheries development in Southeast Asia.

Since the SEAFDEC-AQD was an international organization, it enjoyed functional independence and freedom from control of the State in whose

85. 206 SCRA 283 (1992).

territory its office was located. Further, the Court put emphasis on the opinion of the then Minister of Justice that an international organization enjoyed immunity from local jurisdiction, from legal writs and processes of courts in the country.

D. Southeast Asian Fisheries Development Center v. Acosta (1993)[86]

1. Facts of the Case

This case was a consolidation of two labor cases filed with the NLRC by the employees of SEAFDEC against the latter for wrongful termination from employment.

SEAFDEC objected to the action and claimed that the NLRC was without jurisdiction to try the case since SEAFDEC was an international organization composed of various Southeast Asian countries.

SEAFDEC's motion to dismiss was denied. Hence, it filed an original petition for *certiorari* and prohibition, reiterating its immunity as an international organization.

The respondents-employees contended that SEAFDEC was not immune from suit or, even if it were, it waived such by raising the issue belatedly.

The Supreme Court ruled against SEAFDEC, reasoning that no grave abuse of discretion was evident from the evidence presented. Hence, a motion for reconsideration was filed by SEAFDEC.

2. The Decision of the Supreme Court

The Supreme Court reiterated its decision in the first *Southeast Asian Fisheries Development Center* case.

The Court found it beyond question that SEAFDEC was entitled to immunity as an international organization, as held in an earlier case involving the same organization, to wit:

> Petitioner Southeast Asian Fisheries Development Center-Aquaculture Department (SEAFDEC-AQD) is an international agency *beyond the jurisdiction of public respondent NLRC.*
>
> It was established by the Governments of Burma, Kingdom of Cambodia, Republic of Indonesia, Japan, Kingdom of Laos, Malaysia, Republic of the Philippines, Republic of Singapore, Kingdom of Thailand, and Republic of Vietnam.
>
> Being an intergovernmental organization, SEAFDEC ... *enjoys functional independence and freedom from control of the state in whose territory its office is located.*[87]

86. 226 SCRA 49 (1993).

Furthermore, the Supreme Court stated that Section 2 of P.D. No. 292 provided for the autonomous character of the SEAFDEC. The Court dismissed the contention on waiver of immunity and held that the issue of jurisdiction was timely raised.

E. Eldepio Lasco, et al. v. United Nations Revolving Fund (1995)[88]

1. Facts of the Case

The petitioners were employees of the United Nations Revolving Fund for Natural Resources Exploration (UNRFNRE), a subsidiary organ of the United Nations. The UNRFNRE was involved in exploration work in Dinagat Island, a joint project with the Philippine Government.

The petitioners were terminated from their positions. Thus, they instituted a case for illegal dismissal in the NLRC. The UNRFNRE moved to dismiss the complaint, claiming that it enjoyed immunity pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. In support of its contention, it submitted a letter from the Department of Foreign Affairs which stated that the UNRFNRE was immune from suit.

The Labor Arbiter granted the motion to dismiss, which dismissal was affirmed by the NLRC on appeal. Hence, petitioners filed a petition for *certiorari*, arguing that the acts of mining exploration and exploitation were beyond the official functions of an international organization entitled to immunity. In the alternative, they claimed that, assuming *arguendo* that UNRFNRE is entitled to immunity, it waived such when it engaged in said activities and entered into a contract of employment with petitioners.

2. The Decision of the Supreme Court

The Court explained that by express constitutional mandate, "the Philippines adopts the generally accepted principles of international law as part of the law of the land."[89] Further, it emphasized that the Philippines is a member of the United Nations and a party to the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations. By virtue of these international agreements, the government adheres to the doctrine of immunity granted to the United Nations and its specialized agencies.

Moreover, the Court, citing *Jenks,* explained that the grant of immunities to international organizations and its officials is made to secure for them legal

87. SEAFDEC v. National Labor Relations Commission, 206 SCRA 283 (1992) (emphasis supplied).

88. 241 SCRA 681 (1995).

89. PHIL. CONST., art. II, § 2.

and practical independence in fulfilling their duties.[90] It stated that immunity assures unhampered performance of duties, thereby shielding international organizations from cumbersome litigation, and enabling them to carry out their functions.

It also reiterated its ruling in the *International Catholic Migration Commission* case, that the grant of immunity does not violate the constitutional mandate to protect the rights of workers and promote their welfare; in fact, immunity clauses are now "standard in the charters of international organizations to guarantee the smooth discharge of their functions."[91]

The Court also touched on the relevance of the UNRFNRE, *i.e.*, to improve the quality of life of the people through the exploration project.

Guided by these principles and concerns, the Court ruled that the letter from the Department of Foreign Affairs, recognizing the immunity of UNRFNRE, was enough to establish such immunity. By virtue of this, courts cannot assume jurisdiction over UNRFNRE unless it waives its immunity.

F. *Erneste Callado v. International Rice Research Institute (1995)*[92]

1. Facts of the Case

Ernesto Callado, an employee of the International Rice Research Institute (IRRI), was the subject of a preliminary investigation conducted by IRRI's Human Resource Development Department. The findings from said investigation led to the filing of the following charges against Callado: driving an official vehicle under the influence of liquor while on official duty, and serious misconduct and gross habitual neglect of his duties. Callado was given the opportunity to answer the charges and to set up defenses. Subsequently, however, Callado was served with a notice of termination.

In response, Callado filed an action for illegal dismissal and illegal suspension. IRRI contested the complaint, saying that it enjoyed immunity from suit by virtue of Article 3 of P.D. No. 1620, granting to IRRI the status, privileges, and immunities of an international organization.

The Labor Arbiter admitted IRRI's defense of immunity but nevertheless ruled against it, citing an Order issued by IRRI to the effect that "in all cases of termination, respondent IRRI waives its immunity."[93] The NLRC reversed the Labor Arbiter's decision, and found that IRRI did not waive its immunity.

90. JENKS, *supra* note 63, at 17.

91. *Lasco*, 241 SCRA at 687.

92. 244 SCRA 210 (1995).

93. *Id.* at 212, *citing* the Letter to Honorable Numeriano Villena, dated Jan. 2, 1991, at 92.

Callado contended that IRRI's immunity as an international organization could not be invoked as it was waived because of IRRI's earlier Order.

2. The Decision of the Supreme Court

The Supreme Court held that IRRI's immunity from suit was undisputed. Pursuant to Article 3 of P.D. No. 1620, the institute enjoyed immunity from "any penal, civil and administrative proceedings (sic), except insofar as that immunity has been expressly waived by the Director-General of the Institute or his authorized representatives."[94]

The Court stated that the reason behind the grant of this immunity was to ensure the unhampered performance of functions by the international organizations concerned. The Court reiterated its ruling in *ICMC v. Calleja*,[95] to wit:

> The grant of immunity from local jurisdiction to ... IRRI is clearly necessitated by [its] international character and respective purpos[e]. The objective is to avoid the danger of partiality and interference by the host country in their internal workings. The exercise of the Department of Labor in th[is] instanc[e] would defeat the very purpose of immunity, which is to shield the affairs of international organizations, in accordance with international practice, from political pressure or control by the host country to the prejudice of member States of the organization and to ensure the unhampered performance of their functions.[96]

The Court said that since the immunity of IRRI was clear, an express waiver by the Director-General of IRRI was necessary to abandon this immunity, which according to the Court, did not occur in this case. The internal memorandum issued by IRRI could not suffice as the waiver required here.

G. *Jose G. Ebro III v. National Labor Relations Commission, et. al. (1996)*[97]

1. Facts of the Case

Jose Ebro was hired by the International Catholic Migration Commission (ICMC) to teach at the refugee processing center in Bataan. The contract of employment stated that Ebro was hired as a probationary employee for 6 months, after the completion of which he would become a regular employee with the corresponding salary adjustments. The contract also enumerated the causes for termination and the period of notice to be given two months prior to termination.

94. *Id.* at 213.

95. 190 SCRA 130 (1990).

96. *Id.* at 214-15, *citing* World Health Organization v. Aquino, 48 SCRA 242 (1972).

97. 261 SCRA 399 (1996).

After the sixth month, Ebro was told that he was being terminated for failure to meet the standards set. Consequently, Ebro filed a complaint for illegal dismissal and unfair labor practice against ICMC and concerned officials. The complaint was filed in 1986. In its answer, the ICMC stated that Ebro failed to qualify for regular employment. After the presentation of evidence, ICMC invoked its immunity on the basis of the Memorandum of Agreement entered into by it and the Philippine government in 1988.

The Labor Arbiter ordered reinstatement, claiming that ICMC's immunity, granted subsequent to the filing of the complaint, could not be given retroactive effect. On appeal, the NLRC dismissed the case on the ground that under the Memorandum of Agreement between the Philippine government and ICMC, the latter was immune from suit.

2. The Decision of the Supreme Court

The Supreme Court held that ICMC was immune from suit.

The Court ratiocinated that the immunity of the ICMC under the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations provided for immunity from "every form of legal process;"[98] hence, even if the complaint were filed before the grant, ICMC could claim immunity "to prevent enforcement of an adverse judgment,"[99] since the scope of immunity under the Convention was from every legal process.

Finally, the Court declared ICMC's claim of waiver as unmeritorious since petitioners invoked immunity too late. The Court noted that the Convention on the Privileges and Immunities of Specialized Agencies required an express waiver. Falling short of this, there was no waiver that would subject the ICMC to legal process.

H. Department of Foreign Affairs v. National Labor Relations Commission (1996)[100]

1. Facts of the Case

Jose Magnayi was employed by the Asian Development Bank (ADB). In 1993, he filed a complaint for alleged illegal dismissal and for violation of the labor-only contracting law. Summons were then served on ADB and on the Department of Foreign Affairs. In response, ADB claimed that it was covered

98. Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, Section 4, Article III. UKTS 19 (1965) cmnd. 2565; 500 UNTS 95, 55 AM. J. INT'L. L. 1064 (1961).

99. *Ebro*, 261 SCRA at 406.

100. 262 SCRA 39 (1996).

by immunity from legal process pursuant to Article 50(1) and Article 55 of the Agreement Establishing the Asian Development Bank (ADB Charter), in relation to Sections 5 and 44 of the Agreement between the Bank and the Philippine Government Regarding the Bank's Headquarters (Headquarters Agreement).

The Labor Arbiter found that the ADB had waived its immunity from suit, and thereby ruled in favor of Magnayi. No appeal from the Labor Arbiter's decision was made. Instead, the Department of Foreign Affairs (DFA) sought the vacation of the judgment, claiming it to be void. Since the NLRC acted unfavorably, the DFA then filed a petition for *certiorari*.

2. The Decision of the Supreme Court

The Court upheld the immunity of the ADB pursuant to the ADB Charter and the Headquarters Agreement. Article 50 (1) of the ADB Charter provided that the bank shall be immune from "every form of legal process,"[101] save for certain specified exceptions (the case at bar not being among them). Article 55 of the same Charter provided that the officers of ADB were immune from legal process with respect to acts performed in their official capacity unless ADB waived its immunity. While Section 44 of the Headquarters Agreement further provided that higher officials shall enjoy immunity from "legal process of every kind in respect of words spoken or written and all acts done by them in their official capacity."[102]

The Court noted that the above stipulations in the Charter and Headquarters Agreement sufficed to establish the immunity of ADB from legal process of every form. The Court went on to say that the Charter and Headquarters Agreement, granting immunity to ADB, were "treaty covenants and commitments voluntarily assumed by the Philippine government which must be respected."[103]

V. THE *Liang* DECISION[104] ON THE RECOGNITION OF THE GRANT OF IMMUNITY

A. Facts of the Case

Jeffrey Liang (Huefeng) was an economist working with the Asian Development Bank (ADB). Sometime in 1994, he allegedly uttered defamatory

101. *Department of Foreign Affairs*, 262 SCRA at 42, *citing* Article 50(1) of the Agreement Establishing the Asian Development Bank.

102. *Id.* at 48, *citing* Section 44 of the Agreement between the Bank and the Government of the Philippines Regarding the Bank's Headquarters.

103. *Id.* at 44.

104. Jeffrey Liang (Huefeng) v. People of the Philippines, 323 SCRA 692 (2000).

words against fellow employee Joyce Cabal, imputing theft against her. Cabal charged Liang with two counts of grave oral defamation before the Metropolitan Trial Court (MeTC) of Mandaluyong City. Liang was arrested, but later released on bail and placed under the custody of the Security Officer of the ADB. Subsequently, the MeTC judge received an "office protocol" from the Department of Foreign Affairs stating that Liang enjoyed immunity from legal process by virtue of Section 45 of the Headquarters Agreement between ADB and the Philippine Government. Consequently, the MeTC judge dismissed the two criminal cases against Liang.

Cabal then filed a petition for *certiorari* with the Regional Trial Court (RTC) of Pasig City. After the RTC reinstated the warrant of arrest, Liang sought redress from the Supreme Court claiming that he enjoyed immunity as stated in the Headquarters Agreement.

B. Decision and Principles Applied by the Supreme Court

The Supreme Court dismissed Liang's petition. The Court stated that Section 45 of the Headquarters Agreement provides that officers and staff of the Bank shall enjoy immunity from legal process only with respect to acts performed in their official capacity. The Court interpreted this provision to mean that the immunity mentioned in the Headquarters Agreement was not absolute; that it was subject to the exception that immunity did not cover acts done outside of the officer's official capacity.

On this note, the Court, citing *M. H. Wylie v. Rarang*,[105] decreed that "slandering a person could not possibly be covered by the immunity agreement because our laws [did] not allow the commission of a crime, such as defamation, in the name of official duty."[106] Furthermore, it stated that the imputation of theft could not be considered as part of one's official functions.

In addition, the Court pointed out the well-settled principle that "a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice or in bad faith or beyond the scope of his authority."[107]

Finally, the Supreme Court ratiocinated that, pursuant to the Vienna Convention on Diplomatic Relations, a diplomatic agent "*assuming petitioner is such*," enjoys immunity from criminal jurisdiction except in case of an action relating to any professional or commercial activity exercised by the agent

105. 209 SCRA 357 (1992).

106. *Liang*, 323 SCRA at 696, *citing M. H. Wylie*, 209 SCRA at 368 (1992).

107. *Id. citing* Shauf v. CA, 191 SCRA 713 (1990); Animos v. Philippine Veterans Affairs Office, 174 SCRA 214 (1989); and Dumlao v. Court of Appeals, 114 SCRA 247 (1982).

outside his official functions.[108] The Court then peremptorily reiterated that the commission of a crime was not part of one's official duty.

VI. ANALYSIS

A. Laying the Foundation

There is no single body of law in the Philippines, which lays out the immunities of international organizations. Apart from the Vienna Conventions regarding the privileges and immunities of the United Nations, its officials, as well as its specialized agencies, there is no other law which deals with the immunities of international organizations, apart from the host agreements and constituent treaties of the organizations themselves. As stated previously, the extent of such privileges and immunities is dependent on the international organization concerned, and the agreement or treaty entered into between the organization and the Philippine government.

This does not mean, however, that there is no means by which a conceptualization of international immunities in the Philippines may be made. Rather, the concept of international immunities or immunities of international organizations has evolved over the years with judicial pronouncements made by the Supreme Court.

Pronouncements made by the Supreme Court in cases concerning the immunities of international organizations and their officials have been the subject of scrutiny, but are still considered as part of the law of the land. Hence, recourse to them may be made for the clarification of issues involving the immunities of international organizations.

Upon analysis, the aforementioned cases share one common denominator - in each of these cases, the Supreme Court upheld the immunity of the international organization concerned, or that of the international official involved. Regardless of whether the case involved a labor dispute regarding a certification election, a labor dispute concerning the termination of employment of an employee, or a criminal case for nonpayment of customs taxes and duties, the Supreme Court's ruling was the same: the international organization or international official concerned was immune from the jurisdiction of our courts.

The reasons advanced by the Supreme Court in all these cases were very similar. First, the Court emphasized that international organizations played an important role in the development of the nation (and others as well), doing humanitarian work, research, studies, and other projects designed to improve the country as a whole. Whether the organizations were created by States or

108. *Id. citing* Minucher v. Court of Appeals, 214 SCRA 242 (1992) (emphasis supplied).

under the auspices of the United Nations, the Court categorically stated that the entities and individuals concerned were international organizations and officials of international organizations, respectively.

Second, the grant of immunity was premised upon the agreements and treaties entered into with the Philippine Government, and that in such agreements, the organizations were vested with certain immunities. The Court also noted that these entities were accorded immunities by virtue of generally accepted principles of international law, which the Philippines adopts as part of the law of the land.

Third, the Court made clear that the immunities granted to international organizations are needed to secure, for such organizations, legal and practical independence to fulfill their duties. As a matter of fact, the Court was consistent in holding that these immunities were necessary to enable these organizations to go about their work unhampered.

Thus, considering the important contributions of such international organizations, correlated with their need to be protected from interruptions and undue influence, they should be entitled to immunity and be placed outside the jurisdiction of the courts.

These were the findings of the Court in all of the cases reviewed. There was, as yet, no case where the Court made an opposite ruling. Not once did the Court refrain from recognizing the immunity of an international organization - at least not until January 28, 2000.

When the Court made its ruling on the case of *Jeffrey Liang (Huefeng) v. People of the Philippines*,[109] it departed from all the aforementioned principles it laid down in its previous decisions. In *Liang*, the Court refused to recognize the immunity of Liang as an official of an international organization, namely, the Asian Development Bank (ADB).

The Court, in that instance, did not claim that ADB was not an international organization. Neither did it state that Liang did not belong to the class of international officials enjoying immunity from jurisdiction. Rather, the Court based its decision on the extent of the immunity granted to the officers and staff of the ADB, as provided in the Host Agreement.

B. Immunity under the ADB Headquarters Agreement

At issue was the proper application of the immunity provision of the Headquarters agreement, which has the force and effect of law in this country.[110] The pertinent provision stated:

109. 323 SCRA 692 (2000).

110. Santos III v. Northwest Orient Airlines, 219 SCRA 256.

> Section 45. Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:
>
> (a) immunity from legal process with respect to acts performed by them in their *official capacity* except when the Bank waives immunity....

In construing this provision, the Court merely noted that under the Host Agreement, officers and staff of the ADB enjoy immunity from legal processes with respect to acts performed in their official capacity. However, the Court did not bother to explain what activities were considered under the umbrella of "official capacity" (or who may make such determination, for that matter). Neither did it attempt to characterize what acts were not comprised therein. Rather, the Court ruled that slander could not be covered by the grant of immunity because a crime cannot be committed "in the name of official duty."[111]

It is this statement which creates difficulty. What did the Court mean when it stated that a crime, whenever committed, cannot be covered by immunity because "the commission of a crime" was not allowed "in the name of official duty?"[112] Further, what constitutes official capacity? The Court seemed to imply that for as long as the acts committed by an official of an international organization constituted a crime, they could never be considered as part of one's official duty, regardless of whether or not they were committed while performing official functions.

M.H. Wylie v. Rarang,[113] cited by the Supreme Court in justifying its decision on *Liang*, involved the imputation of theft against American Naval officers while they were performing their official functions. The Court ruled that such imputation could not be considered as part of their official duty, since the then U.S. Bases Treaty did not cover immunity of its officers from crimes and torts; public officials (referring to public officials of the Philippines) could not claim immunity for acts. Nothing in this case ever mentions the extent of immunity from criminal jurisdiction of an official *of an international organization.* Yet, *M.H. Wylie* did not involve a criminal action, but merely a civil action for damages. Hence, a further question arises: is the reliance of the Court on the *M.H. Wylie* case applicable to all actions, regardless of the extent of immunity granted to an international organization?

C. The Problem Regarding Official Capacity

In *Jeffrey Liang (Huefeng) v. People of the Philippines*, the determination as to whether Liang was acting in an official capacity when the slanderous words

111. *Liang*, 323 SCRA at 696.

112. *Id. citing* M.H. Wylie v. Rarang, 209 SCRA 357 (1992).

113. 209 SCRA 357 (1992).

were uttered goes into the heart of the matter; yet, the Supreme Court chose not to explore this issue. Surely, absent any absolute definition as to what constituted official capacity, the Court could have proposed a working definition on which it could have based its strained conclusion. For instance, an act may be said to have been performed in one's official capacity when done on the occasion of, or in connection with, the duties of such person in the organization. As emphasized in *Liang*, the determination of what constitutes official capacity and the position and duties of the individual concerned, in relation to the international organization as a whole, goes to the very essence of immunity. In this manner, a more definite determination of whether the acts involved were done in an official capacity can be made.

In the *Liang* case, the Supreme Court should have considered Liang's position in ADB, as well as the context in which the allegedly slanderous words were spoken. This the Supreme Court failed to do.

Liang was a senior economist in ADB. At the time when the acts complained of were committed, Cabal was Liang's Secretary. On the day of the event, which led to this case, both Liang and Cabal were inside the premises of ADB going about their daily work routines. It can thus be stated that they were then working in their official capacity. It was at this time that Liang suspected that Cabal was claiming overtime pay in excess of the amount equivalent to the hours she actually worked. As Cabal's immediate superior, surely it may be considered his right, as well as his obligation, to call Cabal's attention to the misdeeds the latter may have been performing in the workplace. When he called Cabal's attention to the alleged misdeed, he acted in ADB's interest, and not his own. Since he was acting as a senior economist and as a superior to Cabal, in the interest of the organization, it may be opined that he was acting in an official capacity. It is difficult to understand why the Supreme Court chose not to consider this.

D. The Court's Reliance on the Vienna Convention on Diplomatic Relations

A further argument of the Court was that, pursuant to the Vienna Convention on Diplomatic Relations, a diplomatic agent, *assuming petitioner is such,* did not enjoy immunity from criminal jurisdiction for an action relating to official functions. It unconditionally emphasized that the commission of a crime was not official duty. Surely the Court was aware that ADB, as an international organization, was entitled to international immunities, and that its officials were vested with immunity because of their role in such international organization. It appears that the resort to the Vienna Convention on Diplomatic Relations to rule on the immunity of an official of an international organization was misplaced.

E. Departure from Previous Pronouncements

It is evident that the Court did deign to review its previous decisions involving the immunities of international organizations and their officials. No attempt was made to explain why reliance on any of these cases was not propounded. Neither did the Court propose any sufficient reason to prevent the application of its previous rulings, nor why it was necessary to depart from them.

It should be emphasized that the immunity of the ADB and its officials was upheld in the past by the Court, in *Department of Foreign Affairs v. NLRC.*[114] The Court in this case made the pronouncement that the stipulations in the Charter and Headquarters Agreement of the ADB sufficed to establish the organization's (and it's officials') immunity from legal process of every form; that such Charter and Headquarters Agreement were covenants and commitments which must be respected. Yet, in the *Liang* case, which involved the same international organization, the Court completely discarded its earlier pronouncements, without any explanation why.

Indeed, it cannot be denied that the Supreme Court, the most powerful tribunal in the country, may reverse itself and depart from its earlier pronouncements. However, it is equally certain that should the Court take a new stand, it should, just as equally, take pains to discuss and defend its reasons. It is, after all, reasonable to expect that the Court would explain why its previous rulings were no longer applicable, or why a new ruling had to be made. This, the Supreme Court, whether inadvertently or deliberately, failed to do.

If the Court was rethinking its position on the immunity of international organizations and their officials, why were the traces of its thought processes not made available in its decision on the matter? Put bluntly, the Court should have provided sufficient explanations for its ruling in the *Liang* case, rather than disregard *stare decisis* simply because it was entitled to do so.

Finally, and perhaps most importantly, had the Supreme Court wished to add to, modify, or reverse its previous pronouncements, it should have complied with the mandate of the Constitution by deciding *en banc,* and not in division, in compliance with the constitutional mandate. Article VIII, § 4(3) of the 1987 Constitution states:

> Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberation on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc; Provided that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.* (emphasis supplied)

114. 262 SCRA 39 (1996).

F. Law of the Case, an Added Factor

It is likewise important to consider the background in the development *Jeffrey Liang (Huefeng) v. People of the Philippines*. The complainant in this case, Cabal, instituted against Liang, Civil Case No. 64584, which later on reached the Supreme Court in G.R. No. 119614. The lower court dismissed Cabal's civil action on the finding that Liang was entitled to immunity. Her appeal to the Supreme Court was denied for two reasons. First, it was filed outside the allowable period. On this account alone, the finding of the lower court as to the existence of immunity in favor of Liang had already reached finality. Second, the Supreme Court ruled that Cabal failed to show that the lower court committed reversible error. This pronouncement by the Court should be considered the law of the case[115] on the issue of immunity. Yet, no mention as to this matter was raised by the Court.

VII. Survey of Supreme Court Decision on the Weight Given to Determinations of Immunity made by the Executive Branch

The cases presented in this chapter will concentrate solely on the issue of the weight that should be given to a determination of immunity made by the Executive branch. For this purpose, the facts of the case will no longer be presented except to the extent of the matter at hand, as they have already been discussed in the preceding chapters.

A. World Health Organization, et al. v. Benjamin Aquino, et al.[116]

In this case, the Department of Foreign Affairs formally advised the lower court judge of the Philippine Government's position that Dr. Verstuyft was entitled to diplomatic immunity, pursuant to the Host Agreement. In spite of this, the lower court dismissed such recognition, choosing to rely instead on the allegations of abuse of immunity made by the Constabulary Offshore Action Center (COSAC) officer.

In this regard, the Court ruled that:

> It is a recognized principle of international law and under our system of separation of powers that *diplomatic immunity is essentially a political question and courts should refuse to look beyond the determination made by the executive branch* of the government, and where the plea of diplomatic immunity is *recognized and affirmed by the executive branch* of the government as in the case at bar, *it is then the duty of the courts to accept the claim of immunity....*[117]

115. "Law of the case" is the opinion delivered on a former appeal. It means that what is once established to be the controlling legal rule in a case between the same parties, *whether correct on general principles or not. See* 21 C.J.S. 330 (1940).

116. 48 SCRA 242 (1972).

117. *Id.* at 248 (emphasis supplied).

Further, the Court said that courts may not exercise their jurisdiction as to "embarrass the executive arm of the government in conducting foreign relations,"[118] concluding that the judicial department must follow the action of the Executive branch, instead of embarrassing it with an antagonistic decision.

B. International Catholic Migration Commission v. Calleja[119]

There are two consolidated actions in this case: the *ICMC* case and the *IRRI* case.[120] In the *ICMC* case, the Department of Foreign Affairs (DFA) granted ICMC the status of a specialized agency and recognized its claim of immunity, evidenced by the Memorandum of Agreement entered into between ICMC and the Philippine Government. In addition, the DFA issued an opinion reiterating its recognition of the immunity of ICMC. The then Bureau of Labor Relations Director, however, still ruled against ICMC. This prompted the DFA to file a Motion for Intervention.

In the *IRRI* case, the DFA likewise expressed its view that IRRI enjoyed immunity from the jurisdiction of the Bureau of Labor Relations. The letter containing this recognition was also dismissed by said Bureau.

In response to this, the Court ruled that the opinions made by the DFA amounted to a categorical recognition by the Executive branch of government that ICMC and IRRI were international organizations which enjoyed immunity. The Supreme Court emphasized that such determination was a "*political question*[121] *conclusive upon the Courts* in order not to embarrass a political department of Government."

In support of this pronouncement, the Court reiterated a portion of its decision in *World Health Organization v. Aquino*.[122]

118. *Id.*

119. 190 SCRA 130 (1990).

120. Kapisanan ng Mangagawa at TAC sa IRRI — Organized Labor Association in Line Industries and Agriculture v. Secretary of Labor and Employment and International Rice and Research Institute (G.R. No. 89331, Sept. 28, 2000).

121. A political question is a determination left solely to the executive branch of government whose decision thereon may not be contradicted by any other branch of government. In *Tanada v. Cuenco*, 103 Phil. 1051, 1067 (1965), the Supreme Court defined political question thus: ' those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the Government. It is concerned with issues dependent upon the wisdom, *not legality*, of a particular measure.'

122. 48 SCRA 242 (1972). *See supra* note 116 and accompanying text.

C. *Southeast Asian Fisheries Development Center-Aquaculture Department v. National Labor Relations Commission*[123]

In this case, the Supreme Court relied on the Opinion issued by the Minister of Justice claiming that Philippine Courts were without jurisdiction over SEAFDEC-AQD, as follows:

> One of the basic immunities of an international organization is immunity from local jurisdiction, *i.e.*, that it is immune from the legal writs and processes issued by the tribunals of the country where it is found. The obvious reason for this is that the subjection of such an organization to the authority of the local courts would afford a convenient medium thru which the host government may interfere in their operations or even influence or control its policies and decisions of the organization; besides, such subjection to local jurisdiction would impair the capacity of such body to discharge its responsibilities impartially on behalf of its member-states. In the case at bar, for instance, the entertainment by the National Labor Relations Commission of Mr. Madamba's reinstatement cases would amount to interference by the Philippine Government in the management decisions of the SEARCA governing board; even worse, it could compromise the desired impartiality of the organization since it will have to suit its actuations to the requirements of Philippine law, which may not necessarily coincide with the interests of the other member-states. It is precisely to forestall these possibilities that in cases where the extent of the immunity is specified in enabling instruments of international organizations, jurisdictional immunity from the host country is invariably the first accorded.[124]

D. *Southeast Asian Fisheries Development Center v. Acosta*[125]

The Supreme Court reiterated its ruling in the first SEAFDEC case. It again relied on the opinion of the then Minister of Justice as contained in Opinion No. 139, Series of 1994 (see preceding section).

E. *Eldepio Lasco, et.al. v. United Nations Revolving Fund*[126]

In this case, the Department of Foreign Affairs issued a letter acknowledging the UNRFNE's immunity from suit, and confirming that UNRFNE is a special fund administered by the United Nations. Thus, it was covered by the 1946 Convention on the Privileges and Immunities of the United Nations.

The Supreme Court ruled that UNRFNE's immunity was suffiently established by said letter issued by the Department of Foreign Affairs. It reiterated its ruling in *World Health Organization v. Aquino*[127] that the determination of immunity of an international organization was a purely

123. 206 SCRA 283 (1992).

124. *Id.* at 287-8, *citing* the Minister of Justice Opinion 139, Series of 1984; BOWETT, THE LAW OF INTERNATIONAL INSTITUTIONS 284-85 (1982).

125. 226 SCRA 49 (1993).

126. 241 SCRA 681 (1995).

127. 48 SCRA 242 (1972).

political question which the courts should refuse to answer. The Court emphasized that the determination made by the Executive branch was conclusive on the courts and quasi-judicial agencies.

F. *Erneste Callado v. International Rice Research Institute*[128]

In this case, the Supreme Court reiterated its decision in the *ICMC v. Calleja* case. It held that the letter of the Department of Foreign Affairs in that case was sustained because "it constituted a categorical recognition by the Executive Branch of Government that... IRRI enjoy[s] immunities accorded to international organizations."[129] It repeated further its ruling that such determination is a "political question conclusive upon the courts in order not to embarrass a political department of Government."[130] Finally, the Court again quoted the pronouncement in *World Health Organization v. Aquino.*

G. *Department of Foreign Affairs v. National Labor Relations Commission*[131]

In this case, the Department of Foreign Affairs notified the Labor Arbiter that the ADB and its officers were immune from legal process except for borrowings, guaranties, or sale of securities, pursuant to Article 50(1) and Article 55 of the Charter, and Sections 5 and 44 of the Headquarters Agreement. However, the Labor Arbiter decided that ADB waived its immunity from suit, disregarded the recognition of immunity executed by the DFA.

The DFA then sought the vacation of what it considered a void judgment. However, the NLRC denied its petition, which led to the DFA to seek redress from the Supreme Court.

The Supreme Court upheld ADB's immunity, reiterating its pronouncement in *World Health Organization v. Aquino*, as to the need for courts to accept the recognition made by the Executive departments so as not to embarrass a co-equal department.

Furthermore, the Court cited its pronouncement in *International Catholic Migration Commission v. Calleja*[132] which similarly considered the memoranda of the DFA Legal Adviser as a categorical recognition of the ICMC's immunity. The Court ruled that such determination was conclusive upon the courts.

128. 244 SCRA 210 (1995).

129. *Callado*, 244 SCRA at 214, *citing ICMC*, 190 SCRA at 139-140.

130. *Id.*

131. 262 SCRA 39 (1996).

132. 190 SCRA 130 (1990)

Using these pronouncements as a springboard, the Court held that the filing of the petition by the DFA on behalf of ADB, was likewise an affirmation of the Executive branch's own recognition of ADB's immunity.

VIII. The *Liang* Decision on the Weight Given to Determinations of Immunity made by the Executive Branch

In *Liang*, the Department of Foreign Affairs (DFA) issued an "office protocol" stating that Liang was covered by immunity pursuant to the Agreements entered into between ADB and the Philippine Government.

The Court, however, dismissed this executive recognition of Liang's immunity as an officer of an international organization. It declared that it would not take the DFA's statement on its face, nor "blindly adhere"[133] to it. The Court reasoned that the DFA's determination was merely "preliminary,"[134] and, thus, not conclusive upon the Court. Therefore, it concluded that the prosecution should have been allowed to rebut the DFA protocol.

IX. Analysis

A. Laying the Foundation

Before any conclusion may be reached as to the propriety of *Liang*, one must consider the weight to be given to determinations of international immunity made by the Executive branch of government.

The rulings in the cases reviewed in the preceding chapter are consistent. In each of the cases, the Court held that a letter of recognition issued by the Department of Foreign Affairs or an Opinion issued by the Ministry of Justice recognizing the immunity of the international organization concerned, was conclusive upon the courts. This is so because the determination of the immunity of an international organization is a political question, and thus, to be determined by the Executive branch of government. The Supreme Court ruled that the courts may not exercise their jurisdiction in this instance as to "embarrass the Executive arm of the government in conducting foreign relations."[135] It stressed that courts must follow the actions of the Executive branch in matters left for its sole determination.

133. *Liang*, 323 SCRA at 695.

134. *Id.*

135. WHO v. Aquino, 48 SCRA 242 (1972); Holy See v. Rosario 238 SCRA 524 (1994); DFA v. NLRC, 262 SCRA 39 (1996).

B. Departure from Previous Pronouncements

Despite these consistent assertions, the Court made a complete turnaround in *Liang*. In sharp contrast with prior pronouncements, the Court regarded the determination of immunity made by the Executive branch as merely preliminary; hence, not binding on the Court.

This declaration by the Court finds no support in any of its previous decisions it has rendered. At no instance prior to *Liang* did the Court dismiss a determination of immunity made by the Department of Foreign Affairs or other similar representative of the Executive branch. In spite of this, the Court posited no reason for the non-application of its previous rulings on the matter. It merely concluded that the determination was preliminary and left it at that.

C. Background of the Case

The events that transpired before this case reached the Supreme Court are illuminating. The criminal case filed against Liang before the Metropolitan Trial Court of Mandaluyong was dismissed on account of the determination of the DFA that Liang was entitled to immunity under Article 55 of the ADB Charter and Section 45 of the Headquarters Agreement. At the time, the Solicitor General refused to accept the determination of the DFA. Thus, the Solicitor General filed a petition, SCA Case No. 743, before the Regional Trial Court (RTC) of Pasig, questioning the dismissal of the criminal charges against Liang. The RTC sustained the Solicitor General and ordered Liang's prosecution. Note that the RTC reinstated the case against Liang despite the immunity from legal process established as the law of the case in the Supreme Court's disposition of the prior civil case filed. Liang then instituted the proceeding in the Supreme Court, the decision of which is the heart of the matter in this thesis. The Solicitor General filed a comment on Liang's petition, reiterating his opposition to the grant of immunity. This unrelenting opposition by the Solicitor General was among the reasons propounded by the Supreme Court in ruling against Liang. The Court emphasized that, "*even the government's chief legal counsel, the Solicitor General, does not support the stand taken by petitioner* (Liang) *and that of the DFA.*"[136]

What the Supreme Court did, in effect, was to give more weight to the determination of the Solicitor General than to that made by the DFA on a matter involving the conduct of foreign relations. The court gave undue emphasis on the fact that the Solicitor General is the chief legal counsel of the government.

It is interesting to note that when the case reached the Supreme Court, the President, acting through the Executive Secretary, directed the new Solicitor General (who replaced the Solicitor General who initiated the action in the

136. *Liang*, 323 SCRA at 696.

Pasig Regional Trial Court) "to support the position of the government that Mr. Liang is immune from legal process."[137] The Memorandum stated:

> [T]he Government has determined that Mr. Liang is immune from legal process, and has endorsed its position through the issuance of a formal certification by the DFA dated 7 June 1996.
>
> The Department of Foreign Affairs, itself the department with the competence and authority to act in the determination of persons and institutions covered by immunity, has sustained the immunity invoked by the ADB, and a consistent approach by the OSG in maintaining the decision taken by the DFA will help uphold the credibility of the Government before the international community.
>
> Accordingly, the OSG is directed to:
>
> (i) support the position of the executive branch of the Philippine Government;
>
> (ii) file a petition in intervention with the Supreme Court
>
> (1) supporting the position of the government that Mr. Liang is immune from legal process under the provision of the Headquarters Agreement, and
>
> (2) moving for the reconsideration of the Decision by the Supreme Court issued on 28 January 2000; and
>
> (iii) coordinate closely with the DFA to ensure that the position of the OSG fully supports the position adopted by the Philippine government, under the provisions of the Headquarters Agreement.[138]

D. Proper Party to Determine Propriety of Immunity Claim

Who determines the stand of the government on the grant of immunity? The Solicitor General seemed to adhere to the assertion that his office has the right to make such determination. A loophole in that stand, however, is evident. The Solicitor General does not represent the government as to matters contained in the Headquarters Agreement of the ADB. In fact, the Office of the Solicitor General is the prosecuting arm of the government; its functions do not principally and directly fall into the aspect of foreign relations. Therefore, the Solicitor General has no standing to determine the government's position in the recognition of immunity of an official of an international organization, such task being within the sphere of foreign relations. This is particularly true when the President, has already enunciated his own determination.

Certainly, the Office of the Solicitor General is one of the alter egos of the President. From this, one might assert that the determination made by the Solicitor General is that of the President. However, assuming that the Solicitor General is the Executive office tasked with such determination on behalf of the

137. SCA case no. 743.

138. *Id.* (emphasis supplied).

President, one must not lose sight of the fact that the President already decided on the issue. When the President makes the determination, it is his determination which governs, and not that of a mere alter ego.

In addition, it is the DFA which, by legislative fiat, assists the President in the conduct of foreign relations, and not the Office of the Solicitor General. Book IV, Title I, Chapter I of the 1987 Administrative Code states:

> Section 2. *Mandate.* – The Department [of Foreign Affairs] shall be the *lead agency that shall advise and assist the President* in planning, organizing, directing, coordinating and evaluating the total national effort *in the field of foreign relations.*
>
> Section 3. *Powers and Functions.* – To carry out its mandate and accomplish its mission, the Department shall: (1) *Conduct the country's foreign relations*; ... (3) *Conduct Philippine representation* in the UN, ASEAN and other *international and regional organizations*; (4) *Serve as the channel for matters involving foreign relations*, ...(5) Negotiate treaties and other agreements *pursuant to instructions of the President*.... (emphasis supplied)

Therefore, determination with respect to agreements entered into by the government with international organizations, an activity that delves into the arena of the country's foreign relations, are within the functions of the DFA. It is, after all, this office that has the competence and is more knowledgeable in the country's foreign relations.

E. The Political Question Quandary

Establishing which office of the government is tasked with matters on foreign relations, such as matters concerning the determination of immunity of an official of an international organization, is only the beginning. The more important issue relates to whether the DFA's determination of immunity in the case at bar is a political question, and thus, conclusive upon the courts.

The Supreme Court, in *Tanada v. Cuenco*,[139] defined a political question in this manner:

> [I]t refers to 'those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the Government.' It is concerned with issues *dependent upon the wisdom*, not legality, of a particular measure.[140]

In *Baker v. Carr*,[141] the United States Supreme Court set down guidelines to determine whether an issue was a political question, among which was the potential for embarrassment from multifarious pronouncements by various departments on one question.

139. 103 Phil. 1051 (1965).

140. *Id.* at 1067 (emphasis supplied).

141. 369 U.S. 186 (1962).

The Supreme Court has always regarded the question of immunity as essentially a political question. The cases in the preceding chapter all lay down the same principle, to wit:

> It is a recognized principle of international law and under our system of separation of powers that diplomatic *immunity is essentially a political question and courts should refuse to look beyond a determination by the executive branch of government*, and where the plea of diplomatic immunity is *recognized and affirmed* by the executive branch of the government as in the case at bar, it is then the *duty of the courts to accept the claim of immunity*....Hence in adherence to the settled principle that *courts may not so exercise their jurisdiction...as to embarrass the executive* arm of government in conducting foreign relations....[142]

Therefore, the determination of the immunity of an official of an international organization is a political question, both by tradition and established jurisprudence. Such determination is beyond review by the courts, especially since such review would serve to embarrass a co-equal department in the exercise of its foreign relations.

The Supreme Court, however, enunciated an entirely different doctrine in the *Liang* Case. The Court, through Justice Ynares-Santiago said:

> Courts cannot blindly adhere and take on its face the communication from the DFA that petitioner (Liang) is covered by any immunity. The DFA's determination that a certain person is covered by immunity is only *preliminary* which has no binding effect in courts.... At any rate, it has been ruled that the mere invocation of the immunity clause does not *ipso facto* result in the dropping of the charges.[143]

This pronouncement by the Supreme Court is problematic. First, it serves to remove from the sphere of the Executive the determination of immunity, thereby diminishing its prerogatives in the exercise of foreign relations.

While under the 1987 Constitution, courts are given the power of review over the exercise of discretion by the other branches of government, this power of review is not absolute. The Constitution states:

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been *a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.*[144]

It is readily discernible from the foregoing provision that the determination of immunity made by the DFA may be reviewed by the Court, regardless of the fact that it is a political question, only if there is grave abuse of discretion amounting to lack or excess of jurisdiction.

142. WHO v. Aquino, 48 SCRA 242 (1972); ICMC v. Calleja, 190 SCRA 130 (1990); Lasco v. UNRF, 241 SCRA 681 (1995); Callado v. IRRI, 244 SCRA 210 (1995); DFA v. NLRC, 262 SCRA 1996 (1996) (emphasis supplied).

143. *Liang*, 323 SCRA at 695.

144. PHIL. CONST., art. VIII, § 1 (emphasis supplied).

The Supreme Court in the *Liang* case, however, did not state that the actions of the DFA were tainted with irregularity, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Rather, the Court merely made a categorical declaration that the determination by the DFA is preliminary and not binding on the courts.

Second, and more importantly, the Supreme Court's pronouncement places the government in the confusing and difficult situation where it guarantees immunities to international organizations, so that the latter may function uninterruptedly, only to end up incapacitated later on to defend those very guarantees. This translates into the immunity provisions, which are common to most, if not all, agreements with international organizations, that are rendered meaningless. Such would be a "mockery of the whole principle of immunity from suit."[145] Ultimately, to allow the question to be subject to judicial inquiry would be to disregard any Charter or Agreement entered into, thereby violating a fundamental principle of public international law, *i.e., pacta sunct servanda*. For instance, Article 60 of the ADB Charter states that the determination of the immunity is to be made by the Board of Directors of the ADB and to the Board of Governors if the question is so referred by any Member. Also, Section 52 of the Headquarters Agreement provides:

> Section 52. Any dispute between the Government and the Bank concerning the interpretation or application of this Agreement or any supplementary agreements, or any question affecting the headquarters seat or the relationship between the Government and the Bank, which is not settled by negotiation or other agreed mode of settlement, *shall be referred to a tribunal of three arbitrators: one to be appointed by the Government, one to be appointed by the Bank, and the third, who shall be the chairman of the tribunal, to be chosen by the first two arbitrators... A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding.* The third arbitrator shall be empowered to settle all questions of procedure in any case where there is disagreement with respect thereto. (emphasis supplied)

Hence, assuming there is a disagreement between the government and the ADB as to whether a particular official should be considered immune, this does not mean that the question should be submitted to the courts. Rather, the question must be resolved by the dispute-resolution mechanism in the Headquarters Agreement, and the government, by express stipulation is bound by the decision. Leaving the determination open to judicial inquiry, therefore, violates the agreement voluntarily entered into by the government with the international organization concerned. This in turn is detrimental to the country which may be deprived of the aid of international organizations. They may, after all, not only cease to function effectively with the onslaught of actions which it shall meet without the shield of immunity; but may altogether forego entry into agreements with the Philippines, with the knowledge that such agreements would not be upheld.

145. Lawrence Preuss, *Immunity of Officers and Officers of the UN for Official Acts*, AM. J. INT'L. L. 41 (1947).

X. Conclusion

The role ADB plays in the development of the Philippines is far-reaching. Billions of dollars are spent by ADB every year in its projects for the improvement of the country. In 2000 alone, ADB allocated hundreds of millions of dollars for projects in the Philippines, to wit: US$176 million for the clean-up of the highly-polluted Pasig River, US$45 Million to help improve technical education in fields such as electronics and information communications technology, US$70 million in loans to rehabilitate and widen the North Luzon Expressway, US$70 million in loans to empower local governments and small-scale farmers in Southern Philippines in making their land more productive and profitable, and US$1 million grants to help improve the lives of the Payatas community and to relocate informal settlers living alongside Manila's railroad tracks. Furthermore, the Philippines is one of ADB's largest borrowers, with loans amounting to $7.5 billion since 1968. In fact, the ADB is the country's second largest source of funds.[146]

The importance of the ADB in the scheme of Philippine development, therefore, is beyond dispute. Neither can it be questioned that the Philippines requires assistance from the ADB.

The ADB, as well as other international organizations, and their officials and employees, need certain immunities in order to ensure that they function effectively and unhampered by the control of any particular member-state. Where then, does the problem lie? The difficulty lies in determining when such immunity can be invoked, who makes the determination, and what acts are under its scope. The importance of finding answers to these questions, therefore, strikes at the very heart of the importance of the international organization itself, in this instance, the ADB.

It is this author's submission that the decision of the Supreme Court in the case of *Jeffrey Liang (Huefeng) v. People of the Philippines* is contrary to existing jurisprudence and to the generally accepted principles of international law. The following conclusions may be drawn:

First, the Philippines is a signatory to the ADB Charter and Headquarters Agreement. These instruments constitute treaties which the Philippines voluntarily entered into and which the country must, therefore, adhere to. Failure to do this would run counter to the well-recognized principle of *pacta sunct servanda*.

Second, the Headquarters Agreement unquestionably grants immunity to the officials of the ADB when the actions involved are undertaken in their official capacity, subject to waiver of immunity which the organization itself

146. For more extensive discussion, see ADB's website *at* http://www.adb.com.

makes. Hence, as long as the actions were done in an official capacity, the official concerned is immune, unless ADB itself holds otherwise.

Third, the propriety of the claim of immunity is determined by the parties to the treaty, *i.e.*, ADB itself and the Philippine Government. Both entities made a determination that Liang was acting in an official capacity and was therefore immune.

Fourth, the Office which is tasked by law to make a determination as to the propriety of the claim of immunity is the Department of Foreign Affairs, not the Solicitor General. The Office of the Solicitor General is the prosecuting arm of the government, but it is the Department of Foreign Affairs that is responsible for seeing to it that the country's foreign relations function smoothly, for the benefit of the country as a whole.

Fifth, both the Department of Foreign Affairs and the Office of the Solicitor General are mere alter egos of the President. Hence, the determination made by the President, in this case, recognizing Liang's immunity, should be final.

Sixth, the determination of the propriety of the claim of immunity is a political question, hence, outside the jurisdiction of the local courts. To put the claim of immunity of an international organization and its officials under judicial scrutiny (such as allowing the courts to interpret what official capacity constitutes, as in this case) negates and defeats the very purpose for which the immunity was set up in the first place, *i.e.,* to allow international organizations and their officials to perform their functions unhampered and uninterrupted; and to forestall any embarrassment of the executive branch of government in the conduct of its foreign relations.

Seventh, the first six findings find support in generally accepted principles of international law, which form part of the law of the land and in judicial pronouncements on the same issues, which also partake of the nature of law.

Eighth, assuming *arguendo* that the Supreme Court had jurisdiction to rule on the propriety of the claim of immunity, the reasons it advanced in support of its finding are strained, at best. The Court's reliance on the case of *M.H. Wylie v. Rarang* and on the Vienna Convention on Diplomatic Relations was misplaced. The suit involved an official of an international organization, not a diplomatic official. Further, the Court's finding that the acts involved could not have been actions undertaken in an official capacity because a crime is not part of official duties, was forced. It did not consider whether Liang was acting in an official capacity, considering his duties and responsibilities, when the alleged slanderous utterances were made. Rather, the Court conclusively declared such acts as a crime.

Ninth, assuming further that the Supreme Court was rethinking its position on the immunity of international organizations and their officers, and chose to depart from settled jurisprudence, it failed to adduce sufficient reasons to

support such move. The Court did not lay down its previous rulings. Neither did it propound reasons to deviate from them.

Ultimately, therefore, the decision, being a complete departure from established rulings, without sufficient explanation backed by legal basis, the Supreme Court should rethink its ruling and provide sufficient and legally supported reasons for its decision, if not reconsider it altogether. It is essential to recall that the development of the nation rests, in large part, on the assistance provided by the ADB. The *Liang* decision, as it stands, jeopardizes the relations of the Philippines with said international organization, not to mention its relations with other international organizations which play important roles in Philippine development.

Informed Consent in Human Subject Testing: Definition and Status Under International Law

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