

ISRAEL

Israel shares the analysis dated March 7, 2014, presented by the delegation of the Netherlands concerning the current state of the settlement of disputes of a private character to which an international organization is a party, and considers that the matter merits attention. As indicated in the Netherlands' analysis, the individual characteristics of international organizations need to be taken into account. Many different international organizations, including UN organs, operate in Israel and in the West Bank and Gaza Strip. Consequently, thousands of local residents and/or citizens are employed by those organizations or interact with them, thus creating various forms of legal disputes.

It should be stated that Israel respects the international legal status of UN organs, and is obligated to the UN Convention on the Privileges and Immunities of the United Nations, 1946 (hereinafter "CPIUN"), to which it is a party. Israel also acknowledges that the immunity granted to UN organs is essential for their proper functioning and independence. Nevertheless, Israel is of the opinion that the organizations' immunity should be balanced with the right of individuals to access justice. Israel believes that proper weight should be given to Art. V Section 21 of the CPIUN which stipulates that the UN shall prevent the occurrence of any abuse in connection with the organization's privileges, immunities and facilities.

Hereinafter are examples of private legal disputes between local residents (mainly Palestinians) and UN organs that were pursued in Israeli Courts. In the following cases, the Court inquired whether there was an alternative dispute resolution mechanism to which the injured individuals had access, and was referred to the mechanism stipulated in Art. VIII Section 29 of the CPIUN. It should be mentioned that while Israeli Courts respect the Immunity of UN Organs, the Courts have expressed concern with the individuals' ability to receive adequate relief.

- A medical malpractice claim involving a baby whose development was hindered after receiving an incorrect diagnosis in an UNWRA medical clinic in Shuafat. The Court dismissed the case based on the organization's immunity.
- A tort claim involving a young boy who was injured after being locked in an UNRWA-operated school in Gaza and jumping out of his classroom window. The claim was dismissed based on the organization's immunity.
- An employee of UNDP in Jerusalem was fired after 8 years of employment. The employee's claim regarding his illegal discharge was dismissed based on the organization's immunity. It should be mentioned that in this case, UNDP has brought to our attention an Arbitration clause which exists in all of their employment contracts, which provides that "[a]ny dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules...". In practice, if an employee wishes to initiate an arbitration process in accordance with the UNCITRAL Arbitration Rules, developed by the United Nations Commission on International Trade Law, he/she must bear the high cost of the procedure, thus making the process virtually impossible for individuals.

It should be noted that the UN internal disputes resolution mechanisms, are often located in geographical locations that are remote from the forum state and entail high processing costs (as exemplified in the aforementioned labor law suit against UNDP), thus making it often virtually impossible for individuals to file effective complaints against these organizations. In cases in which a private legal dispute involving a UN organ arises (mainly regarding labor law or torts), local residents are often left with partial remedy and are essentially deprived of proper access to justice.

Following is Israel's position regarding the three mechanisms that were proposed by the Netherlands:

Standing claims commissions: Israel supports the establishment of standing claims commissions for every UN operation, in its place of operation. We believe that such a mechanism may promote a more realistic way to access justice, mainly for local individuals in cases of tort or labor disputes, and will enable individuals to have their day in court, while respecting the UN immunity and enabling the proper functioning and independence of the organization. We also believe that such a mechanism will not subject the UN or its members to an unpractical or unreasonable burden. Naturally, if adopted, this solution would have to be further discussed and developed. In addition, it is important to approach this issue in a consistent manner in UN operations all over the world, while at the same time, giving adequate consideration to special circumstances in every location.

Waiving the UN Organ Immunity: As stated in the analysis, Art. V section 20 to the CPIUN provides for the right and the duty of the Secretary-General to waive the immunity of any UN official or expert on mission in any case where he believes the immunity would impede the course of justice and the immunity can be waived without prejudicing the interests of the UN. We agree that although this is not provided in the case of the organization itself, the same rationale should apply. However, we understand that the implementation of this solution in real life may be complex. In addition, even if a judicial decision is reached against a UN organ, enforcement of the decision might be limited according to the CPIUN.

Ombudsperson: Israel is concerned that an ombudsperson mechanism would not resolve the problem of access to justice in cases in which a judicial decision is required, as detailed above.