



# Legal Status of the Who's Covid-19 Investigator in International Law Perspective

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## Abstract

**Introduction:** This issue was raised based on the fact that the COVID-19 investigation team in carrying out their duties did not always go well, one of which was the refusal of several people from the investigation team to enter Chinese territory.

**Purposes of the Research:** This study aims to analyze the legal protection of the COVID-19 investigator team from WHO in the perspective of international law.

**Methods of the Research:** The research method used is normative juridical research with a qualitative analytical descriptive nature, by examining legal materials, both primary legal materials and secondary legal materials through literature studies and other related literature.

**Results of the Research:** The position of the WHO investigation team in the perspective of international law is as an expert on mission as well as an expert on mission in the United Nations. Expert on mission is an external organ to assist the functions and goals of organizations including WHO. In carrying out their duties, the expert on mission is equipped with all legal protections as stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies. Protection is given when the expert mission is carrying out its duties but in the convention there is no guarantee that the expert on mission is allowed -unconditionally- to enter the territory of the country. This is very reasonable considering that the state has full sovereignty over its jurisdiction. The ban on the entry of the COVID-19 investigation team for reasons of sovereignty should have been avoided considering that the COVID-19 pandemic is a common problem that requires cooperation from all over the world. The existence of obstacles to the work of the Investigation Team by China, which incidentally is the country that initiated the formation of the Covid-19 Investigation Team, is a bad precedent and a violation of international obligations as stipulated in the Responsibility of States for International Wrongful Acts.

## 1. INTRODUCTION

The Covid-19 virus pandemic that has occurred since 2020 until now has not ended. This is shown by the high rate of transmission of this virus in various countries. Based on the Covid-19 statistical records, the number of cases reached 191 million cases with a total death toll of 4.11 million cases.<sup>1</sup> Several things have been done by countries and

<sup>1</sup> Covid-19 statistics, accessed from [https://www.google.com/search?q=statistik+virus+corona+the+world+&ei=Odf3YJWPF9mvyAOfi7iIBQ&oq=statistical++corona+virus+world&gs\\_lcp=Cgdn3Mtd2l6EANKBAhBGABQl44CWOepAmDRsAJJoAHAAeACAAQCI AQCSAQCYAQ2gAQGqAQdn](https://www.google.com/search?q=statistik+virus+corona+the+world+&ei=Odf3YJWPF9mvyAOfi7iIBQ&oq=statistical++corona+virus+world&gs_lcp=Cgdn3Mtd2l6EANKBAhBGABQl44CWOepAmDRsAJJoAHAAeACAAQCI AQCSAQCYAQ2gAQGqAQdn)

international organizations in order to stop the outbreak of this virus, one of which is to look for the origin of this virus where it was originally found, namely in Wuhan - China. In May 2020 the World Health Organization (WHO) as a world health organization formed a study team named the WHO-convened global study of origins of SARS-CoV-2 whose task was to investigate the origin of the SARS-coV-2 virus and was expected to control the spread of the virus. this virus.<sup>2</sup>

The World Health Assembly in WHO resolution 73.1 asked the WHO Director-General to continue working with the World Organization for Animal Health (OIE), the Food and Agriculture Organization (FAO) and countries, as part of the One Health approach, to identify zoonotic sources of viruses and routes of entry into human populations, including possible intermediate host roles. The aim is to prevent reinfection with the virus in animals and humans and the establishment of new zoonotic reservoirs, thereby reducing the risk of further emergence and transmission of zoonotic diseases. This team consists of researchers and experts from around the world who want to learn about SARS-CoV-2 or what we call COVID-19, including researchers from China<sup>3</sup>

In July 2020, WHO and China began a basic study to better understand the origin of the virus. Terms of References (TOR) were agreed which defined a phased approach, and scope of study, key guiding principles and expected results. Phase 1 is the start of a short-term study to better understand how the virus may have been introduced and started circulating in Wuhan, China. WHO selected an international team of multidisciplinary experts to work closely with a multidisciplinary team of Chinese experts on the design, support and implementation of this study and to conduct follow-up visits to review progress and agree on a series of further studies<sup>4</sup>.

However, along the way, the investigations carried out by the study team did not always run smoothly. Although the condition of the spread of this virus is considered an emergency (*force majeure*)<sup>5</sup>, the two members by then had started their journey to China, but one person was refused entry and return, while the other was transiting in a third country. WHO said the refusal occurred because of problems related to visa permits<sup>6</sup>.

This virus-related investigation is not the first time the WHO has conducted, in previous cases WHO also created a study team for the Ebola virus and other viruses. However, in this case, the investigation of the origin of the Covid-19 virus is important because of the many assumptions that have developed in the community regarding this virus, some claiming that this virus is a leaked biological weapon<sup>7</sup>. The refusal to enter

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<sup>2</sup> World Health Organization, 2021, Origins of the SARS-CoV-2 virus <https://www.who.int/health-topics/coronavirus/origins-of-the-virus>, on July 22, 2021

<sup>3</sup> World Health Organization, WHO-convened global study of origins of SARS-CoV-2: China Part, Joint WHO-China Study Team Report, 14 January-10 February 2021. Pg. 6

<sup>4</sup> *Ibid*

<sup>5</sup> Yanping Wang, "Three Legal Questions Arising from the Outbreak of the Coronavirus in China," *Michigan International Lawyer* 31, no. 1 (2020): 9–13.

<sup>6</sup> BBC News, Covid-19: Had 'rejected', the WHO 'original coronavirus' investigation team arrived in China, <https://www.bbc.com/indonesia/dunia-55534396>, accessed on 10 June 2021

<sup>7</sup> Farid Assifa (ed). 2021. The US Unveils Evidence of China's Production of Biological Weapons Ahead of the Potential for World War III. Accessed from: <https://www.kompas.com/tren/read/2021/06/13/070000065/as-beberkan-unjuk-china-production-weapon-biologis-jelang-potensi-war?page=all>. accessed on July 22, 2021], there are also those who link it with conspiracy theories[ Holi Kartika (ed). 2021. A Year of the Covid-19 Pandemic, Here Are 6 Misleading

China's territory against the WHO's investigative team has also come under scrutiny because of the many allegations against China that have not been exposed to the virus.<sup>8</sup>

This is not the first time that the unfavorable treatment of “envoys” from international organizations has occurred. In 1948 Count Folke Bernadotte was a UN mediator in Palestine and his aide Colonel Serot was assassinated on his way to Jerusalem in the context of UN assignments.<sup>9</sup> For this incident, the International Court of Justice (ICJ) in April 1949 issued an advisory opinion on "Reparation for Injuries Suffered in the Service of The United Nations Case" which in essence is that the UN envoy has the right to get protection from things things that threaten his safety or harm him as long as he is carrying out organizational duties.<sup>10</sup>

Actually in 1946 the United Nations had made a rule that provided protection for its envoys through the Convention on the Privileges and Immunities of the United Nation, but the rule only explained the privileges of UN delegates/representatives (UN Representatives). including delegates, deputy delegates, advisers, expert technicians and the secretariat of the delegation, Article 16 of the Convention on the Privileges and Immunities of the United Nation 1946] has not yet reached compensation or remedial action in the event of a situation that endangers the envoy/representative. Therefore, an advisory opinion was issued which further strengthens the legal protection for the UN envoy on duty.

In addition to UN representatives and officials, the Convention on The Privileges and Immunities of the United Nation also mentions experts on mission as persons with privileges and immunities. Article 22 of the convention provides that persons undertaking missions for the United Nations shall be granted such privileges and immunities as necessary for the independent exercise of their functions during the period of their mission, including time spent traveling in connection with their mission. The existence of this expert on mission was further regulated in the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission in 2002.

Not only for the United Nations, in 1947 the United Nations also made rules to protect its special agencies through the Convention on The Privileges and Immunities of The Specialized Agencies, this convention has been in effect since December 1948. In this convention what is meant by special agencies are international organizations that affiliated with the United Nations including the ILO, WHO, World Bank and so on. As in the previous convention, the convention also mentions parties who have special rights and immunities, namely representatives, officials and experts.

Back to the case of the WHO investigation team, the question arises whether the team formed by WHO has the privileges and immunities as stated in the Convention on The Privileges and Immunities of The Specialized Agencies? Or can the position of the WHO

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Conspiracy Theories in the World Accessed from:  
<https://www.kompas.com/sains/read/2021/03/02/170300723/setahun-pandemi-covid-19-ini-misleading-conspiracy-theories-in-the-world?page=all>. accessed on 22 July 2021] 6-

<sup>8</sup> Anonymous. 2021. UK Criticizes China About Corona Virus Data for WHO Team, accessed from:  
<https://www.cnnindonesia.com/internasional/20210215142849-134-606394/enggris-kritik-china-jual-data-virus-corona-untuk-tim-who>, accessed on 22 July 2021

<sup>9</sup> Sumaryo Suryokusumo, *Case Study of International Organization Law* (Bandung: Alumni, 1997), p. 59.

<sup>10</sup> International Court of Justice. 1949. Advisory Opinion. Reparation for Injuries Suffered in the Service of The United Nations Case. p. 10

investigation team be equated with the position of the UN expert on mission so that it gets certain privileges and immunity?

Analysis of the legal status or legal position of the research team (experts) is very important based on the first few arguments that the involvement of experts in the activities of international organizations is very important. Every international organization must involve experts in supporting the implementation of organizational tasks and functions, even though these experts are outside the permanent organizational structure. Second, the scope of the expert's work involves cross-border, which certainly intersects with the jurisdiction of a particular country. Third, the analysis of the legal standing of the expert team is also to measure the extent to which the legal protection and privileges are obtained by the experts as long as they carry out their duties. In addition, the position of international organizations (OI) as a subject of international law continues to develop, where the legal capacity of OI as a legal subject has a significant increasing role.

## 2. METHOD

This research is a normative legal research with a statutory and case approach. In this case the researcher analyzes the legal position as well as legal protection for corona virus investigators. By using the analytical technique of descriptive legal materials, the researcher revealed that there were discrepancies between existing norms and practices that needed to be straightened out and corrected.

## 3. RESULTS AND DISCUSSION

### 3.1 Legal Status of WHO Covid-19 Virus Investigation Team in International Law Perspective

Legal status can be equated with legal status. Legal position is the ability to do something, the ability to move and act to support rights and obligations<sup>11</sup>. Legal status can usually be demonstrated in the following way<sup>12</sup>:

- a) A legal subject is harmed by a regulation and then causes an event that becomes a problem. This event will disappear when the court intervenes.
- b) A legal subject or legal object is given a legal position to carry out the actions mandated through a law or other binding legal rules.

The legal status referred to here is the legal position or capability possessed by the WHO Covid-19 Virus Investigation Team so that it can carry out obligations and have certain rights under the international legal regime. To find out this status, we start by answering basic questions, namely, first, who is this team, second, how is this team created, and third, how does this team work.

The research team formed by WHO can be called the WHO-convened global study of origins of SARS-CoV-2 starting from the United Nations General Assembly Resolutions A/RES/74/270 on Global Solidarity to Fight the Coronavirus Disease 2019 and Resolution A/RES/74/274 concerning International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19. Then forwarded by the World Health Assembly by issuing WHA73.1 on COVID-19 Response.

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<sup>11</sup> Karsten Nowrot, "Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law," *Indiana Journal of Global Legal Studies* 6, no. 2 (1999): 579–645.

<sup>12</sup> R Soeroso, *Introduction to Legal Studies* (Jakarta: Sinar Grafika, 2015), p. 106.

The response contains how countries that are members of the World Health Assembly cope by working with WHO to provide information, provide assistance, provide necessary data for WHO and other countries. One of the contents of this response is contained in OP9.6 COVID-19 Response which reads:

*“Continue to work closely with the World Organisation for Animal Health (OIE), the Food and Agriculture Organization of the United Nations (FAO) and countries, as part of the One-Health Approach to identify the zoonotic source of the virus and the route of introduction to the human population, including the possible role of intermediate hosts, including through efforts such as scientific and collaborative field missions, which will enable targeted interventions and a research agenda to reduce the risk of similar events as well as to provide guidance on how to prevent SARS-CoV2 infection in animals and humans and prevent the establishment of new zoonotic reservoirs, as well as to reduce further risks of emergence and transmission of zoonotic diseases”*

From the contents of the response, the World Health Assembly requested that WHO continue to work with OIE and FAO to investigate this COVID-19 case. Then in this response, countries are also asked to cooperate to support research from the private sector or funded research, and share relevant information with WHO<sup>13</sup>. The aim of this research team is to prevent re-infection of the virus in animals and humans by establishing new zoonotic reservoirs, thereby reducing the risk of further emergence and transmission of zoonotic diseases<sup>14</sup>. The other functions of the research team are:

- a) to increase understanding of the evolving COVID-19 outbreak in China and the nature and impact of ongoing containment measures;
- b) to share knowledge about the COVID-19 response and preparedness measures implemented in countries affected or at risk of COVID-19.
- c) to produce recommendations for the adjustment of COVID-19 containment and response measures in China and internationally; and
- d) to set priorities in collaborative work, research and development programs to address critical gaps in knowledge and responses as well as pandemic preparedness tools and activities.

The WHO-convened global study of origins of SARS-CoV-2 began with a plenary meeting between the international team and the leadership team or those who contributed to the response in China through the National Prevention and Control Task Force. An itinerary was approved for the investigation of the origin of the virus with the agreement to establish three focused working groups: (1) epidemiology, (2) molecular epidemiology and bioinformatics, and (3) animal and environmental. Then by holding extensive discussions, site visits, and getting input from health professionals, scientists, and experts from China<sup>15</sup>.

Analyzing based on the COVID-19 response, which contains the WHO's assignment to continue to cooperate with other international organizations. Then from the WHO structure, which did not include an investigative team in its structure, the research team was assigned the task of WHO, confirming that the experts from WHO who are members of this investigative team are Experts on Mission.

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<sup>13</sup> Health General Assembly, WHO, OP7.12 WHA73.1

<sup>14</sup> Joint WHO-China study: 14 January - 10 February 2021, WHO Overview -convened global study of origins of SARS-CoV-2: China Part, <https://www.who.int/publications/i/item/who-convened-global-study-of-origins-of-sars-cov-2-china-part>, accessed on May 6, 2021

<sup>15</sup> Joint Report, WHO-Convened Global Study of Origins of SARS-CoV-2: China Part. p. 13

Another example of the Experts on Mission that has been running is the formation of the IAEA (International Atomic Energy Agency) to help deal with the nuclear leak in Fukushima, starting with the formation of the International Fact-Finding Expert Mission of the Fukushima team, which began its mission search on May 24. until June 2, 2011. The mission found the fact that the Japanese government did not heed the new regulations regarding building design. Because of this negligence, the IAEA made several new regulations and also emphasized the old regulations to all its members to comply with these regulations so that the events in Japan do not happen again.<sup>16</sup>

Comparing the Investigation Team with the Experts on Mission that existed before this research team, we can find the same elements that make the Investigation Team also Experts on Mission, namely:

- a) Carry out tasks/missions that assist the function of an international organization;
- b) Activities are held in other countries;
- c) Find the cause of a problem originating from the country being investigated;
- d) Provide facts on the ground, solutions and information for the international organization that sent it.

Analyzing these elements, the author believes that the WHO Research Team formed, namely the WHO-convened global study of origins of SARS-CoV-2, is Experts on Mission. Experts on Mission are officials of international organizations outside the organizational structure who help carry out the functions of international organizations<sup>17</sup>. Experts on Mission is owned by International Organizations under the United Nations and the United Nations.

Regulations Governing the Status, Basic Rights, and Duties of Officials other than Secretariat Officials, and Experts on Missions which regulate the status, duties, and basic rights of Experts on Mission at the United Nations. Based on these regulations, before carrying out their mission, Experts on Mission are required to make a written declaration to promise in their duties to be loyal, prudent, and act in accordance with the tasks assigned by the United Nations. The responsibilities of the Expert on Mission are not national but international<sup>18</sup>.

In carrying out their duties related to states, immunity and privileges are needed in order to carry out their duties to the maximum and get the best results. The immunity rights and privileges of Experts on Mission belonging to the United Nations are regulated in the Convention on the Privileges and Immunities of the United Nations, while for Experts on Mission from each of the specialized agencies of the United Nations it is regulated in the Convention on the Privileges and Immunities on the Specialized Agencies.

In the Convention on The Privileges and Immunities of the United Nations and the Convention on The Privileges and Immunities of The Specialized Agencies, the definition of Experts on Mission has the same thing. The Convention on The Privileges and Immunities of the United Nations defines Experts on Mission as follows: "Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be

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<sup>16</sup> Amir Zacarias Mesquita, Rose Mary Gomes do Prodo Souza, Tonatiuh Rivero. IAEA Expert Missions In The Recommissioning on The IAN-RI TRIGA Research Reactor, Proceedings Conference, 3rd World TRIGA USERS CONFERENCE, Minascentro - Belo Horizonte, Minas Gerais, Brazil August 22 -25 2006

<sup>17</sup> Article VI, Convention on The Privileges and Immunities of the United Nations.

<sup>18</sup> Regulations Governing the Status, Basic Rights, and Duties of Officials other than Secretariat officials, and Experts on Mission

accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions.”

The Convention on The Privileges and Immunities of The Specialized Agencies defines Experts on Mission which reads: “Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connexion with service on such committees or missions”

From these two definitions, it can be concluded that the definition of Experts on Mission belonging to the UN and WHO's is the same, namely officials outside officials are regulated in the legal basis of WHO or UN who carry out missions to support the functions of WHO or UN. The United Nations is an international organization engaged in maintaining world peace. International organizations are one of the subjects of international law and have a position before international law.

The position of International Organizations is recognized as originating from the Advisory Opinion or Legal Opinion given by the International Court of Justice, so the position of the United Nations including its specialized agencies and the position of other international organizations as subjects of international law need not be doubted. So it is clear that every international organization must be a legal person, meaning that he has a number of rights and obligations under international law, he is a subject of international law.<sup>19</sup>

Subjects of International Law are subjects who are entitled to the rights of immunity and privileges from their responsibilities in dealing with the international community. One of the subjects of international law is international organizations, which have their own conventions, namely to carry out the functions of international organizations from their responsibilities in the international realm.

Experts on Mission is not a subject of international law, but is a tool for international organizations. Because the right to immunity comes from international law, those who can have this right are subjects of international law. Therefore, in terms of Experts on Mission, the subject of international law is the International Organization. Experts on Mission here are complementary tools in International Organizations that are considered to bring or represent International Organizations carrying out their rights and responsibilities in the international world, and as legal subjects who are entitled to provide protection such as privileges and immunities are International Organizations. Experts on Mission is not a subject of international law and does not have a position as a subject of international law but as a complementary tool to International Organizations.

### **3.2 Legal Protection for the WHO Covid-19 Virus Investigation Team in the Perspective of International Law**

To be able to take legal action, international organizations need legal personality or legal personality. Because in the process, an international organization will carry out many actions as a subject of international law, starting from formulating regulations, enforcing regulations and taking the necessary actions for any violation of the regulations that have

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<sup>19</sup> J Pareira Mandalangi, *Legal Aspects of International Organizations* (Jakarta: Bina Cipta, 1986), p. 18-20.

been made. With the legal personality of the International Organization, it can be used as a basis for dispute resolution.<sup>20</sup>

It is explained in the theory of subjective legal protection, that the law is divided into two, namely objective law and subjective law. With the objective law, it gives birth to subjective law, namely there are parties who get rights and other parties get obligations, besides that there are sanctions in case of injury. In carrying out its function as an international organization, it is clear that there must be legal protection so as not to injure its rights. Then so that their functions can run well, such as special agencies or Specialized Agencies that work together with the United Nations which have various functions carrying out international responsibilities to maintain world peace, are given immunity rights and privileges. As in the United Nations in a convention called the Convention on the Privileges and Immunities of United Nations.

### **Legal Protection of the Investigation Team as Foreign Citizens**

The investigative team from various countries then came to the People's Republic of China, not only as experts on mission, but also as citizens or foreigners. The view of the state as a subject of international law in the full sense is based on the theoretical concept that only the state is a legal subject, and individuals have certain rights and obligations through states that are participants in a convention, such as the 1949 Red Cross Convention<sup>21</sup>. By borrowing a term from Prof. Nguyen Quoc Din, that individuals are subjects of artificial international law, because it is the will of the state, which is formulated in conventional provisions that make individuals in certain cases subject to international law.<sup>22</sup>

In this case, experts who are also foreign nationals. Because it consists of several experts who come from all over the world, therefore experts get protection as foreign citizens who are outside their country, such as these experts in the People's Republic of China.<sup>23</sup> Experts bring their individual rights as subjects of international law that carry a mandate from the World Health Organization. In its development, the position of the individual as a subject of international law became important and understanding about only the state as a subject of international law began to be abandoned, as in the case of the Danzig Railway Officials Case, the International Court of Justice issued a decision in its general dictum of the opinion that: "If an international treaty grants certain rights, to individuals, these rights must be recognized and have enforceability in international law, meaning that they are recognized by international judicial bodies". Likewise, the judiciary in Nuremberg and Tokyo in trying war crimes perpetrators, in which the perpetrators of crimes are individually responsible for war crimes and crimes against humanity, and cannot take refuge in their country.<sup>24</sup>

Although every country has the right or authority to determine its citizenship regulations that apply to its territory, the country must also pay attention to the principles

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<sup>20</sup> Elisabeth Septin Puspoayu, "Juridical Review of Legal Personality in Dispute Resolution Between ASEAN Members in the MEA Era," *Galuh Yustisi* 5, no. 2 (2017): 168–76, <https://doi.org/10.25157/jigj.v5i2.794>.

<sup>21</sup> Mochtar Kusumaatmadja and Etty R Agoes, *Introduction to International Law* (Bandung: Alumni, 2003), p. 96.

<sup>22</sup> Boer Mauna, *International Law's Role, Function in the Era of Global Dynamics* (Bandung: Alumni, 2001), p. 594.

<sup>23</sup> Ferry Eka Rachman, Eko Saputro, and Akhirudin Vami K, "The Protection of Foreigners in International," *Journal of La Sociale* 2, no. 1 (2021): 18–24, <https://doi.org/10.37899/journal-la-sociale.v2i1.264>.

<sup>24</sup> Kusumaatmadja and Agoes, *Introduction to International Law. Op. Cit.* p. 104-105.

of international law and general principles of international law regarding citizenship<sup>25</sup>. The significance of a person's citizenship status for international law is in terms of:<sup>26</sup>

- 1) Granting of diplomatic protection rights abroad. Every country has the right to protect its citizens abroad.
- 2) The country that becomes the nationality of a certain person will be responsible to another country if that country neglects its obligation to prevent unlawful acts committed by the person concerned or the country does not punish him, after the unlawful act is committed.
- 3) In general, a country may not refuse or accept back its own nationals in its territory.
- 4) Nationality is closely related to loyalty, and one of the main rights of loyalty is the obligation of military service in the country to which loyalty is dedicated.
- 5) A country has a broad right, unless there is a special treaty binding it to exercise that right, to refuse the extradition of its citizens to another country requesting their surrender.
- 6) The status of the enemy in war can be determined by the nationality of the person.

A country exercises criminal jurisdiction and other jurisdictions based on a person's nationality. Basically the rights and obligations of the state towards people, both citizens and foreigners, are determined by the state and the nationality of the person concerned. Each person is subject to state power and must obey the laws that apply in the territory of the country, including foreigners with certain restrictions, such as in terms of politics, positions in government. A person's citizenship is closely related to his country, because it gives rise to reciprocal rights and obligations. The state is obliged to protect its citizens wherever they are, and every citizen remains subject to the power of his country and obeys the laws that apply in his country. For citizens who are abroad, the application of state power and the rule of law for them are limited by the powers and laws of the country where they are located<sup>27</sup>. The practice of countries in treating foreigners who are in their territory is always accompanied by certain restrictions, such as in the field of taxation, the right to certain jobs, residence, ownership of property, civil privileges and immunity and immigration.

There are 2 opinions regarding the treatment of foreigners, Article 9 of the 1933 Montevideo Convention:

- 1) International Minimum Standards. This view is held by developed countries, according to this opinion, treating foreigners in the country must meet minimum international standards, namely in accordance with international law and effective protection according to international law. If these conditions are not met, then state responsibility arises. The application of this principle was seen in The Neer Claim case in 1926. In this case, the court held that any treatment of a foreigner constitutes an international crime if the treatment constitutes barbarity, bad faith, willful negligence or a lack of action by the government.

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<sup>25</sup> Matthew J Gibney, "Statelessness and the Right to Citizenship," *Forced Migration Review* 32 (2009): 50–51.

<sup>26</sup> Angus Stewart, "Two Conceptions of Citizenship," *The British Journal of Sociology* 46, no. 1 (1995): 63–78, <https://doi.org/10.2307/591623>.

<sup>27</sup> Bama Andika Putra and Abdul Razaq Cangara, "Invoking the Responsibility to Protect: The Derogation of Its Principles and Implementation," *Journal of Liberty and International Affairs* 4, no. 3 (2018): 56–65.

- 2) National Treatment Standards. This view is held by developing countries. According to this principle foreigners should be treated the same as the state treats its citizens.

In this case, the researchers or the investigative team will get legal protection within the country or from their country if things happen that are not in accordance with the law carried out by other countries to their citizens. In the doctrine of international law there are several opinions regarding the entry of foreigners into the territory of a country:

- 1) A country is obliged to give permission to all foreigners
- 2) A country is obligated to grant permission to all foreigners, provided that the country may refuse certain groups, for example drug addicts, people suffering from dangerous diseases.
- 3) A country is bound to allow foreigners to enter but by imposing conditions on entry permits.
- 4) A country is fully entitled to ban all foreigners according to its will.

The practice of countries in terms of granting entry permits to foreigners in their territory is always accompanied by certain requirements regulated in the national law of each country. This action is in accordance with the reflection of the principle of state sovereignty adopted by a country, even the practice of courts in America and England emphasizes that the prohibition of entry of foreigners by a country as an event of territorial sovereignty. Exceptions to the prohibition of entry of foreigners into the territory of a country, can be determined in international treaties that are binding on those countries. In international law itself, there is no obligation to allow the entry of foreigners freely and does not set a certain period of time for foreigners who enter the territory of a country.<sup>28</sup>

In state practice, there are several legal protection institutions that foreigners can use in solving legal problems:<sup>29</sup>

- 1) An agreement between the country of origin and the country where it is located to regulate the protection of their respective citizens and their property.
- 2) Foreign investment protection institutions, including guarantees from the local government (host state) in the event of nationalization actions, such as the Agreement between Indonesia and Belgium concerning the Encouragement and Protection of Reciprocal Investments on January 15, 1972.
- 3) Insurance Guarantee Agreement consisting of recipient countries and investors at the Convention Establishing the Multilateral Investment Guarantee Agency under the auspices of the World Bank.
- 4) Exhaustion of local remedy, which is a legal action from a foreigner who has been harmed through a claim before a local court.
- 5) Through Diplomatic protection. This effort is carried out because of a violation of international law through negotiations or demands in court on behalf of its citizens. Thus, if diplomatic protection measures have been taken, then the state is the party to the case, according to the opinion of the Permanent International Court of Justice in the *Mavrommatis Palestine Concession 1924* case.
- 6) Prosecution through a court forum in a third country, if the object in dispute is in the jurisdiction of the forum country, for example the tobacco case in the Bremen

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<sup>28</sup> Kamal Sadiq and Tsorapas Gerasimos, "The Post-Colonial Migration State," *European Journal of International Relations* 27, no. 3 (2021): 890.

<sup>29</sup> Yudha Bhakti Ardhiwisastra, *International Law: Bunga Rampai* (Bandung: Alumni, 2003), p. 29.

court between the Indonesian Government and the owner of a tobacco company owned by a Dutch citizen, because the disputed goods are in German territory.

If it is concluded, in principle every country will be responsible for providing legal protection to every citizen wherever he is and foreigners will receive legal protection, within certain limitations, both from the country where he is temporarily located and from his country of origin. Thus, a person's citizenship status is closely related to the protection of international law that will be given to him, himself, his property, and his family.

### **Legal Protection of the Investigation Team as Representatives of International Organizations**

Legal protection is a variety of legal efforts that must be provided by law enforcement officers to provide a sense of security, both mentally and physically from interference and various threats from any party. Philipus M. Hadjon argues that legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments.<sup>30</sup> Attention to the protection of officials of international organizations outside the organizational structure began to be realized since the assassination of Count Folke Bernadotte, a UN mediator in Palestine and his aide Colonel Serot on a trip to Jerusalem in the context of UN assignments in 1948. This case was named "Reparation for Injuries. Suffered in the Service of the United Nations Case".<sup>31</sup>

From this case, there is a competition between diplomatic protection rights on the other hand and functional protection on the other hand. Then the court found a solution, namely that competition between international organizations and national states could be reduced or eliminated either by general convention or by an agreement made<sup>32</sup>. In particular, international regulations have regulated protection arrangements for UN special agencies from a country in several international regulations or conventions. To provide legal protection for the team of investigators, namely Experts on Mission, international regulations are given, namely international conventions relating to legal protection for the team of investigators or experts on mission, namely:

- 1) United Nations Charter
- 2) Convention on the privileges and immunity of United Nations
- 3) Convention on the privileges and immunity of the specialized agencies.

A legal subject is evidenced by one of them being given a position by law to carry out an action mandated through a law or other binding legal rules<sup>33</sup> and the protection provided by law, is also related to the existence of rights and obligations. Humans as legal subjects have the right and obligation to take legal action.

In Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, the duties of experts on mission are obtained by signing a contract called a consultant contract, but can also be directly elected by the Secretary General of the United Nations without using a contract and With the selection of experts on mission by the Secretary General of the United Nations, it is also the Secretary

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<sup>30</sup> Philipus M Hadjon, *A Study of Legal Protection in Indonesia* (Jakarta: Bina Ilmu, 1987), p. 50.

<sup>31</sup> Suryokusumo, *Case Study of International Organization Law. Op. Cit.* p. 59.

<sup>32</sup> Summaries of Judgments, Advisory Opinion and Orders of the International Court of Justice, *Reparation for Injuries Suffered in the Service of The United Nations*, April 11, 1949

<sup>33</sup> Astrid Kjeldgaard-Pedersen, "Global Constitutionalism and the International Legal Personality of the Individual," *ICourts Working Paper Series*, 168 (Copenhagen, 2019).

General of the United Nations who determines whether experts on mission have the right or not, whether to hold or waive the immunity and privileges of experts on mission.

Mentioned in Annex VII number 2 of the Convention on the Privileges and the Immunities of the Specialized Agencies, it was found that the legal protection related to experts on mission getting immunity as follows<sup>34</sup>:

- 1) Immunity from arrest, or confiscation of his goods;
- 2) Respect for words or writings performed by experts in carrying out their mission;
- 3) The right to regulate his finances and exchange currency, as well as protection of his goods from officials of the country where he is carrying out his temporary mission;
- 4) The documents are official and cannot be contested;
- 5) For communication purposes in its mission, has the right to use codes and receive paper or correspondence from couriers or in isolated bags.

The Convention on the Privileges and Immunities of the Specialized Agencies also regulates how in the event of a dispute, it is explained that the UN special agencies make their own provisions in the event of a dispute arising from a contract or other personal dispute in which the special agency is a party or a dispute involving an official of a special agency who because of this official position enjoys immunity, if the immunity has not been waived in accordance with the provisions of Article 22.

With a legal personality, therefore, the World Health Organization can make international agreements between countries and between international organizations. In the International Agreement, it always discusses how to resolve disputes. In Chapter XVIII Article 75, if there are questions or disputes regarding the interpretation or application of the constitution belonging to the World Health Organization that cannot be resolved by negotiation or by settlement using the International Court of Justice in accordance with court statutes, then the parties can use other means. to be able to resolve the dispute. In this case, the World Health Organization prioritizes negotiations in resolving the dispute. Therefore, in this case, the investigative team that was born out of an agreement between the World Health Organization and the state party of the People's Republic of China to conduct a Global Study or deeper research into the territory of the People's Republic of China, resolved the problem by using negotiations between the World Health Organization and the People's Republic of China. the People's Republic of China.

Judging from the regulations that explain what about the immunity rights and privileges of experts, that the protection obtained is preventive protection, it explains how the rights of experts cannot be contested. What is lacking is repressive protection, where if the state defaults or acts arbitrarily, or acts to harm the rights of experts, it is not regulated in it. Experts are still very vulnerable to 'default' that can be done by the state, and there is no legal umbrella for it.

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<sup>34</sup> Number 2(i), Annex VII - The World Health Organization, Convention on The Privileges and Immunities of Specialized Agencies

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#### 4. CONCLUSION

The position of the investigative team formed by the World Health Organization in charge of investigating COVID-19 is the same as the Experts on Mission belonging to the United Nations. Based on the organizational structure of WHO, it can be seen that the research team is not involved in the organizational structure, so it can be concluded that the research team is an external organ to assist the functions and objectives of WHO, the same as that of the United Nations. As Experts on Mission, the investigative team has special immunity which forms the basis of legal protection for the investigative team as regulated in the Convention on the Privileges and Immunities of the Specialized Agencies. Then, based on the principle of contractual liability, the PRC government must carry out the agreement in the formation of the COVID-19 Investigation Team and there is no reason for China to hinder the smooth running of the investigation process or the duties of the investigative team.

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