International Organizations Before National Courts

This book investigates in a radically empirical way how national courts ‘react’ to disputes involving international organizations. Comprehensively analyzing both national courts’ attitudes and techniques and underlying policy reasons, it first describes various legal approaches that result in adjudication or non-adjudication of disputes concerning international organizations. Secondly, it discusses policy issues pro and contra the adjudication of such disputes. It scrutinizes the rationale for immunizing international organizations from domestic litigation, especially the ‘functional’ need for immunity, and substantially debates the implications of a human rights-based right of access to a court on the immunizing of international organizations against the jurisdiction of national courts. The book finally identifies contemporary trends, seeking to ascertain whether a more flexible principle exempting certain types of disputes from domestic adjudication might substitute for the traditional immunity concept, which would simultaneously guarantee the functioning and independence of international organizations without impairing private parties’ access to a fair dispute settlement procedure.

August Reinisch is Professor of Public International Law and EC Law at the University of Vienna Law School, and a lecturer at the Austrian Diplomatic Academy in Vienna and at the SAIS/Johns Hopkins University in Bologna.
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Contents

Preface xi
Acknowledgements xii
Table of cases xvii
Table of legal instruments lxv
List of abbreviations lxv

1 Purpose, subject and methodology of this study
   Introduction 1
   Subject of the study 4
   Survey of existing material and literature 17
   Methods 21

PART I DESCRIPTIVE ANALYSIS

2 Avoidance techniques 35
   Non-recognition as a legal person under domestic law 37
   Non-recognition of a particular act of an international organization – ultra vires acts and non-attributability 70
   Prudential judicial abstention through doctrines concerning act of state, political questions, and non-justiciability 84
   Lack of adjudicative power of domestic courts 99
   No case or controversy 124
   Judicial discretion to prevent harassing lawsuits and mock trials 126
   According immunity to international organizations 127
3 Strategies of judicial involvement

Non-qualification as international organization 170
No delegation of immunity 172
Recognition of an international organization as a legal person under domestic law 175
Denying immunity 177
Restricting the scope of immunity 185
Broad waiver interpretation 214

PART II POLICY ISSUES

4 Rationales for judicial abstention

The protection of the functioning and independence of an international organization 233
A counterbalance to the relative weakness of international organizations 238
The influence of states on an international organization should be channelled through its ‘internal law’ 239
Equality of the member states of an international organization 241
Securing uniformity in dispute settlement 243
Derived or delegated state sovereignty 245
Immunity as an inherent quality of international legal personality 246
Lack of territory 248
Precedent and prestige 250

5 Reasons for asserting jurisdiction

Judicial protection as a public good sought by and against international organizations 252
Making sense of immunity qualifications 253
Encroachment on the territorial sovereignty of the forum state 254
Higher degree of integration: the federal state analogy 255
Enhancing the creditworthiness of international organizations as a functional reason to limit immunity 255
No immunity for iure gestionis activities: the same immunity standard as the one used for states 258
Fairness to third parties 262
Human rights and constitutional limits 278
PART III FUTURE DEVELOPMENTS

6 Do national courts provide an appropriate forum for disputes involving international organizations? 317
   Critical appraisal of the quality of the existing case law 317
   The broader framework 318
   The parameters 324
   Possible solutions 328

7 Conclusions 391

Bibliography 394
Index 444
Preface

My interest in the subject-matter of this book arose rather incidentally when I attended the 1992 Centre for Studies and Research seminar of the Hague Academy of International Law on ‘The External Debt’. It was my task there to focus on responsibility issues concerning debt rescheduling and the international debts crisis; one of the side issues that emerged from this investigation was whether international organizations could be made responsible or liable for part of the crisis and, if so, whether international or national fora would be available to adjudicate such claims. As far as the latter were concerned, it was apparent that immunity from jurisdiction could impede the enforcement of liability. At first, I simply assumed that international organizations would enjoy a similar degree of immunity as states. After a second look, I realized, however, that most applicable international agreements and domestic statutes provided for functional and/or absolute immunity without making explicit what this difference implied. Later on, I found that some national courts, in particular, in the US and Italy, are in fact using a state immunity standard. It appeared that no predictions about any judicial outcomes could be readily made.

To some extent my book is an attempt to find answers to this puzzle. Its subject was soon broadened to include all the various types of reasoning employed by national courts when they have to decide whether or not they will hear cases involving international organizations. It also reflects my preference for ‘real world’ problems which should hopefully make it a useful companion for the practitioner. At the same time it will evidence my attempt to use strict systematic standards in classifying the types and rationales of judicial responses. If it thereby combines elements of a Common Law inspired case analysis with a more formal Civil Law approach, this was not wholly unintended.
I have attempted to make the study current to spring 1998. This inevitably implies that important later developments could not be covered.

August Reinisch
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This study was submitted as ‘Habilitationsschrift’ to the Law Faculty of the University of Vienna in 1997. I wish to express my gratitude to all friends and colleagues at the Institute of International Law and International Relations in Vienna who helped me during the various stages of preparing it.

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quotations and cryptic footnotes which often made me less available for my family than I wished to be, especially during our 1995/96 stay in Washington D.C. This book is dedicated to her and to our wonderful children, Johanna and August, who have grown up splendidly, while I was writing, without having to worry about ‘international organizations before national courts’.

August Reinisch
Table of cases

**Argentine**


137 note 531


139 note 539


136 note 527, 163 note 673, 277


166
Schuster v. UN Information Center, National Labour Court, 1952; Annual Report of the Secretary-General, 7 UN GAOR, Supp. (No. 1) 165, UN Doc. A/2141 (1952); Annual Report of the Secretary-General, 8 UN GAOR, Supp. (No. 1) 149, UN Doc. A/2404 (1953); A. N. Vorkink and M. C. Hakuta, Lawsuits Against International Organizations – Cases in National Courts Involving Staff and Employment (Washington DC, World Bank Legal Department, 1985), 11

Austria


R. Peter Panuschka v. Peter Schaufler, Commercial Court of Vienna, 29 November 1965, 12 Cg 802/65–2; (1965) United Nations Juridical Yearbook 246 160 note 657

X v. Country Y, Supreme Court, 21 November 1990, OGH/Z, 9 Ob A 244/90 235 note 11


Belgium

Centre pour le développement industriel (CDI) v. X., Tribunal Civil de Bruxelles, 13 March 1992, (1992) Actualités du droit 1377 39f. 228


<table>
<thead>
<tr>
<th>Case</th>
<th>Court, Year</th>
<th>Citation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Superior Court Montreal, 1952</td>
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Colombia

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Egypt


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France


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<th>Year</th>
<th>Volume</th>
<th>Page No.</th>
<th>Reference</th>
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<tbody>
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Germany


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tische Wochenschrift 540; Case Note by Gramlich, (1980) Deutsches Verwaltungsblatt 459
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schrift für deutsches Recht 315 149, 160 note 657, 167f, 248

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Charlottenburg, 22 February 1994, 21 Ca 33566/93; Landesarbeitsgericht
(State Labour Court) Berlin, 12 September 1994, 16 Sa 58/94 (unpublished)
210, 226, 244 note 54

X et al. v. European School Munich I, Bayerischer Verwaltungsgerichtshof
(Administrative Court, 7th Chamber) Munich, 23 August 1989, 7 CS 89,80,
108 ILR 649–53 150, 182, 217

X et al. v. European School Munich II, Bayerisches Verwaltungsgericht (Ad-
ministrative Court) Munich, 29 June 1992, M 3 K 90.4137–41 (unpublished), Bayerischer Verwaltungsgerichtshof (Administrative Court, 7th
Verwaltungsblatt 448; Federal Administrative Court, 9 October 1995, 6 B 51/95
150f, 173, 182, 214, 217, 276, 346

X et al. v. European School Karlsruhe, Federal Administrative Court, 29
114, 244 note 54

X v. Hauptgeschäftsstelle Fischwirtschaft, BGH, 28 February 1956, I ZR 84/54
(Hamburg); (1956) Neue Juristische Wochenschrift 746 80 note 218

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245

X v. Y (ESRO case), Bundesarbeitsgericht (Federal Labour Court), 5th Cham-
ber, 25 January 1973; 5 AZR 399/72; Arbeitsrechtliche Praxis D VA 3, 279; Case Note by Grunsky, (1973) Arbeitsrechtliche Praxis H. 13/14, 657 276, 293

Greece

X v. International Centre for Superior Mediterranean Agricultural Studies, Court
of Appeals of Crete, 191/1991 (unofficial translation provided by the
Ministry of Foreign Affairs of the Hellenic Republic to the author)
191, 235 note 9, 250, 276 note 125
### India


Sharma v. UNDP Regional Manager, South Asia, Office of the Labour Commissioner, Delhi Administration, 10 October 1983; A. N. Vorkink and M. C. Hakuta, *Lawsuits Against International Organizations – Cases in National Courts Involving Staff and Employment* (Washington DC, World Bank Legal Department, 1985), 51 135 note 521

### Ireland

Mary O'Brien v. Ireland, the Attorney-General and the Minister for Defence, High Court, 26 August 1994, [1995] 1 ILRM 22 158 note 655

### Italy


4 Italian Yearbook of International Law 177–9; Case Note by Battaglia, (1978–9) 4 Italian Yearbook of International Law 166–73


26 note 118, 117f, 196f, 224


25 note 113


29 note 130, 112f, 118, 193, 212


25 note 113


103 note 349


103 note 349


136 note 528, 145 note 571, 571, 152, 195, 248

Conte v. HAFSE, Tribunale Napoli, 28 September 1967, (1968) 51 Rivista di diritto internazionale 715–18

25 note 113, 111

De Langlade v. Ministero tesoro, Corte di Cassazione, 12 July 1968, No. 2452; (1969) 52 Rivista di diritto internazionale 583

97
**Table of Cases**


83, 133, 162f, 294 note 194, 309


26 note 119, 131ff, 163, 187f, 213, 295


26 note 119, 188


26 note 118


136 note 528, 145 note 571, 152, 194f, 247f


25 note 113


112


25 note 113, 197

*HAFSE v. Gardi e INPS*, Corte di Cassazione (Sezione Unite), 7 July 1978, No. 3366; (1978) Foro Italiano, I, 2474; (1978–9) 4 Italian Yearbook of International Law 182–4; Case Note by Battaglia, (1978–9) 4 Italian Yearbook of International Law 166–73

112

HAFSE v. Trotta, Corte di Cassazione (Sezione Unite), 7 July 1978, No. 3367; (1978) Foro Italiano, I, 2475; (1978–9) 4 Italian Yearbook of International Law 179–82; Case Note by Battaglia, (1978–9) 4 Italian Yearbook of International Law 166–73


Luggeri v. ICEM, Tribunale Santa Maria Capua Vetere, 20 June 1966, (1968) 51 Rivista di diritto internazionale 140–3; Court of Appeals of Naples, 18 December 1970 (unpublished); A. N. Vorkink and M. C. Hakuta, Lawsuits Against International Organizations – Cases in National Courts Involving Staff and Employment (Washington DC, World Bank Legal Department, 1985), 23


113


110 note 381


110 note 380, 359

**Viecelli v. IRO, Tribunale Trieste, 20 July 1951, (1953) 36 Rivista di diritto internazionale 470–2; Case Note by Monaco, (1953) 36 Rivista di diritto internazionale 472**

108 f., 181

**Jordan**


183

**Lebanon**


183


183
### Luxembourg


#### Malaysia


#### Mexico


#### Netherlands


6 note 21, 10 note 37, 82, 157, 167, 171 note 8, 192, 195f, 208, 299

106f, 354 note 131, 384 note 253

328 note 31

Trans-Mediterranean Airways v. Eurocontrol, Royal Decree (administrative decision of the Crown), 16 January 1974 No. 33, AB (1975) No. 22; (1977) 8 Netherlands Yearbook of International Law 258–9
27 note 122, 184, note 86, 291 note 177

UNRRA v. Duun, Cantonal Court Amersfoort, 16 June 1948, District Court Utrecht, 23 February 1949, Supreme Court (Hooge Raad) of the Netherlands, 19 May 1950, (1951) NJ 150; (1955) 82 Journal de droit international (Clunet) 855–87; (1949) 16 ILR 337–8
40, 45 note 45, 48

New Zealand

L v. The Crown, Supreme Court, Auckland, 12 September 1977, (1985) 68 ILR 175
362 note 167

Nigeria

166, 223f, 262, 364 note 176

Philippines

Cohen v. Presiding Judge, Pedro C. Navarro et al., Philippine Supreme Court, 19 January 1976, GR No. 41698; A. N. Vorkink and M. C. Hakuta, Lawsuits Against International Organizations – Cases in National Courts Involving Staff
and Employment (Washington DC, World Bank Legal Department, 1985), 28 129 note 486


Spain


Switzerland

Arab Organization for Industrialization, Arab British Helicopter Company and Arab Republic of Egypt v. Westland Helicopters Ltd, United Arab Emirates, Kingdom of Saudi Arabia and State of Qatar, Court of Justice of Geneva, 23