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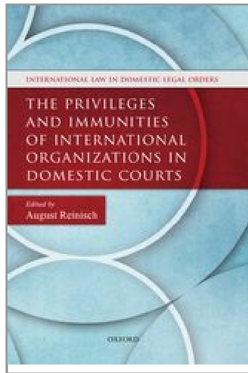

The Privileges and Immunities of International Organizations in Domestic Courts

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The Personality, Privileges, and Immunities of International Organizations before National Courts—Room for Dialogue

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[–] Abstract and Keywords

This chapter summarizes the main themes covered in the preceding chapters. This volume has shown that national courts face a number of often very similar legal issues when international organizations appear as plaintiffs or, more often, as defendants before them. They have to decide whether they accord them legal personality which gives them standing (*ius standi*) in order to sue or to be sued, and whether international organizations enjoy jurisdictional immunity as respondents. The major and most surprising outcome of the analysis of national jurisprudence conducted by the text in this book is that the expected cross-border dialogue between national courts, given their similar problems, hardly takes place. National courts rarely cite or explicitly rely upon judgments of courts in other countries addressing similar issues of international organizations' personality or privileges and immunities.

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Keywords: international organizations, immunity, legal personality, privileges, national courts

This volume has demonstrated that national courts face a number of often very similar legal issues when international organizations appear as plaintiffs or, more often, as defendants before them. They have to decide whether they accord organizations legal personality which gives them standing (*ius standi*) in order to sue or to be sued—a question which is usually easily resolved in courts of member states of international organizations because of applicable treaty provisions in founding documents and/or general privileges and immunities as well as headquarters agreements, but often leads to serious legal difficulties with regard to international organizations before the courts of non-member states.[1] More frequently, national courts have to decide whether international organizations enjoy jurisdictional immunity as respondents—again a question that is, in principle, determined by various treaty provisions granting 'immunity from legal process' or similar forms of immunity to international organizations. However, the exact scope of such immunity remains a major point of controversy, ie whether for all activities, in the sense of an absolute jurisdictional immunity, or only for certain activities which are (intrinsically) linked to the functions of the respective international organization, in the sense of a 'functional' immunity. In addition, it appears that some countries follow an approach which calls for the assimilation of the immunity of international organizations to that of foreign states, thereby implying that the standard of 'restrictive' sovereign immunity might play a role as well. Finally, the human rights obligation on forum states to accord litigants 'access to justice'—reinforced by the ECtHR in its seminal *Waite and Kennedy* judgment[2]—has led many domestic courts to balance the granting of jurisdictional immunity against the availability of reasonable alternative dispute-settlement options.

Indeed, the present volume has demonstrated that national courts regularly face such problems and that the ways in which they are raised in the course of domestic legal proceedings are very similar. It thus seemed reasonable to assume that national courts would engage in a cross-border dialogue when attempting to solve similar problems. The major and most surprising outcome of the very comprehensive analysis of national jurisprudence conducted by the authors of this book is that the expected judicial **(p.330)** dialogue hardly takes place, at least not in the way expected. National courts rarely cite or explicitly rely upon judgments of courts in other countries addressing similar issues of international organizations' personality or privileges and immunities.

Thus, only few contributors report cases in which explicit references to foreign court judgments were made. Interestingly, almost all of these instances took place when courts upheld the immunity of international organizations in employment-related disputes.

The first example is the US landmark case *Mendaro v World Bank*,[3] dating back to 1983. Addressing whether a provision in the Articles of Agreement for the International Bank for Reconstruction and Development could be interpreted as constituting a waiver, the DC Circuit Court of Appeals, *inter alia*, referred to French and Italian decisions on the basis of which it concluded that immunity from employment-related claims was part of customary international law.[4]

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In Switzerland, the first instance labour court in Geneva in *ZM v Arab League*[5] cited numerous well-known foreign judgments, ranging from *Broadbent*,[6] *Weidner*,[7] *Profili*,[8] *Eurocontrol*,[9] to *AS v Iran-United States Claims Tribunal*[10] when determining that domestic courts commonly do not deem themselves competent to decide employment disputes as these are regulated by the respective international organization's legal framework and corresponding dispute settlement mechanisms like administrative tribunals.[11]

Finally, in *Trempe v ICAO Staff Association*[12] the Canadian Superior Court, with subsequent affirmation by the Court of Appeal, took note of *Mendaro v the World Bank*[13] and quoted a lengthy passage when upholding the entitlement of international organizations to immunity in general and regarding employment disputes in customary international law in particular. Furthermore, it also referred to *Broadbent v OAS*,[14] albeit without explicit endorsement.

Obviously, this does not cover all instances of judicial dialogue as it may also occur in a different, more general manner. A good example of such a reference can be seen in the decision of the US DC Circuit Court of Appeals in *Broadbent v OAS*, where it was stated that 'a number of municipal courts have held themselves incompetent to judge claims brought by international civil servants against the organizations which employ them',[15] which is a quotation from a well-known treatise by Akehurst.[16] In this way, courts often seem to prefer to abstain from explicitly mentioning or even discussing **(p.331)** specific foreign cases and rather entertain broad and unspecific referrals to decisions of their equivalents in other countries. Other examples of such referrals include the Italian Court of Cassation in *Cristiani*[17] and in *FAO v INPDAI*,[18] as well as *EUI v Piette*[19].[20] Nevertheless, the overall conclusion that judicial dialogue appears to be a limited phenomenon in this area remains even when taking into account these instances.

The reasons for this reluctance are hard to establish, not only because of the inherently confidential nature of court deliberations which tend to make the determination of a specific finding a speculative task, but also because of the fact that case records are often not easily accessible or available at all. A number of contributions to this volume had to report that court files are generally hard or almost impossible to obtain. Others managed to get access to such files. However, often these files were not much more revealing than the published decisions.

Notwithstanding these difficulties, the contributors to this volume have made a number of very valuable suggestions, ranging from a generally reserved attitude vis-à-vis foreign court decisions that cannot be considered to have a precedential value without compromising the independence of the respective national judiciary and a general inclination to rely and build upon domestic case-law, often along with a tendency to focus solely on the relevant treaty provisions, to simply practical forms of inaccessibility of foreign court decisions.

At the same time, it was indicated that more personal reasons of the judges could possibly be playing a role. Examples are their biographies and the corresponding effects

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on their attitude regarding foreign judgments, language barriers, the lack of genuine expertise in international law, or at least of awareness that foreign courts may have dealt with similar judgments.[21] These personal reasons seem to imply that judges might often be willing to engage in judicial dialogue if they only knew about its very possibility or had the necessary resources.

Among all of the suggested reasons for a limited judicial dialogue, the general attitude of national courts in respect of foreign judgments stands out as the most significant and common impediment to transnational judicial dialogue. Judiciaries seem to have grown comfortable with focusing on a literal interpretation of headquarters agreements and other relevant international and national documents. Some evidence actually suggests that reliance on foreign decisions may furthermore lead to a legitimacy problem since foreign judgments cannot be considered a legal basis for domestic court decisions *stricto sensu*. Even where the potential exists to make reference to foreign cases as evidence of customary international law, domestic courts rarely seize such opportunity.[22] Furthermore, the authors in this book have not found any substantial evidence of parties referring to foreign cases either. It is thus safe to say that, although it appears pertinent from a scholarly viewpoint to look beyond one's borders when dealing with a global phenomenon like international organizations, they are essentially being treated no differently than other issues.

(p.332) While this 'empirically' tested outcome of a rather modest judicial dialogue on questions concerning the personality, privileges, and immunities of international organizations may appear surprising and disappointing, it must be put into perspective. On the one hand, some remarkable exceptions exist. In particular, among European jurisdictions a strong tradition of vertical judicial dialogue engaging with the judgments of the ECtHR can be verified and has been confirmed in the context of international organizations' immunity with regard to the impact of the *Waite and Kennedy* judgment[23] in domestic case-law. On the other hand, a closer look at the results of national jurisprudence concerning the legal personality and the privileges and immunities of international organizations demonstrates that domestic courts frequently resort to a very similar legal reasoning, basing their judgments on comparable *rationes decidendi*, which suggest that there may exist a certain degree of 'unacknowledged' or indirect judicial dialogue. It is, of course, much more speculative to ascertain whether such forms of cross-border conversations take place or not. However, sometimes the 'circumstantial evidence' appears rather compelling.

As to the impact of the *Waite and Kennedy* judgment on the domestic case-law dealing with the jurisdictional immunity of international organizations, the contributions in this volume have demonstrated that many courts in the contracting states parties of the ECHR have taken into account the requirement clearly spelled out in this landmark case that '…a material factor in determining whether granting…immunity from…jurisdiction is permissible is whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention'.[24]

Probably the most important example in this regard is the Belgian Court of Cassation,

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which explicitly applied the *Waite and Kennedy* reasoning in three interconnected cases, namely *Western European Union v Siedler*,[25] *the General Secretariat of the ACP Group v Lutchmaya*,[26] and *the General Secretariat of the ACP Group v BD*.[27] In *Siedler*, the immunity of the Western European Union (WEU) was rejected because the Court found that the internal procedures and the appeals commission failed to meet the article 6(1) ECHR requirements of due process and independence.[28] At the same time, it extended the *Waite and Kennedy* rationale in the two *ACP Group* cases when ruling that the Group could not invoke its immunity from execution due to the complete absence of any complaints mechanism. In addition to this set of cases, reference needs to be made to *Energies Nouvelles et Environnement v The European Space Agency*, where the Brussels Court of Appeal regarded the reasonable alternative means requirement as being met by three internal mechanisms of ESA, which could also be combined, and thus upheld the immunity of the Agency.[29]

In Germany, the Constitutional Court made short references to *Waite and Kennedy* in support of its finding that the legal protection envisaged in the European Patent Convention fulfilled the standards set by the German Constitution and the related **(p.333)** Constitutional Court judgments.[30] Furthermore, Fassbender argues that there exists a possibility of a 'hidden' dialogue, particularly between the ECtHR and the German Constitutional Court, with both of them constantly influencing one another.[31] Peters and Neumann also identify one instance of such a possible 'hidden allusion'[32] in their discussion of Swiss jurisprudence in light of the *Waite and Kennedy* rationale.

They further conclude that this rationale 'has been applied or referred to by Swiss courts in a broad spectrum of very different organizational immunities cases, including cases concerning the immunity from enforcement, organizations without a headquarters agreement with Switzerland and disputes beyond the employment context'.[33]

Another example of explicit reference is Austria, where *Waite and Kennedy*—together with Belgian,[34] English,[35] and Dutch[36] cases—was mentioned in a submission by the legal advisers to the Federal Chancellery that was extensively quoted and approved by the Constitutional Court without any further contestations when it held that the procedure before the Arbitration Panel for *In Rem* Restitution fulfilled the requirements of the ECHR.[37]

Lastly, the course of events in the Canadian *Amaratunga v Northwest Atlantic Fisheries Organization (NAFO)* case,[38] as discussed by Saunders,[39] shows that the emanation of *Waite and Kennedy* even went beyond the various ECHR member states. In this case, a plain-wording interpretation of the NAFO immunity order led the motions judge of the Supreme Court of Nova Scotia to deny NAFO immunity. In this regard, the fact that NAFO did not provide any internal judicial mechanism had prompted the plaintiff to refer to *Waite and Kennedy* when arguing that his due process right under the ICCPR might be violated if international obligations were not taken into account in the interpretation of a legislative provision. Thus, the motions judge decided that, given that there was no explicit legislative intent to disregard international law, the order had to be interpreted in light of Canada's treaty obligations. However, as promising as this early decision might

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have been, it needs to be stated that NAFO's immunity was ultimately upheld on the basis of the need to grant international organizations autonomy from outside interference.

The *Waite and Kennedy* decision further seems to have had an indirect impact on French jurisprudence. While the immunity of organizations like Eutelsat or the Latin Union was upheld in 2001 and 2003 respectively—thus post-*Waite and Kennedy*—the French Cour de Cassation set aside the immunity of the Banque Africaine de **(p.334)** Développement[40] due to the absence of any internal mechanism competent to deal with disputes between staff members and the organization.[41] This line of reasoning was subsequently also upheld in similar cases, such as *Illemassène*,[42] where the French Cour de Cassation, in similar fashion to the Belgian Court of Cassation in the *Siedler* case,[43] undertook an assessment of the character of the relevant internal dispute settlement mechanisms in order to guarantee that its employees were not deprived of their right to have access to justice notwithstanding the fact that the OECD was not bound by the ECHR. However, the Court referred to the French public order instead of the ECtHR, which may be explained by a reluctance to cite a convention to which the international organization involved was not a party and not as evidence of a general refusal of vertical judicial dialogue.

A particularly pronounced example of national jurisprudence that in essence applies a *Waite and Kennedy* rationale without referring to it can be seen in Germany, where the Constitutional Court has adopted the idea that immunity is justified only when alternative remedies are available in a line of cases dating back to the 1980s. The two *Eurocontrol* decisions[44] as well as its *Solange* jurisprudence[45] encapsulate the notion that lack of (national court) jurisdiction over acts of international organizations can only be justified if access to justice is secured through alternative remedies that guarantee a roughly equivalent level of due process/fair trial.[46] Hence, even prior to the ECtHR judgment in *Waite and Kennedy*, several courts in various countries had already cautiously developed the rationale that granting immunity may depend upon safeguarding that the right of access to justice is guaranteed in alternative ways.

For instance, Argentinian and Greek courts seem to have already done so in cases involving smaller technical organizations in the 1980s[47] and 1990s,[48] well before *Waite and Kennedy*, while the Greek Conseil d'Etat reverted to a similar reasoning post-*Waite and Kennedy* without, however, expressly acknowledging the latter.[49]

Italian courts have also already applied the requirement of the availability of internal remedies as a condition for upholding immunity for some time and thus decided to abstain from explicitly endorsing the ECtHR's judgment or even judgments of other domestic courts in the *Piette*,[50] *Pistelli*,[51] and *Drago*[52] decisions. Still, all of them are **(p.335)** essentially in conformity with *Waite and Kennedy*, albeit with a focus on the Italian Constitution. As Pavoni argues, the *Drago* decision in particular may be seen as the result of indirect judicial dialogue, with the Italian Supreme Court holding that the internal committee of an international organization failed to meet the requirements of an effective

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remedy in the sense of article 6 ECHR.[53]

Further, the case-law of some countries has revealed that their courts, while being unwilling to expressly cite foreign judgments, often tend to rely on legal doctrine that makes general assessments of the law on the basis of domestic court judgments.

In Austria, for instance, courts of all instances regularly cite (Austrian) textbooks on international law, thus according them substantial importance.[54] At the same time, the case records have revealed that lower courts rely on more specific scholarly work, while the higher-ranking courts refer to the usually more easily applicable general textbooks on international law when drawing their conclusions on international law-related issues. Indirect judicial dialogue by Austrian courts may further take place via legal opinions of scholars.[55] At least where no domestic case-law relating to a specific question is at hand, judgments of foreign courts as well as scholarly works referring to such cases are being relied upon in such opinions and, in turn, in the ensuing court judgments.[56] Reliance on 'domestic' legal scholarship in order to support the findings on immunity appears to be equally common in Belgian[57] and Greek[58] jurisprudence.

Extensive reliance on scholarship has furthermore taken place in the already mentioned Italian *Piette* case[59] and in numerous decisions in Switzerland. For instance, where the Federal Supreme Court relied heavily on a book by Pierre Klein[60] in its *ZM v Arab League* decision.[61] As shown by the example of *CERN I*,[62] such a reliance on scholarship can even amount to 'a marked réplique'[63] to case-law of other countries **(p.336)** since the Court emphasized the distinctiveness of the immunity of international organizations and state immunity and repeatedly cited a *Festschrift* article by Christian Dominicé[64] that criticized the Italian *INDPAI v FAO* case.[65] Lastly, in *CERN II*,[66] the textbook on international law by Pierre-Marie Dupuy[67] was the basis on which the Court stated that 'if there is a currently acknowledged tendency to grant international organizations the widest possible immunity due to their necessary implantation in a state's territory, an opposite trend is developing'.[68] Aside from these judgments by the Swiss Federal Supreme Court, the Labour Court (TPH) of Geneva, for instance, in the aforementioned *ZM v Arab League*[69] case, relied on French,[70] Swiss,[71] and Austrian[72] authors when holding that employment relations between an international organization and its staff members were outside the ambit of national courts. Another example is the Basel-Stadt Supervisory Authority of the Debt Enforcement Office in *BIS v NML Capital*,[73] which somewhat unspecifically referred to 'the majority view in doctrine and judicature' on the international law obligation to provide internal review mechanisms and to a conclusion in a case note on the French *Degboe v African Development Bank* judgment[74] when deeming itself 'subsidiarily competent' if the international organization failed to offer adequate alternative protection.

Judicial dialogue through scholarship also occurred in *Mendaro v World Bank*,[75] where the works of French and Norwegian publicists were cited along with the already-mentioned foreign cases when the DC circuit held that the immunity of international organizations in employment claims was part of customary international law.

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However, as the example of Russia forcefully demonstrates, indirect judicial dialogue via scholarly contributions is not always obvious since judges may abstain from mentioning their sources in their decisions, thereby making it difficult to determine the impact of indirect judicial dialogue via scholarly works in specific cases as well as on a more general level.[76] Even in instances where judges evidently do refer to textbooks, the dialogue still seems 'mysterious' and 'discreet', to use Maria Gavouneli's words.[77]

(p.337) Still, where scholars rely on national jurisprudence in order to re-state a rule of international law and where other national courts invoke their findings this may be regarded as a form of indirect judicial dialogue, moderated through doctrine.

It also demonstrates why such an indirect form of judicial dialogue appears so pertinent. Foreign court judgments can be regarded as part of relevant state practice and *opinio iuris* evidencing customary international law. This is true in general, but it has particular merit in the context of judicial immunities because here it is national courts that 'form' the relevant state practice. Whether a domestic court accords immunity to an international organization and, if so, what scope of immunity it considers appropriate will form part of state practice. In particular, when it comes to the hard cases, when national courts are unwilling to grant absolute immunity and have to decide on the precise scope of functional immunity or 'sovereign' immunity to be applied their holdings will have repercussions on how such limited immunity standards are to be viewed in international law.

The field of personality, privileges, and immunities of international organizations is a particularly well-suited one when it comes to learning from courts of other states. Their interpretation of treaty rules as well as their views on potential customary international norms on the subject may be directly relevant for shaping the content of these rules. Thus, while national courts appear to have been reluctant to find guidance in the judicial expressions on the topic so far, it seems that they could benefit greatly by increased trans-border judicial conversations on the subject. This book may be regarded as a source of inspiration for judicial decision makers willing to look beyond their own jurisdiction.

Notes:

([1]) See *Arab Monetary Fund v Hashim (No 3)*, [1991] 1 All ER 871; [1991] 2 WLR 729, HL; *In re Hashim and Others* (US Bankruptcy Court, District of Arizona, 1995) 107 ILR 405; *International Association of Machinists v OPEC*, US District Court CD Cal, 18 September 1979.

([2]) *Waite and Kennedy v Germany*, App No 26083/94, European Court of Human Rights, 18 February 1999, [1999] ECHR 13; *Beer and Regan v Germany*, App No 28934/95, European Court of Human Rights, 18 February 1999, [1999] ECHR 6.

([3]) *Mendaro v World Bank*, 717 F.2d 610 (DC Cir 1983).

([4]) *International Institute of Agriculture v Profili*, 5 Annual Digest 413 (Italy, Court of Cassation 1931); *Chemidlin v International Bureau of Weights & Measures*, 12 Annual

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Digest 281 (France, Tribunal Civil of Versailles 1945); *Dame Adrien & Others*, 6 Annual Digest 33 (France, Conseil d'Etat 1931). See also C Brower, II, 'United States', in this volume.

([5]) *ZM v Permanent Delegation of the League of Arab States to the United Nations,* Geneva Labour Court, 17 November 1993, 116 ILR 643.

([6]) *Broadbent v Organization of American States*, 628 F.2d 27 (DC Cir 1980).

([7]) *Weidner v International Telecommunications Satellite Organization*, 392 A 2d 508 (DC App. 1978).

([8]) *International Institute of Agriculture v Profili*, 5 Annual Digest 413 (Italy, Court of Cassation 1931).

([9]) *X v Eurocontrol*, Supreme Administrative Court (*VGH*) of Baden-Württemberg, 7 August 1979, *NJW* 1980, 540.

([10]) *AS v Iran-United States Claims Tribunal*, Supreme Court (Hooge Raad) of the Netherlands, 20 December 1985, 94 ILR (1994) 327.

([11]) See in detail, T Neumann and A Peters, 'Switzerland', in this volume.

([12]) *Trempe* c. *Assoc. du personnel de l'OACI,* 2003 CanLII 44121 (QC CS), aff'd, *Trempe* c. *Canada (Procureure générale)*, 2005 QCCA 1031 (CanLII). See P Saunders, 'Canada', in this volume.

([13]) *Mendaro v World Bank*, 717 F.2d 610 (DC Cir 1983).

([14]) *Broadbent v Organization of American States* (n 6).

([15]) *Broadbent v Organization of American States* (n 6) note 27.

([16]) M B Akehurst, *The Law Governing Employment in International Organizations* (CUP 1967) 12.

([17]) *Cristiani v Italian Latin-American Institute*, Court of Cassation, 23 November 1985 No 5819 (1986) RDI 146, 87 ILR 20.

([18]) *Food and Agriculture Organization v INPDAI*, Court of Cassation, 18 October 1982 No 5399, (1983) RDI 187, 87 ILR 1.

([19]) *European University Institute v Piette*, Court of Cassation, 18 March 1999 No 149, (2000) RDIPP 472.

([20]) See in detail R Pavoni, 'Italy', in this volume.

([21]) See, in particular, the suggestions of C Brower, II, 'United States', in this volume.

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([22]) See D Sarooshi and A Tzanakopoulos, 'United Kingdom', in this volume.

([23]) *Waite and Kennedy v Germany* (n 2).

([24]) *Waite and Kennedy v Germany* (n 2) para 68.

([25]) *Western European Union v Siedler*, Appeal judgment, Cass No S 04 0129 F; ILDC 1625 (BE 2009), 21 December 2009.

([26]) *General Secretariat of the ACP Group v Lutchmaya*, Final appeal judgment, Cass No C 03 0328 F; ILDC 1573 (BE 2009), 21 December 2009.

([27]) *General Secretariat of the ACP Group v BD*, Final appeal judgment, Cass No C 07 0407 F; ILDC 1576 (BE 2009), 21 December 2009.

([28]) See also *Western European Union v Siedler* (n 25).

([29]) *SA Energies Nouvelles et Environnement v European Space Agency*, Appeal judgment, No 2011/2013; 2006/AR/1480; ILDC 1729 (BE 2011).

([30]) See Bundesverfassungsgericht (2nd Senate, 4th Chamber), 4 April 2001, Case no 2 BvR 2368/99, margin numbers 15 and 20. See also State Administrative Court of Hesse, (7th Senate), 17 February 2010, Case no 7 E 2900/09, margin number 19.

([31]) See B Fassbender, 'Germany', in this volume.

([32]) *E v T*, case no C/18260/2005-4, *Cour civile de la Cour de Justice de Genève, Cour d'appel, juridiction des prud'hommes*, judgment of 25 March 2009 (unpublished, on file with the authors of the Swiss chapter) 10 (their translation).

([33]) T Neumann and A Peters, 'Switzerland', in this volume, 266.

([34]) *Dalfino v Governing Council of European Schools and European School of Brussels I*, Conseil d'Etat, 17 November 1982, 108 ILR (1998), 638–42.

([35]) *Lenzing AG's European Patent*, Queen's Bench Division, 20 December 1996, [1997] RPC 245.

([36]) *AS v Iran-United States Claims Tribunal* (n 10).

([37]) *Anonymous v Austria*, Individual constitutional complaint decision, Constitutional Court, B 783/04; ILDC 140 (AT 2004) 14 December 2004. See also G Novak and A Reinisch, 'Austria', in this volume.

([38]) 2010 NSSC 346 (CanLII), rev'd in part, *Northwest Atlantic Fisheries Organization v Amaratunga*, 2011 NSCA; 73 (CanLII).

([39]) See P Saunders, 'Canada', in this volume.

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([40]) *Banque africaine de développement v MA Degboe*, Cour de Cassation, Chambre sociale, 25 janvier 2005, 04-41012, 132 *JDI* (2005) 1142.

([41]) See in detail, G Bastid Burdeau, 'France', in this volume.

([42]) *Illemassene v OECD*, Cour de Cassation, Chambre sociale, No de pourvoi: 09-41030, 30 November 2010.

([43]) *Western European Union v Siedler* (n 25).

([44]) Bundesverfassungsgericht (2nd Senate), 23 June 1981 ('*Eurocontrol I*'), 58 BVerfGE 1 *et seq*; Bundesverfassungsgericht (2nd Senate), 10 November 1981 ('*Eurocontrol II*'), 59 BVerfGE 63 *et seq.*

([45]) Bundesverfassungsgericht (2nd Senate), 29 May 1974 ('*Solange I*'), 37 BVerfGE 271 *et seq*; Bundesverfassungsgericht (2nd Senate), 22 October 1986 ('*Solange II*'), 73 BVerfGE 339 *et seq.*

([46]) See B Fassbender, 'Germany', in this volume.

([47]) *Washington Julio Efraín Cabrera v Comisión Técnica Mixta de Salto Grande*, CSJN, 5 December 1983, *CSJN Fallos*: 305:2150. See on the so-called *Cabrera* doctrine, R E Vinuesa, 'Argentina', in this volume.

([48]) Single-Member Court of First Instance of Chania 142/1990 (1990) *Labour Law Review* 651; Court of Appeal of Crete 479/1991 (1992) *Labour Law Review* 503, M Gavouneli, 'Greece', in this volume.

([49]) M Gavouneli, 'Greece', in this volume, 138.

([50]) *European University Institute v Piette*, Court of Cassation, 18 March 1999 No 149, (2000) RDIPP 472.

([51]) *Pistelli v European University Institute*, Court of Cassation, 28 October 2005 No 20995, (2006) 89 RDI 247, ILDC 297 (IT 2005).

([52]) *Drago v International Plant Genetic Resources Institute*, Court of Cassation, 19 February 2007 No 3718, (2007) Giustizia civile Massimario 2, ILDC 827 (IT 2007).

([53]) See also R Pavoni, 'Italy', in this volume.

([54]) See the frequent references to H Neuhold, W Hummer, and C Schreuer, *Österreichisches Handbuch des Völkerrechts*, Vol I (1983, 2nd edn 1991, 3rd edn, Manz 1997), eg, in *Roswitha W v United States of America*, Supreme Court, 9 Ob A244/90, 21 November 1990; *Company E v European Patent Organization*, Supreme Court, 7Ob627/91, 11 June 1992; *Company Baumeister Ing Richard L v O*, Final appeal/cassation, Supreme Court, 10 Ob 53/04y; ILDC 362 (AT 2004), 14 December 2004.

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([55]) See G Novak and A Reinisch, 'Austria', in this volume.

([56]) See the example of the expert opinion submitted by Seidl-Hohenveldern in the *European Patent Organization Lease* case, *Company E v European Patent Organization*, Supreme Court, 7Ob627/91, 11 June 1992.

([57]) Concerning Belgium, Ryngaert reports that it is common for lower instance courts to rely on scholarship. See C Ryngaert, 'Belgium', in this volume.

([58]) In Greece, the First Instance Court of Chania (Greece) already in 1990 referred extensively to a Greek handbook on international organizations when outlining the rationale of immunity of international organizations in a case concerning the Mediterranean Agronomic Institute of Chania, a finding that was subsequently repeated in almost exactly the same wording by the Crete Court of Appeal. Single-Member Court of First Instance of Chania 142/1990 (n 48); Court of Appeal of Crete 479/1991 (n 48). See M Gavouneli, 'Greece', in this volume.

([59]) *European University Institute v Piette*, Court of Cassation, 18 March 1999 No 149, (2000) RDIPP 472.

([60]) P Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens* (Bruylant 1998).

([61]) *ZM v Arab League,* Swiss Federal Supreme Court, 4 C.518/1996, unpublished judgment of 25 January 1999, partly published in L Caflisch, 'La pratique suisse en matière de droit international public 1999' (2000) 10 *Revue suisse de droit international et européen* 627, 642 *et seq*, also published in (1999) 19 *Praxis des Internationalen Privat- und Verfahrensrechts* (IPRax) 257 (with case note by I Seidl-Hohenveldern, at 273) para 4(c).

([62]) *Groupement d'Entreprises Fougerolle et consorts v CERN,* Swiss Federal Supreme Court, 21 December 1992, ATF 118 Ib 562.

([63]) See T Neumann and A Peters, 'Switzerland', in this volume.

([64]) Ch Dominicé, 'La nature et l'étendue de l'immunité de juridiction des organisations internationales', in K-H Böckstiegel, H-E Folz, J M Mössner, and K Zemanek (eds), *Völkerrecht, Recht der Internationalen Organisationen, Weltwirtschaftsrecht, Festschrift für Ignaz Seidl-Hohenveldern* (Carl Heymanns Verlag 1988) 77.

([65]) *Istituto Nazionale di Previdenze per i Dirigenti di Aziende Industriali (INPDAI) v FAO*, Judgment No 5399, Corte Suprema di Cassazione, 18 October 1982, *United Nations Juridical Yearbook* (1982) 234.

([66]) *A.SA et consorts v Conseil Fédéral*, 4A.1/2004/ech, 2 July 2004, ATF 130 I 312 (also published as *Consortium X v Federal Council,* ILDC 344 (CH 2004)).

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([67]) P-M Dupuy, *Droit International Public* (5th edn, Dalloz 2000).

([68]) Own translation of the passage cited by T Neumann and A Peters, 'Switzerland', in this volume, from *A.SA et consorts v Conseil Fédéral*, 4A.1/2004/ech, 2 July 2004, ATF 130 I 312.

([69]) *ZM v Permanent Delegation of the League of Arab States to the United Nations*, Geneva Labour Court, 17 November 1993, 116 ILR 643.

([70]) A Plantey, *Droit et pratique de la fonction publique internationale* (CNRS 1977) 57.

([71]) Ch Dominicé, 'L'immunité de juridiction et d'exécution des organisations internationales', 187 *Recueil des Cours* (1984 IV) 145, 185.

([72]) I Seidl-Hohenveldern, *Die Immunität internationaler Organisationen in Dienstrechtsstreitfällen* (1981) 19.

([73]) *BIS v NML Capital Ltd et al and Debt Enforcement Office Basel-Stadt*, Aufsichtsbehörde über das Betreibungs- und Konkursamt Basel-Stadt, 23 April 2010, AB 2009/102.

([74]) *Banque africaine de développement v MA Degboe* (n 40) 1142.

([75]) *Mendaro v World Bank* (n 3).

([76]) See the contribution of S Marochkin, 'Russian Federation', in this volume.

([77]) M Gavouneli, 'Greece', in this volume. See also B Fassbender, 'Germany', and T Neumann and A Peters, 'Switzerland' in this volume.

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