CHAPTER TWELVE

EXTERNAL RELATIONS WITH PRIVATE PARTIES,
INTRODUCTION

12.1 Types of relations

IGOs, like States, have commercial and other relations with private parties, where the organization acts in the same manner as a private party (\textit{jure gestionis}). Thus IGOs buy, sell and lease movable and immovable property, acquire copyright and patents, obtain and grant loans, engage firms and individual contractors to perform works and services, conclude contracts for insurance and public utility services, receive donations and inheritance, claim or pay reparation for injury and damage, litigate in national courts and courts of arbitration, etc.

Some organizations conclude certain types of contracts in great numbers. Thus EURATOM research has a great number of purchase and construction contracts in the course of its performance. However, the greatest number of contracts (also of standard type) may have been concluded by relief organizations like UNRWA and UNICEF (autonomous organs of the UN, acting in their own names).

It makes in principle no legal difference whether such relations are with natural or juridical persons, with nationals of member or non-member States, or with persons who are or are not under the organization’s jurisdiction in other respects.

12.2 Application of national law

While internal relations, including relations with officials, are governed by the internal law of the organization, as discussed in Part Two above, external

\footnote{Cf. the legal opinion prepared for the Institut de droit international by the Office of Legal Affairs of the UN Secretariat also published in United Nations Juridical Yearbook, 1976, pp. 159–176.}
relations *jure gestionis* are governed by national law, unless circumstances point towards the application of the internal law of the organization or international law or general principles of law (as in the cases of relations with NGOs and the Loan Agreements of the International Bank). The presumption has traditionally been in favour of a particular national law – which national law depending upon the conflict of laws of the *lex fori*, with appropriate adjustments in view of the special nature of IGOs.

### 12.3 Theory on national versus international law

*Mann*

*F.A. Mann*, in an article on “The Proper Law of Contracts Concluded by International Persons” (including States and IGOs), started out from the traditional view that contracts between an international person and a private party “are, as a rule, governed by the system of municipal law chosen by the parties”. However, he pointed out that in many cases it would be advantageous to submit the contract instead to international law, and he cites several cases where this has been done by implication. He rejected the alternative methods of applying gen-

---

2 See however G. van Hecke, “Contracts Between International Organizations and Private Law Persons” in Bernhardt and Bindschedler (eds.) Encyclopedia of Public International Law (2nd ed. 1992) Vol. 1, 812–14; “It has sometimes been suggested by authors that a distinction should be made between ordinary contracts, to be subjected to a domestic system of law, and contracts closely connected with the performance of the organization’s specific tasks, to be subjected to international law or the general principles of law. The practice of organizations possessing a financial task does not correspond to this theoretical view” (p. 813).


In addition to the writers on IGOs, reference may be made to the writers on the similar problems of States and private parties, including Mann: “The Law Governing State Contracts”, *BYIL*, XXI (1944), pp. 11 ff.; Jessup: Transnational Law, New Haven 1956; McNair: “The General Principles of Law Recognized by Civilized Nations”, *BYIL*, XXXIII (1957), pp. 1–19; Verdross, loc. cit., note 4 below; and Wolfgang Friedmann: The Changing Structure of International Law (1964), pp. 173 et seq.