15.1 The problems

The discussion in the three preceding chapters demonstrates that there are considerable divergences among writers and in practice on the extent to which external relations of IGOs with private parties should be governed by national law. But it demonstrates also the divergences – and even confusion – as to what law should be applied if national law is to be by-passed. Most writers on external relations *jure gestionis* of IGOs (and a few legal advisers of IGOs) speak of international law as the only alternative to national law, although international law may not mean the same thing to all of them. IGOs never refer to international law in their agreements with private parties, but to general principles of law. Courts speak of both. In addition there is the internal law of IGOs, which writers consider part of international law. Are these all different names for the same thing, since in substance they are all made up from general principles of law? Or are they different systems? If so, must we choose only one of them, or shall we apply one or the other depending upon the circumstances?

It is now time to clarify the discussion on this point. We will therefore in this chapter consider first each type of legal system separately, and then attempt to establish the relationship between them. But first we will examine the reason for the modern trend away from national law.

15.2 Reasons for avoiding national law. Practice

The national law of a particular State has the great advantage of being a relatively fully developed and precise legal system. And, as will be demonstrated

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1 See also Jenks, op. cit. supra, chapter 14.4, note 41, pp. 152–153.
below, national law and regular conflict of laws can technically be applied to IGOs without serious difficulty. Still, several important IGOs feel that even their commercial transactions, at least those of an operational nature, should not be governed by the national law of any particular State. This has been so in the United Nations and its autonomous organs UNRWA and UNICEF, which are greatly involved in operational business transactions. Similar considerations apply *a fortiori* to operational relations of a non-commercial nature, for example the research contracts granted by the International Atomic Energy Agency, although some organizations here submit to national law.

If such relations are governed by national law, there is in the first place a risk that provisions of the contract or of applicable regulations be superseded by mandatory provisions of the applicable law. This can be taken care of by a clause specifically precluding supersession, while leaving the way open for interpretation and supplementation under the applicable national law. However, there are few clauses in this sense, and it is doubtful whether those which exist really stop at this point, or whether they do not preclude the application of a specific system of national law even for purposes of interpretation, except on specific points.

In the second place there is the problem of the uniformity of contracts which are concluded with, or offered out for tender to, a great number of parties in different countries. Some of these are operational contracts, for example research or loan contracts, which follow a standard pattern set forth in the contract or in regulations incorporated in it by reference. Others are regular business contracts related to the operations of the organization – for example the purchase of supplies by UNICEF, UNRWA and other relief organizations, which are usually made the subject of bids from different countries. In one case as in the other it is important to retain uniformity of the contents, of interpretation of terms and even of the form of the contracts and regulations. For this reason many organizations wish to avoid the law of the other contracting party, because this would make each contract subject to a different law. That law may, moreover, in many cases be unfamiliar to the organization, and may even require textual changes in the contract or cause other administrative inconvenience. (Still, this solution is applied by the European Community in many cases, alternatively that the contract shall be governed by the substantive national law of Belgium where the main EC institutions have their seat. Moreover, only a limited number of national legal systems

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2 The research contracts of the European Community are expressly submitted to national law.

3 Such supersession appears to have been accepted, e.g. by EURATOM.