18.1 Applicable provisions and general principles of conflict of laws

As demonstrated there are so far only a few scattered provisions on the conflict of laws of IGOs in national statutes, in international conventions on conflict of laws, in constitutions of IGOs and in their conventions on privileges and immunities. In some cases, however, the organizations adopt themselves the necessary substantive law in the form of regulations. These become directly binding upon the parties in those cases where the legal relationship is governed by the internal law of the organization. But in most cases the “regulations” are intended merely as “general conditions”, which become binding only when they have been accepted by both parties as part of their contract (general conditions). Some regulations, contracts and arbitration agreements contain clauses on applicable law. However, most of them do not. On the other hand, most regulations and most contracts contain jurisdictional clauses, and these may offer some guidance as to the intention of the parties.

However, in many cases there are no provisions and no evidence of an intention. The parties may not have thought of the problem. Or they may have considered it too difficult to draw up a satisfactory clause, or not worthwhile to do so. Or they may simply have felt that they could not agree.

In such cases the question of applicable law depends in principle upon the conflict of laws of the lex fori. This must in the case of internal courts of IGOs, ad hoc arbitral tribunals and international courts usually be drawn from general principles of conflict of laws subject to a natural tendency of such courts towards general principles of (substantive) law. Even national courts rely to a great extent upon general principles of conflict of laws. However, in respect of the basic choice between national law and other legal systems,
the general principles of conflict of laws are loose or non-existent. As for the special problems of IGOs, neither the provisions, nor the practice of IGOs in the absence of provisions, offer any uniform picture from which it is possible to discern generally accepted conflict rules upon which the competent courts can draw, with a few exceptions.

18.2 Internal relations

The most important exceptions concerns relations between the organization and its organs, including its officials and other individual members of its organs acting in that capacity. As demonstrated above in chapter 5, these parties are, according to established customary law, under the inherent organic jurisdiction of the organization, and relations with them are governed exclusively by the internal law of the organization. The same is true of relations between the organization and other individuals who are subject to its extended jurisdiction, or sovereign powers, as far as relations involving exercise of such jurisdiction is concerned. As pointed out above in chapter 6, there are a few organizations upon which member States, or even non-member States, have conferred territorial, personal or supranational jurisdiction. IGOs may even unilaterally assume jurisdiction over territory or persons that are not subject to the jurisdiction of any State, or in respects in which they are not subject to State jurisdiction, although there are few examples so far. These are not merely general principles of conflict of laws of the lex fori. They are rules of public international law which are binding upon States (although, in respect of territorial and personal jurisdiction there has not yet been enough time to develop customary law for IGOs, so here it is necessary to rely upon analogy from the law applicable to States). In other words, States are bound to have their courts apply the law of the organization in these cases, to the extent that it does not conflict with substantive rules of international law.

18.3 External relations: the four alternatives

In other fields, no firm rules can be laid down. The choice of law depends, not only upon the nature of the legal relationship concerned, but also upon which organization is involved and upon the type of court before which the question arises and its particular conflict of laws. And the choice is not only between different systems of national law, or between the two types of legal systems into which traditionally all law is divided; national law and international law. The choice is between four different categories of legal systems: