CHAPTER 13

International Organizations and Immunity from Legal Process

An Uncertain Evolution

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1 Introduction

A recurring question in international law is to what extent international organizations (IOs) enjoy immunity from actions being brought against them before national courts. Historically, the reason for such immunity is to allow them to carry out their functions independently. Nevertheless, this goal has to be weighed against individuals’ rights to sue IOs before national courts if a dispute arises between them. These disputes may have a private law character (e.g. employment, contractual or tort issues) or a public law character (e.g. the alleged human rights violations committed by an international organization during a peacekeeping operation or in the administration of foreign territories).¹

This article examines the question of immunity, focusing on two topics: the legal basis of IOs’ immunities before national courts and their nature. As to the second topic, the article analyses the evolution from absolute to functional immunity and, with regard to the latter, it discusses the new trend, according to which the immunity may be granted to IOs only if reasonable alternative means allow for the protection of individual rights.

It is worth noting that the expression ‘legal process’ includes the immunity of IOs both from jurisdiction and from enforcement, but each immunity will be examined separately. The article will discuss first immunity from jurisdiction and then immunity from enforcement. Finally, it will draw a brief conclusion summarising the current situation.

* The views of the author are entirely personal and in no way represent the views of the CJEU.

The Legal Basis of Immunity of International Organizations from Jurisdiction

According to Reinisch, the legal basis of IOs’ jurisdicitional immunity is a ‘perennial problem’. Indeed, scholars dispute whether IOs enjoy immunity from jurisdiction under customary law or treaty law. This uncertainty may also be found in the activity of the International Law Commission (ILC), the Institut de Droit International and the International Law Association. In that regard,


5 The issue of the immunity of IOs has never been considered by the Institut de droit international (IDI), except in the debate that preceded the adoption of the Resolution on Contracts concluded by International Organizations with Private Persons. In that debate the IDI made a reference only to the conventional source of IOs’ immunities.

6 The International Law Association (ILA) first discussed the topic of IOs immunity in the framework of State immunity, stressing that immunity is primarily a result of international treaty law, rather than customary international law. Subsequently, the ILA once again examined the topic of immunity in the framework of the discussion concerning the accountability of international organizations. Also in that discussion, the ILA confirmed that treaty law is the source of IOs’ immunity.