Chapter 18

Settlement of Disputes by International Courts and Tribunals of Regional International Organizations

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1 Introduction

The analysis of disputes settlement mechanisms represents one of the main topics in studying the law of international organizations and is strictly related to an assessment of the legal organization models embodied by interstate cooperation. So it has to be taken into consideration the classical distinction between ‘soft organizations’ and ‘hard organizations’ and, within the latter category, between ‘intergovernmental organizations’ and ‘supranational organizations’. In the light of their non-institutionalized nature and their main features, in the ‘soft organizations’ interstates disputes are generally settled through political-diplomatic means; they give a maximum flexibility to the parties which are not bound by the final ‘proposal’ for a settlement, so that there is little legal certainty but the State’s sovereignty is guaranteed.

The States’ need for granting their national sovereignty from external interference characterizes also ‘intergovernmental organizations’. Generally it translates into the conferral of few not very relevant functions to the regional entity and into a low degree of institutionalization of interstate cooperation. As a consequence, it has important repercussions even on the choice of disputes settlement mechanism. Indeed, founding treaties of

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1 About the ‘soft organizations’, see the chapter of Angela Di Stasi, “About Soft International Organizations: An Open Question,” published in this volume.
3 Rarely but not unlikely in a ‘soft organization’ Member States may adopt agreements regulating specific fields of their cooperation thus providing for the establishment of an arbitral mechanism. This was the case of the Association of South east Asian Nations (ASEAN) before the Charter came into force (ASEAN Protocol on Enhanced Dispute settlement Mechanism, Vientiane, 23 Nov. 2004, which substituted the 1996 Protocol).
4 ‘Intergovernmental organizations’ are governed by principles and rules of international law. Generally Member States cooperate adopting non-binding acts or binding agreements creating
‘intergovernmental organizations’ often provide for the resort to political and diplomatic methods to settle interstate litigations as they allow States to better preserve their sovereignty. Even when the founding agreements don’t regulate conflicts resolution, Member States tend to use political and diplomatic means and only in some cases, in later time, they fill this normative gap adopting an agreement which establishes formally a specific (generally political or arbitral) mechanism. Coherently with its particular legal nature, in ‘intergovernmental organizations’ the judicial body has a marginal role. In some (not many) cases, statutory treaties may provide for the resort to a judicial mechanism, but generally its establishment is expressed in general terms and deferred to the following adoption of a specific protocol. In practice, Member States often prefer not to establish it and to keep on resorting to negotiation or other political-diplomatic means.

However, recent decades have seen a clear increase in the number of judicial disputes settlement mechanisms established within regional economic organizations. This phenomenon, known as ‘judicialization’ process, often ranks in a more general trend to strengthening the regional interstate cooperation on normative and institutional level and expresses Member States’ will to submit their institutionalized cooperation to the rule of law. Moreover it seems to be strictly related to the concrete realization of economic goals within

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