Legal Aspects of Competition between International Organizations

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I Introduction

We are surrounded by competition. Wherever and whenever there is more than one thing of the same kind there is bound to be competition between them. Even when there are two principles of law regulating the same subject matter, invariably they are competing with each other. And not only are they competing but at same stage the one will take precedence over the other. In his Dissenting Opinion in Threat or Use of Nuclear Weapons, Judge Koroma submitted that “[w]hen the [International] Court [of Justice] is faced with two competing principles or rights,1 it should jurisprudentially assign a priority to one of them and cause it to prevail”.2 The present contribution attempts to examine the application of competition rules and principles as they pertain to international organizations, an area that arguably has not attracted much attention in the bibliography. It examines how the most important rules of competition law apply to international organizations and offers pertinent examples from practice.

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1 In casu, the obligation of states to comply with the principles and rules of international law applicable in armed conflict versus the right of states to self-defence, especially when their survival is at stake.

II Applying the Concept of Competition to International Organizations. The Advantages of Competition

Competition has always been a healthy process.\(^3\) It has the power to distinguish the good from the bad, the successful from the disasters and it offers to entities being in competition the opportunity to acquire a new dynamic. Traditionally, competition has been viewed from an economic point of view. Its foundations, processes and players have been defined accordingly: the relevant markets and their interchangeability, undertakings and enterprises, consumers and recipients of services, market shares, the dominant position and its abuse, the monopoly, the monopsony, concerted practices, cartels, access to market and barriers to it, they are all primarily economic notions and principles. Even though not immediately identifiable, competition exists and takes place in many non-economic spheres. To offer illustrations of this diversity, reference could be made to competition among political parties in a democratic society,\(^4\) among public bodies including universities and research centers,\(^5\) among churches,\(^6\) and so on. Generally speaking, competition exists between all those entities (whether private, public or semi public), which aim at gaining power at the expense of others and endeavour to consolidate their power and their control in a given area (in competition jargon the ‘the market’) where they pursue specific activities (‘the product’).

Even though Schumpeter’s ‘gales of creative destruction’ might not apply to international organizations (IOs), at least to the extent that it applies to

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3 For those questioning whether competition is advantageous at all times, see M.E. Stucke, “Is Competition Always Good?” (2013) 1 Journal of Antitrust Enforcement 162.

