CHAPTER 9

Immunities of International Organizations: A NATO View

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Abstract

This chapter argues that recent developments in Europe have eroded the privileges and immunities NATO has historically enjoyed. The European Court of Human Rights and national courts interpreting its jurisprudence have increasingly held states accountable for the actions of the international organizations to which they play host and to which they have granted absolute judicial immunities. This trend involves serious overreach by the courts and, at least in the case of NATO, fails to respect the intentions of the states that simultaneously prepared and adopted the core NATO treaties and the European Convention on Human Rights. This approach presents significant and unnecessary risks to the functioning of an organization whose effectiveness is essential to maintaining international peace and security.

Keywords

NATO – European Convention on Human Rights – immunity – international organizations

1 Introduction

As an important intergovernmental organization headquartered in Europe but with a trans-Atlantic character, the North Atlantic Treaty Organization ('NATO' and the 'Organization') has in recent years observed, with both keen

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interest and a degree of alarm, juridical developments in Europe relating to the immunities of international organizations. Three general considerations should be borne in mind when considering NATO’s perspectives on its immunities.

First, NATO is to a large extent an observer rather than a direct party with respect to court determinations relating to NATO immunities. This is in part because NATO’s principal, or at least most visible and occasionally controversial function—conducting military operations—is carried out almost exclusively by the military forces of individual allies rather than by elements of the Organization itself. But challenges to internal NATO administrative matters as well—and it is in this area that the bulk of litigation involving NATO immunities has taken place to date—are often brought against individual allies rather than against NATO. This is largely because cases brought under the European Convention on Human Rights (‘ECHR’) must be brought against a state party to that Convention.

Second, despite widespread perceptions that NATO is a monolithic military behemoth, it is more accurately understood as essentially a political and structural tool that is available for use by its member states when they collectively so decide. The Secretary General and his staff at Brussels headquarters have very few delegated powers or authorities, and can take very few decisions on their own on behalf of the Organization. In fact, virtually all important (and many unimportant) NATO decisions are taken directly by the allies at weekly meetings of the North Atlantic Council. The Council decides by consensus, in so doing engaging the full political responsibility of all 28 allies in each such decision; a similar approach is followed by the governing boards of the various civilian NATO bodies. The relevance of this with respect to immunities is that in reality many of the decisions taken by the Organization are taken directly by the member states, acting by consensus, rather than by the Secretary General or other appointed heads of the various NATO bodies. This fact may have implications for the legal responsibility of the member states themselves.

Finally, and closely related to the second point, NATO has a highly decentralized structure; there is no overall NATO ‘CEO’. Rather, it is divided into separate military and civilian sides, each of which is further divided into a number of individual NATO bodies or military commands reporting and accountable directly to the North Atlantic Council, rather than to the Secretary General. NATO civilian bodies have presences today in well over a dozen allied countries; there are military headquarters or sub-headquarters in about 20. In each of these countries the resident NATO body or bodies enjoy a different relationship with the host nation.