The Jurisdictional Immunity of International Organizations in the Netherlands and the View from Strasbourg

Thomas Henquet*

Abstract

International organizations are regularly sued before the Dutch courts. This should come as no surprise, since the Netherlands hosts no fewer than 33 of such organizations. While major cases date back to the landmark judgment in the Spaans v. Iran-United States Claims Tribunal case, the recent case of Stichting Mothers of Srebrenica et al. v. United Nations brought to the fore important unresolved issues which relate to the perceived conflicting obligations of states. On the one hand, states must accord immunity to international organizations; on the other, they must provide claimants with access to justice. Complicating circumstances in the Srebrenica case were the operation of the priority rule under Article 103 of the United Nations Charter, and the lack of alternative remedies against the United Nations. This paper highlights these unresolved issues, and considers how the courts interpret and apply the ‘functional immunity’ test. It then examines how to resolve the perceived tension between the obligations of states to accord immunity and to grant access to justice.

Keywords

international organizations – immunity – access to justice – UN Charter Article 103 – European Convention on Human Rights

1 Introduction

International organizations are regularly sued before the Dutch courts. This should come as no surprise, since the Netherlands hosts no fewer than 33 of...
such organizations. There is consequently ample case law by courts at all levels, arising from a broad variety of disputes, concerning the immunity from jurisdiction of international organizations.

The contemporary era of jurisprudence begins in 1985, when the Dutch Supreme Court, the highest court in civil matters, issued its landmark judgment in *Spaans v. Iran-United States Claims Tribunal* (‘IUSCT’). Since then, the Supreme Court has ruled three more times on the immunity of international organizations, including most recently in the high-profile case, *Stichting Mothers of Srebrenica* et al. v. *United Nations*. While the lower courts have used various techniques to deny the immunity of international organizations in some cases, the Supreme Court has each time upheld that immunity. Following the *Spaans* and *Srebrenica* judgments, the claimants initiated proceedings against the Netherlands before the then European Commission of Human Rights and the European Court of Human Rights (‘ECtHR’), respectively, for denying ‘access to justice’ under Article 6 of the European Convention on Human Rights (‘ECHR’). The Netherlands prevailed both times.

The law on the immunity of international organizations in the Netherlands has been clarified in several respects as a result of this litigation. However, the law is not fully settled and the proceedings concerning the *Srebrenica* case have brought to the fore important unresolved issues. These relate to the perceived conflicting obligations of states: on the one hand, to accord immunity to international organizations; and, on the other, to grant claimants access to justice. Complicating circumstances in the *Srebrenica* case were the operation of the priority rule under Article 103 of the United Nations Charter, and the lack of alternative remedies against the United Nations. The main aim of this chapter is to highlight these unresolved issues, following a general introduction to the Dutch case law.¹ In this respect, the chapter begins by briefly discussing the sources of jurisdictional immunity of international organizations in the Netherlands (Section 2) and the main procedural aspects of an immunity defence (Section 3). It next considers how the courts interpret and apply the ‘functional immunity’ test (Section 4). The core of the contribution examines how to resolve the perceived tension between the obligations of states to accord immunity and to grant access to justice (Section 5). This prompts a discussion as to whether such obligations arise in the first place (Section 6).