

International Organizations Before National Courts

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1 Purpose, subject and methodology of this study

Introduction

Studies of international organizations as parties to legal proceedings before national courts have been dealt with in the past mainly using traditional concepts, the two most important of which have focused on the domestic legal personality of international organizations and their immunity from suit. This study is broader in scope. It does not limit itself to issues of immunity or personality and thus does not view the issue from a preconceived legal point of view. Rather, it takes a primarily phenomenological approach: it describes how courts respond to international organizations in proceedings before them.

Although this study focuses on decided cases, it will also analyze scholarly writings and, in particular, the work of the International Law Commission (ILC), the Institut de droit international (IDI), the International Law Association (ILA) and other scholarly bodies entrusted with the codification and development of international law. However, in view of the abundant literature on issues concerning the legal personality of international organizations and their privileges and immunities, theoretical reflections will be kept to a minimum. An effort will be made to address the problems relevant to deciding actual cases. The emphasis is on the way decision-makers handle such problems in the real world of national courts. Therefore, this study will focus on national case law as well as on other legal documents potentially manifesting state practice. This study will not, however, confine itself to analyzing 'how national judges behave' in settling particular types of disputes involving international law. Rather, the comparative analysis will provide a basis for finding 'desired models of [judicial] behavior' for the specific kinds of problems at issue.¹

¹ Cf. the similar approach taken by the Institut de droit international in 'The Activities of

The purpose of analyzing the relevant case law should not be limited to elaborating whether a consistent practice can be found – which in turn might help to ascertain possible customary rules² – or to see whether the international obligations of states have been fulfilled. Rather, this study concentrates on how domestic courts actually deal with such cases and investigates whether certain trends might ultimately lead to new ways of approaching disputes involving international organizations, that is, to a method that is different from the currently predominant party-focused immunity.³ In this respect, a number of questions are raised: how do domestic courts resolve questions concerning the legal personality of international organizations and their immunity from suit? What are the policy issues underlying immunity claims and are they made explicit by the parties and/or by the courts? What kinds of legal tools are employed to solve such problems? Do courts actively seek to adjudicate disputes involving international organizations or are they rather trying to abstain from them?

This study focuses on the attitudes of and techniques used by national courts when confronted with disputes involving international organizations. Under what circumstances they exercise or refrain from exercising their adjudicatory jurisdiction and their justifications for so doing, are matters which lie at the core of this investigation. Thus, decisions of international courts and tribunals are, in principle, outside the scope of this study. However, such decisions will be analyzed in so far as they contain elements relevant to the question of how national courts should treat international organizations, for example international decisions addressing issues of domestic legal personality or immunities and privileges of international organizations.⁴

National Judges and the International Relations of Their State' (1993 I) 65 *Annuaire de l'Institut de Droit International* 327–448 at 329.

² In the course of this investigation national court decisions will be viewed as potential 'sources' of international law, not only in the sense of Article 38(1)(d) of the Statute of the ICJ as a supplementary source and evidence of international law, but rather as relevant state practice for the formation, or – to be proven – the confirmation, of customary law. Cf. Antonio Cassese, 'L'immunité de juridiction civile des organisations internationales dans la jurisprudence italienne' (1984) 30 *Annuaire français de droit international* 556–66 at 566; Sir Hersch Lauterpacht, 'Decisions of Municipal Courts as a Source of International Law' (1929) 10 *British Yearbook of International Law* 65–95 at 67; Karl Zemanek, 'What is "State Practice" and Who Makes It?' in Ulrich Beyerlin, Michael Bothe, Rainer Hofmann and Ernst-Ulrich Petersmann (eds.), *Recht zwischen Umbruch und Bewahrung. Festschrift für Rudolf Bernhardt* (Berlin, 1995), 289–306 at 294. Cf. also the discussion of potential customary personality and immunity standards at pp. 45ff below.

³ See, in particular, Parts I and III of this study.

⁴ Thus, decisions of international tribunals such as the International Court of Justice, the

In a broader sense, this analysis of national case law will also contribute to the issue of international law before national tribunals,⁵ since issues of the domestic legal personality and judicial immunity of international organizations stand at the intersection between domestic and international law.⁶ In fact, most of the legal problems involved concern the interpretation and application of treaty or customary law. Although the majority of cases arise from routine employment or contractual disputes between international organizations and private parties, these cases sometimes have strong political implications.

This book is divided into three major parts. Part I analyzes the attitudes of national courts towards disputes involving international organizations. It describes the various legal approaches taken by courts when confronted with international organizations as parties to legal proceedings. It discusses the applicable legal norms resulting in the adjudication or non-adjudication of such disputes and it focuses on the legal techniques used to avoid such cases or to confront them. Among those legal techniques, jurisdictional immunity is certainly the most prominent but it is by no means the only one: issues concerning the legal personality of international organizations and, in particular, the scope of their personality under domestic law are of particular relevance, as are also the various non-justiciability doctrines.

Part II discusses the policy issues *pro* and *contra* the adjudication of disputes involving international organizations by national courts. It analyzes the rationale for immunizing international organizations from domestic litigation, especially the frequently asserted functional need for immunity. It will also devote substantial space to a discussion of the burden immunity places upon third parties, and the question of how far such a burden can be tolerated.

Part III summarizes the conclusions and seeks to present some suggestions for the future development of this area of the law. It identifies

European Court of Justice or international arbitral bodies, of human rights organs, such as the European Commission of Human Rights and the European Court of Human Rights, as well as of administrative tribunals of international organizations, such as the World Bank Administrative Tribunal, or the OAS and the UN Administrative Tribunals, will be analyzed as far as they prove to be relevant for the main topic.

⁵ Cf. recent ILA Committee work. Committee on International Law in Municipal Courts, ILA, *Report of the 66th Conference, Buenos Aires (1994)*, 326ff. See also Thomas M. Franck and Gregory H. Fox (eds.), *International Law Decisions in National Courts* (Irvington-on-Hudson, NY, 1996).

⁶ See also Bernhard Schlüter, *Die innerstaatliche Rechtsstellung der internationalen Organisationen unter besonderer Berücksichtigung der Rechtslage in der Bundesrepublik Deutschland* (Cologne, Berlin, Bonn and Munich, 1972), 1, for issues of domestic legal personality.

trends in the case law, and asks whether some of them could substitute for or modify the presently predominant immunity concept with a more flexible principle exempting certain types of dispute from domestic adjudication – a principle that would at the same time guarantee the functioning and independence of international organizations and not unduly impair the access of private parties to a fair dispute settlement procedure.

Subject of the study

The subject of this study is the public international organization before domestic courts. Since national courts sometimes treat other entities, not falling under a strict definition of international organizations, as if they were international organizations, these will also be covered with the necessary caution in mind.⁷

Some clarification is therefore needed of the entities regarded as genuine international organizations as opposed to those other entities also receiving attention in this study. Some terminological explanation of such crucial terms as ‘personality’, ‘immunity’, ‘privilege’ and related notions is also required.

International organizations

The need to define international organizations arises not only from the scholarly tradition of limiting and clarifying the issues and topics set out for detailed discussion in the course of a learned investigation. For this particular purpose – ascertaining rules concerning the international and domestic legal personality of international organizations that might be relevant for domestic courts in deciding cases involving international organizations – some clarification of the nature of the subject of the investigation might prove valuable for the insights it will give into the factors which may be decisive for the way courts treat international organizations.

This study focuses on what are called ‘intergovernmental organiz-

⁷ Such similar treatment might result from an erroneous qualification of certain entities as international organizations, or from a specific legal rule calling for the application of rules relating to international organization to non-international organizations, or from the fact that national courts consider them to be in a similar situation. Cf. pp. 11 and 171–2 below.

ations',⁸ 'inter-state organizations'⁹ or 'public international organizations',¹⁰ which will be referred to hereinafter for convenience simply as 'international organizations'.¹¹ Although there is no generally accepted definition of international organizations,¹² there seems to be wide consensus on their constitutive elements.¹³ International organizations are entities consisting predominantly of states, created by international agreements, having their own organs, and entrusted to fulfil some common (usually public) tasks.¹⁴ Sometimes the possession of a legal personality distinct from its member states is included in definitions of an international organization.¹⁵ However, this distinction appears to be

⁸ Cf. the definition of international organizations as 'intergovernmental organizations' in Article 2(1)(i) of the Vienna Convention on the Law of Treaties and in Article 2(1)(i) of the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations.

⁹ Michel Virally, 'La notion de fonction dans la théorie de l'organisation internationale' in *La Communauté Internationale. Melanges offerts à Charles Rousseau* (Paris, 1974), 277–300 at 277.

¹⁰ Henry G. Schermers, *International Institutional Law* (Alphen aan den Rijn and Rockville, 2nd edn, 1980), 8; Louis Henkin, Richard C. Pugh, Oscar Schachter and Hans Smit, *International Law* (2nd edn, St Paul, MN, 1987), 318. See also the definition of international organization 'as public international organization in which the United States participates pursuant to any treaty' under section 1 of the US IOIA.

¹¹ It is important to distinguish the notion of international organizations as legal entities from the concept of 'international organization' (usually in the singular) which describes inter-state cooperation or generally refers to the framework and structure of the international society (of states). Georges Abi-Saab (ed.), *The Concept of International Organization* (Paris, 1981), 9. Mario Bettati, *Le droit des organisations internationales* (Paris, 1987), 9. This term is mainly used in Anglo-American international relations theory. The few examples of German usages of this concept (e.g., Hans Wehberg, 'Entwicklungsstufen der internationalen Organisation' (1953–5) 52 *Friedens-Warte* 193–218) have not been widely adopted.

¹² The ILC deliberately omitted a definition of international organizations when it began considering the now-abandoned topic of relations between states and international organizations (second part of the topic) 'in order to avoid starting interminable discussions on theoretical and doctrinal questions, on which there were conflicting opinions in the Commission and the General Assembly, as was only natural'. Díaz-González in *Yearbook of the International Law Commission* (1985), vol. I, 284.

¹³ Schermers, *International Institutional Law*, 5.

¹⁴ Rudolf Bindschedler, 'International Organizations, General Aspects' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (2nd edn, 1995), vol. II, 1289–309 at 1289; Enno J. Harders, 'Haftung und Verantwortlichkeit Internationaler Organisationen' in Rüdiger Wolfrum (ed.), *Handbuch Vereinte Nationen* (2nd edn, Munich, 1991), 248–58 at 248; Karl Zemanek, *Das Vertragsrecht der internationalen Organisationen* (Vienna, 1957), 9ff; *Restatement (Third) of the Law, The Foreign Relations Law of the United States* (ed. American Law Institute, St Paul, MN, 1987), § 221.

¹⁵ Cf. Bettati, *Le droit des organisations internationales*, 12. See also the definition of an international organization in the IDI draft resolution on 'The legal consequences for member states of the non-fulfilment by international organizations of their obligations toward third parties', Article 1(a) of the Draft Resolution in (1995 I) 66 *Annuaire de l'Institut de Droit International* 465.

rather a consequence than a constitutive criterion of an international organization.¹⁶ Also, the existence of an independent will of the organization and of permanent organs competent to express that will as a 'basic criterion for distinguishing an international organization from other entities'¹⁷ seems to focus more on the result than on the constitutive elements of an international organization.¹⁸

International organizations are created by states, and more recently sometimes with the participation of other international organizations.¹⁹ There is some controversy among legal commentators over whether two states by themselves could set up an international organization or whether at least three states are required.²⁰ In practice, domestic courts do not seem to be aware of this scholarly debate and have been willing to accept without hesitation that, for instance, bilateral commissions or tribunals can be regarded as international organizations.²¹

¹⁶ See pp. 57ff below.

¹⁷ Lacleta Muñoz in *Yearbook of the International Law Commission* (1985), vol. I, 296.

¹⁸ See also the definition of an international organization in the IDI draft resolution on 'The legal consequences for member states of the non-fulfilment by international organizations of their obligations toward third parties' requiring the existence of an organization's 'own will'. Article 2(b) provides: 'The existence of a *volonté distincte*, as well as capacity to enter into contracts, to own property and to sue and be sued, is evidence of international legal personality.' Draft Resolution, (1995 I) 66 *Annuaire de l'Institut de Droit International* 465.

¹⁹ For instance, the EEC became a member of the (Sixth) International Tin Council in 1982; the League of Nations was a founding member of the International Institute for the Unification of Private Law (Unidroit) in 1926. Cf. Henry G. Schermers, 'International Organizations as Members of Other International Organizations' in Bernhardt, Geck, Jaenicke and Steinberger (eds.), *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte, Festschrift Mosler* (Berlin, Heidelberg and New York, 1983), 823–37 at 823ff; Ignaz Seidl-Hohenveldern and Gerhard Loibl, *Das Recht der Internationalen Organisationen einschließlich der Supranationalen Gemeinschaften* (6th edn, Cologne, Berlin, Bonn and Munich, 1996), 6.

²⁰ Zemanek, *Das Vertragsrecht der internationalen Organisationen*, 11, argues that it is part of the essential nature of international organizations that they are formed by a multilateral treaty. This view would require at least three participating states in order to form an international organization. Seidl-Hohenveldern and Loibl, *Das Recht der Internationalen Organisationen*, 5, on the other hand, expressly state that at least two states must participate in an organization. See also Rudolph Bernhardt, 'Qualifikation und Anwendungsbereich des internen Rechts internationaler Organisationen' (1973) 12 *Berichte der Deutschen Gesellschaft für Völkerrecht* 7–46 at 7; and Sucharitkul in *Yearbook of the International Law Commission* (1985), vol. I, 287.

²¹ In *Soucheray et al. v. Corps of Engineers of the United States Army et al.*, US District Court WD Wisconsin, 7 November 1979, a US district court held that the US–Canadian International Joint Commission regulating the water level of the Great Lakes (an 'international agency' in the words of the court) was immune from suit under the IOIA – a finding that presupposes that the Commission is an international organization. Even more explicitly the US Court of Claims held that 'the International Joint Commission is an international organization' enjoying immunity. *Edison Sault Electric Co. v. United States*, US Court of

International organizations are normally set up by international agreement,²² usually by formal written agreements, i.e. by treaties. The terminology used – whether the constituent treaty is called convention, charter, constitution, statute, etc. – is irrelevant. However, international organizations can also be founded by implicit agreement which might be expressed through identical domestic legislation (e.g., the Nordic Council),²³ or by a resolution adopted during an inter-state conference (e.g., Comecon).²⁴

It is further commonly thought that international organizations require a certain institutional minimum, i.e. organs that perform the tasks entrusted to the organization.²⁵ In practice it is sometimes difficult to distinguish organs of international organizations from mere ‘treaty administering organs’²⁶ set up by international agreements falling short of true international organization status.²⁷

Finally, it has been asserted that only those inter-state entities which meet an ‘official public purpose’ test can qualify as international organizations.²⁸ It seems, however, that this requirement is no longer generally

Claims, 23 March 1977, reaffirmed in *Erosion Victims of Lake Superior Regulation, etc. v. United States*, US Court of Claims, 25 March 1987. See also the Dutch case of *AS v. Iran–United States Claims Tribunal*, Local Court of The Hague, 8 June 1983; District Court of The Hague, 9 July 1984; Supreme Court, 20 December 1985, involving the bilateral Iran–United States Claims Tribunal which was treated as an international organization as far as immunity was concerned.

²² Peter H. F. Bekker, *The Legal Position of Intergovernmental Organizations. A Functional Necessity Analysis of Their Legal Status and Immunities* (Dordrecht, Boston and London, 1994), 39; Schermers, *International Institutional Law*, 9; and Zemanek, *Das Vertragsrecht der internationalen Organisationen*, 9.

²³ Axel Berg, ‘Nordic Council and Nordic Council of Ministers’ in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (1983), vol. VI, 261–3 at 261.

²⁴ Schermers, *International Institutional Law*, 9.

²⁵ Article 1(a) of the Draft Resolution, (1995 I) 66 *Annuaire de l’Institut de Droit International* 465; Zemanek, *Das Vertragsrecht der internationalen Organisationen*, 13.

²⁶ Waldemar Hummer, ‘Reichweite und Grenzen unmittelbarer Anwendbarkeit der Freihandelsabkommen’ in Hans-Georg Koppensteiner (ed.), *Rechtsfragen der Freihandelsabkommen der Europäischen Wirtschaftsgemeinschaft mit den EFTA-Staaten* (Vienna, 1987), 43–83 at 44.

²⁷ *Restatement (Third)*, § 221, Comment b. Cf. also the diverging qualification of the nature of the ‘joint committees’ administering the 1972 Free Trade Agreements between EFTA states and the EEC. While Hummer, ‘Reichweite und Grenzen’, 44, calls them ‘treaty administering organs’ (*Vertragsanwendungsorgane*), Theo Ohlinger, ‘Rechtsfragen des Freihandelsabkommens zwischen Österreich und der EWG’ (1974) 34 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 655–88 at 681, note 79, seems to be ready to regard them as organs of an (unnamed) international organization created by the Free Trade Agreements.

²⁸ Ignaz Seidl-Hohenveldern, ‘The Legal Personality of International and Supranational Organizations’ (1965) 21 *Revue égyptienne de droit international* 35–72 at 37; and Ignaz Seidl-Hohenveldern, *Corporations in and under International Law* (Cambridge, 1987), 72.

accepted.²⁹ If the public purpose test were upheld, this would have important implications for the present discussion. According to its adherents, inter-state entities which pursue an aim 'which under domestic law the States concerned would fulfil as subjects of private law rather than as subjects of public law' could not be labelled international organizations.³⁰ The issues of domestic legal personality and immunity from national jurisdiction, however, frequently arise in contexts where international organizations act like 'subjects of private law'. If all those entities that are acting in a private law setting were excluded from the range of international organizations, few issues of interest here would arise in practice. It seems, however, that even the adherents of a 'public purpose requirement' do not always support this result of eliminating inter-state entities acting like private parties from the definition of international organizations. They do not dispute that international organizations might engage in private law affairs in the course of their activities. What they obviously want to exclude from the range of international organizations are entities which fulfil no public purpose at all and are exclusively charged with 'private law tasks'.³¹ This restricted view, however, faces two major practical problems. First, from a theoretical point of view, the dichotomy of public/private law activities is difficult to rationalize on an international law level. It is true that international law has to make the distinction in various fields, especially in the sovereign immunity context or for attributing acts to states for the purposes of state responsibility, but it is still far from being a generally accepted distinction. Secondly, with the rise of international organizations entrusted with market regu-

²⁹ Rosalyn Higgins, 'The Legal Consequences for Member States of the Non-Fulfilment by International Organizations of Their Obligations Toward Third Parties - Preliminary Exposé and Draft Questionnaire' (1995 I) 66 *Annuaire de l'Institut de Droit International* 249-89 at 254; and Shihata, 'Réponse' (1995 I) 66 *Annuaire de l'Institut de Droit International* 311. Cf. also the differentiation made by Schermers, *International Institutional Law*, 8ff, between public and private international organizations who - although speaking of public international organizations - states only three requirements (established by international agreement, having organs, established under international law) that have to be fulfilled by an entity in order to qualify as 'public' international organization.

³⁰ Seidl-Hohenveldern, 'The Legal Personality of International and Supranational Organizations', 37. In his more recent book on international corporations, Seidl-Hohenveldern maintains this distinction and uses an even more pertinent dichotomy when he differentiates between organizations *iure imperii* and organizations *iure gestionis* with the latter being mere intergovernmental enterprises lacking international personality. In the former group he includes those, the acts of which, if done by a single state, would be acts *iure imperii* while the latter comprises entities with a commercial focus which he calls 'common inter-state enterprises'. Seidl-Hohenveldern, *Corporations*, 109ff.

³¹ See p. 10 below.

latory functions to be carried out either by directly dealing on the marketplace (organizations administering commodity agreements)³² or by regulating its members' market behaviour (certain export-regulating organizations),³³ the issue of whether these organizations should be seen as private or public actors has become increasingly difficult.³⁴ Moreover, even undisputedly 'public' international organizations undoubtedly perform a number of private law acts.

Other international bodies

Although this study is devoted to international organizations, other 'international' bodies should not be overlooked where decisions dealing with such entities might prove relevant for the subject of this book. The two most important groups of such other international entities are international tribunals and so-called international public corporations. International non-governmental organizations and transnational corporations – although also frequently associated when dealing with international organizations – are of less importance in the present context.

International tribunals

International tribunals³⁵ are in many respects comparable to international organizations. As far as the specific topics of personality and immunity are concerned, it is interesting to note that, in fact, many international tribunals have been accorded such status and prerogative either by international agreement or express domestic legislation or even implicitly.³⁶ Some international courts and tribunals are, of course, part of larger organizations and derive their legal status from them. Nevertheless, there are also frequently specific instruments addressing their privi-

³² E.g., the International Tin Council. See pp. 118ff below.

³³ E.g., OPEC. See also Henkin, Pugh, Schachter and Smit, *International Law*, 343.

³⁴ Cf. the difficulty of US courts in characterizing OPEC's activities as *iure imperii* or *iure gestionis* in *International Association of Machinists v. OPEC*, US District Court CD Cal., 18 September 1979, affirmed on other grounds, US Court of Appeals 9th Cir., 6 July–24 August 1981. See p. 91 below.

³⁵ Cf. Christian Tomuschat, 'International Courts and Tribunals' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (2nd edn, 1995), vol. II, 1108–15 at 1108ff.

³⁶ For instance, the instrument establishing the Iran-US Claims Tribunal, the Claims Settlement Declaration of Algiers, 19 January 1981, mentions neither the Tribunal's international nor its domestic legal personality. In the view of the Dutch Foreign Ministry, the Tribunal, having been created by an instrument under international law, 'is therefore a joint institution of the two States involved, and has legal personality derived from international law'. Reply to written questions asked in Parliament about the status in the Netherlands of the Iran-US Claims Tribunal in the absence of a treaty between the three countries, Minister for Foreign Affairs, (1984) 15 *Netherlands Yearbook of International Law* 356.

leges and immunities. Decisions by national courts concerning international tribunals may thus be directly relevant for the analysis of their treatment of international organizations.³⁷

International public corporations

Common inter-state enterprises,³⁸ joint international state or quasi-state enterprises,³⁹ international public corporations,⁴⁰ or intergovernmental companies and consortia⁴¹ are interesting intermediate entities between international organizations and private corporations operating internationally. Like international organizations, they are created by states or state bodies and possess their own organs. However, the major distinguishing factor lies in the nature of their tasks, which are generally of a commercial, although not necessarily profit-making, character.⁴² Such corporate entities are frequently formed on the basis of a treaty and then established in accordance with a national corporate law.⁴³ They may be relevant for present purposes where their constitutive agreements expressly provide for a legal status similar to that of an international organization and for comparable privileges and immunities.⁴⁴

³⁷ For instance, the recognition of the domestic personality of the Iran–US Claims Tribunal by Dutch courts in the *AS v. Iran–United States Claims Tribunal* decisions, Local Court of The Hague, 8 June 1983; District Court of The Hague, 9 July 1984. See p. 82 below.

³⁸ Seidl-Hohenveldern, *Corporations*, 109ff; Ignaz Seidl-Hohenveldern, 'Le droit applicable aux entreprises internationales communes, étatiques ou paraétatiques' (1983 I) 60 *Annuaire de l'Institut de Droit International* 1–37 and 97–102 at 1ff.

³⁹ IDI Resolution on the law applicable to joint international state or quasi-state enterprises of an economic nature, adopted at its Helsinki Session 1985, (1986 II) 61 *Annuaire de l'Institut de Droit International* 269.

⁴⁰ *Restatement (Third)*, § 221, Comment d.

⁴¹ Henkin, Pugh, Schachter and Smit, *International Law*, 341.

⁴² Seidl-Hohenveldern stresses their *iure gestionis* character. Seidl-Hohenveldern, *Corporations*, 109. The IDI Resolution on the law applicable to joint international state or quasi-state enterprises of an economic nature characterizes their tasks as 'for purposes of general economic interest principally through private law procedures'. Article 1(b), (1986 II) 61 *Annuaire de l'Institut de Droit International* 271.

⁴³ For instance, the creation of Eurofima, the European Company for the Financing of Railway Rolling Stock, was provided for in a treaty of 20 October 1955 between a number of European states. It was then established as a company according to Swiss law. Michael Kenny, 'European Company for the Financing of Railway Rolling Stock (EUROFIMA)' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (2nd edn, 1995), vol. II, 178–80 at 178ff; See also Ignaz Seidl-Hohenveldern, 'Gemeinsame zwischenstaatliche Unternehmen' in Friedrich-Wilhelm Baer-Kaupert, Georg Leistner and Herwig Schwaiger (eds.), *Liber Amicorum Bernhard C. H. Aubin* (Kehl am Rhein and Strasbourg, 1979), 193–216 at 193ff, discussing various forms of such entities.

⁴⁴ This is the case with Intelsat, the International Telecommunications Satellite Organization, established in 1973 by treaty. See also James Fawcett and Gunnar Schuster, 'Intelsat' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (2nd edn, 1995), vol. II, 1000–4 at 1000ff.

International non-governmental organizations

International non-governmental organizations⁴⁵ (NGOs), usually formed by private persons operating on a transnational level, but regularly associated under a domestic system of law,⁴⁶ lie beyond the scope of the present study. As it happens, however, they may sometimes also be accorded privileges and immunities and thus be treated by national legal systems similar to international organizations proper. National court decisions reflecting such a legal situation will thus be taken into account in this study.⁴⁷

Transnational corporations

Transnational corporations, sometimes also called multinational companies, are commercial entities organized under a specific national company law that are commercially active in more than one state, commonly through subsidiaries.⁴⁸

In the past, some of these corporations have been accorded privileges and immunities, including immunity from local jurisdiction, by territorial sovereigns, in particular, in the older type of oil concession agreements.⁴⁹ In this very limited respect, national case law involving such

⁴⁵ Article 71 of the UN Charter.

⁴⁶ According to the UN Economic and Social Council which 'may make suitable arrangements' with NGOs (Article 71 of the UN Charter), '[a]ny international organization which is not established by international agreement shall be considered as a non-governmental organization for the purposes of these arrangements'. Resolution 288 B (X), para. 8, 27 February 1950, ECOSOC, Official Records, Fifth Year, Tenth Session. See also ECOSOC Resolution 1296 (XLIV), 23 May 1968.

⁴⁷ Cf. *International Catholic Migration Commission v. Pura Calleja*, Philippine Supreme Court, 28 September 1990; and *Kapisanan Ng Manggagawa AT Tac Sa IRRI (International Rice Research Institute) v. Secretary of Labor and Employment*, Philippine Supreme Court, 28 September 1990, involving NGOs that enjoy special privileges and immunities as a matter of national law. See pp. 171f note 9 below. Cf. also the Swiss practice to conclude fiscal agreements with 'quasi-governmental' international organizations, like IATA or the Union internationale pour la conservation de la nature et de ses ressources, conferring certain privileges and immunities upon them. On IATA, see *Jenni, Mouvement Vigilance et Groupe Vigilant du Grand Conseil Genevois v. Conseil d'Etat du canton de Genève*, Federal Tribunal, 4 October 1978; on the Union see (1986) 42 *Annuaire suisse de droit international* 72ff. See also p. 171 below.

⁴⁸ See Peter Fischer, 'Transnational Enterprises' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (1985), vol. VIII, 515–19 at 515; Waldemar Hummer, 'Politisch bedeutsame transnationale Akteure an oder unter der Schwelle der Völkerrechtssubjektivität' in Hanspeter Neuhold, Waldemar Hummer and Christoph Schreuer (eds.), *Osterreichisches Handbuch des Völkerrechts* (2nd edn, Vienna, 1991), 201–16 at 207.

⁴⁹ Peter Fischer, *Die internationale Konzession* (Vienna and New York, 1974), 321; see also Wilhelm Karl Geck, 'Konzession' in Strupp and Schlochauer (eds.), *Wörterbuch des Völkerrechts* (1961), vol. II, 301–7 at 301; and Hummer, 'Politisch bedeutsame transnationale Akteure', 210.

corporations may be relevant in elucidating principles applicable to international organizations. Today, however, such far-reaching concessions are rarely made. Thus, transnational corporations are largely irrelevant to the subject of this study.

Some further terminological clarifications

This book investigates legal problems involving international organizations before national courts in general; a major part of it will be devoted to questions of their personality under domestic law and their immunity from the jurisdiction of national courts. It seems appropriate therefore to outline the terminological use of the notions of 'personality' and 'immunity' as well as the relationship between immunity and different forms of state jurisdiction.

'Personality' is normally regarded as the capability of an entity to possess rights and obligations under a specific legal system. National courts frequently refer to these notions as employed in the applicable domestic and international norms, i.e. mainly domestic legislation and constituent treaties of international organizations, as well as headquarters agreements and treaties concerning their privileges and immunities. The majority of these sources speaks of 'legal'⁵⁰ or 'juridical'⁵¹ 'personality', or of 'legal'⁵² or 'juridical'⁵³ 'capacity'. Courts and legal writers mainly use the expression 'legal personality', although the other terms are used as well. In most cases, 'personality' is understood as a more fundamental concept relating to the existence of an entity as a subject of law within a specific legal order, whereas 'capacity' is more often regarded as a qualification of personality indicating specific legal powers possessed by an entity having personality. In the course of this

⁵⁰ Cf. Draft Article 5 of the ILC Draft on relations between states and international organizations (second part of the topic) according to which '[i]nternational organizations shall enjoy legal personality under international law and under the internal law of their member States'. Leonardo Díaz-González (Special Rapporteur), 'Fourth Report on Relations Between States and International Organizations (Second Part of the Topic)' (UN Doc. A/CN.4/424) *Yearbook of the International Law Commission* (1989), vol. II, Part One, 153-68 at 157.

⁵¹ Cf. Article I(1) of the General Convention providing that '[t]he United Nations shall have juridical personality'. According to Article 2 of the 1976 Agreement Establishing the Arab Monetary Fund, the organization has 'independent juridical personality'.

⁵² Cf. Article 104 of the UN Charter, according to which '[t]he Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes'. Article 211 of the EC Treaty provides: 'In each of the Member States, the Community shall enjoy the most extensive legal capacity'.

⁵³ Cf. Article 6, second sentence of the ECSC Treaty stating that 'the Community shall enjoy the most extensive juridical capacity'.

study, this broad distinction will prove relevant for the analysis of two very fundamental avoidance techniques concerning the non-recognition of an organization's personality,⁵⁴ on the one hand, and the non-recognition of an organization's capacity to perform certain acts,⁵⁵ on the other.

It is always important, however, to keep in mind that personality, capacity, etc. are legal concepts deeply rooted in the various national legal systems, and that different legal systems can differ substantially in the way they define and apply these concepts. Thus, the terminology used by courts and in the legal doctrine of different countries has to be treated with a degree of caution. In particular, it cannot be assumed that the underlying notions are readily transferable.

Both in legal doctrine and in case law, the distinction between 'immunity' and 'privilege' is often blurred. Frequently, one encounters a synonymous use of the two terms.⁵⁶ One author has even concluded that "no such distinction [between privileges and immunities] has gained general acceptance."⁵⁷ But, even if the terminology used might remain at variance, a clear differentiation of substance can and should be made between the two terms.

In the older literature on the subject, one finds attempts to differentiate according to some material criterion. Some authors associate the term 'immunity' with legal notions such as guarantees or the necessary standard for functioning, while they ascribe to privileges the status of prestige, honour, protocol or courtesy.⁵⁸ This approach has not been further pursued, however.

Today's predominantly accepted definition of and differentiation between immunity and privilege concerns issues of the appropriate forum and the applicable law: 'Immunities, as distinct from privileges, confer no substantive exemption from local law but give only procedural protec-

⁵⁴ See pp. 37ff below. ⁵⁵ See pp. 70ff below.

⁵⁶ E.g., *Yearbook of the International Law Commission* (1967), vol. II, 222; *Yearbook of the International Law Commission* (1989), vol. II, Part One, 161; *Restatement (Third)*, § 467, para. 1. See also *Mendaro v. World Bank*, US Court of Appeals, 27 September 1983, calling for an exemption from the application of national employment/labour law (cf. H. J. Steiner, D. F. Vagts and H. H. Koh, *Transnational Legal Problems: Materials and Text* (4th edn, Westbury, NY, 1994), 1013); and *Alpha Lyracom Space Communications Inc. v. Communications Satellite Corp.*, US District Court SDNY, 13 September 1990, where an 'immunity' from anti-trust law was in fact an exemption from the applicable US competition rules.

⁵⁷ Bekker, *The Legal Position*, 97. Similarly, Michael Akehurst, *The Law Governing Employment in International Organizations* (Cambridge, 1967), 117.

⁵⁸ Cf. Ake Hammarskjöld, 'Les immunités des personnes investies de fonctions internationales' (1936 II) 56 *Recueil des Cours* 107-211 at 137; Josef L. Kunz, 'Privileges and Immunities of International Organizations' (1947) 41 *American Journal of International Law* 828-62 at 847.

tion from legal process of adjudication and enforcement.⁵⁹ Using the terminology of the US *Restatement (Third) of Foreign Relations Law*, with its division of a state's jurisdiction into the jurisdiction to prescribe, the jurisdiction to adjudicate and the jurisdiction to enforce, one could characterize immunity as an exception from a state's jurisdiction to adjudicate and/or jurisdiction to enforce, while a privilege can be viewed as an exemption from a state's jurisdiction to prescribe.⁶⁰ Normally an international organization is immune only in respect of adjudicative and enforcement jurisdiction, i.e. it remains liable to obey the law of the state where it is operating, and is merely exempt from judicial process to enforce that law.⁶¹ But there are some areas of national law which regularly do not apply to an international organization, e.g. customs, tax, immigration, financial (e.g., foreign exchange) controls, work permit regulations, etc. These areas should properly be referred to as privileges of international organizations.⁶²

The precise scope of these privileges is beyond the scope of this study.⁶³ However, a few remarks on the subject seem appropriate, in particular since the issues of applicable law and adjudicative jurisdiction are frequently intertwined in cases involving international organizations. Employment disputes have proven especially difficult in this respect. Many decisions in this area fail to differentiate correctly between questions of applicable law and jurisdictional questions.

While issues concerning privileges are normally governed and regulated by international agreements, the question also arises – as in the case of personality and immunity – of whether such privileges are exclus-

⁵⁹ Eileen Denza, 'Diplomatic Agents and Missions, Privileges and Immunities' in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (2nd edn, 1992), vol. I, 1040–5 at 1042. Cf. Bekker, *The Legal Position*, 182; and Hans Fasching, *Lehrbuch des österreichischen Zivilprozeßrechts* (Vienna, 1984), 37. See also the definition of immunity in the ILC Commentary on state immunity covering not only an 'exemption from the exercise of the power to adjudicate', but also the 'non-exercise of all other administrative and executive powers in relation to a judicial proceeding'. Commentary to Draft Article I on 'Jurisdictional immunities of states and their property', *Yearbook of the International Law Commission* (1991), vol. II, Part Two, 13.

⁶⁰ Thus, it is certainly a confusing use of terms when the *Restatement* argues that it seems necessary to consider also a potential 'immunity' from a state's jurisdiction to prescribe. Cf. *Restatement (Third)*, § 467, Comment c.

⁶¹ Harders, 'Haftung und Verantwortlichkeit Internationaler Organisationen', 249.

⁶² Cf. Schermers, speaking of the non-applicability of certain national legal provisions (and government activities based thereon) as issues of privileges. Schermers, *International Institutional Law*, 179 and 792ff.

⁶³ For a detailed appraisal of these issues, see C. Wilfred Jenks, *The Proper Law of International Organizations* (London and Dobbs Ferry, NY, 1962).

ively determined by treaty law or whether there is customary law on the subject as well. Some authors seem to support a 'general rule of international institutional law' requiring the non-applicability of national legislation to international organizations where that could negatively affect their proper functioning.⁶⁴ Generally, however, a more restrictive view prevails. It is usually acknowledged that immunity from suit does not free an international organization from obedience to the local law and that international organizations remain subject to the applicable domestic law unless issues of a purely internal nature are concerned⁶⁵ or unless exceptions are expressly provided for, as may be the case in headquarters agreements or specific conventions on privileges and immunities such as the Convention on the Privileges and Immunities of the United Nations 1946⁶⁶ (hereinafter the 'General Convention'⁶⁷) or the Convention on the Privileges and Immunities of the Specialized Agencies 1947⁶⁸ (hereinafter the 'Special Convention').

A specific exemption from the otherwise applicable law may result from an international organization's power to substitute its own law for the law of the host country. It is an interesting feature of a few headquarters agreements that they recognize the international organization's power to legislate in certain fields. If this power is granted, the international organization's own law will replace the otherwise applicable law of the host state. Most notably the UN has this power and has acted upon it.⁶⁹ But

⁶⁴ Schermers, for instance, seems to be a proponent of a school of thought which advocates some customary principles in this field. Schermers, *International Institutional Law*, 794. In corroboration of this submission, he refers to the UN's refusal to comply with national publication law. (1970) *United Nations Juridical Yearbook* 167.

⁶⁵ Hans Peter Kunz-Hallstein, 'Privilegien und Immunitäten internationaler Organisationen im Bereich nicht hoheitlicher Privatrechtsgeschäfte' (1992) *Neue Juristische Wochenschrift* 3069–73 at 3070.

⁶⁶ Adopted by the General Assembly of the United Nations on 13 February 1946.

⁶⁷ This use conforms to the typical definition used in various headquarters agreements: 'The expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946.' Cf. section 1(c) of the UN Headquarters Agreement 1947; and section 1(i) of the UNIDO Headquarters Agreement 1967.

⁶⁸ Approved by the General Assembly of the United Nations on 21 November 1947.

⁶⁹ For instance, section 7(b) of the UN Headquarters Agreement 1947 provides that 'except as otherwise provided the federal, state and local law of the United States shall apply within the headquarters district'. The 'exception' of this norm refers to the power of the UN 'to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions' (section 8). If this power has been exercised, the agreement provides that '[n]o federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such

other organizations may also avail themselves of similar legislative powers.⁷⁰

Immunity from legal process or immunity from jurisdiction are usually broadly understood as an exemption both from the adjudicative and from the enforcement procedures of national courts. It is probably an English peculiarity to regard the phrase 'immunity from legal process' to refer more narrowly only to immunity from executive or enforcement measures and immunity from jurisdiction to refer only to the adjudicative stage of court proceedings.⁷¹

When dealing with the immunities of international organizations, the notion of 'international immunities' is widely used. Most frequently, it appears to denote the privileges and immunities enjoyed by international organizations and their staff.⁷² In an attempt to restrict the term

inconsistency, be applicable within the headquarters district' (*ibid.*). The UN has 'legislated' upon this provision in the early 1950s by adopting Regulation No. 1 concerning a social security system for its staff members, Regulation No. 2 regarding qualifications and requirements for the performance of professional services (e.g., legal and medical services) within the headquarters district, and Regulation No. 3 concerning hours of operation of any services and facilities or retail establishments with the headquarters district. In 1986, the UN adopted Regulation No. 4 limiting the liability of the organization in tort actions in respect of acts occurring within the headquarters district in order to avoid excessive damages awards under US law. Regulation No. 4, General Assembly Resolution 41/210, reprinted in Paul C. Szasz, 'The United Nations Legislates to Limit its Liability' (1987) 81 *American Journal of International Law* 739–44 at 742, note 14. It has been stressed correctly that such 'legislative' action must be clearly differentiated from reliance on the UN's jurisdictional immunity. Szasz, 'The United Nations Legislates', 744. By the adopted legislation, the UN does not try to hide behind the shield of immunity. In view of the provisions of the headquarters agreement, it rather remains under the obligation to waive its immunity or – in the alternative – to provide for other dispute settlement procedures in cases where legal claims are brought by private parties. Any competent forum, however – be it a US or another country's court or an arbitral tribunal – would be bound to apply the UN's regulation as applicable law. For US courts this obligation would specifically result from the headquarters agreement; in other states it should be the result of applying the *loci delicti* choice of law rule.

⁷⁰ CERN, for instance, issued its own workplace security code as well as a radiation manual. Franz Schmid and Jean-Marie Dufour, 'Le CERN, exemple de coopération scientifique européenne' (1976) 103 *Journal de droit international* 46–104 at 100. See also the general overview on 'internal legislation of intergovernmental organizations' by Finn Seyfersted, 'Jurisdiction over Organs and Officials of States, the Holy See and Intergovernmental Organisations' (1965) 14 *International and Comparative Law Quarterly* 31–82 and 493–527 at 52ff, who even submits that international organizations have a general power to legislate in their internal matters, whether or not their constitutions so provide. *Ibid.*, 57.

⁷¹ According to *Arab Banking Corporation v. International Tin Council and Algemene Bank Nederland and others (Intervenors) and Holco Trading Company Ltd (Intervenors)*, High Court, Queen's Bench Division, 15 January 1986, '[i]mmunity from jurisdiction only refers to the adjudicative process'. (1988) 77 ILR 1 at 6. See pp. 219f below as to the facts of this case.

⁷² C. Wilfred Jenks, *International Immunities* (London and New York, 1961), *passim*.

'international immunities' to those of the international organization itself, the expressions 'organizational immunities'⁷³ or 'institutional immunit[ies]'⁷⁴ are sometimes used. It is this latter concept, concerning the immunity of international organizations from domestic courts, that is relevant to the present study.

Survey of existing material and literature

Court decisions and other relevant practice

This study discusses judicial decisions involving international organizations rendered by national courts from all regions of the world as far as they were available. It cannot claim to include all relevant decisions.⁷⁵

The majority of cases analyzed in this book⁷⁶ are US (over fifty) and Italian (some forty). The abundance of Italian cases largely stems from litigation involving the FAO and NATO, but also some less well-known organizations such as the Bari Institute of the International Centre for Advanced Mediterranean Agronomic Studies or the Intergovernmental Committee for European Migration. In the US, at some point, most of the

⁷³ Bekker, *The Legal Position*, 153.

⁷⁴ Romana Sadurska and Christine M. Chinkin, 'The Collapse of the International Tin Council: A Case of State Responsibility?' (1990) 30 *Virginia Journal of International Law* 845-90 at 854.

⁷⁵ To make such a claim to exhaustive treatment would ignore the limited accessibility and the sometimes – as a practical matter – very difficult access to the judicial opinions which form the main 'subject' of this study. In order to gain material in a fashion as comprehensive as possible, the classic 'sources' of international practice have been used: digests of (internationally relevant domestic) court decisions, international case reports (annual digests, the *International Law Reports*, the *International Legal Materials*, etc.), collections of state practice (such as the *American Journal of International Law*, the *Austrian Journal of Public and International Law*, the *British Yearbook of International Law*, the *Netherlands Yearbook of International Law*, etc.), and other documents have been consulted – both in traditional hard-bound form as well as on computer databases (such as Westlaw, Lexis-Nexis, various internet sites, etc.). In addition, less orthodox methods of gaining access were pursued. For countries which do not regularly publish practice reports or where access to domestic cases is otherwise hardly feasible, the assistance of legal advisor's offices of their foreign ministries was sought through written inquiries for domestic cases involving international organizations. The author addressed more than seventy countries through their diplomatic missions in Washington DC (correspondence on file with the author). The expectedly modest result – as far as 'new cases' are concerned (of seventy-seven missions contacted, twenty-three replied; seven of them informed the author that no domestic cases involving international organizations were known, while four reported cases, two of which were previously unknown to the author) – was not necessarily disappointing. To know that the courts of some countries were not (yet) confronted with lawsuits involving international organizations is fundamentally different from not knowing whether they were or not.

⁷⁶ See the Table of cases, pp. xi-xlvii above.

larger organizations having their seat there (the IBRD, the IFC, Intelsat, the OAS and the UN) have been targets of judicial proceedings or have themselves sought legal remedies from US courts. Due to the rather restrictive attitude of US courts to the availability of judicial recourse against international organizations, attempts to 'hail them into court' have not been frequent.

Apart from the Tin Council litigation, there are only a few UK decisions concerning either organizations of which the United Kingdom is a member state or 'foreign' international organizations. A fair number of French decisions are relevant in the present context; their brevity, however, as far as legal reasoning is concerned, makes their analysis quite difficult.⁷⁷ Surprisingly few cases have been heard by courts in other western European states with a civil law tradition: in particular, Austrian and Swiss cases are not very numerous. The number of German decisions increased only recently. Relevant judgments of national courts other than European or US seem rare – or at least their availability is rather limited. Among those that are available are a number of employment-related disputes involving UN agencies in Latin American countries and in the Middle East, such as the cases brought against UNRWA in Egypt, Jordan, the Lebanon and Syria.

A few remarkable conclusions can be drawn already from this overview. For instance, the number of cases in a particular country does not appear to have any correlation to the number of international organizations having their seat there. On this assumption, one might have expected a large number of Swiss court decisions, and some at least in Austria and the United Kingdom. The host state factor alone does not prove to be a decisive aspect. Furthermore, while it might not be that surprising that a number of US cases deal with international organizations, it is certainly remarkable that almost every international organization setting foot on Italian soil has been sued there – and even more unexpectedly that Italian courts have frequently asserted their jurisdiction over them. The relatively high number of US cases probably has to do with the well-known litigiousness of US society. One should, however, also consider that it is less the cultural differences in the perception of courts as dispute settlement mechanisms and their willingness to address them, than the specific case law that has developed in that country that might be an incentive or disincentive for potential claimants to sue. Thus, the Italian inclination to treat international organizations – as far

⁷⁷ See p. 317 below as to the quality of the reasoning in the cases analysed here.

as immunity is concerned – like states⁷⁸ and the US indeterminacy of whether under the applicable US law international organizations should be treated like states⁷⁹ that probably accounts for the high number of cases in these countries.

Apart from actual court decisions, other state practice will be scrutinized as well,⁸⁰ in particular such documents as opinions of foreign ministries, opinions of the legal advisors to international organizations and – of particular relevance in the context of this study – *amicus curiae* briefs in court proceedings in those jurisdictions which allow them.⁸¹

Literature

The predominance of the traditional legal concepts of personality and immunity of international organizations, in the study of international organizations before domestic courts is clearly reflected by the existing literature. The issue of the domestic legal personality of international organizations has been addressed in a number of law journal articles, but has rarely been dealt with in a comprehensive fashion. Among the few exceptions are the 1969 report for the German Society of International Law by Beitzke⁸² and the 1983 Hague lecture of Barberis⁸³ as well as the treatises on the domestic legal status of international organizations in the Federal Republic of Germany by Schlüter⁸⁴ and in Switzerland by

⁷⁸ See pp. 186ff below. ⁷⁹ See pp. 197ff below.

⁸⁰ Cf. Karl Zemanek, 'What is "State Practice"', 296ff, concerning new forms of state practice.

⁸¹ Thus, a very valuable source of these manifestations of state practice and/or *opinio iuris* are the documents published in the sections on diplomatic practice of various national collections of state practice as well as those contained in the *United Nations Juridical Yearbook* and to a certain extent the updated volumes of the *Repertory of Practice of United Nations Organs*. Apart from selected national court decisions involving the UN and other organizations of the 'UN family', the *Juridical Yearbook* contains legal opinions of UN lawyers that are sometimes relevant to the pre-lawsuit stage. The *Repertory*, however, is of limited value for the purposes of this study, since it is 'confined to the practice of United Nations organs [and] does not deal with enabling legislation of individual States and decisions of national courts relating to the privileges and immunities of the United Nations'. *Repertory of Practice of United Nations Organs*, Supplement No. 1, vol. II, 415, Articles 104 and 105.

⁸² Günther Beitzke, 'Zivilrechtsfähigkeit von auf Staatsvertrag beruhenden internationalen Organisationen und juristischen Personen' (1969) 9 *Berichte der Deutschen Gesellschaft für Völkerrecht* 77–119.

⁸³ Julio A. Barberis, 'Nouvelles questions concernant la personnalité juridique internationale' (1983 I) 179 *Recueil des Cours* 145–304.

⁸⁴ Bernhard Schlüter, *Die innerstaatliche Rechtsstellung der internationalen Organisationen unter besonderer Berücksichtigung der Rechtslage in der Bundesrepublik Deutschland* (Cologne, Berlin, Bonn and Munich, 1972).

Hug.⁸⁵ All of them analyze the issue on a highly theoretical level. However, they rarely address any relevant case law.

As far as the second fundamental doctrinal view point is concerned, there are a number of broader scholarly works on the issue of privileges and immunities of international organizations. The classical studies are those by Lalive,⁸⁶ Jenks,⁸⁷ Ahluwalia,⁸⁸ Michaels,⁸⁹ and Dominicé.⁹⁰ Among the more recent studies are those by de Bellis,⁹¹ Bekker⁹² and Wenckstern.⁹³ However, all three generally lay emphasis on aspects other than those focused on in this book.

Compared to the wealth of literature on state immunity, the topic of immunity of international organizations remains to be surveyed. For reasons that will be analyzed and critically discussed in-depth below, a direct analogy or reference to those principles of sovereign immunity is generally regarded as inappropriate.⁹⁴ As a consequence, questions concerning the immunity of international organizations are usually excluded when state immunity is dealt with. For instance, the Schauman report for the German Society of International Law 1968,⁹⁵ the ILC codification of the law of state immunity,⁹⁶ and the work of the sovereign immunity committee of the ILA⁹⁷ all consider the immunity of interna-

⁸⁵ Dieter Hug, *Die Rechtsstellung der in der Schweiz niedergelassenen internationalen Organisationen* (Berne, Frankfurt am Main, Nancy and New York, 1984).

⁸⁶ Jean-Flavien Lalive, 'L'immunité de juridiction des états et des organisations internationales' (1953 III) 84 *Recueil des Cours* 205–396.

⁸⁷ Jenks, *International Immunities*.

⁸⁸ Kuljit Ahluwalia, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations* (The Hague, 1964).

⁸⁹ David B. Michaels, *International Privileges and Immunities. A Case for a Universal Statute* (The Hague, 1971).

⁹⁰ Christian Dominicé, 'L'immunité de juridiction et d'exécution des organisations internationales' (1984 IV) 187 *Recueil des Cours* 145–238.

⁹¹ Saverio de Bellis, *L'immunità delle organizzazioni internazionali dalla giurisdizione* (Bari, 1992).

⁹² Bekker, *The Legal Position*.

⁹³ Manfred Wenckstern, *Die Immunität internationaler Organisationen. Handbuch des Internationalen Zivilverfahrensrechts* (Tübingen, 1994), vol. II/1.

⁹⁴ Cf. pp. 347ff below.

⁹⁵ W. Schaumann, 'Die Immunität ausländischer Staaten nach Völkerrecht' in (1968) 8 *Berichte der Deutschen Gesellschaft für Völkerrecht* 1–57 at 6, expressly excluding any comments on the immunity of international organizations.

⁹⁶ ILC Draft Article 1 on 'Jurisdictional immunities of states and their property' limits the scope of applicability to 'the immunity of a State and its property from the jurisdiction of another State'. *Yearbook of the International Law Commission* (1991), vol. II, Part Two, 12–62 at 13.

⁹⁷ In the Revised Draft Articles for a Convention on State Immunity adopted at the ILA's Buenos Aires meeting in 1994, Article IX(A)(2) expressly provides that '[t]his Convention is without prejudice to [t]he rules of international law relating to the immunities of