

# The Law of the International Civil Service

Institutional Law and Practice in International Organisations

Gerhard Ullrich



Duncker & Humblot · Berlin

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## Preface

In a world of increasing globalisation, sovereign states, as the classic actors in international relations, find themselves in growing need of transnational cooperation. More than ever, international organisations are important players in global governance and the interdependency of states. In coping with world issues such as climate change, financial stability, poverty, ageing populations and terrorism, the tasks of international organisations have taken on a new dimension. While the material tasks and fields of competence of international organisations range across all aspects of human life, the structures of the institutional law of international organisations have much in common. Indeed, international organisations face similar problems in the context of their institutional law and one international organisation will frequently rely extensively on the proven experience of others. This is especially true for the employment law of international organisations. When setting up their rules of employment, they do not re-invent the wheel but take inspiration from the civil service law of comparable existing organisations. This book categorises the various civil service rules of organisations into four schemes, it aims at contributing to a better understanding of the similarities and differences of the employment law of international organisations.

Since the first edition of this book in 2009, the law of the international civil service has undergone substantial changes.

The global financial crisis was not without repercussion for the financing of international organisations. As a result, most organisations have introduced moderation and exception clauses into their regular salary adjustment systems.

The increase in life expectancy is leading to a lengthening of the time during which pension benefits are being paid out. In parallel to national legislation, ever more organisations have shifted the right to an unreduced pension payment to a higher retirement age and reduced the yearly rates of acquired pension claims, or even replaced the defined benefit scheme by a defined contribution scheme.

In other fields of institutional law, like data protection, measures against corruption, whistle-blowing and harassment, there has been a flood of new rulings with an impact on the employment law of international organisations.

The first addition of this book was published in German in 2009. Many people have assisted me in the accomplishment of this book. I would like to repeat the acknowledgment of the previous edition of this book to my former colleagues. In order to achieve a wider circulation of this book it has been decided to publish this edition in English, the *lingua franca* of international organisations today.

Munich, April 2018

Gerhard Ullrich



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## Abbreviations

AAFI/AFICS	Association of Former International Civil Servants – Geneva
ADR	Alternative dispute resolution
AöR	Archiv des öffentlichen Rechts (German Law Journal)
Art.	Article
ASG	Assistant Secretary-General of the UN
AT/EPO agreement	Agreement between the EPO and the Republic of Austria concerning the headquarters of the Vienna sub-office of the EPO of 2 July 1990, AT/BGBl. No. 263 of 6 November 1990, pp. 4071 et seq.
BGBl.	Bundesgesetzblatt (German Federal Law Gazette)
CCFSR	Community Charter of Fundamental Social Rights of Workers of 9 December 1989
CCISUA	Co-ordinating Committee for International Staff Unions and Associations of the UN System
CCR	Co-ordinating Committee on Remuneration
CERN	European Organisation for Nuclear Research
CERN/ESO-PF	Pension Fund of CERN and ESO
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the EU (before 1 December 2009 European Court of Justice)
CJEU (CST)	The European Civil Service Tribunal of the CJEU (until 1 September 2016)
CJEU (GC)	The General Court of the CJEU (before 1 December 2009 Court of First Instance)
CO	co-ordinated organisations
CoE	Council of Europe
CoE-GAPI	General Agreement on Privileges and Immunities of the CoE
CoE-NPS	New Pension Scheme of the CoE (Appendix Vbis CoE-SR)
CoE-SR	Staff Regulations of the CoE
CoE-TPS	Third Pension Scheme of the CoE (Appendix Vter CoE-SR)
CVPO	Community Plant Variety Office
DBPS	Defined benefit pension scheme
DCPS	Defined contribution pension scheme
DE/EPO agreement	Headquarters Agreement between the EPO and the Government of the Federal Republic of Germany of 19 October 1977, DE/BGBl. II No. 17 of 4 April 1978, pp. 337 et seq.
doc.	Document
EC	European Communities
ECB	European Central Bank

ECB-SR	Conditions of employment for staff of the ECB
ECGAB	European Code of Good Administrative Behaviour
ECHR	European Court of Human Rights
ECMWF	European Centre for Medium Range Weather Forecast
EConHR	European Convention for the Protection of Human Rights and Fundamental Freedom
EFTA	European Free Trade Association
EGV	Vertrag zur Gründung der Europäischen Gemeinschaft (TEC, Treaty establishing the European Community)
EIB	European Investment Bank
EIF	European Investment Fund
EJIL	European Journal of International Law
EMBL	European Molecular Biology Laboratory
EP	European Parliament
EPO	European Patent Organisation
EPO (Office)	European Patent Office
EPO-Codex	EPO documents on personnel/policy and personnel/operational matters published on the website of the EPO Administrative Council since 30 September 2015
EPO-EPC	European Patent Convention
EPO-PPI	Protocol of Privileges and Immunities of the EPO
EPO-PRF	Pension Reserve Fund of the EPO
EPO-PS	Pension Scheme regulations and rules of the EPO
EPO-RFPSS	Reserve Funds for Pensions and Social Security of the EPO
EPO-SR	Service Regulations for permanent employees and the conditions of employment of other employees of the EPO
EPPO	European and Mediterranean Plant Protection Office
EPSO	European Personnel Selection Office
ES	European School
ESA	European Space Agency
ESC	European Social Charter
ESM	European Stability Mechanism
ESMAT	Administrative Tribunal of the ESM
ESO	European Southern Observatory
et seq.	and following pages
EU	European Union
EU-CEOS	Conditions of employment of other servants of the EU
EUIPO	EU Intellectual Property Office
EU-PPI	TEU Protocol No. 7 on the privileges and immunities of the EU
EU-PS	Pension Scheme of the EU (Annex VIII of the EU-SR)
EUR-LEX	Database of EU law
Eurocontrol	European Organisation for the Safety of Air Navigation
FAO	Food and Agriculture Organization of the UN
footn.	footnote

GRUR Int	German Journal of Intellectual Property Law and Practice, international part
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IGO	Intergovernmental IO
IIB	International Patent Institute
ILC	International Law Commission
ILO	International Labour Organization
ILOAT	Administrative tribunal of the ILO
IMF	International Monetary Fund
IMFAT	Administrative Tribunal of the IMF
INPADOC	International Patent Documentation Centre
IO	International Organisation(s)
IOLR	International Organizations Law Review
IOM	International Organization for Migration
IPSAS	International Public Service Accounting Standards
IPU	Inter-Parliamentary Union
ISA	International Seabed Authority
ISR	Internationale Steuer Rundschau (German international tax review)
ISRP/SIRP	International Service for Remuneration and Pensions
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
JIU	Joint Inspection Unit of the UN system
juris	German legal database
LTC	Long-term care
MIGA	Multilateral Investment Guarantee Agency
NATO-SR	Civilian Personnel Regulations of NATO
NGO	Non-governmental IO
NJW	Neue Juristische Wochenschrift (German Law Journal)
NL/EPO agreement	Agreement between the EPO and the Kingdom of the Netherlands concerning the branch of the EPO at The Hague, NL, of 27 June 2006, NL Tractatenblad 2006, No. 155
OAJ	Office of Administration of Justice of the UN
OASAT	Administrative Tribunal of the Organization Of American States (TRIBAD)
OECD	Organisation for Economic Co-operation and Development

ÖGBL.	Österreichisches Gesetzblatt (Austrian Law Gazette)
OJ	Official Journal
OLA	Office of Legal Affairs of the UN
OLAF	European Anti-Fraud Office
Old UNAT	UNAT before 31 December 2009
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organisation for Security and Co-operation in Europe
OSLA	Office of Staff Legal Assistance of the UNDT/UNAT
p.	page
para.	paragraph(s)
PF	Pension Fund
pp.	pages
PPI	Protocol on Privileges and Immunities
PS	Pension Scheme (Pension Regulation)
R.	Rule
Reg.	Regulation(s)
SG	Secretary-General
SR	Staff Regulations (Staff Rules), Service Regulations
StBl.	Bundessteuerblatt (German Federal Fiscal Tax Gazette)
SUEPO	Staff Union of the EPO
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
Triblex	Database of the ILOAT
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAT	Administrative Tribunal of the UN
UNBISNET	UN Bibliographic Information System
UN-CPI	Convention on the Privileges and Immunities of the UN
UN-CS	UN Common System
UNDP	United Nations Development Programme
UNDPI	UN Department of Public Information
UNDT	Dispute Tribunal of the UN
UNECOSOC	Economic and Social Council of the UN
UNESCO	UN Educational Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGA	General Assembly of the UN
UNIDO	UN Industrial Development Organization
UNJSPF	United Nations Joint Staff Pension Fund
UNODC	UN Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
UN-SG	Secretary-General of the UN
UN-SR	Staff Regulations and Rules of the UN
UN-WTO	UN World Tourism Organization

UPC	Unified Patent Court
USG	Under Secretary-General of the UN
v.	versus, against
VCDR	Vienna Convention on Diplomatic Relations
VCLT	Vienna Convention on the Law of Treaties
VCLT-IO	Vienna Convention on the Law of Treaties between States and International Organizations (not yet in force)
WB	World Bank
WBAT	Administrative Tribunal of the WB
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
YBIO	Yearbook of International Organizations
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (German Law Journal)
ZBR	Zeitschrift für Beamtenrecht (German Journal for the Law of Officials)

## Introduction

### A. The civil service law of international organisations – unity within diversity

The civil service law of public (intergovernmental) international organisations (IO) forms an integral part of the institutional law of IO and is within the sphere of public international law. The constituent instruments of IO are particular conventions by which each IO is endowed by its member states with a certain autonomy in order to ensure the unimpeded accomplishment of its tasks. The internal law of an IO is *particular* international public law since it is restricted in its effects to member states (Ipsen, p. 198: Given the different tasks of the IO one cannot speak of a self-contained law of IO). This is also the reason why the civil service law of IO does not constitute a uniform system of law applicable to all IO but, in principle, only refers to a specific IO. Nevertheless, the legal literature consistently refrains from using the plural form of the word “law” in the context of a description of the employment law of IO (e.g. Amerasinghe, *The law*; Schermers/Blokker; de Cooker). The use of the singular form shows that the law of the international civil service is a legal sphere in which largely uniform legal principles and similar structures and elements prevail justifying a coherent presentation.

In comparison with the other areas of institutional law of IO such as financing, general administration, internal legal order (Schermers/Blokker § 26 distinguish a total number of eleven areas of the institutional rules of IO) the employment law of IO is of enhanced coherence. A major reason for this lies in the jurisprudence of the international administrative tribunals. In constant case law the tribunals use the general legal principles common to member states and the principles enshrined in the international conventions and declarations on fundamental and human rights as a necessary complement to the service regulations (SR) of all IO. These general principles govern the employment relationship of all IO as a supreme value system (see, for example ILOAT Judgment 1118 para. 10: An IO “must at all times, and more particularly when amending the conditions of service, abide by those general principles”).

This common set of rights which is laid down in only a fragmentary manner in the SR of IO supplements the SR as a kind of “shadow constitution”. It provides the necessary judicial yardstick for the interpretation, gap filling and legal checks of the employment law of IO. The insular nature of the SR of an IO is thereby partly removed and the SR of IO are focused on common legal principles.



But even the structure and the elements of the SR of each IO show more converging than separating elements. Despite all the diversity of tasks IO are confronted with identical or similar problems in the field of their employment relationships.

Newly established IO do not reinvent their own SR but resort to existing and proven SR of functionally comparable IO.

During the operational phase of IO there is an ongoing exchange of experiences between the human resources and legal departments of IO. This often leads to an alignment of the SR. If there are new developments in the law of the international civil service, e.g. in the areas of data protection, social security systems (long-term care) or protection of dignity (harassment) the provisions drafted by one organisation are often used as a template by others.

Despite all the diversity in the SR of IO it, therefore, does seem justified to speak of a certain uniformity in this area (Schermers/Blokker, subtitle and § 22 et seq: “Unity within diversity”). The growing uniformity of the law of the international civil service is, however, not to be understood as goal, unlike e.g. the motto on the Great Seal of the United States: “*e pluribus unum*” (out of many, one), but as a working hypothesis for a comparative study of the law of the international civil service.

## B. Objectives

This book does not intend to supplement the series of monographs and commentaries on the SR of individual IO or of a group of IO. It intends to provide a general overview of the law of the international civil service, to disclose the substantial content of the SR and refer to their similarities and differences. Another purpose is the analysis of the general legal principles applicable to the law of the international civil service, notably derived from the case law of the international administrative tribunals. Given the multitude of IO a grouping of the IO in accordance with the similarities of their employment relationship is inevitable. For this purpose the law of the international civil service is subdivided into four civil service systems which show some degree of similarity in the structure and the elements of their SR.

For the purpose of this book the term SR is used in its broader sense, i.e. it also includes, in addition to the SR for active officials also the pension schemes (PS) and tertiary employment law (directives, circulars etc.).

*Part 1*

**Basic elements**

*Chapter 1*

**The international organisations**

**A. The legal nature of international organisations**

The establishment of IO is based on the realisation that certain goals cannot be achieved by individual states on their own but only in cooperation with others. IO serve the purpose of achieving political, scientific, technical, humanitarian, social and economic objectives which exceed the national resources and opportunities (a good overview of the various objectives pursued by IO can be found in Seidl-Hohenveldern/Loibl § 2101 to § 4001).

The member states of an IO endow their organisation with the necessary legal status and functional sovereignty *sui generis* (Schermers/Blokker § 209; Seidl-Hohenveldern/Loibl § 0107) in order to achieve their common objectives.

In order to accomplish these tasks IO have legal personality in international law and in the national law of their member states. The status of legal personality was not expressly attributed to IO until some 40 years ago. The legal status was, however, derived by implication from the need to exercise its powers properly (see Schermers/Blokker § 1565 et seq. concerning the UN; but see Art. 5(1) and 5(2) EPO-EPC and Art. 47 TEU; Art. 335 TFEU).

The question of whether the individual organs, subsidiary organs, institutions or other bodies of an IO have their own legal personality in international and national law cannot be answered in general terms but only according to its constituent instruments (see Schermers/Blokker § 1571).

On the basis of their international legal personality, which is functionally limited and determined by their tasks (Schermers/Blokker § 1570), IO may enter into bilateral agreements with member states (see, for example, the headquarters agreements) and codify their entire internal legal system as particular international law (Seidl-Hohenveldern/Loibl para. 1513).

In national law, IO generally enjoy the most extensive legal capacity accorded to legal persons under the national law of each member state in order to act within the national legal order (e.g. rent buildings, buy equipment etc., Schermers/Blok-