MASTER THESIS

Titel der Master Thesis / Title of the Master‘s Thesis

“The application of law to international organizations and their accountability”

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien, 2019 / Vienna 2019

Studienkennzahl lt. Studienblatt / Postgraduate programme code as it appears on the student record sheet:	A 992 628
Universitätslehrgang lt. Studienblatt / Postgraduate programme as it appears on the student record sheet:	International Legal Studies
Betreut von / Supervisor:	Univ.-Prof. MMag. Dr. August REINISCH, LL.M.

Acknowledgements

I would like to acknowledge the people who have supported me over the last few years. I would like to thank my supervisor, Professor August Reinisch, for his continued guidance and advice; Claudia Luxon, for her patience and support; my parents for their endless encouragement; and my friends who have always been there to support me and persuaded me to keep going even when I felt like giving up. Finally, I would to thank my husband, Henry Alexander Maples, for believing in me. I could not have done this without you.

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List of Abbreviations

CDE	Centre for the Development of Enterprise
DARIO	Draft articles on the responsibility of international organizations
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EPO	European Patent Office
EU	European Union
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IDI	Institut de Droit International
ILA	International Law Association
ILC	International Law Commission
ILOAT	Administrative Tribunal of the International Labour Organization
IMF	International Monetary Fund Home Page
IO	International organization
OECD	Organisation for Economic Co-operation and Development
SC	Security Council
UDHR	Universal Declaration of Human Rights
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNAT	United Nations Administrative Tribunal
UN Charter	Charter of the United Nations
US	United States of America
WWII	Second World War

Introduction

In the last few decades the number of international organizations (IOs) increased significantly, together with the number of tasks they perform and are involved in.

Today IOs have substantial influence and status. This is not only because to increased power and authority but also due to a larger number of staff, partners, donors etc.[1]

IOs have been criticized for their lack of accountability and sometimes even violating fundamental human rights (e.g. the right to access courts). Different suggestions have been made and new laws have been implemented in order to eliminate the abuse of power.

The transfer of powers and responsibilities from states to IOs has been always a complicated practice. [2] As a result, the range of IOs' responsibilities have increased and this has led to greater accountability and the creating new frameworks that will deal within IOs.

The concept of accountability of IOs is new and requires detailed research. One of the main questions among scholars and practitioners is to identify whether and to what extent IOs are bound by national law. In particular, how courts and tribunals apply and interpret the law that is related to IOs.

The purpose of this research paper is to study the accountability of IOs and will be focusing on the application of international and national law. The question to what extent an IO is bound by national law will be also examined. This paper will analyse how IOs' internal tribunals and domestic courts started applying and interpreting the law regarding accountability of IOs. Moreover, the right of access to the courts vs. immunity will be also examined.

Based on the research of different topics, the thesis is divided into three chapters.

Chapter one will examine a brief introduction and an overview of IOs. The chapter explores the historical development of the term 'international organization', its definitions and types as well as the development of IOs as subjects of international law, which is a 'relatively new phenomenon'. This chapter will also outline the legal nature of the immunity of IOs, which guarantes the independent functioning of IOs, and highlights the problems of exemption from the jurisdiction of national courts. The chapter will analyse whether IOs enjoy immunity under customary international law or whether the application of immunity should be based on the headquarter agreement.

[1] Brown L. David Brown, Moore H. Mark, Accountability, Strategy, and International Nongovernmental Organizations, Nonprofit and Voluntary Sector Quarterly, 30(3), 2001, here at p. 569

[2] Reinisch August, Securing the Accountability of International Organizations, 7 Global Governance 131 (2001), here at p.131

Chapter two will focus on the concept of accountability of IOs. The development and definition of the term 'accountability' will be introduced and analysed. In this regard, the work of the International Law Commission (ILC) in drafting the Articles on Responsibility of International Organizations will be taken into account, demonstrating authoritative guidance as to the relevant law and its development. The chapter will then examine the limits of accountability of IOs for their wrongful conduct, by outlining the main rules regulating the accountability of IOs.

Chapter three will explore the application of law to IOs. In this context, the chapter will analyse whether and to what extent IOs are accountable by national law; the rules of IOs (internal law) will also be examined. The chapter will further focus on the conflict between immunities and the right of access to the courts in the context of IOs. The chapter also explores the way in which IOs implement the fundamental right of access to justice by providing alternative dispute settlement mechanisms. The chapter will then examine the criteria that enables access to dispute settlement mechanisms, as well as the transparency and impartiality of certain internal procedures, in order to establish whether they are efficient and adequate. The chapter will also analyse the legal nature of the internal appeal procedures of IOs. The right to appeal will be examined as well is it's effectiveness and adequacy. The chapter will include some suggestions for possible changes to alternative dispute settlement mechanisms in order to improve their functioning and make them more efficient.

The objectives of this thesis are as follows: 1) Examine whether and to what extent IOs are bound by national law, 2) analyse the application of law to IOs in court and tribunal decisions and 3) review and analyse academic opinion (the ILC opinion on the responsibility of IOs and, in particular, the Draft Articles on the Responsibility of International Organizations).

‘Where states cooperate well and use an international organization as a vehicle to carry out activities that they themselves may be prevented from engaging in either under their domestic law or under international law, the ‘Lack of substantive and procedural restraint may pose a serious problem. This is where the lawyers’ interest in protecting against worst-case scenarios begins.’

(Reinisch August, Securing the Accountability of International Organizations, 7 Global Governance 131, 134 (2001), p. 134)

‘International organizations are no longer seen as the good guys of global governance which produce global public goods that states alone cannot furnish. Instead, there is a ‘growing awareness of the internal pathologies and ideological biases of the most dominant international institutions.’

(Cogan Jacob Katz, Hurd Ian, Johnstone Ian, The Oxford Handbook of International Organizations, Oxford University Press (2016), p. 41)

Chapter I. Definition and legal nature of international organizations

Introduction

The first chapter will focus on IOs as part of international law and their ‘creation’ as a result of international development in the 20th century. The aim of this chapter is to study the role and purpose of IOs in the 21st century and to provide an overview of IOs as subjects of international law. The essential features of IOs and in particular the variety of definitions will be examined. The historical development of the term ‘international organization’ will be briefly outlined and its place in international law will be analysed. As the specific focus of this research is connected to accountability of IOs, the immunity issues of IOs will be presented. The accountability of IOs will be examined in detail in the second chapter. It should be noted that analysing the definition and legal nature of IOs is not the main purpose of this research paper and therefore, this chapter is written to provide an introduction to the accountability of IOs.

a) Evolution of the term ‘international organization’

As written in the UN Chronical, ‘It was not in 1945 nor in 1919 [that the process of IOs began]. Rather, it was the Congress of Vienna (1814-15) that proved to be the relevant turning point in history, when certain conditions allowed a number of European States to set in motion

a series of innovations, inventions and learning processes that shaped the core of what we today refer to as international organizations (IOs).' [3]

After WWII the term 'international organization' was used for formal IOs (in most cases they were institutions of the United Nations (UN)). In the centre of the post-war period there were international agreements, treaties and resolutions. Therefore, IOs became a part of research in terms of rules, principles and decision-making procedures.[4]

The present system of global governance was created after WWII with the help of IOs. By 1950 only 60 countries had joined the UN. In comparison, by the end of 20th century, due to advances in technology and the end of the colonialist era, the UN had become a large international institution with 159 members. [5]

In the decades following WWII, the purpose of IOs changed dramatically. For instance, the World Bank changed its scope of activities from European reconstruction to funding development goals in developing countries. The IMF switched their activities from establishing stability in the global exchange rate policy to solving debt problems in developing countries. The UN started to organise peacekeeping operations across the world.[6]

In the beginning, the aim of establishing IOs was to facilitate international co-operation in different fields. Some IOs were created for specific purposes, such as the International Law Association and the International Committee of the Red Cross. In the last century, the development of international law and specific issues related to it, such as accountability, was significant. Many IOs were established and one of the aims of their existence was to understand international community interests. A lot of international treaties and agreements have now been adopted and IOs still remain influential in the world. [7]

'International organisations (or institutions) have now become indispensable. In a globalised world they facilitate co-operation across state frontiers, allowing for the identification, discussion and resolution of difficulties in a wide range of subjects, from

[3] Reinalda Bob, From the Congress of Vienna to Present-Day International Organizations', Vol. LI No. 3, December (2014), available at: https://unchronicle.un.org/article/congress-vienna-present-day-international-organizations (visited last: 10.08.2019)
[4] Carlsnaes Walter, Risse Thomas & Simmons A. Beth, Chapter 13: International Organizations and Institutions, Handbook of International Relations (2002), pp. 326-351, available at: https://scholar.harvard.edu/files/bsimmons/files/ch_13_-_international_os_and_is.pdf Pp 326-351, here at p.327-328 (visited last 10.08.2019) in: Carlsnaes W, Risse T, Simmons BA, Handbook of International Relations. Thousand Oaks, CA: Sage Publications (2002)
[5] McArthur W. John, Werker Eric, Developing countries and international organizations: Introduction to the special issue, The Review of International Organizations, Vol. 11, Issue 2, June (2016), here at p. 155-156
[6] *Ibid*, p. 127
[7] Shaw N. Malcolm, International Law, 6th edition, Cambridge University Press (2008), here at p. 1283

peacekeeping and peace enforcement to environmental, economic and human rights concerns.'[8]

As a result of international development and the progress of the 'modern nation-state', a significant number of self-governing IOs provided many challenges, especially in the field of cooperation.[9] In general, the transfer of governmental functions to IOs is 'a complex, multidimensional, simultaneously upward and downward process'.[10] Western Europe heavily influences IOs and this raises concerns about domination and politically motivated decision-making processes within these organisations. [11]

b) International organizations: general overview

i. Definition and role

The number and variety of IOs has grown significantly over the last few decades. Meanwhile, a lot of scholars have made an effort to clarify and describe the term 'international organization'. Despite this, a common definition has not been found. [12]

Although a great amount of work has been undertaken in recent years to clarify this term, a clear definition is not included in the Articles on the Responsibility of IOs. [13] The given definition refers to the Vienna Convention on the Law of Treaties between States and International Organizations (1986). Article 2 describes an IO as 'an inter-governmental organization'. [14]

According to Article 2 of the Draft Articles on the Responsibility of International Organizations (DARIO), *'"international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international*

[8] *Ibid*, here at p. 1284
[9] *Ibid*, p. 1282
[10] Reinish, supra note 2, p. 131
[11] Thompson Alexander and Snidal Duncan, International Organization: Institutions and Order in World Politics, Chapter 17 in Production of Legal Rules (2011), here at p. 313
[12] Duffield John, What Are International Institutions?, International Studies Review Vol. 9, No. 1 Spring (2007), here at p. 1
[13] Gaja Giorgio, Articles on the responsibility of international organizations, United Nations Audiovisual Library of International Law, p. 2, available at: http://legal.un.org/avl/pdf/ha/ario/ario_e.pdf (visited last: 10.08.2019)
[14] UN General Assembly, Convention on the Law of Treaties between States and International Organizations or between International Organizations, 16 December 1982, A/RES/37/112, available at: https://www.refworld.org/docid/3b00f0158.html (visited last: 10.08.2019)

legal personality. International organizations may include as members, in addition to States, other entities.' [15]

It must be mentioned that 'an international organization may incur international responsibility only if it possesses an international legal personality.'[16]

The Organisation for Economic Co-operation and Development (OECD) established the following definition: 'International organisations are entities established by formal political agreements between their members that have the status of international treaties; their existence is recognised by law in their member countries; they are not treated as resident institutional units of the countries in which they are located.'[17]

Thakur and Weiss define IOs as the compound of formal and informal establishments, instruments, relationships and regulations among the states, their citizens, other institutions (inter- and non-governmental) and through which joint interests are expressed.[18]

According to Prof. Reinisch, IOs are identified as 'entities consisting predominantly of states, created by international agreements, having their own organs, and entrusted to fulfil some common (usually public tasks)'.[19] Moreover, commissions or tribunals can be considered as IOs on national level.[20]

IOs are usually described as associations of states. IOs are created using certain rules, where their staff members take part in the establishment, implementation and interpretation of these rules. [21]

Unlike the majority of cases, some IOs were not created by a treaty (for example, the Organization for Security and Co-operation in Europe (OSCE) or the Organization of the Petroleum Exporting Countries (OPEC)). Such formal treaties may not have existed.[22] It is also well known that IOs should have a certain number of executive organs in order to function.[23]

To summarize, IOs are universal and complex institutions, which require clearer definitions. This could be achieved through the IOs' functions (adopted regulations and

[15] Draft articles on the responsibility of international organizations, with commentaries, Yearbook of the International Law Commission, 2011, vol. II, Part Two, 2011, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (visited last: 10.08.2019)
[16] Gaja, supra note 13, p. 2
[17] Manual Frascati, Guidelines for Collecting and Reporting Data on Research and Experimental Development, OECD, Annex 2: Glossary of terms (2015), here at p. 373
[18] Clive Archer, International Organizations, Routledge (2014), here at p. 2
[19] Reinisch August, International Organizations Before National Courts, Cambridge University Press (2000), here at p. 5-6
[20] *Ibid*
[21] Martin and Simmons, supra note 4, p. 329
[22] United Nations, Yearbook of the International Law Commission 2003, United Nations Publications (2010), here at p. 32
[23] Reinish, supra note 19, p. 7

treaties, which could be interpreted within different law systems) and the work of scholars and legal practitioners, whose aim it is to solve issues raised by the interference of international institutions.

ii. Diversity of IOs

The variety of IOs is impressive and its common that new organizations are created following the examples of existing ones. The law of IOs is applicable to all the organizations, irrespective of their nature and principles. For example, all IOs enjoy privileges and immunities from the jurisdiction of their member states. IOs are subject to the same responsibility rules, which were outlined in the Articles of Responsibility by the ILC.[24]

IOs are very different according to their functions, involvement and nature. Their diversity *apriori* means that some laws are applicable to every IO. This is illustrated in the articles on responsibility. For instance, in Article 10, para. 1, it states that *'[t]here is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned'*.[25] However, some rules are only relevant for specific IOs. Article 21 regarding self-defence is applicable to some IOs because of their nature and purpose but is not relevant to all.[26]

Article 64 reflects that *'some special rules apply to the international responsibility of certain categories of organizations or to some specific organizations. These special rules are not identified in the text. Although the existence of these special rules has often been invoked by international organizations, few examples are provided. The commentary to article 64 refers to an alleged rule that would attribute to the European Union the conduct taken by its member States when they implement European Union law.'*[27]

As mentioned, the difficulty of this topic relates to the question of whether all organizations are subject to the same set of rules, principles and policies. This has become a debatable question for scholars and practitioners.[28]

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[24] Klabbers Jan, Unity, Diversity, Accountability: The Ambivalent Concept of International Organisation, MelbJlIntLaw 6, 14(1) Melbourne Journal of International Law 149 (2013), available at: http://classic.austlii.edu.au/au/journals/MelbJIL/2013/6.html (visited last 10.08.2019)
[25] Gaja, supra note 13, p. 3
[26] *Ibid*
[27] *Ibid*
[28] Klabbers, supra note 24

iii. International organizations as subjects of international law

In the final report of the International Law Commission in 2011, it was noted that: 'There are very significant differences among international organizations with regard to their powers and functions, size of membership, relations between the organization and its members, procedures for deliberation, structure and facilities, as well as the primary rules including treaty obligations by which they are bound. Because of this diversity and its implications, the draft articles where appropriate give weight to the specific character of the organization (...).'

[Draft articles on the responsibility of international organizations, with commentaries, Yearbook of the International Law Commission, Vol. II, Part Two (2011), p. 3, para. 7, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (visited last 10.08.2019)]

The ILC has adopted the DARIO in 2011. The idea to adopt these articles began in 2002, when the ILC decided to add the topic of the responsibility of IOs to their agenda.[29]

The purpose of the Articles on the responsibility of IOs is to cover issues of accountability. Giorgio Gaja argues that they 'consider first of all the internationally wrongful acts committed by international organizations and the content and implementation of responsibility when an organization is responsible towards another organization or a State or the international community as a whole.' [30]

However, there are not as many practical examples for accountability of IOs as there are for the Articles on States Responsibility. [31]

Yet, the aim of the ILC was to adopt the common rules that have universal application, including the term 'international organization' in its broad sense. [32] This means that all IOs are included, not just 'intergovernmental organizations'. [33]

So the main question of this paragraph is whether IOs are subjects of international law?

The DARIO state the following:

Article 3 (Responsibility of an international organization for its internationally wrongful acts): *'Every internationally wrongful act of an international organization entails the international responsibility of that organization.'* [34]

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[29] Möldner Mirka, Responsibility of International Organizations – Introducing the ILC's DARIO, Max Planck Yearbook of United Nations Law Online, Vol. 16, Issue 1 (2012), here at p. 284-285

[30] Gaja, supra note 13, p. 1-2

[31] Daugirdas Kristina, Reputation and the Responsibility of International Organizations, The European Journal of International Law, Vol. 25 no. 4, here at pp. 993-994

[32] Wouters Jan, Odermatt Jed, Are all international organizations created equal? Reflections on the ILC's Draft Articles of Responsibility of international organizations, Global Governance Opinions, March 2012, available at: https://ghum.kuleuven.be/ggs/publications/opinions/opinions13-wouters-odermatt.pdf (visited last: 10.08.2019)

[33] Supra note 15

[34] Draft Articles on the Responsibility of International Organizations, 3rd June 2011 (UN Doc A/CN.4/L.778), available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf (visited last: 10.08.2019)

Article 4 (Elements of an internationally wrongful act of an international organization):

'There is an internationally wrongful act of an international organization when conduct consisting of an action or omission: (a) is attributable to that organization under international law; and (b) constitutes a breach of an international obligation of that organization.'[35]

Some scholars argue that this article reproduces a general principle of law. Other scholars state that IOs should be responsible for their wrongful acts on an international scale.[36]

In her research paper, Prof. Daugirdas states that international law combines both customary international law and general principles. Despite this fact, scholars have different opinions about the law of IOs. Are they bound only by international law? [37]

In particular, the WHO-Egypt case states that: 'International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.'[38]

The statement 'under general rules of international law' remains unclear and is open to further discussion. [39]

The 'general rules of international law' statement leads to the misunderstanding as the International Court of Justice (ICJ) did not use this term consistently. 'Sometimes the term refers to customary international law and general principles. Other times the term refers to norms that are mandatory and binding without exception. Still other times it is used as a synonym for customary international law.'[40]

Prof. Klabbers said that the statement 'general rules of international law' can be also understood as an indication to customary international law. [41]

As a result, the WHO-Egypt case cannot answer the question of what rules will be applicable to IOs. Scholars do not have a common view whether these rules are obligatory. [42]

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[35] *Ibid*
[36] Möldner, supra note 29, p. 286
[37] Daugirdas, supra note 31, p. 331
[38] Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I. C.J. Reports 1980, para. 37
[39] Cogan Jacob Katz, Hurd Ian, Johnstone Ian, The Oxford Handbook of International Organizations, Oxford University Press (2016), here at p. 1035
[40] Daugirdas Kristina, How and Why International Law Binds International Organizations, Harvard International Law Journal, Vol. 57 (2016), here at p. 333
[41] Klabbers Jan, An Introduction to International Organizations Law, Cambridge University Press (2015), here at p. 325
[42] Daugirdas, supra note 40, here at p. 334

iv. Immunity issues

IOs not only promote peace, security, democracy and stability, but also control territories, impose sanctions, organize military operations etc. This means that they are involved in different acts (e.g. peacekeeping operations) and all their staff enjoy absolute immunity, which cannot be waived. There have been severe cases, which have led the international community to suggest different ways in which to limit immunities and to increase the responsibility of IOs. It was proposed that states should: 1) Take responsibility for the actions of the IOs they assist, contribute to, or of which they are members of, 2) limit immunity where it is not essential and will exceed necessary requirements and 3) improve accountability mechanisms within the organization by subjecting them to independent judicial inspection.

Unfortunately, accountability of IOs is not an easy subject to analyse due to the fact that such mechanisms are undeveloped or do not even exist. [43]

The majority of IOs enjoy functional immunity that is not outlined. Immunity from every form of legal process is provided by multilateral or headquarters agreements. [44]

For instance, Article 14 of the TIN Council states that *'…representatives of Member countries of the Council and of intergovernmental organisations participating in the International Tin Agreement… shall enjoy:— (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the exercise of their functions'*. [45]

De facto it is problematic to hold IOs accountable, even if their actions are considered to be wrong. Third parties, including organizations, cannot enjoy effective access in order to complain and apply for remedies. In order to avoid the problematic issue of immunity in the scope of national jurisdiction, IOs establish their own international administrative tribunals (dispute settlement mechanisms) in order to solve employment matters. During the 1980-1990s more administrative tribunals were created in order to deal with 'the basic international human right of due process', such as within the UN or the World Bank. [46]

[43] Beneyto José Maria, Accountability of international organisations for human rights violations, Committee on Legal Affairs and Human Rights, available at http://website-pace.net/documents/10643/110596/20131106-OrganisationAccountability-EN.pdf/28c93fd3-53fa-4a9d-9712-bd25f5e68be0 (visited last 10.08.2019)
[44] Reinisch August, Weber Ulf Andreas, In the Shadow of Waite and Kennedy – The Jurisdictional Immunity of International Organizations, the Individual's Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement, International Organizations Law Review, Volume 1, Issue 1 (2004), here at p. 60-61
[45] The International Tin Council (Immunities and Privileges) Order 1972, available at: http://www.legislation.gov.uk/uksi/1972/120/made (visited last 10.08.2019)
[46] Suzuki Eisuke, Nanwani Suresh, Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks, Michigan Journal of International Law, Vol. 27, Issue 1 (2005), here at pp. 182-184, available at:

The acknowledgment of immunities is an essential measure of guaranteeing the functioning of IOs. The immunity from jurisdiction is a widespread practice, which is recognised to ensure proper performance in the duties of IOs. [47] It's also necessary to understand the distinguishing character of treaties; the rules of international law should not be ignored. [48]

As McKinnon Wood underlines, IOs are in need of immunity mechanisms as they protect people from the danger of prejudice in domestic courts. [49]

However, 'on the one hand, it has been shown that such immunity is typically construed rather broadly; even if courts espouse the view that immunity should only be accorded when it is functionally necessary, it appears that, in fact, immunity becomes virtually absolute, as most activities of the organization somehow relate to the fulfilment of a function of the organization. On the other hand, however, there are instances of courts willing to restrict the immunity of international organizations.'[50] As Prof. Reinish points out, the problem with functional immunity is to provide a test for it. Generally, functional immunity leads to absolute immunity. In this respect, immunities of IOs are limited by their functions. The position of national courts is to revoke immunity if a certain action performs beyond 'the scope of the functionally necessary'. Moreover, the courts accept a broad scope of functional necessity including the issues arise among employment-related cases, which cover the functions of IO's performance.[51]

However, another point for discussion is the relationship between immunity and the availability of alternative dispute settlement mechanisms. The national courts may ignore immunities of IOs except in cases where they actually provide such alternative dispute settlement mechanisms.[52] This issue will be discussed in detail in the next few chapters.

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https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1184&context=mjil, (visited last 10.08.2019)

[47] Stichting Mothers of Srebrenica v. Netherlands, App. No. 65542/12, European Court of Human Right, June 11 (2013), para. 139 (c)

[48] *Ibid*, para. 139 (e)

[49] Wood H. McKinnon, Legal Relations between Individuals and a World Organization of States. The Grotius Society Transactions for the year 1944 – Problems of Peace and War, (1945 (3)), pp. 143-144

[50] Ryngaert Cedric, The Immunity of International Organizations before Domestic Courts: Recent Trends, Working Paper No 143 - December (2009), Institute for International Law K.U.Leuven, available at: https://www.law.kuleuven.be/iir/nl/onderzoek/working-papers/WP143e.pdf, (visited last 10.08.2019)

[51] Reinisch and Weber, supra note 44, here at pp. 63-64

[52] Reinisch August, The Immunity of International Organizations and the Jurisdiction of Their Administrative Tribunals, Chinese Journal of International Law, Vol. 7, No. 2 (2008), here at p. 303, available at: https://deicl.univie.ac.at/fileadmin/user_upload/i_deicl/VR/VR_Personal/Reinisch/Publikationen/TheImmunityIOs_2008.pdf, (visited last 10.08.2019)

The immunity from legal process, which was established for IOs, makes it difficult to hold IOs accountable for their wrongful acts. In particular, where no alternative dispute settlement mechanisms are provided, this can potentially lead to severe accountability gaps. [53]

[53] Reinisch August, Accountability of international organizations according to national law, 36 Netherlands Yearbook of International Law (2005), here at p. 37, available at: http://www.caio-ch.org/docs/Account_Int_Orgs_Nat_Law.pdf, (visited last 10.08.2019)

Chapter II. Accountability of international organizations

'The responsibility of IOs derives from community expectation about their personality as subjects of international law, designed for specific objectives, and provided with only such authority, resources, and bases of power as are necessary to such objectives. Therefore, where IO activities in breach of international law result in injury, IOs are responsible for the injury like other subjects of international law.'
(Mahnoush H. Arsanjani, Claims Against International Organizations: Quis custodiet isos custodes, 7 Yale J. Int'l L. (1981), p. 132)

Introduction

The first chapter focused on the general issues of IOs, their development and legal nature. The second chapter will outline the accountability of IOs, a widely discussed 'phenomenon' among scholars and practitioners, within the scope of international law and the law of IOs. The definition and development of accountability of IOs will be analysed, with particular attention paid to the regulations of the International Law Association and the International Law Commission. Additionally, the limits of accountability will be discussed and the question to whom IOs are accountable will be explored.

a) Definition and historical development of accountability of international organizations

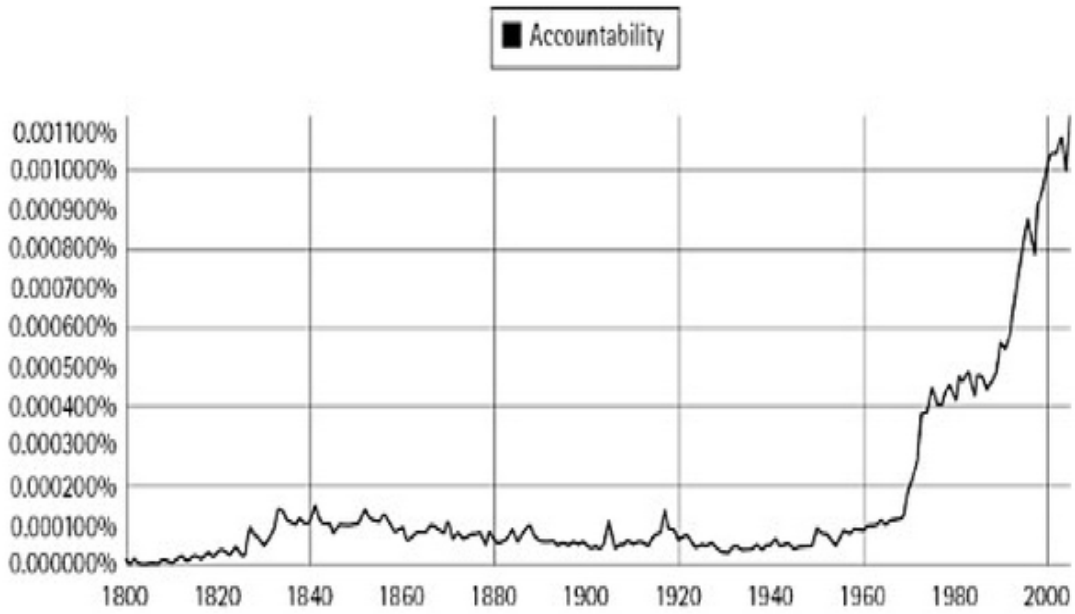
It its legal sense, the word 'accountability' means someone's responsibility vis-à-vis others, e.g. individuals or organizations. Accountability is a guarantee that an individual or organization will be liable for their actions in relation to something in which they are responsible.

The idea of 'accountability of IOs' has its origin over 50 years ago, when Prof. C. Eagleton expressed the idea of general responsibility of legal unities for their actions.[54] But this idea came second to the idea of state responsibility, that was not unusual at that time. It was a period of finding new and better tools to develop international law and, in particular, the law of responsibility. Prof. Eagleton was the first who suggested that the concept of responsibility (which had only applied at the state level) should be transferred to international organizations.

[54] Eagleton Clyde, International organization and the law of responsibility, Recueil des cours de l'Académie de droit international de La Haye, Paris, Sirey. Vol. 76 (1950–I), here at p. 423

Prof. Eagleton underlined, that 'state responsibility is 'the principle which establishes an obligation to make good any violation of international law producing injury committed by the respondent state'. [55] Nowadays it's admitted that the responsibility of IOs had developed as customary international law. [56]

Interest in the 'new' issue of accountability became widespread towards the end of the 20th century (see graph 1 below). This is a result of the power of IOs having increased and greater access to information on IOs.



[Source: Bovens Mark, Goodin E. Robert, Schillemans Thomas, The Oxford Handbook of Public Accountability, OUP Oxford (2014)]

Graph 1: Frequency of accountability in English language texts, 1800-2005

However, although widely discussed among scholars and practitioners, the concept of accountability requires clear understanding and definition for a few reasons. Firstly, as the idea of IO responsibility is fairly new, it has not been examined thoroughly, especially in practice (cases against IOs, interpretation of international law by national courts). Secondly, such research will attract much needed attention to the responsibility of IOs. The last century has shown that responsibility is an integral part of the modern world that helps to ensure good governance, the rule of law, transparency, fundamental human rights and democracy.

[55] Eagleton Clyde, The Responsibility of States in International Law, The New York University Press (1928), here at p. 22

[56] Accountability of International Organizations, Final Report, ILA, Berlin (2004), available at: https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1091&StorageFileGuid=4f1be483-8b56-453b-8682-5707b178a841 (visited last: 10.08.2019)

According to the Oxford English Dictionary the term 'accountability' means 'the quality of being accountable; liability to account for and answer for one's conduct, performance of duties, etc. (in modern use often with regard to parliamentary, corporate, or financial liability to the public, shareholders, etc.); responsibility. Freq. with modifying word.' [57]

However, such definitions cannot be understood as complete or universal, rather they can be considered too abstract. Usually the definition depends on the context. There are also many synonyms, such as 'responsibility' or 'liability'. Technically speaking, these words cannot be identical but they share a degree of synonymy. [58] Some legal practitioners distinguish accountability, responsibility and liability. Often responsibility is understood as part of international law, where its subjects are responsible for their actions. Liability is related with civil liability under national law. Accountability goes outside responsibility and 'includes models that are characterised by less formal and more open mechanisms'. [59]

Moreover, as Prof. Hafner underlines, 'accountability' meets different equivalents in several languages, including French, German, Spanish and Russian.[60] Another aspect to discuss, is that instead of defining a narrower meaning of 'accountability', it is more common to understand what constitutes 'accountability'. [61]

In general, liability of IOs is a complex part of international law and the balance of influence should be promoted. [62] Gaps in accountability are usually a result of modifications of power and this creates a higher risk of abuse. [63]

In this research paper we will analyse accountability from the perspective of IOs and international law.

i. The International Law Association

The increasing power of IOs has been a central point of interest among scholars and

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[57] Bovens Mark, Goodin E. Robert, Schillemans Thomas, The Oxford Handbook of Public Accountability, OUP Oxford (2014), here at p. 26
[58] *Ibid*, p. 26-27
[59] Beneyto, supra note 43, p. 5
[60] Hafner Gerhard, Can International Organizations be Controlled? Accountability and Responsibility', American Society of International Law (ASIL), Proceedings of the 97th Annual Meeting (2003), here at p. 236, available at: https://www.ilsa.org/jessup/jessup07/basicmats/asilproc_hafner_article.pdf, (visited last 10.08.2019)
[61] Bovens, Goodin and Schillemans, supra note 57, p. 26
[62] Hafner, supra note 60, p. 236
[63] Nollkaemper André, Curtin Deirdre, Conceptualizing Accountability in International and European Law, Netherlands Yearbook of International Law, 36 (2007), here at p. 14, available at: https://pure.uva.nl/ws/files/4245224/67449_Conceptualising_accountability_in_international_and_european_law.pdf, (visited last 10.08.2019)

practitioners for decades. Lisa Clarke in her research article states that numerous approaches have been taken or are now being taken by IOs and scholars regarding the growing power of international institutions. 'Among them are the International Law Association's work on the accountability of international organizations, New York University's work on global administrative law, and the Max Planck Institute's work on the public law approach. An important aspect of these approaches is the focus on power'. [64]

The aim of the International Law Association (ILA) is to explore the development of international law.

Despite the fact that the ILA established the Committee on the Accountability of International Organizations in 1996, the topic of accountability of IOs only relatively recently became part of a long research program at the International Law Commission. [65]

In their first report, it was noted that 'accountability is not a notion which, for the sake of its operationality, is or has to be viewed as monolithic, calling for uniform and indiscriminate application. Such rigidity would not survive the complexities of international reality.' [66]

The development of IOs within the last few decades raised the concern whether there should be an effective mechanism for holding IOs accountable for their actions. In particular, the ILA stated '[p]ower entails accountability, that is the duty to account for its exercise'. [67] It underlines the importance of the suitable mechanisms of control. [68]

One of the specific actions was creating responsibility mechanisms so that third parties could raise a complaint against internal policies and procedures. However, the duty of establishing such mechanisms is the responsibility of the IO (the IO's internal policy).[69]

ii. The International Law Commission

As already mentioned, the topic 'Responsibility of international organizations' was a part of the long-term programme organised by the ILC.[70]

At the beginning of the 21st century a number of reports were published by the ILC concerning accountability of IOs. Implementing responsibility of IOs was inevitable for the

[64] Clarke Lisa, Responsibility of International Organizations under International Law for the Acts of Global Health Public-Private Partnerships, Chicago Journal of International Law, Vol. 12, Number 1 (2011), here at p. 70
[65] Suzuki and Nanwani, supra note 46, pp. 178-179
[66] Accountability of International Organizations, Final Report, supra note 56
[67] *Ibid*
[68] Beneto, supra note 43, p. 2
[69] Suzuki and Nanwani, supra note 46, pp. 180-181
[70] Wouters and Odermatt, supra note 32, p. 2

international community (not only IOs, but also states) and for development of international law. The Draft Articles are 'commended to the attention of Governments and international organizations without prejudice to the question of their future adoption or other appropriate action.' [71]

The main purpose of the articles is to analyse if IOs can potentially be liable under international law. In this document, it was noted that IO accountability is becoming more and more important.

The purpose of the articles is also to explain the conditions and consequences of violating obligations by IOs under international law. For instance, they identify the conditions when violations may be exempted and underline the consequences of accountability.[72] Prof. Daugirdas states that in regards to the IOs Responsibility Articles, for instance, if the peacekeepers' actions or omissions indicate a violation of the UN's international obligations, the UN must provide full compensation for the injury caused.[73]

As the articles looks similar to the Articles on State Responsibility, many of the provisions that are included look identical. Since states and IOs are subjects of international law, the same rules should be applied in cases of violating international obligations. [74]

The ILC states in its commentary '"[o]ne of the main difficulties in elaborating rules concerning the responsibility of international organizations is due to the limited availability of pertinent practice.' [75] The Draft Articles, despite its importance, has been criticised due to the fact that it has codified an unclear area of law that had not been sufficiently developed. [76]

Despite the sceptical reaction concerning the effectiveness of the articles, they still can be useful in a scope of binding legal norms. As Prof. Daugirdas points out, since the articles were adopted only a few years ago, it is still early to analyse and criticise the conditions. 'The article examines the still ongoing controversy about claims that the UN violated its international obligations by inadvertently bringing cholera to Haiti.' [77]

The consequences of the articles cannot be undervalued. They were adopted to affect not only IOs, but also states that work together with or via IOs. The articles do not cover all

[71] United Nations General Assembly Resolution 66/100, Responsibility of International Organizations (Adopted on December 9, 2011)
[72] Daugirdas, supra note 31, p. 992
[73] *Ibid*
[74] Möldner, supra note 29, p. 288
[75] See Draft articles on the responsibility of international organizations, para. 5, supra note 15
[76] Hafner Gerhard, Is the Topic of Responsibility of International Organizations Ripe for Codification? Some Critical Remarks, in U. Fastenrath et. al. (eds.), From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma, Oxford University Press (2011), here at pp. 700-701
[77] Daugirdas, supra note 31, p. 993

the issues towards IOs and their responsibility and they do not provide any mechanism to sue IOs. However, this document was the first important step in the field of accountability towards IOs in international law. his may mean that in the future the term 'accountability' will not only become more complex, but also it also provides hope that specific mechanisms will be created to make IOs accountable for their wrongful acts.

b) The concept of accountability of international organizations

The concept of accountability of IOs requires further development. Scholars have examined different aspects of accountability of IOs, its origins, early development and improvement by analysing case law together with theory.

De facto, accountability is an integral part of power and as a result, accountability is a logical consequence of power. Interestingly, within time, power of IOs increases and liability under international law does not always follow immediately. [78]

Accountability is also related to the abuse of power. In particular, the question of accountability becomes a central point when we talk about IOs and their activities that have a direct impact on the people's interests and rights. [79]

Despite the fact that IOs are seen as protective and supportive instruments, sometimes they are the ones that cause the breach of law. It's been discussed by scholars that IOs violate different types of law, from international to humanitarian and employment law. [80]

This paragraph will argue that IOs should be accountable for their actions and the ways to hold IOs accountable will be examined. This section will also provide an overview of the concept of accountability of IOs, to what extent IOs are accountable and to whom.

i. To what extent international organizations are accountable?

Over the last few decades the number of IOs increased significantly together with the number of tasks they are performing and are involved in. IOs have been criticized not only for their lack of accountability but also for being 'too democratic'.[81]

[78] Clarke, supra note 64, p. 64
[79] Nakamura Erika, Human Rights Treaty Bodies' Monitoring of the Accountability in Peacekeeping Operations: A Crossover between Obligations of the UN and the Member States (Master's thesis), (2015), p. 8, available at http://othes.univie.ac.at/39671/1/2015-09-07_1449017.pdf, (visited last: 10.08.2019)
[80] Daugirdas, supra note 31, pp. 991-992
[81] Gaja, supra note 13, p. 3

David Held suggests that lack of accountability could also be due to two complications: disproportional power among member states and imbalance between states and NGOs (for example) on the international arena. [82]

It is well-known that IOs are created for particular functions, which can be achieved via their actions. However, the rules are universal and are not applicable to all IOs without exception. For example:

Article 21(Self-defence)

The wrongfulness of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.[83]

This general rule cannot indicate that self-defence is related to all IOs, rather only for a small number of them.

Consequently, not all IOs will be accountable for particular actions and some rules might be applicable to some institutions and not suitable for others.

Therefore, in what ways we can hold IOs accountable? Prof. Daugirdas underlines that there are different ways this can be done. One of them is applying international law. The states' obligations are mentioned in international law and general principles. But this cannot always be applied to IOs. The question remains unclear, how is possible to find out about the limits of accountability if it is not clear which rules IOs break? [84]

In her research, Prof. Daugirdas states that IOs are bound by treaties to which they are part of (apart from some exclusions). Therefore, IOs are bound by general international law. [85] IOs are considered to be 'separate legal persons under international law with a significant degree of autonomy'. [86]

In 1949, the International Court of Justice (ICJ) recalled that '[t]he subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.'[87]

Moreover, the court added: 'That is not the same thing as saying that it (here: The United Nations) is a state, which it certainly is not, or that its legal personality and rights and

[82] Held David, Democratic accountability and political effectiveness from a cosmopolitan perspective, Government and Opposition, Vol. 39, No. 02 (2004), here at pp. 369-370
[83] UN General Assembly, Responsibility of States for internationally wrongful acts: Resolution adopted by the General Assembly, 28 January 2002, A/RES/56/83
[84] Daugirdas, supra note 40, p. 330
[85] *Ibid*, p. 327
[86] *Ibid*
[87] Reparation for Injuries [Reparation for Injuries Suffered in the Service of the United Nations] Advisory Opinion of 11 April 1949, I.C.J. Reports (1949), here at p. 178

duties are the same as those of a state. Still less is it the same thing as saying that it is "a super-state", whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a state must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.' [88]

The ICJ stated that the functioning of the UN depends on its function and purpose, which is specified in its legal documents and has been developed in practice. Additionally, the courts highlighted that the UN is a subject of international law and can enjoy international rights and duties. [89]

Holding states accountable for their wrongful actions is considered to be an accepted practice. In this respect, it is unclear if the same rule will apply towards IOs. [90] IOs are subjects of international law so the liability for illegal acts is required. [91]

Another concern is that the principle of speciality is a part of the international status of IOs. As it was clarified by the ICJ Advisory Opinion (Reparation for Injuries Suffered in the Service of the United Nations) concerning the UN, the rights and responsibilities of IOs should depend on their purposes and functions and in the way they are established and developed in practice. [92]

It is well-known that IOs cannot create themselves; they are empowered by the states and as ICJ mentioned in its Advisory Opinion, 'they are invested by the states which create them with powers, the limits of which are a function of the common interests whose promotion those states entrust to them.'[93]

The relationship between IOs and member states is regulated by general international law, the headquarters agreement with the host state and the internal law of the organization. [94]

The main legal framework for IOs between their staff and an IO itself, is the internal law of the organization (specific staff regulations, regulations and procedures that are related

[88] *Ibid*, p. 179
[89]. Arsanjani H. Mahnoush, Claims Against International Organizations: Quis custodiet isos custodes, 7 Yale J. Int'l L. (1981), here at pp. 133-134, available at: http://digitalcommons.law.yale.edu/yjil/vol7/iss2/2, (visited last: 10.08.2019)
[90] Reinisch, supra note 53, p. 5
[91] Murray Odette, Ragazzi Maurizio (Ed.), Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie, Leiden and Boston, Martinus Nijhoff Publishers (2013), here at p. 42-43
[92] *Ibid*, p. 46
[93] Legality of the Use by a State of Nuclear Weapons in armed Conflict, Advisory Opinion, 1996 I.C.J. 227 (8 July 1996), para. 25
[94] Suzuki and Nanwani, supra note 46, p. 190

to employment contracts etc). When IOs act outside their institution, this relationship is regulated by general international law and bilateral agreements. Domestic law (subject to the headquarters agreement with the host state) and contracts govern the relationship with private institutions and persons.[95]

The boundaries of holding IOs accountable are not always declared or outlined in law. Therefore, it is hard to define the extent to which IOs are liable and what the implications of this are.

ii. Accountable to whom?

The main question of the limits of accountability is to whom IOs are accountable? The accountability of IOs is related to the accountability of the members of IOs. This question needs *apriori* further research as it depends on criteria of where accountability starts. However, we need to understand to whom IOs can be liable as this will help scholars and practitioners understand better the implications of wrongful actions and the term 'accountability of IOs' itself.

The functioning of IOs include people at different levels who may be affected by these institutions. Such parties 'may include dependent peoples, governments, other IOs, individuals, and employees'.[96]

The above-mentioned categories (apart from 'private parties' and 'employees') will not be analysed any further. The employment and administrative relationships will be explored in Chapter III. [97]

IOs adopt their policies and regulations for other parties and on behalf of themselves. Ngaire Woods states that the issue of accountability should involve transparency. In addition, it is necessary to provide clarity regarding those in charge. [98]

Cogan, Hurd and Johnston state that 'individuals [are] assumed to be entirely and properly 'mediated' by their states in international organizations'.[99] Therefore, IOs should be held accountable by the people who effectively created them. However, this statement in

[95] *Ibid*, p. 191
[96] Arsanjani, supra note 89, p. 135
[97] *Ibid*, p. 136
[98] Woods Ngaire, Good Governance in International Organisations, Global Governance Volume 5, Number 1 (Jan-March 1999), available at: https://www.unsystem.org/system/files/Finance%20%26%20Budget%20Network/Governance%2C%20Audit%20and%20Oversight/studGAO/01/good_governance_in_IOS_0.pdf, (visited last: 10.08.2019)
[99] Cogan, Hurd and Johnstone, supra note 39, pp. 45-46

practice might be not as straightforward as it sounds. In fact, it might not even have the same concept of understanding.

The accountability of IO's actions and/or omissions is limited. Moreover, it is not unusual that in most cases such claims are left without any compensation. Only the EU acknowledged a direct accountability to individuals. The ECJ in its judgement Van Gend & Loos highlighted that the subjects of the Community legal order include member states and their residents. The legal concept should be applied to other institutions as well. [100]

When we explore the question of to whom IOs are accountable, as Jacques Fomerand suggests, we should also outline what criteria and limits should be used in order to measure entitlements of accountability and the mechanisms through which this can be performed.[101] As this subtopic needs further examination and clarification, especially in terms of applicable criteria (and is not a part of the main research question), it will not be analysed further.

[100] *Ibid*, p. 46

[101] Fomerand F. Jacques, Evolution of International Organization as Institutional Forms and Historical Processes Since 1945: "Quis Custodiet ipsos custodies?", Oxford Research Encyclopedia of International Studies, Oxford University Press (2017), available at: https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-87, (visited last: 10.08.2019)

Chapter III. Application of law to international organizations

Introduction

The second chapter was focused on accountability of IOs and, in particular, its definition and concept. It was analysed whether it is possible to have limits to the accountability of IOs and whether IOs can be accountable towards the members of IOs. It was also examined whether there are some criteria to what extent IOs are liable. The third chapter will outline how practice in domestic courts and international tribunals developed and how it differs when we talk about the accountability of IOs. The application of national law and international law will be discussed, as well as internal law, rules, procedures and regulations of IOs. Thus, it will be shown in this thesis how individuals can exercise their rights within IOs. The chapter will further focus on some conflict points such as the rights of access to courts v. immunity, right to appeal, access and availability of alternative dispute settlement mechanisms and whether this access is as efficient, adequate and transparent as it should be.

a) Application of national law

The decisions made by domestic courts are important to understand in order to see how international law rules are being applied in national law systems. It also helps to analyse how international law is integrated, implemented and applied in domestic law. International treaties or customary law sometimes contain uncertain provisions and domestic court decisions can make these problematic issues even more complicated. [102]

The main question is whether and to what extent IOs may be liable in relation to national law. Prof. A.Reinisch states that 'given the fact that long before the international legal personality of international organizations became generally accepted their legal personality according to national law and been taken for granted'.[103]

As Prof. Reinisch highlights, since IOs *de facto* enjoy both international and national legal personality, they potentially have the rights and obligations that are applicable to them under both international and national law. This may happen when contracts, while being subject to national law, are also part of international agreements that are regulated by

[102] Reinisch August, The Privileges and Immunities of International Organizations in Domestic Courts, OUP Oxford (2013), here at p. 4
[103] Reinisch, supra note 53, p. 3

international law. Moreover, it is often declared by scholars, international courts and tribunals that such contracts may be considered to be 'internationalized' or even become subject to general principles of law.[104]

It would not be right to assume that IOs will only have the rights and obligations under international or national law. In this case, it will be impossible to apply domestic or international legislation. For instance, contractual regulations are subject to national law and at the same time they are an essential part of IOs' performance in a host state.

Another aspect that needs further clarification is whether there is a limit to the national rules and regulations that are applicable towards IOs. The question is if IOs are bound by the legal norms of national law, where they perform their functions, then up to what extent will national law be valid?[105] This might sound simple but in practice it can result in more questions than answers. To draw these limits might be an impossible task, and moreover, the answer will depend weather IOs are bound or not by national law.

A few opinions were developed and discussed in the legal literature. One of them, a 'territorial approach'[106] is based on the central rule, which applies to the civil, criminal and administrative law of the state unless otherwise mentioned in the host agreement. The applicability of law from a 'territorial approach' to the IOs in a host state is considered to be reasonable.[107]

Another view, expressed by Henry Schermers and Niels Blokker[108], is that restrictions to IOs may only cause complications and therefore they suggest applying national law, unless it is not excluded by exceptions ('limits imposed by privileges'). That implies non-applicability of the host state law towards IOs in the case of custom duties, taxes, import/export restrictions, currency transfers etc.[109]

According to Prof. Schaw, IOs are mostly bound by international law but in some cases the applicable law might be national law. For instance, when a company provides services for an IO or an IO is purchasing or renting, such actions will be generally subject to the applicable

[104] Reinisch August, Contracts between International Organizations and Private Law Persons, Max Planck Encyclopedia of Public International Law, available at: https://deicl.univie.ac.at/fileadmin/user_upload/i_deicl/VR/VR_Personal/Reinisch/Publikationen/contracts_ios_epil.pdf, (visited last: 10.08.2019)
[105] Reinisch, supra note 53, p. 5
[106] Muller A. Sam, International Organizations and Their Host States: Aspects of Their Legal Relationship, Martinus Nijhoff Publishers (1995), here at p. 131
[107] Reinisch, supra note 53, p. 6
[108] Schermers G. Henry, Blokke Niels, International Institutional Law, 3rd rev. ed., M. Nijhoff (1995), here at pp.1000, 1003
[109] Reinisch, supra note 53, p. 6

domestic law. The internal law of IOs is applicable in employment cases, administrative services etc. Some relations that are governed by national law might also be regulated by the police or armed forces (in case of tortious liability).[110]

A question of remedies, procedure, right to a fair trial and the pre-eminent immunity problem aren't straightforward topics, especially when they are related to the law that will be applicable towards IOs. All the cases, related to IOs and national courts differ. For example, national contract or tort law is not as complex as cases that are related to health and safety laws or employment law.[111] IOs work together with third parties in contractual relationships, lease and purchase, construction etc. The procedural distinction is that IOs enjoy immunities from national jurisdiction. However, the established law of IOs together with legal practice look relatively developed and advanced.[112]

These cases and the courts tendency will be analysed further.

The varieties of contracts can sometimes lead to a problem of identifying which law will be applicable in a particular case. For instance, over 60000 people are working as consultants and individual contractors for the UN. Therefore, a contract between an IO and individuals can be governed by domestic regulations.[113] However, it is not always easy to determine which national law will apply to contractual relationships. In practice, this will be chosen by either domestic courts or arbitrators.[114]

In 1977, the Institut de Droit International (IDI) issued the Oslo Resolution on the 'Contracts Concluded by International Organizations with Private Persons'. It asserted that both national and international law may constitute the proper law of the contract and that the parties should expressly specify the source from which the proper law of the contract is to be derived. Pierre Schmitt says that it is mainly stated in a contract, which law will be applicable. If not, such intention has to be recognised. Eventually, it is up to domestic courts to choose. However, it can also lead to another problem – limited case law in terms of the applicable law to private parties. [115]

Due to this limitation, sometimes it is problematic to see the actual practise of IOs in relation to the application of law towards such organisations. It should be mentioned that occasionally the domestic law of the location of that state is declared. Only a few cases can

[110] Shaw, supra note 7, p. 1310
[111] Reinisch, supra note 53, p. 4
[112] Arsanjani, supra note 89, p. 137
[113] Schmitt Pierre, Access to Justice and International Organizations: The Case of Individual Victims of Human Rights Violations, Edward Elgar Publishing (2017), here at p. 39
[114] Reinisch, supra note 53, p. 8
[115] Schmitt, supra note 110, p. 40

potentially answer the question of how contractual relationships between IOs and third parties should be regulated.[116]

In case of headquarter agreements, between an IO and a state, national law cannot be considered applicable. For example, the UN-US Headquarters Agreement reflects that all UN Rules and Regulations dominate over the application of any US laws regarding the internal law and their regulations. When such exclusion of application of national law is not mentioned in the headquarters agreement, there will be a dilemma whether domestic law will be applicable towards staff members. [117]

Article 3 (Law and Authority in the Headquarters District) states the following:

'The headquarters district shall be under the control and authority of the United Nations as provided in this agreement.' [118]

Since the headquarter agreements outline common provisions regarding the status of IOs, some cases might be difficult to resolve without referring to general principles of international law.[119]

In fact, IOs are considered to be treated as institutions with special status in their host states. In the centre of this statement is the nature and the purpose of IOs: They should enjoy special treatment as long as they are needed for the efficient performance of their functions.

Indeed, the basic principles governing a headquarters agreement to be negotiated between the Court and the host country refer to the following statement:

N. Applicability of the headquarters agreement

40. The headquarters agreement should be without prejudice to relevant rules of international law, including international humanitarian law.' [120]

[116] Reinisch, supra note 50, p. 9
[117] Schmitt, supra note 113, p. 38
[118] The Headquarters Agreement with the United Nations (Headquarters Agreement) came into force on Nov. 21, 1947, available at: https://treaties.un.org/doc/Publication/UNTS/Volume%2011/volume-11-I-147-English.pdf, (visited last: 10.08.2019)
[119] Mensah A. Thomas, Headquarters Agreements and the Law of International Organizations. In Coexistence, Cooperation and Solidarity, Leiden, The Netherlands: Brill | Nijhoff (2012), here at p. 1464
[120] Rules of Procedure and Evidence of the International Criminal Court, ICC-ASP/1/3, at 10, and Corr. 1, U.N. Doc. PCNICC/2000/1/Add.1 (2000), available at: http://legal.un.org/icc/asp/1stsession/report/first_report_contents.htm, (visited last: 10.08.2019)

b) Internal law of international organizations

It should be noted that international law is not a major player between IOs and private entities. Internal law of IOs generally consists of general principles of law and the regulations of an IO. [121]

Nowadays, most IOs contain an outlined set of laws, procedures and regulations that are applicable to staff members and whose aim is to regulate the relations between staff and IOs.

Interestingly, the concept of 'internal law' has not been defined in the legal literature. The ILC describes it as 'the constitution of the State and any other kind of internal legal rules, written or unwritten, including those which effect the incorporation into internal law of international agreements'.[122]

Pierre Schmitt states that historically, the staff regulations and procedures that are established by IOs are the main elements of their applicable law. Such rules typically contain provisions that indicate how the staff members should behave. Staff members should always act according to the interest of the organization and be effective and capable. [123]

Diego Germán Mejía-Lemos also underlines that the concept of internal law is related to the law of treaties the law of international responsibility. They both consider to be very important as they regulate main foundations of responsibilities and the consequences of their violation.[124]

Eisuke Suzuki and Suresh Nanwani from the Asian Development Bank distinguish different types of relationship towards an organization and another party. These are its relationships with member states, non-member states, staff, other international organizations, non-state private entities under contracts and other third parties, i.e., private individuals and groups. It implies that different laws will be relevant to each group. National law will be applicable in a scope of relations with private entities. And international law is valid outside the IO, including bilateral agreements as well.[125]

The contractual model of the communication between IOs and their staff means that the internal law of the organization is considered to be the main legal framework, where the

[121] Reinisch, supra note 104
[122] Mejía-Lemos Diego Germán, The Law of International Organisations: «Internal» or «International»? A Critical Analysis of the Relevant Practice of the United Nations Codification Organs, Revista Chilena De Derecho Y Ciencia Politica Mayo-Agosto, Vol. 5, No. 2, PÁGS (2014), here at p. 144
[123] Schmitt, supra note 113, pp. 35-36
[124] Mejía-Lemos, supra note 122, p. 144
[125] Suzuki and Nanwani, supra note 46, p. 190-191

rights and obligations are determined vis-a-vis its employees.[126] In addition, the UN Secretariat states that universal principles of public and private international law will be applicable in the case of IO responsibility.[127]

It seems reasonable to agree that relationships between IOs and private persons are different and complex. There is no universal example, no universal set of rules and no universal case practises. There are a lot of different types of relationships that are connected to contractual relations, health and safety legislation, employment relations etc. Since the last category is represented the most among scholars and legal practitioners, it will be analysed further.

Prof. Ryngaert states that employment disputes occur between IOs and individuals, who are usually related somehow to the organization. Naturally, these cases are related to private law. However, some cases might be related to public law, for example, in cases of human rights' violations. The employment disputes are part of the dispute settlement mechanisms that are established by a particular organization. Yet, individuals can also use domestic courts for their application.[128] It thus will be shown in this thesis how alternative dispute settlement mechanisms function and as well as their discrepancies.

Prof. Reinisch states that when employment cases occur, they are regulated by the internal law of an IO. Such 'public service' law is valid to staff who are employed in a 'formal sense'. That will not include temporary or service contracts. Such relations will be regulated by domestic law. [129] In addition, such employment-related disputes are often exempted from national law. While they are being regulated by internal regulations of IOs, they can be 'also referred to as internal administrative law.'[130]

Internal law of IOs will be applicable towards staff members as they are in a contractual relationship with that IO.[131]

To support this statement, it has been established that domestic courts in different countries define that employment relations are usually regulated by the internal law of IOs. For example, in the Eckhardt Case[132] the court stated that 'the relationship between the parties [wa]s not governed by Dutch civil labour law, but by the conventions, regulations, etc.,

[126] *Ibid*, p. 191
[127] U.N. Secretariat, Office of Legal Aff., Law Applicable to Contracts Concluded by the United Nations with Private Parties-Procedures for Settling Disputes Arising out of such Contracts-Relevant Rules and Practices, 1976 U.N. JURID. Y.B. 159, 160; here at p. 161
[128] Ryngaert, supra note 50
[129] Reinisch, supra note 53, p. 23
[130] Reinisch, supra note 104
[131] Schmitt, supra note 113, pp. 39-40
[132] Eckhardt v. EUROCONTROL, District Court of Maastricht, 12 January 1984, 16 NYIL (1985)

specially drawn up for the purpose'. Also, courts refuse to apply national law as the relationship is regulated by internal regulations. Moreover, if such a rejection of domestic law is not stated, national law will still be invalid for these cases. This can be also traced in the Administrative Tribunal of the International Labour Organization (ILOAT) statements: IOs are not subjects to domestic law (see Saunoi v. INTERPOL) and thus, application of national law is not obligatory (see Acosta Andres, Azola Blanco & Veliz Garcia v. ESO).[133]

The Eckhardt Case illustrates how the Dutch court held that it didn't have jurisdiction regarding this particular case since the employment contract was connected with administrative law and was serving for public commitments. Therefore, Eurocontrol was enabled to enjoy immunity as it functions for public purposes. [134]

Indeed, the court found that the employment relationship was considered to be 'administrative' and stated that Eurocontrol was in charge of establishing its legal provisions that are related to its personnel as well as establishing alternative dispute settlement mechanisms.

One more example that is relevant to this part of law interpretation is the Hetzel v Eurocontrol case[135]. This dispute demonstrates how German domestic courts lacked jurisdiction between an IO and an individual. Moreover, the court stated that 'the organization's immunity before German courts did not violate minimum requirements of the rule of law principle contained in the German Constitution because the exclusively competent Administrative Tribunal of the International Labour Organization (ILOAT) provided an adequate alternative remedy'.[136]

Similar courts' opinions were held in French cases. Generally, the French courts deny cases against IOs as they could affect their independence.[137]

However, Prof. Reinisch highlights that, as a general rule, not all types of employment relationships are regulated by internal law. Relationships between IOs and local or technical staff are usually regulated by domestic law. Yet, in practice the categories between permanent staff members and other categories might be difficult to distinguish.[138]

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[133] Reinisch, supra note 53, p. 24-26
[134] Wickremasinghe Chanaka, The jurisdictional immunities of international organisations and their officials. PhD thesis, London School of Economics and Political Science (United Kingdom), (2003), pp. 230-231, available at: http://etheses.lse.ac.uk/2095/1/U586463.pdf, (visited last: 10.08.2019)
[135] Hetzel v. EUROCONTROL, Federal Constitutional Court, Second Chamber, 10 November 1981, 2 BvR 1058/79, BVerfG 59, 63; NJW (1982), 512, DVBl (1982), 189, DÖV (1982)
[136] Cogan, Hurd and Johnstone, supra note 39, p. 1064
[137] *Ibid*
[138] Reinisch, supra note 104

c) The right of access to court vs. immunity

The right to access the courts is one of the most important rights in the modern world. Access to justice is a fundamental principle of law and is established to hold IOs and states accountable for their actions.

As one of the human rights, it is guaranteed by many international conventions (the Universal Declaration of Human Rights[139], the European Convention of Human Rights[140] etc.). The right of access to courts is a logical element when we talk about immunity of IOs. Moreover, it makes sense to provide alternative dispute settlement mechanisms as IOs can be potentially held accountable before national courts.[141]

As already mentioned before in this thesis, the development of IOs had also faced new challenges, in particular, regarding immunities and the right of access to court. [142]

There is a growing tendency between the doctrine of the IOs' immunity and the right to access to the courts. As it is well known, IOs enjoy immunities and are also exempted from the jurisdiction of national courts. These issues are regulated by the Convention on the Privileges and Immunities of the United Nations (adopted by the General Assembly (GA) in 1946)[143] and by the Convention on the Privileges and Immunities of the Specialized Agencies (adopted by the GA in 1947).[144]

Since the rule of immunity applies to IOs, applicants generally have no access to domestic courts.

Generally, the status of IOs before courts is taken for granted. Many cases are related to immunity provisions and the courts do not usually examine any further as the relationships are governed by a headquarters agreement or an agreement on privileges or immunities. [145]

Access to justice is a key element in an IO-court relationship. Courts and tribunals play the main role in protecting the implementation of accountability. More importantly, access to

[139] Art. 14, para. 1, International Covenant on Civil and Political Rights, provides, inter alia, that "[a]ll persons are equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."
[140] Art. 6, para 1, European Convention on Human Rights, states: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
[141] Reinisch and Weber, supra note 44, pp. 65-67
[142] Nollkaemper Andre, Reinisch August, Janik Ralph, Simlinger Florentina, International Law in Domestic Courts: A Casebook, Oxford University Press (2019), here at p. 181
[143] UN General Assembly, Convention on the Privileges and Immunities of the United Nations, 13 February 1946, at: https://www.refworld.org/docid/3ae6b3902.html, (visited last: 4.07.2019)
[144] UN General Assembly, Convention on the Privileges and Immunities of the Specialized Agencies, 21 November 1947, at: https://www.refworld.org/docid/3ae6b3b10.html, (visited last: 4.07.2019)
[145] Klabbers, supra note 24

justice is essential for natural persons.[146] 'Outside the EU, no international courts before which individuals, beyond staff for labor issues, could institute judicial proceedings against international organizations or their organs exist'.[147]

The functioning of IOs is protected by jurisdictional immunity and therefore the question is whether national courts and tribunals follow it? There are a few approaches to advance the concept of accountability.

Firstly, the organizational immunity could be restricted. Since only the relevant rules are applicable to IOs (headquarters agreement, a convention on immunities etc.), the limit of IOs is dependent on certain mechanisms within their functions. Moreover, often it seems problematic changing the immunity issues without a formal modification of the governing instrument.

Secondly, the accountability of IOs could be provided by allowing access to dispute settlement mechanisms.

For instance, the European Court of Human Rights (ECtHR) outlined that a determining factor regarding jurisdictional immunity is whether the applicants had access to protect their rights under the Convention (Article 6 of the European Convention of Human Rights (ECHR)).[148] The abovementioned condition was a main argument in many cases in national courts. Nonetheless, this condition is not universal or strict as there are cases where the courts have not waived immunity of IOs (see Stiching Mothers case, NML Capital Ltd v BIZ case).[149]

Generally, the immunities of IOs create difficulties for achieving accountability via judicial means. 'Because domestic judgements risk obstructing the work of the organization and inevitably apply the relevant international law in an uneven and uncoordinated fashion, domestic institutions should serve as an accountability forum only as a last resort (ultima ratio), and only with the objective of inciting organizations to close the accountability gap themselves. In the end, organizations are well advised to waive their immunity or to offer internal settlement in order to garner the public support they need.'[150]

It should be noted that many national courts do not acknowledge the immunities of IOs when the treaty law is missing. Interestingly, sometimes domestic courts lack understanding of

[146] Cogan, Hurd and Johnstone, supra note 39, p. 52
[147] *Ibid*, p. 53
[148] Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 04 November 1950, entered into force 03 September 1953, 213 UNTS 222
[149] Cogan, Hurd and Johnstone, supra note 39, pp. 55-56
[150] *Ibid*, p. 56

immunities and their legal nature and therefore, the legal concepts can be misunderstood. Also, domestic courts can provide complicated legal reasoning.[151]

Many courts, which had to examine the same issue regarding immunity of IOs, held that state immunity should not be considered similar in terms of customary law. For example, the Belgian Supreme Court pointed out that immunities should be outlined on the headquarters agreement between a state and an IO. An Italian court also specified that immunity of IOs should be 'based on conventional instruments'. In the OPEC Fund for International Development case (ILDC 362 (AT 2004))[152], an Austrian court stated that: 'Comparing the nature of the immunity of international organizations to that of states, while foreign states, according to domestic law and prevailing international law, solely enjoy immunity for sovereign acts and not in their capacity as subjects of private rights and duties, the immunity of international organizations is—within the scope of their functional restrictions—in principle to be regarded as absolute.' [153]

Prof. A. Reinisch points out that accountability of IOs is necessary in order to provide effective mechanisms to hold IOs responsible for their actions.[154] Since states transfer their functions to IOs, such mechanisms are considered to be an integral part of the law of IOs, as through them the right to have access to courts can be achieved.

Such a requirement to provide alternative dispute settlement mechanisms within IOs is an important part of providing justice and impartiality. The right to have access to courts or an alternative mechanism of dispute settlement has become more relevant to the topic of accountability of IOs. Local IOs, e.g. the European Community (EC) or the European Union (EU) have recognised that they are committed to fulfil human rights obligations and do not consider themselves to be above the law. Moreover, the European Court of Justice (ECJ) established a policy where they announced the human rights obligations to be indirectly mandatory as it is part of the general principles of law.[155]

Yet, the alternative dispute mechanisms have only been offered to natural persons a few decades ago. In regards to employment-related issues, internal complaint mechanisms have been developed. Despite this, accountability of IOs remains inefficient and needs to be improved.[156]

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[151] Ryngaert, supra note 50
[152] Company Baumeister Ing Richard L v O, Final appeal/cassation, 10 Ob 53/04y, ILDC 362 (AT 2004), 14th December 2004, Austria; Supreme Court of Justice [OGH]
[153] *Ibid*
[154] Reinisch, supra note 2, p. 143
[155] Reinisch, supra note 52, p. 290
[156] Cogan, Hurd and Johnstone, supra note 39, p. 54

Regarding the immunity of IOs, the case Siedler v. Western European Union (WEU)[157] illustrates how the Court interprets the role of alternative dispute mechanisms and the right to a fair trial.

Thus, in an 'important precedent', the Brussels Labour Court of Appeal pointed out that the internal dispute settlement mechanism for disputes did not guarantee a reasonable trial according to Article 6(1) of the ECHR. The absence of availability to exercise the right to a fair trial according to Article 6 prohibited access to domestic courts due to IO immunity. [158]

Therefore, the court had to examine if the existence of the abovementioned mechanism was considered to be an adequate alternative. It was found that 1) there was no obligation to enter decisions of the WEU Appeals Commission into force, 2) the publication of judgements was not guaranteed, 3) there was no availability of public hearing and 4) selection of the Appeals Commission members was not impartial. The court stated that such restrictions to exercise the right to a fair trial in domestic courts was not compatible with Article 6 of the ECHR. The Siedler v WEU case shows the further interpretation of the availability to exercise rights using alternative dispute settlement mechanisms, which are usually provided by IOs. It also examines the how practical it is to access such dispute mechanisms. [159]

The Court of Cassation accepted the view of the appeal court and underlined that the method of appointing the members of the Appeals Commission was inappropriate and their term duration was too short.[160]

The Siedler v WEU case is considered to be significant in relation to Article 6(1) of the ECHR. The immunity of an IO was rejected because the alternative dispute settlement mechanisms did not meet the requirements of Article 6(1). This was also analysed by the ECtHR in the Waite and Kennedy and Beer and Regan cases.[161]

The same idea was followed by the District Court of The Hague when it failed to grant immunity jurisdiction to the EPO. Specifically, 'according to the ILOAT Registrar, the procedure before the ILOAT would have taken fifteen years.' [162]

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[157] Siedler v Western European Union, Brussels Court of Appeal, Judgment of 17 September 2003

[158] Wouters Jan, Ryngaert Cedric, Schmitt Pierre, Western European Union v. Siedler; General Secretariat of the ACP Group v. Lutchmaya; General Secretariat of the ACP Group v. B.D., American Journal of International Law, Volume 105, Issue 3 July (2011), here at p. 560

[159] Klabbers Jan, Wallendahl Asa, Research Handbook on the Law of International Organizations, Edward Elgar Publishing (2011), here at p. 145

[160] Nollkaemper, Reinisch, Janik and Simlinger, supra note 142, p. 191

[161] Reinisch, supra note 52, p. 299

[162] Thévenot-Werner Anne-Marie, The right of staff members to a Tribunal as a limit to the jurisdictional immunity of international organisations in Europe (pp. 111-139), in Peters Anne, Devers Manuel, Thévenot-Werner Anne-Marie and Zbinden Patrizia (dir.), Les acteurs dans l'ère du constitutionnalisme global / Actors in

Thus, the applicant would not have a reasonable opportunity to exercise his right to a fair trial.

Prof. Reinisch states that providing access to court is an important element of human rights. In his research, he highlights that the fundamental right to access to the courts means that each individual should have access to 'a fair third-party adjudication… against anyone else, regardless of whether the opponent might be another private party, a foreign state or an international organization.' [163]

As discussed among scholars, IOs have a duty to provide access to alternative dispute settlement mechanisms and this is considered to be an implementation of an international legal obligation.[164] Robin Silverstein states that it is very disappointing when courts reject jurisdiction in cases related to the rights of staff members. 'In suitable cases, it may be believed a denial of justice, forcing one specific category of litigants to operate in a no-man's land in terms of access to protection from violation of their human rights.'[165]

Domestic courts have closely examined the influence of human rights v. immunity for the last few decades. When alternative dispute settlement mechanisms are available, the courts tend to state that IOs do not invade fundamental rights.[166]

The idea of granting immunities was related to the accessibility of adequate alternative dispute settlement mechanisms and was also followed by the ECtHR in the Waite and Kennedy case. Furthermore, the court stated that if no alternative dispute settlement mechanisms are provided, this does not mean that the right of access to courts is violated (see Stichting Mothers of Srebrenica and Others v the Netherlands).[167]

In addition, it might sometimes be difficult to distinguish what law is applicable.

It should be noted that so far two tendencies have been established. The multilateral agreements have already been implemented into national legislation and other countries have accepted autonomous legislation without referring to international law. Countries like the UK, US and Australia have adopted their laws, which aim is to govern the relationship between IOs

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the Age of Global Constitutionalism, coll. «UMR de droit comparé de Paris», vol. 35, Paris, Société de législation compare (2014), 200 p., here at p. 132

[163] Reinisch and Weber, supra note 44, p. 67

[164] Reinisch, supra note 52, p. 294

[165] Silverstein Robin, Revisiting the Legal Basis to Deny International Civil Servants Access to a Fundamental Human Right, Michigan State International Law Review, Vol. 25.2 (2017), here at p. 426, available at: https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1222&context=ilr (visited last: 10.08.2019)

[166] Reinisch, supra note 52, p. 295

[167] Nollkaemper, Reinisch, Janik and Simlinger, supra note 142, pp. 182-183

and states (see for the US: The International Organizations Immunities Act[168]; for Australia: The International Organizations (Privileges and Immunities) Act[169]; for the UK: The International Organizations Immunities Act[170]). It should also be mentioned that national courts will have to define the legal basis of IO immunity while analysing the case. [171]

For instance, Italian courts state that the immunity from jurisdiction will be based on treaty law (bilateral agreements between the organizations and a host state (see Drago v. IPGRI). In some disputes, the court said that immunity from jurisdiction should be applicable in the same way as cases that are related to the immunity of states (see INPDAI v. FAO, Carretti v. FAO cases). In France, case law is more uncertain in terms of jurisdictional immunity. IOs may still enjoy immunity from jurisdiction as a general rule, even though the immunity provisions may not be stated in the headquarter agreement (see International Institute of Refrigeration v. Elkaim). Swiss courts have provided the same reasoning, i.e. IOs enjoy immunities on the basis of treaty law (see Groupement d'Entreprises Fougerolle v. CERN). Also, it should be mentioned that Dutch courts have applied a customary rule on IOs' immunity as in the Eckardt v. EUROCONTROL case. Mutatis mutandis, Austrian domestic courts tend to deny the application of a customary rule in terms of immunity. In fact, as in France and Switzerland, in Austria the immunity of IOs is regulated by treaty law (see Firma Baumeister Ing. Richard L v. O).[172] US case law is also unclear, especially in terms of the immunity concept. Some cases acknowledge that IOs hold immunity from jurisdiction because of customary law.[173]

In Weidner v. International Telecommunications Satellite Organization the court stated that an IO will enjoy immunity despite the fact it was not an IO when the case occurred. [174]

[168] The International Organizations Immunities Act, available at: http://archive.ipu.org/finance-e/PL79-291.pdf (visited last: 10.08.2019)
[169] The International Organizations (Privileges and Immunities) Act, available at: https://www.legislation.gov.au/Details/C2016C01053 (visited last: 10.08.2019)
[170] The International Organizations Immunities Act, available at: https://www.legislation.gov.uk/ukpga/1968/48 (visited last: 10.08.2019)
[171] Virzo Ingravallo, Evolutions in the Law of International Organizations, Hotei Publishing (2015), here at pp. 367-368
[172] *Ibid*, pp. 368-370
[173] *Ibid*, p. 370
[174] Henderson W. Frances, How Much Immunity for International Organizations: Mendara v. World Bank, 10 N.C. J. Int'l L. & Com. Reg. 487 (1985), here at p. 494, available at: http://scholarship.law.unc.edu/ncilj/vol10/iss2/9, (visited last 10.08.2019)

d) Alternative dispute settlement mechanisms

The establishment of efficient alternative dispute settlement mechanisms can be understood as a legal obligation of IOs. The options for providing alternative dispute settlement mechanisms are quite diverse and this is mention by the UN. Article 33 of the UN Charter states that 'the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.'[175]

Moreover, the ICJ mentioned in the Curamaswamy Case[176] that it is the UN's responsibility to provide the alternative dispute settlement mechanisms as the organization might be accountable for their wrongful actions: 'It may thus have to respond to claims brought by third parties which, in the ICJ's view, are excluded from the jurisdiction of national courts. Instead, they should be settled in accordance with the "appropriate modes of settlement" provided for in the General Convention'.[177]

The aim of such mechanisms (tribunals) is to examine how internal staff regulations and rules actually work. Moreover, this will include general principles of law and fundamental human rights.[178]

The right of an effective remedy is defined in international law. Furthermore, it is also protected by national law.

In cases Waite and Kennedy and Beer and Regan, the ECHR said that courts may limit the right to access courts if the rights of the claimant can be protected by acceptable alternative dispute settlement mechanisms. Prof. Ryngaert states that the national courts are expected to provide an overview of alternative means of dispute settlement according to Article 6 of the ECHR (e.g. internal procedures or arbitration). This is followed by merging individual rights and the rights of the institution. However, this process sometimes may be complicated and is required the national courts to forward their decision onto IOs' dispute settlement mechanisms.[179]

[175] UN Charter, adopted 26 June 1945, entered into force 24 October 1945, 1 UNTS XVI
[176] Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Cumaraswamy), 1999, ICJ Rep. 62
[177] Reinisch and Weber, supra note 44, at p. 69
[178] *Ibid*, pp. 70-71
[179] Ryngaert, supra note 50

Furthermore, if IOs are not providing alternative dispute mechanisms, waiving their immunity cannot be considered a violation of international law.[180]

Over the last few years, national courts have been unwilling to question the adequacy of alternative dispute settlement mechanisms. However, in some cases the court decided to revoke the immunity as there was no availability or no access to such mechanisms. [181] This will be analysed in the following subparagraphs.

i. Access to dispute settlement mechanisms

Since IOs enjoy immunity when private parties are involved, IOs should provide alterative dispute settlement mechanisms. Usually, such mechanisms are established in order to provide access to justice and the right to a remedy that is ensured by international law. This issue is not unusual as a lot of disputes have arisen in the scope of employment vs the right to a fair trial and access to it.[182]

The liability of IOs vis-à-vis their employees has been acknowledged from the beginning of their functioning. The League of Nations, during one of their assemblies, implemented a recommendation regarding a case of dismissal when a member of staff can submit a case to an IO. An administrative tribunal was also established and it was aimed to solve disputes between staff members and the Secretariat of the League of the I.L.O. The UN followed the same procedure, they established an appeals board and an administrative tribunal later. The tribunal was dealing with cases regarding employment relationships between an IO and its staff members. Nowadays, administrative tribunals are an essential and integral part of most IOs. [183]

The duty to provide alternative dispute settlement mechanisms is established by various IOs, and, in particular, by the UN. This obligation can be traced in the Convention on the Privileges and Immunities of the Specialized Agencies. Prof. Reinisch states that the duty to provide requirements for suitable methods of settlement in the Convention relates to disputes that are related to private law contracts concerning the UN. 'However, it is clear that the underlying situation of both types of private persons, the outside contractor envisaged by the treaty provisions and the employee apparently not covered, is almost identical. In both cases,

[180] *Ibid*
[181] Nollkaemper, Reinisch, Janik and Simlinger, supra note 142, p. 183
[182] Reinisch, supra note 52, p. 286
[183] Arsanjani, supra note 89, p. 173

the "weak" individual is seeking access to justice in pursuing his or her claims against the "strong", immunity protected international organization.'[184]

The availability of internal dispute mechanisms is a necessity for IOs if they want to avoid immunity denial. Some scholars state that in order to enjoy immunity, IOs must grant access to justice. This idea is established by national courts in order to follow the concept of fundamental rights.[185]

For instance, this requirement was first addressed in the Solange case where the German Court acknowledged the following, 'a splitting of competence between the European Court of Justice (ECJ) and national courts in the field of human rights protection… While in Solange I the court upheld the admissibility of a human rights scrutiny by the German Constitutional Court "as long as" Community law does not contain a comparably adequate fundamental rights protection, Solange II reversed the reasoning and justified the lack of competence of the German judiciary over acts of Community organs "as long as" an equal human rights protection is guaranteed by the ECJ.'[186]

Moreover, the issue of providing alternative internal dispute settlement mechanisms was mentioned by the European Commission on Human Rights. In the Melchers case[187], the Commission found out that the Community legal order was providing an adequately established system in terms of fundamental human rights protection. In the Matthews v UK[188] Case, the court found that there was no availability to exercise the right to access courts as there was an opportunity to review the legality of the act before the ECJ. [189]

The Matthews v. UK case shows that states could be accountable for violations of human rights even in the case of transferring their authority to other IOs.

José Maria Beneyto states that '… Internal mechanisms could provide a means to remedy the accountability shortcomings. Unsurprisingly, those mechanisms that have been voluntarily established by international organisations are as diverse as the international organisations themselves. Hence, this introductory memorandum can only provide a cursory account of some of the mechanisms established. This topic, however, merits further attention.'[190]

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[184] Reinisch, supra note 52, p. 288-289
[185] Reinisch and Weber, supra note 44, pp. 72-73
[186] *Ibid*, p. 74
[187] M & Co. v. Federal Republic of Germany, European Commission on Human Rights, Application No. 13258/77, 9 February 1990, 64 Decisions and Reports (1990)
[188] Denise Matthews v. United Kingdom, European Court of Human Rights, Application No. 24833/94, 18 February 1999, (1999) ECHR 12470 p.
[189] Reinisch and Weber, supra note 44, pp. 75-76
[190] Beneyto, supra note 43, p.7

Usually disputes, which are at the centre of these internal dispute mechanisms, are related to employment issues. This is not new and is related to staff members and their day-to-day duties within an IO. This issue will be further discussed in the research paper.

Moreover, the administrative tribunals of IOs have acknowledged the need of access to alternative dispute settlement mechanisms for their employees.[191]

Some scholars also debate whether it is necessary that 'reasonable alternative means' should be granted.

Prof. Ryngaert states that 'in Waite and Kennedy[192], the Court merely held that 'a material factor in determining whether granting … immunity from … jurisdiction is permissible is whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention'.[193]

The availability of 'reasonable' alternative means of redress is an essential condition of immunities. For instance, the Siedler v WEU case illustrates that the mechanisms for alternative remedies do not sometimes provide the condition of a fair trial. [194]

Access to administrative tribunals is a complex subject that has no clear set of rules that can be followed and applied.

ii. Compensation

The compensation principle is provided under national and international law. It is also mention in the DARIO.

Article 31 (Reparation) of the DARIO states the following:

The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.[195]

Article 40 (Ensuring the fulfilment of the obligation to make reparation)

[191] Reinisch and Weber, supra note 44, p. 70
[192] Waite and Kennedy v. Germany, European Court of Human Rights, Application No. 26083/94, European Court of Human Rights, February 18, 1999
[193] Ryngaert, supra note 50
[194] Cogan, Hurd and Johnstone, supra note 39, p. 1065
[195] DARIO, supra note 34

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter. [196]

The principle of remedy is a vital component of the principle of responsibility of IOs. As Arsanjani states, 'remedies may take the form of monetary awards for compensation, punitive damages, or special awards'. [197]

It would be reasonable to agree that IOs should provide compensation for injuries and/or damage in case of wrongful acts or omissions. Still, there is no established mechanism how this compensation can be provided. It should be noted that this does not exempt IOs from accountability. It is even mentioned in the DARIO (Article 39) that IOs are required to provide mechanisms for fulfilling its duties of compensation. It is even proposed that IOs should hold insurance in order to cover damages that occur from their actions.[198]

According to Prof. Reinisch, another aspect to be taken into account, is whether the amount of reimbursement should be a crucial element. The problem here may arise if IOs financially commit to provide compensation, which might lead to serious financial problems. This can potentially cause a financial gap within IOs.[199]

In the Cumaraswamy case the ICJ emphasised that the problem of immunity from legal process is different from providing compensation for damages that was caused by the UN. Nevertheless, the General Conventions state that any claims against the UN should be brought to domestic courts and these claims should be referred to the suitable dispute settlement mechanisms.[200]

In addition, the ECHR uses different criteria to examine the proportionality of limitations related to the right to a remedy. **'**Mutatis mutandis, this may imply that, in respect of immunities of international organizations, the limitation of the claimant's right to a remedy, constituted by the granting of immunity to the organization, might be warranted even in the absence of concrete alternative means to protect his rights'.[201]

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[196] *Ibid*
[197] Arsanjani, supra note 89, p. 174
[198] Meeting Summary: Legal Responsibility of International Organisations in International Law, Summary of the International Law Discussion Group meeting held at Chatham House on Thursday, 10 February 2011, here at p. 10, available at: https://www.chathamhouse.org/sites/default/files/field/field_document/il100211summary.pdf, (visited last 10.08.2019)
[199] Reinisch August, To What Extent Can and Should National Courts "Fill the Accountability Gap"?, International Organizations Law Review 10.2 (2014), here at p. 582
[200] Reinisch and Weber, supra note 44, p. 69
[201] Ryngaert, supra note 50

iii. Transparency

Access to information always requires IO transparency. During the last few decades, a number of procedures, regulations and processes have been updated and changed in order to guarantee access to information. One of the key elements of the functioning of IOs is transparency.

According to Cogan, Hurd and Johnstone, the objects of transparency of IOs will include their internal and external procedures, regulations, rules, meeting, documents etc. 'Transparency is a condition sine qua non both for critique of an organization and for an informed consent to its activities'. [202]

Some scholars state that there is a distinction between access to information and broader transparency, such as providing access to decision-making processes. The problem of transparency is in deciding what information can be made available to the public. However, these discussions can potentially lead to an organizational reform.[203]

For the last few decades, IOs state the importance of transparency and accountability. All these features create 'good governance'.

The umbrella for good governance also includes accountability to democratic institutions, effective services, transparent and applicable laws and regulations, consistency and coherence in policy formation, high standards of ethical behaviour, fairness and equity in dealings with citizens and including mechanisms for consultation and participation.[204]

A number of IOs have adopted the transparency and access to information policies. This also implies access to information and procedures by parties that were affected by decisions that were made by those institutions.[205]

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[202] Cogan, Hurd and Johnstone, supra note 39, p. 49

[203] Burall Simon, Neligan Caroline, The Accountability of International Organizations', GPPi Research Paper Series No.2 (2005), here at p. 15, available at: https://www.gppi.net/fileadmin/user_upload/media/pub/2005/Burall_Neligan_2005_Accountability.pdf, (visited last 10.08.2019)

[204] Wouters Jan and Ryngaert Cedric, Good Governance: Lessons From International Organizations, Institute for International Law K.U.Leuven, Working Paper No 54, May (2004), here at p. 11, available at: https://www.law.kuleuven.be/iir/nl/onderzoek/working-papers/WP54e.pdf, (visited last 10.08.2019)

[205] Von Bernstorf Jochen, Procedures of Decision-Making and the Role of Law in International Organizations, German Law Journal, Vol. 09 No. 11 (2008), here at p. 1958

iv. Independence of administrative tribunals

It is impossible to imagine the 21st century without internal administrative tribunals that are competent to hear complaints of the staff members of IOs against their employer. A lot of scholars highlight that it is extremely important, in order to ensure democracy and transparency, to make sure that members of administrative panels are impartial and independent.

Lorne Sossin and Charles Smith underline that the administrative tribunals should not only apply and execute the policy and procedures, but they should also structure that policy.[206]

Benedict Kingsbury and Richard Stewart state that the transfer of power from national to global institutions has led to certain requirements, such as transparency and independence. These administrative tribunals deal with a verity of cases: employment agreements, internal orders, internal staff rules and regulations etc.[207]

The idea behind independence of administrative tribunals is that everyone is entitled to a fair trial within reasonable time and by an independent and impartial tribunal that has been established by law (see Article 6 of the ECHR). The same right is established in the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR).[208]

The decisions that were taken by national courts sometimes state that the proceedings of the ILOAT are independent and their judges have met the requirement of independence and impartiality (see B. et al v. EPO). Therefore, it was held that the minimum standards of justice have been met. However, in this case the German court did not examine personal circumstances and asked the claimants to provide evidence whether standards of legal protection were adequate. These observations simply lead to the conclusion that domestic courts might not always examine the competence of administrative tribunals properly.[209]

Nevertheless, the work that has been undertaken over the last few decades cannot be underestimated. The tribunals of IOs have weakened the power of states in many cases, e.g. in

[206] Sossin, Lorne, Smith Charles W, The Politics of Transparency and Independence before Administrative Boards, Saskatchewan Law Review 75.1 (2012), here at p. 14
[207] Kingsbury Benedict, Stewart Richard, Administrative Tribunals of International Organizations from the Perspective of the Emerging Global Administrative Law, The Development and Efffectiveness of International Administrative Law, Leiden, The Netherlands: Brill, Nijhoff (2012), here at pp. 69-70
[208] Reinisch, supra note 52, p. 291
[209] *Ibid*, pp. 301-302

employment-related cases with political background or in cases of renewals and appointments of new staff members. [210]

As Prof. Reinisch states, the absence of independence can be also traced in certain UN institutions. For instance, Secretariat of the United Nations Appeals Tribunal (UNAT) is supported and guided by the Office of Legal Affairs. Meanwhile, ILOAT's Registry of the ILOAT is an independent body. Nevertheless, staff members of both these IOs report and provide support to the head of the institution. The process of appointing members to the administrative tribunals has also been criticized and raised concerns and further questions regarding their independence.[211] Many scholars have highlighted that the selection process for judges has been important for many IOs. [212]

The present practise emphasises that the right to access court is a complex and problematic part of the functioning of IOs. The task of IOs and their tribunals is to establish and provide the implementation of the above-mentioned task as well as willingness to make the necessary changes. In addition, many IOs such as the UN and the EPO employ temporary workers while they have no access to the alternative dispute settlement mechanisms. This leads to a larger group of people who cannot exercise their right. [213]

v. Right to appeal

The right to appeal is guaranteed in many international documents. For instance, Article 8 of the American Convention on Human Rights[214] says that in criminal proceedings 'every person is entitled, with full equality [to] the right to appeal the judgment to a higher court'. Article 6 of the ECHR does not provide a right to appeal as fundamental principle. However, this right is guaranteed by Article 2 of Protocol No. 7 to the Convention[215], which is related to

[210] Tabassi Lisa, The Role of Administrative Tribunals in Safeguarding the Independence of the International Civil Service, The Development and Effectiveness of International Administrative Law. Leiden, The Netherlands: Brill, Nijhoff (2012), here at pp. 105-106
[211] Reinisch August, Knabr Christina, From the United Nations Administrative Tribunal to the United Nations Appeal Tribunal – Reform of the Administration of Justice System within the United Nations, Max Planck Yearbook of United Nations Law, Vol. 12 (2008), here at p. 453, available at: http://www.mpil.de/files/pdf3/mpunyb_13_knahr_12.pdf (visited last 10.08.2019)
[212] *Ibid*, p. 460
[213] Gulati Rishi, An International Administrative Procedural Law of Fair Trial: Reality or Rhetoric?, Vol 21, Max Planck Yearbook of United Nations Law, Vol. 21 (2018, Forthcoming), here at p. 270
[214] Organization of American States (OAS), American Convention on Human Rights, Pact of San Jose, Costa Rica, 22 November (1969), available at: https://www.refworld.org/docid/3ae6b36510.html, (visited last 10.08.2019)
[215] Council of Europe, Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November (1984), ETS 117, available at: https://www.refworld.org/docid/3ae6b3654.html, (visited last 10.08.2019)

the right of appeal in criminal matters. In relations between IOs and staff members, the right to appeal is a central point for individuals who are dissatisfied with the outcome. Therefore, the next subject is availability of the right to appeal within alternative dispute settlement mechanisms. [216]

Jochen von Bernstorf states that some IOs are blamed for their policies by establishing 'quasi-judicial complaint mechanisms on the international level.'[217] For instance, the World Bank inspection panel, Interpol's control commission and the OECD-guidelines on corporate social responsibility provide individual complaints. Particularly, these review mechanisms tend to restrict 'the applicable standards to the ones the IO has given itself in the form of internal rules and guidelines. As a result, such mechanisms add to the fragmentation of standards in the law of international institutional law.'[218] Generally, there is no appeal procedure and no application of general international law. [219]

The question of providing appeal mechanisms will be examined through some cases that will show the decisions in this area. For example, in the Chadsey v. Universal Postal Union[220] case, the tribunal found that 'any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.' [221]

In the Rubio case[222], the tribunal held that 'an employee of an international organisation is entitled to the safeguard of an impartial ruling by an international tribunal on any dispute with the employer'.[223]

The appeals committees usually have their own set of rules and provide advice for an IO. For instance, such committees include the WHO Board of Appeal, the EPO Internal Appeals Committee etc. Quite often IOs rely on their appeal bodies in case of examining

[216] The Right to a Fair Trial: Part II – From Trial to Final Judgement, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, here at p. 305, at https://www.ohchr.org/Documents/Publications/training9chapter7en.pdf, (visited last 4.07.2019)
[217] Von Bernstorf Jochen, Procedures of Decision-Making and the Role of Law in International Organizations, German Law Journal, Vol. 09 No. 11 (2008), here at p. 1959, available at: https://www.cambridge.org/core/services/aop-cambridge-core/content/view/C83D3CB86F29C79CA252EC0329FB25F0/S2071832200000705a.pdf/procedures_of_decisionmaking_and_the_role_of_law_in_international_organizations.pdf, (visited last 10.08.2019)
[218] *Ibid*
[219] *Ibid*
[220] Chadsey v. Universal Postal Union, ILO Administrative Tribunal, 15 October 1968, Judgment No. 122, UNJYB (1968)
[221] Wälde-Sinigoj Max, UN Immunity and Access to Dispute Settlement, Reseacrh paper, University of Vienna, here at p. 9, available at: https://deicl.univie.ac.at/fileadmin/user_upload/i_deicl/VR/VR_Personal/Reinisch/Internetpublikationen/waelde_sinigoj.pdf , (visited last 10.08.2019)
[222] Rubio v. Universal Postal Union, ILO Administrative Tribunal, 10 July 1997, Judgment No. 1644
[223] Reinisch and Weber, supra note 44, p. 70

evidence. For instance, in the Hemmerlein-Bengsch v. EPO[224] case the applicant's husband was not allowed to give evidence to the ILOAT as the ILOAT acknowledged the view of the Internal Appeals Committee without additional examination. The Popineau v. EPO[225] case illustrates the meaning of the right to a fair trial even though the appeal tribunals are not judicial institutions: 'Whatever drawbacks there may be in the overlap between the disciplinary and appeal procedures, the complainant's procedural rights were in any event scrupulously observed. There was therefore no breach whatever of his right to a fair trial'. [226]

Despite the fact that IOs provide access to alternative dispute settlement mechanisms, the applicants might face some complications. For instance, only members of staff within IOs have access to the ILOAT. Thus, in the Liaci v. EPO[227] case the tribunal dismissed the case since Liaci, an applicant, was not yet employed by the organization. [228]

In the V. C. v. the Centre for the Development of Enterprise (CDE)[229] case, the tribunal found that, 'the right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority. Thus, except in cases where the staff member concerned forgoes the lodging of an internal appeal, an official should not in principle be denied the possibility of having the decision which he or she challenges effectively reviewed by the competent appeal body (see, for example, on that point Judgments 2781, under 15, and 3068, under 20)'.[230]

In the E.E.É. A. v. the Technical Centre for Agricultural and Rural Cooperation[231] case the tribunal said that 'the right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority. Consequently, save in cases where the staff member concerned forgoes the lodging of an internal appeal, an official should not in principle be denied the possibility of having the decision which he or she challenges effectively reviewed by the competent appeal body (see, for example, on this point, Judgment 2781, under 15).'[232]

[224] Hemmerlein-Bengsch v. EPO, ILO Administrative Tribunal, 8 July 1999, Judgment No. 1869
[225] Popineau v. EPO (Nos. 6, 7 and 8), ILO Administrative Tribunal, 13 July 1994, Judgment No. 736
[226] Reinisch and Weber, supra note 44, pp. 101-102
[227] Liaci v. EPO, ILO Administrative Tribunal, 12 July 2000, Judgment No. 1964
[228] Reinisch and Weber, supra note 44, pp. 106-107
[229] V. C. v. the Centre for the Development of Enterprise, Judgment No. 3127, at http://www.ilo.org/dyn/triblex/triblexmain.fullText?p_lang=en&p_judgment_no=3127&p_language_code=EN
[230] *Ibid*
[231] E.E.É. A. v. the Technical Centre for Agricultural and Rural Cooperation (CTA), Judgment No. 3067
[232] *Ibid*

The N.K. v the European Southern Observatory case[233] shows the following: 'Article VI 1.01 of ESO's International Staff Rules reads as follows: 'Every member of the personnel shall have the right to appeal against any decision of the Director General concerning himself. Thus, a person who is not a "member of the personnel" has no right to launch an internal appeal and his or her only recourse is directly to the Tribunal.' [234]

The right to appeal was a central issue for the ILOAT, that examined it outside the right to access a court, in regards to internal administrative procedures and yet, they still continue to apply it. Moreover, the Administrative Tribunal of the Council of Europe and the new United Nations Appeals Tribunal (UNAT) confirm that individuals should enjoy their right to access to a court, when they are involved in disputes.[235]

The availability of appeal committees and tribunals does not guarantee their effectiveness and adequacy. Moreover, some examples (the Board of Appeal of WHO, the Internal Appeals Committee of the EPO etc.) illustrate that the appeal committees generally follow their own establish guidelines and are not established to make a judgement. In addition, they also provide advise to the head of an IO (see Vollering v. EPO[236]).[237]

Thévenot-Werner states that the universality of the right to access a court in domestic cases does not relate to 'the rule with the same content coming under international law'. [238] Furthermore, although the right to access courts includes a general principle of international law, there is an asymmetry when we talk about treaty obligations regarding IOs (e.g. immunity from jurisdiction, providing the right to appeal etc.). [239]

[233] N. K. against the European Southern Observatory (ESO), Judgment No. 2216
[234] *Ibid*
[235] Thévenot-Werner, supra note 162, p.120
[236] Vollering v. EPO (No. 21), ILO Administrative Tribunal, 30.01.2002, Judgment No. 2114
[237] Reinisch and Weber, supra note 44, here at pp. 100-101
[238] Thévenot-Werner, supra note 162, p. 138
[239] *Ibid*

Conclusions

In December 2017, the GA of the UN adopted the 72/122 Resolution where the ongoing importance of codification was highlighted along with a statement on the rapid development of international law. In particular, it mentioned the following:

'Requests the Secretary-General to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments and international organizations to submit information on their practice in this regard, as well as written comments on any future action regarding the articles, and also requests the Secretary-General to submit this material well in advance of its seventy-fifth session.' [240]

In recent years, there has been considerable interest in IOs and their functions. This is due to the increasing power of IOs and their involvement not only in international law but also in domestic legislation and affairs. An understanding of the different types of IOs is very important. It is also essential to outline general principles, rules and the scope of law when we talk about IOs.

The characteristics of IO accountability in international and domestic law has not been dealt with in depth. The aim of this thesis was to outline the practice of internal alternative dispute settlement mechanisms as well as to analyse the practice of national and international courts. This research has shown that although most European courts follow the same tendency when dealing with liability of IOs, some new challenges have been established (e.g. the availability of independent and adequate administrative tribunals, the impartiality of judges, the right to access courts v. immunity etc). In addition, courts also started examining the right to fair trial in detail. The analysis of current scholars' opinion and courts' practice has shown that courts began to analyse the competence of internal administrative tribunals, the impartiality and independence of oral hearings and the selection of judges.

Another important aspect of accountability of IOs is their immunities. The courts' practice has indicated that sometimes immunity is understood to be too broad and in practice it is almost impossible to be waived. However, it should be noted that some courts examine a balance between immunity and the right to access courts and the right to compensation.

[240] A/RES/72/122 Resolution adopted by the General Assembly on 7 December 2017, available at: http://legal.un.org/docs/?symbol=A/RES/72/122 (visited last: 10.08.2019)

Further analysis showed that IOs are multidimensional institutions whose decisions might affect their staff members and other IOs. This shows that it is important to examine accountability of IOs more thoroughly.

Research into solving this problem is already in progress by many international law practitioners and scholars. However, without accepting the necessary changes that should be made by IOs, the challenging issues regarding accountability might be very difficult to eliminate.

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Abstract

In recent years, there has been considerable interest in IOs and their functions. This is due to the increasing power of IOs and their involvement not only in international law but also in domestic legislation and affairs. The aim of this thesis was to highlight the importance of IOs and their accountability in the 21st century as well as provide a review of national courts' decisions and examine the practice of internal alternative dispute settlement mechanisms. For that research purpose, different examples have been given regarding the institutional characteristics and practices of IOs in accordance with the current discussion about the accountability of international institutions. This thesis also revealed some new challenges that have been established in recent courts' practices (e.g. the availability of independent and adequate administrative tribunals, the impartiality of judges, the right to access courts v. immunity etc.). Although a great amount of work has been undertaken in recent years regarding accountability of IOs, there is no clear set of rules or procedures that IOs have to follow. In addition, national courts' practice and academic literature on IOs sometimes does not pay enough attention to the issue of the laws that are applicable towards individuals and third parties.

Zusammenfassung

In den letzten Jahren gab es ein großes Interesse an den internationalen Organisationen (IOs) und ihren Funktionen. Dies ist auf die zunehmende Macht der IOs und ihre Einbeziehung nicht nur in das Völkerrecht, sondern auch in den innerstaatlichen Gesetzgebungen und Angelegenheiten zurückzuführen. Ziel dieser Arbeit ist, die Bedeutung von IOs und ihre Verantwortung im 21. Jahrhundert herauszustellen, Entscheidungen der nationalen Gerichte zu überprüfen und die Praxis interner alternativen Streitbeilegungsmechanismen zu untersuchen. Zu diesem Zweck wurden im Einklang mit der aktuellen Diskussion über die Verantwortung der internationalen Institutionen verschiedene Beispiele zu den institutionellen Merkmalen und Praktiken von IOs angeführt. Die Masterarbeit entdeckte auch einige neue Herausforderungen, die sich in der Praxis der Gerichte ergeben haben (z. B. die Verfügbarkeit unabhängiger und angemessener Verwaltungsgerichte, die Unparteilichkeit der Richter, das Recht auf Zugang zu Gerichten gegen Immunität usw.). Obwohl in den letzten Jahren eine Menge Arbeit in Bezug auf die Verantwortung von IOs geleistet wurde, gibt es keine klaren Regeln oder Verfahren, die von IOs befolgt werden müssen. In der Praxis der nationalen Gerichte und in der wissenschaftlichen Literatur zu IOs wird der Frage der Gesetze, die für Einzelpersonen und Dritte gelten, manchmal nicht genügend Aufmerksamkeit geschenkt.