



**Advisory Committee
on Public International Law**

Settlement of disputes to which international organisations are parties

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Members of the Advisory Committee on Issues of Public International Law



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Introduction



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On 16 March 2024, the Minister of Foreign Affairs requested the Advisory Committee on Issues of Public International Law (hereinafter: CAVV) to prepare an advisory report on the ILC topic of settlement of disputes to which international organisations are parties, devoting specific attention to disputes of a private law character to which international organisations are parties. The Minister expressed the expectation that the CAVV's input could be of particular value in preparing 'the commentary on this topic to be submitted by the Dutch government to the ILC in due course'.¹

The CAVV notes that the ILC has not yet adopted any draft conclusions or guidelines concerning disputes of a private law character. Nor was a report of ILC Special Rapporteur Reinisch on this topic available at the moment of submission of this advisory report. However, based on two reports by the Special Rapporteur, the ILC did adopt six guidelines in 2023 and 2024 on the scope of the project, the terminology used and international disputes of a non-private law character. The Minister has not asked the CAVV to comment on these draft guidelines, at least not at this stage. In this advisory report, the CAVV will therefore confine itself to the subject of disputes of a private law character, in keeping with the request for advice.

The CAVV would first like to emphasise the importance of this subject. The mandate of international organisations has been systematically expanded. This has been a factor in shaping international cooperation in many different fields, with positive consequences for international security, stability and prosperity. At the same time, it has increased the chance that individuals and other private legal entities such as businesses will suffer damage as a result of the actions of international organisations,² for example through non-performance of a contract³ or the commission of a wrongful act. Adequate systems should be put in place to settle these disputes,⁴ not least in the light of the right of access to justice. An obligation to provide for dispute settlement systems can be inferred from Article 2, paragraph 3 of the International Covenant on Civil and Political Rights (hereinafter: ICCPR), which obliges State Parties to 'ensure that any person whose rights or freedoms [recognized in this Covenant] are violated shall have an effective remedy'. Although this provision is not binding on the United Nations (hereinafter: UN) as such (as it is not a party to the ICCPR), it could be argued that the essence of the right to a fair trial is of a customary law nature and is also important for an international organisation such as the UN. However, when this right is implemented, the specific institutional context of the organisation should be taken into account. In view of the specific powers that the organisation exercises, it cannot be expected that the legal protection afforded by the organisation will in all cases be identical to that which States should provide under Article 2, paragraph 3 of the ICCPR.⁵

The establishment of adequate dispute settlement systems by international organisations is compensation for the immunity they enjoy, in principle, before national courts. However, this does not in any way mean that an organisation ceases to have immunity if it violates the obligation to provide for a dispute settlement system.⁶ After all, this would seriously hinder the autonomous functioning of the organisation. However, there is some case law, especially in Europe, indicating a link between the granting of immunity to the organisation and its provision of an adequate dispute settlement system.⁷ There is therefore some risk that national courts will not respect the immunity of international organisations if they do not provide for adequate dispute settlement. The CAVV would also point out that failure to establish dispute settlement mechanisms has negative consequences for the reputation and legitimacy of international organisations. This applies in particular to the UN, which holds itself out as an advocate of human rights.⁸ It is therefore very important that international organisations provide adequate dispute settlement systems.

The issue of the settlement of disputes of a private law character to which international organisations are parties has already been partially addressed by the CAVV in previous advisory reports, in particular in reports no. 13 (2002) and no. 27 (2015). Part I of the present report sets out the key points of these previous reports. Part II outlines the systems provided by the United Nations (hereinafter: UN) for the settlement of disputes of a private law character to which it is a party, and then provides a critical assessment of these systems and makes recommendations for institutional development. Although the CAVV has chosen to pay special attention to one specific universal organisation, namely the UN, its considerations also have broader application as other international organisations, in particular the specialised agencies of the UN, have been inspired by the manner in which the UN settles disputes of a private law character. Nonetheless, international organisations can deal with disputes of a private law character in various ways. Part III describes the arrangements which the EU, as a regional organisation, has made in this regard. Finally, the report provides a summary of its recommendations.



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— Part I

CAW's previous position on disputes of a private law character to which international organisations are parties

As already noted in the introduction, the issue of the settlement of private law disputes to which international organisations are parties has already been partially addressed by the CAVV in previous advisory reports.

In advisory report no. 13 (2002), the CAVV considered the UN's responsibility under private law in the context of international peace operations. The CAVV advised at that time that the local claims review boards used by the UN in an internal procedure for settling disputes of a private law character concerning peace operations should 'comply with the principle of independence, have several members and function in accordance with due process of law and that their decisions should be made public.'⁹ The CAVV also advocated the establishment of a central claims commission to which the victims of wrongful acts committed during UN peace operations could submit a claim.¹⁰

In advisory report no. 27 (2015) on the responsibility of international organisations in general, the CAVV noted that international organisations had still not provided an adequate claims procedure, 'particularly for claims brought by third parties (i.e. by persons other than their employees)'.¹¹ This was why the CAVV took the view that the national courts continue to play an essential role. The CAVV considered that in due course such a role could also eventually produce improvements in the dispute settlement system of the international organisation itself.

— Part II

Evaluation of dispute settlement systems established by the EU

The CAVV notes that gaps still exist in the systems of international organisations for settling disputes of a private law character. It will discuss the lack of legal protection at UN level in more detail below.

Under Section 29 of the Convention on the Privileges and Immunities of the United Nations (1946), the UN is obliged to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the UN is a party.¹² The Convention on the Privileges and Immunities of Specialized Agencies (1947) provides that UN specialized agencies have a similar obligation.¹³

Section 29 does not specify precisely what provisions the UN must make for the settlement of disputes of a private law character. In exercising this discretion the UN has introduced various provisions, under which there are also financial and temporal limits on the compensation that can be claimed by a third party.¹⁴ Below, the CAVV distinguishes between the provisions that the UN has made with regard to contractual disputes on the one hand (section 1) and disputes about wrongful acts (section 2) on the other. In section 3, the CAVV discusses the scope of the concept 'dispute of a private law character' and suggests ways of distinguishing disputes of this kind from other disputes (to which Section 29 does not apply as such).

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Contractual disputes

Pursuant to Section 29, the UN has made specific provisions for settling contractual disputes. Such disputes are submitted to arbitration if negotiations prove unsuccessful. Commercial contracts to which the UN is a party contain a standard clause to this effect.¹⁵ Disputes relating to contracts with volunteers and possible related administrative and disciplinary decisions by the United Nations Volunteers are also settled through arbitration. The CAVV considers that the UN has made quite good provision for the settlement of contractual disputes, although, as explained below, improvements would be possible.

The model conditions of contract used by the UN are easy to find. These have been made available by the Procurement Division of the UN Secretariat¹⁶ so that they can be consulted both by parties and individuals before they enter into a private law contract with an international organisation. The number of contracts valued at over \$150,000 concluded each year (since 2012) is also shown on the site of the Procurement Division.



The Secretary General's 1999 report on 'Procurement-related arbitration'¹⁷ makes recommendations for preventing disputes (of a private law character). The Office of Legal Affairs and the Procurement Division are closely involved in their implementation. Much importance is attached to instilling confidence among parties that possible disputes of a private law character will be dealt with fairly by the UN. However, it is advisable that standard contracts be used with due care by the departments of the Secretariat. For example, an online search revealed a contract between the United Nations System Chief Executives Board for Coordination (CEB) and the organisation that represents interpreters/translators within the UN, which contains a dispute settlement clause¹⁸ that barely defines what should happen if a dispute arises.

Procurement takes place before a contract is concluded. Parties must register and, if approved, will be placed on a roster enabling them to participate in these often complicated procurement procedures. It follows that parties know exactly what they are getting into. Detailed information about the procurement procedures and the registration of parties can be found on the Procurement Division's website. An annual conference with participants from the EU and the UN is organised by the European Procurement Forum, Inc (EUPF)¹⁹ in preparation for the UN procurement procedures.

A Procurement Manual has also been posted online.²⁰ This is publicly accessible, but is intended for UN staff. The manual does not contain anything about the settlement of disputes that may arise between the tenderer and the UN during the procurement stage. The site does explain how complaints should be submitted, but not how they are handled.²¹ Information on the site about the handling of these complaints, in the form of dispute settlement, would enhance transparency.²² A separate arbitration agreement could be concluded ex post facto. The UN already does this in disputes of a private law character involving non-commercial contracts, where no arbitration clause has been included in the contract itself. Such an agreement is then concluded specifically for that single dispute, and is otherwise consistent with the standard clauses.²³

The CAVV would also note that no proper provisions are in place for the settlement of disputes between the UN and interns. The United Nations Dispute Tribunal (hereinafter: UNDT), which has jurisdiction over disputes between the UN and its employees, has no jurisdiction over disputes between the UN and interns.²⁴ The UN Joint Inspection Unit recognised in 2018 that an internal appeal mechanism should be available to interns.²⁵ The CAVV agrees with this proposal.

Where necessary, many of the disputes of a private law character between the UN and private parties, particularly commercial parties, are submitted for arbitration to the Permanent Court of Arbitration (hereinafter: PCA). The PCA has made proposals for an accelerated and cheaper method of dispute settlement through arbitration.²⁶ These include using one arbitrator instead of three, conducting discussions online and avoiding the printing of documents.²⁷

The CAVV considers that there is much to be said for a system in which the PCA, as an independent mechanism operating outside the UN framework, has jurisdiction in *all* cases for the settlement of contractual disputes to which the UN is a party. The CAVV thus endorses the position taken by Thomas Henquet in his book *The Third-Party Liability of International Organisations: Towards a 'Complete Remedy System'*, where he proposes a two-tier dispute resolution system under the auspices of the PCA, consisting of a first instance body and an appellate body.²⁸

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Wrongful acts

In the case of disputes about wrongful acts, the UN uses arbitration for acts committed at its New York headquarters and duty stations.²⁹ Commercial insurance provides the solution for disputes arising from accidents caused by UN vehicles used for official purposes.³⁰ These arrangements do not warrant any further comment by the CAVV.

Where wrongful acts are committed in the course of UN peacekeeping operations, UN Status of Forces Agreements (SOFAs) concluded with the receiving state provide, in principle, for the establishment of standing claims commissions.³¹ In practice, however, no such commissions are established, as the UN itself acknowledges;³²



instead, the UN uses an internal administrative procedure based on local claims review boards.³³ The CAVV considers that these review boards do not meet the minimum requirements of the rule of law, particularly because the international organisation concerned is then the judge in its own case (as the CAVV observed as long ago as 2002),³⁴ but also because decisions of these review boards are not made public.³⁵ The CAVV believes that it is high time that the UN endeavoured to establish independent standing claims commissions as, all too often, victims are deprived of any meaningful dispute resolution.³⁶ Consideration could also be given to establishing, especially for complex disputes, a central appellate body (either a permanent central claims commission or an international court), possibly under the auspices of the PCA.³⁷ The CAVV is not in favour of extending the jurisdiction of the UNDT, which is at present used only for disputes between the UN and its officials,³⁸ since disputes about wrongful acts differ fundamentally from disputes about civil service law and therefore require different expertise.

Independent claims commissions or courts should settle disputes primarily on the basis of the existing UN Liability Rules³⁹ (or possibly after those rules have been revised by the UN); they may also apply general principles of law.⁴⁰ In the interests of transparency and legal certainty, all decisions should be published.

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Definition of disputes of a private law character

Only disputes of a private law character fall within the scope of Section 29 of the Convention on the Privileges and Immunities of the UN. Usually, it will be fairly clear whether a dispute is of a private law character, for example a dispute involving a contract for the supply of goods or services. However, that is not always the case. To distinguish disputes of a private law character from other disputes (of a public law/policy character), the CAVV suggests adopting the position taken in the *travaux préparatoires* of the Convention on the Privileges and Immunities of the Specialized Agencies. It is apparent from these *travaux préparatoires* that it was assumed that claims of a private law character relate to

‘[c]ontracts and other matters incidental to the performance by the Agency of its main functions under its constitutional instruments and not to the actual performance of its constitutional functions’; these are disputes to which private law applies in principle and which could be brought before national courts if there were no immunity.⁴¹ Apart from contracts, practical examples of claims which are, intrinsically, of a private law character (and from which, for example, states do not enjoy immunity)⁴² include claims for wrongful acts, claims concerning property and claims for unjust enrichment,⁴³ or defamation.⁴⁴

However, the precise meaning of ‘dispute of a private law character’ is not always obvious. International law does not distinguish between private and public law as such. Moreover, the answer to the question of whether a claim is of a private or public law character can differ from one national legal system to another.⁴⁵ Like Thomas Henquet, the CAVV nevertheless proposes that the following criteria be used when determining whether a dispute is of a private law character: (i) the nature of the claimant (individual or private legal entity), (ii) the damage sustained (personal injury, illness or death, and property loss or damage), (iii) the remedy requested (compensation),⁴⁶ (iv) the use of an agreement governed by private law (in the case of contractual obligations), and (v) the fact that the dispute does not relate to the performance of the organisation’s mandate under its constitution. This means, for example, that disputes relating to decision-making within the organisation and involving policy choices are not of a private law character.

The CAVV notes that it can sometimes be difficult in practice to determine the precise character of a dispute, even if the specified criteria are applied. This is particularly true in the case of disputes arising from damage caused by institutional negligence in the course of operational action by an organisation, for example a military mission or peace mission that derives its mandate from a resolution of the organisation concerned, such as a UN Security Council resolution.⁴⁷ The CAVV advises the Minister to request the ILC to provide clarification about this.

The CAVV would also point out that even where a dispute is clearly of a private law character it may



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still be unclear precisely what law applies to the dispute. If a contract contains a choice of forum clause (for example, the designation of a specific arbitral tribunal), this does not automatically mean that the parties are also making a choice about the applicable contractual law. The CAVV believes that a choice of law clause is conducive to legal certainty. In the absence of a choice of law, the CAVV proposes that general principles concerning commercial contracts should be applied, for example the *UNIDROIT Principles of International Commercial Contracts*.⁴⁸

The CAVV also considers that the independent commissions or courts, to which reference has already been made, should have the authority, possibly under the auspices of the PCA, to determine in preliminary proceedings whether a dispute is of a private law character within the meaning of Section 29 (a condition for the exercise of jurisdiction). Hitherto, the final decision on whether a dispute is of a private law character has always been made by the UN itself. The CAVV considers the absence of independent assessment in such matters to be undesirable,⁴⁹ and takes the view that only an independent body can make a definitive decision on the character of a dispute.

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Disputes of a non-private law character

The Minister requested that the CAVV pay specific attention in its report to disputes of a private law character to which international organisations are parties. Relevant legal instruments, such as Section 29 of the UN Convention, usually only stipulate that the organisation has an obligation to make provision for modes of settling disputes of a private law character. However, as explained in the introduction, it follows from the right of an individual to a legal remedy that international organisations should, in principle, *always* provide for dispute settlement. Whether or not a dispute is classified as being of a private law character is therefore of only secondary importance to the CAVV. Even if an organisation such as the UN is only obliged under its own institutional law to ensure that a legal remedy is available for disputes of a private law character, it stands to reason that a legal remedy should be available in cases in which a human rights violation may have been committed. In practice, this means that

if a dispute is not of a private law character (and therefore falls outside the scope of Section 29 as far as the UN is concerned), there is a legitimate expectation that a legal remedy will *nonetheless* be provided, in particular if the dispute concerns an alleged human rights violation.⁵⁰ The CAVV notes, however, that in some cases national courts do not consider claims relating to the acts and omissions of states during foreign (military) missions to be justiciable if the claims relate to political policy or military activities.⁵¹ The CAVV recommends that the Minister request the ILC to indicate whether this approach should also apply to disputes involving international organisations.

In this section, the CAVV briefly discusses, by way of example, legal remedies for disputes regarding sanctions imposed on individuals by the UN Security Council (for example, freezing of assets and entry bans). In principle, disputes about sanctions are of an administrative law character rather than a private law character.

The CAVV believes that the current settlement system for disputes concerning UN sanctions leaves something to be desired. At present, persons placed on a sanctions list by the UN Security Council can generally only complain about this to a ‘focal point’. Such a focal point is nothing more than a mailbox which forwards delisting requests to the state or states that placed the person on the list or the state of which the person has the nationality (or where the person has the right to reside).⁵² It can therefore hardly be regarded as an adequate dispute settlement mechanism. The CAVV is more positive about the establishment and functioning of the independent ombudsperson for the ‘1267’ sanctions regime (ISIL/Al-Qaida).⁵³ The UN established the office of ombudsperson mainly as a result of pressure from the Court of Justice of the European Union (which, in the *Kadi* case, reviewed whether the EU regulation implementing UN resolution 1267 was compatible with European fundamental rights).⁵⁴ Although the ombudsperson cannot make binding decisions, a recent study shows that, mainly due to the mechanism of reverse consensus, the UN generally follows the ombudsperson’s recommendations for delisting.⁵⁵ It should be noted, however, that cases are known to have occurred in which the 1267 Sanctions Committee removed a person from the list on the recommendation of the ombudsman, but then



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placed that person on another sanctions list over which the ombudsman had no jurisdiction.⁵⁶ This practice is undesirable and violates the principles of the rule of law.⁵⁷

In any event, the CAVV regards the office of ombudsperson as a good dispute resolution mechanism for sanctions as it operates independently and provides a form of accountability for the complainant. An ombudsperson mechanism should also be adopted for other UN sanctions regimes. In due course, however, the UN should consider establishing an independent sanctions court at UN level; this could be either a chamber of the central claims commission mentioned above or a court. After all, it may be doubted whether the use of an ombudsperson as a dispute resolution mechanism is sufficient in terms of the right of access to the courts.⁵⁸

— Part III Disputes of a private law character and the European Union

The system adopted by the European Union (hereinafter: 'EU' or 'Union') for settling disputes of a private law character involving EU institutions or other EU bodies, agencies or entities distinguishes between the contractual and non-contractual liability of the Union.⁵⁹

— 1 Contractual liability of the EU

Contractual liability has traditionally been regulated by the arrangements currently provided for in Article 272 of the Treaty on the Functioning of the European Union (hereinafter: TFEU), under which the EU Court of Justice (in practice, the General Court under Article 256, paragraph 1 TFEU) has jurisdiction to give judgment pursuant to any arbitration clause (in French: '*clause compromissoire*') contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or by private law. There is important case law on this subject, which has not been analysed all that frequently.⁶⁰ In the absence of such a clause, the EU courts cannot rule on claims for contractual damages as Article 274 TFEU gives national

courts and tribunals general jurisdiction over disputes to which the Union is a party.⁶¹ Under Article 340, paragraph 1 TFEU, the contractual liability of the Union is governed by the law applicable to the contract in question.⁶²

In practice, the Union does not rely on the arbitration clause referred to above in the case of contracts relating to the *procurement of goods and services*. Such contracts contain a choice of law clause that refers to EU law, as supplemented by the national law of the member state in whose territory the relevant institution (or service, body, agency, etc.) is established.⁶³ These contracts currently refer to the jurisdiction of the national courts of the member state concerned.

On the other hand, contracts in which the EU awards a grant, for example in the fields of research, education and culture, generally contain an arbitration clause of the kind referred to above. Where grants are awarded in the context of the Union's external relations and the funds are managed by a partner organisation (a practice referred to as 'indirect management') which is not located in the EU, the Belgian courts are often given jurisdiction because this enables the third countries concerned to enforce their rights.⁶⁴

— 2 Non-contractual liability of the EU

The non-contractual liability of the Union has traditionally been governed by the provision currently enacted in Article 340, paragraph 2 of the TFEU, under which '[i]n the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.' According to the settled case law of the Court of Justice, the action for damages under the second paragraph of Article 340 of the TFEU was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific purpose.⁶⁵ Despite this specific form of action, there is widespread criticism of the very restrictive conditions imposed by the Court of Justice's case law in this regard, as a result of which only a





few cases (around 8%)⁶⁶ result in the award of compensation. One such comment is that ‘the loud barking of the principle of liability rarely leads to a bite. In practice, the claimant has many hurdles to overcome in order to succeed in a claim for breach of EU law and it is, therefore, not surprising that most runners never reach the finish line.’⁶⁷ The CAVV agrees with this criticism.

Nonetheless, an important evolution has taken place in recent years in the area of the Union’s non-contractual liability for sanctions (known in EU terminology as ‘restrictive measures’), with the General Court and the Court of Justice concluding in a number of cases that there had been a ‘sufficiently serious breach’ and awarding compensation.⁶⁸

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Interim conclusion

This brief overview of EU practice illustrates the diversity of the approach adopted by international organisations to disputes of a private law character and the uniqueness of the EU approach, with the liability of the organisation being largely ‘internalised’, either through the arbitration clause conferring exclusive jurisdiction on the Court of Justice or through a choice of law clause providing that EU law, as supplemented by the law of a member state, is applicable. This approach may perhaps be difficult to transpose to other international organisations that do not have a court with exclusive jurisdiction. On the other hand, the CAVV considers that the overview shows that the practice of the Union, especially in the case of non-contractual claims for compensation, is also vulnerable to criticism (and capable of improvement), in particular because of the very restrictive conditions imposed by the Court of Justice in this respect.⁶⁹

Conclusion and advice



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At the request of the Minister, the CAVV has examined in this advisory report the settlement of disputes to which international organisations are parties, in particular disputes of a private law character. The ILC is preparing draft guidelines on this subject. The report can be summarised as follows:

1. International organisations should make provision for adequate systems for the settlement of disputes of a private law character with individuals and legal entities, not least in the light of the right of access to justice.
2. The provision of adequate dispute settlement systems reduces the risk that national courts will not respect the organisation's immunity. It would also enhance the reputation and legitimacy of the organisation.
3. The CAVV points out that under Section 29 of the Convention on the Privileges and Immunities of the United Nations (1946), the UN is *obliged* to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the UN is a party.
4. The CAVV considers that the UN has made quite good provision for the settlement of contractual disputes. In principle, the UN uses arbitration agreements for this purpose. Nonetheless, improvements are possible. This is particularly true in the case of disputes about procurement procedures and contracts with interns. An accelerated and cheaper form of arbitration is also a possibility. Moreover, consideration could be given to making the Permanent Court of Arbitration competent to settle all contractual disputes to which the UN is a party.
5. The CAVV believes that the settlement of disputes concerning wrongful acts committed in the course of UN peace operations leaves something to be desired. The CAVV urges the UN to finally establish independent standing claims commissions for this purpose. The UN could also establish a central appeals body, in the form of a permanent central claims commission or an international court, possibly under the auspices of the Permanent Court of Arbitration.
6. An independent body should determine whether a dispute is of a private law character, with a view to the application of Section 29 of the Convention on the Privileges and Immunities of the UN. After all, if a final decision on this were to be taken by the UN, it would be acting as judge in its own cause.
7. The CAVV considers that private law disputes relate to claims that are *intrinsically* of a private law character. The following are the main criteria to be applied in this assessment: (i) the nature of the claimant (individual or private legal entity), (ii) the damage sustained (e.g. personal injury or property loss or damage), (iii) the remedy requested (compensation), (iv) the use of a contract governed by private law (in the case of contractual obligations), and (v) the fact that the dispute does not relate to the performance of the organisation's mandate under its constitution.
8. The CAVV recommends that the Minister request that the ILC provide clarification of the precise difference between disputes of a private and non-private law character. The nature of a dispute is not always obvious, particularly in the case of disputes arising from damage caused by institutional negligence in the course of an organisation's operational activities. The CAVV takes the position that international organisations should also put in place settlement procedures for disputes of a non-private law character to which individuals are parties, in particular where the disputes involve alleged violations of human rights. Legal remedies for such disputes are currently inadequate.
9. The CAVV considers that the mechanism of the independent ombudsperson for the

'1267' sanctions regime (ISIL/Al-Qaida) has functioned well and proposes that it be applied to other UN sanctions regimes as well. In the long term, the UN could consider establishing an independent court for sanctions and other disputes of a non-private law character to which individuals are parties.

10. International organisations deal with disputes of a private law character in various ways. In this advisory report, the CAVV has dealt with not only the UN but also the EU. The EU has adopted a fairly unique approach in which the liability of the organisation is largely 'internalised', either through a contractual arbitration clause conferring exclusive jurisdiction on the Court of Justice or through a choice of law clause providing that EU law, as supplemented by the law of a member state, is applicable. In practice, however, the Court of Justice imposes very restrictive conditions on non-contractual claims for compensation against the EU.



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Endnotes

- ¹ Minister of Foreign Affairs, Request for advice on the International Law Commission topic of settlement of disputes to which international organisations are parties, 16 March 2024, <https://www.adviescommissievolkenrecht.nl/adviestrajecten/publicaties/adviesaanvragen/2024/03/16/ilc-beslechting-van-geschillen-waarbij-een-internationale-organisatie-partij-is>.
- ² K. Boon and F. Mégret, 'New Approaches to the Accountability of International Organizations', *International Organizations Law Review* (16) 2019, pp. 1-10, at p. 7. As regards human rights violations, see J. Wouters et al., 'Accountability for Human Rights Violations by International Organisations: Introductory Remarks', in J. Wouters et al. (eds.), *Accountability for Human Rights Violations by International Organisations*, Antwerp-Oxford, Intersentia 2010, pp. 1-18, at p. 2.
- ³ As long ago as 1977, the *Institut de Droit International* adopted a resolution in which it noted that 'the development of international organizations and of their activities involves the conclusion of an increasing number of contracts of various types between such organizations and private persons': Institut de Droit International, Session of Oslo 1977, Resolution of 6 September 1977, *Contracts concluded by international organizations with private persons*. See also A. Reinisch, 'Contracts between International Organizations and Private Law Persons', in *Max Planck Encyclopedia of Public International Law*, 2021.
- ⁴ In its statement of 27 October 2023 to the Sixth Committee of the UN General Assembly, the European Union suggested that the scope of the ILC's work in relation to the present topic should be restricted to the 'international law aspects of disputes involving international organizations', see UNGA Sixth Committee, 78th Session, Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions (Agenda item 79), Statement of European Union (in accordance with resolution 65/276) (II) on the Settlement of Disputes to which international organizations are parties, 27 October 2023, paras. 3-5.
- ⁵ Compare the case law of the European Court of Human Rights (ECtHR) concerning comparable, albeit not necessarily 'identical', legal protection afforded by the organisation, as already discussed in CAVV, Advisory report no. 27, *Responsibility of international organisations*, 2015, p. 17. The requisite legal protection may also differ *between* organisations, given the differences between them in terms of institutional structure and powers. See K. Daugirdas and S. Schuricht, 'Breaking the Silence: Why International Organizations Should Acknowledge Customary International Law Obligations to Provide Effective Remedies', *AJIB Yearbook of International Law* (3) 2020, pp. 54-87, at p. 72 ('Particular customary international law rules can thus account for differences between States and international organizations, as well as differences among international organizations.').
- ⁶ See, for example, Supreme Court of Canada, 29 November 2013, *Amaratunga v. Northwest Atlantic Fisheries Organization*, 2013 SCC 66, para. 60; United States Court of Appeals, 16 August 2016, *Georges v. United Nations*, No. 15-455 (2d Cir., 2016).
- ⁷ ECtHR, 18 February 1999, ECLI:CE:ECHR:1999:0218JUD002608394 (*Waite and Kennedy v. Germany*), para. 68 ('For the Court, a material factor in determining whether granting ESA immunity from German jurisdiction is permissible under the Convention is whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention.'). As regards the Netherlands, see: Supreme Court, 24 December 2021, ECLI:NL:HR:2021:1956 (*Supreme v. SHAPE and JFCB*), para. 3.2.3 ('A factor of particular importance in determining whether the granting of immunity from jurisdiction to an international organisation is proportional is whether the litigant has reasonable alternative means of protecting the rights granted to him by the European Convention on Human Rights. If reasonable alternative means are available to a litigant, it can be assumed that the granting of immunity from jurisdiction does not affect the essence of his right of access to justice.'). However, as regards the UN, see: ECtHR, 11 June 2013, ECLI:CE:ECHR:2013:0611DEC006554212 (*Stichting Mothers of Srebrenica and others v. the Netherlands*), paras. 140-170, particularly at para. 154.
- ⁸ K. Daugirdas, 'Reputation and Accountability: Another Look at the United Nations' Response to the Cholera Epidemic in Haiti', *International Organizations Law Review*, (16-1) 2019, pp. 11-41.



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- ⁹ CAVV Advisory report no. 13, *Responsibility for wrongful acts during UN peace operations*, 2002, p. 28.
- ¹⁰ Ibid.
- ¹¹ CAVV, Advisory report no. 27, *Responsibility of international organisations*, 2015, p. 32.
- ¹² Article VIII, Section 29 (a) of the Convention on the Privileges and Immunities of the United Nations, 13 February 1946: The United Nations shall make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party.’
- ¹³ Article IX, Section 31 (a) of the Convention on the Privileges and Immunities of Specialized Agencies, 21 November 1947. The CAVV has not examined to what extent international organisations that are not part of the UN family also provide for an obligation of this kind.
- ¹⁴ Resolution 52/247 of the UN General Assembly (17 July 1998), ‘Third-party liability: temporal and financial limitations’, UN Doc A/RES/52/247.
- ¹⁵ Ibid., paras. 3 and 6.
- ¹⁶ See <https://www.un.org/Depts/ptd/about-us/conditions-contract>.
- ¹⁷ Report of the Secretary-General, ‘Procurement-related arbitration’ (14 October 1999), UN Doc A/54/458, paras. 27-35.
- ¹⁸ Agreement between the United Nations Common System Chief Executives Board for Coordination and the Association internationale des interprètes de conférence regulating the conditions of employment of short-term conference interpreter (1 January 2019), para. 64: ‘Disputes between AIIC and an Organization or Organizations arising out of the interpretation or application of this Agreement shall, at a first stage, be the subject of direct conversations between AIIC and the Organization or Organizations concerned, with a view to settling the dispute. If no settlement can be reached, the two parties shall refer the matter as rapidly as possible to a jointly agreed third party for an opinion. On the basis of that opinion, the parties shall endeavour to find, within a reasonable time frame, a mutually acceptable solution.’ <https://hr.un.org/sites/hr.un.org/files/handbook/CEB-AIIC%20agreement%201%20Jan%202019.pdf>.
- ¹⁹ <https://eupf.org>.
- ²⁰ <https://www.un.org/Depts/ptd/sites/www.un.org/Depts.ptd/files/files/attachment/page/pdf/pm.pdf>, last updated on 30 June 2024.
- ²¹ <https://www.un.org/Depts/ptd/complaints>.
- ²² The EU gives detailed information about this stage on its website and has issued guidelines to make the procurement procedure as transparent as possible: https://europa.eu/youreurope/business/selling-in-eu/public-contracts/request-review-public-procurement-procedure/index_en.htm.
- ²³ See the reply to the question by the United Nations Office of Legal Affairs in Memorandum by the Secretariat entitled ‘Settlement of international disputes to which international organizations are parties’, UN Doc A/CN.4/764, p. 13 and see also UN Doc A/CN.9/WG.II/WP.118, p. 7, para. 17 where reference is made to such agreements in a letter from the director of the General Legal Division, p. 3, para. 5.
- ²⁴ See UN Doc UNDT/2011/168 (26 September 2011) and on appeal UN Doc UNAT/2012/249 (29 June 2012).
- ²⁵ https://www.unjui.org/sites/www.unjui.org/files/jui_rep_2018_1_english.pdf, par. 94.
- ²⁶ The PCA has explained this in its reply to a question (question 6) raised by the ILC Secretariat in preparation for the next report on this subject (suggestions for improvements in dispute settlement methods), see Memorandum of the Secretariat, ‘Settlement of international disputes to which international organizations are parties’, UN Doc A/CN.4/764, p. 99.
- ²⁷ Ibid.
- ²⁸ T. Henquet, *The Third-Party Liability of International Organisations: Towards a ‘Complete Remedy System’*, Brill Nijhoff 2022, pp. 440-490.
- ²⁹ Report of the Secretary-General, ‘Procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946’ (24 April 1995), UN Doc A/C.5/49/65



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- (UN Headquarters District in New York and UN premises in duty stations other than New York).
- ³⁰ Ibid., para. 14.
- ³¹ Report of the Secretary-General, 'Financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters; Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations' (20 September 1996), UN Doc A/51/389, p. 7, para. 20.
- ³² Report of the Secretary-General, 'Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations' (21 May 1997), UN Doc A/51/903, p. 4, para. 8.
- ³³ M. Zwanenburg, 'UN Peace Operations Between Independence and Accountability', *International Organizations Law Review* (5) 2008, p. 28. In the past, the UN also sometimes concluded lump sum agreements with the receiving state, but these are no longer applied in practice. See Y. Okada, 'Interpretation of Article VIII, Section 29 of the Convention on the Privileges and Immunities of the UN: Legal Basis and Limits of a Human Rights-based Approach to the Haiti Cholera Case', *International Organizations Law Review* (15-1) 2018, pp. 39-76, at pp. 52-54.
- ³⁴ CAVV Advisory Report no. 13, *Responsibility during peacekeeping operations*, 2002, p. 20.
- ³⁵ Incidentally, the UN itself acknowledges these problems. See: Report of the Secretary-General, 'Financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Forces headquarters; Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations' (20 September 1996), UN Doc. A/51/389.
- ³⁶ The present practice has been described by S. van de Put as resulting in 'individuals being left without effective means of redress'. See S. van de Put, 'Acquiescence and the Immunity of UN Peacekeepers; Implicit Acceptance?', *International Organizations Law Review* (20-3) 2023, pp. 370-399, at p. 371.
- ³⁷ For a detailed proposal for a multi-tiered dispute resolution system, see: T. Henquet, *The Third-Party Liability of International Organisations: Towards a 'Complete Remedy System'*, Brill Nijhoff 2023, chapter 5. Compare also C. Ferstman, 'Reparations for Mass Torts Involving the United Nations: Misguided Exceptionalism in Peacekeeping Operations' *International Organizations Law Review* (16-1) 2019, pp. 42-67, at p. 67, who proposes that claims under a given financial threshold should be heard by local claims review boards and that other claims should be dealt with in a centralised system.
- ³⁸ For a proposal of this kind, see: E. Chukwuemeke Okeke, 'The Tension between the Jurisdictional Immunity of International Organizations and the Right of Access to Court', in P. Quayle (ed.), *The Role of International Administrative Law at International Organizations*, Brill Nijhoff 2021, pp. 25-51, at p. 51.
- ³⁹ Resolution 52/247 of the UN General Assembly (17 July 1998), 'Third-party liability: temporal and financial limitations', UN Doc A/RES/52/247.
- ⁴⁰ Y. Kryvoi, 'Procedural Fairness as a Precondition for Immunity of International Organizations', *International Organizations Law Review* (13) 2016, pp. 255-272, at p. 270 (in the context of international administrative tribunals).
- ⁴¹ UNGA Sixth Committee, 'Final report of subcommittee 1 of the sixth committee on coordination of the privileges and immunities of the United Nations Specialized Agencies' (15 November 1947), UN Doc A/C.6/191, para. 32.
- ⁴² See the United Nations Convention on Jurisdictional Immunities of States and Their Property, 2 December 2004, in particular Articles 10-17 which list the categories of activity in which state immunity does not apply, in view of the non-sovereign nature of the activity. See also F. Mégret, 'La responsabilité des Nations unies aux temps du cholera', *Revue belge de droit international* (1) 2013, pp. 161-189, at p. 166 ('les litiges de droit privé font l'objet d'un traitement préférentiel, un peu par analogie avec la manière dont les immunités des États cèdent en matière d'actes *de jure gestionis*, car ces litiges remettent moins directement en question l'action des Nations Unies.').



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⁴³ Report of the Secretary-General, 'Procedures in place for implementation of article VIII, Section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946' (24 April 1995), UN Doc A/C.5/49/65, paras. 16 and 17.

⁴⁴ In the *Cumaraswamy* case, the ICJ implied that the dispute at issue – a dispute over (alleged) defamation by a UN Special Rapporteur – could potentially give rise to a claim against the UN under Section 29. ICJ, 29 April 1999, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 66 ('The United Nations may be required to bear responsibility for the damage arising from such acts. However, as is clear from Article VIII, Section 29, of the General Convention, any such claims against the United Nations shall not be dealt with by national courts but shall be settled in accordance with the appropriate modes of settlement that "[t]he United Nations shall make provisions for" pursuant to Section 29.').

⁴⁵ See, for example, F. Mégret, 'La responsabilité des Nations unies aux temps du cholera', *Revue belge de droit international* (1) 2013, p. 161-189, p. 167 ('On remarquera néanmoins à titre liminaire que la distinction entre droit public et droit privé est historiquement et géographiquement construite et donc contingente [...]').

⁴⁶ T. Henquet, *The Third-Party Liability of International Organisations: Towards a 'Complete Remedy System'*, Brill Nijhoff 2023, p. 186.

⁴⁷ It seems as though the UN does not treat such disputes as being of a private law character. In respect of a claim in tort for compensation for harm caused by the spread of cholera due to deficient maintenance of sanitary facilities in a UN peacekeeping compound in Haiti, see: Letter from the United Nations Under Secretary-General for Legal Affairs, Patricia O'Brien to the Director of the Institute for Justice and Democracy in Haiti, Brian Concannon, 15 July 2013 ('consideration of these claims would necessarily include a review of political and policy matters'). See also Kosovo Human Rights Advisory Panel concerning a claim relating to lead poisoning affecting internally displaced persons in UN camps in Kosovo: The Human Rights Advisory Panel, 10 June 2012, Decision, *N.M. and Others v. UNMIK*, Case No. 26/08,

para. 19 ('On 25 July 2011, the UN Under-Secretary-General for Legal Affairs informed the complainants of her decision to declare the claims non-receivable. She stated that under Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations ... the UN Third Party Claims Process provided for compensation only with respect to "claims of a private law character", whereas the complainants' claims concerned "alleged widespread health and environmental risks arising in the context of the precarious security situation in Kosovo"). Several authoritative authors have noted that the dispute in the Haiti cholera case was not about the illegality of UN policy as such, but about the defective implementation of a UN mandate. As there was a wrongful act that caused harm to individuals, the authors concluded that the dispute was of a private law character. F. Mégret, 'La responsabilité des Nations unies aux temps du cholera', *Revue belge de droit international* (1) 2013, pp. 161-189, at p. 174 ('Dans le cas de la plainte haïtienne, il n'est aucunement question de remettre en cause une politique générale des Nations Unies en tant que telle, mais uniquement un résultat trahissant une défaillance. La plainte ne vise pas en soi et pour soi les pratiques sanitaires consistant à soumettre ou ne pas soumettre certains contingents de casques bleus à tel ou tel test médical, que dans son abstraction l'on aurait pu, en d'autres circonstances, qualifier de purement publique (...). Mais ce qui se passe dans le cas haïtien est très différent dès lors qu'un dommage privé a été subi du fait d'une faute onusienne. Ces termes-là sont, éminemment, ceux du droit privé.');

K. Schmalenbach, 'Dispute Settlement (Article VIII, Sections 29–30 General Convention)', in A. Reinisch (ed.), *The Conventions on the Privileges and Immunities of the United Nations and its Specialized Agencies: A Commentary*, 2016, p. 529, para. 47 ('all harm-inflicting interactions with private parties arising from or attributable to the UN mission can be the basis of tortious claims of a private law character that create a purely bilateral relationship in which the wrongdoer (i.e. the UN) has to make good to the sufferer without putting the mission's international mandate and its implementation under scrutiny'); T. Henquet, *The Third-Party Liability of International Organisations: Towards a 'Complete Remedy System'*, Brill Nijhoff 2023, p. 201. However, Henquet considers that the Kosovo case mentioned in the previous footnote was *not* of a private law character because the dispute concerned the relocation of claimants and thus implied policy choices by the UN. Henquet also considers that the *Mothers of Srebrenica* case, which involved the (inadequate)



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- action taken by the UN in the face of an impending genocide, was not of a private law character because it concerned decision-making by the UN. Ibid., p. 205 ('No private party could conceivably face the same dilemmas at issue in this case.')
- ⁴⁸ <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>. In this respect, see also PCA, 17 December 2010, Case 2010-08 *Polis Fondi Immobiliare di Banche Popolare S.G.R.p.A v. International Fund for Agricultural Development (IFAD)*, (in which the choice of law problem was resolved by the fact that both parties invoked the UNIDROIT Principles).
- ⁴⁹ On this point, see Brussels Civil Court, 10 December 1966, *Manderlier t. Organisation des Nations unies et Etat belge (Ministre des affaires étrangères)*, *Journal des tribunaux*, No. 4553, 121, of which an English translation is included in C. Ryngaert, I.F. Dekker, R.A. Wessel and J. Wouters (eds.), *Judicial decisions on the law of international organizations*, Oxford University Press 2016, p. 364, with commentary by P. Schmitt.
- ⁵⁰ D.U. Picard, 'The United Nations' Obligation to Provide Access to Remedies to Third-Party Claimants Under International Law', *International Organizations Law Review* (20-3) 2023, pp. 330-369, at p. 369 ('the UN has an obligation to provide remedies to third-party claims of public law character and is breaching it by refusing to grant these claims access to remedies'); T. Henquet, *The Third-Party Liability of International Organisations: Towards a 'Complete Remedy System'*, Brill Nijhoff 2023, p. 496.
- ⁵¹ See, for example, the American *political question doctrine*: C.A. Bradley and E.A. Posner, 'The Real Political Question Doctrine', *Stanford Law Review* (75) 2023, p. 1031. For British restrictive doctrines, see: U. Grušić, *Torts in UK Foreign Relations*, Oxford University Press 2023.
- ⁵² UN Security Council Resolution 1730 (2006), UN Doc S/RES/1730 (2006), para. 5.
- ⁵³ UN Security Council Resolution 1904 (2009), UN Doc S/RES/1904 (2009).
- ⁵⁴ EU Court of Justice, 3 September 2008, ECLI:EU:C:2008:461 (*P. Kadi and Al Barakaat International Foundation v. Council and Commission*).
- ⁵⁵ A. Lang, 'Alternatives to Adjudication in International Law: a Case-Study of the Ombudsperson to the ISIL and Al-Qaida Sanctions Regime of the UN Security Council,' *American Journal of International Law* (117) 2023, pp. 48-91.
- ⁵⁶ J. Cockayne, R. Brubaker and N. Jayakody, *Fairly Clear Risks: Protecting UN sanctions' legitimacy and effectiveness through fair and clear procedures*, Research report, United Nations University 2018, pp. 19-20 (discussion of a case in which a person was placed directly on the Somalia sanctions list).
- ⁵⁷ A. Lang, 'Alternatives to Adjudication in International Law: a Case-Study of the Ombudsperson to the ISIL and Al-Qaida Sanctions Regime of the UN Security Council,' *American Journal of International Law* (117) 2023, pp. 48-91, at p. 67.
- ⁵⁸ See also EU Court of Justice, 18 July 2013, ECLI:EU:C:2013:518 (*Commission v. Kadi*), paras. 133-134.
- ⁵⁹ In addition, a separate system applies to staff disputes, which will not be discussed here: see K. Lenaerts, K. Gutman and J.T. Nowak, *EU Procedural Law*, 2nd ed., Oxford University Press 2023, pp. 589-613.
- ⁶⁰ For a recent consideration of this subject, see, for example, G. Butler, 'The EU's Contractual Relations and the Arbitration Clause: Disputes at the Court of Justice of the European Union', *European Law Review* (46) 2021, pp. 345-363; L. Lebon, 'Quelle responsabilité contractuelle de l'Union européenne?', *Revue des affaires européennes*, 2015, pp. 127-141.
- ⁶¹ 'Save for the powers conferred by the Treaties on the Court of Justice of the European Union, disputes to which the Union is a party are not excluded from the jurisdiction of the courts or tribunals of the Member States.', See K. Lenaerts, K. Gutman and J.T. Nowak, *EU Procedural Law*, 2nd ed., Oxford University Press 2023, pp. 589-613.
- ⁶² The EU Court of Justice has provided important clarification on this point in its recent case law: if the parties decide, in their contract, to confer on the EU judicature, by means of an arbitration clause, jurisdiction over disputes relating to that contract, that judicature will have jurisdiction, independently of the applicable law stipulated in that contract, to examine any infringement of the Charter or of the general principles of EU law. Even



when implementing such a contract, the European Commission remains subject to its obligations under the Charter and the general principles of Union law. EU Court of Justice, 16 July 2020, ECLI:EU:C:2020:575 (*Inclusion Alliance for Europe GEIE v. Commission*), paras. 80 and 81, with reference to EU Court of Justice, 16 July 2020, ECLI:EU:C:2020:576 (*ADR Center v. Commission*), para. 86. For an application in connection with the principle of legitimate expectations (under Belgian law as well), see EU General Court, 26 July 2023, ECLI:EU:T:2023:438 (*Engineering – Ingegneria Informatica SpA v. Commission*), paras. 106-109.

⁶³ The following is an example of a type of clause used for the European Parliament: ‘Le droit de l’Union européenne complété par la loi belge s’applique au présent contrat’: see article I.12, para. 1, Contrat-cadre type de prestation de services, contrat interinstitutionnel COMM/ME-AV/FWC/2013/9, https://www.europarl.europa.eu/tenders/2014/dgcomm/100201/20140326/16.1020822-1_FR_FWC.pdf.

⁶⁴ Compare, for example, the following two types of clause mentioned in Article 13 (‘Applicable law and the settlement of disputes’) of the Contribution Agreement Manual – June 2023 (https://international-partnerships.ec.europa.eu/document/download/85241e26-af12-400a-86e4-8aa7517010fa_en?filename=contribution-agreement_manual_en.pdf): 13.2 ‘Where the Organisation is not an International Organisation, and the European Commission is the Contracting Authority, this Agreement is governed by EU law, complemented – if necessary – by the relevant provisions of Belgian law. In the absence of an amicable settlement in accordance with Article 13.1 above, the General Court, or on appeal the Court of Justice of the European Union, has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU). Notwithstanding the foregoing sentence, where the Organisation is not established or incorporated in the EU, any of the Parties may bring before the Brussels courts any dispute between them concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably. Where one party has brought proceedings before the Brussels courts, the other party may not bring a claim arising from the interpretation, application or validity of the Agreement in any other court than the Brussels courts before which the proceedings have already been brought.’ and 13.3 ‘Where the Organisation is not an International

Organisation and the European Commission is not the Contracting Authority, the Agreement shall be governed by the law of the country of the Contracting Authority and the courts of the country of the Contracting Authority shall have exclusive jurisdiction, unless otherwise agreed by the Parties. The dispute may, by common agreement of the Parties, be submitted for conciliation to the European Commission. If no settlement is reached within one hundred and twenty (120) days of the opening of the conciliation procedure, each Party may notify the other that it considers the procedure to have failed and may submit the dispute to the courts of the country of the Contracting Authority.’

⁶⁵ See, for example, EU Court of Justice, 5 September 2019, ECLI:EU:C:2019:672 (*European Union v. Guardian Europe Sàrl*), para. 49.

⁶⁶ See R. Mańko, ‘Action for damages against the EU’, European Parliament Research Service, PE 630.333, 2018, p. 8.

⁶⁷ C. Van Dam, *EU tort law*, 2nd ed, Oxford University Press, 2013, p. 50. For other critical voices, see the authors cited in R. Mańko, ‘Action for damages against the EU’, European Parliament Research Service, PE 630.333, 2018, pp. 8-9.

⁶⁸ See, in particular, the groundbreaking judgment of the EU Court of Justice of 30 May 2017 in EU:C:2017:402 (*Safa Nicu Sepahan v. Council*), para. 31, where the Court recalls that a breach of EU law ‘will, in any event, clearly be sufficiently serious if it has persisted despite a judgment finding the breach in question to be established, or despite a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted a breach.’ In paras. 35-40 the Court applies this principle to the field of restrictive measures and concludes that ‘the obligation on the Council to provide, in the event of a challenge, information or evidence substantiating the reasons for the adoption of restrictive measures against a natural or legal person was already apparent, at the time when the provisions at issue were adopted, from well-established case-law of the Court’ (para. 40). The Court of Justice upheld the finding of the General Court that ‘the breach of that obligation over a period of almost three years constituted a sufficiently serious breach of a rule of law intended to confer rights on individuals’ (*ibid.*); see also S. Thanou, ‘Individual restrictive measures and actions for damages before the General Court of



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the European Union', *ERA Forum* (20) 2020, pp. 599-614, at p. 608. For a recent case, see also EU General Court, 1 February 2023, ECLI:EU:T:2023:26 (*Klymenko v. Council*).

- ⁶⁹ See also, however, the observation by M. Wathelet, *Contentieux européen*, 2nd ed., Larcier 2014, p. 318: 'Il est extraordinaire de trouver dans un texte de droit international la possibilité d'attaquer une organisation internationale en responsabilité extracontractuelle devant une juridiction, dont à la fois la compétence et les arrêts sont obligatoires pour elle.'



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List of abbreviations



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CAVV

Advisory Committee on Issues of Public International Law

CEB

United Nations System Chief Executives Board for Coordination

ECtHR

European Court of Human Rights

EUPF

European Procurement Forum, Inc

ICJ

International Court of Justice

ILC

International Law Commission

ICCPR

International Covenant on Civil and Political Rights

PCA

Permanent Court of Arbitration

UNDT

United Nations Dispute Tribunal

UN

United Nations

TFEU

Treaty on the Functioning of the European Union