CHAPTER 2

The Tension between the Jurisdictional Immunity of International Organizations and the Right of Access to Court

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Abstract

The major controversy about immunity from legal process possessed by many international organizations is that without access to court or adequate alternative recourse there may be a denial of justice. Even where a recourse to an alternative dispute resolution mechanism is available, there is still the issue whether that mechanism meets the requisite standards of impartiality and independence for the determination of a legal claim. This chapter addresses the nature, sources and purpose of the immunity from legal process of international organizations, and then discusses how national courts and international courts and tribunals, especially the European Court of Human Rights, have dealt with the interplay between these competing or conflicting principles of jurisdictional immunity and access to court. Most importantly, it addresses whether the jurisdictional immunity of international organizations is conditional on the availability of an alternative dispute resolution mechanism. It also discusses the adequacy of alternative dispute resolution mechanisms; in particular, whether the proceedings of international administrative tribunals meet the standards of such instruments as Article 6(1) of the European Convention on Human Rights. It concludes with an exploration of whether the international law principle of jurisdictional immunity of international organizations could be reconciled with the human rights principle of access to court or tribunal.

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1 Introduction

There is no denying that there is tension between the international law principle of jurisdictional immunity of international organizations and the human rights principle of access to court. The tension arises because of the inherent conflict between both principles. The major controversy about jurisdictional immunity is that without access to court or adequate alternative recourse there may be a denial of justice or accountability gap where an international organization does not provide remedy to aggrieved persons. This is so because any time jurisdictional immunity is asserted and granted, the inevitable result is that an aggrieved party will be left without legal recourse or remedy. Even where a recourse to an alternative dispute resolution mechanism is available, there is still the issue whether that mechanism is adequate in the sense that it meets the requisite standards of fairness for the determination of a legal claim.

Following this introduction, this chapter will start with a discussion of the nature of international organizations and the sources and purpose of their jurisdictional immunity (Section 2). This is followed by the identification of the right of access to court or tribunal in international human rights instruments, as well as some national laws together with an examination of how courts have addressed the tension between jurisdictional immunity and access to court—especially the fecund and profound jurisprudence of the European Court of Human Rights (Section 3). In particular, it will examine how courts have considered the availability and adequacy of alternative dispute resolution mechanisms in addressing the tension. In this regard, it will address whether the jurisdictional immunity of international organizations is conditional on the availability or adequacy of alternative dispute resolution mechanisms, such as international administrative tribunals (Section 4). The chapter concludes with an exploration of whether jurisdictional immunity and access to court could be reconciled (Section 5).

2 Sources and Purpose of Jurisdictional Immunity of International Organizations

States opt for international cooperation through the establishment of and participation in international organizations to achieve their common objectives. International organizations, which are different from nongovernmental organizations or multinational corporations, are established by international

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1 Jurisdictional immunity is often referred to as immunity from legal process or immunity from judicial process.
agreements by their member States and governed by international law. They are not rogue entities. As the International Court of Justice has determined, international organizations have their own international personality and are therefore subjects of international law.\(^2\) However, international organizations are not sovereign States or ‘super-States’.

International organizations derive their jurisdictional immunity primarily from their constituent instruments.\(^3\) International organizations may also derive jurisdictional immunity from other multilateral treaties on privileges and immunities;\(^4\) bilateral treaties, such as host nation agreements; or national legislation, such as the United States International Organizations Immunities Act\(^5\) and the United Kingdom International Organisation Act.\(^6\)

To enable international organizations to fulfill their functions, their member States accord them certain privileges and immunities, including immunity from legal process. These privileges and immunities protect international organizations from the jurisdiction and enforcement measures of their member States. Jurisdictional immunity bars a national court from subjecting these international organizations to judicial process or adjudicating their legal relations.\(^7\) Staff of these international organizations also enjoy jurisdictional immunity for acts performed in the discharge of their official duties. Under international law, international organizations generally are immune from legal process unless the organization expressly waives the immunity.

\(^2\) ICJ, *Reparation for Injuries* 1949, 174.

\(^3\) See, for example, IMF Articles of Agreement, art IX, s 3 (“The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract”).

\(^4\) See, for examples, Convention on the Privileges and Immunities of the United Nations (General Convention), art 11, s 2 (“The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity”); Convention on the Privileges and Immunities of the Specialized Agencies (Specialized Agencies Convention), art 111, s 4 (“The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity”).

\(^5\) International Organizations Immunities Act (USA), s 2(b) (“International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract”).

\(^6\) International Organizations Act 1968 (UK), sch 1, pt 1 (‘Immunity from suit and legal process’).

\(^7\) Okeke 2018, 4.
Jurisdictional immunity prevents interference by member States, through their national courts, in the administration, management and operation of international organizations. It ultimately serves to protect international organizations from becoming subject to national laws and regulations. Jurisdictional immunity protects both the international organizations and their member States by preventing their various national courts from unilaterally determining the legal validity of the acts of the international organizations in the exercise of their functions. Immunity allows international organizations to fulfil their functions effectively, efficiently and economically. These functions or activities of international organizations are determined and defined by the member States.

The main justification for the jurisdictional immunity of international organizations has been summed up as follows:

Intergovernmental organizations, which carry out their functions not only in their headquarters State but in the territories of all their members, must, in order to deal equitably with all their members, be able to operate on the basis of uniform, i.e., international, law, rather than on the basis of the diverse laws of particular member States. If any State could, through its courts, bend the operations of an organization to the laws of that State, all other States could do likewise with respect to their laws, thus possibly paralyzing or fragmenting the organization.8

3 Right of Access to Court and Availability of Alternative Dispute Resolution Mechanism

International human rights instruments, such as the Universal Declaration of Human Rights (UDHR),9 the International Covenant on Civil and Political Rights (ICCPR),10 the European Convention on Human Rights (ECHR),11 Amer-

8 UN Juridical Yearbook 1980, 228. See also Court of Appeals for the DC Circuit, Broadbent v Organization of American States.
9 Universal Declaration of Human Rights, art 10 (“In the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”).
10 International Covenant on Civil and Political Rights, art 14 (“In the determination of his [...] rights and obligations in a suit at law, everyone shall be entitled to fair and public hearing by a competent, independent, and impartial tribunal established by law”).
11 European Convention for the Protection of Human Rights and Fundamental Freedoms, art 6(1) (“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”).
ican Convention on Human Rights,\textsuperscript{12} and African Charter on Human and Peoples’ Rights,\textsuperscript{13} all recognize the right to a fair proceeding before an independent and impartial court or tribunal.\textsuperscript{14} These human rights instruments impose the obligation of access to court on their respective State parties.\textsuperscript{15} Where these State parties are also members of international organizations and have granted them jurisdictional immunity under applicable treaties, there is an apparent conflict between their treaty obligations: the right of access to court to persons under their jurisdiction and the jurisdictional immunity of international organizations which is an impediment to that right. Reconciliation of the conflict is made more difficult in that neither the right of access to court nor the jurisdictional immunity of international organizations has achieved customary international law status as to be applicable \textit{erga omnes}. Consequently, courts have to and have developed legal standards to reconcile these competing principles.

At issue is whether an international organization’s jurisdictional immunity must be conditioned on the availability of an alternative dispute resolution mechanism. Some legal instruments on privileges and immunities oblige international organizations to provide an alternative or appropriate mode of resolution of disputes of contracts or other disputes of a private nature. For example, Article \textit{viii}, Section 29 of the Convention on the Privileges and Immunities of the United Nations (General Convention) provides:

\begin{quote}
The United Nations shall make provisions for appropriate modes of settlement of: (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party; (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.
\end{quote}

\textsuperscript{12} American Convention on Human Rights, art 8(1) (“Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law”).

\textsuperscript{13} African Charter on Human and Peoples’ Rights, art 7 (“Every individual shall have the right to have his cause heard”).

\textsuperscript{14} In addition to international human rights treaties, some national constitutions do provide for access to court: Constitution of Italy, art 24(1) (“All may bring a case before a court of law in order to protect their rights under civil and administrative law”); Constitution of South Africa, s 34 (“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”); Constitution of Japan, art 32 (“No person shall be denied the right of access to the courts”).

\textsuperscript{15} See Vienna Convention on the Law of Treaties, art 26 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith”).
Similarly, Article IX, Section 31(a) of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations (Specialized Agencies Convention) provides:

Each specialized agency shall make provision for appropriate modes of settlement of: (a) Disputes arising out of contracts or other disputes of private character to which the specialized agency is a party; (b) Disputes involving any official of a specialized agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of Section 22.

The Secretary-General of the United Nations (UN) had reported on the procedures in place for the implementation of Article VIII, Section 29 of the General Convention, in response to the request from the General Assembly.16 With respect to disputes arising out of commercial agreements (contracts and lease agreements), the report stated that,

[I]t has been the practice of the United Nations to make provision in its commercial agreements (contracts and lease agreements) for recourse to arbitration in the event of disputes that cannot be settled by direct negotiations. This practice has also been followed by subsidiary bodies of the United Nations, such as the United Nations Development Programme (UNDP) and the United Nations Children’s Fund (UNICEF).17

It reported that the UN incorporates a standard clause on privileges and immunities in all of its commercial agreements: “Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of the UN, including, but not limited to, immunity from any form of legal process”.18 The preservation of privileges and immunities clause,

...which normally follows the arbitration clause, makes clear to the contractor/lessor that the United Nations, by entering into contractual relations with private firms or individuals and by accepting arbitration as the method of dispute settlement, has not agreed to waive its immunity from legal process, which the Organization enjoys in accordance with Section 2 of the General Convention.19

16 See UNGA Fifth Committee, ‘Review of the Efficiency of the Administrative and Financial Functioning of the United Nations’ 1995.
17 Ibid., para 3.
18 Ibid., para 6.
19 Ibid.
It continued:

It is clear, however, that the ‘privileges and immunities clause’ does not adversely affect the commitment to arbitration since the Organization has agreed to be bound by the arbitration award as the final adjudication of the dispute, controversy or claim; the privileges and immunities clause provides protection to the Organization against possible court proceedings initiated prior to or after the award unless a waiver of immunity is expressly granted.20

According to the Report, other disputes of a private law character encountered by the UN include “(a) third-party claims for personal injuries (arising outside the peace-keeping context), (b) claims related to United Nations peace-keeping operations, and (c) claims related to operational activities for development”.21 For tort claims arising from acts within the Headquarters district in New York, the organization has a special Regulation,

...to place reasonable limits on the amount of compensation or damages payable by the United Nations in respect of claims by third parties for death, personal injury or illness or for damaged, destroyed or lost property arising from acts or omissions occurring within the Headquarters district in New York.22

For claims for personal injury or property damage arising from acts occurring on UN premises in duty stations other than New York, recourse is had to amicable settlement through negotiation, failing which, the matter would be referred to arbitration.23 Claims arising from accidents involving vehicles operated by United Nations personnel for official purposes are dealt with through the commercial insurance policy with worldwide coverage that the UN maintains.24

Regarding third-party claims for compensation for personal injury or death and property loss or damage resulting from acts of members of a United Nations peace-keeping operation, the UN enters a status-of-forces agreement

20 Ibid.
21 Ibid., para 9.
22 Ibid., para 11.
23 Ibid., para 13.
24 Ibid., para 14.
with host countries which envisage the establishment of a ‘standing claims commission’ for the purpose of settling most claims.25 The Report states that the United Nations’ policy is not to enter into litigation or arbitration with individuals who are aggrieved that they were not selected for positions in the UN, but that the internal dispute resolution mechanism is available to those other individuals who are recruited as staff members and present complaints relating to their terms of employment.26

The International Court of Justice (ICJ), in the Cumaraswamy case, raised the issue of the obligation of the UN under Section 29 of the General Convention to provide alternative modes of settlement of disputes, but it did not address whether the organization’s entitlement to immunity is conditioned on the availability of an alternative remedy.27 The ICJ noted:

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 29.28

In Georges v United Nations, the question presented before the United States Court of Appeals for the Second Circuit was whether the fulfillment by the United Nations of its obligation under Section 29 of the General Convention is a condition precedent to its immunity under Section 2 of the General Convention such that the UN’s failure to make provisions for appropriate modes of settlement of certain disputes compels the conclusion that its immunity does not exist.29 The Court held that the UN’s fulfillment of its Section 29 obligation is not a condition precedent for its jurisdictional immunity under Section 2 of the General Convention. Plaintiffs, citizens of the United States or Haiti, had sued the United Nations, the UN Stabilization Mission in Haiti (MINUSTAH), the Secretary-General, and the former Head of MINUSTAH. They claimed that they “have been or will be sickened, or have family members who have died or will die, as a direct result of the cholera” that was introduced by the Nepalese contingent of MINUSTAH and the epidemic that had ravaged Haiti.30

25 Ibid., para 16.
26 Ibid., para 24.
27 ICJ, Cumaraswamy Case 1999.
28 Ibid., para 66.
29 US Court of Appeals for the Second Circuit, Georges v United Nations 2016.
30 Ibid., para 90.
To answer the question whether Section 29 is a condition precedent for Section 2, the Court noted that the interpretation of a treaty begins with the text, and where the language is plain, a court must construe it and refrain from amending it. It also noted that a treaty is a contract between nations and must be interpreted upon the same principles that govern the interpretation of contracts between individuals. It applied the interpretation canon of *expressio unius est exclusio alterius*, in other words, the express mention of something means the exclusion of another. Since Section 2 expressly mentions express waiver as the only circumstance when the United Nations shall not enjoy immunity, by *negative implication* all other circumstances, including failure to fulfill its Section 29 obligation, are excluded. The Court concluded that Section 29 is not a condition precedent for Section 2. It reasoned that conditions precedent to contractual obligations are generally disfavored and must be expressed in plain and unambiguous language—which is lacking regarding Sections 2 and 29 of the General Convention.

Other courts have considered the availability of alternative dispute resolution mechanisms in their decision on the jurisdictional immunity of international organizations. The European Court of Human Rights (ECtHR) has been in the vanguard and has developed its own standard to deal with the tension between right of access to court granted by Article 6(1) of the European Convention on Human Rights (ECHR) and the jurisdictional immunity of international organizations. In the *Waite and Kennedy v Germany*, and *Beer and Regan v Germany* cases both decided on 18 February 1999, the ECtHR unanimously held that in giving effect to the jurisdictional immunity of the European Space Agency (ESA), the German courts did not violate Article 6(1) of the ECHR.

The applicants in *Waite and Kennedy*, British nationals residents in Germany, were employed by a company to provide services for ESA. When the company informed the applicants that their employment would be terminated at the expiration of their contract, they instituted proceedings against ESA before the Darmstadt Labour Court, claiming that under the German labor law, they had acquired the status of employees of ESA. ESA invoked its immunity under its constituent instrument and the Darmstadt Labour Court declared the applicants’ action inadmissible. The Frankfurt/Main Labour Appeals Court,

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31 Ibid., paras 92–93.
32 Ibid., paras 93–94.
33 ECtHR, *Waite and Kennedy v Germany* 1999 and *Beer and Regan v Germany* 1999. The ECtHR was set up by the Council of Europe member States in 1959 to deal with allegations of violations of the 1950 European Convention on Human Rights.
34 The European Space Agency is an international organization established under the Convention for the Establishment of a European Space Agency.
as well as the German Federal Labour Court, dismissed the applicants’ appeal. The applicants then applied to the European Commission of Human Rights, complaining that they had been denied access to a court for the determination of their dispute with ESA regarding an issue under German labour law in violation of Article 6(1) of the ECHR. The Commission declared their application inadmissible and referred the case to the ECtHR.

The ECtHR declared that the right to institute proceedings before courts in civil matters is but one aspect of the ‘right to a court’ as embodied in Article 6. The ECtHR, however, noted that “the right of access to the courts secured by Article 6 [subsection] 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State”. It recognized that States enjoy a certain margin of appreciation, but it remains the province of the ECtHR to decide whether the requirements of the ECHR are met.

The ECtHR determined that to ensure that the right of access is not impaired,

...a limitation will not be compatible with Article 6 [subsection] 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

The ECtHR then concluded that the jurisdictional immunity of international organizations had a legitimate objective because the attribution of privileges and immunities is essential to the proper functioning of international organizations, and to freedom from unilateral interference by individual governments. The ECtHR noted “that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective”. Under the circumstances of the case, a material factor for the Court in determining whether granting ESA jurisdictional immunity in Germany is permissible was whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention. The assessment of proportionality “cannot be applied in such a way as to compel an international organization to submit itself to national litigation in relation to

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35 ECtHR, Waite and Kennedy v Germany 1999, para. 50.
36 Ibid., para. 59.
37 Ibid.
38 Ibid., para 63.
39 Ibid., para 67.
employment conditions prescribed under national labour law”. It therefore held:

Taking into account in particular the alternative means of legal process available to the applicants, it cannot be said that the limitation on their access to the German courts with regard to ESA impaired the essence of their ‘right to a court’ or was disproportionate for the purposes of Article 6 [subsection] 1 of the Convention.

Following Waite and Kennedy, Belgian and French courts decided not to recognize the jurisdictional immunity of international organizations in cases where they found the dispute resolution mechanism in those organizations to be incompatible with the ECHR. The Belgian Court of Cassation delivered its judgment on 21 December 2009, in three cases in connection with employment disputes between international organizations and their employees that have been making their way through the Belgian court system.

In Lutchmaya v General Secretariat of the African, Caribbean and Pacific Group of States (ACP), an employee of ACP had successfully challenged the non-renewal of their term appointment before the Belgian Labour Tribunal, which awarded them compensatory damages. When ACP failed to pay the award, the employee sought an order attaching the organization’s bank accounts. ACP contested the attachment and invoked its immunity under its constituent instrument, and the Tribunal upheld the organization’s immunity and vacated the attachment. The employee then appealed to the Brussels Labour Court, which ruled that, if it is to be effective, the right to a hearing consistent with Article 6(1) of the ECHR must include the enforcement of a final decision. The Labour Court applied the principle developed by the ECtHR in Waite and Kennedy, and ruled that giving effect to immunity from enforcement would violate Article 6 because ACP did not provide an alternative dispute resolution mechanism for the employee to challenge ACP’s refusal to abide by a decision rendered against the organization. It ordered attachment of ACP’s account.

Subsequently, ACP filed an appeal of the decision with the Court of Appeals and in turn with the Court of Cassation, which confirmed the decision of the

40 Ibid., para 72.
41 Ibid., para 73.
42 Belgian Court of Cassation, WEU v Siedler 2009; ACP v Lutchmaya 2009; ACP v B. D. 2009.
43 Brussels Labour Court, Lutchmaya v ACP 2003.
Court of Appeals denying the immunity of execution against ACP’s Belgian bank account.\textsuperscript{44}

In a companion case to \textit{Lutchmaya}, ACP had decided not to comply with an order to pay damages to the plaintiff and had opposed the enforcement measures before the Tribunal of First Instance and Court of Appeal of Brussels based on immunity from execution. The Court of Appeal decided that the immunity from execution would be incompatible with Article 6 of the \textit{ECHR}.\textsuperscript{45} ACP filed an appeal with the Court of Cassation, which rejected the appeal and immunity on the ground that the plaintiff’s right of access to court had been unduly limited by the absence of any dispute resolution mechanism with ACP.\textsuperscript{46}

In \textit{Siedler v Western European Union}, an employee of the now defunct Western European Union (\textit{WEU}) had challenged their termination in 2000 before the organization’s internal appeals mechanism, and had been awarded damages.\textsuperscript{47} Not happy with the disposition of their appeal, the former employee took their case to the Belgian Labor Tribunal. The claimant argued that their employment contract was subject to national labour law rather than the internal law of \textit{WEU}. The Labour Tribunal ruled in favor of the claimant, and \textit{WEU} appealed the decision to the Belgian Labour Court, invoking its jurisdictional immunity. \textit{WEU} had also argued that Belgian law was inapplicable to the employment relationship between the organization and its staff. At issue was whether the jurisdictional immunity of \textit{WEU} could be reconciled with the right to a fair trial as guaranteed in Article 6(1) of the \textit{ECHR}. The Belgian Labour Court concluded that, absent an independent dispute resolution mechanism within an international organization, Article 6(1) mandates that the organization be subject to the jurisdiction of national courts. It concluded that \textit{WEU’s} internal mechanism did not provide the necessary safeguards for an independent tribunal as required under the Convention because the hearings were closed, the decisions were not published, the adjudicators were nominated by the organization for a two-year term, and there was no provision for adjudicators to recuse themselves, calling into question their independence. In other words, the existence of an internal mechanism is not enough—the quality of that mechanism must also be scrutinized to determine whether that mechanism is independent. Consequently, the Labour Court ruled that granting immunity to

\textsuperscript{44} Belgian Court of Cassation, \textit{ACP v Lutchmaya} 2009.

\textsuperscript{45} Brussels Labour Court of Appeals, \textit{B.D. v ACP} 2007.

\textsuperscript{46} Belgian Court of Cassation, \textit{ACP v B.D.} 2009.

\textsuperscript{47} Brussels Labour Court of Appeals, \textit{Siedler v WEU} 2003.
the WEU in this regard would violate Article 6(1) of the ECHR. The WEU appealed the decision to the Court of Cassation, which agreed with the Labour Court that the guarantees of a fair trial have not been met by the WEU internal procedure. The Court of Cassation rejected the WEU jurisdictional immunity claim but ruled that the WEU’s internal rules, as opposed to the Belgian labour law, would apply to the proceedings before the Belgian courts.

In Degboe v African Development Bank, an employee of the African Development Bank (AfDB) who had been terminated appealed the decision to the AfDB’s appeals committee, which made a recommendation in their favor. When the AfDB’s president rejected the recommendation, the former employee brought an action before the French Labour Tribunal, which ruled in their favor and ordered the payment of compensatory damages. The AfDB, which did not appear before the Labour Tribunal, appealed the decision of the Tribunal before the Paris Court of Appeals, and invoked jurisdictional immunity. The former employee argued that the AfDB’s jurisdictional immunity contravened Article 6(1) of the ECHR. The Paris Court of Appeals applied the principle of Waite and Kennedy, and noted that the (then) dispute resolution mechanism within the AfDB did not provide for a binding decision (The case arose before the establishment of the AfDB’s Administrative Tribunal). The French Court consequently concluded that respecting the AfDB’s immunity would deny its employees an adequate recourse to challenge its decisions and thereby negate their right under Article 6 of the Convention. It declined to dismiss the case on jurisdictional grounds and ordered further proceedings before the national court.

The ECtHR clarified the principle that it had developed in Waite and Kennedy in the case of Stichting Mothers of Srebrenica and Others v The Netherlands. The case arose out of the horrors of the 1992–1995 war in Bosnia and Herzegovina. The applicants were a foundation created under Dutch law to bring proceedings on behalf of relatives of the victims of the Srebrenica Massacre, and 10 nationals of Bosnia and Herzegovina who were the surviving relatives of people killed in the massacre. The United Nations Security Council (UNSC) had set up the United Nations Protection Force (UNPROFOR) for the
Yugoslav crisis, and the Netherlands was one of the troop-contributing nations. By Resolution 819 (1993), the UNSC had declared Srebrenica in eastern Bosnia a 'safe area'. In 1995, the Bosnian Serb Army overran the 'safe area' and, despite the presence of a battalion of UNPROFOR, made up of lightly-armed Dutch soldiers (Dutchbat), massacred about 8,000 Bosniac men and boys.

The applicants had first brought proceedings against The Netherlands and the United Nations before the Regional Court of The Hague and argued that the jurisdictional immunity of the UN had been overridden by Article 6 of the ECHR and the jus cogens prohibition of genocide. The Regional Court declined jurisdiction against the UN and noted that

...the creation of the United Nations predated the entry into force of the Convention. Moreover, the United Nations was an organization whose membership was well-nigh universal; this distinguished it from organizations such as the European Space Agency, the organization in issue in Waite and Kennedy and Beer and Regan, which had been created only in 1980 and whose membership was limited to European States.53

The applicants appealed to the Court of Appeals of The Hague, which upheld the judgment of the Regional Court. The applicants then filed an appeal with the Supreme Court, which decided that, pursuant to the Charter of the United Nations and the General Convention, the UN could not be summoned before the national courts of its member States.

Following the exhaustion of proceedings in the Dutch courts, the applicants took their case to the ECtHR, and complained that the recognition of the jurisdictional immunity of the United Nations by the Dutch courts violated their right of access to courts under Article 6 of the Convention. The ECtHR noted:

[T]he attribution of responsibility for the Srebrenica massacre or its consequences, whether to the United Nations, to the Netherlands State or to any other legal or natural person, is not a matter falling within the scope of the present application. Nor can the Court consider whether the Secretary-General of the United Nations was under any moral or legal obligation to waive the United Nations’ immunity. It has only to decide whether the Netherlands violated the applicants’ right of “access to a court”, as guaranteed by Article 6 of the Convention, by granting the United Nations immunity from domestic jurisdiction.54

53 Ibid., para 70.
54 Ibid., para 137.
Before the ECtHR applied the principles from its case law\(^{55}\) to the jurisdictional immunity enjoyed by the UN, it noted that previous cases before it concerned the jurisdictional immunity of international organizations in disputes between the organization and members of its staff,\(^{56}\) or the request to impute the acts of international organizations to State Parties to the ECHR who are member States of those international organizations.\(^{57}\) It differentiated those cases from this one because the dispute in this one involved a dispute between the applicants and the United Nations arising out of the action of the UNSC under Chapter 7 of the UN Charter. The Court consequently held that because of the fundamental mission of the United Nations to secure international peace and security, Article 6 of the Convention cannot be interpreted to deny the UN jurisdictional immunity for the acts and omissions of the Security Council:

To bring such operations within the scope of domestic jurisdiction would be to allow individual States, through their courts, to interfere with the fulfillment of the key mission of the United Nations in this field, including with effective conduct of its operations.\(^{58}\)

The ECtHR noted that in *Waite and Kennedy* as in *Beer and Regan*, it had considered the availability of reasonable alternative means to protect effectively the rights under the Convention a ‘material factor’ in its determination whether the grant of jurisdictional immunity was permissible under the Convention. It conceded that there was no such alternative means in this case, but contended:

> It does not follow, however, that in the absence of an alternative remedy the recognition of immunity is ipso facto constitutive of a violation of the right of access to a court. In respect of the sovereign immunity of foreign States, the ICJ has explicitly denied the existence of such a rule. As regards international organizations, this Court’s judgments in *Waite and Kennedy* and *Beer and Regan* cannot be interpreted in such absolute terms either.\(^{59}\)

\(^{55}\) Ibid., para 139 (citations omitted).

\(^{56}\) See ECtHR, *Waite and Kennedy v Germany* 1999 and *Beer and Regan v Germany* 1999.

\(^{57}\) ECtHR, *Behrami v France* 2007 and *Saramati v France* 2007.

\(^{58}\) ECtHR, *Stichting Mothers of Srebrenica v The Netherlands* 2012, para. 154 (citations omitted).

\(^{59}\) Ibid., para 164, citation omitted to the ICJ’s Judgment *Jurisdictional Immunities of the State* (Germany v Italy: Greece intervening) 2012, para. 101.
The ECtHR further noted:

There remains the fact that the United Nations has not, until now, made provision for “modes of settlement” appropriate to the dispute here in issue. Regardless of whether Article viii, Section 29 of the Convention on the Privileges and Immunities of the United Nations can be construed so as to require a dispute settlement body to be set up in the present case, this state of affairs is not imputable to the Netherlands. Nor does Article 6 of the Convention require the Netherlands to step in: as pointed out above, the present case is fundamentally different from earlier cases in which the Court has had to consider the immunity from domestic jurisdiction enjoyed by international organizations, and the nature of the applicants’ claims did not compel the Netherlands to provide a remedy against the United Nations in its own courts.60

The ECtHR concluded that the grant of immunity to the United Nations in this case served a legitimate purpose and was not disproportionate.61

Lastly, the position of the Canadian Supreme Court may sum up the predominant view on the availability of alternative dispute resolution mechanism: “The absence of a dispute resolution mechanism or of an internal review process is not, in and of itself, determinative of whether [an international organization] is entitled to immunity.”62 It had ruled that the “fact that the appellant has no forum in which to air his grievances and seek remedy is unfortunate. However, it is the nature of an immunity to shield certain matters from the jurisdiction of the host State’s courts.”63 It noted that “it is an ‘inevitable result’ of a grant of immunity that certain parties will be left without legal recourse, and this is a ‘policy choice implicit’ in the legislation.”64

4 Adequacy of Alternative Dispute Resolution Mechanism

Even when alternative dispute resolution mechanisms are available, there may still arise an issue about the adequacy of such mechanism. Employment relations within international organizations are usually regulated by their internal rules and policy. For the resolution of employment-related disputes, most in-

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60 Ibid., para 165.
61 Ibid., para 169.
62 Supreme Court of Canada, Amaratunga v Northwest Atlantic Fisheries Organization 2013, para 60.
63 Ibid., para 63.
64 Ibid.
International organizations have set up an internal dispute resolution mechanism in the form of administrative tribunals. Judges of administrative tribunals are independent from the organs in the international organization that appoint them. The adequacy of an alternative dispute resolution mechanism revolves around its independence and impartiality. Some courts have denied immunity to an international organization where they considered an internal mechanism not to be independent and impartial. Generally, courts have recognized the jurisdictional immunity of international organizations with respect to employment disputes with their staff.

The Statute of the Administrative Tribunal of the International Labour Organization (ILOAT), which was adopted by the International Labour Conference on 9 October 1946, provides in Article 11:

1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.
2. The Tribunal shall be competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of her or his employment and to fix finally the amount of compensation, if any, which is to be paid.65

International organizations, such as the World Health Organization (WHO), United Nations Education, Science and Cultural Organization (UNESCO), Food and Agricultural Organization (FAO), and a good many others that have their headquarters in Europe, have accepted the jurisdiction of the ILOAT for the resolution of employment disputes between them and their staff.66

The World Bank Administrative Tribunal (WBAT) was established in 1980 and its Statute provides in Article 11 (1):

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words “contract of employment” and “terms of appointment” include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.67

65 ILOAT Statute.
66 ILOAT, ‘Membership’. See ILOAT Statute, Annex.
67 WBAT Statute.
The United Nations Administrative Tribunal was established in 1950 pursuant to the General Assembly Resolution 351 A (IV) of 24 November 1949. Under Article 2 of its Statute, the Tribunal had jurisdiction over employment disputes between the United Nations and its staff. Article 9 of the Statute provides that “the oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private”. The United Nations reformed its internal justice system and introduced a two-tier system in 2009, with a first instance, United Nations Dispute Tribunal (UNDT) and the appellate and final, United Nations Appeals Tribunal (UNAT). Other international organizations, like the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), have accepted the jurisdiction of the UNDT and UNAT for the resolution of employment disputes between them and their staff.

Administrative tribunals of international organizations are judicial bodies. In its advisory opinion in the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (Effect of Awards)* case, the ICJ determined that the United Nations Administrative Tribunal was “an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions”. The Court inferred an obligation from the Charter of the UN to establish a dispute resolution mechanism for its staff members:

When the Secretariat was organized, a situation arose in which the relations between the staff members and the [UN] were governed by a complex code of law. This code consisted of the Staff Regulations established by the General Assembly, defining the fundamental rights and obligations of the staff, and the Staff Rules, made by the Secretary-General in order to implement the Staff Regulations. It was inevitable that there would be disputes between the [UN] and staff members as to their rights and duties. The Charter contains no provision which authorizes any of the principal organs of the United Nations to adjudicate upon these disputes, and Article 105 secures for the United Nations jurisdictional immunities in national courts. It would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the

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68 UNGA Res 351 A (IV), 24 November 1949.
69 UN Administrative Tribunal Statute, art 9.
70 UNGA Res 63/253, 24 December 2008.
71 ICJ, *Effect of Awards* 1954, 53.
United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.\(^{72}\)

The establishment of international administrative tribunals by international organizations is founded on a human rights principle of access to court or the obligation to provide an alternative dispute resolution mechanism under multilateral or bilateral treaties on their jurisdictional immunities. In this regard, when the Administrative Tribunal of the World Bank was established in 1980, the memorandum of the President of the World Bank to the Board of Executive Directors stated that one of the reasons for the establishment of the tribunal is that,

Wherever administrative power is exercised, there should be the possibility, in case of disputes, of a fair hearing and due process. This principle is enshrined not only in numerous national constitutions, it is also reaffirmed in the Universal Declaration on Human Rights.\(^{73}\)

The ECtHR has decided whether the Article 6 of the ECHR applies to the administrative tribunals of international organizations in a number of cases. In Boivin v 34 Member States of the Council of Europe, the applicant, a dual Belgian and French national, had challenged the termination of their employment with the European Organization for the Safety of Air Navigation (Eurocontrol) before the ILOAT.\(^{74}\) The Tribunal upheld the impugned decision. The applicant subsequently filed an application with the ECtHR and complained, inter alia, that the reasoning in the ILOAT judgment had been insufficient under Article 6 of the ECHR. The Court noted that the complaint in the application is actually against the judgment of the ILOAT concerning their employment dispute with Eurocontrol. In other words, the applicant’s complaints were not directed against any acts of the respondent States but against the decision of the Tribunal. It pointed out that the ILOAT was outside the jurisdiction of the respondent States, that those States did not intervene directly or indirectly in the employment dispute, and that no action or omission of those States can be considered to engage their responsibility under the ECHR. It distinguished this

\(^{72}\) Ibid., 57.

\(^{73}\) World Bank, ‘Memorandum of the President’, 14 January 1980.

\(^{74}\) ECtHR, Boivin v 34 Member States of the Council of Europe 2008. The application was declared inadmissible with respect to 32 of the member States for failure to comply with the six-month time-limit, and was only examined with respect to France and Belgium.
case with those cases where the State or States concerned had been involved directly or indirectly such that the responsibility of the respondent States had been at issue. The Court determined that the alleged violation of the ECHR cannot be attributed to France and Belgium. It also pointed out that since Eurocontrol is not a party to the ECHR, its responsibility cannot be engaged under the Convention. Consequently, the Court declared the applicant’s complaints incompatible ratione personae—in other words, by reason of the person concerned—with the provisions of the Convention, and the application inadmissible.

In Connolly v 15 Member States of the European Union, the applicant was a British national resident in London, whose employment with the European Commission was terminated, following disciplinary proceedings, for publishing a book without prior authorization. The former employee unsuccessfully challenged their termination before the European Community Court of First Instance (abbreviated as TPICE in French) before appealing to the European Community Court of Justice (abbreviated as CJCE in French) which also rejected their appeal. Before the ECtHR, the claimant alleged violation of Article 6(1) of the ECHR, amongst other things. The Court noted that this application originated from a decision of the European Commission to terminate the applicant’s employment, as well as the decisions of the TPICE and CJCE. The Court also noted that the applicant, however, thought that the 15 member States of the European Union at the time of the impugned decisions should be held responsible for the violation of the Convention. The ECtHR confirmed its jurisprudence as established in the Boivin case and decided that the alleged violation of the Convention should not be imputed to the respondent States and that the responsibility of the European Union, an international organization that is not a party to the Convention, cannot be engaged.

In Gasparini v Italy and Belgium, the applicant, an Italian national, was an employee of the North Atlantic Treaty Organization (NATO) and had been working at the organization’s headquarters in Brussels. The applicant brought proceedings before the NATO Appeals Board to challenge the increase in their pension contributions. At the ECtHR, they complained that the proceedings at the NATO Appeals Board had not met the requirements of a fair hearing as enshrined in Article 6 of the ECHR. The ECtHR noted that this complaint was different from that in the Boivin and Connolly cases. Specifically, the complaint was about the absence of public hearings at the NATO Appeals Board. The Court concluded that, under the circumstances of the procedure under

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75 ECtHR, Connolly v 15 Member States of the European Union 2008.
76 ECtHR, Gasparini v Italy and Belgium 2009.
the NATO Civilian Personnel Regulations, the requirements of fairness were still met without the holding of public hearing. It recalled that the Appeals Board had justified the absence of a public hearing by the need “to preserve its serenity in the specific context of an organization such as NATO”.77 Regarding the complaint about the alleged bias or partiality of the NATO Appeals Board, the Court noted that the Appeals Board is composed of three members who were appointed by the North Atlantic Council for three years from outside the organization and with recognized competence. It also noted that the applicant had the right to ask for a change of the composition of the Appeals Board for presumed partiality but failed to do so.

Beygo v 46 Member States of the Council of Europe was an application by a French and a former employee of the Council of Europe, alleging, inter alia, a violation of Article 6(1) of the ECHR.78 The applicant claimed that as a result of the composition of and appointment of the members of the Administrative Tribunal of the Council of Europe by the Council of Europe, the tribunal had not provided the guarantees of independence and impartiality required under the Convention. The Court noted that the applicant did not dispute that the alleged violations of the Convention originated from the impugned decision by the Secretary General and the decision of the Tribunal, but claimed that the 46 member States of the Council of Europe should be jointly held responsible for the alleged violation arising from the impugned decision. After recalling the principles enunciated in its case law, the ECtHR held that the alleged violation of the ECHR cannot be imputed to the member States in this case, and consequently concluded that the applicant’s complaint is inadmissible ratione personae within the provisions of the Convention.

In Klausecker v Germany, the applicant who was physically disabled had applied for the post of patent examiner at the European Patent Office (EPO) in Munich, Germany, but was not appointed because the organization determined that they did not meet the physical requirements of the post as required by the Service Regulations of EPO.79 The applicant challenged the decision not to recruit them, claiming that the decision constituted unlawful discrimination against the disabled. Their request for review was dismissed by the President of EPO and their internal appeal was rejected as inadmissible, but they

77 Ibid., 2.
78 ECtHR, Beygo v 46 Member States of the Council of Europe 2009.
79 ECtHR, Klausecker v Germany 2015.
were advised that they could appeal the decision to the ILOAT which has jurisdiction over employment disputes between EPO and its staff members.\textsuperscript{80}

The applicant lodged a constitutional complaint directly with the German Federal Constitutional Court, arguing that the EPO enjoyed jurisdictional immunity in German courts, and complaining that their right of access to court under Article 19(4) of the Basic Law had been violated because they had no remedy within EPO, or before the German courts or the ILOAT. The Federal Constitutional Court found the constitutional complaint inadmissible.

The applicant then filed an application with the ILOAT against the decision by the EPO not to recruit them, and the tribunal dismissed this complaint as irreceivable.\textsuperscript{81} The ILOAT considered that it was a court of limited jurisdiction and had no jurisdiction over claims by applicants who had no contract of employment with the international organization. It ruled that it had no authority to order the EPO to waive its immunity. It noted, however, that its judgment created a legal vacuum and considered it highly desirable that the EPO should seek a solution affording the applicant access to a court, either by waiving its immunity or by submitting the dispute to arbitration.\textsuperscript{82}

The applicant then filed an application with the ECtHR, which considered the applicant’s complaints about lack of access to German courts and to the EPO internal justice system to fall under Article 6(1) of the ECHR. The Court noted:

The internal system of judicial review within the EPO also guaranteed a protection of fundamental rights comparable to that secured by the Convention. Moreover, despite the restriction of access to that system of internal judicial review for job applicants, the applicant did have, in the circumstances of the present case, alternative means effectively to protect [their] Convention rights. The EPO had offered the applicant to conduct an arbitration procedure which would have afforded [them] effective protection.\textsuperscript{83}

The Court recapitulated the relevant principles from its case law and applied them to the case. It considered that the arbitration that was offered to the applicant, but which was declined, made available to them,

\textsuperscript{80} ILOAT, in \textit{Fabio Liaci v EPO} 2000, had previously rejected as irreceivable a complaint against EPO by an applicant whose application for a job at the organization had equally been rejected for failure to meet the physical requirements of the post.

\textsuperscript{81} ILOAT, \textit{R. K. v EPO} 2007.

\textsuperscript{82} See ECtHR, \textit{Klausecker v Germany} 2015, paras 19 and 20.

\textsuperscript{83} Ibid., para 55.
...reasonable alternative means to protect effectively [their] rights under the Convention. Therefore, the limitations placed on the applicant’s access to the German courts had been proportionate to the legitimate aims pursued by the grant of immunity from jurisdiction to the EPO and the very essence of the applicant’s right of access to court under Article 6 [subsection] 1 was not impaired.\footnote{84}{Ibid., para 76.}

It concluded that the denial of access to the internal justice system of an international organization to an applicant who was not recruited does not disclose a “manifestly deficient protection of fundamental rights” within the organization, especially where the applicant was offered arbitration of the impugned decision.\footnote{85}{Ibid., para 106.} The Court dismissed the application as manifestly ill-founded.

In \textit{Perez v Germany}, the applicant, a Spanish national who had served the United Nations and resided in Germany, had challenged their termination of employment by the UN before the \textit{unat} before filing their application with the ECtHR.\footnote{86}{ECtHR, \textit{Perez v Germany 2015}.} In their application, the former staff member complained that the proceedings before the UN internal justice system,

...had been characterised by manifest procedural, substantive and practical shortcomings and had not met the requirements of a fair trial within the meaning of Article 6 of the Convention. Germany was to be held responsible for these deficient procedures as it had failed to ensure that there was a UN internal dispute settlement procedure protecting [...] fundamental rights in a manner equivalent to the Convention standards.\footnote{87}{Ibid., para 47.}

The applicant argued that Germany, by granting jurisdictional immunity to the UN, “had failed to guarantee [their] access to a fair and public hearing by an independent and impartial tribunal in the determination of [their] civil rights before the German courts, in breach of Article 6 of the Convention”.\footnote{88}{Ibid., para 48.} The Court recalled its case law:

\begin{quote}
[W]here the impugned decision emanated from an internal body of an international organization or an international tribunal outside the jurisdiction of the respondent States, in the context of a labour dispute that
\end{quote}
lay entirely within the internal legal order of an international organization that had a legal personality separate from that of its Member States. It was decisive for the respondent States to be held responsible under the Convention in those cases whether the States concerned had intervened directly or indirectly in the dispute, and whether an act or omission of those States or their authorities could be considered to engage their responsibility under the Convention. If that was not the case, the Court considered the applicants not to have been “within the jurisdiction” of the respondent States concerned for the purposes of Article 1 of the Convention and therefore declared the applications to be incompatible ratione personae with the provisions of the Convention in this respect.\footnote{Ibid., para 61 (citations omitted).}

The Court also recalled its case law as established in \textit{Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland},\footnote{ECtHR, \textit{Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland} 2005. The applicant in the \textit{Bosphorus} case was an airline charter company incorporated in Turkey which had leased aircraft from the national airline of the former Yugoslavia which was then impounded by Ireland following United Nations Security Council (\textit{UNSC}) Resolution 757 (1992) which was implemented in the European Community by Regulation (\textit{EEC}) No 1432/92, and \textit{UNSC} Resolution 820 (1993) which was implemented by Regulation (\textit{EEC}) No 990/93. The Court determined that the impoundment was in compliance by Ireland with its legal obligation under Article 8 of Regulation (\textit{EEC}) No 990/93 flowing from its membership of the European Community. To establish the extent to which a State’s action was in compliance with obligations that flow from its membership of an international organization to which it has transferred part of its sovereignty, the Court noted that absolving the member States completely from their Convention responsibility in the areas covered by such transfer would run counter to the purpose and object of the Convention. The Court considered the State to retain liability under the Convention for treaty commitments subsequent to the entry into force of the Convention. The Court took the view: “State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides; By ‘equivalent’ the Court means ‘comparable’; any requirement that the organisation’s protection be ‘identical’ could run counter to the interest of international cooperation pursued [...]. However, any such finding of equivalence could not be final and would be susceptible to review in the light of any relevant change in fundamental rights protection” (para 155). The Court created the so-called Bosphorus Presumption: “If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation. However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly}
of States in complaints about acts of international organizations and their international administrative tribunals:

In *Gasparini*, the Court deducted from the principles developed in the *Bosphorus* case that, when transferring part of their sovereign powers to an international organization of which they are a member, Contracting Parties to the Convention were under an obligation to monitor that the rights guaranteed by the Convention received within that organization an “equivalent protection” to that secured by the Convention system. In fact, a Contracting Party’s responsibility under the Convention could be engaged if it subsequently turned out that the protection of fundamental rights offered by the international organization concerned was “manifestly deficient” [...]. Conversely, an alleged violation of the Convention was not attributable to a Contracting Party because of a decision or measure emanating from an organ of an international organization of which it is a member where it has not been established nor even been alleged that the protection of fundamental rights generally offered by the said international organization was not “equivalent” to that secured by the Convention and where the State concerned neither directly nor indirectly intervened in the commission of the impugned act.91

The Court then applied its case law to the *Perez* case and held that the mere fact that the impugned decision that was reviewed under the United Nations internal justice system took place in Germany where the applicant worked and resided does not bring the impugned act within the ECtHR’s jurisdiction for the purposes of Article 1 of the Convention. Regarding the alleged violation of Article 6 (1) of the Convention for denial of access to German courts, the Court reiterated:

[I]t would be incompatible with the purpose and object of the Convention if the Contracting States, by attributing immunities to international organizations, were absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. This applies, in particular, to the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial

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91 Ibid., para 62 (citations omitted).
It follows that the applicant was not estopped from holding Germany responsible for its alleged failure to grant her access to the domestic courts in order to have [their] employment dispute with the UN determined. Therefore, [their] application is compatible *ratione personae* with the provisions of the Convention in this respect.\(^{92}\)

The ECtHR concluded that a complaint before the German Constitutional Court would have been an effective remedy but the applicant had failed to exercise that remedy regarding their complaint about the alleged deficiency of the United Nations internal justice system.

The conclusion that could be drawn from the case law of the ECtHR is that if an international organization is not a signatory to the Convention, then it cannot be held accountable by the Court for alleged violation of the *ECHR*. Applications against international organizations are, therefore, inadmissible *ratione personae*. An application that challenges the internal justice system of an international organization as incompatible with the *ECHR* is not attributable to its member States unless they have intervened in the dispute or the system is not equivalent to the standards of the *ECHR*. The Court recognizes the need for the independence of international organizations and therefore respects their jurisdictional immunity where they provide an alternative dispute resolution mechanism. Under some circumstances, the ECtHR will respect the jurisdictional immunity of an international organization even in the absence of an alternative recourse or remedy for an aggrieved party. This is usually the case with international organizations whose member States include States that are not parties to the *ECHR*. When applicants want to challenge the acts or decisions of international organizations before the ECtHR, they usually do so by invoking the responsibility of the host State of the international organization, or the responsibility of the member States of the international organization for the deficiency in the internal dispute resolution mechanism.

5 Conclusion

The case law of international and national courts demonstrates that the right of access to court is not absolute and may be legitimately limited by jurisdictional immunity. It is widely recognized that jurisdictional immunity of international organizations serves a legitimate purpose. Some courts consider the

\(^{92}\) Ibid., para 93.
availability of alternative dispute resolution mechanisms in their determination of whether to uphold jurisdictional immunity. However, the absence of such a mechanism does not always equate to a violation of the right of access to court. Courts are still struggling with striking the right balance between the need to maintain the independence of international organizations through jurisdictional immunity and the need to offer redress to those aggrieved by the international organization. Because of their jurisdictional immunity, proceedings against international organizations can only be brought before administrative tribunals which have very limited jurisdiction. Currently, administrative tribunals are only available for the resolution of employment related disputes between international organizations and their employees.

Recourse is usually had to arbitration for the resolution of commercial and other contractual disputes. Although arbitral panels are not considered courts established by law, they are acceptable as an alternative to dispute resolution by such courts. An alternative dispute resolution mechanism for disputes of a tortious nature involving third parties is still lacking. Absence of redress for victims of tort by international organizations may constitute an accountability gap or denial of justice, but proceedings in national courts are not the ideal way to address them. It is also worth considering whether to expand the jurisdiction of administrative tribunals to also hear such cases. Availability of alternative dispute resolution mechanisms serves as a counterbalance to jurisdictional immunity and a reasonable compromise to access to court.

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