Lawsuits Against International Organizations: Cases in National Courts Involving Staff and Employment

World Bank Legal Department

July 1, 1985

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1. **In re Lamborot** (1928, Conseil d'État, France) Appeal to the Conseil d'État of the Ministry of War's implied decision (due to silence) against plaintiff. Plaintiff alleged that the Ministry suspended plaintiff's salary for the period he served as one of France's representatives to the Inter-Allied Commission. The Court upheld the Ministry's silence, holding that there is lack of jurisdiction because Lamborot and others were in the charge of an international organization, and not of the French Government. However, the Court reversed the Ministry's decision in respect of plaintiff's claim that the orders delivered to them gave the wrong impression as to the source of certain pecuniary advantages during their service with the Commission, and ordered the French Government to pay plaintiff. Recueil des Arrêts du Conseil d'État (1928), p. 1304

2. **In re Antin** (1928, Conseil d'État, France) Appeal to the Conseil d'État to reverse the Ministry of War's decision refusing plaintiff reinstatement. Plaintiff alleged that the Ministry's action was in violation of a French law guaranteeing employment to disabled veterans. The Court upheld the Ministry of War, holding that the railroad administration in the occupied territory where plaintiff was originally employed did not constitute an "administration or establishment of the [French] State", but that the administration was really an international organization over which the Court had no jurisdiction. Recueil des Arrêts du Conseil d'État (1928), p. 764

3. **In re Courmes** (1928, Conseil d'État, France) The Conseil d'État upheld the French Ministry of Health's decision refusing payment of indemnities to plaintiff as retired commander of the Port of the Principality of Monaco. The Court held that plaintiff rendered service to the two governments according to an agreement and that the French Government has no responsibility to pay indemnities to one who was not a "French" agent. Recueil des Arrêts du Conseil d'État (1928), p. 357

4. **In re Marthoud** (1929, Conseil d'État, France) The Conseil d'État upheld the Ministry of War's decision not to act on plaintiff's request, on the ground that plaintiff was engaged in railroad administration in an occupied territory which was considered an international organization, to which decisions of the French Minister of War did not apply. Recueil des Arrêts du Conseil d'État (1929), p. 408
5. **In re Godard** (1930, Conseil d'Etat, France) The Conseil d'Etat upheld the Ministry of War's refusal to reimburse plaintiff for his moving costs from his position with the Inter-Allied Commission to his position with an equipment station at Nancy. The Court held that plaintiff's service with the Commission was service with an international organization, not with the French Government, and therefore not reimbursable by the latter. Recueil des Arrêts du Conseil d'Etat (1930), p. 648

6. **International Institute of Agriculture (IIA) v. Profili** (Judgment of February 26, 1931, Court of Cassation, Italy) An Italian national, a former cashier of IIA, filed suit claiming compensation for the termination of his contract. The court of first instance held that it had jurisdiction, which decision was upheld by the Court of Appeals of Rome. On further appeal, the Court of Cassation declined subject matter jurisdiction. The Court of Cassation held that IIA was "an autonomous union free, as regards its internal affairs, from interference by the sovereign power of the States composing the Union [the Pact of Union, which created IIA] except when it consents thereto". As such the Court found that IIA's autonomy includes "that of arranging its own organisation and controlling the relations of the organisation ... " to an extent which "rules out all State interference and all authority of its laws, substantive or procedural". While recognizing that municipal laws may be applicable insofar as incorporated in the internal law of, or as may be expressly consented to by, IIA, the Court held that absent any such provision or consent, and notwithstanding the absence of an adequate internal remedy, "there is nothing which authorizes the intervention of an external jurisdiction". Giurisprudenza Italiana I, 1931, Col. 738, 5 Annual Digest and Reports of Public International Law Cases, 1929-1930, Case No. 254, p. 413; 10 Rivista di Diritto Internazionale 386 (1931)

7. **In re Dame Adrien and Others** (Judgment of July 17, 1931, Conseil d'Etat, France) The Conseil d'Etat held that it had no jurisdiction to hear an appeal by French employees of the Reparation Commission against decisions of the French Minister of Foreign Affairs relating to the employees' official classification. The Court held that it had no competence to hear the petition because the position of petitioners, as employees of an international organization, was "determinable only by international public law". 6 Annual Digest and Reports of Public International Law Cases, 1931-1932, Case No. 11, p. 33
8. **In re Scholtes** (Judgment of February 23, 1940, Conseil d'Etat France) Appeal to the Conseil d'Etat to annul the implicit decisions (by its silence) of the French High Commissioner for the Rhine territories denying appellant's claims for indemnity. Appellant claimed he was entitled to indemnity for the injuries he suffered during his service with the railways administration under an ordinance issued by the Commissioner in which the French Government undertook to guarantee and to protect the present and future positions and material interests of the citizens of the occupied territories. Without ruling on the receivability of the plea, the Court rejected the appeal on two grounds: that the railroad administration where appellant was employed was not under the French State and therefore the French Government could not be held liable for his injuries, and furthermore, that the Court was incompetent as to matters which involved acts of the French Government in its relation with international bodies or foreign states. Recueil des Arrêts du Conseil d'Etat (1940), p. 78

9. **Godman v. Winterton** (Judgment of March 12, 1940, Court of Appeal, England) The Court of Appeal declined jurisdiction in an interlocutory appeal claiming payment of expenses and reasonable remuneration for services rendered by plaintiff to the International Committee for Refugees. The Court of Appeal, upholding the Master's order made in Chambers that the statement of claim should be struck out, declined jurisdiction on the ground that "the action was one against sovereign States acting through their agent, the Intergovernmental Committee". Annual Digest and Reports of Public International Law Cases, Supplementary Volume, 1919-1942, Case No. 111, p. 205

10. **Chemiduin v. International Bureau of Weights and Measures (IBWM)** (Judgment of July 27, 1945, Tribunal Civil of Versailles, France) Suit by a former employee asserting a claim for damages due to alleged breach of contract and failure by IBWM to reinstate plaintiff in the position he had occupied since 1931. Plaintiff was called up for military service in 1939 and was a prisoner of war from 1940-1941. Plaintiff filed a claim under the French law concerning ex-soldiers and returned prisoners of war. The Tribunal Civil of Versailles declined subject matter jurisdiction, stating that "[I]nternational civil servants . . . exercise their functions in the public interest but under international authority and outside the legal system of the State to which they belong". Annual Digest and Reports of Public International Law Cases, 1943-1945, Case No. 94, p. 281; 1964 Nordisk Tidsskrift 20; Gazette du Palais, October 15, 1945
11. **Viccelli v. International Refugee Organization** (IRO) (Judgment of July 20, 1951, Tribunal of Trieste, Italy) Suit filed by a former employee who was dismissed by IRO. The Court declared that it lacked jurisdiction to hear the case in view of an agreement between Italy and IRO. That agreement provided for arbitration by the Italian Chamber of Advocates of any contractual controversy between IRO and an employee which could not be settled through administrative channels. The Court found the arbitration clause valid in respect of the employment relationship between IRO and plaintiff, because of the power of IRO, as expressly recognized by the Court, "to set by itself the provisions which shall govern relations between itself and private individuals", and held that the provision for arbitration was a valid exercise by the agency of this power. In dismiss- ing the case against IRO, the Court declared that plaintiff, instead of filing suit against the agency, "should have referred the controversy for arbitration". 36 Rivista di Diritto Internazionale 470 (1953)

12. **Schuster v. U.N. Information Center** (1952, National Labor Court, Argentina) Suit by a former staff member for the payment of termination and other indemnities. The Labor Court of Buenos Aires held itself incompetent on the ground that the United Nations was a juridical person under public international law. The case was then heard by the Supreme Court which held "that since the United Nations was not a foreign State, an action against the [Center] was not covered by the constitutional provision that the Supreme Court has original and exclusive jurisdiction over actions involving foreign States." Consequently, the Supreme Court held itself incompetent and remanded the case to the Labor Court. At this point the Center, invoking its immunity from judicial process, declined to submit to the jurisdiction of the Labor Court. The claim was later settled out of court. Annual Reports of the Secretary General, 7 U.N. GAOR, Supp. (No. 1) 165, U.N. Doc. A/2141 (1952); ibid., 8 U.N. GAOR, Supp. (No. 1) 149, U.N. Doc. A/2404 (1953)

Tribunal on December 7, 1956, which denied plaintiff's claim for payment of a special indemnity or sickness benefit. However, in view of the small amount of money involved, the Tribunal adjourned consideration of the case in respect of the plaintiff's claim for termination indemnity in order to give the parties an opportunity to arrive at a settlement between themselves, but awarded plaintiff costs for delays which the Tribunal found were caused by UNRWA. Judgment No. 65, United Nations Document AT/DEC/65; 23 International Law Reports 613

14. W v. United Nations Relief and Works Agency for Palestinian Refugees in the Near East (1952, Lebanon) "Labor tribunals attached to the Ministry of National Economy have on two occasions pronounced judgments in default against UNRWA for payment of terminal indemnities to former staff members. The judgments were served on UNRWA through the Foreign Office. They were not accepted and the Ministry for Foreign Affairs was requested to advise all competent Lebanese departments of the legal position of UNRWA, and its immunity under the Convention." Annual Report of the Director of UNRWA, 8 U.N. GAOR, Supp. (No. 12) 25, U.N. Doc. A/2470 (1953)

15. Weiss v. Institute for Intellectual Cooperation (Judgment of February 20, 1953, Conseil d'Etat, France) Appeal by a former legal adviser of the Institute claiming that action by the French Minister of Foreign Affairs had been responsible for his dismissal from his post in the Secretariat of the Institute, had prevented him from obtaining execution of an award in his favor rendered by the Administrative Tribunal of the League of Nations, and had prevented him from obtaining a post in UNESCO to which he considered he had a claim. Appellant claimed damages resulting from the alleged interruption of his career as an international official. Without examining the grounds raised by appellant, the Court rejected the appeal. The Court found that the Institute "was a body with an international character" and declared itself incompetent on two grounds: "that administrative jurisdictions are not competent to consider disputes between an international body and one of its officials" and, furthermore, "that administrative jurisdictions are not competent to judge acts performed by the French Government in its relations with international bodies". 81 Journal de Droit International (1954), p. 754, note P. Huet


18. **Branno v. Ministry of War** (Judgment of June 14, 1954, Court of Cassation (United Chambers), Italy) By reference, the Tribunal of Naples requested the Court of Cassation for a decision on the question of whether Italian courts had jurisdiction to hear an action for the enforcement of a commercial contract entered into by the North Atlantic Treaty Organization (NATO) Headquarters for Southern Europe with a private individual. The contract in question involved the provision by the plaintiff in the action of canteen facilities for Headquarters staff. The Court of Cassation stated that while Italian courts will not exercise jurisdiction with respect to cases arising out of the public law activities of a subject of international law which possesses both *jus imperii* and a legal system of its own, it may do so where an express or implicit renunciation of immunity has been made. The Court of Cassation declared that Italian courts and, in particular, the Tribunal of Naples, has jurisdiction in the present case because the contract out of which the dispute arose is not one which exempts foreign States and other subjects of international law from Italian jurisdiction by the operation of particular rules of internal or international law, and because the purpose of the contract does not involve an act of sovereignty connected with NATO's public law activity. The Court in
fact found that by entering into such a contract, NATO manifested its intent to divest itself of all rights in respect of its sovereignty, in effect, "contracting as an individual, under a private law, and to create a true contract regulated by civil law and by the contractual will of the parties." 22 International Law Reports 756 (1955)

19. **Diaz-Diaz v. U.N. Economic Commission for Latin America** (ECLA) (Judgment of April 28, 1954, Supreme Court, Mexico) Suit by a former staff member for the payment of termination indemnities and overtime. The United Nations did not submit to the jurisdiction of the Arbitration Tribunal of Mexico City and did not enter an appearance in court. The Tribunal held itself competent and, applying the Federal Employees' Act to the case, ordered ECLA to pay plaintiff. ECLA appealed before the Circuit Court, which declined jurisdiction and, in turn, referred the case to the Supreme Court. The Supreme Court sustained ECLA's appeal, declaring that the Tribunal lacked jurisdiction over controversies between an organ of the United Nations and its personnel and rejecting the Tribunal's application of the Federal Employees' Act to other than Federal employees. In addition, since ECLA did not submit expressly or implicitly to the Tribunal's jurisdiction, the Court ruled that the Tribunal's judgment had been in violation of the Federal Constitution and concluded that the justice of the Union of Mexico States protected ECLA against the Tribunal's judgment. Annual Report of the Secretary General, 9 U.N. GAOR, Supp. (No. 1) 105, U.N. Doc. A/2663 (1954)

20. **Maida v. Administration for International Assistance** (Judgment of May 27, 1955, Court of Cassation, Italy) The Court of Cassation in United Chambers found jurisdiction in the Italian administrative courts because the organization, an organ of the International Refugee Organization, had adopted Italian law as the proper law of the employment contract. However, the Court suggested that if there had been an effective method of settling personnel disputes this would have been accepted as sufficient to oust the Italian courts. 23 International Law Reports 510; 39 Rivista di Diritto Internazionale 546 (1956)

21. **Mazzanti v. Headquarters Allied Forces Southern Europe** (HAFSE) (Judgment of August 4–23, 1955, Court of Appeals of Florence (1st Section), Civil Proceedings, Italy) Appeal against the decision of the Tribunal of Florence which held that it lacked jurisdiction over the action brought by a former employee of HAFSE. The employee, who disputed the terms of his
employment contract, alleged that the Italian court had jurisdiction. The Tribunal, however, declared HAFSE to be "an international juridical person, and, having entered into the [employment] contract in the exercise of its public law capacity, it was exempt from local jurisdiction" and dismissed the case. 38 Rivista di Diritto Internazionale 354 (1955); 22 International Law Reports 758. On appeal, the Court of Appeals of Florence affirmed the lower court. The Appeals Court declared that HAFSE, which was created under the North Atlantic Treaty (NATO) was exempt from Italian jurisdiction because of the nature of the relationship between HAFSE and the plaintiff, and because of the existence of a legal code which governs the public law activities of NATO and, consequently, of HAFSE. The Appeals Court found the employment relationship between HAFSE and plaintiff as one of a public law character and therefore subject to the legal code established by HAFSE. Holding that the said code is "without doubt ... an independent legal code distinct from that of each of [NATO's] member States", the Appeals Court declared HAFSE "exempt from the jurisdiction of Italian courts" and dismissed the case. In doing so, the Appeals Court confirmed its agreement with the long-established line of reasoning of the Supreme Court of Italy which that Court had enunciated in the noted International Institute of Agriculture v. Profili 1/ case. The Appeals Court noted that the Profili case established the principle that Italian courts do not have jurisdiction over the internal affairs of an international organization, except where the organization has expressly provided for, or consented to, such jurisdiction and, furthermore, that there is lack of jurisdiction even where an adequate internal remedy is not available. Giustizia Civile (Section 436) 461 (1955)

22. Hénaut v. État-major des Forces Alliées Centre-Europe (FACE) (Judgment of December 5, 1955, Tribunaux de Paix de Fontainebleau, France)

Suit for payment of back salaries and other indemnities by a civilian employee of FACE. Plaintiff alleged his right to the salaries and indemnities provided under a scale of salaries used for a similar profession. The Tribunal dismissed the case, declaring that the salary structure applicable under a convention between certain national forces and that for the civilian personnel of FACE is not analogous and, therefore, that there was no basis for comparing the two salaries. The Tribunal held that the former was not applicable to plaintiff. On the question of jurisdiction, FACE had decided not to exercise its right under its Statute to reject the jurisdiction of the Tribunal for this particular case only. Gazette du Palais, May 1, 1956, p. 301

1/ See case 6, above.


25. **Radicopoulos v. United Nations Relief and Works Agency for Palestine Refugees in the Near East** (1957, Egypt) Suit by a former employee in an Egyptian court was withdrawn after UNRWA had indicated that an internal remedy was open to plaintiff. Annual Report of the Director of UNRWA, 13 U.N. GAOR, Supp. (No. 14) 41, U.N. Doc. A/3931 (1958). The claim was subsequently decided by the U.N. Administrative Tribunal against the allegations of the employee. 1-70 JUNAT 419 (1957); 24 International Law Reports 683 (1957)
26. **YY v. United Nations Relief and Works Agency for Palestine Refugees in the Near East** (Judgment of August 17, 1957, Gaza) The Annual Report of the Director of UNRWA for the period 1957-1958 carried the following report: "... attempts have been made to apply the provisions of local municipal law to contracts of service between [UNRWA] and its staff. Thus three court actions and three complaints 2/ to the Egyptian Department of Labor were filed against [UNRWA] by former staff members. In none of these court cases has UNRWA's status or jurisdictional immunity been recognized and as mentioned in the previous report, one such case resulted in a judgment expressly denying this status and immunity". Annual Report of the Director of UNRWA, 13 U.N. GAOR, Supp. (No. 14) 41, U.N. Doc. A/3931 (1958). The above-mentioned case resulted in a judgment against UNRWA and was reported as follows: "A Gaza court rendered a decision to the effect that UNRWA was not an organ of the United Nations; that under the Agreement of 1950 it did not enjoy jurisdictional immunity; and that, therefore, the court was competent to hear a claim lodged against [UNRWA] by a former staff member". Annual Report of the Director of UNRWA, 12 U.N. GAOR, Supp. (No. 14) 47, n. 34, U.N. Doc. A/3686 (1957)

27. **ZZ v. United Nations Relief and Works Agency for Palestine Refugees in the Near East** (1957, Cairo and Gaza) The two cases and three complaints referred to in case 26 above were filed during the period 1957-1958, in which former employees of UNRWA sought to apply the provisions of local municipal law to their contracts of service with UNRWA. At about this time, UNRWA received notice of documents emanating from official sources, one written in 1956, the other in 1958, both of which denied UNRWA's status and privileges and immunities. Annual Report of the Director of UNRWA, 13 U.N. GAOR Supp. (No. 14) 41, U.N. Doc. A/3931 (1958). As of 1959, it was reported that "at least two of the previous cases ... remain before the courts (one in Gaza and one in Cairo) and the Government has not yet informed the authorities, in accordance with international practice, of [UNRWA's] status or immunity". Annual Report of the Director of UNRWA, 14 U.N. GAOR, Supp. (No. 14) 35, U.N. Doc. A/4213 (1959)

28. **Bergaveche v. United Nations Information Center** (Judgment of March 19, 1958, Camara Nacional de Apelaciones del Trabajo de la Capital Federal, Argentina) Suit for termination indemnities filed by a former employee whose fixed-term contract was not renewed. The Center did not

2/ See case 27, below.
submit to the Labor Court's jurisdiction, but requested the Ministry of Foreign Relations of Argentina to notify the Court of the Center's immunity from suit. The Labor Court dismissed the action for want of jurisdiction on November 23, 1954, under the terms of Article 105 of the United Nations Charter, as well as under the 1946 Convention on the Privileges and Immunities of the United Nations. The claim was resubmitted later and on February 7, 1956, another Labor Court assumed jurisdiction on the ground that Argentina was not a party to the Convention. Argentina acceded to the Convention on August 31, 1956, by virtue of Decree No. 15.971, and on having been so advised by the Public Prosecutor, the Labor Court dismissed the action for lack of jurisdiction. On appeal, the Camara Nacional held that the Labor Court's decision must be affirmed and rejected appellant's claims that said Decree could not be retroactively applied in his case, or even if retroactive application was intended, that "such law could not be applied so as to impair rights acquired under labor legislation which was in effect on the date of dismissal of the complainant". The Court declared that Decree 15.971, being a procedural law, immediately applied to proceedings pending at the time of, as well as to those instituted after, its adoption, and dismissed the appeal. 94 Revista Jurídica Argentina Le Ley 585 (1959); reprinted in (1958-II) International Law Reports 620.

29. **De Bruyn v. European Parliamentary Assembly** (Judgment of January 22, 1960, Court of Arbitration for disputes between private employers and employees, Canton of Luxembourg) Claim for annulment of notice of dismissal and for damages by a former employee of the Assembly who claimed that her contract of employment with the Assembly was subject to private law. Plaintiff filed the present claim shortly after she had instituted appeal proceedings before the internal administrative appeals machinery of the Assembly, but pending a decision by that body. The Assembly asserted that it was not subject to the national laws of Luxembourg, and that since the employment contract was subject to public law, that the Court lacked jurisdiction. On January 22, 1960, the Court of Arbitration issued a decision which held that the plaintiff's employment contract existed in public law and therefore it had no jurisdiction. In its decision the Court clearly found it lacked jurisdiction under a Luxembourg statute which expressly removed from the Court's jurisdiction "all disputes arising between the State, the Communes and public establishments ...." and because of the supranational character of the European Coal and Steel Community (ECSC) (of which the Assembly is a part) and, consequently, of the Assembly. The Court of Arbitration stated that since the ECSC had been created by a supranational Convention, it falls outside the jurisdiction of the national laws of Luxembourg, and concluded that the "juridical relationships between the Institution and its staff cannot in any event properly be subject to examination by a national court of arbitration" but should be decided only
by a supranational tribunal established by the Court of Justice alone. Plaintiff then appealed to the Court of Justice of the European Communities which declared that it has jurisdiction under certain provisions of the EEC and EURATOM Treaties. The Court of Justice found for the plaintiff because the employment contract provided for a probationary period and the dismissal decision was taken illegally. The Court ordered the Assembly to pay damages for breach of contract but dismissed plaintiff's request for annulment of the notice of dismissal for lack of merit. 34 International Law Reports 466

30. **Giurgiu v. United Nations Relief and Works Agency Representative and the Director, Department of Palestine Affairs** (Judgment of December 31, 1961, Court of First Instance, Egypt) Claim for compensation for alleged wrongful termination. The Cairo Court of First Instance (Department 23-Labor Tribunal) held that "UNRAWA, as a subsidiary organ of the United Nations, enjoyed the privileges and immunities of the General Convention" and that since immunity from suit had not been waived, the case should be dismissed. Reprinted in The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Administration concerning their Status, Privileges and Immunities, Part 2, U.N. Doc. A/CN.4/L.118/Add.1, May 7, 1967, pp. 53-54

31. **Lopez v. Advisory Group, Inter-American Development Bank** (IDB) (1963, Bolivia) Suit brought in the Labor Court of La Paz in which plaintiff, who had been hired by IDB as a consultant in 1962, alleged that his contract had been rescinded prematurely. The parties later agreed to settle the case out of court. Cited in World Bank Legal Files


33. **Morre v. International Institute for the Unification of Private Law** (UNIDROIT) (Judgment of June 12, 1965, Rome Court of First Instance, Italy) In an action filed against UNIDROIT involving an employment dispute, the Court of First Instance of Rome found UNIDROIT "fully autonomous and independent of the legal systems which promoted [UNIDROIT's] establishment", including that of Italy's. The Institute was originally created by
international agreement which was terminated in 1937 and revived three
years later. Under the new by-laws provision was made, inter alia, for an
administrative court to settle employment disputes between UNIDROIT and its
staff. The Court unequivocally declared UNIDROIT immune from Italian
jurisdiction on three grounds: Firstly, recognizing the international
character of UNIDROIT, it declared that UNIDROIT and the Italian State both
have "mutual autonomy and absolute mutual independence" in respect of their
legal systems. According to the Court, this autonomy renders it "impossi-
ble for Italian courts to deal with legal relations involving [UNIDROIT] in
any way", particularly those relating to judicial activity. Secondly, the
Court pointed out that Italy's ratification of UNIDROIT's by-laws implied a
"full acknowledgment" by Italy of the "absolute autonomy and independence
of UNIDROIT's legal system" and that, consequently, "Italy cannot interfere
in any way, and even less so exercise its jurisdiction over legal relations
created by UNIDROIT in the exercise of its basic attributes, one of which
indeed is the power to organize its own offices". Finally, the Court
rejected the plaintiff's assertion that the lack of Italian jurisdiction
over such legal relations of UNIDROIT would result in the impossibility of
settling future disputes of a similar nature. The Court pointed out that
"those relations could be dealt with validly and effectively by the appro-
priate bodies of international courts", and concluded that "[U]nder such
conditions, UNIDROIT, being a juristic person, which makes it the equal of
any other juristic person under international law... is not subject to the
jurisdiction of the State of Italy". 50 Rivista di Diritto Internazionale
169 (1967)

34. Bartolomei v. Intergovernmental Committee for European Migration
(ICEM) (Judgment of September 16, 1966, Tribunal of Naples) Suit against
ICEM in which the Tribunal of Naples considered as a preliminary question
ICEM's objection that the court lacked jurisdiction. Plaintiff, an
employee of ICEM, principally alleged that the 1949 Convention on the
Privileges and Diplomatic Immunities of Specialized Agencies was non-
existent in respect of Italy because Italy had acceded to the Convention
subject to reservations relating to immunity from jurisdiction. Plaintiff
thus claimed that the Agreement between ICEM and Italy, and Act No. 244 of
March 25, 1953, which ratified that Agreement, were inoperative or void in
respect of Italy. On the other hand, ICEM argued that the court lacked
jurisdiction and that, in any case, its immunity does not derive from the
Convention, but from its Agreement with Italy as ratified by the 1953 Act,
and, in particular, Article 4 of the Agreement which expressly provided
that "[ICEM] shall be a juristic person in Italy and shall be granted the
same immunities and the same privileges as are enjoyed by International
Organizations which have their headquarters in Italy, which are specified
under Article 3 of the Convention dated November 27, 1949 on the privileges and diplomatic immunities of specialized agencies". The Tribunal agreed with ICEM's objections and dismissed the case. Without going into the jurisdictional issue, the Tribunal agreed that the grant of immunity from jurisdiction resulted from ICEM's Agreement with Italy and not, as plaintiff alleged, from the Convention which, in any case, the Tribunal found did not apply to ICEM. 51 Rivista di Diritto Internazionale 144 (1968)

35. **Kiersfeld v. French-German Office for Youth** (Judgment of June 18, 1968, Court of Appeals of Paris (21st Chambers), France) Appeal of a lower court decision which declared it lacked jurisdiction over an employee suit against the Office. Appellant, a former staff member of the Office, had filed the complaint following her termination for serious misconduct. The lower court concluded that in the treaty establishing the Office, the signatory states -- France and Germany -- clearly intended the staff to have a specific regime other than the internal legislation of the two countries. On appeal, the Appeals Court affirmed. The Appeals Court analyzed the structure, organization and the staff regulations of the Office and declared it to be an "international organization" which is not subject to the rules of domestic law. The Court concluded that the employees of the Office have specific legal status of an international character and should be regarded as "international civil servants". Consequently, the Court declared itself incompetent to hear the case, observing that its declaration of incompetence follows the principle applied in earlier cases 3/ in which the courts have held that the legal situation of such organizations as the Office is not subject to French law. 14 Annuaire Français de Droit International 370 (1968)

36. **Giovanni Porru v. Food and Agriculture Organization (FAO) of the United Nations** (Judgment of June 25, 1969, Rome Court of First Instance (Labor Section), Italy) Action filed against FAO by plaintiff, an Italian national who had been employed at various times and over a period of years as a messenger or lift operator. Plaintiff, whose appointments had been generally short-term, asserted that he had been refused permanent employment which would have entitled him to certain benefits and claimed an amount equivalent to certain Italian social security benefits. FAO maintained that it was in all respects immune from the jurisdiction of the

3/ The Appeals Court cited the following cases: **In re Dame Adrien and Others** (No. 7, above), and **Chemidlin v. International Bureau of Weights and Measures** (No. 10, above).
Italian courts under the Headquarters Agreement which it had concluded with Italy on July 31, 1950, which stated that FAO was immune from legal process in Italy. The Court dismissed the case for lack of jurisdiction, but observed that FAO may only claim such immunity in respect of activities carried out for FAO's institutional purposes, but that such immunity does not apply to its private law activities. The Court, holding that "the acts by which an international organization arranges its internal structure fall undoubtedly in the category of acts performed in the exercise of its established functions", found the legal relation between FAO and plaintiff to be within this category of activities and declared that "in this respect therefore [FAO] enjoyed immunity from jurisdiction". 1969 United Nations Juridical Yearbook 238

37. **Herbert Harvey, Inc. v. National Labor Relations Board** (September 19, 1969, 137 U.S. App. D.C. 282, 424 F.2d 776) Petition for review and cross-petition for enforcement of a Board order against Harvey which required petitioner to engage in bargaining with the representatives of its service and maintenance personnel who work on World Bank-(the Bank) owned buildings. In a similar action filed before the same court earlier, petitioner had argued that the Board lacked jurisdiction over the Bank and that due to the nature of petitioner's relationship with the Bank, as a service contractor, the Board should decline jurisdiction. Without deciding on the merits, the Court of Appeals remanded the case to the Board for determinations calculated to resolve the jurisdictional problem. On remand, the Board issued a supplemental decision which reaffirmed its earlier decision and order and which held that the Bank is not subject to the Board's jurisdiction. In its decision, the Board held that the Bank, being a creature of international agreement and a specialized agency of the United Nations, enjoys unique advantages, among them being its immunity from the Board's jurisdiction. The Board accepted the view of the U.S. Court of Appeals that the Bank and Harvey are joint employers as the law of the case 47; it held, however, that Harvey had sufficient control over the working conditions of the service and maintenance employees at the Bank as to enable it to bargain effectively with the Union. On September 19, 1969, the Court of Appeals, Spottswood W. Robinson, III, Circuit Judge, held that the contract between Harvey and the Bank and evidence as to the parties' actual practice sustained the Board's finding that Harvey exercised effective control over the working conditions of its employees. Furthermore, the Court of Appeals held that Harvey was fully competent to engage in collective bargaining, and that the Board's holding was not such a departure from its holdings in other cases as to support Harvey's claim of arbitrariness. The Court of Appeals denied Harvey's petition to review and ordered enforcement of the Board's order.

38. **A v. United Nations Economic Commission for Latin America** (ECLA) (Judgment of November 8, 1969, Supreme Court, Chile) Suit against the Executive Secretary of ECLA as the legal representative of ECLA, concerning the exchange rates which had been applied to the former staff member's salary and to social security benefits and allowances to which he was entitled. The Supreme Court of Chile set aside the summons served on the Executive Secretary of ECLA, as well as the rest of the proceedings in the Labor Court, on the ground that the Labor Court was not competent to try the suit, without, however, any prejudice to the plaintiff's right of recourse through other appropriate channels. 1969 United Nations Juridical Yearbook 237

39. **Intergovernmental Committee on European Migration (ICEM) v. Luggieri** (Judgment of December 18, 1970, Court of Appeals of Naples (decision unpublished); Judgment of June 20, 1966, Tribunal of Santa Maria, Italy) Appeal of a lower court decision which found jurisdiction over an employee suit against ICEM because the Agreement between ICEM and Italy expressly provided for such jurisdiction. Article V of the Agreement, which was ratified by Italy, provided "that the Government [of Italy] shall apply to all ICEM employees concerned the social security measures prescribed by the law of Italy for the employees of Italian private firms". According to the lower court, this provision contained "implicit but clear proof that labor relations between ICEM and its employees are understood by the parties to the Agreement not to fall within the legal relations removed from the jurisdiction of the State of Italy". Furthermore, the lower court stated that there were two other grounds on which it could have found jurisdiction, namely certain reservations made by Italy limiting the immunity granted under the Agreement, and the waiver, in this case, by ICEM of its immunity from jurisdiction. ICEM appealed to the Court of Appeals of Naples which rendered a decision on December 18, 1970; that opinion is not available. See, however, the decisions in more recent cases against ICEM (nos. 42, 43, and 46 below), in which higher courts have upheld ICEM's immunity from the jurisdiction of Italian courts. For the lower court decision in this case, see 51 Rivista di Diritto Internazionale 140 (1968).

40. **Barreneche v. CIPE/General Secretariat of the Organization of American States** (OAS) (1971, Superior Court, Bogota, Colombia) Suit by a former employee of OAS which was dismissed by the court on the ground of the Organization's immunity. The Court dismissed the complaint, based on the certification by the Chief of the Legal Division of the Ministry of Foreign Affairs of Colombia that pursuant to the Agreement between Colombia
and the General Secretariat for the establishment in Bogota of the CIPE offices, OAS and its organs enjoy in Colombia immunity from all types of intervention, whether executive, administrative, judicial or legislative. Cited in World Bank Legal Files

41. **Barrios v. CIPE/General Secretariat of the Organization of American States** (1973, Superior Court, Bogota, Colombia) Suit by a former employee of OAS which was dismissed by the court on the same grounds as in case 40 above. Cited in World Bank Legal Files

42. **Mrs. C. v. Intergovernmental Committee on European Migration (ICEM)** (Judgment of June 7, 1973, Supreme Court of Cassation (Plenary for Civil Matters), Italy) Appeal of a lower court decision denying ICEM's plea of immunity from jurisdiction. The case arose out of a claim by a former staff member of ICEM for the difference between termination payments she had received from ICEM and the amount which would have been due her under Italian Labor Law. ICEM claimed immunity from jurisdiction on the ground that under its Agreement with Italy, the Convention on the Privileges and Immunities of Specialized Agencies which, inter alia, granted immunity from jurisdiction to certain specialized agencies, applied to ICEM. The lower court rejected this claim, whereupon ICEM appealed to the Supreme Court. ICEM argued, firstly, that the immunity it enjoys under the said Convention was not subject to the distinction drawn in Italian judicial practice between the private and public law activities of international organizations, and, secondly, that even if the Court applied such distinction, the employment relationship between ICEM and its staff would fall into the second category and be covered by immunity. The Supreme Court rejected the first argument, but accepted the second, and reversed on that ground. The Court held that "acts by which an intergovernmental organization arranges its internal structure, including the rules laid down by it in respect of the employment relationship with the staff, were manifestations of the organization's power under international law", and concluded that "the provisions and measures adopted by ICEM, also in so far as they regarded terminal emoluments, were governed by the organization's own system of rules. They were consequently not subject to the Italian legal system and were exempt from the jurisdiction of the Italian courts". 1973 United Nations Juridical Yearbook 197
43. **Intergovernmental Committee on European Migration (ICEM) v. Chiri** (Judgment of November 7, 1973, Court of Appeals (No. 2910), Italy) Appeal of a lower court decision which found jurisdiction over an employee suit against ICEM. Appellee, who was employed by ICEM as a typist and later as a secretary, brought the suit claiming damages due to the termination of her contract. The lower court found it had jurisdiction on the basis of the work performed by the appellee. While generally recognizing ICEM's immunity from jurisdiction in respect of its public law activity, the lower court declared ICEM subject to Italian jurisdiction because appellee merely carried out subordinate tasks which the court held were outside of ICEM's "decision-making mechanism". ICEM appealed on the grounds that its immunity under the Agreement with Italy, as well as under Articles 1 and 2 of Ratification Law 244, was not subject to the distinction drawn in Italian judicial practice (as interpreted in various ways in other countries) between the private and public law activities of international organizations. Furthermore, ICEM claimed that even if the court made this distinction, the employment relationship between ICEM and appellee would fall into the second category and therefore be covered by the immunity. The Court of Appeals rejected the first ground of appeal, but reversed the decision of the lower court on the second ground of appeal. It held that the organizational activities of international organizations — which include the drawing up of regulations to govern its organizational relationships — are analogous to similar activities of the state governments of Italy, and therefore constitute public law activities. While recognizing that appellee merely performed subordinate or clerical tasks, the Appeals Court concluded that the permanent and uninterrupted nature of the relationship make it a public law relationship and therefore held that the rules laid down by ICEM regarding compensation and other respects "are governed under the juridical setup of the agency itself and therefore are beyond the reach of the Italian regulations and, because of the immunity mentioned, also beyond the reach of Italian jurisdiction". 10 Rivista di Diritto Internazionale Privato e Processuale 579 (1974)

44. **Araya v. Institute for Latin-American Integration/Inter-American Development Bank** (IDB) (1974, Labor Court of Argentina) Suit filed by a former employee of the Institute, a unit of IDB, claiming indemnity for unjust dismissal. IDB responded in writing, without appearing in court, claiming its privileges and immunities under its Agreement with Argentina Establishing the Bank. This non-appearance would have resulted in a decision against the Bank because under the Argentinian Code an appearance before the Court has to be made in order to claim immunity, or to claim any kind of defense; furthermore the statutes operate in such a way that the party who fails to make an appearance loses its defenses therefor. In
addition, the Fiscal Agent for the lawsuit filed an opinion which interpreted the provision on the Bank's judicial immunity in the Agreement as being inapplicable to the case. The parties later reached an out-of-court settlement. Cited in World Bank Legal Files.

45. **Porrini and Others v. The European Atomic Energy Community (EAEC) and Comont S.p.A. and Bellintani and Others v. The European Atomic Energy Community and Cesi S.p.A.** (March 18, 1974, Labor Commissioner, Tribunale di Varese, Italy; March 11, 1975, Court of Justice of the European Communities) By judgment of March 18, 1974, the Labor Commissioner of the Tribunale di Varese applied to the EEC Court of Justice for a preliminary ruling on the interpretation of Article 152 of the Treaty establishing the EAEC and on its application to persons who claim to be officials or servants of the European Communities. These questions were raised in the context of disputes which were filed before the Tribunale di Varese and joined by that court, relating to the according of recognition as EAEC officials or servants to employees of two local maintenance and cleaning firms with which EAEC had concluded service contracts. The employees were plaintiffs in the main action before the Tribunale di Varese against the two firms and EAEC. They claimed, inter alia, the status of officials or of establishment staff on the basis of Law No. 1369 of 1960 which provided, inter alia, that contracts for the provision of other than labor only imposes a joint and several obligation on the party awarding the contract and on the contractor to pay workers employed by the contractor at the same rates as those paid to staff of the employers awarding the contract. EAEC objected, on the grounds, inter alia, that this claim was outside the Italian court's jurisdiction because, in its view, engagement as an official must be based on an instrument of appointment for which no judicial decision may be substituted. In its reply to the Tribunale di Varese, the Court of Justice stated that since the rights in question are recognized under EAEC's Staff Regulations and Conditions of Employment, it interpreted Article 152 of the EAEC Treaty as being applicable to persons who have the status of officials or of servants other than local staff as well as to persons who claim this status and declared that therefore the basis of the service relationship between the Community and its officials or servants other than local staff cannot reside in a decision of a national court. [1975] European Court Reports, Volume 3, p. 319
46. **Intergovernmental Committee on European Migration (ICEM) v. Di Benella Shirone** (Judgment of April 18, 1975, Supreme Court of Italy) Suit by a permanent clerical employee alleging that ICEM failed to give her the amount of severance pay agreed upon in her employment contract. The Court of Appeals of Rome, while generally accepting ICEM's immunity from jurisdiction, deemed such immunity to be subject to limitations relating to the nature of the activities carried out by ICEM. According to the appellate court, an employment contract between ICEM and one of its employees did not come under those acts which are carried out for the organization's "institutional purpose", especially as the plaintiff merely carried out subordinate or clerical tasks, and therefore ICEM was subject to Italian jurisdiction. On appeal, this decision was reversed by the Supreme Court which held that international agencies such as ICEM have immunity from Italian jurisdiction in controversies involving labor relations with those of their employees who are permanently and uninterruptedly incorporated in the structure of such agencies. The Court stated that such immunity was not limited to high-level executives employed by ICEM, as all such relations relate to the self-organizing activity of international agencies and therefore are within the scope of their institutional purposes. 59 Rivista di Diritto Internazionale 820 (1976)

47. **Bari Institute of the International Center for Advanced Agricultural Studies in the Mediterranean v. Scivetti** (Judgment of December 23, 1975, Tribunal of Bari, Italy) Appeal of a lower court decision which resulted in a judgment against the Institute. Appellee, who was employed by the Institute as superintendent and chief accountant, alleged that the Institute failed to pay his full salary for the entire period of his employment and claimed payment for the difference plus interest, inflation allowance and costs. At the preliminary hearing at which only appellee and his counsel were present, the court of first instance of Bari found for appellee and ordered the Institute to pay. The Institute appealed, asserting that the court lacked jurisdiction and that Italian law is inapplicable to relations between the Center and its staff, on the basis of international agreements between the Institute and Italy. The Institute also claimed that relations between the Center and its staff are governed by the internal regulations of the agency through its appropriate organs. On appeal, the Tribunal of Bari reversed the decisions of the lower court. The Tribunal held that on the basis of the 1961 Paris Agreement and of two additional Protocols to the Agreement, in particular Article 2 of Additional Protocol No. 2, Italian courts lack jurisdiction in respect of employment disputes between the Center, of which the Institute is a part, and its staff, particularly where the staff member has participated in "carrying out the institutional activities" of the organization, such as in
the present case. The Tribunal, declaring the Institute to be an "international organization", furthermore held that such dispute "must be referred to the body established for that purpose under the internal regulations of the Center." 59 Rivista di Diritto Internazionale 547 (1976)

48. **Cohen v. Presiding Judge, Pedro C. Navarro, et al.** (Judgment of January 19, 1976; Motion for Reconsideration denied March 15, 1976) (Supreme Court, Manila, Philippines, G.R. No. 41698) Petition for Mandamus filed against the presiding judge and other agents of a local court. The respondent judge had refused to issue petitioner's request for Alias Summons in respect of the breach of contract and damage suit which petitioner had filed against the Asian Development Bank (ADB) earlier. ADB had refused to accept the summons in that action, claiming it has immunity from jurisdiction under its Agreement with the Philippine Government. The present petition before the Supreme Court was filed following respondent judge's denial of that Motion and two other subsequent Motions for Reconsideration by petitioner. In denying the petitioner-complainant's motion, the respondent judge had held that ADB enjoys immunity from suit under the above-mentioned Agreement and, in particular, under Section 5, Article III of the Agreement which provides that "[t]he Bank shall enjoy immunity from every form of legal process, except in cases arising out of, or in connection with, the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the Republic of the Philippines". Prior to hearing the petition, the Supreme Court requested the Philippine Solicitor-General to provide the Court with a legal opinion regarding ADB's claim of immunity in this particular case. On January 7, 1976, the Solicitor-General transmitted his opinion to the Court which, in effect, strongly urged the Court to follow its holding in a 1972 case in which the Court have held that in the conduct of foreign relations, "the judicial department of (this) government follows the action of the political branch and will not embarrass the (executive branch) by assuming an antagonistic jurisdiction". In

5/ **World Health Organization (WHO) v. Aquino** (L-35131, November 20, 1972, 48 SCRA 242), involving an appeal by WHO of a lower court decision which had found that local police agents have power to search the personal effects of a WHO official upon the official's entry into the country. WHO invoked immunity from local jurisdiction under its Agreement with the Philippine Government and, as in the instant case, the Solicitor-General as well as the executive branch of the Philippine Government, strongly supported WHO's claims of immunity. The Supreme Court reversed, holding that under recognized principles of international law and under the system of separation of powers under Philippine law, questions relating to diplomatic immunity "is essentially a political question" and should properly be decided by the executive branch. The Supreme Court concluded that any such determination by the executive branch should be binding on the judicial branch.
that as in the present case, the Solicitor-General had likewise supported the organization's plea of immunity. On January 19, 1976, the Supreme Court rejected the Petition for Mandamus, presumably on these grounds (copy of the decision is unavailable); on March 15, 1976, the Court likewise rejected the petitioner's Motion for Reconsideration of that decision. Cited in World Bank Legal Files

49. **North Atlantic Treaty Organization (NATO) v. Capocci Belmonte**
(Judgment of June 5, 1976, Supreme Court, Joint Sections, No. 2054, Italy)
Appeal of the lower court decisions which have held that Italian judicial authorities have jurisdiction over a claim by a former contract employee of NATO. The Court of Naples, affirming the Tribunal of Naples, had rejected NATO's appeal on the ground that the plaintiff performed activities which the court had found to be of a "private nature" and as such are not covered by the immunity from the jurisdiction of the Host State extended by the Convention among the States participating in the North Atlantic Treaty and by Article 8 of the 1961 Agreement between Italy and the Supreme Allied Commander of NATO. The Court stated that these treaties extended such immunity only to civilian and military personnel hired by acts of authority to perform duties of a permanent nature and who are remunerated according to rates established by NATO. NATO then appealed to the Supreme Court, which upheld the decision of the lower court. Distinguishing between those NATO personnel who have "international status" and those who have "local status", the Court found that claimant's remuneration and duties were not in conformity with those who have "international status" and hence not governed by the regulations in force for NATO bodies. The Supreme Court held that such personnel are not exempted from the legislation and jurisdiction of the Host State and declared controversies related to such labor relations not exempted from Italian jurisdiction. 59 Rivista di Diritto Internazionale 824 (1976)

(Judgment of June 25, 1976, Local Court of Sittard, the Netherlands)
Petition for decree to nullify EUROCONTROL's decision which resulted in the termination of petitioner's employment. The Local Court of Sittard found jurisdiction, but dismissed the petition on other grounds. The Court found it had jurisdiction under Article 92(1) of the General Conditions, and Article 93(1) of the Staff Regulations of EUROCONTROL, which provide that any dispute between EUROCONTROL and its staff relating to non-compliance with the provisions of these documents "shall, in the absence of a national court, be referred to the Administra-
tive Tribunal of the International Labor Office". The Court interpreted these provisions, and that of Section 5 of the Protocol of Signature, which provides that "nothing in the Convention or the Statute annexed thereto shall be deemed to restrict the jurisdiction of national courts in respect of disputes between the Organization and its personnel" as "clearly show[ing] that national courts (in this case the Local Court, since a labor dispute is involved) have jurisdiction in respect of such a dispute". However, the Local Court dismissed the petition on the ground that plaintiff based his petition on Dutch law. The Local Court stated, in agreement with EUROCONTROL, that the relationship between EUROCONTROL and plaintiff was not governed by Dutch civil labor law, but by the conventions, regulations, etc., specially drawn up for the purpose which implies that Dutch laws relating to dismissal are not applicable to the present case. Furthermore, the Local Court stated that plaintiff failed to show that EUROCONTROL infringed the provisions governing the employment contract. 9 Netherlands Yearbook of International Law 276 (1978)


52. Bruno v. United States of America (Judgment of January 25, 1977, Court of Appeals (Joint Section), No. 355, Italy) Appeal of a lower court decision which dismissed plaintiff's request for overtime compensation and seniority allowance on grounds of lack of jurisdiction. Plaintiff was employed from 1954 to 1973 as a fireman at the Air Facility of the U.S. Armed Forces stationed in Italy. The lower court found it lacked jurisdiction under customary principles of international law which exempt foreign countries and their public agencies from Italian jurisdiction in respect of the exercise of their institutional ends. Plaintiff appealed, on the ground that his claim was based on a labor relation which was covered by the July 17, 1957 agreement between the Italian Ministry of Labor and the commanding officer of the U.S. Armed Forces regulating the treatment of non-U.S. civilian personnel hired by the Armed Forces and that since the tasks he performed were totally outside the institutional purposes of the foreign country, the armed force's jurisdictional immunity was inoperative. Appellee likewise filed a counterappeal with written statements. On appeal, the Court of Appeals reversed on the following,
inter alia, substantive grounds: (1) that specific provisions in the NATO
Convention regarding the employment of civilian personnel by a NATO member
country or organization precluded the application by the lower court of
customary principles of international law, especially where such provisions
in the Convention provided that the laws of the host country will govern in
respect of employment matters; (2) that an examination by the Court of
Appeals of the type of organization for, and the legal conditions under,
which appellant rendered service to appellee clearly showed that appellant
belonged to that category of civilian personnel which under Article IX,
paragraph 4 of the Convention, is subject to the laws in respect of, inter
alia, the employment, working conditions and, in particular, wages, as well
as conditions for worker protection of the host country. In particular,
this article provided that employees belonging to this category are subject
to the provisions of local civil law which, under the Italian Code of Civil
Procedure, makes them subject to Italian jurisdiction. The Court also
cited that Appellant's insurance under the Italian social security system
and the inclusion of a schedule relating to firemen employed by the armed
force in the July 17, 1957 Agreement under which Appellant based his appeal
which provided that "the recruitment, administration and payment of
personnel hired by the U.S. Armed Forces" was "in implementation" of said
article of the Convention, as additional proofs of Appellant's status.
Furthermore, the Court declared that the intent of this particular
 provision of the Convention — which is to safeguard the independence of
NATO countries and organizations wherever they may be operating, and at the
same time to subject the host country to as little limitation on its own
sovereignty in its own territory as possible and to promote the better
employment of its own citizens — would be frustrated if employees falling
under this provision of the Convention were prohibited from having recourse
to the judges of their own country. The Court of Appeals declared the
lower court in error, held that Italian courts have jurisdiction, set aside
the decision of the lower court and ordered appellee to pay court costs.

53. Talavera v. International Bank for Reconstruction and Development
(IBRD) and Insurance Company of North America (Case No. 77-DCWC-145/OWCP
benefits on behalf of the widow and minor children of the deceased, a
former staff member of the IBRD. Plaintiff claimed that the staff member's
injury and death arose out of and in the course of employment. By letter
dated March 9, 1977, the Claims Examiner affirmed that plaintiff's claim as
to the cause of death appeared to be correct. However, the Examiner
declined to recommend payment of death benefits, in view of the fact that
the IBRD had not "expressly waived its immunity to the District of Columbia
Workers' [sic] Compensation Act", concluding that "[t]herefore, the Interna
tional Bank for Reconstruction and Development is not within the juris-
diction of that Act". Cited in World Bank Legal Files
(C. A. No. 501-77) Memorandum Order of September 8, 1977, D.C. Cir.) Suit  
filed in the U.S. District Court for the District of Columbia, alleging  
civil conspiracy, libel and slander and a claim for damages against the  
Secretary-General of the Organization of American States (OAS), the  
Director of Public Information of OAS, the United Press International, the  
ANSA News Agency, the agents for UPI and ANSA, and three John Does. The  
twelve plaintiffs were former employees of OAS who were separated from  
service during a reduction in force. At Secretary-General Orfila's  
request, the Assistant Chief of Protocol of the Department of State issued  
a certificate stating that the two officials named in the suit "are  
ettled to the immunities conferred by Section 7(b) of the International  
Organizations Immunities Act". This case was never tried. It was with-  
drawn and later refiled in the Superior Court of the District of Columbia.  
On June 2, 1977, Judge Revercomb of the Superior Court of the District of  
Columbia granted the Defendant-OAS' motion to dismiss with prejudice, on  
the ground that as a matter of law he "could not ascertain an identifiable  
class that has been defamed . . . .", without, however, touching on the  
question of the immunity claimed by OAS. On appeal, the District of  
Columbia Court of Appeals issued an order, sua sponte, on September 8,  
1977, dismissing the appeal, in view of the failure of appellants' counsel  
to file a timely response to the Court's show cause order. Cited in World  
Bank Legal Files

Jasbez v. International Center for Advanced Agricultural Studies  
in the Mediterranean  (Judgment of October 21, 1977, Court of Cassation,  
Italy) Appeal of a lower court decision in an employee suit which held  
that Italian courts have jurisdiction over the case. The Center appealed  
before the Court of Cassation claiming that it is immune from the jurisdic-  
tion of Italian courts under the Paris Agreement of May 21, 1962, and  
Ratification Law No. 932, and that such immunity extends to its organs, one  
of which is the Institute. The Court of Cassation affirmed the decision of  
the lower court. While generally accepting the Center's immunity from  
jurisdiction under the above agreements, the Court of Cassation deemed such  
immunity to be subject to limitations, such that only some aspects of labor  
relations fall within the area of exemption from jurisdiction. Applying a  
two-pronged test, the Court found that plaintiff's duties as a simultaneous  
interpreter did not fall within the intellectual-deliberative process of  
fulfilling the purposes of the institution, nor did they constitute a  
participation in the function fulfilled by that institution and that there-  
fore the Italian court has jurisdiction. 61 Rivista di Diritto Interna-  
nazionale 577 (1978)
56. **Beaudice 6/ (sic) v. Agency for the Safety of Aerial Navigation in Africa and Madagascar (ASECNA)** (Judgment of November 23, 1977, Appeals Court, 1st Division, Paris, France) Appeal for the reversal of an arbitral award rendered in France between a French employee and ASECNA, an employer created by international agreement. The arbitrator had found that the employee's rights under the contract with respect to his period of employment and the termination procedure had been complied with and dismissed the complaint. Appellant appealed under Article 1010 of the French Code of Civil Procedure which provided that the only remedy against an arbitral award is an appeal. Without responding directly to ASECNA's claim of immunity, the Appeals Court held the appeal to be admissible because both parties have implicitly designated in the employment contract that French law would govern the arbitration. At the same time, the Appeals Court dismissed the appeal for lack of merit and ordered appellant to pay the costs of the appeal. Cited in World Bank Legal Files

57. **General Headquarters of Allied Ground Forces in Southern Europe (FTASE) v. Ferrero, Sanita, et al.** (Judgment of February 6, 1978, Court of Appeals (Section 1), Italy) Appeal of a lower court decision which, inter alia, held that Italian courts have jurisdiction over an employee suit against FTASE. Appellees, who were employed as telephone operators, filed suit in which they claimed that they received lower pay than provided for under Article 8 of the Paris Accord and under certain collective bargaining contracts applied to similar workers in Italy, in violation of the Accord. The lower court had held itself competent under Article 8(f) of the Accord and because the dispute involved the employment relationship between FTASE and the appellees, which the court held to be of a private law nature. FTASE appealed to the Court of Appeals of Verona. The Appeals Court affirmed the decision of the lower court and, in addition, went further to suggest that even if the relationship were of a public law nature, Italian courts would have jurisdiction under Italian law. On further appeal, the Court of Appeals rejected FTASE's claims and declared that: (a) under Italian law civilian personnel with local status hold subjective rights in relation to the parties to an international agreement, especially where the agreements involved provided expressly for the safeguarding of the juridical positions of such personnel, such as the case at hand; (b) the lower court had correctly held the work relationship to be of a private law nature; and (c) the lower court had correctly held FTASE regulations, which that court had found to be in violation of the Accord, to be null and void. Holding thus that Italian courts have jurisdiction both under the Accord and under the 1951 London Convention on the Status of Armed Forces, the Appeals Court dismissed the appeal of FTASE. 62 Rivista di Diritto Internazionale 441 (1979)

6/ Should be "Beaubier".
58. Bellaton v. European Space Agency (ESA) (Judgment of May 24, 1978, Cour de Cassation Sociale, France, 1978) In an action against ESA for indemnity which plaintiff claimed on the basis of the termination of his employment contract, the Court declared that international organizations enjoy, on the basis of their statutes, immunity from jurisdiction which they may renounce, if they so choose, in each particular case. Consequently, without such express renunciation, French courts would lack competence in an action for indemnity, such as in the case at hand. The Court stated that the protocol on the privileges and immunities of ESA expressly provided for such immunity. 25 Annuaire Français de Droit International 893 (1979)

59. F.I.I.T.A.T.-C.I.S.L. Union of Vicega v. North Atlantic Treaty Organization (NATO) Command of Verona (Judgment of July 7, 1978, Court of Cassation, Italy, No. 3368) Suit by a union to order, inter alia, the cessation of alleged anti-union activities by the FTASE-NATO Command of Verona. The Court found that it lacked subject matter jurisdiction. It found that the Conventions regarding relations between NATO organs and contracting States (the London Convention of 1951, the 1952 Paris Protocol on the Status of the International Military Bases, and the Agreement between the Italian Government and the Supreme Command of the Allies, parties to the Atlantic Treaty, signed in Paris in 1961) do not contain any rule or principle which extends to said organs the substantial and procedural rules of Italy regarding union activities. Furthermore, the Court stated, the Italian Workmen's Statute requires any agency subject to it to so modify its structure as to allow the enforcement of the labor laws. The Court of Cassation stated that the Italian State cannot interfere with an international body, adding that the Statute only applies to agencies and not to the public administration to which an international body can be best compared. 62 Rivista di Diritto Internazionale 158 (1979)

60. Weidner v. International Telecommunications Satellite Organization (INTELSAT) (C.A. No. 12328) September 21, 1978, D.C. Cir. (392 A. 2d 508) Former employee's appeal of a wrongful discharge action. The Superior Court of the District of Columbia, by Order dated May 16, 1977, granted INTELSAT's Motion to Dismiss appellant's complaint on the ground of INTELSAT's immunity. In a Per Curiam decision dated September 21, 1978, the Court of Appeals for the District of Columbia affirmed the lower court's decision. In rejecting the appeal, the Court of Appeals held that the designation by presidential executive order of INTELSAT as an international organization is "well within the President's authority and does
not constitute an ultra vires act" and that INTELSAT's immunity, which was granted after the cause of action arose, operates retroactively and therefore bars courts which lack jurisdiction to enforce actions arising before the grant of immunity. The Court of Appeals also rejected appellant's contention that the immunity extended to international organizations is different from that enjoyed by foreign governments, such that INTELSAT enjoys a "less protective immunity than foreign governments" under the International Organizations Immunities Act. Stating that it found no such differentiation was clearly intended by Congress, the Court of Appeals affirmed the decision of the lower court and dismissed the appeal.

61. The Confederale Headquarters of the Italian General Confederation Of Labor (CGIL) and the CGIL-affiliated Teachers Union of Bari Province v. the Bari Institute of the International Center for Advanced Agricultural Studies in the Mediterranean (Judgment of April 27, 1979, Court of Cassation (Case No. 2425), Italy) Appeal on jurisdictional grounds of a lower court decision which declared as illegitimate certain regulations of the Institute which subjected the political activity of its employees and their ability to hold public office to prior authorization by the Institute's Secretary-General. The Court of Cassation, held, inter alia, that Italian courts do not have jurisdiction in respect of claims for the cessation of anti-trade union activity and the removal of its effects under the Italian law on the Statute of Laborers which was invoked by CGIL. According to the Court, although such claims are protected under Italian law, the Court of Cassation held that they may not be invoked against the Institute without adversely affecting its organization, as the Italian State "is not authorized to interfere with the organization of international bodies". 62 Rivista di Diritto Internazionale 793 (1979)

62. Novak v. World Bank (EEOC Charge No. 032-790528) (May 31, 1979) Charge of discrimination filed against the World Bank (the Bank) by an employee who was dismissed because of unsatisfactory performance. Complainant charged that he was discriminated against on the basis of his national origin (U.S.). The Equal Employment Opportunity Commission, in an order dated May 31, 1979, dismissed the charge for lack of jurisdiction. The Commission stated that the Bank is an international governmental agency and as such is not subject to U.S. law or the laws of any of its other members. Cited in World Bank Legal Files
63. **Ezcurra de Mann v. Inter-American Development Bank** (IDB) (Judgment of June 11, 1979, Court of Appeals, Argentina) Suit filed by a dismissed employee. IDB claimed immunity under the Agreement Establishing the Bank and Ratification Act 14,483. Furthermore, IDB asserted that under Article XI of said Agreement and under a Supreme Court ruling, absent IDB's express consent, Argentine courts lack jurisdiction. Article XI provided, inter alia, that in addition to the status, immunities and privileges to be accorded to IDB, "actions may be brought against it only in a court of competent jurisdiction in the territories of a member in which the Bank has an office [or] has appointed an agent for the purpose of accepting service or notification of process". The Supreme Court rule provided that "employment-related claims by Argentine employees of foreign diplomatic establishments are subject to the provisions of Article 24(1) of Decree-Law 1285/58, which requires the consent of the foreign state for such claims to be heard by Argentine courts (Gomez, Samuel v. British Embassy, 24.6.76; and similarly, Embassy of France, 24.6.76, Derecho del Trabajo, 1976, p. 571, etc.)". In its decision of August 15, 1978, the National Labor Court held that IDB was entitled to the diplomatic immunity accorded to foreign states and was immune from jurisdiction under the Agreement and that, with respect to actions brought against it, IDB's agent "is empowered to accept service or notification of process or, conversely, not to accept same". On appeal, the appellate court upheld both the correctness of, and the grounds for, the lower court's decision. The appeals court reaffirmed that IDB enjoyed diplomatic immunity, that "the consent of the defendant is required for the matter to be heard by the courts", and that with respect to actions brought against IDB, "the Bank may or may not accept such service or notice". (Underlining in original in Spanish.) Cited in World Bank Legal Files

64. **Novak v. World Bank** (C.A. No. 79-0641) (Memorandum Order of June 12, 1979, D.D.C.) (20 EPD P30, 021; 20 FEP Cases (BNA) 1166) Civil action filed against the World Bank (the Bank) in the U.S. District Court for the District of Columbia. Plaintiff, an employee who was dismissed for unsatisfactory performance, alleged that the Bank had discriminated against him on the basis of age (51) and nationality (U.S.), in violation of various U.S. civil rights and equal employment statutes. Plaintiff further asserted that the Bank favored foreign nationals and younger professionals. Plaintiff sought an injunction prohibiting the Bank from engaging in its discriminatory practices and reinstatement in his former position. The Bank filed a motion to dismiss the action for lack of jurisdiction and justiciability, in which it claimed that U.S. courts do not and should not have jurisdiction to grant relief against an intergovernmental organization in suits arising out of the employment relationship. Furthermore, the Bank claimed that the Civil Rights Act of 1964 and various equal employment
statutes do not apply to intergovernmental organizations and that therefore
the complaint failed to state a claim upon which relief can be granted. Members of the Bank's Staff Association filed an amicus brief solely on the
issue of jurisdiction and justiciability, in which the Association claimed
that the Bank's Articles of Agreement waive immunity from suit, except for
suits by member states. The Association also stated that employment con-
tracts are not merely internal matters, but are commercial activities
involving a bilateral, contractual relationship between the Bank and its
employees. The Association claimed that the Court has jurisdiction over
the case and if necessary can apply the substantive laws of other states
and countries or international law. By Memorandum Order handed down on
June 12, 1979, Judge Richey of the U.S. District Court for the District of
Columbia granted the Bank's motion to dismiss, on the ground that plain-
tiff's complaint failed to state a claim. In its decision, the Court did
not rule on the issue of immunity, stating that, "[i]n reaching this
result, the Court makes no ruling whatsoever with respect to the scope, or
existence, of any immunity claimed by the World Bank." Plaintiff filed a
Notice of Intent to Appeal but subsequently abandoned the appeal. See,
however, cases 70 and 80 below.

65. **Groll v. Air Traffic Services Agency** (EUROCONTROL) (Judgment of
September 14, 1979, State Labor Court of Baden-Wurttemberg, Germany)
Employee suit against EUROCONTROL, the facts of which parallel the Strech
case (No. 66, below), and resulted in a similarly worded judgment dismis-
sing the suit. Cited in World Bank Legal Files

66. **Streich v. Air Traffic Services Agency** (EUROCONTROL) (Judgment of
September 28, 1979, Appellate Labor Court for Baden-Wurttemberg, Germany)
Appeal of the decision of the Labor Court of Karlsruhe which declared that
it had jurisdiction over an employee dispute between EUROCONTROL and its
staff member. The staff member had petitioned the Karlsruhe Court for
relief, claiming payment of the difference between the remuneration he had
received while domiciled in Germany and that paid to him after he moved to
France. The Appellate Labor Court annulled the lower court's decision on
the ground that German courts lack jurisdiction. The issue of jurisdiction
revolved largely around the interpretation of paragraph 5 of the Special
Protocol to the International Agreement on Cooperation for Air Traffic
Safety. Paragraph 5 stated that "the jurisdiction of intrastate courts in
reference to disputes between the organization and the personnel of
[EUROCONTROL] are not restricted either by the agreement or by the statute
attached to it as an annex." According to the Appellate Court, this provi-
sion merely preserved the jurisdiction of national courts insofar as such jurisdiction existed, but since, in fact, these courts had no jurisdiction, this provision of the Special Protocol need not be implemented. In reaching this conclusion, the Court took account of the fact that competent intergovernmental organs of the defendant had decided that all staff appeals were to be referred to the ILO Administrative Tribunal, which had been recognized as a genuine judicial institution and therefore fulfilled the requirement that no person may be deprived of his day in court. Cited in World Bank Legal Files

67. *Velasquez v. Asian Development Bank* (ADB) (Case No. RB-IV-AB-1841-79) (Decision of November 25, 1979, Ministry of Labor, Region IV, Manila, Philippines) Complaint filed in the Philippine Ministry of Labor in which a staff member, who was dismissed for misconduct, alleged illegal termination and claimed reinstatement and back wages. ADB declined to accept the summons and to appear before the hearings, claiming, *inter alia*, that it is immune from jurisdiction under the Agreement Establishing the [ADB] and the Headquarters Agreement between the Bank and the Philippine Government. The Labor Arbiter concluded that it had jurisdiction because ADB failed to show that the above-mentioned Agreements had been ratified, and that even if they were effective, they had been superseded by the New Labor Code and the rules and regulations implementing the Code. Since the complaint involved an employer-employee relationship, the Labor Arbiter declared ADB subject to the provisions of the Code and ordered ADB to reinstate and to pay complainant the back wages claimed plus interest. ADB made representations to the Ministry of Foreign Affairs regarding its immunity from suit under its Charter and the Headquarters Agreement. The Ministry of Foreign Affairs, upholding ADB's immunity, advised the Ministry of Labor on January 25, 1980 that the latter had no jurisdiction to entertain the complaint. Cited in World Bank Legal Files

68. *Broadbent, et al. v. Organization of American States (OAS), et al.* (C.A. No. 78-1465) (628 F.2d 27) (January 8, 1980, D.C. Cir.) Appeal of the Order and Memorandum of March 28, 1978 of the U.S. District Court of the District of Columbia which vacated the District Court's January 25, 1978 Order and dismissed the employee suit against the OAS, finding the OAS immune from all suits. Appellants, seven staff members who were dismissed following a reduction in force, had filed suit claiming reinstatement after the OAS, under the terms of an OAS Administrative Tribunal judgment, had alternatively chosen to pay indemnity to, rather than reinstate, the
appellants. In its January 25, 1978 Order, the District Court had held it had jurisdiction, but reversed that holding and dismissed the case on March 28, 1978. (481 F.Supp. 907) Appellants then filed an appeal before the U.S. Court of Appeals for the District of Columbia. In this appeal, several international organizations (IDB, IBRD, INTELSAT, and the UN) as well as the United States Government filed briefs as amici curiae in support of the OAS' position. On January 8, 1980, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the lower court's holding and dismissed the suit. The Court of Appeals' holding, which is on different grounds from that of the lower court's, centered on the unique nature of the international civil service and the harm which could result if national courts interfered in the personnel matters of international organizations. It noted the two theories of absolute and restrictive (i.e., for non-commercial activities only) immunity for international organizations, but held that regardless of which theory is applicable, the present action by the staff members of OAS cannot be brought because "the relationship of an international organization with its internal administrative staff is non-commercial, and, absent waiver, activities defining or arising out of that relationship may not be the basis of an action against the organization".

69. **Mendaro v. McNamara** (EEOC Charge No. 032-800226) (February 12, 1980) Charge of discrimination filed against the president of the World Bank (the Bank) by a staff member. The charge was referred by the Equal Employment Opportunity Commission to the District of Columbia Office of Human Rights which Office declined to assert jurisdiction over the charge and referred the charge back to the EEOC. On February 12, 1980, the Washington Area office of the EEOC dismissed the charge on the ground that it lacked jurisdiction over the Bank. The State Department then filed a letter at the national level of the Commission to the effect that relevant provisions of domestic and international law and sound policy considerations preclude the Commission from exercising jurisdiction over the Bank. On July 22, 1980, the national level of the Commission confirmed the decision of the local EEOC office. Thereafter complainant filed suit in the U.S. District Court for the District of Columbia (case No. 79, below). Cited in World Bank Legal Files.

70. **Novak v. World Bank** (C.A. No. 79-2382) (April 28, 1980, D.C. Cir. (per curiam)) Appeal of the decision of the U.S. District Court for the District of Columbia dismissing plaintiff's second lawsuit 7/ against

the World Bank (the Bank). In his complaint plaintiff, who was terminated, alleged negligence by the Bank and personal injury arising from the manner in which the Bank supervised and evaluated the staff member. The District Court dismissed the suit on the grounds that the allegations involved the same transactions covered by a previous suit by the staff member against the Bank 8/, which was dismissed for failure to state a claim. The Court held that the dismissal of the first suit acted as a bar to the second, under the principle of res judicata. The Court made no ruling as to the Bank's contention that the Bank's Articles and status as an international organization deprive U.S. and other national courts of jurisdiction to grant relief against the Bank in employee suits. Plaintiff then appealed, claiming that, for a number of reasons, the first action could not be considered as res judicata on the second action. On the jurisdictional issue, appellant argued that since the court in the first case failed to reach this issue, the dismissal was void and cannot be considered a dismissal on the merits for res judicata purposes. The Bank filed a Motion for Summary Affirmance of the District Court's decision on the second case, preserving its jurisdictional arguments, arguing that the lower court had properly concluded that the second action was barred under principles of res judicata by the dismissal of the first action, because (1) both cases arose out of the same set of occurrences and involved the same cause of action for purposes of res judicata; (2) the dismissal of the prior action for failure to state a claim operated as a judgment on the merits under the Federal Rules of Civil Procedure; and (3) the legal theory of recovery asserted by plaintiff in the present case could and should have been raised in the prior action. In a one-sentence decision the Court of Appeals summarily affirmed the lower court's dismissal of the case. Cited in World Bank Legal Files.

71. Van Kuijff v. European Space Agency (ESA) (1 Ca 359/80) (Judgment of November 27, 1980, Labor Court of Darmstadt, Germany) Suit by a person who was originally employed by a contractor of ESA, seeking a declaration from the Labor Court to the effect that he is an employee of the computer center of ESA, under the German law on temporary employment. The complainant claimed that the non-renewal of his contract was tantamount to notice of termination and that this notice was contrary to social principles; he also claimed that ESA's claim of immunity from jurisdiction had been waived by the Agreement of 1967 under which ESA was established. On November 27, 1980, the Labor Court dismissed the complaint, holding that ESA is immune from suit and, in particular, that it is immune from a suit by a person originally employed by a contractor of ESA. Cited in World Bank Legal Files

72. **Mininni v. The Bari Institute of the International Center for Advanced Agricultural Studies in the Mediterranean** (Judgment of November 29, 1980, Pretore of Bari, Italy) Claim for unpaid salaries plus devaluation, interest and expenses by an employee of the Institute. The Institute filed motions to protest the attachment by complainant of the Institute's assets in a local bank and to dismiss the service of injunctive decrees and attachment orders which have been requested by complainant. The Institute claimed, *inter alia*, that it is immune from any forced execution in respect of its implementation of an international agreement to which Italy was a party, and that the forced execution brought about a modification in the scheduled activity of the Institute. According to the Institute, such modification constituted an illegitimate interference by the Italian Government in the autonomy of the Center and, consequently, of the Institute. The Pretore of Bari examined the Agreements which created the Center, of which the Institute is a part, and found that Article 13 of the Paris Agreement of May 21, 1962, as ratified by Italy, provided that "in the territory of the Contracting States, the Center enjoys legal capacity, and the privileges and immunities envisaged in Title I of the Protocol Number 2 added to the present Agreement". Title I, Articles 1 and 2 of Protocol Number 2, provided that the Center, "its properties and assets, wherever they may be located and whoever may be their holder, enjoy immunity from jurisdiction, except as the Center may have expressly renounced in a particular case". The Pretore of Bari declared that the properties and assets of the Institute are "free from any executory measure" and furthermore, since the Institute had not waived its immunity in this particular case, that Italian courts lack jurisdiction in the dispute between its staff and an international organization. 64 Rivista di Diritto Internazionale 681 (1981)

73. **Labor Union F.I.L.T.A.T.-C.I.S.I.L. (Italian Labor Union) of Verona v. General Headquarters of NATO's Allied Land Forces and Southern Europe, in Verona** (Judgment of March 24, 1981, Supreme Court (Cassazione) (United Sections), No. 1677, Italy) Appeal filed by labor union-appellant requesting the Court to require the Pretore of Verona to issue an order against the Headquarters of the Allied Land Forces in Verona to abstain from hiring non-union workers during periods of strike by its members. The union had claimed that such activity by Headquarters was in violation of Article 28 of the Law of May 20, 1970, Number 300, and furthermore that it was in violation of certain labor regulations. General Headquarters claimed that it was exempt from the jurisdiction of the Italian courts. The matter was referred to the Supreme Court, following a request by the Supreme Commander of the General Headquarters of the Allied Land Forces of Southern Europe, of which General Headquarters is a subordinate organ, which submitted a
petition to the Supreme Court for settlement of the case on the jurisdictional issue, in effect, requesting a stay of the case on the merits. The Supreme Court, in its decision handed down on March 24, 1981, declared that Italian courts lacked jurisdiction in respect of the dispute between the labor union and General Headquarters. The Court stated that in accordance with well-established principles in Italian law, and in consonance with the Court's recent decisions, the provisions of the London Convention of June 19, 1951, of the Paris Agreement, and of the Protocols annexed to the Paris Agreement, govern the determination of the relations between the bodies created by these treaties and the signatory countries. While it appeared that these treaties expressly provide for the status of the civilian and military personnel of these Headquarters, no mention had been made of the Headquarters' relations with the labor unions. In this respect, the Court declared that "such a gap cannot be filled by Italian law". The Court added that the international nature of these bodies requires that they be accorded similar treatment as a State, which, under principles enunciated by the Court, are necessary to prevent interference from third parties as to their structure and as to the conduct of their operations. The Supreme Court thus declared the lack of jurisdiction by Italian courts in the case. 64 Rivista di Diritto Internazionale 679 (1981)

74. **Heltzel v. Air Traffic Services Agency** (EUROCONTROL) (Judgment of November 10, 1981, Federal Constitutional Court, Second Senate, of Germany) Motion filed by a staff member of EUROCONTROL before the Federal Constitutional Court for the issuance of a provisional order that would have required the Administrative Court to take jurisdiction of the case pending final judgment by the Constitutional Court on his complaint against respondent. Petitioner in a petition submitted earlier to the Administrative Court of Karlsruhe, had requested for an order extending his employment contract and the continuation of his salary pending the final determination of his complaint against EUROCONTROL. The Karlsruhe Court had held the petition inadmissible on the ground, inter alia, that the respondent organization enjoys immunity from the national courts of treaty nations in respect of disputes with its staff. Under the multilateral treaty creating EUROCONTROL, to which Germany was a party, the organization has legal personality both under international law and in intrastate legal dealings and, therefore, the right to develop a personnel statute for its

The Supreme Court stated that "[t]he principles on which is based the decision on immunity from jurisdiction" are those stated by the Court in cases 59 and 61 above.
staff, which it had done. While recognizing that this immunity was not expressly conferred, the Court declared that it was required in order to permit the organization to carry out its tasks "properly and impartially". Moreover, since the treaty states had approved an agreement between EUROCONTROL and ILO to permit the latter's Administrative Tribunal to exercise jurisdiction over employment disputes — and the Tribunal had affirmed its jurisdiction in a 1976 case 10/, and others were pending — that, therefore, German courts had no jurisdiction. Petitioner then appealed before the Administrative Court of Baden-Württemberg, which affirmed the decision of the Karlsruhe court and rejected the appeal for similar reasons. In addition, the Court of Baden-Württemberg added that the assignment of employment cases to the ILO Administrative Tribunal is unobjectionable under the German Constitution. Thereafter petitioner filed the present motion before the Federal Constitutional Court, which denied the request. In declining to issue the provisional order, the Constitutional Court weighed the potential benefits and harms to the petitioner against those to the defendant from the granting or the denial of such an order. In particular, the Court speculated that by granting such an order it would incur the danger of causing the Federal Republic of Germany to violate international law, since it may appear that EUROCONTROL enjoys immunity under international treaties or customary law against suits by members of its staff. The Court thus dismissed the case. Deutsches Verwaltungsblatt 1980, p. 127

75. **Tuck v. Pan American Health Organization (PAHO)** (C.A. No. 80-2553) (November 13, 1981, D.C. Cir., 668 F.2d 547) Appeal of the decision of the U.S. District Court for the District of Columbia dismissing plaintiff's lawsuit against PAHO and its Director. In his suit, plaintiff, who was the outside attorney for the PAHO Staff Association, claimed that PAHO and its Director had tortiously interfered with his contract for legal services with the PAHO Staff Association by restricting his activities on PAHO's property; that PAHO had discriminated against plaintiff, who is black, by restricting his providing legal services to PAHO staff; and that PAHO had violated the U.S. Constitution by affecting his rights since the U.S. government is a member of PAHO and thus action by PAHO is action under the U.S. Constitution. On November 14, 1980, the District Court entered a Memorandum Order granting appelees' Motion to Dismiss. In the Order, Judge Pratt declined to reach the jurisdictional and immunity issues raised by appelees, and dismissed plaintiff's action on the ground that the complainant failed to state a cause of action. On appeal, the U.S. Court of Appeals in its November 13, 1981 decision upheld part of the District

10/ **In re Breuckmann**, Judgments I.L.O. Ad. Trib. no. 322.
Court decision for reasons other than those relied upon by the lower court, and remanded as to another part. Without deciding on the question of absolute versus restrictive immunity for international organizations, the Court of Appeals confirmed the Broadbent 11/ approach of not resolving that issue since dismissal would occur under application of either theory of immunity. Furthermore, the Court of Appeals opinion expanded on the Broadbent decision in two ways: first, the Court of Appeals emphasized the harm of bypassing the question of immunity to reach the merits of cases when immunity is involved; and, secondly, the Court stated that not only is a suit by an employee barred by an international organization's immunities but also one arising from an international organization's "supervision of its civil service personnel, and from its provision and allocation of office space" (the plaintiff was not a PAHO staff member). Finally, while confirming that the PAHO Director is immune for activities carried out in his official capacity, the Court of Appeals remanded to the District Court the issue of whether the Director can be held personally liable for plaintiff's claims. Following remand, plaintiff filed a "Motion to Withdraw the Case from Further Consideration". By Order dated January 18, 1982, Judge Pratt of the U.S. District Court for the District of Columbia granted plaintiff's motion and dismissed the case with prejudice. Cited in World Bank Legal Files

76. Gupta v. International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) (Q.B., 1981 G-No. 2128, Judgment of February 19, 1982, England) Claim filed in the U.K. High Court of Justice, Queen's Bench, by an Indian national who was hired in 1978 under a contract by the Bangladesh Chemical Industries Corporation (BCIC) to carry out certain studies for the Government of Bangladesh. The foreign exchange costs of these studies were to be financed by an IDA credit under an agreement between the Government of Bangladesh and IDA. Following disputes between BCIC and Gupta, and Gupta's unsuccessful attempts to obtain a financial settlement from BCIC, Gupta instituted arbitration proceedings before the International Chamber of Commerce (ICC) in Paris, in which IBRD and IDA were also cited as co-defendants. ICC dismissed the case against IBRD and IDA on their claim, which ICC accepted, that neither IBRD nor IDA had contractual ties to Gupta. Gupta then filed the present action against IBRD and IDA, alleging that since IDA financed his consultancy contract with BCIC, IDA was a principal to the contract, and claiming about $200,000 for fees, damages for loss of reputation, anxiety, breach of contract, and for negligent advice on his tax status. As a preliminary step, IBRD and IDA presented a motion before the Court to

11/ See case no. 68, above.
declare that English courts had no jurisdiction. At a hearing held before the High Court on November 19, 1981, Master Bickford Smith set aside service and stayed proceedings in the case on the ground that Gupta had not established any basis for jurisdiction in the U.K. The Court ordered Gupta to pay defendants costs, including counsel fees. Gupta then filed an appeal, which was dismissed on February 19, 1982. In his decision, Mr. Justice Drake stated that, on the evidence presented, the Bank's and IDA's presence in England was not sufficient for the purpose of the U.K. Rules relating to service of process which required that the defendants be carrying on business in the U.K., which the Court found they were not. Gupta was ordered to pay costs and was denied leave to appeal. Cited in World Bank Legal Files

77. **Kissi v. Jacques de Larosiere, Managing Director of the International Monetary Fund** (IMF) (C.A. No. 82-1267) (Judgment of June 23, 1982, D.D.C.) Suit against the Managing Director of the IMF in which complainant, appearing \textit{pro se}, alleged that repeated rejections of his several applications for employment with the IMF constituted unjustified arbitrariness and discrimination. Plaintiff had applied for a position as a junior economist in response to magazine advertisements by the IMF. He claimed that defendant's arbitrary denial of employment had caused him economic hardship, mental anguish and humiliation, for which he claimed an undetermined amount as compensatory and punitive damages. On May 27, 1982, the IMF responded to the complaint by filing a motion to dismiss, on the grounds of lack of jurisdiction, insufficiency of process, and insufficiency of service of process. The motion to dismiss was accompanied by a certificate from the U.S. Department of State which stated that by virtue of an executive order, the IMF had been designated as a public international organization and as such the Managing Director of the IMF is immune from suit and legal process with respect to acts performed in his official capacity or resulting from his functions. On June 23, 1982, Judge Joyce Green of the U.S. District Court for the District of Columbia issued a two-page Order dismissing the suit with prejudice on the grounds of IMF's immunity from suit. Judge Green cited that under Section 3, Article IX of the Articles of Agreement of the Fund, the IMF "shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity". Furthermore, Section 8, Article IX of the Fund's Articles provides that all Governors, Executive Directors and staff of the IMF "shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives its immunity". The Court observed that the IMF had not waived Mr. de Larosiere's immunity, as noted in an affidavit filed by the IMF, and held that the act of denying employment to plaintiff is within the Managing Director's official capacity. Cited in World Bank Legal Files
Mathew v. International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) and the Government of India (Judgment of August 18, 1982, High Court of Andra Pradesh, India) Petition for reinstatement by an employee whose services as editor were terminated. Plaintiff contended, inter alia, that his dismissal was arbitrary and violated the fundamental rights guaranteed to him under Article 14 of the Constitution, and that ICRISAT's privileges and immunities do not entitle it to terminate his employment arbitrarily. ICRISAT responded that under the United Nations (Privileges and Immunities) Act of December 20, 1947, the Agreement of March 23, 1972 relating to ICRISAT's establishment is an international agreement and that the Institute is an international organization and that therefore the grant of immunities under the October 28, 1972 Notification of the Government of India conferring immunities on ICRISAT was proper. The Acting Chief Justice of the High Court of Andra Pradesh declared, in effect, that the privileges and immunities granted to ICRISAT by the Government of India protected it against actions in the courts of India and dismissed the suit. In his opinion, the Acting Chief Justice declared that: "In sum, we hold that ICRISAT is an international organization, the United Nations (Privileges and Immunities) Act, 1947 is in force and applicable to the Telangana area of Andra Pradesh State where ICRISAT has its office and staff quarters, experimental seed farms and research labs; that the privileges and immunities are validly conferred on ICRISAT under the notification dated 28-10-1972 of the Government of India issued in exercise of the powers conferred on it under Section 3 of the United Nations (Privileges and Immunities) Act and render the ICRISAT immune from legal process... that the services of the petitioner have been validly terminated in accordance with the terms of his employment and does not violate the fundamental rights guaranteed to a citizen under Article 14... of the Constitution of India; that in any event, the privileges and immunities conferred on the ICRISAT makes the ICRISAT immune from any action by way of writ, suit or any other proceeding by its employees; that in any event, as the issuance of any writ direction or order against the ICRISAT interferes with the discharge of the international obligations undertaken by the Government of India, it is wholly inappropriate to do so." Cited in World Bank Legal Files

79. Mendaro v. The World Bank (C.A. No. 82-2247) (September 27, 1983, D.C. Cir. 717 F.2d 610) Appeal from a judgment of the United States District Court for the District of Columbia which dismissed a suit by a former staff member 12/ of the World Bank (the Bank). Appellant was a 36 year-old citizen of Argentina who held a succession of appointments as

a researcher from September 1977 through 1979. In her complaint before the District Court, she alleged that the Bank discriminated against her on the basis of sex in violation of U.S. civil rights statutes, for which she sought reinstatement, injunctive relief, back pay, damages and attorney's fees. The Bank responded by moving to dismiss the original action, arguing that it is an international inter-governmental organization not subject to its members' jurisdiction in suits arising out of the Bank's internal administrative affairs, such as the alleged violation of its employment contracts. Plaintiff while conceding that the challenged activities of the Bank would ordinarily be immune from judicial scrutiny, opposed the motion for dismissal claiming that Article VII §3 of the Bank's Articles permitted actions to be brought against the Bank "in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities." The District Court dismissed the action for lack of jurisdiction. The District Court rejected plaintiff's interpretation, on the basis of a reading of the Articles of Agreement as a whole and in reliance on the decision of the U.S. Court of Appeals District of Columbia Circuit in Broadent 13/. On appeal, appellant challenged the District Court's dismissal of her action under Title VII of the Civil Rights Act of 1964 14/, arguing that the Articles of Agreement of the Bank effectively waive the immunity from suit which the Bank would otherwise enjoy under the International Organizations Immunities Act. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court. In its decision issued on September 27, 1983, the Court of Appeals expressly held that the Bank enjoys the same broad immunity from employment-related suits as other international organizations. The Court recognized that the scope of the waiver of the Bank's immunity is defined by the Articles of Agreement under which the Bank was established and, in reading the Articles as a whole, the Court of Appeals concluded that the World Bank's immunity has been waived "only to the extent necessary to further its objectives" and, therefore, that the World Bank is subject to suit only in "actions arising out of its external commercial contracts and activities". The Court of Appeals also pointed out that this interpretation is consistent with its decision in earlier cases which involved international charters containing a partial waiver of immunity from judicial process and, finally, that the result reached in these decisions has likewise been supported by the Executive Branch of the U.S. Government.


80. **Novak v. World Bank and Madison National Bank** (C.A. No. 82-1329)
(December 21, 1983, D.C. Circuit) motion for summary affirmance granted
July 10, 1984; petition for rehearing en banc denied, August 24, 1984)
Plaintiff, in his third pro se action against the World Bank (see cases 64
and 70 above) filed a complaint on June 10, 1981, in the U.S. District
Court for the District of Columbia, charging age discrimination and
conspiracy between his former employer and his commercial bank to do him
bodily harm as part of the World Bank's termination of his employment.
Madison National Bank was served, appeared, and filed a motion to dismiss,
contending that if it was indeed a co-conspirator with the World Bank it
was thus in privity with the Bank and dismissal of the two previous actions
against the World Bank would act as a bar to the present action on res
judicata grounds. The World Bank declined to receive service of process and
entered no appearance. On February 4, 1982, Judge Richey of the U.S.
District Court for the District of Columbia dismissed the action with
prejudice as to Madison National on res judicata grounds and dismissed the
action, sua sponte, as to the World Bank, on the ground that plaintiff
failed to perfect service. On appeal, the U.S. Court of Appeals for the
District of Columbia Circuit vacated the District Court's judgment and
remanded the case for further proceedings. 15/ The Court of Appeals held
res judicata inapplicable to Madison National, because it was not a party
to appellant's earlier actions. The Court of Appeals likewise reversed the
District Court's dismissal of appellant's action against the World Bank, on
the ground that "there is a reasonable prospect that service can be made
on the World Bank". Following service on remand, the World Bank moved to
dismiss, partly on the ground that the District Court had properly
concluded that the Court of Appeals' recent decision in **Mendaro v. World
Bank** 16/, holding that the World Bank is immune from all employment-related
actions, was dispositive of the present case. By Memorandum Order dated
December 21, 1983, the U.S. District Court for the District of Columbia
Circuit granted Madison National's Motion for Summary Judgment and the
World Bank's Motion for Dismissal. Appellant filed a motion on April 3,
1984, whereby Madison National filed a motion for Disposition without
Oral Argument and Summary Affirmance, and the World Bank, a Motion for
Summary Affirmance. On July 10, 1984, the U.S. Court of Appeals for the
District of Columbia Circuit issued an Order (per curiam) granting both
motions. The Court of Appeals granted Madison National's motion on the
ground that the District Court had properly granted summary judgment
because of appellant's failure to present sufficient evidence to refute
Madison National's denial of a conspiracy. The Court of Appeals likewise
granted the World Bank's motion on the ground that under **Mendaro**, "[t]he
World Bank is immune from employee suit". Plaintiff then filed a motion
for rehearing en banc, which was denied by the Court of Appeals on August
24, 1984.


16/ 717 F.2d 610 (D.C. Cir. 1983), Case No. 79, above.
81. **Adiren v. Camarena, et al.** (C.A. 1314-84) (May 8, 1984, Superior Court of the District of Columbia, Civil Division) Complaint for Damages and Injunction for Discrimination, Interference with Contractual Rights, Infliction of Mental Distress and Damage to Reputation filed by a staff member against three of his supervisors in the Inter-American Development Bank. Defendants responded by filing a Motion to Dismiss Plaintiff's Complaint with Prejudice. On the basis of defendants' arguments and submissions, the Superior Court concluded that under international and United States law, defendants are immune from suit. The Court found that "in view of the clear and controlling authority mandating dismissal of this action, which was brought to the attention of plaintiff's counsel, the filing of plaintiff's Complaint was unreasonable and without grounds". Judge Murphy of the Superior Court of the District of Columbia, Civil Division, therefore granted defendants' motion and dismissed the complaint with prejudice and, furthermore, ordered plaintiff to pay defendants' costs 17/ and legal fees. Cited in World Bank Legal Files.

82. **Arthur Pierre, Belgium v. De Ruyck v. International Bank for Reconstruction and Development (IBRD)** (Docket No. 83.380) (Tribunal of First Instance, Antwerp, Belgium, filed June 14, 1984) Claim filed by A. Pierre, a shipping and storage company, for the payment of storage charges against De Ruyck, a former staff member of the IBRD. De Ruyck, whose appointment on seconndment was terminated in 1976 for unsatisfactory service, then filed a third-party complaint against the IBRD, claiming that the latter is responsible for the charges incurred after his termination. IBRD responded by filing a trial brief in which it argues, in part and in line with Mendaro: 18/ (1) that the Belgian court lacked jurisdiction because IBRD's Articles of Agreement as ratified by the Law of Belgium of December 26, 1945, provides for immunity from jurisdiction; (2) that while Article VII, 3 of IBRD's Articles provides for a limited waiver of immunity, such waiver applies only in respect of claims brought against the Bank "before a court of a member state where the Bank has an office or has appointed a functionary empowered to receive summonses or where the Bank has [issued] bonds or has guaranteed such [issuance]", that is, in respect of the Bank's commercial contracts and activities; and (3) that such waiver "does not apply to the Bank's internal operations, such as its relationship

17/ By order dated September 25, 1984, the Superior Court of the District of Columbia, Civil Division, taking account of the plaintiff's economic position and the voluntary reduction by defendants of their claim, ordered the award of costs at a discounted rate to defendants.

18/ See case no. 79, above.
with its own employees". Citing Mendeiro and other cases, the Bank also argued that the principle of immunity from jurisdiction enjoyed by international organizations has been unanimously accepted by national courts in and outside Europe in respect of similar suits involving matters relating to the organizations' internal affairs, which include employee-related disputes. The case is presently pending. Cited in World Bank Legal Files.

83. **Iran-United States Claims Tribunal v. Spaans** (July 9, 1984, District Court of the Hague, the Netherlands) Appeal of a lower court decision which found jurisdiction over a former employee's claims against the Iran-United States Claims Tribunal (the Claims Tribunal) in spite of the court's recognition of the Claims Tribunal's immunity. The opinion of the lower court in part stated: (1) that the parties have admitted or insufficiently contested that the Claims Tribunal was established under an international agreement and as such that the Claims Tribunal is a common institution of the two States, with a legal personality based on public international law; (2) that it had been established that the Government of the Netherlands takes the position that the Claims Tribunal enjoys the usual immunity of international organizations based on public international law, such immunity being essential for the fulfillment of the tasks for which they were created and, furthermore, that Articles 17 to 19 of the draft Convention between the Netherlands and the United States of America and the Islamic Republic of Iran expressly grant the Claims Tribunal such immunity; (3) that the parties have agreed that the Claims Tribunal can act autonomously in the fulfillment of its institutional tasks and that the employment agreement between the parties was concluded in pursuit of such tasks; and, furthermore, that it had also been established that the written employment agreement usually offered to the Claims Tribunal's employees provided that disputes between the Claims Tribunal and its employees involving personnel-related matters would be settled by the Claims Tribunal as the highest judicial authority; (4) that the lower court, while rejecting the applicability to the Claims Tribunal of the European Convention on the Immunity of States nevertheless held that as an international organization established by States, it enjoys the same immunity as States under the principle of State Immunity; and, finally, (5) citing the 3-pronged test developed by the case law in the area of State Immunity, in which acts of State ("acta jure imperii") are distinguished from commercial transactions ("acta jure gestionis"), the lower court held that this test should likewise be applied to international organizations such as the Claims Tribunal. Applying this test, the lower court held the conclusion of an oral employment contract by the parties to be an act falling under the second category and, consequently, declared itself competent to hear the case. On appeal, the District Court affirmed its agreement with the substance of the lower court's opinion insofar as it related to the
aforementioned five points. The District Court, however, which agreed with the Claims Tribunal's claim that it is immune under public international law, endorsed the agreement between the parties that the act in question clearly fell under the first category, and declared the lower court's contrary holding as clearly erroneous. As to appellee's claim that the absence of recourse for employees of the Claims Tribunal constituted deprivation of legal protection, the District Court held that in view of the recognition of the Claims Tribunal's immunity under public international law, the "lack of legal protection for employees of the Tribunal does not make the Netherlands judiciary incompetent". Consequently, the District Court quashed the judgment of the lower court and declared the Netherlands judiciary incompetent. Appellee has announced his intention to bring the case before the Supreme Court of the Netherlands. Cited in World Bank Legal Files.

84. **Sharma v. UNDP Regional Manager, South Asia** (Claim filed with the Office of the Labour Commissioner, Delhi Administration, India, October 10, 1983; administrative proceedings dismissed by the Labour Department, Delhi Administration, December 21, 1984; judicial proceedings pending before the Labour Court) Action filed against the UNDP Regional Manager in South Asia before the Office of the Labour Commissioner, Delhi Administration, by a former staff member of a UNDP Regional Project. Complainant claimed, in part, that the Commissioner has jurisdiction over the World Bank, which was the executing agency for the project in India in which complainant was employed. On December 21, 1984, the Secretary of the Delhi Administration, Labour Department, Delhi, determined that the Delhi Industrial Tribunal has no jurisdiction over the proceedings on the grounds that the World Bank is covered by the provisions of the United Nations (Privileges and Immunities) Act, 1947. The case remains pending, however, as the dismissal of the administrative proceedings by the Delhi Industrial Tribunal did not dispose of the separate judicial proceedings which are now pending in the Labour Court. Cited in World Bank Legal Files.

85. **Nudekor v. World Bank Resident Mission**, Lome, Togo (Labor Tribunal, Lome, Togo, filed March 1985) Claim for damages filed by a former local staff member whose employment was terminated for unsatisfactory service. The Resident Mission office has received summons from the Labor Tribunal to appear at a hearing and respond to the claims. Cited in World Bank Legal Files.

insurance carrier by the survivors of a Bank staff member and the estate of her husband who died in a plane crash in Ecuador while on home leave. The decedents, having arrived at the home leave destination, were on an excursion within Ecuador when their death occurred. Plaintiffs claimed that the incident was covered by the Bank's policies on home leave travel to or from headquarters, or, alternatively, that misunderstandings for which the Bank was responsible and ambiguities in the insurance and personnel policies covering home leave travel induced decedents to rely on the proposition that these policies covered incidents such as the one causing their death. The Bank responded by filing a Motion to Dismiss, on the grounds that its insurance benefits were provided to employees as part of their employment contract and, hence, under the Mendaro 19/ case, the District Court had no jurisdiction. Judge Joyce Hens Green of the U.S. District Court for the District of Columbia, relying on Mendaro 20/ and the Broadbent 21/ cases, squarely agreed, and granted the Bank's motion to dismiss. With respect to plaintiff's claim that the statutory grant of power to the Bank's Administrative Tribunal excluded their claims and that the Bank thereby waived its immunity to such claims, the District Court found that in fact the Statute of the World Bank Administrative Tribunal contained no such "express" waiver of immunity for claims like those asserted by the plaintiffs. In fact, the Court found that the Statute empowers the Tribunal to adjudicate claims made by a "member of the staff" alleging "non-observance of the contract of employment or terms of employment...." 22/, and, furthermore, that the term "member of the staff" is expressly defined in the statute to include "any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death...." 23/ Since this definition "clearly cover[ed]" the plaintiffs, the Court concluded that under Mendaro, the plaintiffs have failed to establish that the Bank has waived immunity for the claims. The insurance carrier was given a summary judgment in its favor on the ground that the insurance policy unambiguously excluded the travel from coverage.

19/ 717 F.2d 610 (D.C. Cir. 1983), see case no. 79, above.

20/ Id.

21/ This case involved OAS employees, see case no. 68 above. 628 F.2d 27 (D.C. Cir. 1980).


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