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Book Review: International Organizations before International Courts (2000)

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International Organizations Before National Courts. By August REINISCH. Cambridge: Cambridge University Press 2000. Pp. lxviii, 449. ISBN 0-521-65326-6. US$85.00.

Should a United States court adjudicate a libel suit against INTERPOL, or does INTERPOL enjoy immunity from such suits in national courts? What about a disgruntled employee suing in a German court to force Eurocontrol to make payments into the German social security system? When do national courts exercise jurisdiction over international organizations and when do they opt to abstain? August Reinisch, the author of this study, attempts to answer these questions by comparing over 240 national court cases involving international organizations (IOs) and assessing the reasons such courts accept or decline jurisdiction over IOs. The author goes beyond the issues of immunity and legal personality to explore the policy reasons and practicalities behind courts' decisions to decline or accept jurisdiction over IOs. The book is the latest in the Cambridge Studies in International and Comparative Law series. The author is a professor of public international law and European Community law at the University of Vienna School of Law, and a lecturer at the Austrian Diplomatic Academy in Vienna and the School of Advanced International Studies/Johns Hopkins University in Bologna.

This well-organized book is divided into an introduction followed by three distinct parts. The introduction sets forth clearly the purpose, parameters and methodology of the empirical study, as well as explaining the organization of the three main parts. For the purposes of the study, the author defines IOs as "entities consisting predominantly of states, created by international agreements, having their own organs, and entrusted to fulfil some common (usually public) tasks" [p. 5]. The umbrella term "international organizations" includes intergovernmental, inter-state, and public international organizations. Although the author does not generally include non-governmental organizations (NGOs) within his definition of IO,

where courts have accorded an NGO the privileges and immunities of an IO, the study takes those court decisions into account.

Part I describes the approaches and attitudes of national courts toward disputes involving IOs. This descriptive portion of the book is divided into two chapters: the first analyzes decisions where courts avoided adjudicating disputes involving an IO, while the second analyzes those cases wherein courts chose to adjudicate such disputes. Although the majority of the cases analyzed in the study are from United States and Italian courts (reflecting the locations of the United Nations, FAO and NATO), the cases examined come from courts worldwide. A meticulously prepared Table of Cases provides the reader with citation information sufficient to locate much of the material in most academic law libraries. In addition to the Table of Cases, the book contains a Table of Legal Instruments, a bibliography, and a useful index.

In Part II, the author parallels the arrangement of Part I, with the initial chapter presenting the policy reasons supporting judicial abstention and the following chapter discussing policy reasons arguing for adjudication by the national courts of disputes involving IOs. In contrast to Part I, where the author focused on the courts' reasoning in accepting or declining to adjudicate disputes involving IOs, Part II focuses on the author's and other scholars' assessment of the policies and rationale for declining or accepting jurisdiction. The author draws analogies to situations where national courts choose or not to apply international law[4] and to situations involving the exercise of jurisdiction by a domestic court over a foreign state. Woven throughout the discussion are the competing policy threads of protecting IO functionality and safeguarding private third party access to the courts.

In Part III, the author discusses the trends he has discerned in the case law and presents some suggestions for the future development of this area of law. His study of the decisions demonstrates that national courts do not rely exclusively on the concept of immunity but instead employ a broad range of legal rationale in determining whether to exercise jurisdiction over IOs. In seeking solutions which would adequately take into account the legal interests involved in a question of IO immunity, the author looks at "functional" immunity as an alternative to absolute immunity. He also suggests that the highly developed rules regarding diplomatic and consular immunities might provide a useful model in fleshing out some of the details concerning IO immunity. In addition, the author suggests that the existence of an alternative

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[4] For a collection of essays on the integration of international law into national court decisions, see Thomas M. Franck and Gregory M. Fox, *International Law Decisions in National Courts* (Irvington-on-Hudson, NY: Transnational Publishers, 1996).

dispute resolution mechanism should factor into the decision of whether an IO enjoys immunity, so that in instances where alternative fora are not available, the national courts ought to be more likely to adjudicate the dispute. He concludes by advocating for continuing "functional" immunity for IOs in disputes concerning the internal affairs of IOs, especially when such disputes are between an IO's member states or its organs. In these instances, the IOs should use their own dispute settlement mechanisms to resolve conflicts without any outside influence. However, in the majority of cases where the dispute is between an IO and a private third party (e.g., tort or human rights victim, or person providing personal services to the IO[5]) the author advocates against immunity, suggesting that the IOs ability to function will not be unduly hindered if the private plaintiff is allowed to pursue the claim in a national court. By employing this functional immunity rationale, the author posits, national courts will find the best balance between safeguarding the independence and functionality of the IOs with the fundamental right of access to courts by third parties.

This book is comprehensively researched and exhaustively footnoted, with the author supporting his proposals with references to a tremendous body of case law and legal literature. The work is a welcome entry in the rapidly expanding scholarship regarding international organizations, and this book should be a useful addition to any academic law library supporting research in international law.

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Modern Treaty Law and Practice. By Anthony AUST. New York: Cambridge University Press, 2000. Pp. 443. ISBN 0-521-59153-8 (hardback) US$120.00; ISBN 0-521-59846-X (paperback) US$44.95.

Anthony Aust's *Modern Treaty Law and Practice* came across my desk one day too late. If I had had it one day earlier, before teaching the treaty research section of a course on Research Methods in International Law, I could have astounded my students with my intimate knowledge and comprehensive understanding of treaties and treaty practice. As it happens,

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[5] The argument for IO liability in criminal actions is also receiving support in the legal literature. *See, e.g.*, Robert McLaughlin, "Improving Compliance: Making Non-State International Actors Responsible for Environmental Crimes," *Colorado Journal of International Environmental Law & Policy* 11 (2000): 377.