

## ANDORRA

### Preliminary remark

The document that was circulated by the Delegation of the Netherlands (document CAHDI (2014)5) has chosen to illustrate the question of the settlement of private disputes between individuals and international organisations with some relevant cases deriving from UN peace-keeping missions. It seems to us that the case of UN peace-keeping missions is a very specific topic, possibly one of the most problematic among all the international organisations operating in Member States territory and that this particular field may require different standards from other international organizations’ activities. Andorra has no military forces and is conscious that actions of the UN peace missions might lead to very intricate legal questions but has little direct involvement with the topic. Therefore, the contribution herein after is mostly based on the issues born from the relation Andorra has with the only international organisation operating on its territory, and on the problems relating to the settlement of disputes of a private character that such relation could generate. Andorra hopes that the following comments may add some useful information, mostly by confirming the content of the section “*Differences between the IO*” on page 4 and the interest on the question that concerns all States.

- **What is your experience with the settlement of disputes of a private character to which an international organisation is a party in your legal system?**

From a general point of view, relating to the several international organisations which Andorra is Party to, the government has not been faced with problems related to the settlement of disputes of private character with an international organisation to which the IO is a party.

However Andorra is host to the World Tourism Organisation Office for the Development of Human Resources (WTO.HR). Could the activities and actions of this organisation in the private sphere fall within the judicial jurisdiction of Andorra? The establishment of this Office in Andorra was made by an Agreement regulating its legal status, Agreement that respects international standards, including the immunities of jurisdiction. Art. 4 of the Agreement declares: “*The OMT.DRH benefits from jurisdictional immunity, except if it renounces explicitly to it whenever it feels it is relevant*”. Interestingly, article 16 to this Agreement that relates to the prevention of abuses, and states the following:

*“16.1. The Andorran Government and the WTO.HR cooperate at all moments to facilitate the administration of justice, to secure the observance of the police regulation and to prevent any abuse relating to the privileges, exemptions, immunities and facilities established in this Agreement. The personal of the WTO.HR is granted with the same privileges and immunities of the other diplomatic missions established in Andorra.*

*16.2. In the case of a serious or repeated violation of the laws and regulations of the Principality of Andorra from a member of the staff of the WTO.HR, Andorran authorities can request the Office director, or if necessary, the Secretary General of the WTO, the lifting of the jurisdiction immunity of the person, or alternatively, her immediate departure from Andorran territory.”*

Thus, article 16, completed by article 17 of the Agreement (alternative dispute resolution clause) goes along the lines of the UN Convention on Privileges and immunities (sect. 29).

However, the Office WTO.HR has remained “dormant” as the only personal to be appointed at the Office was the first director who operated for a few months with a secretary. Therefore, the text of the Agreement has remained to date, a virtual arrangement.

The collaboration between the WTO and the Andorra Government has taken another way in practice and a public foundation was created in 1998, that develops a part of the tasks of the Office of the WTO.HR and is regulated by domestic law. The “Themis Foundation” has Statutes that define its composition and basic functioning. There is also a Memorandum of Understanding (MOU) between Andorra and the WTO on the functioning of the Themis Foundation. Article IX of the MOU establishes that if the Parties don’t find a way to resolve

their different in a friendly way, they will have to submit the question to an arbitration tribunal formed by three members, which decision cannot be appealed and will be binding for both parties (art.9.4 of the MOU). The WTO wanted to put a direct reference on the Regulation of the UNCITRAL on settlement of commercial disputes, but Andorra preferred to let the article undefined. This is the kind of situation where very delicate issues could arise. The Foundation is ruled by national law, constituted equally by funds from Andorra and from the WTO and the personal has to be locally hired whenever possible. However, article X of the MoU also has a clause that states that "*nothing in this agreement on in relation to it shall be understood as a renunciation of the prerogatives and immunities of the WTO*".

Therefore, the government has tried to keep everything related to the Themis Foundation within the jurisdiction of Andorran legal system but at the same time is accepting to resolve any different by arbitration and not by access to the tribunal. Therefore, the Government of Andorra is aware that these are tricky questions should a controversy or a problem appear in the application of the MoU or in the execution of the program of the Foundation.

- **In particular, are there examples in your legal system of perceived shortcomings in the settlement of disputes of a private character to which an international organisation is a party leading claimant to turn to the member States?**

There are not really perceived shortcomings in our legal system, especially in the absence of any case-law so far. However, the ministry of Foreign Affairs, has noted, in certain specific and executive agreements between the WTO and Andorra, whenever an event is organized on Andorran territory (Conference, International Fair...) that the text of the agreements have included a clause that states that although the space of the event will be considered ruled by the immunity applicable to the WTO, the responsibility of something happening during the time of the event shall fall on the State. Such an imbalance, accepted by other competent ministries in order to promote and attract events of international nature is not, according to the ministry of Foreign Affairs, a practice to be continued in the future as it could potentially exclude the international organisation from the jurisdiction of Andorran tribunals.

- **Do you consider that the strengthening of the settlements of disputes of a private character to which an international organisation is a party merits attention?**

It is a question that the States should be aware of whenever they are negotiating with international organisations that will operate and work on their territory.

- **Specifically in respect of settlement of private claims in UN Peace operations, how do you see the merits of the possible measures proposed?**

The Ministry of Foreign Affairs sees the suggested solutions in page 5 of the document, in particular the creation of Permanent claim commissions as a positive step to create at least a channel for the claimants to be heard, why not by combining it with the designation of a mediator that could either be a separate organ, or work in collaboration with the Permanent claim Commissions.

The Ministry of Foreign Affairs agrees with the idea that if the immunity can be lifted for a IO civil servant or an expert working for IO in mission, it could also be lifted for the entire organisation, and that the UN liability shouldn't be superior to the one that is granted to a State or to another international organisation. As jurisdictional immunity is in practice slowly but progressively restricted even in the field of diplomatic relations between States, there is no reason why this more narrow interpretation should not apply to international organisations, although, again, the case of UN peace-keeping missions may imply more difficult realities to deal with than those international organisations operating in countries at peace and with a system of justice established by the rule of law and within a democratic system. At the same time, the flawless example of the UN is essential for populations to see it as a landmark in justice, and the more guarantees for the citizens of countries to have access to remedies, the better.