ESTONIA

- **Do you share our analysis concerning the current state of the settlement of disputes of a private character to which an international organization is a party?**

Estonia agrees with the assessment of the Dutch delegation that the topic at hand merits further analysis as well as discussion.

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

There has been one case with European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) acting as the plaintiff (EU-Lisa vs Europark Estonia OÜ, case no 2-17-12294).

In addition to eu-LISA, Estonia hosts the headquarters of the NATO Cooperative Cyber Defence Centre of Excellence. The respective headquarters agreement stipulates that the Allied Headquarters have immunity from seizure, attachment or other enforcement measures. Furthermore, according to the headquarters agreement Article 13 1(a) disputes pertaining to the employment of civilian personnel "*shall be handled solely in accordance with the applicable North Atlantic Council approved regulations. Recourse to Estonian courts, tribunals, agencies or similar fora shall not be granted, and in the event NATO International Civilians would attempt to use a national administrative or judicial body to pursue any employment dispute, the Estonian authorities shall advise the concerned administrative or judicial body of its lack of jurisdiction".* According to Article 13 2(b) "*Labour disputes between a Headquarters and Local Wage Rate personnel shall be adjudicated in accordance with the appropriate NATO regulations, without prejudice, however, to the right of such personnel to the jurisdictional protection afforded by Estonian law*".

As to the headquarters agreement between Estonia and eu-LISA, again the inviolability of the premises of the Agency and its archives is foreseen. Regulation (EU) 1077/2011[1], the Staff Regulations of Officials[2] and the Protocol on the Privileges and Immunities of the European Union further apply to the Agency. According to article 24 of the Regulation (EU) 1077/2011 the contractual liability of the Agency is governed by the law applicable to the contract in question. The Court of Justice of the European Union has jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency. In the case of non-contractual liability, the Agency is to make good any damage caused by its departments or by its servants in the performance of their duties. The Court of Justice of the European Union has jurisdiction in disputes relating to compensation for damage.

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

Estonia is unable to assess possible shortcomings in the settlement of such disputes on account of a shortage of case-law.

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

[1] Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems.

[2] Regulation No 31 (EEC), 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

As the Dutch delegation has pointed out in their paper, the possibilities for settlement of disputes of a private character to which an international organization is a party are limited. Even if the lack of accountability is a perceived one and alternative means to protect one's rights exist, in the context of an ever-growing number of international organizations there may be an increased necessity to consider strengthening the settlement of disputes of such nature. While consideration should be given to established case-law of the ECtHR, it may be wise to revisit the options private persons have at their disposal for redress and whether limiting immunities of international organizations could serve to strengthen them. Increased accountability of international organizations should, however, not be taken lightly and it should not lead to jeopardizing the functioning of international organizations in host states nor to their vulnerability.

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

The topic merits further deliberations and the Dutch paper highlights many questions that need to be at their focus. Waiving the immunity of the UN is a question of principle and poses a series of risks (e.g consistency in what criteria the decision to waive immunity is based on; jeopardizing the special nature of UN peace operations) that need to be taken into account in future discussions in, most appropriately, New York. When it comes to the establishment of standing claims commissions, more information as to why this has not happened to date would be welcome. However, if indeed the current practice of creating local claims review boards makes it difficult for claimants to file a claim; this option should be considered more carefully. It seems that there are obvious advantages of establishing the commissions, as this, for example, will increase impartiality. As to the establishment of an ombudsperson, although the institution's role is traditionally more of an advisory nature and may not solve the general issue of access to justice, there may be other advantages that speak in favour of the option. Revisiting internal UN mechanisms, at first glance, may bring about slight changes, but seems not to be enough if a more fundamental shift in the system is to be envisaged.