SWITZERLAND

- **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? 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?**

The host country agreements concluded by Switzerland generally provide that the organization enjoys jurisdictional immunity in Switzerland unless an authorized person has validly waived immunity in a specific case on behalf of the organization (e.g. Art. 8(1) of the *Accord entre la Confédération suisse et l'Organisation mondiale du commerce en vue de déterminer le statut juridique de l'Organisation en Suisse OMC/WTO*).

When concluding host country agreements with international organizations, Switzerland insists on the inclusion of a treaty clause according to which the organization must provide for alternative mechanisms to settle private law disputes (e.g. Art. 44(1) of the agreement concluded with the WTO). In a dispute involving the European Organization for Nuclear Research (CERN), the Federal Tribunal has pointed out that these clauses constitute a concretisation of Article 6(1) of the European Convention on Human Rights, according to which everyone is entitled to a fair and public hearing in the determination of his or her civil rights and obligations (ATF 130 I 312, p. 317, Cons. 1.1).

As far as the nature of these alternative mechanisms for dispute settlement is concerned, the Federal Tribunal has held that an arbitral procedure between the CERN and private creditors meant that the creditors had access to an independent, impartial and effective judicial remedy (ATF 130 I 312, p. 328 Cons. 4.3.2; see also ATF 118 IB 562, in which the same tribunal upheld the CERN's absolute immunity). In a number of other cases, applicants unsuccessfully argued that upholding an international organization's immunity amounted to a breach of their right to have access to justice (see e.g. ATF 136 III 379, p. 389-90, Cons. 4.5.2-4.5.3 in a dispute involving the Bank for International Settlements; Judgment 5A_106/2012 of 20 September 2012 in a dispute involving the International Committee of the Red Cross).

- **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?**

The cases of *Waite and Kennedy* and *Beer and Regan* dealt with employment disputes. In Switzerland, the immunities of international organizations have been challenged by former employees (e.g. Judgment 4A_216/2009 of 21 December 2009 of the Federal Tribunal, in relation to a dispute involving the permanent mission of the Islamic Conference Organization to the UN).

Switzerland recognizes the importance of both upholding the immunities of international organizations and of making sure that the right of private parties to access to justice is respected. It has already been mentioned that Switzerland insists that international organizations provide for alternative mechanisms, such as arbitration, to settle disputes with private parties. In employment disputes involving international organizations, internal mechanisms of recourse are of particular importance for harmonizing these two goals. This is why Switzerland strongly advocates that internal mechanisms of recourse should be open to all categories of members of the personnel (see e.g. the Swiss intervention in the Sixth Committee concerning agenda item 144 (administration of justice at the United Nations) during the 78th session of the General Assembly, 11 October 2023).