

UNITED KINGDOM

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

There is a difficult tension between the need to compensate people that have suffered harm and the need for international organisations to have immunity to protect their proper functioning.

- **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?**

UK case law on this issue is relatively sparse, but when the UK courts have been confronted with immunity issues regarding international organisations in private law disputes (i.e. employment and contractual disputes) they have generally taken a close statutory interpretation of the domestic legislation giving effect to the international obligations of the UK under the constitutive instrument of the organisation and/or the headquarters/host agreement. The immunities of international organisations have generally been upheld in a principled way.

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

The UK courts have considered (a) whether there is a rule of customary international law that member states could be held liable for “unsatisfied” claims against an international organisation simply by virtue of their membership; and (b) whether there is a separate basis of liability arising from a potential agency relationship existing between an organisation and its member states¹. In relation to (a), the House of Lords has queried, without giving a definitive view, whether there was such a rule of customary international law and commented that, even if there was, there would be serious logistical and practical difficulties in its application. The House of Lords approached the issue under domestic law, holding that where an international organisation has been granted legal personality in English law independent of its members, the international organisation is the contracting party, not its members. Therefore, the international organisation, and not the members, would be liable under contracts it entered into, subject to any immunity. In relation to (b), the House of Lords has found that there is a general presumption against such an agency relationship existing between an organisation and its member states.

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

The UK agrees that this issue merits attention, but there is no easy or quick solution and the various options require very careful consideration involving all stakeholders. We are in favour of some kind of redress being available where needed, but one size will not fit all. It is essential to look at what is appropriate in each circumstance, taking account of the subject matter, jurisdiction and the each individual international organisation to ensure that the correct balance is struck between remedy and proper functioning of the international organisation.

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

In relation to UN peacekeeping, the issues are particularly difficult and it is more appropriate for such discussion to take place in New York, as has done previously (for example with the

¹ See *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry and Others and Related Appeals*; *Maclaine Watson & Co Ltd v Department of Trade and Industry*; *Maclaine Watson & Co Ltd v International Tin Council* [1990] 2 AC 418

General Assembly resolution on limited liability). There are a number of complicated issues involved in peacekeeping disputes beyond the mechanism of redress, including the appropriate standard of law to be applied. It is also important to keep in mind the issue of consistency of approach, as the UN operates across many different jurisdictions.

The paper presented by the Netherlands presents some sensible ideas for injecting independence into internal dispute resolution mechanisms, either through the constitution of claims boards or through the establishment of an independent Ombudsperson. However, more detailed consideration would be required of these possible measures, including issues of staffing and financing. Therefore, we would urge caution and more detailed discussion in the appropriate fora.