



Universiteit  
Leiden  
The Netherlands

**The third-party liability of international organisations: towards a 'complete remedy system' counterbalancing jurisdictional immunity**  
Henquet, T.S.M.

**Citation**

Henquet, T. S. M. (2022, June 7). *The third-party liability of international organisations: towards a 'complete remedy system' counterbalancing jurisdictional immunity*. Retrieved from <https://hdl.handle.net/1887/3308350>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3308350>

**Note:** To cite this publication please use the final published version (if applicable).



Universiteit  
Leiden

# **THE THIRD-PARTY LIABILITY OF INTERNATIONAL ORGANISATIONS**

*Towards a 'Complete Remedy System'  
Counterbalancing Jurisdictional Immunity*

Thomas Servaas Marie Henquet

# **THE THIRD-PARTY LIABILITY OF INTERNATIONAL ORGANISATIONS**

*Towards a 'Complete Remedy System'  
Counterbalancing Jurisdictional Immunity*

PROEFSCHRIFT

ter verkrijging van  
de graad van doctor aan de Universiteit Leiden,  
op gezag van rector magnificus prof.dr.ir. H. Bijl,  
volgens besluit van het college voor promoties  
te verdedigen op dinsdag 7 juni 2022  
klokke 16.15 uur

door  
Thomas Servaas Marie Henquet  
geboren te Maastricht  
in 1973

Promotor: Prof. dr. N.M. Blokker

Promotiecommissie: Prof. dr. R.A. Lawson

Prof. dr. K.E. Boon (Seton Hall University, South Orange, NJ, USA)

Prof. dr. P. Palchetti (Université Paris 1, France)

Prof. dr. A. Reinisch (University of Vienna, Austria)

Prof. dr. N.J. Schrijver

To Barbara,  
Emma and Jules

## ACKNOWLEDGMENTS

I am most grateful to all those who have encouraged and supported me in the pursuit of this dissertation.

Particular gratitude goes to my supervisor, Professor Niels Blokker, for his continual mentorship and intellectual stimulation, dating back to our days at the International Law Division of the Ministry of Foreign Affairs of the Netherlands.

I would also like to sincerely thank the members of the Doctorate Committee for their time and thoughtful consideration.

In conducting this study, I have benefited tremendously from discussions with colleagues and friends. In particular, I would like to acknowledge Brooks Daly, Juliette Luycks, Alejo Mattaar, Guénaël Mettraux, Miša Zgonec-Rožej and Marten Zwanenburg. I am grateful to Samantha Tirthdas van der Kleij, who provided editorial assistance with the manuscript.

I am indebted to my successive employers during this study: the Ministry of Foreign Affairs of the Netherlands granted PhD ‘seed time’ and PhD leave when I began the study; and the International Criminal Court granted a leave of absence for the final stretch. I would also like to thank the T.M.C. Asser Instituut for welcoming me as a visiting researcher at an early stage.

I am most thankful for the support of my mother, and my father in spirit, and for the encouragement and interest of my sister and brother, my late stepfather, and my extended family in the Netherlands, Ireland and England.

Throughout this process, I have been inspired by Emma and Jules, who have shown great patience and curiosity. And to Barbara, I am forever grateful for her constant encouragement, loving support and critical legal mind.

## **PREFACE**

This study builds on a series of publications by the author on the subject of the jurisdictional immunity of international organisations, dating back to 2010, in addition to the experience the author has acquired on the subject throughout his career in practice.

The text of this study was completed on 23 December 2021, with certain additions made in the first months of 2022.

The author is currently a staff member of the International Criminal Court. The views expressed herein are those of the author alone and do not reflect the views of the International Criminal Court, or any of his previous employers.

The Hague, the Netherlands

April 2022

## CONTENTS

ACKNOWLEDGMENTS .....	v
PREFACE.....	vi
ABBREVIATIONS.....	ix
<b>1 INTRODUCTION.....</b>	<b>1</b>
<b>1.1 Introduction .....</b>	<b>1</b>
<b>1.2 Research objective and research questions.....</b>	<b>8</b>
1.2.1 Case studies: introduction .....	10
1.2.2 The rule of law .....	12
<b>1.3 Structure and outline of the study .....</b>	<b>15</b>
<b>2 THE INTERNATIONAL ORGANISATIONS LAW FRAMEWORK GOVERNING THIRD-PARTY REMEDIES .....</b>	<b>18</b>
<b>2.1 Introduction .....</b>	<b>18</b>
<b>2.2 The Legal Status of International Organizations in Domestic Legal Orders and the International Legal Order .....</b>	<b>19</b>
2.2.1 Domestic legal personality, and privileges and immunities.....	20
2.2.2 International legal personality .....	22
2.2.3 Interim conclusions .....	35
<b>2.3 How Are International Organisations, and the UN in Particular, Bound by International Law?.....</b>	<b>35</b>
2.3.1 Treaty law, general international law and jus cogens .....	37
2.3.2 Sources of obligations specific to the UN.....	44
2.3.3 Interim conclusions .....	47
<b>2.4 International Human Rights Law.....</b>	<b>48</b>
2.4.1 Primary rules .....	48
2.4.2 Secondary rules: the ‘right to a remedy’ .....	53
2.4.3 Interim conclusions .....	72
<b>2.5 Conclusions .....</b>	<b>73</b>
<b>3 SECTION 29(A) OF THE GENERAL CONVENTION .....</b>	<b>75</b>
<b>3.1 Introduction .....</b>	<b>75</b>
<b>3.2 The UN is bound by the obligation under Section 29 of the General Convention .....</b>	<b>75</b>
3.2.1 The General Convention is binding on the UN.....	76
3.2.2 Failure to implement Section 29 of the General Convention and jurisdictional immunity 78	
<b>3.3 Overview of practice of the UN under Section 29(a) of the General Convention .....</b>	<b>85</b>
3.3.1 Key documents setting out the practice and regulations of the UN.....	85
3.3.2 The UN’s practice per category of dispute.....	89
3.3.3 From Srebrenica to Haiti: introduction to case studies .....	110
<b>3.4 Discussion: ‘a complete remedy system to private parties’?.....</b>	<b>118</b>
3.4.1 General observations regarding Section 29 of the General Convention .....	119
3.4.2 ‘Private law character’ .....	127
3.4.3 ‘Provisions for appropriate modes of settlement’ .....	160
<b>3.5 Conclusions .....</b>	<b>226</b>



<b>4</b>	<b>THE JURISDICTIONAL IMMUNITY OF INTERNATIONAL ORGANISATIONS IN THE NETHERLANDS AND THE VIEW FROM STRASBOURG</b> .....	<b>229</b>
<b>4.1</b>	<b>Introduction</b> .....	<b>229</b>
<b>4.2</b>	<b>Immunity from jurisdiction</b> .....	<b>231</b>
4.2.1	Rationale .....	231
4.2.2	Sources .....	234
4.2.3	Procedural aspects.....	238
4.2.4	‘Functional immunity’ .....	241
<b>4.3</b>	<b>Immunity from jurisdiction and ‘access to court’</b> .....	<b>248</b>
4.3.1	Waite and Kennedy .....	250
4.3.2	‘Reasonable alternative means’: beyond Waite and Kennedy .....	256
4.3.3	Absence of reasonable alternative means: Mothers of Srebrenica.....	280
<b>4.4</b>	<b>Reducing ‘accountability gaps’: a role for national courts?</b> .....	<b>319</b>
<b>4.5</b>	<b>Conclusions</b> .....	<b>322</b>
<b>5</b>	<b>TOWARDS A ‘COMPLETE REMEDY SYSTEM’ FOR THIRD-PARTIES UNDER SECTION 29 OF THE GENERAL CONVENTION</b> .....	<b>325</b>
<b>5.1</b>	<b>Introduction</b> .....	<b>325</b>
<b>5.2</b>	<b>Proposed solutions</b> .....	<b>328</b>
5.2.1	The legal character of third-party disputes.....	328
5.2.2	(Standing) claims commissions.....	329
5.2.3	Arbitration .....	332
<b>5.3</b>	<b>The Mechanism for the Settlement of Disputes of a Private Law Character</b> .....	<b>342</b>
5.3.1	Amicable and contentious dispute resolution under the auspices of the PCA.....	343
5.3.2	Establishment and legal framework of the Mechanism .....	370
5.3.3	Other international organisations .....	376
<b>5.4</b>	<b>Conclusions</b> .....	<b>379</b>
<b>6</b>	<b>FINDINGS AND CONCLUSIONS</b> .....	<b>382</b>
<b>6.1</b>	<b>Findings</b> .....	<b>382</b>
<b>6.2</b>	<b>Concluding observations</b> .....	<b>387</b>
	<b>BIBLIOGRAPHY</b> .....	<b>392</b>
	<b>TABLE OF CASES</b> .....	<b>403</b>
	<b>SAMENVATTING (DUTCH SUMMARY)</b> .....	<b>408</b>
	<b>CURRICULUM VITAE</b> .....	<b>413</b>

## ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
AJUN	Administration of Justice at the United Nations
CAHDI	Committee of Legal Advisers on Public International Law of the Council of Europe
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EPO	European Patent Organisation
ESA	European Space Agency
EUROCONTROL	European Organisation for the Safety of Air Navigation
FAO	United Nations Food and Agriculture Organization
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organisation
ILOAT	International Labour Organization Administrative Tribunal
IMF	International Monetary Fund
KFOR	Kosovo Force
MINUSTAH	United Nations Stabilization Mission in Haiti
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
ONUC	United Nations Operation in the Congo
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organisation for Security and Co-operation in Europe
PCA	Permanent Court of Arbitration
UN	United Nations
UNAT	United Nations Appeals Tribunal
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNEF	United Nations Emergency Force

UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNMIK	United Nations Mission in Kosovo
UNPROFOR	United Nations Protection Force
UNRRA	United Nations Relief and Rehabilitation Administration
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTS	United Nations Treaty Series
WTO	World Trade Organization