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CASENOTES

How Much Immunity for International Organizations?: *Mendaro v. World Bank*

Employees of international organizations headquartered in the United States may find themselves remediless against abuse by their employers, unless their organization has an effective internal administrative tribunal. Recently, the Court of Appeals for the District of Columbia Circuit in *Mendaro v. World Bank*[1] found the World Bank,[2] as an international organization, immune from suit by an employee alleging sexual harassment, despite the conspicuous absence of an effective grievance procedure within the Bank.[3] The court reasoned that employment relations were within the grant of immunity contemplated by Congress in the International Organizations Immunities Act (IOIA).[4] The court failed, however, to acknowledge the conditional nature of international organizations immunity.

The IOIA grants international organizations headquartered in the United States immunity from American municipal law for their official, noncommercial activities.[5] While international organizations traditionally have enjoyed immunity,[6] the State Department considers this immunity a privilege of national law that imposes a special obligation on international organizations to provide effective methods of addressing labor-management disputes.[7] When faced with an action brought by an employee against an international organization,

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[1] 717 F.2d 610 (D.C. Cir. 1983).

[2] The World Bank is an international financial institution that promotes private foreign investment and long-range balanced growth in international trade. It was established by Articles of Agreement which came into force December 27, 1945. 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134.

[3] *Mendaro*, 717 F.2d at 612.

[4] 22 U.S.C. § 288 (1982). For a discussion of the Act, see Preuss, *The International Organizations Immunities Act*, 40 AM. J. INT'L L. 332 (1946).

[5] *Id.* The broad purpose of the statute is to vitalize the status of international organizations of which the United States is a member and to facilitate their activities. International Refugee Org. v. Republic of S.S. Corp., 189 F.2d 858, 860 (4th Cir. 1951), citing Balfour, Guthrie & Co. v. United States, 90 F. Supp. 831, 833 (N.D. Cal. 1950).

[6] Article 105 of the United Nations Charter grants the United Nations complete immunity from all legal process. *See* L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 617 (3d ed. 1969).

[7] DEPARTMENT OF STATE DIGEST OF PRACTICE IN INTERNATIONAL LAW, Ch. 2, § 4B (1979) [hereinafter cited as PRACTICE IN INTERNATIONAL LAW.]

a court must delineate the reasonable scope of immunity, by referring to the IOIA and its legislative history, as well as to applicable treaties or organizational charters.

The *Mendaro* court had the opportunity to define this scope when Susana Mendaro, an Argentine citizen employed at the World Bank, alleged a pattern of sexual harassment and discrimination against her.[8] Mendaro filed suit with the Equal Employment Opportunity Commission (EEOC), alleging violation of Title VII of the Civil Rights Act of 1964.[9] The EEOC area office dismissed the complaint for lack of jurisdiction, finding the World Bank immune as an international organization.[10]

Mendaro then filed suit against the World Bank in the United States District Court for the District of Columbia Circuit.[11] The World Bank moved to dismiss the action, claiming immunity from the jurisdiction of member nations in suits arising out of the Bank's internal administrative affairs.[12] While conceding that challenged activities of the Bank normally would be immune from judicial scrutiny, Mendaro opposed the action, arguing that the Articles of Agreement (the World Bank Charter) effectively waived the Bank's right to claim the immunities of an international organization.[13]

The district court rejected Mendaro's interpretation of article VII, section 3, which waives the Bank's immunity in specified cases.[14] Relying on *Broadbent v. Organization of American States*[15] and the language of the World Bank Charter, the district court dismissed the action for lack of jurisdiction.[16] Mendaro appealed to the United States Court of Appeals for the District of Columbia Circuit,[17] which believed that the correctness of the district court decision depended on the extent of the World Bank's immunity from suit under the IOIA.[18]

Mendaro argued that while the World Bank clearly possesses the immunity granted to international organizations, its Charter contains an effective waiver of immunity from judicial process by stipulating

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[8] *Mendaro*, 717 F.2d at 612.

[9] 42 U.S.C. § 2000(e) (1982). 29 C.F.R. § 1604.11(a)-(g) (1984) contains the enacted guidelines that make sexual harassment on the job actionable.

[10] Article VII, § 3 of the Articles of Agreement permits actions to be brought against the World Bank "in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities." 60 Stat. 1457, 2 U.N.T.S. 180.

[11] *Mendaro*, 717 F.2d at 613.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 628 F.2d 27 (D.C. Cir. 1980).

[16] *Mendaro*, 717 F.2d at 613.

[17] *Id.*

[18] 22 U.S.C. § 288 (1982).

the conditions under which actions may be brought against the Bank.[19] Furthermore, because this waiver is subject to two clearly expressed exceptions,[20] the Charter implies that there are no other restrictions on the waiver of immunity. Thus, the Charter affirmatively waives the Bank's immunity to all other types of suits, including those brought by its employees.[21]

Mendaro relied on an earlier decision of the District of Columbia Circuit in which the waiver provision in the Articles of Agreement of the Inter-American Development Bank was interpreted broadly to allow suits by debtors as well as by bondholders, creditors, and beneficiaries of creditors.[22] Mendaro argued that this generous construction should be used in interpreting the World Bank's Charter to allow suits against the World Bank by employees.[23]

The court, however, rejected this argument, concluding that the argument would be logical only if no reference were made to the interrelationship between the functions of the Bank and the purposes underlying international organizations immunities.[24] The function of the Bank is to provide coordinated multinational action in promoting development and balanced growth in international trade.[25] The purpose of international immunities is to free organizations such as the World Bank from the peculiarities of national politics by immunizing them from legal process, financial controls, taxes, and duties.[26]

Some immunities are waived by charter when an insistence on immunity would prevent or hinder an organization from conducting its activities.[27] The *Mendaro* court, however, found that immunity from suits by employees in actions arising out of the employment relationship is one of the most important protections against the peculiarities of national politics.[28] The court noted that if an international organization were expected to adhere to all of the employment practices of its member organizations, administrative havoc would

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19 *Mendaro*, 717 F.2d at 614. 22 U.S.C. § 288a(b) codifies the ability of an international organization to expressly waive immunity.

20 These exceptions are: (1) suits by the members of the Bank, and (2) actions seeking prejudgment attachment of the Bank's assets. *Mendaro*, 717 F.2d at 614.

21 *Id.*

22 Lutcher S.A. Celulose e Papel v. Inter-American Dev. Bank, 382 F.2d 454 (D.C. Cir. 1967) (lower court granted jurisdiction but dismissed case for failure to state cause of action; dismissal affirmed on appeal).

23 *Mendaro*, 717 F.2d at 614.

24 *Id.* at 615.

25 *Id.*

26 RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (revised) § 464(1) (Tentative Draft No. 4) (1983).

27 *Mendaro*, 717 F.2d at 615.

28 *Id.* The court also noted that the immunity is now an accepted doctrine of customary international law. *See* A. PLANTEY, THE INTERNATIONAL CIVIL SERVICE §§ 133-35 (1981); *but see* M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 118 (4th ed. 1982).

ensue, impairing the functioning of the organization.[29]

Conceding that the World Bank could have chosen to waive immunity expressly,[30] the court refused to read such a waiver into the World Bank Charter. Relinquishment of immunity arguably would not give any benefit to the Bank. The court stated that "rather than furthering the purposes and operations of the Bank, this waiver would lay the Bank open to disruptive interference with its employment policies in each of the thirty-six countries in which it has resident missions. . . ."[31]

While the court noted that many multinational corporations must conform their employment practices to the laws of various countries, it recognized the important distinction between private corporations and international organizations: while private corporations are organized under the laws of one or more countries, international organizations owe their primary allegiance to the principles and policies established by their organic documents, and not to the legislation of any one member.[32] Further, the Bank officers and staff pledge their allegiance to the Bank and to no other authority.[33] The court concluded that in light of this strict neutrality policy and the obstruction to the Bank's purposes that judicial scrutiny of its employment practices would cause, no waiver of immunity could be inferred from the Bank's Charter. Thus, the court dismissed Mendaro's Title VII action for lack of jurisdiction.[34]

The concept of foreign sovereign immunity, which insulates foreign sovereigns from otherwise meritorious actions, has existed for several thousand years.[35] In an early articulation of the doctrine, Chief Justice Marshall in *The Schooner Exchange v. M'Faddon* stated: "The jurisdiction of a nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself."[36]

Gradually, however, as international trade increased, and the need for security in transactions with foreign governments grew, absolute sovereign immunity began to lose force as a rule of international law. By the post-World War II period, few nations granted

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[29] *Mendaro*, 717 F.2d at 615.

[30] RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 84 (1965) provides that the "immunity of an international organization . . . may be waived only by an express waiver on the part of the organization." *Id.*

[31] *Mendaro*, 717 F.2d at 618.

[32] *Id.* at 619.

[33] *Id.* For a discussion of the unique role of the international civil servant, see G. LANGROD, THE INTERNATIONAL CIVIL SERVICE 82-83 (1963).

[34] *Mendaro*, 717 F.2d at 621.

[35] *See generally* Glenn, *Immunities of International Organizations*, 22 VA. J. INT'L L. 247 (1981).

[36] 11 U.S. (7 Cranch) 116, 136 (1812).

absolute sovereign immunity.[37] In 1952 United States policy became aligned with the modern view,[38] which granted immunity to official but not commercial acts. The doctrine of "restrictive sovereign immunity," codified in the Foreign Sovereign Immunity Act of 1976 (FSIA),[39] permits suit based on "commercial activity" against a sovereign without its consent. Such immunity does not mean that the holder is above municipal law, only that it is unenforceable against it; therefore, the holder may waive the immunity and make the municipal laws binding on it.[40]

The IOIA grants international organizations the same immunities as enjoyed by foreign governments if the organizations meet statutory criteria.[41] This immunity is deemed necessary for two reasons: (1) international organizations are composed of sovereign members whose sovereignty ought to be respected; and (2) freedom from conflicting municipal laws is necessary for the smooth functioning of the organization.[42] There are, however, three ways in which immunity for international organizations may be limited: (1) the organization itself may waive its immunity; (2) the President may specifically limit the organization's immunity in the original executive order; and (3) the immunity is subject to modification, condition, or revocation by executive order if the privilege is abused.[43] Furthermore, the language of the IOIA indicates its derivative nature: international organizations "shall enjoy the same immunity from suit as is enjoyed by foreign governments."[44] Thus, following the restrictive theory, the immunity of international organizations is limited to official, noncommercial activity.

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[37] *See* Glenn, *supra* note 35, at 252-54.

[38] The adoption of this theory of restrictive immunity was announced in what has come to be known as the "Tate Letter;" Letter from Jack B. Tate, Acting Legal Advisor of the Department of State, to Phillip B. Perlman, Acting Attorney General (May 19, 1952), *reprinted in* 26 DEP'T OF ST. BULL. 984 (1952). *See also* Republic of Mexico v. Hoffman, 324 U.S. 30 (1945), in which the court judicially abolished the doctrine of absolute sovereign immunity.

[39] Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1332(a)(2-4), 1391(f), 1441(3), 1602-1611 (1982). For a discussion of the effect of the FSIA on the IOIA, see Note, *Jurisdictional Immunities of Intergovernmental Organizations*, 91 YALE L. J. 1167 (1982).

[40] M. AKEHURST, *supra* note 28, at 118-19. For an example of such a waiver, see Libyan Am. Oil Co. v. Socialist People's Libyan Arab Jamahirya, 482 F. Supp. 1175 (D.D.C. 1980), in which the court held that a Libyan arbitration clause waived the defense of foreign sovereign immunity for purposes of federal jurisdiction, but noted that a court must give particular reasons for denying sovereign immunity and must comply with traditional requirements for in personam jurisdiction.

[41] Immunity is granted to the organization if the United States participates in it pursuant to a treaty or congressional act, and if it has been designated by the President as an international organization. The World Bank has been approved by Congress, 22 U.S.C §§ 286, 286(h) (1982), and properly designated by the President (Exec. Order No. 9751, 3 C.F.R. 558 (1943-48 Comp.).

[42] *See* M. AKEHURST, THE LAW GOVERNING EMPLOYMENT IN INTERNATIONAL ORGANIZATIONS 12 (1967).

[43] 22 U.S.C. § 288 (1982).

[44] *Id.* § 288a(b).

The distinction between commercial and official activity is not always easily drawn.[45] It is clear that Congress intended the scope of sovereign immunity to be decided by the courts, rather than the State Department, because an express purpose of the FSIA was to dispel the doctrine of judicial deference to the executive on sovereign immunity issues.[46]

Thus, the courts are empowered to define the scope of sovereign immunity by reference to the IOIA, the FSIA, their legislative histories, and any applicable treaties or charters.[47] One commentator has written that "the courts should limit the category (commercial activity) as narrowly as possible consistent with honoring the autonomy of the international organizations in the conduct of their official functions."[48]

This immunity is limited traditionally to what is necessary for the organization to function.[49] Immunity from suit in the courts of the member states lies at the core of this "functional necessity" concept of sovereign immunity:

> [I]f there is one certain principle it is that no member state may hinder in any way the working of the organization or take any measures the effect of which might be to increase its burdens, financial or other.[50]

When immunity is not necessary to the functioning of the organization or in fact impedes it, the organization makes a waiver of immunity for certain actions.[51]

The *Mendaro* court faced the question whether immunity from suit by an employee is necessary to the functioning of the World Bank. In finding immunity necessary, the court followed a tradition

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[45] 28 U.S.C. § 1603(d) (1982) defines commercial activity as "either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct . . . rather than by reference to its purpose." *Id. See, e.g.*, Sugarman v. Aeromexico Inc., 626 F.2d 270 (3rd Cir. 1980) (national airline of Mexico held not immune from suit because airline was commercial activity).

[46] "It [the FSIA] is designed to bring U.S. practice into conformity with that of most other nations by leaving sovereign immunity decisions exclusively to the courts, thereby discontinuing the practice of judicial deference to 'suggestions of immunity' from the executive branch." H.R. REP. No. 1487, 94th Cong., 2d Sess. 5, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 6604, 6610. *See, e.g.*, *Ex parte* Republic of Peru, 318 U.S. 578 (1943) (Court defers to executive determination the immunity of a sovereign vessel from a libel action). For a discussion of the FSIA, see Clarke, *The Foreign Sovereign Immunity Act of 1976*, 3 N.C.J. INT'L L. & COM. REG. 206, 208-09 (1978). *See also* O'Toole, *Sovereign Immunities Redivus: Suits Against International Organizations*, 4 SUFFOLK TRANSNAT'L L.J. 1 (1980).

[47] Glenn, *supra* note 35, at 278.

[48] O'Toole, *supra* note 46, at 3.

[49] D. BOWETT, THE LAW OF INTERNATIONAL INSTITUTIONS 308 (3d ed. 1975). *See also* Curran v. City of New York, 191 Misc. 229, 77 N.Y.S.2d 206 (1947) (rejecting taxpayer's challenge to United Nation's exemption from city taxes, because the exemption found to be part of United Nation's immunity, which was necessary to its functioning).

[50] Doc. XIII, IV/2, 13 U.N.C.I.O. Docs. 703, 704-5 (1945), *reprinted in* 13 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 34, 36 (1968).

[51] *See* M. AKEHURST, *supra* note 28, at 118-19.

of recognizing the international civil service as ideally unaffected by competing national policies. Because staff are recruited from all over the world, a choice of a particular municipal law would be arbitrary. Allowing an international civil servant to use his municipal law would subject the organization to national pressures.[52] Furthermore, the multinational personnel are expected to act only in the interests of their organizations and not their national states.[53] International civil servants are said to be governed by the internal authority of their organization rather than the municipal laws of the member states.[54]

Recognizing the importance to international organizations of immunity from employment suits, American courts have been unwilling to assert jurisdiction over claims by disgruntled international civil servants. Recently, in *Broadbent v. Organization of American States*[55] the United States Court of Appeals for the District of Columbia Circuit held that because the relationship between an international organization and its internal administrative staff is noncommercial, the organization is thereby immune based on either a restrictive or absolute sovereign immunity.[56] The court stated that "the employment by a foreign state or international organization of internal administrative personnel is not properly characterized as 'doing business.' "[57]

The *Broadbent* court relied heavily on the legislative history of the IOIA, which states that employment of civil service personnel is stated to be a public, noncommercial activity.[58] In limiting its holding to a finding that employment of international civil servants is a noncommercial activity, and therefore does not fall within the exception provided by the restrictive theory, the *Broadbent* court evaded further questions about the extent to which immunity should be granted to international organizations.

In *Tuck v. Pan American Health Organization* (PAHO)[59] the court found PAHO immune from suit by Tuck, an employee who had alleged tortious interference with contract by the organization. The court found that Tuck's claims arose out of PAHO's supervision of its personnel, a noncommercial activity that was protected under the restrictive immunity theory.[60] Like the *Broadbent* court, the *Tuck*

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[52] M. AKEHURST, *supra* note 42, at 5.

[53] *Id.*

[54] *Id.*

[55] 628 F.2d 27 (D.C. Cir. 1980).

[56] *Id.* at 33.

[57] *Id.*

[58] *See* H.R. REP. No. 1487, 94th Cong., 2d Sess. 16 (1976), *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 6615: "Also public or governmental and not commercial in nature would be the employment of diplomatic, civil service, or military personnel . . . . " *Id.*

[59] 668 F.2d 547 (D.C. Cir. 1981).

[60] *Id.* at 550.

court found it unnecessary to decide whether PAHO possessed absolute or restrictive immunity, concluding that "appellees are in most respects immune from suit in the district court."[61]

In *Herbert Harvey, Inc. v. NLRB* a corporation that managed maintenance workers in buildings owned by the World Bank asserted that the National Labor Relations Board (NLRB) had no jurisdiction over it because of its intimate connection with the World Bank as employer.[62] The court denied this assertion and upheld the NLRB's jurisdiction over Herbert Harvey, while recognizing the World Bank's immunity from the reach of the NLRB.[63]

In *Weidner v. International Telecommunications Satellite Organization (Intelstat)*[64] the court held Intelstat immune from a breach of contract suit, even though it had not been designated as an international organization at the time the cause of action arose. Established in 1973, Intelstat was designated an international organization by President Ford in January 1977[65] after its alleged wrongful dismissal of plaintiff six weeks before the filing of the complaint. The court found the operative date was the date the complaint was filed, and dismissed plaintiff's argument that there is a distinction between immunities extended to foreign governments and those extended to international organizations.[66]

The *Mendaro* court was thus faced with a seemingly impenetrable body of case law that excluded international civil servants from actions against their employers in American courts. A reading of this case law, the relevant statutes, and the legislative history indicates that the *Mendaro* decision, although problematic, is defensible. The denial of equal protection to an employee working within the United States is a troubling application of sovereign immunity. Although the *Mendaro* court was sympathetic to plaintiff's plight,[67] it was unable or unwilling to search beyond the present application of the law to find a remedy.

Unlike sovereign immunity, which is derived from the common law (later codified in its restrictive form in the FSIA), the immunity of international organizations is statutory. Before the enactment of the IOIA, no provision was made for jurisdictional immunity of interna-

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61 *Id.*

62 424 F.2d 770 (D.C. Cir. 1969).

63 *See id.* at 773 n.20 in which the court cites the proposition that "the Bank enjoys certain privileges and immunities. Thus, the governors, directors, officers, and employees of the Bank are immune from legal process for acts performed in their official capacities . . . ." *Id.*

64 392 A.2d 508 (D.C. 1978).

65 Exec. Order No. 11,966, 42 Fed. Reg. 4331 (1977).

66 *Weidner*, 392 A.2d at 511. The court hints, however, that it sees some merit to this argument: "Even if Congress intended for there to be such a distinction when they enacted the [IOIA] in 1945, it is unclear what the differences in the immunities are." *Id.*

67 *Mendaro*, 717 F.2d at 616 n.41.

tional organizations or their personnel,[68] although international organizations were recognized as legal personalities vulnerable to suit.[69] The IOIA was a congressional grant of immunity intended to facilitate the functioning of international organizations.[70] The immunity is given to a specific international organization by executive order and can be revoked by executive order if abused.[71] Unlike the FSIA, which clearly intends that questions of immunity be decided by the courts, rather than the executive branch,[72] the IOIA vests considerable power in the President to set limits on international organization immunity.

The State Department clearly views the grant of immunity to international organizations as a privilege of national law rather than a privilege inherent in customary international law. The Department has asserted that the privileges and immunities granted to public international organizations impose a special responsibility on them and their member states to provide effective methods of addressing and resolving labor-management disputes.[73] This view, coupled with the power vested in the executive to revoke international organizations immunity indicates that international organizations may not run roughshod over the rights of their employees. The courts traditionally have been willing to grant immunity from employment suits to international organizations; yet given a directive from the executive branch, they would not be compelled to grant such immunity.

There is a considerable body of international organization internal administrative law, which began to develop in the late 1920s in the League of Nations.[74] A common law for international civil servants has emerged, based largely on the principles of the best established municipal systems.[75] The character of employment in international organizations necessitates the development of a *corpus juris* unique to each international organization, because these organizations are established under, and governed by, their constitutions or charters.[76] Recognizing the need for internal administrative law, most international organizations have internal administrative tribu-

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[68] Note, *Jurisdictional Immunities of Intergovernmental Organizations*, 91 YALE L.J. 1167, 1168 (1982).

[69] Preuss, *The International Organizations Immunities Act*, 40 AM. J. INT'L L. 332, 333-34 (1946).

[70] Congress also considered the possibility that the United Nations would establish headquarters in the United States. *See* H.R. REP. No. 1203, 79th Cong., 1st Sess. 1 (1945).

[71] 22 U.S.C. § 288 (1982).

[72] *Id.*

[73] PRACTICE IN INTERNATIONAL LAW, *supra* note 7, Ch. 2, § 4B.

[74] M. AKEHURST, *supra* note 42, at 4-6.

[75] *See* A. PLANTEY, *supra* note 28, § 141.

[76] M. AKEHURST, *supra* note 42, at 5. See also Morgenstern, *The Law Applicable to International Officials*, 18 INT'L & COMP. L.Q. 739 (1969), for a discussion of the problems inherent in this body of law.

nals or staff associations for the establishment of staff regulations and the resolution of internal grievances.[77] Internal administrative tribunals cannot render binding judgments, but can only make recommendations to the Secretariat.[78] At a minimum, the existence of an internal administrative tribunal provides a forum for airing employee grievances.

When Mendaro's cause of action arose, the World Bank did not have an internal administrative tribunal.[79] The World Bank had begun as a small group of highly-trained professionals and specialists. In the last twenty years, the staff has increased sixfold, to over six thousand.[80] No longer a tight-knit group of professionals, the World Bank had become a large international organization with no internal tribunal for employee grievances.

The World Bank finally established an internal administrative tribunal in April 1980 for two reasons: (1) management recognized the importance of some grievance procedure for staff morale; and (2) lack of judicial guarantees to Bank employees might be viewed as a factor by some national courts in deciding to assert jurisdiction.[81] The World Bank's tribunal was established too late for Mendaro.[82] She was left remediless by an international organization with inadequate staff regulations and grievance procedures, and by a municipal court that refused to pierce the veil of immunity of international organizations or even, through dicta, to call upon the executive to take note of the wrongdoing.

Mendaro is significant, not for its reiteration of case law denying jurisdiction over employment claims by employees of international organizations, but for its refusal to recognize fully the conditional nature of international organizations immunity.[83] The court sympathized with Mendaro, because her claim concerned a particularly egregious offense.[84] Yet it was unwilling to examine seriously the functional necessity argument for blanket immunity of international organizations in employment disputes and the procedure for redress of employee grievances. Furthermore, the court refused to impose legal responsibility on an organization that is granted immunity by

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[77] M. AKEHURST, *supra* note 42, at 11-26. For a discussion of the development of administrative tribunals in international organizations, see J. YOUNG, INTERNATIONAL CIVIL SERVICE: PRINCIPLES AND PROBLEMS 189-206 (1958).

[78] M. AKEHURST, *supra* note 42, at 12.

[79] *Mendaro*, 717 F.2d at 616 n.41.

[80] Arechaga, *The New Administrative Tribunal of the World Bank*, 14 J. INT'L L. & POL. 1, 2 (1981).

[81] *Id.* at 1-6.

[82] The tribunal was vested with only limited retroactive jurisdiction, which did not extend to the time when Mendaro's cause of action arose. Also, it was not explicitly authorized to resolve claims based on sexual harassment. *Mendaro*, 717 F.2d at 616 n.41.

[83] The court referred to this conditional nature early in the discussion of the IOIA, but never discussed it substantively.

[84] *Mendaro*, 717 F.2d at 616 n.41.

statute and retains it at the pleasure of the executive. The court legally may not have been able to assert jurisdiction over the World Bank in *Mendaro*, but strong dicta about the Bank's responsibility to its employees and the ability of the executive to remove the immunity would have been a useful prod to international organizations with inadequate adminstrative tribunals.

—FRANCES WRIGHT HENDERSON