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Informazioni generali

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Informazioni sul volume

This book provides the first comprehensive analysis of the international law regime of jurisdictional immunities in employment disputes involving foreign states, international organizations and diplomatic and consular agents. Three main arguments lie at its heart. Firstly, this study challenges the widely held belief that international immunity law requires staff disputes to be subject to blanket or quasi-absolute immunity from jurisdiction. Secondly, it argues that it is possible to identify well-defined standards of limited immunity to be applied in the context of employment litigation. Thirdly, it maintains that the interaction between the applicable immunity rules and international human rights law gives rise to a legal regime that can provide adequate protection to the rights of employees.

These arguments are developed over the course of five chapters.

Chapter two lays down a framework for the rest of the book by performing an overview of the immunities from civil jurisdiction to which foreign states, international organizations and diplomatic and consular agents are entitled under international law. This chapter shows that, for all that the international law immunities make up a composite and diversified legal regime, in

all three areas international law has developed non-absolute (ie limited) standards of immunity from civil jurisdiction. This suggests that, as a default rule, blanket approaches to immunity from civil jurisdiction are unwarranted, and that it is necessary to distinguish between admissible and non-admissible exercises of civil adjudicatory jurisdiction.

Chapter three turns to the problem of the persistence of absolute immunity in employment disputes. It shows that, in apparent contrast with the default rule of limited immunity in the context of civil litigation, both judicial decisions and scholarly writings manifest a substantial resistance to the application of non-absolute standards of immunity in employment matters. This chapter challenges the rationales for the persistence of absolute immunity in labour litigation and submits that none of the common justifications for absolute or quasi-absolute immunity holds up on closer examination, except for cases where absolute immunity results from unequivocal treaty provisions. The argument that this chapter puts forward is that any form of 'employment exceptionalism' in international immunity law is unwarranted. Just like any other form of civil litigation, it is necessary to devise limited immunity standards applicable to employment cases.

Chapter four examines how the doctrine of restrictive state immunity has been adapted to the peculiar context of employment litigation. The chapter's main claim is that this process of adaptation has taken place through the development of immunity standards that are peculiar to the area of labour and to a good extent are alternative to the classic formulation of restrictive state immunity, ie the distinction between *acta jure imperii* and *acta jure gestionis*. The discussion analyses the various employment-specific immunity criteria developed in international and domestic immunity instruments, as well as in domestic judicial decisions, and how such criteria have been applied to concrete cases. In light of a comprehensive analysis of existing state practice, the chapter concludes by bringing clarity to the much-debated issue of the status of the customary international law of state immunity in employment matters.

Chapter five aims to delineate non-absolute standards of immunity applicable to claims against employers other than the foreign state. Its key argument is that, despite the comparatively limited judicial practice available, it is possible to flesh out viable standards of limited immunity from staff claims brought against international organizations and diplomatic and consular agents, both in post and after the end of posting. It further argues that, to this end, restrictive immunity standards developed in the context of employment disputes with states may, to some extent, provide relevant guidance mutatis mutandis.

Finally, chapter six investigates the interplay between the content of immunity law, as detailed in the previous chapters, and the employees' right of access to justice under international human rights law. After discussing the two main judicial approaches to the accommodation of

such conflict, this chapter suggests that the adoption of a consistent approach is critical in order to avoid remedy gaps and differential treatment among workers. To this end, it submits that the rights of employees should be protected through a combination of limited immunity standards and of the principle of equivalent protection as developed in a growing body of human rights jurisprudence.