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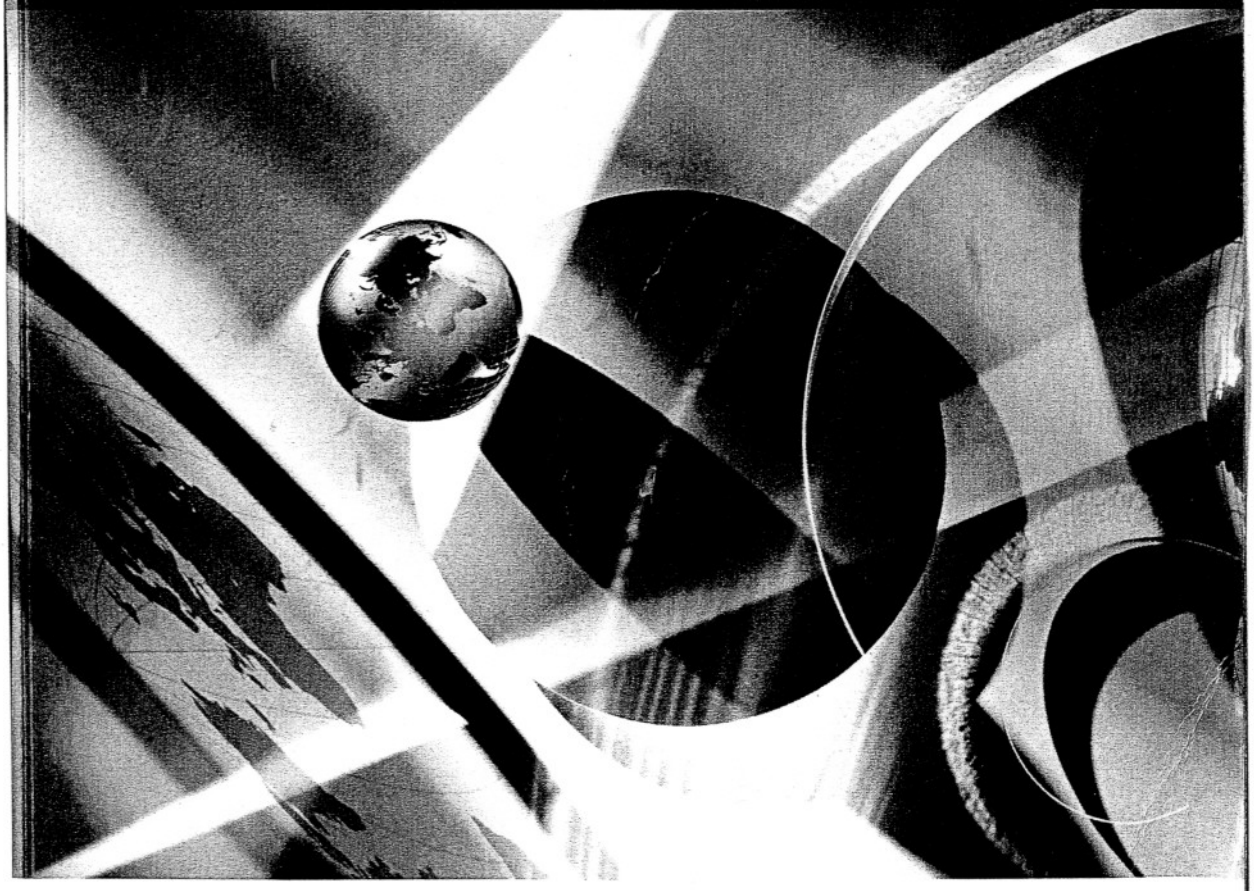
International Law



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INTERNATIONAL ORGANIZATIONS

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SUMMARY

This chapter examines the legal framework governing international organizations. It begins with an examination of the history, role, and nature of international organizations. It is argued in the chapter that although the constituent instrument and practices of each organization differ, there are common legal principles which apply to international organizations. The chapter focuses on the identification and exploration of those common legal principles. There is an examination of the manner in which international organizations acquire legal personality in international and domestic law and the consequences of that legal personality. There is also discussion of the manner in which treaties establishing international organizations are interpreted and how this differs from ordinary treaty interpretation. The legal and decision-making competences of international organizations are considered as are the privileges and immunities of international organizations. Finally, the chapter examines the structure and powers of what is probably the leading international organization—the United Nations.

I. INTRODUCTION

A distinctive feature of modern international affairs is the large number of international organizations through which States seek to achieve cooperation. This chapter looks at the place occupied by international organizations within the international legal system and sketches the legal framework governing their activities. It also describes the structure and activities of the leading global international organization—the United Nations (UN).

A. HISTORY AND ROLE OF INTERNATIONAL ORGANIZATIONS

International organizations were first created in the nineteenth century as a means of conducting international relations and fostering cooperation between States. They evolved from the ad hoc multilateral conferences convened by States to deal with particular situations—such as the Congress of Vienna (1815) which settled issues arising from the end of the Napoleonic wars—into institutions in which member States not only met regularly but which also possessed organs that functioned on a permanent basis. The early international organizations dealt with technical, non-political matters and included Commissions regulating European rivers such as the Rhine, the International Telegraphic Union (1865), and the Universal Postal Union (1874). The League of Nations, created in 1919 after the First World War, was the forerunner of the United Nations and was the first international organization established to deal with general political and other relations between States and which aspired to universal membership.

International organizations now play a significant role in international affairs generally and in the development of international law specifically. They exist in practically all fields of endeavour ranging from general political cooperation to protection of the environment, defence, provision of humanitarian and development assistance, promotion of trade, etc. Within their diverse fields of operation, international organizations perform a number of functions. These include:

- Providing a forum for identifying, debating, and deliberating upon matters of common interests.
- Acting as vehicles for taking action on international or transnational problems.
- Providing a forum for adopting and developing rules on matters of common interest.
- Providing mechanisms for promoting, monitoring, and supervising State compliance with agreed rules, policies, and practices as well as the gathering of information and data regarding the conditions, policies, and practices.
- Providing a forum for the resolution of international disputes.

B. DEFINITION, DISTINCTIONS, AND DIFFERENCES

In order to qualify as an international organization an entity must be composed predominantly of States and/or other international organizations and be established under international law. International organizations are usually created by treaty but they can also be created by other means, such as the resolution of another international organization or joint unilateral acts by States. Additionally, such an entity must possess autonomous organs having a will which is separate from that of the members. In practice this means that an organization must have a separate legal personality and be able to act on a majority basis.

The criteria set out above distinguish intergovernmental organizations which are the subject of this chapter from other types of international associations such as international non-governmental organizations and international public corporations. The key factor distinguishing international or intergovernmental organizations, such as the UN or the World Trade Organization (WTO), from international non-governmental organizations, such as Amnesty International or Greenpeace, is that the former are composed predominantly of States (and other intergovernmental organizations) whilst the latter are composed of private entities, though they operate in more than one country. International public corporations or joint inter-State enterprises are entities jointly created by a number of States for the performance of commercial functions. Examples include the European Company for the Financing of Railway Rolling Stock (EUROFIMA) or Air Afrique (an airline established by eleven West African States). Whilst international organizations are entities created under international law and have international legal personality, joint inter-State enterprises are formally established under the corporate law of one of the member States, even though the enterprise may have its roots in a treaty.

Despite sharing a common definition, there are many differences between international organizations. The most obvious differences concern membership and functions. Membership may be either universal (open) or closed. Universal organizations are open to all States and examples include the UN and its specialized agencies. Closed organizations limit membership to those States fulfilling certain common criteria. Examples based on geographic criteria include regional organizations such as the Organization of American States (OAS) and the African Union (AU). Other examples based on economic criteria include the Organization of Petroleum Exporting Countries (OPEC) and the Organization for Economic Cooperation and Development (OECD). Whilst some international organizations, such as the UN, have general functions within broad areas, the functions of others are restricted to particular fields, such as telecommunications, labour, health, or trade. Membership and function can be combined in various ways: some closed regional organizations exercise general functions (eg, the OAS and the Council of Europe) whilst some universal organizations only have competence in a limited field (eg, the UN specialized agencies such as the International Labour Organization (ILO)).

C. IS THERE A COMMON LAW OF INTERNATIONAL ORGANIZATIONS?

Given their great diversity, the existence of a common law applicable to international organizations has been questioned. On one view, since the law governing each organization derives from its own constituent instrument and practices, each will be governed by different legal principles which can only be applied by analogy to other organizations. It is true that these 'constitutions' regulate many matters, such as membership, competences, and financing, in disparate ways. However, it is equally true that customary international law and, to a much lesser degree, treaties have generated principles of general application. These common principles concern

matters such as the legal personality of international organizations, implied competences, interpretation of constituent instruments, employment relations, immunities and privileges, and the liability and responsibility of the organization and its member States. These common principles apply in the absence of any contrary principle provided for in the law of the particular organization, and as regards liability and responsibility may even apply despite contrary constitutional provisions. It is also accepted that the solutions adopted by one organization to a problem have a relevance to the approach to be taken to an analogous problem in another. The following sections outline the most important elements of this common law applicable to international organizations.

II. LEGAL PERSONALITY

In considering the legal position of international organizations it is useful to start by considering whether such entities possess legal personality and, if so, what the consequences of that legal personality are. Because international organizations usually operate on both the international plane and in national territories, one must consider whether these organizations possess international legal personality and legal personality in domestic law. Section II.A examines the meaning of international legal personality and the sources of that personality for international organizations, especially in cases in which it is not expressly provided for in the constituent instrument of that organization. It also examines the consequences for international organizations of the possession of international legal personality. Section II.B considers whether non-member States of international organizations are bound to recognize their legal personality. Section III.C examines the obligation of member States to confer personality in domestic law and the various techniques used by States to confer such personality.

A. PERSONALITY IN INTERNATIONAL LAW

1. The meaning of international legal personality

To say that an entity has international legal personality is to say that the entity is a bearer of rights and duties derived from international law. Whilst it was often asserted in the nineteenth and early twentieth centuries that States were the only subjects of international law it was decisively established in the *Reparations for Injuries* Advisory Opinion that other entities, particularly international organizations, also possess international legal personality. The case arose out of the murder of a UN mediator in Jerusalem by a Jewish group. The UN General Assembly requested an opinion from the International Court of Justice on whether the UN had the capacity to bring an international claim (against Israel) for the purpose of obtaining reparation for

injuries done to the organization and its agents. Whilst Article 104 of the Charter imposes an obligation on UN member States to confer legal personality on the Organization within their domestic legal systems, there is nothing in the Charter which expressly grants international personality to the UN. Nevertheless, the Court found that the UN possesses international legal personality, arguing that this was necessary for the fulfilment of its functions. The Court also deduced legal personality from the powers and rights that had been given to the UN (the power of decision-making, domestic legal personality, and privileges and immunities, treaty-making powers) under the Charter. The Court also noted that the Organization 'occupies a position in certain respects in detachment from its members' and that:

> . . . the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane.[1]

To say that international organizations possess international legal personality only tells us that they are capable of possessing international rights, capacities, or duties. It does not define the particular capacities, rights, or duties that any particular organization possesses.

2. The sources of international legal personality for international organizations

Although treaties establishing universal international organizations do not usually provide expressly that they possess international legal personality, there are treaties dealing with closed international organizations which do so.[2] Where there is no express treaty basis, international personality may be deduced by other means.

There are two basic schools of thought regarding the method by which the personality is to be established in the absence of an express treaty provision. The first school—the inductive approach—asserts that the personality of an international organization is to be implied from the capacities, powers, rights, and duties conferred on that organization in its constituent instrument and developed in practice (Seyersted, 1964; Rama Montaldo, 1970). According to this school of thought, an international organization will only have personality if its members intended it to have such personality or if it can be asserted that such personality is necessary for the fulfilment of the functions ascribed to it by its members. The second school—the objective approach—asserts that an international organization has international legal personality as long as certain objective criteria set out by law are fulfilled (Schermers and Blokker, 1995, §1565; Reinisch, 2000, pp 54–59; Bowett, 2001, para 15–007).[3] Thus personality is not derived from the will of the members. The relevant criteria are

[1] *Reparation for Injuries, Advisory Opinion, ICJ Reports 1949*, p 179.

[2] Examples include EC Treaty, Article 210; European Coal and Steel Community Treaty, Article 6; Agreement Establishing the African Development Bank, Article 50.

[3] Amerasinghe, 1996, p 82 tries to merge both schools, arguing an objective intention is required and is to be found in the circumstances surrounding the creation of the organization.

essentially those stated above in the definition of an international organization: that there must be (i) an association of States or international organizations; (ii) entrusted with functions or powers; (iii) endowed with at least one organ with a will of its own.

However, there is no radical difference between the two schools if one accepts that the characteristics which confer international legal personality on international organizations must necessarily be conferred on it by its members. Once those characteristics are conferred (by the will of the members through the constituent instrument or subsequent practice), the rules of international law confer international personality on the organization with all the consequences that this entails. Arguably, all that the Court did in the *Reparation for Injuries* Opinion was to search to see if the characteristics necessary for international personality (and which are predetermined by international law) had been conferred on the UN by its members.

3. The consequences of the possession of international legal personality by international organizations

Possessing international legal personality means that an organization possesses rights and duties in international law but this does not usually tell us the particular rights and capacities possessed by a particular organization. However, there are certain consequences which flow from the possession of international legal personality by an international organization:

(i) Personality distinguishes the collective entity (the organization) from the members. In particular, legal personality, separates out the rights and obligations of the organization from those of the members.

(ii) Personality entitles the organization to bring a claim in international law for the purpose of maintaining its own rights.[4] Such claims by international organizations will be brought through the mechanisms which exist in international law for the settlement of international disputes and can only be made in an international tribunal if that tribunal has jurisdiction to deal with the case.

(iii) Personality entails the consequence that an international organization is responsible or liable for the non-fulfilment of its obligations and gives rise to a presumption that members of the organization are not liable with respect to the obligations of the organizations, although this presumption can be displaced. The principle that members of the organization are not liable for its obligations is illustrated by the *International Tin Council (ITC)* cases. These cases arose out the failure of the ITC—an international organization established to control the price of tin on the world markets—to meet its commercial obligations. The ITC operated a buffer stock of tin and bought tin when price was low (thus creating a demand) and sold when prices were high. The organization was empowered to borrow money to finance these transactions. As a result of a persistent drop in the price of tin, the organization was no longer in a position to carry out trading and defaulted on a number of contracts with tin brokers and commercial bankers. These parties brought action in England (and elsewhere) seeking, amongst other things, to hold the members of the ITC liable for its debts. These actions were dismissed at all levels of the English courts on the ground that the personality of the organization precluded holding the members liable, the House of Lords relied primarily on English domestic law[5] whilst the majority in the Court of Appeal reached the same conclusion on the basis of international law.[6]

[4] Schermers and Blokker, 1995, §1856 argue that this capacity is an implied power but one possessed by all international organizations.

These three consequences are inherent in the very notion of international legal personality and apply to any international legal person. However, there are other consequences of the personality of international organizations which do not apply to all international legal persons but result from the nature of personality possessed by international organizations.

First, customary international law confers, at least within the host State, certain privileges and immunities on international organizations that are necessary for the efficient and independent functioning of the organization. Secondly, international organizations possess a power to conclude agreements which are subject to the law of treaties.[7] Whilst the question whether a particular type of treaty is within the competence of any particular organization depends on its implied powers, every organization at least has the competence (where not expressly denied) to enter into certain types of treaties. These include host-State agreements and treaties for the purpose of settling claims by and against the organization.[8]

B. OBJECTIVE LEGAL PERSONALITY AND RELATIONS WITH NON-MEMBER STATES

Does personality exist only in relation to members or is this personality objective in the sense that non-members are bound to recognize it, with all the consequences that this entails? Given that international organizations are created by treaties which do not bind non-parties without their consent[9] it might be argued that the personality of an international organization is only binding on members.[10] This would mean that non-members would only be bound to accept that personality

[5] *JH Rayner (Mincing Lane) Ltd* v *Department of Trade and Industry* [1989] 3 WLR 969 (HL).

[6] [1988] 3 All ER 257 (CA), particularly Ralph Gibson LJ at 353. Likewise in the *Arab Organization for Industrialisation & others* v *Westland Helicopters Ltd & others*, the Swiss courts held the member States of the organization were not bound by the obligations undertaken by the organization towards a private entity. See 80 ILR 622 Court of Justice, Geneva (1987); Swiss Federal Supreme Court (1988).

[7] Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986), preambular para 11.

[8] See *Reparation for Injuries, Advisory Opinion, ICJ Reports 1949*, p 174 at p 181.

[9] Vienna Convention on the Law of Treaties (1969), Article 34.

[10] See *Third Restatement*, 1987, §223.

where they have 'recognized' the organization as a legal person. However, it seems that the personality of international organizations is in fact objective and opposable to non-members.

In the *Reparation for Injuries* Opinion, the Court had to consider whether the UN could bring a claim against a State (Israel) which was not a member of the Organization. It took the view that:

> . . . fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality and not merely personality recognised by them alone. . . .[11]

Clearly then, international organizations with a membership consisting of the vast majority of the international community possess objective international personality.

However, it is important to note that the Court did not say that *only* such organizations possess objective personality and there are good reasons of practice and principle for concluding that the personality possessed by any international organization is objective and opposable to non-members. In practice, 'no recent instances are known of a non-member State refusing to acknowledge the personality of an organization on the ground that it was not a member State and had not given the organization specific recognition' (Amerasinghe, 1996, p 86). Furthermore, domestic courts of non-member States do acknowledge the international personality of international organizations.[12] As a matter of principle, the personality of international organizations derives from rules of customary international law that are binding on all States. Thus, once international law ascribes personality to an organization, a subject of international law is created with its own rights and its own duties.

C. PERSONALITY IN DOMESTIC LAW

1. The obligation to confer domestic legal personality

Since international organizations also operate within the territory of States, they usually need to possess domestic legal personality, including the capacity to perform legal acts in domestic law. For example, international organizations will need to be able to enter into contracts, own property, and institute legal proceedings. Many treaties establishing international organizations provide that they are to have the necessary legal capacities in domestic law, for example, UN Charter, Article 104. Even where there is no express treaty obligation, there may be an implied obligation for members to provide the organization with such domestic capacities as are necessary to allow it to function effectively (Reinisch, 2000, p 44).

[11] *Reparation for Injuries, Advisory Opinion, ICJ Reports 1949*, p 174 at p 185.

[12] For example, *International Tin Council* v *Amalgamet*, 80 ILR 31; 524 NYS 2d 971 (1988).

2. The manner in which domestic legal personality is recognized

States confer domestic legal personality on international organization in various ways. The technique used depends in part on the relationship between international law and the national law of the State concerned. The technique also varies between member States of an organization and non-members. In member States which adopt a more monist tradition of the relationship between international law and national law, the domestic personality is often taken to flow directly from the treaty provision requiring the conferment of such personality. This position has been taken (i) in the United States and Belgium[13] with respect to the UN, (ii) the Netherlands with respect to the United Nations Relief and Rehabilitation Administration,[14] and (iii) Italy with respect to the North Atlantic Treaty Organization (NATO).[15]

In member States in which treaties do not form part of domestic law such treaty obligation will usually need to be transformed into national law by a national instrument. This is the technique adopted in common law countries like the UK where the International Organizations Act (1968) provides that the legal capacity of a body corporate may by Order in Council be granted to any international organization of which the UK is a member.[16]

Thus in the UK, the House of Lords in *JH Rayner (Mincing Lane) Ltd* v *Department of Trade and Industry* stressed that the legal persona of the ITC in English law was created not by the constituent agreement of the organization but by the domestic legislation. According to Lord Oliver:

> Without the Order in Council the I.T.C. had no legal existence in the law of the United Kingdom. . . . What brought it into being in English law was the Order in Council and it is the Order in Council, a purely domestic measure, in which the constitution of the legal persona is to be found and in which there has to be sought the liability of the members which the appellants seek to establish, for that is the act of the I.T.C.'s creation in the United Kingdom.[17]

The consequence of this was that the liability of members for the organization's debts depended on domestic legislation rather than on the position in international law.

The legal personality of international organizations will also be recognized by the courts of non-member States. Under private international law domestic courts will recognize the legal status and capacities of an organization created by foreign law. Since an international organization has personality under the law of its creation—international law—that personality will be recognized by domestic courts.[18]

[13] *Manderlier* v *Organisation des Nations Unies & Etat Belge* (Ministre des Affairs Etrangères) (1966), 45 ILR 446; *UN* v *B* (1952), 19 ILR 490.

[14] *UNRRA* v *Daan* (1949), 16 ILR 337.

[15] *Branno* v *Ministry of War* (1954), 22 ILR 756.

[16] International Organizations Act 1968, s. 2(a). Similar legislation exists in the United States, Australia, Canada, and New Zealand.

[17] [1989] 3 WLR 969, 1012c.

[18] See *International Tin Council* v *Amalgamet*, 80 ILR 31; 524 NYS 2d 971; *Arab Organization for Industrialisation & others* v *Westland Helicopters Ltd & others* (1988), 80 ILR 622.

In the UK, the legal personality of an international organization of which the UK is not a member will be recognized where the organization has been accorded legal personality under the law of the host State or of another member State[19] rather than by virtue of international law and the relevant constituent treaty. Taken to its logical conclusion, this approach would have the unfortunate consequence that the law governing the status and capacities of the organization would be the foreign domestic law. Happily, the High Court in *Westland Helicopters Ltd* v *Arab Organization for Industralization*[20] held that whilst the personality of an international organization of which the UK was not a member would only be recognized in the UK if a foreign State had accorded that organization personality in its domestic law, the law governing the status and capacities of the organization is international law, including the relevant treaties.

III. INTERPRETATION OF CONSTITUENT INSTRUMENTS

Treaties which establish international organizations set out both the purposes, structure, and competences of the organization as a whole, and the particular functions and powers granted to its individual organs. These treaties, therefore, define the position of the organization towards its members as well as the relationship between the individual organs. In many cases, they also create rights and impose obligations between the members. Finally, they may to some degree define the relationship between the organization and third parties. Consequently, the manner in which they are interpreted is of considerable importance. The following subsections consider (i) who is empowered to interpret constituent treaties of international organizations and (ii) the relevant principles of treaty interpretation.

A. WHO IS EMPOWERED TO INTERPRET?

Since the organs of international organizations will need to have some appreciation of the scope of their functions and powers in order to carry them out, these organs will necessarily and routinely have to interpret the treaty setting up the international organization. In the *Certain Expenses* Advisory Opinion, the ICJ accepted that 'each organ [of the UN] must, in the first place at least, determine its own jurisdiction'.[21] Interpretations by organs will take place either formally and explicitly (eg, in a legal

[19] *Arab Monetary Fund* v *Hashim* [1990] 1 All ER 685. A similar approach was taken in the US case *In Re Jawa Mahmoud Hashim* (1995), 107 ILR 405.

[20] 108 ILR 564; [1995] 2 All ER 387.

[21] *Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962*, p 151 at p 168.

act of the organ)—particularly in cases where dispute arises as to the meaning of particular provisions—or impliedly as a result of the practice of the organ in question. Some constituent treaties provide for formal and definitive interpretations by a particular organ. This is particularly common with respect to international financial institutions where there is often an obligation to submit questions of interpretation to the Executive Board, Board of Directors, or the Board of Governors of the institution for decision.[22] In such circumstances, the interpretations given by these organs are binding, at least on the parties to the dispute, if not on all members and other organs. Where there is no formal power of interpretation given, and interpretation arises simply in the course of the work of the organization, such interpretations are not binding on member States. In the same way that organs will have to interpret constituent treaties in the course of their functions, members will similarly have to do so.

Judicial or arbitral tribunals may also have occasion to interpret constituent instruments. Such bodies may be created to deal with legal issues which arise within the system of the international organization in question. Examples include the Court of Justice of the European Communities and the International Tribunal for the Law of the Sea. International organizations do not have standing to be parties in contentious cases before the ICJ although UN organs and UN specialized agencies may request advisory opinions from the ICJ on legal questions arising within the scope of their competence, including the interpretation of their constituent instruments.[23] In the case of specialized agencies, this competence to request advisory opinions will be contained in agreements concluded with the UN or in their constituent instruments.[24] The ICJ may also have to interpret the constituent instrument of international organizations in contentious cases between States, where such a case raises questions relating to the rights and obligations of States arising from such treaties.

The constituent treaties may also provide for disputes arising thereunder to be referred to international arbitration.[25] Alternatively, an arbitral tribunal established under a treaty or contract between an international organization and a third party may have to interpret the constitution of that organization.[26] As has already been seen, national courts may also have to construe the constituent instruments of international organizations.

[22] eg, IMF Articles of Agreement, Article XXIX(a); IBRD Articles of Agreement, Article IX(a); Agreement Establishing the Asian Development Bank, Article 59.

[23] Although there are implications to the contrary in the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by WHO), Advisory Opinion, ICJ Reports 1996*, p 66, para 28, the better view is that an authorized UN specialized agency is always entitled to request an advisory opinion on the interpretation of its constituent instrument. See Akande (1998), pp 452–457.

[24] eg, WHO Constitution, Article 76; IMO Constitution, Article 66.

[25] eg, Universal Postal Union Constitution, Article 39.

[26] See *Westland Helicopters* v *Arab Organization for Industrialization et al.* (1988), 80 ILR 595.

B. WHAT ARE THE RELEVANT PRINCIPLES OF INTERPRETATION TO BE APPLIED?

Since the constituent instruments establishing international organizations are usually treaties, interpretation is governed by Articles 31 and 32 of the Vienna Convention on the Law of Treaties. Article 5 of that Convention expressly states that the Convention applies to such treaties and in the *Nuclear Weapons Advisory Opinion (Request by WHO)* the ICJ stated that:

> From a formal standpoint, the constituent instruments of international organizations are multilateral treaties, to which the well-established rules of treaty interpretation apply.[27]

However, the ICJ has noted that constituent instruments have 'certain special characteristics'[28] and that:

> . . . the constituent instruments are also treaties of a particular character; their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals. Such treaties can raise specific problems of interpretation, owing, *inter alia*, to their character which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by its founders, the imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties.[29]

To the extent that constituent instruments are in some senses 'constitutions', the general rules of treaty interpretation have to be applied differently when such treaties are under consideration (Lauterpacht, 1976, p 416; Amerasinghe, 1996, p 59). It is these differences that are focused on below.

1. The role of objects and purposes—the principle of effectiveness

Article 31 of the Vienna Convention provides that:

> A treaty shall be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

The ICJ has stated that 'interpretation must be based above all upon the text of the treaty',[30] and generally speaking, the objects and purpose of a treaty are subsidiary to the text (Aust, 2000, p 188). However, when interpreting constituent instruments of international organizations special prominence is given to the objects and purposes of the instrument and of the organization. In *Nuclear Weapons* Advisory Opinion the Court spoke of 'the very nature of the organization created, the objectives which have been assigned to it by its founders, the imperatives associated with the effective performance of its functions' as elements which may 'deserve special attention' in interpreting the constituent instruments of international organizations. Likewise in the *Reparation for Injuries* Opinion, the Court stated that 'the rights and duties of an entity such as the Organization must depend on its purposes and functions as specified or implied in its constituent documents or developed in practice'.[31] Frequently, the Court 'will seek to determine what are the purposes and objectives of the organization and will give to the words in question an interpretation which will be most conducive to the achievement of those ends' (Lauterpacht, 1976, p 420). This is known as the principle of effectiveness. The primary example of this principle is the doctrine of implied powers, by which an organization is deemed to have those powers that are necessary for achieving its purposes even in the absence of words in the text which indicate that the organization is to have such a power.

2. The role of subsequent practice

The practice of the organization is often given a special role, and is used not only in cases where the text of the agreement is ambiguous but also in cases of silence and to graft new rules on to the constituent instrument. The justification for this is that such treaties must be regarded as living instruments and be interpreted in an evolutionary manner, permitting the organization to fulfill its purposes in changing circumstances (Ress, 2002, pp 23–25). A well known example of this is the *Namibia* Advisory Opinion,[32] where the Court, relying on the consistent practice of the Security Council and its members, held that an abstention by a permanent member of the Security Council was a 'concurring vote' within the meaning of Article 27(3) of the United Nations Charter and not a veto. Similarly, in the *Reparation for Injuries* Advisory Opinion the Court referred to the practice of the UN and the fact that it had entered into treaties as confirming the legal personality of the organization.[33]

Reference to the practice of parties as a means of treaty interpretation is permitted by the Vienna Convention, Article 31(3)(b). However, the Court has also drawn on the practice of the organs of the organization. This is significant since some organs are not composed of all organization's members and, even if they are, many operate on a majority basis. Thus the practice of organs may not reflect the position of all parties to the treaty. It is always possible that this practice is acquiesced in by members. However, where some members object to the practice of an organ, allowing that practice to influence interpretation or development of new rules amounts to imposing new obligations on the minority without their consent. This is contrary to the general principle of international law that obligations can only arise from express or implied

[27] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by WHO), Advisory Opinion, ICJ Reports 1996*, p 66, para 19.

[28] *Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962*, p 151 at p 157.

[29] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by WHO), Advisory Opinion, ICJ Reports 1996*, p 66, para 19.

[30] *Territorial Dispute (Libya/Chad), Judgment, ICJ Reports 1994*, p 21, para 41.

[31] *Reparation for Injuries, Advisory Opinion, ICJ Reports 1949*, p 174, at p 180.

[32] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971*, p 16, paras 20–22.

[33] *Reparation for Injuries, Advisory Opinion, ICJ Reports 1949*, p 174 at p 179.

consent and some judges of the ICJ have counselled against this approach.[34] Some authors claim there is an independent rule permitting the use of the practice of organs which members of organizations must be deemed to have accepted (Lauterpacht, 1976, 460; Ress, 2002, pp 27–30). However, subsequent practice of a majority within an organ must not be used as a means of constitutional amendment (Amerasinghe, 1996, p 54; Lauterpacht 1976, p 465). It is noteworthy that in practically all cases where the ICJ has referred to subsequent practice of organs it has simply been used as a means of confirming an interpretation already arrived at using other methods of interpretation. Subsequent practice of organs should therefore be confined to cases where it establishes the agreement of the parties, confirms a result already reached or to cases where other methods of interpretation lead to an ambiguity or an unreasonable result.

IV. POWERS OF INTERNATIONAL ORGANIZATIONS

In addition to the powers expressly conferred on international organizations by their constituent treaties these organizations also possess powers which are implied. This section examines the basis for those implied powers. It then surveys the kinds of decision-making powers possessed by international organization, and finally examines the legal consequences when organizations act beyond their powers.

A. IMPLIED POWERS

In the *Reparation for Injuries* Advisory Opinion, the ICJ stated that:

> Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.[35]

This doctrine of implied powers has been applied by the ICJ in a number of cases. In the *Reparation for Injuries* Opinion, the Court held that the UN was entitled to present an international claim on behalf of its agents even though such a power is not stated in the Charter. Likewise, in the *Certain Expenses* Advisory Opinion,[36] the Court held that the UN Security Council and the General Assembly were competent to establish peacekeeping operations although that concept is not mentioned in the Charter.

Implied powers are not restricted to those powers necessary for carrying out of express powers or functions. On the contrary, ICJ practice shows that powers can be

[34] See the Separate Opinion of Judge Spender in *Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962*, p 151 at p 197.

[35] *Reparation for Injuries, Advisory Opinion, ICJ Reports 1949*, p 174 at p 182.

[36] *Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962*, p 151 at p 177.

implied whenever they are 'essential' for the fulfilment of the organization's objects and purposes. Furthermore, 'essentiality' does not mean that the power to be implied must be 'indispensably required' (Lauterpacht, 1976, pp 430–432). The Court has been rather liberal in its approach and has been willing to imply a power where it would 'promote the efficiency of the Organization'.[37] The main limitation is that the power must be directed at achieving the aims and purposes of the Organization. As the ICJ stated that in *Certain Expenses* Advisory Opinion:

> When the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization.[38]

B. DECISION-MAKING POWERS

International organizations are often given the power to take decisions relating to their spheres of activity. Some decisions relate to the internal workings of the organization itself and are directed at the organs of the organization—for example, decisions approving the budget, staff regulations, rules of procedure, or decisions establishing subsidiary organs. Other decisions are taken in the course of carrying out the tasks entrusted to the organization and are directed at the members of the organization or, exceptionally, at third parties such as individuals and other non-State entities. Examples include decisions of the WHO setting standards with respect to pharmaceutical and other products; decisions of the UN Security Council imposing sanctions on a State; decisions of the ICAO Council relating to safety standards for international aviation.

In determining whether or not a particular decision of an international organization is legally binding on its addressee one must consider, first, whether that organ or organization is empowered by its constitution (expressly or impliedly) to take binding decisions and, secondly, whether the language of decision reveals an intention on the part of the organ to issue a binding decision.

Some constituent treaties expressly confer on organizations the power to issue decisions binding on their members. For example, Article 25 of the UN Charter obliges members to carry out decisions of the Security Council and under Article 22 of the WHO Constitution regulations adopted by the World Health Assembly are binding, unless a member opts out of the regulation *ab initio*.

Since international organizations do not generally have law-making powers, they are usually given power to take non-binding decisions which may take a number of forms. The most common is the power to make *recommendations* to members concerning matters within the scope of the organization (eg, UN General Assembly under Articles 10–14 of the UN Charter). Other decisions may be *determinations* consisting of findings of facts or characterizations or formal *declarations* of principles

[37] Akande, 1998, p 444.

[38] *Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962*, p 151 at p 168.

which the organ considers applicable in a particular area. Since these decisions are not binding, they do not, of themselves, create obligations for member States.

However, the non-binding nature of decisions does not mean that a particular decision is devoid of legal effect for members. Some constituent instruments oblige members to consider recommendations in good faith. For example, the ILO and UNESCO Constitutions (Article 19(6) and Articles 4(4) and 8 respectively) require member States to submit recommendations to their competent national authorities for consideration and are to report back to the organization on action taken. Furthermore, a separate international treaty may contain an obligation to have regard to (and possibly to comply with) non-binding decisions of an international organization. For example, the WTO Agreement on Sanitary and Phytosanitary Measures (SPS), Article 3 encourages members to base their SPS measures on standards adopted by other international organizations. Likewise United Nations Convention on the Law of the Sea obliges States to comply with standards adopted by the 'competent international organization' (usually the IMO). Additionally, it is arguable that there is a presumption that members acting in accordance with a relevant decision of an international organization are acting lawfully at least as between the members of that organization.

Finally, non-binding decisions of international organizations may contain rules of law which are or become binding through other processes of international law. Resolutions of the UN General Assembly which are couched in declaratory terms are a good example.[39] Where such declarations elaborate on rules contained in the constituent treaty of the organization or other treaties adopted within the organization they may be regarded as authoritative interpretations of the treaty in question or, alternatively, as subsequent practice establishing the agreement of the parties to the treaty.[40] Furthermore, such resolutions may be declaratory of pre-existing rules of customary international law. Alternatively, such resolutions may play a role in the formation of *new* customary rules so that the rules contained therein may come to be regarded as binding. As the ICJ noted in the *Nuclear Weapons* Advisory Opinion,

> . . . General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.[41]

[39] Prominent examples include the 'Universal Declaration of Human Rights', GA Res 217A (1948); 'Declaration of Principles of International Law Concerning Friendly Relations Among States', GA Res 2625 (1970); 'Declaration on Permanent Sovereignty Over Natural Resources', GA Res 1803 (1962).

[40] Article 31(3)(*c*), Vienna Convention on the Law of Treaties.

[41] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by WHO), Advisory Opinion, ICJ Reports 1996*, p 66, para 70.

Thus whilst some international organizations have the competence to adopt decisions which are binding on member States and others, most do not possess this power. However, non-binding decisions of international organizations are not without legal effect and the rules contained in those decisions may be binding through a link with other treaties or under customary international law.

C. *ULTRA VIRES* DECISIONS OF INTERNATIONAL ORGANIZATIONS

What is the effect of a decision that is beyond the powers (*ultra vires*) of the organ or the organization? Are such decisions nullities and therefore of no effect at all (void *ab initio*)? Or are they only voidable, meaning that they are effective until they are set aside by a competent body? And whatever view is taken, how one is to determine whether a particular decision is *ultra vires* or not. Very few international organizations have, like the EC, a judicial system competent to compulsorily adjudicate on the legality of acts of the organs of the organization. There is, for example, no general procedure by which the ICJ can consider the legality of decisions of the UN or its specialized agencies, unless the question is raised in an advisory opinion requested by the organ or organization or if it arises incidentally in a contentious case between States (Akande, 1997).

The dearth of procedures for reviewing the legality of decisions makes the view that illegal decisions are voidable (Osieke, 1983, p 255) problematic. In effect, it would mean that illegal decisions stand unless by accident there is the possibility of review. This is clearly unsatisfactory and the better view is that *ultra vires* decisions—but not those merely suffering some minor procedural defect—are a nullity.[42] As Judge Morelli said in the *Certain Expenses* case:

> In the case of acts of international organizations . . . there is nothing comparable to the remedies existing in domestic law in connection with administrative acts. The consequence of this is that there is no possibility of applying the concept of voidability to the acts of the United Nations. If an act of an organ of the United Nations had to be considered as an invalid act, such invalidity could constitute only the *absolute nullity* of the act. In other words, there are only two alternatives for the acts of the Organization: either the act is fully valid, or it is an absolute nullity, because absolute nullity is the only form in which invalidity of an act of the Organization can occur.[43]

Thus, where a decision is illegal, a State is free to depart from it.[44] However there is always the risk that the decision might later on be found to be lawful and the non-compliant State in breach of its obligations.

It must be noted that given the limited opportunities for judicial review, the

[42] The constitution of the organization might provide that wrongful decisions become void only following the determination of a competent body. See Osieke, 1983, pp 244–245.

[43] *Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports 1962*, p 151 at p 222.

[44] See Separate Opinion of Judge Gros, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, ICJ Reports 1980*, p 73 at p 104.

principle that *ultra vires* acts are void *ab initio* might undermine the certainty of decisions of international organizations and permit States to seek to evade their treaty obligations. However, this danger is reduced by the presumption, already referred to, that acts of international organizations directed at the fulfilment of the purposes of the organization are valid, meaning that the burden of proof is on the State arguing otherwise. Additionally, mere procedural defects do not render decisions invalid. The combination of these principles is sufficient to ensure stability.

V. PRIVILEGES AND IMMUNITIES

International organizations require certain privileges and immunities for the effective performance of their tasks. These immunities are granted to preserve the independence of the organization from its member States and to secure the international character of the organization. They ensure that no member State is able to unilaterally interfere through its legislative, executive, or judicial branches with the workings of an international organization set up to act in the common interests of members. This section considers the sources and content of the privileges and immunities of international organizations.

A. SOURCES OF PRIVILEGES AND IMMUNITIES

The privileges and immunities of international organizations may be derived from a number of sources.

1. Treaties

There are three types of treaties which deal with the privileges and immunities of international organizations. First, the constituent instrument of the organization often includes provisions requiring member States to grant the organization immunities. Such provisions are usually very basic and, like Article 105 of the UN Charter, only contain a general statement that the organization, its officials, and representatives of members are to enjoy such privileges and immunities as are necessary for the exercise of their functions.[45]

Secondly, there are general multilateral agreements dealing with the immunities of particular international organizations or groups of organizations. These types of agreements are regarded as a necessary supplement to the more basic provisions in the constituent instruments. The leading examples include the 1946 General Convention

[45] See also ILO Constitution, Article 40; WHO Constitution, Article 12; Council of Europe Statute, Article 4(a); OAS Charter, Articles 133 and 134. However, the constitutional texts of international financial institutions contain fairly elaborate provisions. See, eg, IBRD Articles of Agreement, Article VII; IMF Articles of Agreement, Article IX; EBRD Constitution, Articles 46–55.

on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.[46]

The third type of treaty are bilateral agreements between international organizations and individual States which set out specific privileges and immunities. They are most commonly concluded between the organization and the State in which it is situated (the headquarters agreement) or with States in which the organization is about to perform a particular mission, such as a peacekeeping or factfinding activity (eg, Status of Forces Agreements). Such States need not be members of the organization.[47]

2. Customary international law

In the absence of a treaty obligation, customary international law requires States to grant privileges and immunities to international organizations.[48] This has been recognized both by domestic courts of member States of an organization and those of non-member States which have consented to the organization functioning in their territory.[49] The obligation is one of good faith requiring the 'provision of what is necessary for an organization to perform its functions' (Higgins, 1994, p 91).

3. National law

Since privileges and immunities are to be enjoyed within the national legal order, many States have enacted domestic legislation governing their being granted. The relevant legislation in the UK is the International Organizations Act 1968 which provides that the Executive may by subsidiary legislation (Order in Council) grant the stated privileges and immunities to international organizations of which the UK is a member.

B. SCOPE OF PRIVILEGES AND IMMUNITIES

The particular privileges and immunities which a State is to grant an international organization flow from the source of the obligation which will most commonly be a

[46] Similar treaties exist within the OAS, Council of Europe, European Communities, League of Arab States, and the OECD.

[47] For a long time Switzerland was not a member of the UN but had an agreement with the UN regarding the UN's office in Geneva.

[48] See Reinisch, 2000, pp 145ff; Higgins, 1994, pp 90–94; *Third Restatement*, 1987, §467(1); Amerasinghe, 1996, pp 397–402; Szasz, 1995, p 1328. But see Bowett, 2001, §15–040 who only accepts such a customary obligation in some cases.

[49] See *X et al.* v *European School Munich II* (Bavarian Administrative Court, Germany 1995), referred to by Reinisch, 2000, pp 150–151; *Iran-United States Claims Tribunal* v *AS*, 96 ILR 321, 329 (Dutch Supreme Court, 1985); *ESOC Official Immunity Case*, 73 ILR 683 (Federal Labour Court, F.R. Germany, 1973); *Branno* v *Ministry of War*, 22 ILR 756 (Court of Cassation, Italy, 1954); *International Institute of Agriculture* v *Profili*, 5 ILR 413 (Court of Appeal, Italy, 1930). Courts of States other than the host State have held that they are not obliged to grant immunities to international organizations in the absence of a treaty. See *Bank Bumiputra Malaysia BHD* v *International Tin Council*, 80 ILR 24 (High Court, Malaysia, 1987); *International Tin Council* v *Amalgamet*, 80 ILR 31 (New York Supreme Court, 1988); *ECOWAS* v *BCCI*, 113 ILR 473 (Court of Appeal of Paris, France, 1993).

treaty. Despite the impressive number of treaties providing for the privileges and immunities, there are remarkable similarities in their contents. This has permitted rules of customary international law to develop. However, these similarities relate to general matters and details vary from treaty to treaty.

Who is entitled to the immunity? Most treaties confer privileges and immunities on three categories of person. First, to the organization itself; secondly, to officials of the organization (including experts on mission for the organization); thirdly, to representatives of member States (or exceptionally of other bodies) to the organization. This chapter only considers the privileges and immunities of the organization itself since the personal immunities of international officials and State representatives are considered in Chapter 12. The five main privileges and immunities conferred on international organizations are considered in the following sections.

1. Immunity from jurisdiction

International organizations are usually granted absolute immunity from the judicial jurisdiction of States. For example, Article II, Section 2 of the 1946 Convention on the Privileges and Immunities of the United Nations provides that:

> The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Similar provisions exist in many treaties setting out the immunities of international organizations.

This immunity from jurisdiction prevents law suits against organizations before domestic courts unless they have waived their immunity by consenting to the proceedings. Despite the absolute nature of the immunity granted, a number of domestic courts have applied to international organizations the concept of restrictive immunity, granting them jurisdictional immunity only in relation to acts *jure imperii* (in the exercise of sovereign authority) rather than acts *jure gestionis* (done privately).[50] This is based on the misapprehension that since international organizations are composed of States they are to be placed in the same position as foreign States. This approach is incorrect for at least two reasons. First, it is contrary to the express provisions of the relevant treaties. Secondly, international organizations are not sovereign entities and do not exercise sovereign authority. Their immunity is not granted to protect sovereign or public acts but is functional and granted in respect of acts done in the exercise of their functions. Such functions and acts may well be commercial and so classified as private if done by a State. Thus immunity may arise for an international organization in cases where a foreign State will be denied immunity. For example, employment disputes fall within the immunity of an international organization even if the relations with the particular employee might be classified as *jure gestionis*.

[50] See Reinisch, 2000, pp 185–205 who notes that this trend is most common in Italy.

It should be noted that some international organizations are not granted absolute immunity by the relevant treaties. In particular, constituent instruments of a number of international financial institutions such as the World Bank (IBRD) do not extend immunity to certain kinds of actions. This is because these organizations operate in the commercial world where it is felt necessary to permit creditors to institute actions in some instances.

2. Immunity from execution

International organizations also enjoy immunity from measures of execution. This prevents the seizure or even the pre-judgment attachment of its property or other assets. It is important to note that a waiver of jurisdictional immunity does not include a waiver of the enforcement jurisdiction which must be given expressly and separately. In some cases, particularly as regards international financial institutions, the immunity from execution granted by the relevant treaty only applies before the delivery of final judgment.

3. Inviolability of premises, property, and archives

Practically all relevant treaties provide that the premises of an international organization are to be inviolable and that its property and assets are to be immune from search, requisition, confiscation, or other forms of interference by State authorities.[51] Thus, national authorities may not enter such premises without the consent of the international organization, even when a crime has been committed on the premises or a criminal is sheltering there. The treaties also impose an obligation on the national authorities to exercise due diligence in protecting those premises from acts of third parties.

The archives (documents) of an international organization are usually inviolable wherever located.[52] This ensures the confidentiality of communications within and with the international organization, enabling it to function effectively and independently. Consequently, international organizations are not obliged to produce their official documents, or other documents held by them, in proceedings before national courts. In one of the Tin Council cases—*Shearson Lehman Bros* v *Maclaine Watson & Co* (1987)[53]—the House of Lords held that documents issued by an international organization but which had been communicated to third parties by officials of the organization did not benefit from these principles. This decision has been criticized because the documents were sent by the organization to the States in their capacity as members—not as third parties—and in relation to the work of the organization. Plainly, the confidentiality of such documents requires protection.

[51] UN Convention 1946, Article II, section 3; Specialized Agencies Convention 1947, Article III, section 5.

[52] UN Convention 1946, Article II, section 4; Specialized Agencies Convention 1947, Article III, section 6.

[53] 77 ILR 107.

4. Currency and fiscal privileges

Since many international organizations exercise their functions in a number of countries they will need to transfer funds. Several treaties provide that such transactions are to be free from financial restrictions. For example, the UN Convention provides that the organizations (a) 'may hold funds, gold or currency of any kind and operate accounts in any currency' and (b) may freely transfer their 'funds, gold or currency from one country to another or within any country and to convert any currency held by them into any other currency'.[54] International organizations are usually exempt from direct taxation of their assets, income, and property as well as from custom duties and other import and export restrictions in respect of articles for official use.[55] However, this does not extend to charges for public utility services or excise duties or sales taxes.

5. Freedom of communication

It is commonly provided that official communications by international organizations shall be accorded treatment at least as favourable as that accorded to foreign governments.[56] In addition it is sometimes provided that no censorship shall be applied to official communications and that the organization shall have the power to use codes as well as couriers and bags having the same status as diplomatic couriers and bags.[57]

International organizations should not use their privileges and immunities to circumvent either the domestic laws of States or their responsibility towards third parties. In order to prevent immunity being used to avoid legal responsibility, Article 29 of the UN Convention provides that 'The United Nations shall make provisions for appropriate modes of settlement of (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party . . .'. In practice international organizations will often include arbitration clauses in contracts that they enter into. Furthermore, most organizations have a system for the settlement of employment disputes which includes recourse to an international administrative tribunal.

Finally, it must be remembered that international organizations remain responsible in international law for breaches of their obligations even if they are immune from process before domestic courts. As the ICJ has stated 'the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity'.[58]

[54] UN Convention, Article II, section 5; Specialized Agencies Convention, Article III, section 7.

[55] UN Convention, Article II, section 7; Specialized Agencies Convention, Article III, section 9.

[56] UN Convention, Article III, section 9; Specialized Agencies Convention, Article IV, section 11; IBRD Articles of Agreement, Article VII(7).

[57] UN Convention, Article III, sections 9 and 10; Specialized Agencies Convention, Article IV, section 12.

[58] *Difference Relating to Immunity from Legal Process, Advisory Opinion, ICJ Reports 1999*, p 62, para 66.

VI. THE UNITED NATIONS SYSTEM

The remainder of this chapter will look at the structure and powers of what is perhaps the leading family of international organizations—the United Nations system. The United Nations was established after the Second World War with very broad aims, including: (i) the maintenance of international peace and security; (ii) the development of friendly relations among nations; (iii) international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and (iv) the promotion of human rights (Article 1, UN Charter). The work of the UN and its specialized agencies touches on practically every area of human life and endeavour.

A. THE STRUCTURE OF THE UNITED NATIONS

Like all international organizations, the UN is composed of a number of organs. In addition, the UN system comprises a family of international organizations which share certain common institutions and practices.

1. The United Nations organs

Article 7 of the UN Charter identifies two types of organs within the United Nations: principal organs and subsidiary organs. Article 7(1) lists the six principal organs of the United Nations: (i) the General Assembly; (ii) the Security Council; (iii) the Economic and Social Council (ECOSOC); (iv) the Trusteeship Council; (v) the International Court of Justice; and (vi) the Secretariat. The structure and powers of each of these organs shall be discussed below. Article 7(2) provides that 'such subsidiary organs as may be found necessary may be established in accordance with the present Charter'. Whilst the list of principal organs is exhaustive and no additional organs may be established or wound up except by amendment of the Charter, subsidiary organs can always be created by the principal organs. Their lifespan is determined by the principal organ that has established them.

The powers, functions, and composition of the principal organs are determined by the Charter, whilst those of subsidiary organs are determined by the principal organs that establishes them. Subsidiary organs established by the General Assembly include the International Law Commission, the United Nations Environment Programme (UNEP), the Office of the UN High Commissioner for Refugees (UNHCR), UNICEF, the United Nations Development Programme (UNDP), and the UN Administrative Tribunal (UNAT). Subsidiary organs set up by the Security Council include peacekeeping missions, the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and the United Nations Compensation Commission (UNCC).

In most cases, a principal organ will confer some of its powers on a subsidiary organ that it creates. However, a principal organ may be entitled to confer on the

subsidiary organ powers which it does not itself possess where the power to establish such a subsidiary organ is necessary for the performance of the functions of the principal organ (Sarooshi, 1996, pp 426–431). Thus, both the General Assembly and the Security Council have established subsidiary organs that have judicial powers even though they themselves do not have such powers. The legality of their doing so was confirmed by the ICJ in the *Administrative Tribunal* Advisory Opinion[59] and by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia.[60] Moreover, in the *Administrative Tribunal* case it was held that the General Assembly was bound to give effect to the awards of the Administrative Tribunal thus confirming that a principal organ can establish a subsidiary organ with powers to bind the principal organ.

2. The specialized agencies

The Charter also refers to another type of body known as specialized agencies. Unlike the subsidiary organs, these are international organizations in their own right. They are established by separate treaties and brought into relationship with the UN by agreement (Articles 57 and 63). They operate in particular technical fields and, like the UN, are open organizations with worldwide membership and responsibilities. There are currently seventeen specialized agencies.[61]

Although they are independent international organizations, the UN Charter provides that the UN may coordinate their activities (Articles 57–60), principally through ECOSOC, which has not, in practice, been active in this regard. Some activities are coordinated by other bodies. For example, development assistance is coordinated by UNDP. The Administrative Committee on Co-ordination (ACC) is responsible for coordinating the work of the specialized agencies themselves. Despite the suggestion to the contrary in the *Nuclear Weapons* Advisory Opinion (WHO Request),[62] legitimate overlap can and does occur between the competences of

[59] *Effects of Awards of Compensation made by the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1954*, p 47.

[60] *Prosecutor* v *Tadić (Jurisdiction)* (1995), 105 ILR 419, 470–471.

[61] These are: (1) The International Labour Organization (ILO); (2) The Food and Agriculture Organization (FAO); (3) The United Nations Educational, Scientific and Cultural Organization (UNESCO); (4) The World Health Organization (WHO); (5) The International Bank for Reconstruction and Development (IBRD or World Bank); within the World Bank group are the next three agencies which are also specialized agencies but are run together with the World Bank; (6) The International Development Association (IDA); (7) The International Finance Corporation (IFC); (8) The Multilateral Investment Guarantee Agency (MIGA); (9) The International Monetary Fund (IMF); the IMF is separate from the World Bank but closely related as another 'Bretton Woods' Institution; (10) The International Civil Aviation Organization (ICAO); (11) The Universal Postal Union (UPU); (12) The International Telecommunications Corporation (ITU); (13) The World Meteorological Organization (WMO); (14) The International Maritime Organisation (IMO); (15) The World Intellectual Property Organization (WIPO); (16) The International Fund for Agricultural Development (IFAD); (17) The United Nations Industrial Development Organization (UNIDO).

[62] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by WHO), Advisory Opinion, ICJ Reports 1996*, p 66, para 26.

specialized agencies within the UN system. For example, both the WHO and the ILO are competent to deal with health of workers. Likewise IMO, UNEP, and the International Atomic Energy Agency cooperate regarding transportation of nuclear fuel by sea.

3. Treaty bodies

A variety of treaties concluded under the auspices of the UN establish bodies which maintain very close relations with the UN and are considered as UN bodies. Examples include the various committees set up by human rights treaties to monitor compliance with the obligations they contain, such as the Human Rights Committee and the Committee Against Torture. These bodies only act in relation to those States which are parties to these treaties. They meet in the UN, are serviced by the UN Secretariat, and submit reports to the General Assembly.

B. PRINCIPAL ORGANS OF THE UNITED NATIONS

1. The General Assembly

The General Assembly is the plenary organ of the United Nations and is composed of all member States (Article 9) and is the only principal organ in which all members are represented. It is a deliberative not a legislative body and unlike the Security Council, is not in permanent session but meets annually in regular session which usually takes place between September and December (Article 20). It may also meet in special session outside its regular sessions. At its regular sessions, agenda items are allocated to one of the six main committees, where substantive discussion and decision-taking occurs. These committees are:

First Committee—Disarmament and International Security;
Second Committee—Economic and Financial Committee;
Third Committee—Social, Humanitarian and Cultural Committee;
Fourth Committee—Special Political and Decolonization Committee;
Fifth Committee—Administrative and Budgetary Committee;
Sixth Committee—Legal Committee.

Decisions taken in these committees are put to the plenary for adoption towards the end of the Assembly's session.

There are also two procedural and two standing committees. The procedural committees, which unlike the main committee are not composed of all UN members, are the General Committee (responsible for organizing the work of the session and for deciding on the agenda) and the Credentials Committee (which examines the credentials of representatives of member States). The standing committees—the Advisory Committee on Administrative and Budgetary Questions and the Committee on Contributions—assist the Fifth Committee with financial matters and are composed of experts rather than representatives of member States.

The Assembly has competence to discuss and make recommendations upon the very broad range of matters falling within the scope of the Charter (Article 10). However, it can only make binding decisions on internal administrative matters. Articles 11–17 of the Charter specifically provide that the General Assembly has competence with regard to peace and security, promoting human rights, and international cooperation in political, economic, social, cultural, educational, and health fields. However, the Assembly may not make recommendations concerning disputes or situations in respect of which the Security Council is exercising its functions unless requested to do so by the Council (Article 12) and, together with the UN as a whole, it may not intervene 'in matters which are essentially within the domestic jurisdiction of any State' (Article 2(7)). Voting in the Assembly is on the basis of one member one vote. Decisions on important questions must be adopted by two-thirds of members present and voting. There is a non-exhaustive list of such important questions. Other decisions are to be taken by simple majority (Article 18).

2. The Security Council

The Security Council is composed of fifteen member States of the UN. There are five permanent members of the Council (USA, Russia, UK, France, China) and ten which are elected by the Assembly for two-year terms (Article 23). Its competence is mainly (though not exclusively) limited to issues concerning the maintenance of international peace and security, for which it bears primary responsibility within the UN system (Article 24). Although each member has one vote, decisions on non-procedural matters must be adopted by the affirmative vote of nine members and include the concurring vote of the permanent members who therefore possess a veto with respect to substantive decisions. Abstention, however, are not deemed to be vetos.[63] The powers of the Security Council in the area of peace and security are explored in Chapters 16 and 19. It suffices here to note that the Council has the power to adopt decisions which are binding on members of the UN (Articles 24 and 25).

3. The Economic and Social Council

ECOSOC is the primary organ responsible for economic and social matters within the UN. It is composed of fifty-four members who serve for three years and each member has one vote. ECOSOC can make or initiate studies in the area of its competence and make recommendations to the General Assembly, the member States, or the specialized agencies on such matters (Article 62). ECOSOC has special responsibility for the promotion of human rights. It has been active in preparing treaties in the human rights areas (eg, the International Covenant on Civil and Political Rights). It also has responsibilities regarding the specialized agencies, concerning their relations with the UN and the coordination of their activities.

[63] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971*, p 16, paras 20–22.

ECOSOC has created a number of subsidiary organs: five regional commissions—for Africa, the Asia Pacific, Europe, Latin America and the Caribbean, and Western Asia—and nine functional Commissions dealing with particular topics, including the Commission on Human Rights, the Commission on Sustainable Development, and the Commission on the Status of Women. ECOSOC also has six standing committees (eg, the Commission on Human Settlements and the Commission on Transnational Corporations) and a number of standing bodies of experts.

4. The International Court of Justice

This is the principal judicial organ of the United Nations and is considered in Chapter 18.

5. The Secretariat

The Secretariat consists of the staff of the UN and is headed by the Secretary-General. It services the work of the UN organs, except the ICJ, and carries out other functions that they assign to it. In addition, the Secretary-General may bring to the attention of the Security Council any matter which he considers may threaten international peace and security (Article 99). Members of the Secretariat are to be independent of governments and may not seek or receive instructions from them (Article 100).

6. Trusteeship Council

The Trusteeship Council was set up to administer the trusteeship system established by Chapter XII of the Charter. This concerned the administration of territories that had been League of Nations mandates (ie, territories taken from Germany and Turkey following the First World War) and territories 'detached from enemy States as a result of the Second World War' (Article 77) with the objective of promoting the advancement of the inhabitants and their progressive development towards self-government and independence. The work of the Council was suspended in 1994 when the last of the Trust territories, Palau, achieved independence.

VII. CONCLUSION

Despite the diversity in the nature and tasks of international organizations, it has proved possible to identify some common legal principles which govern these organizations. However, it cannot be forgotten that the structure, functions, and powers of each organization are primarily to be derived from the treaty setting up the organization and the practice which has built up regarding that organization.

The fact that States continue to create new international organizations to deal with emerging problems in international affairs is principally due to the result of three factors. First, there is the realization that a number of problems faced by States and their populations can only be resolved or can best be resolved through international

cooperation. Secondly, there is there is the realization that such cooperation often needs to be multilateral. Thirdly, it is clear that such cooperation needs to be permanent. The heightened awareness by States of these points and the increasing emergence of 'global problems', means that it is likely that there will be an increase not only in the number of international organizations but also in the powers and functions accorded to those organizations. However, together with this increasing delegation of public powers by States to international organizations it is likely that greater attention will be paid to developing means to hold these organizations accountable for the exercise of such powers.[64] This is a process that has already generated much interest and will involve careful analysis of the limits of the powers of international organizations.

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[64] See generally, Reinisch, 2001 and ILA Committee Reports, 1996–2000.

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