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THE LAW OF INTERNATIONAL ORGANIZATIONS

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Introduction

The world of today is vastly different from the world in which states laid down the roots and basis of the international law system as a normative framework for coexistence. The trends toward globalism and necessity of interstate cooperation have given rise to new actors in international politics, among which international organizations are the most important. They serve for states (and sometimes other actors) as international cooperation fora, allowing sovereign nations to accomplish common goals. Though some of these goals may be accomplished by states individually, most require international cooperation. Among such goals are issues crucial for the survival of the whole international community: peace, security, human rights, environmental protection, and more. No state – no matter how prosperous or powerful – can effectively address these issues alone, or through restricted tools such as international conferences. Global problems require a coordinated and effective response; international organizations can facilitate such responses. Most changes in international law since 1945 have occurred within the framework of international organizations, and international organizations, as institutionalized forms of cooperation (without which the existence and functioning of today's international community is unthinkable) can be created to fulfill nearly all imaginable goals. This explains their meteoric rise, and why most issues arising in world news headlines´ are or will be adressed by international organizations. In short: international organizations are (directly or indirectly) part of our lives, making headlines every day.

Secondly, international organizations exist as legal persons in their own right, but are designed and operated by the states that created them. That is why this subject matter is never boring – the rise of international organizations challenges the position of states as the primary actors in international relations. This paradigm, reflected in international law, makes the study of international organizations an interesting, but also challenging, undertaking. International organizations, however, raise a lot of legal issues –and dealing with them is the aim of this course. We will ask, among other things, why the international responsibility of international organizations is insufficiently regulated under current international law, whether international organizations also commit wrongful acts (e. g. sexual abuse committed by UN peacekeepers), and whether member states hinder the organization from exercising its functions e. g. by not paying their shares.

The nature of the above-described topic is what determines the overall approach of this course – and this handbook. We will be looking at what international organizations do and how they work. This handbook facilitates this, and contributes towards the effective use of course time, the understanding of a variety of aspects of international organizations, and ultimately the durability of the knowledge gained. Finally, we remind all who use this text that it is designed as a tool for learning the law of international organizations, and not as an authoritative and comprehensive source of knowledge covering all the legal issues that arise with them daily; it covers only the principal questions, and the reader is thus advised to look for more detail in relevant documents and sources, some of which are listed in the section "Researching the law of international organizations".

Researching The Law of International Organizations

In researching in the field of IOs, one is confronted with a variety of sources, providing an overwhelming amount of information. The following categories provide some help with starting research.

Web searching

- Searching for websites: *.int / .org / .gov* are common domain names. The *.int* domain name is reserved for international governmental organizations.

Directories and Research guides

- Union of International Associations (the most comprehensive list of IOs, providing links by name, by subject area, and by regional groupings and IGO list): http://www.uia.org
- Northwestern University Library IGO list (Links to international governmental organizations´ websites): http://libguides.northwestern.edu/content.php?pid=227016&sid=1878754
- United States Institute of Peace (alphabetical list of links to IOs): http://www.usip.org/publications/international-organizations
- European Journal of International Law links: http://www.ejil.org/links/index.php
- The Hague Justice Portal (a very useful general international law research portal): http://www.haguejusticeportal.net/eCache/DEF/43.html
- United Nations Documentation Research Guide: https://research.un.org/en/docs
- The Yale Law School „Avalon Project" (very comprehensive collection of mainly historical documents in [international] law, diplomacy and history): http://avalon.law.yale.edu/default.asp

Books (selection of main works)

- Jan Klabbers, Introduction to International Organizations Law (CUP 2015, 3rd ed.).
- C.F. Amerasignhe, Principles of the Institutional Law of International Organizations (2nd ed., CUP 2005)
- Henry G. Schermers/Niels M. Blokker, International Institutional Law (Brill 2018, 6th ed.)
- Nigel White, The Law of International Organizations (Manchester UP, 2016, 3rd ed.)
- José E. Alvarez, International Organizations as Law-Makers (OUP 2005).
- Malcolm N. Shaw, International Law, pp. 1282-1331 (6th ed., CUP 2008) (Chapter 23: International Organizations)
- August Reinisch, International Organizations Before National Courts (CUP 2000).

Periodicals

- ASIL Reports on International Organizsations (biannual reports intended to highlight the work of IOs - both regional and subject-specific): https://www.asil.org/topics/international-organizations-and-governance
- International Organization (journal published by the Cambridge University Press on behalf of the International Organization Foundation. The site provides tables of contents and abstracts for issues from 1947 to present): http://journals.cambridge.org/action/displayJournal?jid=INO

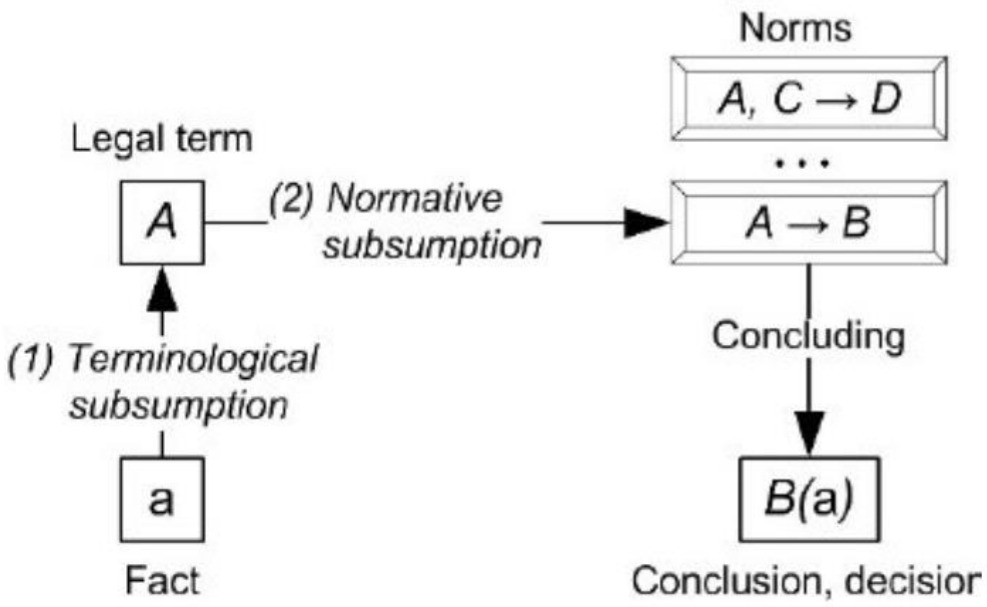
Solving Cases in International Law (of International Organizations)

Once you have a case to provide expert opinion on, you ask yourself – where do I start? And how do I proceed with the facts of the case, and with the legal provisions I deem applicable?

The main method used to solve cases in international law, and thus the main method applied by (international) lawyers, is that of *subsumption.* Subsumption refers to the application of the law, or more precisely, the application of a norm to a fact, thus concluding legal qualification. The English dictionary explains: *"subsumption – 1. that which is subsumed, as the minor clause or premise of a syllogism; 2. incorporating something under a more general category. Subsumption is central in making a legal decision."*

Legal qualification, which results from the subsumption procedure within the legal domain, is central for ontologies in law: only the legal qualification of an act determines whether a given killing (universally acknowledged) is murder, legal sanction in the form of an execution, or permissible in an international armed conflict.

Subsumption is of key importance in judging violations. To judge a violation of law, a factual situation (from the world of 'Is') must be subsumed under a legal norm (from world of Ought). Note that the factual situation can be subsumed under different norms. Therefore, conflicting norms and norm exceptions must be considered. Only a judicial practitioner is capable of this. Here, balance is more important than an absolute rule.



Source: Compliance and software transparency for legal machines. Available from: https://www.researchgate.net/publication/263113768_Compliance_and_software_transparency_for_legal_machines [accessed Feb 18 2021]

Chapter 1: INTRODUCTION TO THE LAW OF INTERNATIONAL ORGANIZATIONS

Learning objectives and structure of the lecture:

This chapter provides an introduction to the topic and is focused on the question of defining the term "international organization". After this lecture, you should be able to name and explain aspects of this definition, as well as how international organizations differ from other subjects of international law.

To start with, you need to become acquainted with the UN Charter (see part C of this Chapter), the founding document of the most important international organization – the United Nations. A solid overview and understanding of the structure and content of this document, which provides the basic legal framework for the existence and functioning of the UN, is indispensable not only for further study of international organizations, but also for understanding the role, tasks, competences, and procedures, of the United Nations.

Finally, we look at the variety of international organizations and attempts to classify them.

Required reading prior to the lecture (in addition to this chapter):

Jan Klabbers, *Introduction to International Organisations Law* (2015), pp. 1-15

For additional documents see the respective section in Moodle.

A. Introduction

The law of international organizations is a body of international legal rules covering all aspects of international organizations´ existence under international law, their establishment, internal functioning, relations between the organization and its members, and also external relations with other subjects of international community (third states and other international organizations). It shares its basic features with other bodies of international law, the starting point of which is that the current system of international law is a horizontal system dominated by states (i.e. a system predominantly made and implemented by states) which are considered sovereign and legally equal. However, there are certain specifics which make the study of international organizations an interesting but at the same time uneasy undertaking.

Definition

The difficulties start even with the attempt to clarify what an international organization is, as international law itself does not (unfortunately) provide any clear answer to this question. The term "international organization" has its roots in the treaties of the late 19th century. Later, the Statute of the Permanent Court of International Justice (Art. 67) used the notion to describe international entities, such as the League of Nations or the International Labour Organisation. Although some eminent jurists of their time disliked it (the president of the PCIJ Anzilotti called it an "expression malheureuse"), it gained worldwide acceptance.

Explaining the origins of the term, however, does not help us with the attempt to clarify how "international organizations" can be defined. An attempt was made in 2003 by the *UN International Law Commission (ILC)*, which came to the following definition:

"*The term ´international organization´ refers to an international organization established by a treaty or other instrument governed by international law and possessing its own legal personality. International organizations may include as members, in addition to states, other entities*".[1]

According to many authors, at least certain aspects of this definition appear problematic. Hence, reviewing the above-mentioned definition, and considering problematic issues concerning the ILC definition, it can be established that an international organization is:

- any organized entity created (mostly) between states,
- on the basis of an instrument governed by international law,
- possessing a will distinct from that of its founding members (*volonté dictincte*),
- to achieve through its organs the purposes for which it was created.

<u>An organized entity created (mostly) between states.</u>

International organizations were born in a state-centric international legal system, and at the time they started to appear, there was no other subject of international law than a state. This is among the reasons why international organizations are still today created mostly by states. However, as international law has changed, it is accepted that even other international organizations may become (even founding) members.

We should also note that not all entities created between states are international organizations. States may establish legal persons under their domestic legal system (e.g., the Basel-Mulhouse Airport Authority, established by France and Switzerland, but governed by French law).

<u>Created by an instrument governed by international law.</u>

International organizations are usually created based on an international agreement concluded between two or more states in written form. Such an agreement is governed by international law and is subject to the respective will of states or international organizations seeking membership. We deal with this issue in more detail in Chapter 8 (Legal Order of International Organizations).

<u>A will distinct from that of its founding members</u>

International organizations must have at least one organ able to create the will of the organization, i.e., a will attributable to the organization only. If the entity were only an instrument used to express the consolidated will of its members, such an entity could be considered an international collegial organ acting on behalf of its members, but not an international organization. Naturally, in practice, making such a distinction between organs and organizations is not easy, but establishing whether an entity can generate its own will is decisive for its categarisation as a separate legal subject. As only the "speaking funnel"

[1] Report of the International Law Commission, Fifty-fifth Session [5 May-6July and 7 July-8 August 2003], GAOR 58th Session Supp 10, 38.

of its members, it would not be justified to regard it as having separate legal personality under international law.

Although the above-mentioned criteria are broadly accepted, we must agree with *Jan Klabbers* that it is nearly impossible to define "international organization" in an abstract way. But, as he adds- when we see one, we usually can identify it as such. And it is the criteria specified above which help us to conclude whether a certain entity can be considered an international organization. Moreover, these criteria also help to distinguish international organizations from other types of international associations, such as non-governmental organizations (NGOs) or international public corporations (such as "Air Afrique"). For example, it is the requirement "established on the basis of an international agreement" which distinguishes international organizations from NGOs; in contrast to intergovernmental organizations, NGOs are established by private persons under national laws. The requirement of "having autonomous will" helps to distinguish between international organizations and other – looser forms of international cooperation (which nevertheless may evolve into international organizations, as was the case with the CSCE evolving into OSCE).

Classification

The classification of international organizations is possible in many ways, depending on the definition of terms, or the perspective chosen. The first classical distinction is between international non-governmental and governmental organizations. NGOs (such as *Amnesty International* and *Greenpeace*), in contrast to "regular" international organizations, do not have international legal personality but are involved in international political activities and the functioning of the international community.

Besides this, international organizations can be classified according to various criteria, including organizations´

- functions (general [e.g., UN, EU, AU] and specialized organizations [e.g. WMO],
- purposes/activities (judicial [ICC], political [OSCE], technical [ITU]), or
- membership (with restriction e.g., on geographic basis [EU, ASEAN]).

B. Problems and questions

Q1: Test your knowledge about the UN at https://www.cfr.org/quiz/see-how-much-you-know-about-united-nations!

Q2: Read the Charter of the United Nations. Would you consider the UN to be an international organization? Why yes/no? If yes, which of the provisions of the UN Charter support your view?

Q3: Find one international organization which is "weird"/interesting and explain why you consider it so!

C. Materials

Doc. 1.1

Charter of the United Nations

Preamble

We the Peoples of the United Nations Determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

And for these Ends

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure by the acceptance of principles and the organization of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

Have Resolved to Combine our Efforts to Accomplish these Aims

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and selfdetermination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organisation shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organisation at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.

CHAPTER III

ORGANS

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV

THE GENERAL ASSEMBLY

Composition

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each member shall have not more than five representatives in the General Assembly.

Functions and Powers

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1(b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

Voting

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, Composition including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Procedure

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V

THE SECURITY COUNCIL

Article 23

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years.

In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Voting

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Procedure

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by

the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE

PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces. their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of selfdefense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X

THE ECONOMIC AND SOCIAL COUNCIL

Composition

Article 61

1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election after the increase in the membership of the Economic and Social Council from twentyseven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

Functions and Powers

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

Procedure

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

CHAPTER XI

DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of goodneighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the

peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals and also equal treatment for the latter in the administration of justice without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War, and

c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to

political. economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

THE TRUSTEESHIP COUNCIL

Composition

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

a. those Members administering trust territories;

b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and

c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

a. consider reports submitted by the administering authority;

b. accept petitions and examine them in consultation with the administering authority;

c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the

specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph I of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

Chapter 2: THE HISTORY OF INTERNATIONAL ORGANIZATIONS

Learning objectives and structure of the lecture:

As the title suggests, in this lecture we focus on historical development of (the law of) international organizations. In preparation for this lecture you are asked to write a short reflection on the institutionalization of interstate relations. Together with a video at the beginning of the lecture, it helps us to frame our discussion on the conditions which led to the development of international organizations as we know them today.

With the help of this lecture, you should be able to describe the milestones in the historical development of international organizations, and to explain their distinguishing features in comparison to predecessors. Since the institutionalisation of international relations is one of the two main developments of international law (especially of the last century), basic knowledge of historical development is not only important for understanding of the change in the landscape of international law in general, but also facilitates understanding of the "how and why" of current international organizations´ design and procedures.

Required reading prior to the lecture:

Jan Klabbers, *Introduction to International Organizations Law* (2015), pp. 16 – 38.

For additional documents and assignments see the respective section in Moodle.

A. Introduction

States are no longer the only actors on the international scene. Since the beginning of the 20th century international, organizations have played an ever growing role: not only is their number constantly increasing, but more importantly they have significant influence in nearly all areas of international law. One may agree with *Robert Ago*, a leading Italian scholar of international law, who considers international organizations the most important phenomenon of modern international law.

The origins of international organizations lie in the 19th century, but the underlying base enabling their creation was the Peace of Westhpalia (1648), marking the end of the Thirty Years' War (1618-1648) in the Holy Roman Empire. Due to the Westphalian Peace, a new political order emerged, based on a new concept of sovereign and legally equal states. At the same time, the peace treaties can be considered as the outcome of the first modern diplomatic "congress", attempting to settle issues of an international character. In the aftermath of the Westhalian Peace, international congresses evolved to a regular mode of diplomacy and to a means of resolving problems of an international character.

The 19th century was marked by the forerunners of international organizations. It was the complicated situation in Europe at the beginning of the 19th century which made it clear to states that bileral treaties and diplomacy as traditional means were no longer

sufficient for the settlement of complex issues, such as those arising from the French Revolutionary Wars and the dissolution of the Holy Roman Empire. States needed to advance to other forms of cooperation: multilateral treaties and conferences, and later in the 19th century, administrative unions, as the real forerunners of international organizations.

Among the multilateral peace conferences, the Vienna Congress, the Hague Conferences, and the Paris Peace Conference played a prominent role. The Congress of Vienna (1814/15) started the era of international conferences and the so-called European Concert – a series of peace conferences with the aim to restore and preserve peace through a determination of the balance between European powers. From 1899, several peace conferences took place: in 1899 and 1907 the Hague Peace Conferences, in 1912/13 the London Peace Conference (on the Balkans) and in 1919/20 the well-known Paris Peace Conference (Versailles Treaty).

Even if peace conferences constituted an adequate tool for settling issues and a qualitative step towards the co-operation of states, their potential was limited. They were of *ad-hoc* character, did not bring any institutionalization (they had no organs) or rules of participation, and their ability to settle multiple or complex issues was rather constrained. Furthermore, compared to IOs of today, a unanimous decision was always required.

The true forerunners of international organizations were "administrative unions". Their creation was a result mostly of developments in technology and industry. During the 19th century and at the turn of the 20th century, the following administrative unions were created:

- Central Commission for Navigation on the Rhine (1815) (and consequently Commissions on the Elbe [1821], Douro [1835], and the Danube [1856])
- International Telecommunication Union (17 May 1865)
- Universal Postal Union (Treaty of Bern, signed on October 9, 1874)
- Metric Union (1875)
- International Copyright Union (1886)
- International Union of Railway Freight Transportation (1890)
- International Sugar Union (1902)
- International Office of Public Health (1903)
- International Institute for Agriculture (1905)

Compared to *ad-hoc* congresses, administrative unions were created based on treaties among states, providing a normative framework for their functioning. The organs which they possessed allowed them to operate and fulfill their functions without the continuous presence of member states representatives. However, adminstrative unions were of strictly functional character (i.e., policymaking). Moreover, they were not considered as legal entities separate from their founding members – the idea of a nexus between international legal personality and the ability to exercise sovereign power on a certain defined territory was dominant at the time.

To sum up, both congresses and administrative unions paved the way towards international organizations as we know them today; the 19th century is therefore sometimes termed the IO-preparation phase.

In 1918, Woodrow Wilson in his famous "fourteen points" speech, called for creation of a "*general association of nations … under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.*" Following this idea, and because of the 1919 Versailles Peace Conference, the International Labour Organisation (ILO) and the League of Nations were created. The League of Nations aimed, among other things, at promoting international cooperation and achieving international peace through a system of collective security (in which an attack against a member state gave other member states the right to intervene automatically in favour of the state attacked). However, it was precisely this aim that the League (despite some success, e.g., in the dispute on Aland Islands in 1921) failed to achieve. It failed to prevent several armed conflicts, most importantly the Second World War. The bitter end of the League was also caused by its weaknesses: decisions were taken by unanimous votes (Art. 5 of the 1919 Covenant), there was the option to withdraw from the League pursuant to Art. 1of the 1919 Covenant (Germany and Japan used this), and finally the fact that the United states, by not ratifying the Covenant, did not become a member state of the League. On the other hand, the creation of League of Nations (and also the ILO) can be considered a significant qualitative step forward in the development of international organizations. Both organizations were established as legally independent (from their founding members) entities, equipped with their own organs, powers, and capacity to create their own will. Moreover, their mandate included policy making, in contrast to the strictly functional administrative unions of their forerunners. Following the failure of the League of Nations, and the Second World War, the United Nations, as universal peacekeeping organization, was created in 1945. International organizations like the League of Nations or the UN, which are of permanent character and have executive, administrative and other organs, did not replace the system of *ad hoc* diplomacy (conferences, etc.); they became only one (although probably the most important) among the possible tools for cooperation and settlement of issues among states.

B. Problems and questions

Q1: Read the Convention Concerning the Administration and Upholding of the Lighthouse at Cape Spartel (→Doc. 2.1) and answer the following questions:

- *Can the lighthouse at Cape Spartel be considered an international organization? Present arguments!*
- *The convention does not contain any accession clause. After it was concluded, Germany expressed its intention to become a member. How should orginial Member states have proceeded in response to Germany´s request?*

Q2: League of Nations and maintaining of peace: Find the relevant provisions of the Covenant of the League of Nations and consider why they can be seen as an important step towards the protection of international peace and security.

Q3: The League of Nations was meant to become the first universal international organization. Present two examples of both the "successes" and "failures" of the League of Nations. Describe the background and League of Nations´ involvement in each case.

Q4: The 1899 and 1907 Hague conferences outcomes can be considered an important contribution towards the development of international law in general. Prepare a short presentation on their backgrounds and main outcomes!

C. Materials

Doc. 2.1

Convention Between the United States, Austria, Belgium, Spain, France, Great Britain, Italy, The Netherlands, Portugal, and Sweden on the One Part, and The Sultan of Morocco on the Other Part, Concerning the Administration and Upholding of the Light-House at Cape Spartel.

In the name of the only God! There is no strength nor power but of God.

His Excellency, the President of the United States of America, and His Majesty the Emperor of Austria, King of Hungary and Bohemia, His Majesty the King of the Belgians, Her Majesty the Queen of Spain, His Majesty the Emperor of the French, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the King of Italy, His Majesty the King of the Netherlands, His Majesty the King of Portugal and the Algarves, His Majesty the King of Sweden and Norway, and His Majesty the Sultan of Morocco and of Fez, moved by a like desire to assure the safety of navigation along the coasts of Morocco, and desirous to provide, of common accord, the measures most proper to attain this end, have resolved to conclude a special convention, and have for this purpose appointed their Plenipotentiaries, to wit:

His Excellency the President of the Republic of the United States: Jesse Harland McMath, esquire, his Consul-General near His Majesty the Sultan of Morocco;

His Majesty the Emperor of Austria, King of Hungary and of Bohemia:

Sir John Hay Drummond Hay, commander of the very honorable Order of the Bath, his General Agent ad interim near his Majesty the Sultan of Morocco;

His Majesty the King of the Belgians: Ernest Daluin, knight of his Order of Leopold, commander of number of the Order of Isabella the Catholic, of Spain, commander of the Order of Nichan Eftikhar of Tunis, his Consul-General for the west coast of Africa;

Her Majesty the Queen of Spain: Don Francisco Merry y Colom, Grand Cross of the Order of Isabella the Catholic, knight of the Order of St. John of Jerusalem, decorated with the Imperial Ottoman Order of Medjidie of the 3d class, officer of the Order of the Legion of Honor, etc., her Minister Resident near his Majesty the Sultan of Morocco;

His Majesty the Emperor of the French: Auguste Louis Victor, Baron Ayrne d'Aquin, officer of the Legion of Honor, commander of the Order of Francis the First of the Two Sicilies, commander of the Order of St. Maurice and Lazarus of Italy, commander of the Order of Christ of Portugal, commander of the Order of the Lion of Brunswick, knight of the Order of Constantine of the Two Sicilies, knight of the Order of Guelphs of Hanover, his Plenipotentiary near His Majesty the Sultan of Morocco;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland: Sir John Hay Drummond Hay, commander of the very honorable Order of the Bath, her Minister Resident near His Majesty the Sultan of Morocco;

His Majesty the King of Italy: Alexander Verdinois, knight of the Order of St. Maurice and Lazarus, Agent and Consul-General of Italy near His Majesty the Sultan of Morocco;

His Majesty the King of the Netherlands: Sir John Hay Drummond Hay, commander of the very

honorable Order of the Bath, Acting ConsulGeneral of the Netherlands in Morocco;

His Majesty the King of Portugal and the Algarves: Jose Daniel Colaco, commander of his Order of Christ, knight of the Order of the Rose of Brazil, his Consul-General near His Majesty the Sultan of Morocco;

His Majesty the King of Sweden and of Norway: Selim d'Ehrenhoff, knight of the Order of Wasa, his Consul-General near His Majesty the Sultan of Morocco;

And His Majesty the Sultan of Morocco and of Fez, the Literary Sid Mohammed Bargash, his Minister for Foreign Affairs-

Who, after having exchanged their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE 1

His Majesty Sherifienne, having, in an interest of humanity, ordered the construction, at the expense of the Government of Morocco, of a lighthouse at Cape Spartel, consents to devolve, throughout the duration of the present convention, the superior direction and administration of this establishment on the representatives of the contracting Powers. It is well understood that this delegation does not import any encroachment on the rights, proprietary and of sovereignty, of the Sultan, whose flag alone shall be hoisted on the tower of the Pharos.

ARTICLE 2

The Government of Morocco not at this time having any marine, either of war or commerce, the expenses necessary for upholding and managing the light-house shall be borne by the contracting Powers by means of an annual contribution, the quota of which shall be alike for all of them. If, hereafter, the Sultan should have a naval or commercial marine, he binds himself to take share in the expenses in like proportion with the other subscribing Powers. The expenses of repairs, and in need of reconstruction, shall also be at his cost.

ARTICLE 3

The Sultan will furnish for security of the light-house a guard, composed of a Kaid and four soldiers. He engages, besides, to provide for, by all the means in his power, in case of war, whether internal or external, the preservation of this establishment, as well as for the safety of the keepers and persons employed. On the other part, the contracting Powers bind themselves, each so far as concerned, to respect the neutrality of the light-house, and to continue the payment of the contribution intended to uphold it, even in case (which God forbid) hostilities should break out either between them or between one of them and the Empire of Morocco.

ARTICLE 4

The representatives of the contracting Powers, charged in virtue of Article 1 of the present convention, with the superior direction and management of the light-house, shall establish the necessary regulations for the service and superintendence of this establishment, and no modification shall be afterward applied to these articles, except by common agreement between the contracting Powers.

ARTICLE 5

The present convention shall continue in force for ten years. In case, within six months of the expiration of this term, none of the high contracting parties should, by official declaration, have made known its purpose to bring to a close, so far as may concern it, the effects of this convention, it shall continue in force for one year more, and so from year to year, until due notice.

ARTICLE 6

The execution of the reciprocal engagements contained in the present convention is subordinated, so far as needful, to the accomplishment of the forms and regulations established by the constitutional laws of those of the high contracting Powers who are held to ask for their application thereto, which they bind themselves to do with the least possible delay.

ARTICLE 7

The present convention shall be ratified, and the ratifications be exchanged at Tangier as soon as can be done.

In faith whereof the respective Plenipotentiaries have signed and affixed thereto the seals of their arms.

Done in duplicate original, in French and in Arabic, at Tangier, protected of God, the fifth day

of the moon of Moharrem, year of the Hegira 1282, which corresponds with the 31st of the month of May of the year one thousand eight hundred and sixty-five.

Doc. 2.2

THE COVENANT OF THE LEAGUE OF NATIONS

(Including Amendments adopted to December, 1924)

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE 1.

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE 3.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world. At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

ARTICLE 4.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council, with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

The first Secretary General shall be the person named in the Annex; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.

ARTICLE 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE 8.

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments. Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions

and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

ARTICLE 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12.

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13.

The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support

one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the

people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(b) undertake to secure just treatment of the native inhabitants of territories under their control;

(c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general convention but which are not placed under the control of international

bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

Chapter 3: THE LEGAL STATUS OF INTERNATIONAL ORGANIZATIONS

Learning objectives and structure of the lecture:

This chapter helps with understanding the legal status of international organizations under international and national law. Do they enjoy rights on the international level (such as the right to conclude international treaties), and can they have duties (are they bound by human rights obligations or responsible for wrongful conduct)? And what is the legal position of international organizations on the national level - can for instance the EU be a party to a dispute before a national court in Brazil? We deal with the following aspects:

- what does it mean that an international organization (or another entity) is a subject of international law?
- Where does the legal subjectivity of international organizations come from, why is its origin controversial (objective vs subjective theory), and how is it different to the international legal personality of states?
- What is the legal position of international organizations under domestic law?

In preparation for the lecture you are asked to become acquainted with one of the most important cases of the ICJ, the Reparations for Injuries Case, which is a startpoint of all discussions on this topic.

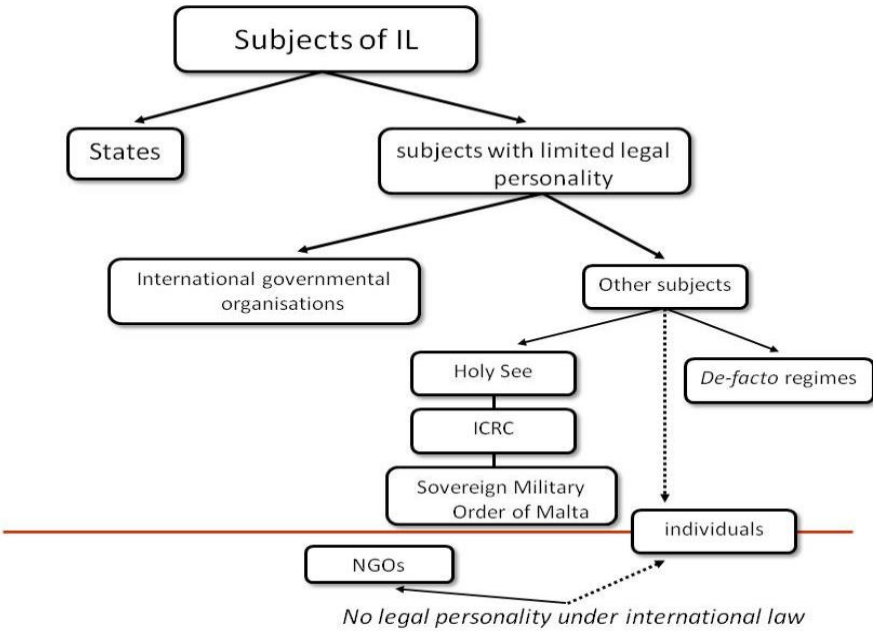
Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organizations Law* (2015), pp. 41 – 89.
- Excerpts from the Reparations for Injuries Case, ICJ Advisory Opinion from April 11, 1949 (see Doc. 3.1)
- For additional documents see the respective section in Moodle.

A. Introduction

1. Legal status under international law

Renowned international lawyer, Oppenheim, stated in 1912 in a book on International Law: "*Since the law of nations is based on the common consent of individual states (...), states solely and exclusively are the subjects of international law.*" Nowadays, this consensuality is still among the fundamental principles of international law, but Oppenheim´s statement is no longer valid in its entirety. States remain the predominant actors of international law, but progressively international organizations too- together with individuals, national liberation movements, *de-facto* regimes and other entities – have acquired a certain degree of legal personality.



The existence of other subjects in international law, apart from states, was recognized in the ICJ´s advisory opinion *Reparation for Injuries* (→ Doc. 3.1), the leading case on the legal personality of international organizations. The Court held that (1) there may be other subjects of international law than states, and such subjects may come in various shapes and guises, (2) the subjects of any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community. Taking these conclusions as a starting point, there is no doubt that today international organizations can have international legal personality (i.e., be subjects of international law). If we apply the standard definition of „subject", organizations are deemed capable of independently bearing rights and obligations stemming from interational law. As explained in the chapter on the history of IOs, this has not always been the case. It was only the 20th century that marked the departure from the strict statecentric view, allowing consideration of IOs not only as gatherings of states or their proxies, but as legal entities separate from the states which created them; as Gautier says, legal personality simply reflects the autonomy of the organization and its ability to act on its own. Being a separate legal entity, IOs for example hold the capacity to sue a state (see

the *Reparation* case), regardless of its membership in the organization, for damage caused by a violation of the obligations which that state has toward the organization.

The ICJ´s advisory opinion, *Reparation for Injuries, also* provides guidance on the conditions under which IOs acquire legal personality. It is accepted that organizations are subjects of international law where they:

1. are a permanent association of states, pursuing objectives which are in accordance with international law;

2. are autonomous, i.e., have distinct legal powers, objectives, and purposes from member states; and

3. have the capacity to exercise legal powers internationally, not only within a domestic system.

But can organizations exist also without being an international legal person? Not granting such status would cause practical problems: organization would not be able to appear in their own right in legal proceedings; all the rights, obligations and powers would be vested collectively to member states. As Amerasinghe writes, the legal personality of an international organization (only) facilitates its functioning and thus the achievement of the purposes for which it was created. Nevertheless, an organization can exist (and function) even without being recognized as a subject of international law.

Clarifying the ability to acquire legal personality is just one of the questions raised in the context of the legal status of international organizations. It also needs to be clarified:

- when and how organizations acquire legal personality, and
- what their precise extent is.

Both issues are regarded as controversial and constitute a fertile ground for discussions between legal scholars. Taking the complexity of the issue into account, we will delineate only the main points of the discussion.

Compared to the legal personality of states, the **legal personality** of organizations is different in (1) **origin** and (2) **extent**.

As to its origins, it is accepted that the ability to bear rights and obligations does not come automatically. However, what exactly is decisive for the organization´s legal personality is a matter of controversy between two diamtetrically opposed theories, "will theory" and "objective theory".

According to "**will theory**", organizations have legal personality only if the founding states decide so. If they decide otherwise, the organization cannot be considered an international legal person. Such a will may be expressed in a constitutive treaty by including an explicit provision. However, this is rarely the case. More often the legal personality of organizations is of an implicit character –derived from the powers, objectives and functions stated in its constituent treaty. For example, the legal personality of the European Union (before the entry into force of the Lisbon Treaty, which included an explicit provision), was derived mainly from the Union´s explicitly stipulated capacity to conclude treaties.

"**Objective theory**" draws parallels with the creation of states as subjects of international law, and applies the same template: as soon as the entity exists as a matter of fact, and meets the requirements stipulated by international law, it possesses international legal personality. A logical question which follows is: what then are the criteria for determining organizations? Here legal writers provide a variety of answers, but the founder of "objective theory", Finn Seyersted, considers the decisive criterion to be 'volonté distincte', i.e. that the organization has a will of its own distinct from that of its founders. We may add that both theories raise serious questions to which they are not able to provide satisfactory answers. One possible solution may be seen in Jan Klabbers´ concept of "presumptive personality": if the acts of an organization can be explained only based on international legal personality, then such a personality will be presumed. On the other hand, if member states express the clear intention that it shall not possess international personality, this must be regarded as decisive (following the view that freely expressed consent is one of the basic principles governing international law in general).

To say, however, that an international organization has legal personality, does not in itself determine the full scope of what that personality entails. As the ICJ stated in its *Reparations for Injuries* opinion, the extent of international legal persons´ rights may vary from one entity to another. Legal personality can be unlimited, in the sense that all rights and obligations under international law can be accorded to a subject. However, this is so only in the case of states – only they are the original, primary, and universal subjects of international law. Other subjects of international law have limited personality. For international organizations, it is accepted that they have rights and obligations, either explicitly stipulated in the organization´s constituent document, or derived from the objectives and functions of the organization. International law thus focuses on and acknowledges the specific identity of each organization by pointing out its characteristic mandate or competence. To provide an example: the World Health Organisation (WHO) requested the ICJ to deliver an advisory opinion on the question of whether the use of nuclear weapons by states constitutes was illegal under international law.[2] The Court refused the request for the opinion, holding that such issue was not covered by the mandate of the WHO.

The question of whether an international organization has legal personality arises not only under international law, but also in national legal systems. Therefore the legal position and personality of international organizations under domestic law also needs to be addressed.

2. Personality under domestic law

The position of international organizations in domestic legal systems is usually explicitly provided for in the constituent treaty of the organization, and therefore less controversial than their legal status under international law. Many constitutions of international organizations provide (cf. Article 104 UN Charter) that the organization should have personality in domestic law to enable it to contract for goods or services, acquire or dispose of property, institute legal proceedings in local courts, etc. The main problem, however, is to overcome the position in non-member states. In other words, can the EU sue an Brazilian company in Brazilian Courts? This question is outside the scope of the application of international law – the answer will depend solely on Brazilian law. The

[2] The Legality of the Threat or Use of Nuclear Weapons in Armed Conflict, 1 ICJ Rep. 226 [1996].

reason is simple: for non-member states the creation of an international organization constitutes *res inter alios acta* ("a thing done between others") and the *pacta tertiis* maxim under international law says that states cannot create rights or obligations for third parties without the consent of those third parties, i.e. no legal obligations result for Brazil from the establishment of the EU.

B. Problems and questions

Q1: Are (or should be) the following entities subjects of IL? Discuss and provide arguments!

- *Australia, Brazil, India*
- *United Nations*
- *Al Khaida, British Petroleum (BP), Transparency International*
- *Mr. Bankovic, Bashar al-Assad*

Q2: Consider the following question and discuss with colleagues: Legal personality should be recognized by members of the organization (and host nations), but must it also be recognized by non-members?

Q3: Read the excerpts from the Reparations for Injuries Advisory Opinion and explain:

- *the structure through which the ICJ decided to answer the question raised by the UN General Assembly*
- *the ICJ´s conclusion and argumentation on the question of legal personality of the United Nations.*

C. Materials

Doc. 3.1

REPARATION FOR INJURIES SUFFERED IN THE SERVICE OF THE UNITED NATIONS

International Court of Justice
April 11, 1949
General List No. 4

***174** Injuries suffered by agents of United Nations in course of performance of duties.-Damage to United Nations.-Damage to agents.-Capacity of United Nations to bring claims for reparation due in respect of both.-International personality of United Nations.-Capacity as necessary implication arising from Charter and activities of United Nations.-Functional protection of agents.-Claim against a Member of the United Nations.-Claim against a non- member.-Reconciliation of claim by national State and claim by United Nations.- Claim by United Nations against agent's national State.

Advisory Opinion.

Present: President BASDEVANT; Vice-President GUERRERO; Judges ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIC-IC, DE VISSCHER, Sir Arnold McNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO.

*175 THE COURT,
composed as above,
gives the following advisory opinion:

On December 3rd, 1948, the General Assembly of the United Nations adopted the following Resolution:

'Whereas the series of tragic events which have lately befallen agents of the United Nations engaged in the performance of their duties raises, with greater urgency than ever, the question of the arrangements to be

made by the United Nations with a view to ensuring to its agents the fullest measure of protection in the future and ensuring that reparation be made for the injuries suffered; and

Whereas it is highly desirable that the Secretary-General should be able to act without question as efficaciously as possible with a view to obtaining any reparation due; therefore

The General Assembly

Decides to submit the following le-gal questions to the International Court of Justice for an advisory opinion:

(...)

* * *

The first question asked of the Court is as follows:

'In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against ***177** the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?'

It will be useful to make the following preliminary observations:

(a) The Organization of the United Nations will be referred to usually, but not invariably, as 'the Organization'.

(b) Questions I (a) and I (b) refer to 'an international claim against the responsible de jure or de facto government'. The Court understands that these questions are directed to claims against a State, and will, therefore, in this opinion, use the expression 'State' or 'defendant State'.

(c) The Court understands the word 'agent' in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions-in short, any person through whom it acts.

(d) As this question assumes an in-jury suffered in such circumstances as to involve a state's responsibility, it must be supposed, for the purpose of this Opinion, that the damage results from a failure by the State to perform obligations of which the purpose is to protect the agents of the Organization in the performance of their duties.

(e) The position of a defendant State which is not a member of the Organization is dealt with later, and for the present the Court will assume that the defendant State is a Member of the Organization.

* * *

The questions asked of the Court relate to the 'capacity to bring an international claim'; accordingly, we must begin by defining what is meant by that capacity, and consider the characteristics of the Organization, so as to determine whether, in general, these characteristics do, or do not, include for the Organization a right to present an international claim.

Competence to bring an international claim is, for those possessing it, the capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims. Among these methods may be mentioned protest, request for an enquiry, negotiation, and request for submission to an arbitral tribunal or to the Court in so far as this may be authorized by the Statute.

This capacity certainly belongs to the State; a State can bring an international claim against another State. Such a claim takes the form of a claim between two political entities, equal in law, similar ***178** in form, and both the direct subjects of international law. It is dealt with by means of negotiation, and cannot, in the present state of the law as to international jurisdiction, be submitted to a tribunal, except with the consent of the States concerned.

When the Organization brings a claim against one of its Members, this claim will be presented in the same manner, and regulated by the same procedure. It may, when necessary, be supported by the political means at the disposal of the Organization. In these ways the Organization would find a method for securing the observance of its rights by the Member against which it has a claim.

But, in the international sphere, has the Organization such a nature as involves the capacity to bring an international claim? In order to answer this question, the Court must first enquire whether the Charter has given the Organization such a position that it possesses, in regard to its Members, rights which it is entitled to ask them to respect. In other words, does the Organization possess international personality? This is no doubt a doctrinal expression, which has sometimes given rise to controversy. But it will be used here to mean that if the Organization is recognized as having that personality, it is an entity capable of availing itself of obligations incumbent upon its Members.

To answer this question, which is not settled by the actual terms of the Charter, we must consider what characteristics it was intended thereby to give to the Organization.

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable.

The Charter has not been content to make the Organization created by it merely a centre 'for harmonizing the actions of nations in the attainment of these common ends' (Article I, para. 4). It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5), and to accept and carry out the decisions of the Security Council; by authorizing the General Assembly to make recommendations to the Members; ***179** by giving the Organization legal capacity and privileges and immunities in the territory of each of its Members; and by providing for the conclusion of agreements between the Organization and its Members. Practice-in particular the conclusion of conventions to which the Organization is a party-has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations. It must be added that the Organization is a political body, charged with political tasks of an important character, and covering a wide field namely, the maintenance of international peace and security, the development of friendly relations among nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character (Article 1); and in dealing with its Members it employs political means. The 'Convention on the Privileges and Immunities of the United Nations' of 1946 creates rights and duties between each of the signatories and the Organization (see, in particular, Section 35). It is difficult to see how such a convention could operate except upon the international plane and as between parties possessing international personality.

In the opinion of the Court, 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. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Accordingly, the Court has come to the conclusion that the Organisation is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is 'a super-State', whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and du-ties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

The next question is whether the sum of the international rights of the Organization comprises the right to bring the kind of international claim described in the Request for this Opinion. That is a claim against a State to obtain reparation in respect of the ***180** damage caused by the injury of an agent of the Organization in the course of the performance of his duties. Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice. The functions of the Organization are of such a character that they could not be effectively discharged if they involved the concurrent action, on the international plane, of fifty-eight or more Foreign Offices, and the Court concludes that the Members have endowed the Organization with capacity to bring inter-national claims when necessitated by the discharge of its functions. (...)

Chapter 4: CREATION, DISSOLUTION AND SUCCESSION

Learning objectives and structure of the lecture:

In this chapter, the legal aspects of two important moments in the life of international organizations are covered: how they come into existence (creation), and what happens once they are dissolved, including questions of possible succession.

The focus of the lecture is on the legal aspects of dissolution. We work with several examples of organizations which no longer exist. In the first step, we explore what dissolution means in legal terms, what is the usual legal basis for dissolution (under what conditions). Inevitably connected to dissolution is the question of possible succession. In this regard, we focus on two issues: whether one organization may succeed another, and what the modalities are of such a process.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organizations Law* (2015), pp. 189 – 204.
- Read the article from New York Times on dissolution of the Warsaw Pact and focus especially on reasons, why the Warsaw Pact was to be dissolved according to the article (see below Doc. 4.1)
- For additional documents see the respective section in Moodle.

A. Introduction

1. Creation

The motivation of states for the creation of international organizations is multifaceted. The legal basis of each and every organization, however, is an international agreement through which the organization as an entity not only comes into existence but operates according to governing provisions. This sets forth the most important aspects of organization´s existence: its goals, powers, structure, etc. Hence the founding treaties of international organization are of dual nature: contractual and constitutional.

A constituent treaty can be laid down in a single and separate founding document (such as the Charter of the United Nations, or the Washington Treaty establishing NATO), or the constituent provisions of an international organization can be incorporated in a document with a more comprehensive *ratione materiae* scope (such as provisions included in the 1982 Convention on the Law of the Sea, establishing the International Seabed Authority).

The conclusion of such treaties is governed by general international law, i.e., rules established in the 1969 Vienna Convention on the Law of Treaties. The name of such treaties (Charter, Convention, etc.) is of no legal consequence. The will to accept rights and obligations resulting from the treaty is expressed by states through ratification, and the conditions for their entry into force are usually laid down in the treaty itself. It is the entry into force of the constituent document which we can describe as the organization´s hour of birth.

2. Dissolution

States may create international organizations for a variety of reasons, and the same applies to their dissolution - the life of an organization may end because it has completed its tasks, or because another organization is created with the same or similar functions. For example, the International Refugee Organisation (IRO) was dissolved in 1952, as member states (especially the United states, who contributed about 60 per cent of the costs of the IRO) deemed its tasks completed – the decrease of European refugees had been so significant that their administration no longer required the existence of a separate organization. In the case of IRO, some of its activities were continued by the UN High Commissioner for Refugees and the Intergovernmental Committee for European Migration. An example of an outdated organization is the Warsaw Pact, dissolved in 1991 after the collapse of the Soviet Union.

Regardless of the motivation, dissolution generally leads to a cessation of activities and the disappearance of the organization as a legal entity under international (and national) law. Although this is the ultimate result, the process of dissolution is complex. Dissolution occurs somewhat infrequently, and there is no common design. The organization must usually decide on its liquidation procedure and determine the means of this, such as what happens with its staff, assets and liabilities. For example, the statement of the Presidency of the Permanent Council of the WEU on behalf of the High Contracting Parties to the Modified Brussels Treaty, a document constituting the legal basis for WEU´s dissolution, contained the following provisions:

> "*The WEU has therefore accomplished its historical role. In this light we the states Parties to the Modified Brussels Treaty have collectively decided to terminate the Treaty, thereby effectively closing the organization, and in line with its article XII will notify the Treaty's depositary in accordance with national procedures. […] The states Parties task the WEU Permanent Council with organising the cessation of WEU activities in accordance with timelines prescribed in the Modified Brussels Treaty preferably by the end of June 2011*".

Even if dissolution means the end of an organization´s legal existence, members may decide to uphold legal personality in a limited way even after its dissolution. Article 38.5 of the 1997 Eurocontrol Revised Convention stipulates:

> "*If […] the Organisation is dissolved, its legal personality and capacity […] shall continue to exist for the purposes of winding up the Organisation"*.

Much also depends on whether there is a successor organization or not. In most cases a new organization will take up certain functions of the old one. A complete termination of an organization is unusual; nevertheless, a transfer of all functions is equally rare.

The main general question concerning dissolution is how organizations are terminated. There are basically two scenarios: (1) the constituting document contains provisions on the organization´s dissolution, (2) there is no specific regulation for this.

The first option is rather rare, even though one can find examples. Article 97 of the ECSC Treaty limited the duration of the Community´s existence to 50 years. In 2002 the treaty expired and as the members showed no desire to renew it, the organization´s activities and resources were integrated into the European Community. Continuation of existence can also be made dependent on a minimum number of members - for example Article 25 ESA Convention stipulates: „*The Agency shall by dissolved if the number of Member states becomes less than five*". Sometimes the power to dissolve the organization is vested in the hands of the highest body representing the member states. Most financial organization, such as the IMF, the World Bank or the EBRD can be dissolved on the basis of their Board of Governors; according to article 27 Sec. 2 a) of the IMF „*The Fund may not be liquidated except by decision of the Board of Governors*".

If the rules of the organization do not provide for dissolution, the organization can be dissolved by a decision of its highest representative body in accordance with the general rules of international law on treaties (The Vienna Convention on the Law of Treaties [1969], Art. 54 – 64). For example, the League of Nations was dissolved by a decision taken by the Assembly without the need for individual assent by each member nation.

In practice, dissolution is often followed by the establishment of a new organization, as in the case of the League of Nations and the United Nations. Therefore, succession aspects play an important role.

3. Succession

The dissolution of an organization is a political step, which does not necessarily mean that the organization´s tasks have been completed. As this is rarely the case, usually there is a new organization at least partially replacing the old one; in most cases, member states decide to terminate certain functions of the old organization and transfer the outstanding functions to a new one (e.g. after the tasks and organizations of the Western European Union had been transferred to the European Union, the member states decided in 2010 to dissolve the WEU). Dissolution therefore often contains aspects of termination, as well as succession.

Two main aspects should be mentioned in the context of the succession of organizations: whether one organization may succeed to another, and what the modalities are of such a process. Unfortunately, international law contains no general treaty or customary rules in this regard. There are two consequences of this: (1) as there is no treaty or norm regulating the succession of international organizations, general principles of international law are applied, and (2) legal rights and acts of international organizations expire at the moment of their dissolution if there is no successor. Where there is a successor, the assets and archives of the predecessor organization go to its successor. Whether this also applies to debts, remains unsettled.

While the succession of international organizations is a rare situation, there is some practice in this regard, which shows that the issue of succession is usually governed by explicit treaty-based rules, for instance Art. 15 of the OECD Convention:

„When this Convention comes into force the reconstitution of the Organizations for European Economic Co-operation shall take effect, and its aims, organs, powers and name shall thereupon be as provided herein. The legal personality possessed by the Organization for European Economic Co-operation shall continue in the Organization, but decisions, recommendations and resolutions of the Organization for European Economic Co-operation shall require approval of the Council to be effective after the coming into force of this Convention."

Another example is the succession of the League of Nations. In this case too, no general succession took place, but there was a special agreement between the League and the UN on the transfer of functions, assets and liabilities, and staff.[3] Moreover, the UN decided not to assume particular functions of the League of Nations (cf. General Assembly Resolution 24 (I) of 12 February 1946), such as the League of Nations political functions, powers gained under international treaties, and other instruments.

B. Problems and questions

Q1: Consider the following questions and present your views:

- *Is unanimity required to dissolve an organization?*
- *What happens to the assets of the organization?*
- *What pays the debts?*
- *Who keeps the archives?*

C. Materials

Doc. 4.1

The New York Times

Warsaw Pact Agrees to Dissolve Its Military Alliance by March 31

By CELESTINE BOHLEN, Special to The New York Times

Published: February 26, 1991

Source: http://www.nytimes.com/1991/02/26/world/warsaw-pact-agrees-to-dissolve-its-military-alliance-by-march-31.html

Fatally stricken by the collapse of Soviet power in Eastern Europe, the Warsaw Pact today signed its own obituary with an agreement to dissolve the 36-year-old military alliance by March 31.

The future of the treaty's political links will be decided at another meeting in Prague in June, but spokesmen for the new democracies in Eastern Europe today made clear that it is a matter of time and formalities before all traces of the old Soviet-dominated alliance disappear.

"When you deprive the Warsaw Treaty of its military essence, it becomes more or less an empty shell," said the Polish Foreign Minister, Kryzstof Skubiszewski, at a news conference where representatives of the Soviet Union were notably absent.

In the last year the Warsaw Pact had effectively ceased to function as its Eastern European members -- Hungary, Poland, Romania, Bulgaria, Czechoslovakia and, until recently, East Germany -- cut themselves loose from Moscow one by one.

[3] Common Plan for the Transfer of the Assets of the League of Nations established by the United Nations Committee and the Supervisory Commission of the League of Nations (1 February 1946) UN Doc A/18/Add.1.

Even before they held free elections last year, Hungary and Czechoslovakia had negotiated agreements for the total withdrawal of Soviet troops from their territories by mid-1991. Last June Hungary became the first Warsaw Pact country to announce it would pull out of the military alliance by the end of this year, a timetable that was soon adopted in other Eastern European capitals.

The Warsaw Pact, signed in 1955, was first created as Moscow's counterbalance to the North Atlantic Treaty Organization, but soon become the instrument of Soviet control over its satellites in Eastern Europe. It emerged at a time when the Soviet Union was sending out mixed signals, from the early signs of the post-Stalinist thaw to the crushing of the Hungarian uprising in 1956.

Dominated by the Soviet Army, which provided 3.7 million of the alliance's total troop strength of 4.8 million, the Warsaw Pact served externally as a framework for diplomatic bargaining over arms control and, internally, as the agent of Moscow's will. Warsaw Pact troops were used in the crackdown against the Prague Spring of 1968, and loomed as the threat behind the imposition of martial law in Poland in 1981.

Role Withers Away

These actions were unlawful even within the terms of the treaty itself, as Mr. Skubiszewski said today. And in the last year, the Warsaw Pact has seen its role wither away, as the individual countries reclaimed sovereignty over their armed forces, adopted positions independent of Moscow and negotiated separately over the reduction of conventional weapons. But a final meeting to decide the alliance's fate, originally scheduled for last November, had been postponed indefinitely at Moscow's request, leaving the Warsaw Treaty in a state of legal limbo. Faced with the increasing impatience of its former allies, the Soviet Union recently proposed the special meeting today of foreign and defense ministers and set April 1 as the deadline for the dissolution of the military organization.

President Mikhail S. Gorbachev's recent tilt toward hard-liners in the Soviet military and the Communist Party has raised concerns in Eastern Europe that their new-found independence may somehow be jeopardized by their giant neighbor's political instablity. Although the withdrawal of 123,000 Soviet troops from Hungary and Czechoslovakia has continued on schedule, negotiations over the departure date for 50,000 Soviet soldiers in Poland have bogged down in recent months, while the Soviet parliament has still not given its approval to the treaty guaranteeing German reunification.

For Eastern Europeans who worry that the Sovet Union has not reconciled itself to its loss of influence in the region, the dissolution of the Warsaw Pact had become an increasingly urgent issue. By the same token, their Soviet counterparts have been increasingly eager to avoid anything that smacks of further humiliation.

Largely Academic Debate

According to most observers, the continuing debate over when and how to wind up the Warsaw Pact's remaining political functions is largely academic, with some members proposing a deadline at the end of this year, as Moscow holds out for next summer.

In the meantime, diplomats say the real diplomatic initiatives have already moved to continuing negotiations between Moscow and its former allies over new inter-state agreements, covering a range of issues, including defense. (...)

Other new security arrangements are also emerging, as countries in Eastern and Central Europe grope for new identities in a world no Langer divided into blocs. One example was the mutual cooperation agreement signed last week by Hungary, Poland and Czechoslovakia. In addition, all countries in the region are seeking to expand their ties to Western Europe and to assert their role in the Helsinki process.

Called a First Step

Soviet diplomats described the agreement today as "the first step" toward new security arrangements in the heart of Europe, suggesting some role might still be found for the old alliance's political grouping. In Moscow, meanwhile, the chairman of the Soviet parliament's foreign affairs committee proposed this week that the disbanding of the Warsaw Pact should be matched by structural changes in NATO, its adversary in the West.

Chapter 5: MEMBERSHIP

Learning objectives and structure of the lecture:

Membership of an international organization is a bit like membership of a golf club. Depending on the rules of the international organization, not all states are necessarily welcome to join, and if that is the case, admission is subject to certain conditions. We look at the following aspects to understand the issue of membership:

- What forms of membership can be distinguished (full vs associate membership vs observer status)?
- What is the legal basis for admitting new members (illustrated by the conditions of membership in the United Nations)?
- Grounds for termination and end of membership (dissolution, expulsion, and withdrawal)

In preparation for the lecture, you are asked not only to read the texts mentioned below, but also provide your expert opinion on the possible relevance of voting in the UN as recognition, which helps us to frame the discussion at the beginning of the lecture.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organisations Law* (2015), pp. 90 – 112.
- Excerpts from the ICJ Advisory Opinions (see Doc. 5.1 and 5.4)
- For additional documents see the respective section in Moodle.

A. Introduction

The question of membership is important for all international organizations. Sometimes states create an organization as a "private club", i.e., they do not wish to admit other states. For example, Benelux was created by Belgium, the Netherlands, and Luxembourg, as a closed organization – no other state may join it, unless the three states decide to change their mind, followed by the change of Benelux´s constituent treaty. Organizations of such type are however rare. The vast majority permit admission of new members, not only of states, but also international organizations. For example, the European Union is member of several organizations, such as the FAO (Food and Agriculture Organization) or the WTO (World Trade Organization).

The legal status of a *member* can thus be achieved by being the founding member of the organization or by joining the organization after it is established. For example, Art. 3 of the UN Charter stipulates: *"The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organizations at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110."*

The distinction between original members and those who join later usually does not have any impact on their status, rights, and obligations. However, in contrast to original members, states applying for admission must fulfil certain material and procedural conditions, usually laid down in specific provisions of the organization´s constituent treaty.

The basic condition to be fulfilled by applicants is to become a party to the constituent document, in other words to declare their will and capacity to accept and fulfil rights and

obligations resulting from it. For example, among the conditions which candidate countries for EU-membership must fulfil is to accept and implement the whole EU *acquis* – accumulated legislation, legal acts, and court decisions which constitute the body of European Union law. Organisations are free to formulate conditions for membership as they deem necessary. As a result, conditions of membership vary from one international organization to another.

Conditions for membership in the United Nations, as the most prominent international organization, are stipulated in Art. 4 of the UN-Charter:

"Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations."

The above provision hence lays down four basic admission criteria:

1. Membership is open to states and not to other entities (such as other IOs)
2. States applying for membership must be peace-loving.
3. Candidate countries for membership must accept the obligations of the Charter
4. The applicant must be able and willing to carry out the obligations of the Charter.

The judgment on whether the applicant state has fulfilled membership conditions is decided by the organization itself, and is thus of a political character. However, as the ICJ held in its advisory opinion *Conditions of Admission of a State to Membership in the United Nations* (1948), the conditions mentioned in Article 4 UN-Charter are exhaustive. In other words, states may not *ad-hoc* apply further conditions to applicants. Also, in the judgment on whether a state fulfils the admission criteria, members must observe the principle of good faith, reflected, among other references, in Article 2, para. 2 of the UN-Charter. Article 4 of the UN-Charter, in para. 2, also lays down the applicable procedure for admission of new states; the Security Council issues a reccommendation and the General Assembly decides. In addition, it should be mentioned that despite its *prima facie* straightforwardeness, Article 4 para. 2 of the UN-Charter is subject to another (twice issued) ICJ advisory opinion concerning issues of UN-membership (ICJ, *Competence of the General Assembly for the Admission of a state to the United Nations*, 1950).

As mentioned, international organizations usually do not distinguish between their members in the sense of the extent of rights and obligations. Nevertheless, besides full membership other forms sometimes appear as a response to an organizations´s practical needs, such as associate membership or observer status.

Full membership is the usual form of membership in international organizations. Full members are usually granted the same extent of rights and obligations, regardless of the point of time when they joined the organization.

Associate membership can be understood as a "preparation" for full membership, toward which it may lead. Associate members are granted limited rights; for example, they have the right to speak, but no right to vote or designate representatives for an office within the organization. Sometimes associate membership is used, e.g., in the case of the FAO and similarly the WHO or UNESCO, for territories who do not appear on the international plane as separate entities (which are not themselves responsible for the conduct of their international relations). For example, the German territory of Saar was regarded by

the Council of Europe as an associate member until 1956, when it was included in the Federal Republic of Germany. Also, the World Tourism Organization (UNWTO) counts among its associate members Hong Kong, Aruba, or the Flemish Community of Belgium.

Observer status enables international organizations, among other things, to cooperate with political significant entities which are not yet, or generally cannot become, members. The meaning of observer status may vary not only by organization, but it may have different content. Observer status may lead to full membership, but not in every case. For example, the Palestine Liberation Organization (PLO) was granted permanent observer status within the United Nations decades ago. In 2011, Palestine applied for full membership in the UN. Despite being a full member of some regional organizations in the Middle East since 1960s, its application for UN membership was rejected on the grounds of lacking statehood. This case revealed once again that the admission of new members may depend on the conditions stipulated in the respective organization´s constituent instrument, but the question of whether they are fulfilled is of political character and decided by the organization itself. Observers are not granted full rights in the organization: they have no right to vote, to circulate official documents or to make proposals. If they enjoy such rights, then it is usually on an *ad-hoc* basis upon special permission.

An issue of importance connected with membership in international organizations is succession. What happens with membership when states merge, gain independence, or fall apart? As explained in the previous chapter, international law rules on succession are still surrounded by a certain murkiness and only some aspects of states´ succession are regulated in treaties[4]. When it comes to customary international law, the successor state will be bound to the obligations of its predecessor, but with treaty obligations the situation is less clear. It is argued that especially so-called "newly independent" states have the right to start independence with a *tabula rasa*, i.e., without having to accede to any treaty obligation into which their predecessors entered (cf. Article 4 of the 1978 Vienna Convention on Succession of States in respect of Treaties). Such treaty obligations include membership in an international organization, this happens through the act of becoming a party to its constituent treaty.

When considering the issue of succession in membership, the rules of the international organization play an important role. Unfortunately, very few founding documents contain such rules. The reasons are understandable: not only are situations of succession in membership in an international organization quite rare, but the modalities of succession may significantly differ from one case to another. Therefore, acquisition of membership by way of succession can be considered exceptional. Moreover, some authors consider membership in an international organization to be the "personal" right of every state, which precludes automatic succession; the new state shall have the chance to make use of its sovereign right to decide whether to join an organization. For example, in the case of Czechoslovakia, the state ceased to exist, and its legal personality was not continued. Instead, two new states emerged, the Czech Republic and the Slovak Republic. Both states then had to apply for membership in the UN, even though Czechoslovakia was a founding member of the UN. How complicated succession questions can be may be illurstated by

[4] Cf. the Vienna Convention on Succession of sSates in respect of Treaties from 1978 and the Vienna Convention on the Succession of States in respect of State Property, Archives and Debts from 1983 [not entered into force yet].

shown the former Yugoslavia. Serbia and Montenegro considered themselves as successor states, but the UN considered the break-up of Yugoslavia as a case of dismemberment, and therefore did not allow Serbia and Montenegro to succeed to Yugoslavia´s UN seat. In cases of secession where the original state continues to exist, but part of it becomes a new state (e.g., Bangladesh´s secession from Pakistan in 1974), the original state naturally maintains its membership. The new state must undergo the full application process. However where a new state comes into existence by merging two states, membership will be continued and the new state does not have to re-apply (as was the case for example of Tanzania´s membership in the UN, when Tanzania emerged in 1964 from the merging of Tanganika and Zanzibar).

The last aspect of membership which we need to draw attention to, is **termination.** This has three basic scenarios:

If a member state ceases to exist or the international organization is dissolved (as was the case with the League of Nations or the Western European Union), then the termination of membership is a logical consequence. On the other hand, as the case of Iraqi invasion in Kuvait in 1991 shows, an illegal termination of a state does not lead to a termination its membership in international organization. Despite Iraqi occupation, Kuwait remained a member of the UN.

States may also terminate their membership voluntarily - by withdrawal. Such a situation is quite rare, but occasionally happens; for example, Indonesia withdrew from the UN in 1965. Withdrawal, like admission, may be regulated by the organization´s constituent document and be subject to certain conditions. For example, Article 7 of the Council of Europe stipulates: „*Any member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so. Such withdrawal shall take effect at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year.*" Not all founding documents however contain a withdrawal clause – the most prominent example is the Charter of the United Nations, which does not contain any specific rules for this case.

Termination of membership can also take place involuntarily, through expulsion. For example, article 6 of the UN Charter stipulates: „*A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council*."

It follows from this provision (and Article 5 of the UN-Charter) that expulsion is usually understood to relate to serious violations of members' obligations. In the case of the UN, it may expel a member if it has persistently violated the principles of the UN. The procedure includes a recommendation from the Security Council, which basically means thatpermanent members may veto such a decision. Nonetheless, situations of expulsion from international organization now and then occur. A prominent example was the threat to expel Greece from the Council of Europe due to human rights violations commited by the military junta ruling Greece, after a *coup d´état,* between 1967-1974. Greece, however, withdrew before it could be expelled.

B. Problems and questions

Q1: On the basis of official UN documents (including the UN Charter) describe the procedure of admitting a new member state to the UN.
Q2: What role do political considerations play in decisions on the admission of new members? Discuss especially regarding the admission of new members to the UN!

C. Materials

Doc. 5.1

CONDITIONS OF ADMISSION OF A STATE TO MEMBERSHIP IN THE UNITED NATIONS

(Article 4 of the Charter)

International Court of Justice
May 28, 1948
General List No. 3

***57** Request for advisory opinion in virtue of Resolution of General Assembly of United Nations of November 17th, 1947. -Request does not refer to actual vote but to statements made by a Member concerning the vote. Request limited to the question whether the conditions in Article 4, paragraph 1, of the Charter are exhaustive. -Legal or political character of the question. - Competence of the Court to deal with questions in abstract terms. -Competence of the Court to interpret Article 4 of the Charter. -Legal character of the rules in Article 4. –Interpretation based on the natural meaning of terms. - Considerations extraneous to the conditions of Article 4. Considerations capable of being connected with these conditions.-Procedural character of paragraph 2 of Article 4. -Subordination of political organs to treaty provisions which govern them. Article 24 of the Charter. - Demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants. -Individual consideration of every application for admission on its own merits.

ADVISORY OPINION.

Present: President GUERRERO; Vice-President BASDEVANT; Judges ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORICIC, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO.

***58** THE COURT, composed as above, gives the following advisory opinion:

On November 17th, 1947, the General Assembly of the United Nations adopted the following Resolution:
'The General Assembly,
Considering Article 4 of the Charter of the United Nations,

Considering the exchange of views which has taken place in the Security Council at its Two hundred and fourth, Two hundred and fifth and Two hundred and sixth Meetings, relating to the admission of certain States to membership in the United Nations,

Considering Article 96 of the Charter,
Requests the International Court of Justice to give an advisory opinion on the following question:

Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?

Instructs the Secretary-General to place at the disposal of the Court the records of the above-mentioned meetings of the Security Council.' (...)

* * *
Before examining the request for an opinion, the Court considers it necessary to make the following preliminary remarks:

The question put to the Court is divided into two parts, of which the second begins with the words 'In particular', and is presented as an application of a more general idea implicit in the first. The request for an opinion does not refer to the actual vote. Although the Members are bound to conform to the requirements of Article 4 in giving their votes, the General Assembly can hardly be supposed to have intended to ask the Court's opinion as to the reasons which, in the mind of a Member, may prompt its vote. Such reasons, which enter into a mental process, are obviously subject to no control. Nor does the request concern a Member's freedom of expressing its opinion. Since it concerns a condition or conditions on which a Member 'makes its consent dependent', the question can only relate to the statements made by a Member concerning the vote it proposes to give. (...)

The question put is in effect confined to the following point only: are the conditions stated in paragraph 1 of Article 4 exhaustive in character in the sense that an affirmative reply would lead to the conclusion that a Member is not legally entitled to make admission dependent on conditions not expressly provided for in that Article, while a negative reply would, on the contrary, authorize a Member to make admission dependent also on other conditions.

* * *
Understood in this light, the question, in its two parts, is and can only be a purely legal one. To determine the meaning of a treaty provision-to determine, as in this case, the character (exhaustive or otherwise) of the conditions for admission stated therein-is a problem of interpretation and consequently a legal question. (...)

In framing this answer, it is necessary first to recall the 'conditions' required, under paragraph 1 of Article 4, of an applicant for admission. This provision reads as follows:

'Membership in the United Nations is open to all other peaceloving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.'

The requisite conditions are five in number: to be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so.

All these conditions are subject to the judgment of the Organization. The judgment of the Organization means the judgment of the two organs mentioned in paragraph 2 of Article 4, and, in the last analysis, that of its Members. The question put is concerned with the individual attitude of each Member called upon to pronounce itself on the question of admission.

Having been asked to determine the character, exhaustive or otherwise, of the conditions stated in Article 4, the Court must in the first place consider the text of that Article. The English and French texts of paragraph 1 of Article 4 have the same meaning, and it is impossible to find any conflict between them. The text of this paragraph, by the enumeration which it contains and the choice of its terms, clearly demonstrates the intention of its authors to establish a legal rule which, while it fixes the conditions of admission, determines also the reasons for which admission may be refused; for the text does not differentiate between these two cases and any attempt to restrict it to one of them would be purely arbitrary.

The terms 'Membership in the United Nations is open to all other peace-loving States which....' and 'Peuvent devenir Membres des Nations unies tous autres Etats pacifiques', indicate that States which fulfil the conditions stated have the qualifications requisite for admission. The natural meaning of the words used leads to the conclusion that these conditions constitute an exhaustive enumeration and are not merely stated by way of guidance or example. The provision would lose its significance and weight, if other conditions, unconnected with those laid down, could be demanded. The conditions stated in paragraph 1 of Article 4 must therefore be regarded not merely as the necessary conditions, but also as the conditions which suffice. Nor can it be argued that the conditions enumerated represent only an indispensable minimum, in the sense that political considerations could be superimposed upon them, and prevent the admission of an applicant which fulfils them. Such an interpretation ***63** would be inconsistent with the terms of paragraph 2 of Article 4, which provide for the admission of 'tout Etat remplissant cesconditions'-'any such State'.

It would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions. Such a power would be inconsistent with the very character of paragraph 1 of Article 4 which, by reason of the close connexion which it establishes between membership and the observance of the principles and obligations of the Charter, clearly constitutes a legal regulation of the question of the admission of new States. To warrant an interpretation other than that which ensues from the natural meaning of the words, a decisive reason would be required which has not been established.

Moreover, the spirit as well as the terms of the paragraph preclude the idea that considerations extraneous to these principles and obligations can prevent the admission of a State which complies with them. If the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the conditions laid down therein, they would undoubtedly have adopted a different wording.

The Court considers that the text is sufficiently clear; consequently, it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself.

The Court furthermore observes that Rule 60 of the Provisional Rules of Procedure of the Security Council is based on this interpretation. The first paragraph of this Rule reads as follows:

'The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.'

It does not, however, follow from the exhaustive character of paragraph 1 of Article 4 that an appreciation is precluded of such circumstances of fact as would enable the existence of the requisite conditions to be verified.

Article 4 does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down in that Article. The taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor-that is to say, none connected with the conditions of admission-is excluded. ***64** It has been sought to deduce either from the second paragraph of Article 4, or from the political character of the organ recommending or deciding upon admission, arguments in favour of an interpretation of paragraph 1 of Article 4, to the effect that the fulfilment of the conditions provided for in that Article is necessary before the admission of a State can be recommended or decided upon, but that it does not preclude the Members of the Organization from advancing considerations of political expediency, extraneous to the conditions of Article 4.

But paragraph 2 is concerned only with the procedure for admission, while the preceding paragraph lays down the substantive law. This procedural character is clearly indicated by the words 'will be effected', which, by linking admission to the decision, point clearly to the fact that the paragraph is solely concerned with the manner in which admission is effected, and not with the subject of the judgment of the Organization, nor with the nature of the appreciation involved in that judgment, these two questions being dealt with in the preceding paragraph. Moreover, this paragraph, in referring to the 'recommendation' of the Security Council and the 'decision' of the General Assembly, is designed only to determine the respective functions of these two organs which consist in pronouncing upon the question whether or not the applicant State shall be admitted to membership after having established whether or not the prescribed conditions are fulfilled.

The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution. In this case, the limits of this freedom are fixed by Article 4 and allow for a wide liberty of appreciation. There is therefore no conflict between the functions of the political organs, on the one hand, and the exhaustive character of the prescribed conditions, on the other.

It has been sought to base on the political responsibilities assumed by the Security Council, in virtue of Article 24 of the Charter, an argument justifying the necessity for according to the Security Council as well as to the General Assembly complete freedom of appreciation in connexion with the admission of new Members. But Article 24, owing to the very general nature of its terms, cannot, in the absence of any provision, affect the special rules for admission which emerge from Article 4.

The foregoing considerations establish the exhaustive character of the conditions prescribed in Article 4.

* * *

The second part of the question concerns a demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants.

***65** Judged on the basis of the rule which the Court adopts in its interpretation of Article 4, such a demand clearly constitutes a new condition, since it is entirely unconnected with those prescribed in Article 4. It is also in an entirely different category from those conditions, since it makes admission dependent, not on the conditions required of applicants, qualifications which are supposed to be fulfilled, but on an extraneous consideration concerning States other than the applicant State.

The provisions of Article 4 necessarily imply that every application for admission should be examined and voted on separately and on its own merits; otherwise it would be impossible to determine whether a particular applicant fulfils the necessary conditions.

To subject an affirmative vote for the admission of an applicant State to the condition that other States be admitted with that State would prevent Members from exercising their judgment in each case with complete liberty, within the scope of the prescribed conditions. Such a demand is incompatible with the letter and spirit of Article 4 of the Charter.

FOR THESE REASONS,
THE COURT,
by nine votes to six,

is of opinion that a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article;

and that, in particular, a Member of the Organization cannot, while it recognizes the conditions set forth in that provision to be fulfilled by the state concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State.

***82** DISSENTING OPINION OF JUDGES BASDEVANT, WINIARSKI, SIR ARNOLD McNAIR AND READ.

1. We regret that, while we concur in the opinion of the majority of the members of the Court as to the legal character of the first question, as to the power of the Court to answer it and the desirability of doing so, and as to the competence of the Court to give any interpretation of the Charter thereby involved, we are unable to concur in the answer given by the majority to either question, and we wish to state our reasons for not doing so.(...)

17. In our opinion it follows from these considerations that a Member of the United Nations remains legally entitled, either in the Security Council or in the General Assembly, during the discussion upon the admission of a new Member, to put forward considerations foreign to the qualifications specified in paragraph 1 of Article 4, and, assuming these qualifications to be fulfilled, to base its vote upon such considerations. (...)

20. While the Members of the United Nations have thus the right and the duty to take into account all the political considerations which are in their opinion relevant to a decision whether or not to admit an applicant for membership or to postpone its admission, it must be remembered that there is an overriding legal obligation resting upon every Member of the United Nations to act in good faith (an obligation which moreover is enjoined by paragraph 2 of Article 2 of the Charter) and with a view to carrying out the ***92** Purposes and Principles of the United Nations, while at the same time the members of the Security Council, in whatever capacity they may be there, are participating in the action of an organ which in the discharge of its primary responsibility for the maintenance of international peace and security is acting on behalf of all the Members of the United Nations. That does not mean the freedom thus entrusted to the Members of the United Nations is unlimited or that their discretion is arbitrary.

21. For these reasons, our view is that the first question should be answered as follows:

A Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State which possesses the qualifications specified in paragraph 1 of that Article, is participating in a political decision and is therefore legally entitled to make its consent to the admission dependent on any political considerations which seem to it to be relevant. In the exercise of this power the Member is legally bound to have regard to the principle of good faith, to give effect to the Purposes and Principles of the United Nations and to act in such a manner as not to involve any breach of the Charter.

22. Having now replied to the first question, we shall proceed to the second, which is as follows:

'In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?'

The practice of the General Assembly and of the Security Council in regard to the admission of new Members recognizes an affirmative vote, a negative vote, or an abstention, but not a vote subject to a condition; so the second question put must be understood as asking the Court to decide whether a Member of the Organization is legally entitled, while admitting that the qualifications prescribed in Article 4, paragraph 1, are fulfilled by the applicant State, to vote against its admission unless the Member is assured that other States will be admitted to membership in the United Nations contemporaneously with that State.

This question is put in general terms, and without making any distinction according to the importance possessed by the vote of any particular Member in the attainment of the majority required in the Security Council or in the General Assembly.

23. If it is agreed (as we have already submitted) that a Member of the United Nations is legally entitled to refuse to vote in favour ***93** of admission by reason of considerations foreign to the qualifications expressly laid down in Article 4, paragraph 1, this interpretation applies equally to the second question. A consideration based on the desire that the admission of the State should involve the contemporaneous admission of other States is clearly foreign to the process of ascertaining that the first State possesses the qualifications laid down in Article 4, paragraph 1; it is a political consideration. If a Member of the United Nations is legally entitled to make its refusal to admit depend on political considerations, that is exactly what the Member would be doing in this case.

25. Nevertheless, as we have said, a Member of the United Nations does not enjoy unlimited freedom in the choice of the political considerations that may induce it to refuse or postpone its vote in favour of the admission of a State to membership in the United Nations. It must use this power in good faith, in accordance with the Purposes and Principles of the Organization and in such a manner as not to involve any breach of the Charter. But no concrete case has been submitted to the Court which calls into question the fulfilment of the duty to keep within these limits; so the Court need not consider what it would have to do if a concrete case of this kind were submitted to it. (...)

***107** DISSENTING OPINION BY M. KRYLOV.

[Translation.]
To my regret, I am unable for the following reasons to concur in the opinion of the Court.

1. From a legal standpoint, the drafting of the question put to the Court gives rise to some criticism: the word 'conditions' is used in this question with different meanings; the words 'consent' and 'vote' are used, but in fact the reasons for a vote are meant. These errors of drafting are characteristic. They reveal the secret of the origin of the Resolution of November 17th, 1947. It was not framed in a legal atmosphere.

Appearances are deceptive: though framed in a legal form, it is a question put with a definitely political purpose; it is political in conception; though abstract in form, it is a concrete question which expressly refers in one of its paragraphs to the 'exchange of views which has taken place in the Security Council at its 204th, 205th and 206th Meetings'; though impersonal in form, it is a question designed to censure the reasons given by a permanent member of the Security Council.

It has been suggested that the request couched in abstract terms is not of a political character, that the Court is not called upon to consider the reasons which may underly the request and, lastly, that the Court is bound only to envisage the question in the abstract form in which it has been presented by the General Assembly.

I cannot share this view. I hold that it is impossible to eliminate the political elements from the question put to the Court and only to consider it as presented in an abstract form. The reply to the question should refer to concrete cases which have been considered by the Security Council and General Assembly. The legal criteria should be examined in the light of the political grounds on which, in actual fact, the attitude of Members of the United Nations was based. (...)

Doc. 5.2

3203 (XXIX). Admission of the People's Republic of Bangladesh to membership in the United Nations

The General Assembly,

Having received the recommendation of the Security Council of 10 June 1974 that the People's Republic of Bangladesh should be admitted to membership in the United Nations,[1]

Having considered the application for membership of the People's Republic of Bangladesh,[2]

Decides to admit the People's Republic of Bangladesh to membership in the United Nations.

2233rd plenary meeting
17 September 1974

3204 (XXIX). Admission of Grenada to membership in the United Nations

The General Assembly,

Having received the recommendation of the Security Council of 21 June 1974 that Grenada should be admitted to membership in the United Nations,[3]

Having considered the application for membership of Grenada,[4]

Decides to admit Grenada to membership in the United Nations.

2233rd plenary meeting
17 September 1974

3205 (XXIX). Admission of the Republic of Guinea-Bissau to membership in the United Nations

The General Assembly,

Having received the recommendation of the Security Council of 12 August 1974 that the Republic of Guinea-Bissau should be admitted to membership in the United Nations,[5]

Having considered the application for membership of the Republic of Guinea-Bissau,[6]

Decides to admit the Republic of Guinea-Bissau to membership in the United Nations.

2233rd plenary meeting
17 September 1974

[1] *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 22, document A/9642.

[2] A/8754-S/10759. For the printed text, see *Official Records of the Security Council, Twenty-seventh Year, Supplement for July, August and September 1972.*

[3] *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 22, document A/9652.

[4] A/9641-S/11311. For the printed text, see *Official Records of the Security Council, Twenty-ninth Year, Supplement for April, May and June 1974.*

[5] *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 22, document A/9712.

[6] A/9665-S/11393. For the printed text, see *Official Records of the Security Council, Twenty-ninth Year, Supplement for July August and September 1974.*

3206 (XXIX). Credentials of representatives to the twenty-ninth session of the General Assembly[7]

The General Assembly

Approves the first report of the Credentials Committee.[8]

2248th plenary meeting
30 September 1974

3207 (XXIX). Relationship between the United Nations and South Africa[7]

The General Assembly,

Recalling its resolutions 2636 A (XXV) of 13 November 1970, 2862 (XXVI) of 20 December 1971 and 2948 (XXVII) of 8 December 1972 and its decision of 5 October 1973,[9] by which it decided to reject the credentials of South Africa,

Recalling that South Africa did not heed any of the aforementioned decisions and has continued to practise its policy of *apartheid* and racial discrimination against the majority of the population in South Africa,

Reaffirming, once again, that the policy of *apartheid* and racial discrimination of the Government of South Africa is a flagrant violation of the principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

Noting the persistent refusal of South Africa to abandon its policy of *apartheid* and racial discrimination in compliance with relevant resolutions and decisions of the General Assembly,

Calls upon the Security Council to review the relationship between the United Nations and South Africa in the light of the constant violation by South Africa of the principles of the Charter and the Universal Declaration of Human Rights.

2248th plenary meeting
30 September 1974

3208 (XXIX). Status of the European Economic Community in the General Assembly

The General Assembly,

Wishing to promote co-operation between the United Nations and the European Economic Community,

Requests the Secretary-General to invite the European Economic Community to participate in the sessions and work of the General Assembly in the capacity of observer.

2266th plenary meeting
11 October 1974

3209 (XXIX). Status of the Council for Mutual Economic Assistance in the General Assembly

The General Assembly,

Wishing to promote co-operation between the United Nations and the Council for Mutual Economic Assistance,

[7] See also p. 10, item 3.

[8] *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 3, document A/9779.

[9] *Ibid., Twenty-eighth Session, Supplement No. 30* (A/9030), p. 10, item 3.

Doc. 5.3

UN Doc. A/66/371 S/2011/592 Annex I

Letter received on 23 September 2011 from the President of Palestine to the Secretary-General Application of the State of Palestine for admission to membership in the United Nations

I have the profound honour, on behalf of the Palestinian people, to submit this application of the State of Palestine for admission to membership in the United Nations.

This application for membership is being submitted based on the Palestinian people's natural, legal and historic rights and based on United Nations General Assembly resolution 181 (II) of 29 November 1947 as well as the Declaration of Independence of the State of Palestine of 15 November 1988 and the acknowledgement by the General Assembly of this Declaration in resolution 43/177 of 15 December 1988.

In this connection, the State of Palestine affirms its commitment to the achievement of a just, lasting and comprehensive resolution of the Israeli-Palestinian conflict based on the vision of two-States living side by side in peace and security, as endorsed by the United Nations Security Council and General Assembly and the international community as a whole and based on international law and all relevant United Nations resolutions.

For the purpose of this application for admission, a declaration made pursuant to rule 58 of the provisional rules of procedure of the Security Council and rule 134 of the rules of procedure of the General Assembly is appended to this letter (see enclosure).

I should be grateful if you would transmit this letter of application and the declaration to the Presidents of the Security Council and the General Assembly as soon as possible.

(*Signed*) Mahmoud **Abbas**
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization

Enclosure

Declaration

In connection with the application of the State of Palestine for admission to membership in the United Nations, I have the honour, in my capacity as the President of the State of Palestine and as the Chairman of the Executive Committee of the Palestine Liberation Organization, the sole legitimate representative of the Palestinian people, to solemnly declare that the State of Palestine is a peace-loving nation and that it accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfill them.

(*Signed*) Mahmoud **Abbas**
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization

Doc. 5.4

COMPETENCE OF THE GENERAL ASSEMBLY FOR THE ADMISSION OF A STATE TO THE UNITED NATIONS

International Court of Justice
ADVISORY OPINION OF MARCH 3rd, 1950
General List No. 9

***4** Competence of the Court to interpret Article 4, paragraph, of the Charter.-Character of the question.-Absence of recommendation from the Security Council regarding admission to the United Nations.-Power of the General Assembly regarding admission to membership in the United Nations in the absence of a recommendation of the Security Council.-Meaning of the term "upon the recommendation of the Security Council.-Interpretation of a treaty provision according to its natural and ordinary meaning in its context.-Travaux préparatoires.-*

Interpretation in the light of the general structure of the Charter.-Application of Article 4, paragraph 2, by the General Assembly and the Security Council.

***5** THE COURT, composed as above, gives the following Advisory Opinion:

On November 22nd, 1949, the General Assembly of the United Nations adopted the following Resolution: "The General Assembly, Keeping in mind the discussion concerning the admission of new Members in the Ad Hoc Political Committee at its fourth regular session, Requests the International Court of Justice to give an advisory opinion on the following question :

'Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?' "

(...)
This question has been framed by the General Assembly in the following terms:

"Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate fading to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?“

The Request for an Opinion envisages solely the case in which the Security Council, having voted upon a recommendation, has concluded from its vote that the recommendation was not adopted because it failed to obtain the requisite majority or because of the negative vote of a permanent Member. Thus the Request refers to the case in which the General Assembly is confronted with the absence of a recommendation from the Security Council.

It is not the object of the Request to determine how the Security Council should apply the rules governing its voting procedure in regard to admissions or, in particular, that the Court should examine whether the negative vote of a permanent Member is effective to defeat a recommendation which has obtained seven or more votes. The question, as it is formulated, assumes in such a case the non-existence of a recommendation.

The Court is, therefore, called upon to determine solely whether the General Assembly can make a decision to admit a State when the Security Council has transmitted no recommendation to it.

Article 4, paragraph 2, is as follows:

"The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

The Court has no doubt as to the meaning of this text. It requires two things to effect admission: a "recommendation" of the Security Council and a "decision" of the General Assembly. It is in the nature of things that the recommendation should come before the decision. The word "recommendation", and the word "upon" preceding it, imply the idea that the recommendation is the foundation of the decision to admit, and that the latter rests upon the recommendation. Both these acts are indispensable to form the judgment of the Organization to which the previous ***9** paragraph of Article 4 refers. The text under consideration means that the General Assembly can only decide to admit upon the recommendation of the Security Council; it determines the respective roles of the two organs whose combined action is required before admission can be effected: in other words, the recommendation of the Security Council is the condition precedent to the decision of the Assembly by which the admission is effected.

In one of the written statements placed before the Court, an attempt was made to attribute to paragraph 2 of Article 4 a different meaning. The Court considers it necessary to Say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context that is an end of the matter.

If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to

ascertain what the parties really did mean when they used these words. As the Permanent Court said in the case concerning the *Polish Postal Service in Danzig* (P.C.I.J., Series B, No. II, P. 39) :

"It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd."

When the Court can give effect to a provision of a treaty by giving to the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning. In the present case the Court finds no difficulty in ascertaining the natural and ordinary meaning of the words in question and no difficulty in giving effect to them. Some of the written statements submitted to the Court have invited it to investigate the *travaux préparatoires* of the Charter. Having regard, however, to the considerations above stated, the Court is of the opinion that it is not permissible, in this case, to resort to *travaux préparatoires.*

The conclusions to which the Court is led by the text of Article 4, paragraph 2, are fully confirmed by the structure of the Charter, and particularly by the relations established by it between the General Assembly and the Security Council.

The General Assembly and the Security Council are both principal organs of the United Nations. The Charter does not place the Security Council in a subordinate position. Article 24 confers upon it "primary responsibility for the maintenance of international peace and security", and the Charter grants it for this purpose certain powers of decision. Under Articles 4, 5, and 6, the Security Council co-operates with the General Assembly in matters of admission to membership, of suspension from the exercise of the rights and privileges of membership, and of expulsion from the Organization. It has power, without the concurrence of the General Assembly, to reinstate the Member which was the object of the suspension, in its rights and privileges.

The organs to which Article 4 entrusts the judgment of the Organization in matters of admission have consistently interpreted the text in the sense that the General Assembly can decide to admit only on the basis of a recommendation of the Security Council. In particular, the Rules of Procedure of the General Assembly provide for consideration of the merits of an application and of the decision to be made upon it only "if the Security Council recommends the applicant State for membership" (Article 125). The Rules merely state that if the Security Council has not recommended the admission, the General Assembly may send back the application to the Security Council for further consideration (Article 126). This last step has been taken several times: it was taken in Resolution 296 (IV), the very one that embodies this Request for an Opinion.

To hold that the General Assembly has power to admit a State to membership in the absence of a recommendation of the Security Council would be to deprive the Security Council of an important power which has been entrusted to it by the Charter. It would almost nullify the role of the Security Council in the exercise of one of the essential functions of the Organization. It would mean that the Security Council would have merely to study the case, present a report, give advice, and express an opinion. This is not what Article 4, paragraph 2, says.

The Court cannot accept the suggestion made in one of the written statements submitted to the Court, that the General Assembly, in order to try to meet the requirement of Article 4, paragraph 2, could treat the absence of a recommendation as equivalent to what is described in that statement as an "unfavourable recommendation", upon which the General Assembly could base a decision to admit a State to membership.

Reference has also been made to a document of the San Francisco Conference, in order to put the possible case of an unfavourable recommendation being voted by the Security Council : such a recommendation has never been made in practice. In the opinion of the Court, Article 4, paragraph 2, envisages a favourable recommendation of the Security Council and that only. An unfavourable recommendation would not correspond to the provisions of Article 4, paragraph 2.

While keeping within the limits of a Request which deals with the scope of the powers of the General Assembly, it is enough for ***10** the Court to Say that nowhere has the General Assembly received the power to change, to the point of reversing, the meaning of a vote of the Security Council.

In consequence, it is impossible to admit that the General Assembly has the power to attribute to a vote of the Security Council the character of a recommendation when the Council itself considers that no such recommendation has been made.

For these reasons,

THE COURT

by twelve votes to two,

is of opinion that the admission of a State to membership in the United Nations, pursuant to paragraph 2 of Article 4 of the Charter, cannot be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend.

Chapter 6: THE POWERS OF INTERNATIONAL ORGANIZATIONS

Learning objectives and structure of the lecture:

Can international organizations do just anything they want? Certainly not. They are founded to carry out certain tasks and, to do so, they need powers. So, if their personality is derived from states, what powers do international organizations have, and what is their legal basis? How is it possible that the UN deploys peacekeeping operations, if there is not a single word about them in the UN Charter? With the help of this lecture, you can answer these questions and explain the powers of international organizations and where they come from (including the so-called implied powers theory).

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organizations Law* (2015), pp. 154-188; 267-285
- Excerpts from two ICJ Advisory Opinions (Doc. 6.1 and Doc. 6.2)
- For additional documents see the respective section in Moodle.

A. Introduction

The functioning and conduct of all activities of an international organization must be based on legal powers given to the organization either at the time of their creation or subsequently. This fundamental principle is termed the **principle of attributed/conferred powers**, or the **principle of speciality,** and the International Court of Justice described it in its 1996 *Advisory Opinion on Legality of the Use by state of Nuclear Weapons in Armed Conflict* (ICJ Rep. 66, para. 25) as follows:

"*international organizations [...] do not, unlike states, possess a general competence. International organizations are governed by the ´principle of speciality´, that is to say, they are invested by the states which create them with powers, the limits of which are a function of the common interest whose promotion those states entrust to them.*"

Hence it is obvious, for example, that the *World Meteorological Organisation* cannot enter into a military pact. If it concluded such a treaty, this would be considered *ultra vires* (beyond powers) and invalidated.

The principle of attributed powers contains and explains a fundamental difference between states and international organizations: states as original subjects of international law can exercise general powers – they possess so-called "Kompetenz-Kompetenz", i.e. the

competence to assign powers to themselves. In contrast, international organizations may only exercise those powers that have been conferred on them and do only the things they are empowered to. A clear statement in this regard is made in Art. 5(2) TEU:

"*Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member states in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member states."*

Powers are usually conferred to international organizations **explicitly** in their founding document, stating in a more or less detailed way what competences the member states have decided to confer on the organization to enable it to fulfil its intended functions and purposes. Such provisions are the legal basis for the acts and decisions of the organization. By referring to them, the organization demonstrates that it is acting within the powers bestowed on it. For example, all resolutions of the UN Security Council contain provisions specifying the respective Chapter or provision of the UN Charter on which they are based. As for the EU, the ECJ formulated in *France v Commission* (C-325/91, 16 June 1993, para. 26) the obligation for any act to indicate its legal basis:

"As a result of […] the requirement for legal certainty, the binding nature of any act intended to have legal effects must be derived from a provision of Community law which prescribes the legal form to be taken by that act and which must be expressly indicated therein as its legal basis."

To create an international organization is a complicated undertaking, especially if the organization is intended to fulfil a plethora of functions and goals, such as with the UN, the African Union, etc. Transfer of powers from member states is a necessary part of the creation process, and states are understandably very careful about the competences with which they endow the organization. This wariness, but also developments in the international community, the changing role of the international organization, or other factors, may lead to a situation where the organization is unable to fulfil some purposes or functions because of the lack of an explicit empowering provision in its founding treaty. For example, for the UN in 1954 the question arose of whether the General Assembly had the power to establish an administrative tribunal to settle disputes between the UN and its staff without the express power to do so in the UN-Charter. The ICJ was asked to offer an advisory opinion (*Effect of Awards of Compensation Made by the U.N. Administrative Tribunal,* 1954 I.C.J. 47, para. 57). The Court held that as one of the aims of the UN is the promotion of freedom and justice for individuals, and at the same time the UN staff is not allowed to bring a suit against the UN in domestic courts due to possible jurisdictional immunities, "*the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity*". The Court thus confirmed the previous statement in the advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations (1949, ICJ Rep. 174, 182):*

"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."

Hence the powers of international organizations are not limited to explicit powers, but it is generally accepted that they may also be implied; rather than being explicitly contained in their constituent document, they result from the organization´s functions and purposes, or from the member states' practice. This approach is called the **implicit (or implied) powers theory**.

The notion of implied powers is generally accepted, but less clear is its scope. At least four limits to implied powers may be mentioned: (1) the use of implied powers must be necessary or indispensable for the organization to perform its functions, (2) at least certain explicit powers must exist in the area concerned, (3) the use of implied powers must not be contrary to the fundamental rules of international law, and (4) the use of implied powers must not modify the distribution of functions between the organs of an international organization.

The general acceptance of implied powers has led to the incorporation of respective explicit provisions in the constituent treaties of international organizations. A notable example of such a provision is Art. 352(1) TFEU:

"If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures."

Article 352 TFEU provides a subsidiary legal basis, which, as stated above, must be identified in every legal act of the EU. However, this provision does not serve as a basis for widening the scope EU´s powers beyond the general framework created by the founding treaties, and in particular provisions defining the tasks and activites of the EU. Art. 352 TFEU also does not allow the adoption of acts and provisions which equate to amendments of the constituent treaties circumventing the procedures prescribed for such changes.

B. Problems and questions

Q1: Read the relevant provisions of the UN Charter and fill in the following chart.

UN organ	Relevant provisions of UN-Charter	Functions	Powers

Q2: Ascertain the tasks (the mandate) of the following international organizations!

- *Andean Community of Nations*
- *Eurocontrol*
- *OPEC*
- *EU*
- *Korean Peninsula Energy Development Organisation (KEDO)*

C. Materials

Doc. 6.1

Legality of the Use of Nuclear Weapons, 1996 I.C.J. at 74-75.

The constituent instruments of international organizations are also treaties of a particular type; their object is to create new subjects of international law endowed with certain autonomy, to which the parties entrust the task of realising 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 founder, 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.

Doc. 6.2

Effect of awards of compensation made by the U. N. Administrative Tribunal, Advisory Opinion of July 13th, I954:
I.C. J. Reports 1954, p. 47.

56 The legal power of the General Assembly to establish a tribunal competent to render judgments binding on the United Nations has been challenged. Accordingly, it is necessary to consider whether the General Assembly has been given this power by the Charter.

There is no express provision for the establishment of judicial bodies or organs and no indication to the contrary. However, in its Opinion-Reparation for Injuries suffered in the Service *of the* United Nations, Advisory Opinion: I.C. J. Reports 1949, p. 182-the Court said: "*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.*"

The Court must therefore begin by enquiring whether the provisions of the Charter concerning the relations between the staff members and the Organization imply for the Organization the power to establish a judicial tribunal to adjudicate upon disputes arising out of the contracts of service. [...]

57 [...] The contracts of service between the Organization and the staff members are contained in letters of appointment. Each appointment is made subject to terms and conditions provided in the Staff Regulations and Staff Rules, together with such amendments as may be made from time to time.

When the Secretariat was organized, a situation arose in which the relations between the staff members and the Organization were governed by a complex code of law. This code consisted of the Staff Regulations established by the General Assembly, defining the fundamental rights and obligations of the staff, and the Staff Rules, made by the Secretary-General in order to implement the Staff Regulations. It was inevitable that there would be disputes between the Organization and staff members as to their rights and duties. The Charter contains no provision which authorizes any of the principal organs of the United Nations to adjudicate upon these disputes, and Article 105 secures for the United Nations jurisdictional immunities in national courts. It would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.

In these circumstances, the Court finds that the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence, and integrity. Capacity to do this arises by necessary intendment out of the Charter.

Chapter 7: INSTITUTIONAL STRUCTURES

Learning objectives and structure of the lecture:

Just as state organs constitute the machinery of states, and perform various tasks in the name of the state, so it is with the organs of international organizations. The UN has six principal organs – but these may establish subsidiary organs where deemed necessary. This lecture provides insight into the organizational infrastructure of international organizations, which is extraordinary diverse. It helps understand this diversity and encounter some typical categories of such organs. Moreover, we explore the question of the position of member states of the organization. With the help of in-class assignments, we take a closer look at the organs of the United Nations, serving as examples for the theoretical underpinning of this topic.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organisations Law* (2015), pp. 207-241
- For additional documents see the respective section in Moodle.

A. Introduction

It is accepted that it is the capability of international organizations to create their own will which separates them from their member states. However, to enable an IO to create such a separate will, its founders must endow it with the necessary institutional structures. In other words, international organizations must have at least one organ able to create a will distinctive from the will of member states. Considering the variety of existing organizations, their mandates, purposes and powers, there is no standard institutional structure to be found in every international organization. Despite this heterogeneity, it can be argued that there are five categories of organ which international organizations typically possess:

- Plenary
- Executive
- Administrative
- Judicial
- Parliamentary/expert

All organizations have among their principal organs a **plenary organ**, where Member states are represented and meet periodically (e.g., the UN General Assembly or Committee of Ministers of the Council of Europe). Such organs, whatever their name (general assembly, congress, board of governors, council), represent the will (and the interests) of Member states in the organization. Their tasks include setting upcommon standards, especially for the internal functioning of the organization. Further generalization is hardly possible, as the functions, powers and voting procedures of such organs differ greatly.

In contrast to plenary organs, **executive structures** work for the interest of the organization. A good example is the European Commission. They are usually designed for quick decision-making, ensuring the functionality and effectiveness of the organization. This, however, naturally precludes (especially in organizations with many members) the participation of all members in decision-making. It is thus characteristic that executive

organs have limited Member state representation. Some organs are vested with the power to make legally binding decisions (e.g., the UN Security Council), while some are also engaged in regulatory and executive activities (e.g., the European Commission).

All organizations need **administrative structures**, above all to assist and support policy-making organs. Secretariats and other administrative bodies provide the necessary infrastructure and often are responsible for the practical implementation of the decisions of policy-making organs (plenary and executive bodies). Although this remains the main purpose of such organs, nowadays they often have a certain degree of influence on the policy of the organization. The most prominent example of this was the decision made under the second UN Secretary-General Dag Hammarskjöld to initiate and implement firts peacekeeping operation ever (UNEF I). The decision was backed by Art. 99 of the UN-Charter, which provides:

„The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

Judicial organs are structures created to solve disputes between Member states, between organs of the organization, or between Member states and these organs. They might be of various character (permanent, temporal), but they have certain similarities: most importantly they are composed of independent judges competent to render legally binding decisions, and their jurisdiction is usually limited in certain respects (ratione temporae, loci, materiae, personae). Organs, which do not meet the standards of "courts" are usually described as "quasi-judicial organs". Not all international organizations have (or need) a judicial organ; inorganizations with few members, the judicial function may be vested in one of the principal organs of the organization.

International organizations may create a wide variety of other organs. Some have established **parliamentary organs** in response to frequent criticism of a lack of democratic legitimacy in the organization´s policy and decision-making process (eg. the debate concerning t the democratic deficit of the EU and the role of the European Parliament). The vast majority of parliamentary organs can be found in regional organizations, usually occupying rather weak positions, e.g., having consultative functions (cf. the role of the Pan-African Parliament, which currently has consultative and advisory powers). Apart from parliamentary bodies, some organizations in pursuit of their purposes establish **expert bodies**. It is generally accepted that, (1) no two persons of the same nationality may sit in the expert body, and (2) individuals are chosen (elected) on the basis of their personal capacity as experts, not as representatives of Member states. For instance, members of the UN International Law Commission must be persons of recognized competence in international law. They are not responsible to the state of their nationality (or any other state), even if it the Member states are responsible for proposing a list of experts from which the UN General Assembly elects ILC members.

All the abovementioned types of organs can be created in various ways. Some are **created** by **constituent instruments** (usually the principal organs of the organization), others **by separate treaties** (e.g., in the area of human rights protection), or by **decisions of organs**. This last-mentioned category of "subsidiary" organs (e.g., ICTY, created on the basis of a UN Security Council resolution) can be established only within the competence of the principal organ and may not create further suborgans without express authorization.

B. Problems and questions

Q1: What are the main organs of the UN? Which of the organs has suspended its operation and for what reasons?

Q2: Describe the voting procedures in the UN Security Council and in the UN General Assembly. When describing the voting procedures in the UN Security Council, take into consideration the conclusions of the ICJ in the advisory opinion Legal Consequences for states of the Continued Presence of South Africa in Namibia (International Court of Justice, Advisory Opinion, 21 June 1971)!

Q3: Describe how the role, legal position and powers of the European Parliament have evolved since its creation.

C. Materials

Doc. 7.1

LEGAL CONSEQUENCES FOR STATES OF THE CONTINUED PRESENCE OF SOUTH AFRICA IN NAMIBIA

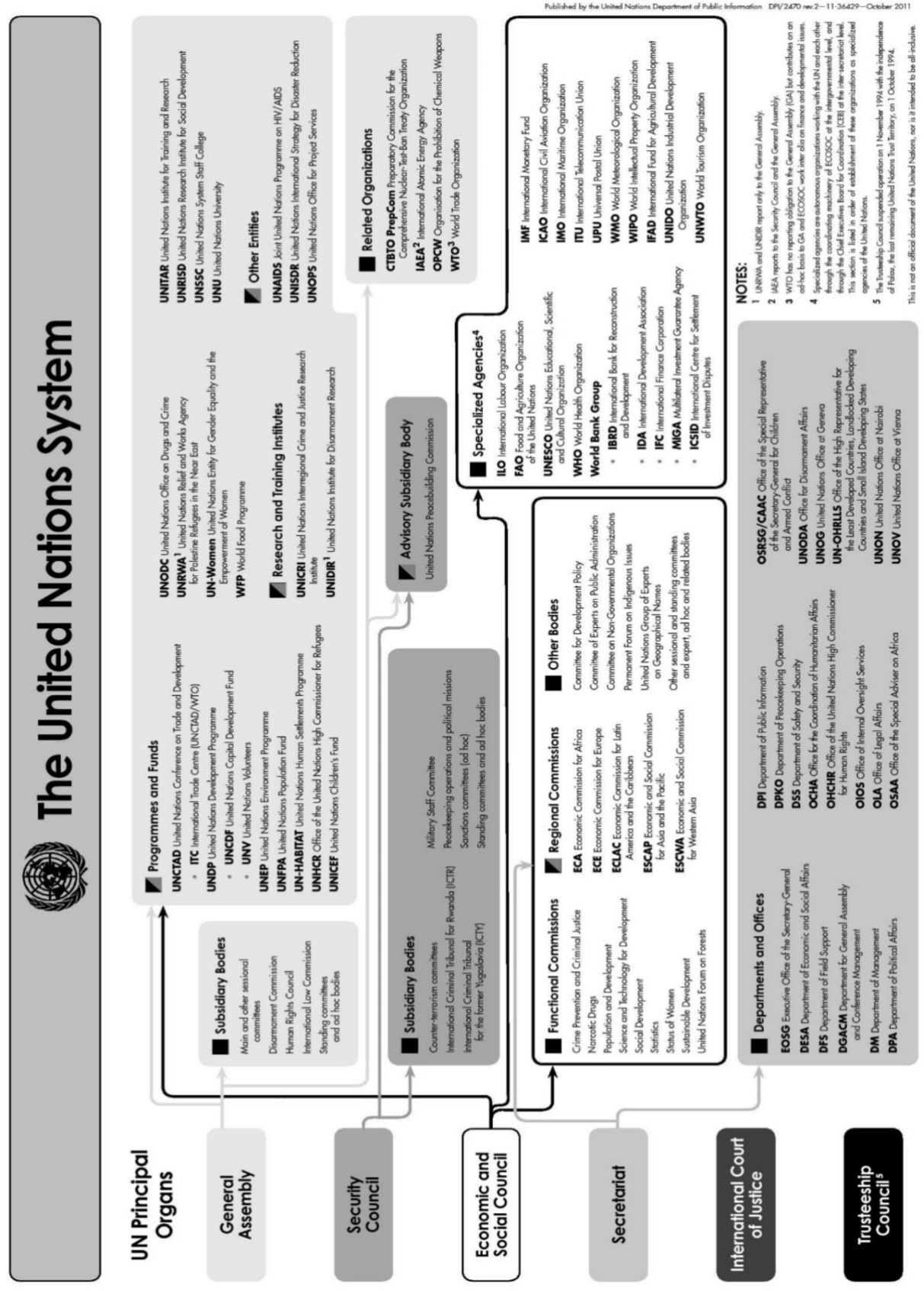
International Court of Justice (ICJ), Advisory Opinion of 21 June 1971

20. The Government of South Africa has contended that for several reasons resolution 284 (1970) of the Security Council, which requested the advisory opinion of the Court, is invalid, and that, therefore, the Court is not competent do deliver the opinion. A resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ´s rules of procedure, and is declared by its President to have been so passed, must be pressument to have been validly adopted. However, since in this instance the objections made concern the competence of the Court, the Court will examine them.

21. The first objection is that in the voting on the resolution two permanent members of the Security Council abstained. It is contended that the resolution was consequently not adopted by an affirmative vote of nine members, including the concurring votes of the permanent members, as required by Article 27, paragraph 3, of the Charter of the United Nations.

22. However, the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the positions taken by the members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resultions. By abstaining, a member does not signigy its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote. This procedure followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been generally accepted by Members of the United Nations and evidences a general practice of that Organization.

Doc. 7.2


The United Nations System
UN Principal Organs
General Assembly
Security Council
Economic and Social Council
Secretariat
International Court of Justice
Trusteeship Council[5]
Programmes and Funds
UNCTAD United Nations Conference on Trade and Development
ITC International Trade Centre (UNCTAD/WTO)
UNDP United Nations Development Programme
UNCDF United Nations Capital Development Fund
UNV United Nations Volunteers
UNEP United Nations Environment Programme
UNFPA United Nations Population Fund
UN-HABITAT United Nations Human Settlements Programme
UNHCR Office of the United Nations High Commissioner for Refugees
UNICEF United Nations Children's Fund
UNODC United Nations Office on Drugs and Crime
UNRWA[1] United Nations Relief and Works Agency for Palestine Refugees in the Near East
UN-Women United Nations Entity for Gender Equality and the Empowerment of Women
WFP World Food Programme
Research and Training Institutes
UNICRI United Nations Interregional Crime and Justice Research Institute
UNIDIR[1] United Nations Institute for Disarmament Research
UNITAR United Nations Institute for Training and Research
UNRISD United Nations Research Institute for Social Development
UNSSC United Nations System Staff College
UNU United Nations University
Other Entities
UNAIDS Joint United Nations Programme on HIV/AIDS
UNISDR United Nations International Strategy for Disaster Reduction
UNOPS United Nations Office for Project Services
Related Organizations
CTBTO PrepCom Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
IAEA[2] International Atomic Energy Agency
OPCW Organisation for the Prohibition of Chemical Weapons
WTO[3] World Trade Organization
Subsidiary Bodies
Main and other sessional committees
Disarmament Commission
Human Rights Council
International Law Commission
Standing committees and ad hoc bodies
Subsidiary Bodies
Counter-terrorism committees
International Criminal Tribunal for Rwanda (ICTR)
International Criminal Tribunal for the former Yugoslavia (ICTY)
Military Staff Committee
Peacekeeping operations and political missions
Sanctions committees (ad hoc)
Standing committees and ad hoc bodies
Advisory Subsidiary Body
United Nations Peacebuilding Commission
Specialized Agencies[4]
ILO International Labour Organization
FAO Food and Agriculture Organization of the United Nations
UNESCO United Nations Educational, Scientific and Cultural Organization
WHO World Health Organization
World Bank Group
IBRD International Bank for Reconstruction and Development
IDA International Development Association
IFC International Finance Corporation
MIGA Multilateral Investment Guarantee Agency
ICSID International Centre for Settlement of Investment Disputes
IMF International Monetary Fund
ICAO International Civil Aviation Organization
IMO International Maritime Organization
ITU International Telecommunication Union
UPU Universal Postal Union
WMO World Meteorological Organization
WIPO World Intellectual Property Organization
IFAD International Fund for Agricultural Development
UNIDO United Nations Industrial Development Organization
UNWTO World Tourism Organization
Functional Commissions
Crime Prevention and Criminal Justice
Narcotic Drugs
Population and Development
Science and Technology for Development
Social Development
Statistics
Status of Women
Sustainable Development
United Nations Forum on Forests
Regional Commissions
ECA Economic Commission for Africa
ECE Economic Commission for Europe
ECLAC Economic Commission for Latin America and the Caribbean
ESCAP Economic and Social Commission for Asia and the Pacific
ESCWA Economic and Social Commission for Western Asia
Other Bodies
Committee for Development Policy
Committee of Experts on Public Administration
Committee on Non-Governmental Organizations
Permanent Forum on Indigenous Issues
United Nations Group of Experts on Geographical Names
Other sessional and standing committees and expert, ad hoc and related bodies
Departments and Offices
EOSG Executive Office of the Secretary-General
DESA Department of Economic and Social Affairs
DFS Department of Field Support
DGACM Department for General Assembly and Conference Management
DM Department of Management
DPA Department of Political Affairs
DPI Department of Public Information
DPKO Department of Peacekeeping Operations
DSS Department of Safety and Security
OCHA Office for the Coordination of Humanitarian Affairs
OHCHR Office of the United Nations High Commissioner for Human Rights
OIOS Office of Internal Oversight Services
OLA Office of Legal Affairs
OSAA Office of the Special Adviser on Africa
OSRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict
UNODA Office for Disarmament Affairs
UNOG United Nations Office at Geneva
UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNON United Nations Office at Nairobi
UNOV United Nations Office at Vienna
NOTES:
1 UNRWA and UNIDIR report only to the General Assembly.
2 IAEA reports to the Security Council and the General Assembly.
3 WTO has no reporting obligation to the General Assembly (GA) but contributes on an ad-hoc basis to GA and ECOSOC work inter alia on finance and developmental issues.
4 Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of ECOSOC at the intergovernmental level, and through the Chief Executives Board for Coordination (CEB) at the inter-secretariat level. This section is listed in order of establishment of these organizations as specialized agencies of the United Nations.
5 The Trusteeship Council suspended operation on 1 November 1994 with the independence of Palau, the last remaining United Nations Trust Territory, on 1 October 1994.
This is not an official document of the United Nations, nor is it intended to be all-inclusive.
Published by the United Nations Department of Public Information DPI/2470 rev.2—11-36429—October 2011

Doc. 7.3

Resolution 827 (1993) Adopted by the Security Council on 25 May 1993

The Security Council, (...)

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace, (...)

Acting under Chapter VII of the Charter of the United Nations,

1. Approves the report of the Secretary-General;

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

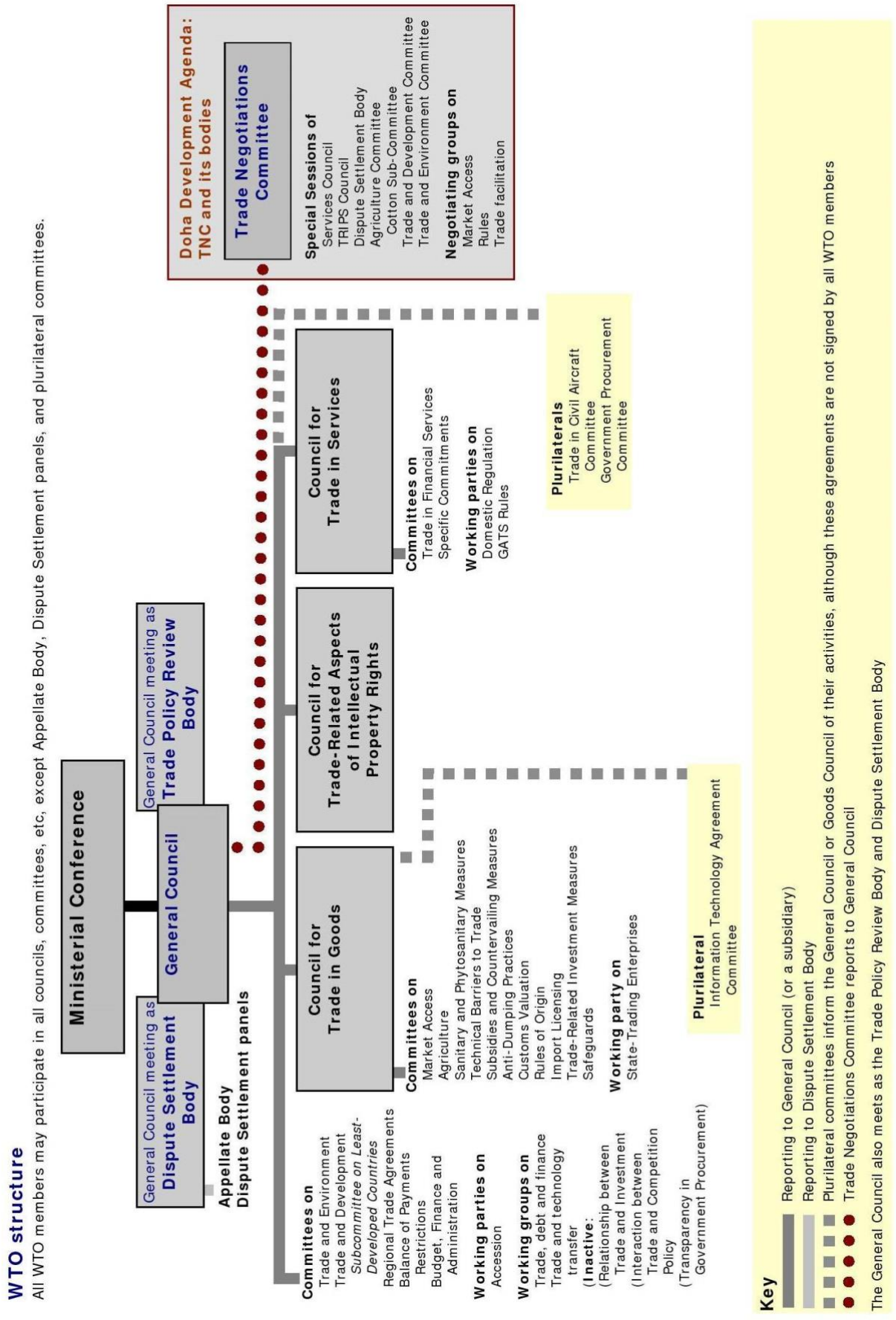
6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

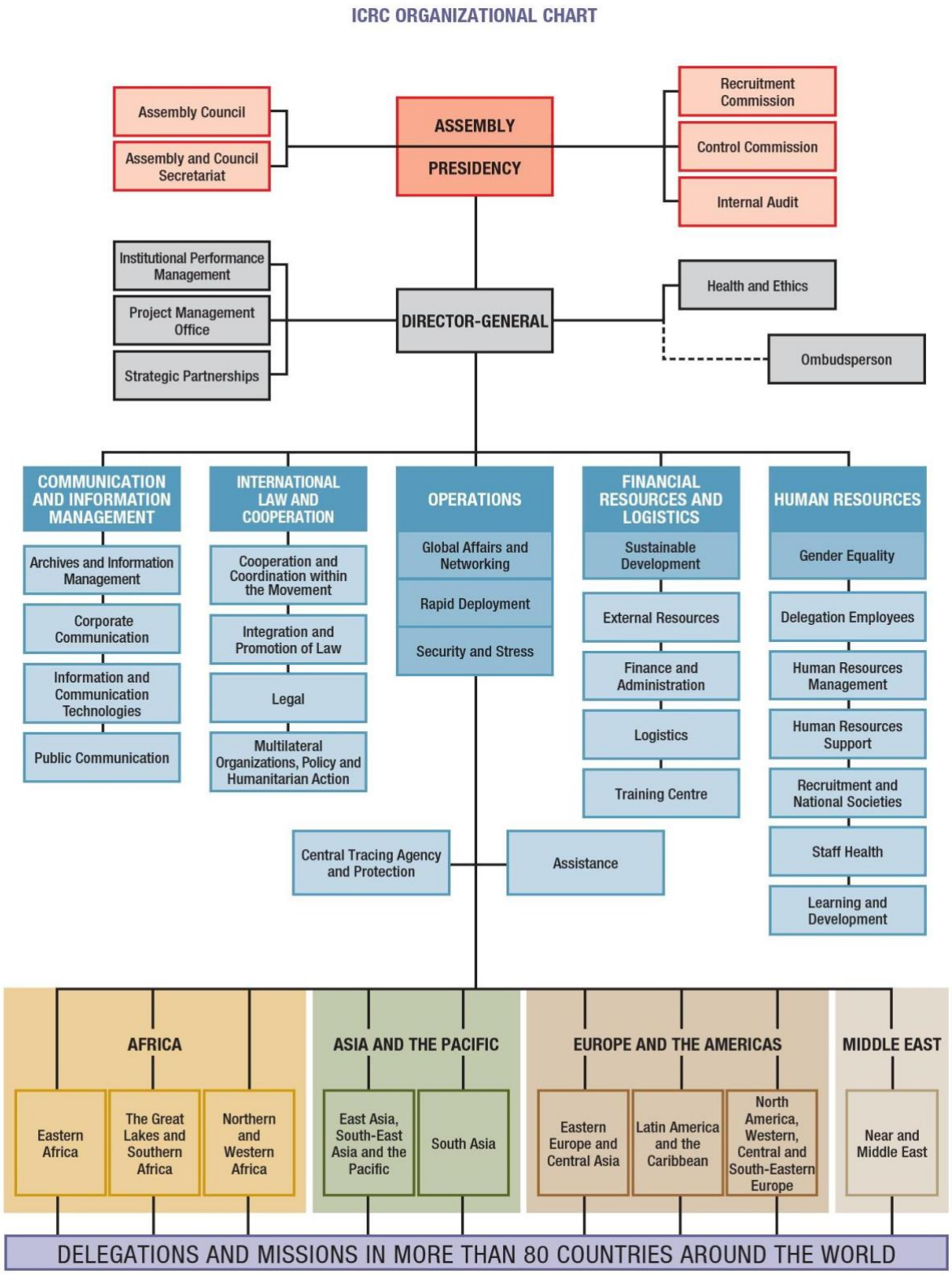
8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.

Doc. 7.4


WTO structure
All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, and plurilateral committees.
Ministerial Conference
General Council meeting as Dispute Settlement Body
General Council
General Council meeting as Trade Policy Review Body
Appellate Body
Dispute Settlement panels
Council for Trade in Goods
Council for Trade-Related Aspects of Intellectual Property Rights
Council for Trade in Services
Trade Negotiations Committee
Doha Development Agenda: TNC and its bodies
Special Sessions of
Services Council
TRIPS Council
Dispute Settlement Body
Agriculture Committee
Cotton Sub-Committee
Trade and Development Committee
Trade and Environment Committee
Negotiating groups on
Market Access
Rules
Trade facilitation
Committees on
Trade and Environment
Trade and Development
Subcommittee on Least-Developed Countries
Regional Trade Agreements
Balance of Payments Restrictions
Budget, Finance and Administration
Working parties on
Accession
Working groups on
Trade, debt and finance
Trade and technology transfer
(Inactive:
(Relationship between Trade and Investment
(Interaction between Trade and Competition Policy
(Transparency in Government Procurement)
Committees on
Market Access
Agriculture
Sanitary and Phytosanitary Measures
Technical Barriers to Trade
Subsidies and Countervailing Measures
Anti-Dumping Practices
Customs Valuation
Rules of Origin
Import Licensing
Trade-Related Investment Measures
Safeguards
Working party on
State-Trading Enterprises
Plurilateral
Information Technology Agreement Committee
Committees on
Trade in Financial Services
Specific Commitments
Working parties on
Domestic Regulation
GATS Rules
Plurilaterals
Trade in Civil Aircraft Committee
Government Procurement Committee
Key
Reporting to General Council (or a subsidiary)
Reporting to Dispute Settlement Body
Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
Trade Negotiations Committee reports to General Council
The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Doc. 7.5: International Committee of the Red Cross Organizational Chart



Source: http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-2010-organi-chart.pdf

Chapter 8: THE LEGAL ORDER OF INTERNATIONAL ORGANIZATIONS

Learning objectives and structure of the lecture:

International organizations are complex entities, which, like states, have their own legal order. However, the design and features of organizations´ legal orders may differ significantly, reflecting the variety of functions international organizations may perform and the corresponding powers they have been equipped with. Therefore, each organization develops a legal order of its own. In this lecture, we focus on two questions: (1) the form of an organization´s decisions/legal acts (what types of legal instruments may international organizations issue?) and (2) their binding or non-binding character (what is the source of their binding nature, if so?). We explore these questions with the help of several examples of founding instruments and legal acts issued by international organizations.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organisations Law* (2015), pp. 154 - 188
- For additional documents see the respective section in Moodle.

A. Introduction

The reason an international organization needs to have a legal order is obvious: it enables an organization to perform functions and achieve the goals for which it was created. The legal order of international organizations consists of two elements: (1) the **founding instrument** through which the organization is established and (2) legal instruments adopted or created by the organization on the basis of theirconstituent treaty, i.e. **secondary law**. In some cases, organizations will refer to a third element – general principles common to the legal order of its member states (for example Art. 6 TEU referrs to *constitutional traditions common to the Member states* as one of the sources of fundamental rights constituting general principles of the Union´s law).

Constituent instruments

The constituent instruments of international organizations are dual in nature and of "special" character. They are not only international treaties concluded between the representatives of states, regulating states´ rights and duties, but they establish a new legal subject of international law, an international organization. Moreover, the founding treaty sets up the main features of the organization´s legal order, delineates the powers of the organization, its functions and purposes, institutional structures, hierarchy, and the effect of secondary acts,among other things. Moreover, the validity of secondary acts will depend on their compliance with the constituent document. Thus a founding treaty can be truly described as the "constitution" of an international organization.

The founding treaties of international organizations have a special place in international law, because they establish an international organization. On the one hand they are regulated by the relevant international law (1969 Vienna Convention), but on the other hand they form the basis for creation of further rules, which may go well beyond the intentions of founding member states due to the ability of international organizations

to create their own will. This is recognized by Article 5 of the 1969 Vienna Convention, stipulating that the Convention:

> *[…] applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.*

The notion of the „relevant rules of the organization" was defined by the *1986 Vienna Convention on the Law of Treaties between states and International Organizations or between International Organizations* (not yet in force) as "*in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization*".

The differences between "normal" treaties and treaties establishing international organizations have not been clearly elaborated yet by international lawyers. Nevertheless, some practical examples can be provided. An obvious example is the question of membership in international organizations, for which accession to the founding treaty is a constituent precondition. Normally, accession to a treaty, from the viewpoint of international law, is a unilateral act, which means that it is up to third states whether they decide to join the treaty or not. Becoming a member of international organization is different. As we described in the chapter concerning membership, often the organs of international organizations are vested with the power to decide on the question of whether a third states becomes a member or not.

The special nature of constituent treaties and the relevant international practice has given rise to a number of much-discussed issues:

(1) making reservations

Reservations are a complex issue itself, and particularly undesirable in the context of international organizations´ constituent treaties. Examples include the opt-outs of the United Kingdom and the Czech Republic from the *EU Charter of Fundamental Rights*). A further aspect complicating the situation is that in some cases, treaty organs or the organs of international organizations claim the power to determine the compatibility of reservations with the founding treaty (e.g., the *European Commission of Human Rights* in the 1986 case, Temeltasch vs. Switzerland).

(2) revision of constituent documents

The need to revise a constituent treaty may arise for various reasons; it may arise from the changed interests or political views of members, the extension or reduction of the organization's functions and purposes, etc. Revision, however, raises issues, among which the most problematic can be the question of whether amendments to constituent treaties need to be accepted by all members of the organization, or what effect such an amendment will have on member stateswhich have not decided to accept it. For example, Art. 108 UN Charter stipulates that amendments to the Charter require a two-thirds majority of the General Assembly, must be ratified by two-thirds of the member states, including the permanent UN Security Council members. An amendment adopted following such a procedure shall then bind all members of the UN, i.e., even those who have not accepted the amendments. Such an explicit provision, regulating not only the matter of revision, but also of legal effects on members who voted against or abstained, is rather rare. Usually

founding treaties only contain provisions concerning the revision process, but not the effect of amendments on states not accepting them. The general rule entailed in the law of treaties may provide guidance here, stipulating (in essence) that amendments are binding only for states which become parties to them, and in relation to states which did not accept the amendment, the original treaty remains applicable (i.e. in the version to which both parties consented). Such an outcome appears satisfying, as it is also in line with the sovereign equality of states and the consensual nature of international law.

(3) termination of founding treaties, and

The issues arising in the context of revision of constituent documents similar in nature to those connected with their termination. Translated into practical terms, termination has practical relevance when a member state decides to withdraw from an international organization. Some constituent documents contain express provisions, but most remain silent on the issue. For such cases, Art. 56 of the *1969 Vienna Convention* stipulates that a treaty is not subject to withdrawal except where a right to withdraw can be derived from the intention of the drafters or implied from the nature of the treaty. In practice, the help offered by Article 56 *1969 Vienna Convention* is rather limited, as it is unclear to what extent it can be applied to such international treaties.

(4) interpretation of documents

Constituent instruments are subject to interpretation by member states and the organs applying them. Therefore, one of the issues is how to ensure unity of interpretation. What happens if members disagree with the judicial organ of an organization on the interpretation of founding treaties? When the Court of Justice of the EU was deciding on the famous cases of *Van Gend and Loos* and *Costa vs. ENEL*, some member states argued that the question of the direct effect of EU law had to be decided in accordance with the national constitutional law of member states. The ECJ disagreed and concluded, based on a broadinterpretation of the founding treaties, that direct effects are based on EU law itself. As the Court of Justice of the EU has shown, judicial (as well as other) bodies of international organizations may have substantial and extensive legal impact through case law and other acts.

Secondary law

So-called secondary law has two principal sources (1) international agreements and (2) unilateral acts/legal instruments (acts with internal or external effect). The acts comprised in the latter category may be distinguished according to their purpose. *Jan Klabbers*[5] distinguishes four categories:

(1) law making rules, i.e., general and abstract rules aiming to bind all subjects of a system (e.g. EU regulations, certain decisions of the UN General Assembly, rules regulating aircraft flying over the high seas, produced by the International Civil Aviation Authority pursuant to Article 12 Chicago Convention, Art. 21 WHO),
(2) acts similar to "administrative acts", where laws are applied to certain configurations of facts (e.g., EU decisions, UN Security Council decisions),
(3) rules concerning the functioning of the organization (internal rules), such as budget making, the admission of new members or election of officials, and

[5] Klabbers, International Institutional Law, 2. Ed., pp. 181-182.

(4) acts aimed at influencing behaviour, but not creating law (recommendations, declarations, codes of conduct and generally non-binding decisions).

It might be noted that such categorisation cannot be regarded as strict, as, for instance, rules of non-binding character may be of legal importance; resolutions of the General Assembly, meanwhile, are not binding even if they are unanimous (except resolutions concerning the internal issues of the UN or matters within its competence, such as election to the Security Council, etc.). However, despite being formally non-binding, General Assembly resolutions may declare customary law or assist in its formation. For example, in the *Nicaragua* Case the ICJ referred to severalresolutions of international bodies, in particular the UN General Assembly, for *opinio juris* (supporting a prohibition on the use of force, and against intervention in the internal affairs of other states).

The legal basis for secondary law is the constituent document, which may also set the forms, hierarchy, grounds of invalidation, law-making procedures, and other features of the internal legal order of an organization. As to the question of where the secondary acts (or more general legal acts) of an international organization derive their binding nature from, the most popular theory is the delegation of powers. According to this idea, one of the competences with which member states equip an international organization atthe moment of its establishment is the power to create legally binding rules. This view is also favoured by the domestic law of some states. For example, the Constitution of the Czech Republic speaks in Article 10a about the "delegation of powers" tointernational organizations.

As to non-binding rules, much attention has been paid to UN General Assembly resolutions. It might be surprising that the organ of an organization of universal character, consisting of representatives from all member states, was not vested with the general competence to make binding decisions. There have been various attempts to explain the legal effects of General Assembly resolutions. Some consider them "authoritative interpretations" of the UN Charter, some as being declarative of international law, and some view General Assembly resolutions as customary international law. All these views are somewhat imperfect, but the question is whether it is really necessary to have a precise answer, as the example of the OECD shows. This organization started (and continues) to adopt documents, such as guidelines and model agreements, which are formally not binding. In the practice of OECD Member states, these documents have gained overwhelming acceptance – despite not being binding in nature.

One of the broadly disputed categories of the legal instruments of international organizations is international treaties. For a long time, there has been a heated discussion on whether international organizations can conclude international agreements. This has been disputed especially over the issue of capacity. Nowadays it is common that the founding treaties of international organizations contain a provision explicitly empowering it to conclude treaties. Although the doctrine of international law considers the notions of capacity and competence to be different, practice largely ignores this debate and, in the absence of explicit provisions in their founding treaty, organizations often rely on the implied powers doctrine. Besides the question of competence, another important practical issue in need of clarification is who is bound by a treaty concluded by an international organization. Is it only the organization itself, or member states as well? Although no definite answer can be given, the overall approach is that it is the international

organization only, which bears of rights and duties resulting from the agreement. Member states are considered bound by the same treaty only by consent. A special category is so-called "mixed agreements", where both an international organization and some or all member states become parties to the treaty. The explanation of the existence of such a category is the division of powers between the organization and its members – the powers concerning a topic covered by an international agreement may be divided between the organization and its member states, just as with the EU in certain areas.

Finally, we must mention the existence of the category of atypical acts. Even in organization such as the European Union, the constituent treaties which regulate in detail the issues of its legal order and law-making, many acts falling into this category can be found: communications, recommendations, white and green papers, international agreements, agreements between Member states, inter-institutional agreements, etc. This shows that when it comes to legal instruments and the explanation of their binding or non-binding character, the whole system can be seen as a great puzzle, where some parts do not really fit, some are missing, but we already have some overview of the final picture.

B. Problems and questions

Q1: Answer the following questions:

- *Describe the process of the creation of international custom*
- *Can the resolutions and declarations of international organs be recognized as a factor in the international custom-generating process? (Read the* South-West Africa [Second Phase] ICJ Judgment *excerpts for help)*

Q2: Are the resolutions of the UN Security Council legally binding? Answer based on relevant provisions of the UN Charter!

Q3: Do non-binding resolutions of the UN Security Council have any legal effect? If not, why do countries and organizations make these non-binding resolutions?

C. Materials

Doc. 8.1

Constitution of the International Labour Organization

Article 19

1. When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: *(a)* of an international Convention, or *(b)* of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.

2. In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

3. In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions

substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

4. Two copies of the Convention or Recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General. Of these copies one shall be deposited in the archives of the International Labour Office and the other with the Secretary-General of the United Nations. The Director-General will communicate a certified copy of the Convention or Recommendation to each of the Members.

5. In the case of a Convention:

(a) the Convention will be communicated to all Members for ratification;

(b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the autority or authorities within whose competence the matter lies, for the enactment of legislation or other action;

(c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;

(d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention;

(e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation:

(a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;

(b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;

(c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;

(d) apart from bringing the Recommendation before the said kompetent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested

by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

Doc. 8.2

SOUTH-WEST AFRICA CASES (ETHIOPIA V. SOUTH AFRICA; LIBERIA V. SOUTH AFRICA)
Second Phase
International Court of Justice (ICJ), Judgment of 18 July 1966

General List Nos. 46 & 47

98. It has also been sought to explain why certain trusteeship agreements do not contain the jurisdictional clause by a further appeal to the "necessity" argument. This clause was no longer necessary, so it was contended, because the United Nations voting rule was different. In the League Council, decisions could not be arrived at without the concurrence of the mandatory, whereas in the United Nations the majority voting rule ensured that a resolution could not be blocked by any single vote. This contention would not in any event explain why the clause was accepted for some trusteeships and not for others. But the whole argument is misconceived. If decisions of the League Council could not be arrived at without the concurrence, express or tacit, of the mandatory, they were, when arrived at, binding: and if resolutions of the United Nations General Assembly (which on this hypothesis would be the relevant organ) can be arrived at without the concurrence of the administering authority, yet when so arrived at-and subject to certain exceptions not here material-they are not binding, but only recommendatory in character. The persuasive force of Assembly resolutions ***51** can indeed be very considerable, -but this is a different thing. It operates on the political not the legal level: it does not make these resolutions binding in law. If the "necessity" argument were valid therefore, it would be applicable as much to trusteeships as it is said to be to mandates, because in neither case could the administering authority be coerced by means of the ordinary procedures of the organization.
The conclusion to be drawn is obvious. (...)

***250** DISSENTING OPINION OF JUDGE TANAKA

***291** An important question involved in the Applicants' contention is whether resolutions and declarations of international organs can be recognized as a factor in the custom-generating process in the interpretation of Article 38, paragraph 1 (b), that is to Say, as "evidence of a general practice".

According to traditional international law, a general practice is the result of the repetition of individual acts of States constituting consensus in regard to a certain content of a rule of law. Such repetition of acts is an historical process extending over a long period of time. The process of the formation of a customary law in this case may be described as individualistic. On the contrary, this process is going to change in adapting itself to changes in the way of international life. The appearance of organizations such as the League of Nations and the United Nations, with their agencies and affiliated unstitutions, replacing an important part of the traditional individualistic method of international negotiation by the method of "parliamentary diplomacy" (Judgment on the *South West Africa* cases, *I.C.J. Reports* 1962, p. 346), is bound to influence the mode of generation of customary international law. A state, instead of pronouncing its view to a few States directly concerned, has the opportunity, through the medium of an organization, to declare its position to al1 members of the organization and to know immediately their reaction on the same matter. In former days, practice, repetition and *opinio juris sive necessitatis,* which are the ingredients of customary law might be combined together in a very long and slow process extending over centuries. In the contemporary age of highly developed techniques of communication and information, the formation of a custom through the medium of international organizations is greatly facilitated and accelerated; the establishment of such a custom would require no more than one generation or even far less than that. This is one of the examples of the transformation of law inevitably produced by change in the social substratum.

***292** Of course, we cannot admit that individual resolutions, declarations, judgments, decisions, etc., have binding force upon the members of the organization. What is required for customary international law is the repetition of the same practice; accordingly, in this case resolutions, declarations, etc., on the same matter in the same, or diverse, organizations must take place repeatedly.

Parallel with such repetition, each resolution, declaration, etc., being considered as the manifestation of the collective will of individual participant States, the will of the international community can certainly be formulated more quickly and more accurately as compared with the traditional method of the normative process. This collective, cumulative and organic process of custom-generation can be characterized as the middle way between legislation by convention and the traditional process of custom making, and can be seen to have an important role from the viewpoint of the development of international law.

In short, the accumulation of authoritative pronouncements such as resolutions, declarations, decisions, etc., concerning the interpretation of the Charter by the competent organs of the international community can be characterized as evidence of the international custom referred to in Article 38, paragraph 1 (b). (...)

***293** From what has been said above, we consider that the norm of non-discrimination or non-separation on the basis of race has become a rule of customary international law as is contended by the Applicants, and as a result, the Respondent's obligations as Mandatory are governed by this legal norm in its capacity as a member of the United Nations either directly or at least by way of interpretation of Article 2, paragraph 2. (...)

Doc. 8.3

European Parliament Resolution on the Situation in Tibet

Resolution A3-0369/92

The European Parliament,

- having regard to the motions for resolutions:

(a) by Mrs. Muscardini and others on human rights and EEC economic activity in China (B3-0460/90) (b) by Mrs Aglietta and Mr Langer on the situation in Tibet (B3-1375/90) (c) by Mr Coates and others on the situation in Tibet (B3-1557/90),

- having regard to its resolution of 15 October 1987, 16 March 1989, 15 March 1990 and 13 February 1992, (…),

- having regard to the information acquired during the hearing on human rights in Tibet held by the European Parliament on 24 and 25 April 1990,

- having regard to the experience of the European Parliament's delegation during its stay in Lhasa from 20 to 23 September 1991 and especially to the fact that the freedom of movement of the individual members of the delegation was restricted and that they were prevented from obtaining information outside the official programme for the visit, discussions with individual members of the Tibetan population and religious dignitaries being consistently prevented by the presence of security forces in large numbers,

- having regard to the report of the chairman of the Delegation for Relations with the People's Republic of China of 4 November 1991 on the delegation's visit to the People's Republic of China from 20 to 23 September 1991,

- having regard to the report of the Committee on Foreign Affairs and Security (A3-0369/92),

A. recognizing that the Tibetans are a people according to international law,

B. noting that self-determination, a fundamental principle enshrined in Articles 1(2) and 55 of the United Nations Charter, is affirmed as a right of peoples in Article 1 of the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights:

'All peoples have the right to self-determination. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development.'

C. recalling, however, that in his determination to secure the human rights of Tibetans by peaceful means, the Dalai Lama has made clear that he does not insist that Tibet should become totally independent;

D. noting with deep anxiety the continued denial of the Tibetan people's right to self-determination, in spite of the fact that according to the relevant international law, a broad range of possibilities are available to pave the way for the attainment of this right, (...)

G. deploring the continued violation of the fundamental human rights and freedoms of the Tibetans, including both civil and political rights and economic, social and cultural rights,

H. particularly concerned by the encouragement given to the resettlement of Chinese in Tibet, which marginalizes the Tibetan culture and threatens the identity of the Tibetans as a distinctive people and their ability to participate effectively in any political process both currently and if Tibet were to become democratic in the future,

I. distressed by the continued violations by China of its international obligations, as evidenced by the prevalence of mass executions, political detention and torture,

J. extremely concerned by the continued military occupation of Tibet by Chinese troops and armed police and the reported deployment of Chinese nuclear missiles, which pose a threat to peace and stability in this region and, in development projects,

K. deploring the destruction wrought on the natural environment of Tibet by a mistaken agricultural policy, a politcally motivated immigration policy and the ruthless exploitation of the country's natural resources, which contravenes the UN Declaration of the Rights of Peoples to Sovereignty over Natural Resources and has resulted in major deforestation around the upper reaches of Asia's greatest rivers, with catastrophic implications for the future of the region,

L. particularly concerned by the attacks on Tibetan culture, such as discrimination against the Tibetan language in government and in the education system, and the strict supervision of monasteries and religious observance, in open disregard of long-standing Tibetan traditions and customs despite nominal autonomy, (...)

1. Condemns the human rights violations inflicted on the Tibetan people and calls on the People's Republic of China to respect human rights as defined in international law;

2. Demands the release of all political prisoners and a halt to torture and intimidation in Tibet, and urges the Chinese Government to invite a neutral and impartial institution such as the International Committee of the Red Cross to visit all detention facilities and prisoners;

3. Calls for an immediate halt to the environmental degradation anc economic exploitation perpetrated by the Chinese in Tibet, and insists that the management of natural resources and the economy be entrusted to local Tibetan authorities;

4. Appeals for an end to discrimination against Tibetans in health and education services, further efforts to improve the health and education levels of the Tibetan population and genuine improvement of the health and education facilities available to the Tibetan population;

5. Calls for the immediate reversal of policies that encourage the mass transfer of Chinese to Tibet in violation of the Tibetan people's right to self-determination which implies the right for the Tibetan people to decide democratically on levels and patterns of immigration and the promotion of Tibetan as the language of government and education in Tibet;

6. Recommends that, in the highly senstive area of birth control policy, a sensible, culturally and socially acceptable settlement be found, taking into account the convictions of the Tibetan population and the country's special situation;

7. Advocates the termination of all measures restricting the Tibetan's freedom of movement within the TAR even after the lifting of martial law (e.g. the occasional blockading of individual cities or areas); notes in particular that the freedom of monks to travel is restricted, the aim obviously being to prevent contacts between monasteries;

8. Welcomes the recent visits to Tibet permitted for Australian, Swiss, Austrian and other delegations, but regrets the selective and conditional nature of access to Tibet, particularly the refusal of permission to the rapporteur of the European Parliament's Political Affairs Committee to visit Tibet in his official capacity;

deplores interference in the composition of delegations and the limits imposed on the freedom of movement of delegation members and on what foreign delegation members may observe while in Tibet; condemns in particular the persecution of Tibetans who talk to delegation members without permission or supply information to foreign delegation members which deviates from that prescribed by the Chinese authorities;

9. Abhors the censorship of communications and the limitations imposed on journalists, including denial of entry and expulsion, and the confiscation of documents and films from Western travellers and journalists;

10. Declares its solidarity with the numerous Tibetans serving long prison sentences for expressing or publishing their political opinions;

11. Welcomes the recent openness of the Chinese Government in supplying information about the numbers of politcal prisoners (those held for 'counterrevolutionary offenses') in Drapchi prison and hopes figures will be published for other categories of prisoners, e.g. prisoners being 'held for investigation' in Public Security Bureau detention and interrogation camps such as Gutsa and New Seitu and also political prisoners in 'reform and re-education through labour' camps at Sangyip and Powo Tramu and other unacknowledged prison camps;

12. Demands the full involvement of Tibetans, with international observation in the reconstruction of all culturally sensitive sites, particularly the Potala palace, which should be made a UNESCO 'World Heritage Site';

13. Regrets that the various constructive initiatives of the Dalai Lama's government in exile have not been acknowledged as a basis for serious negotiations; considers that a willingness to reconsider the Dalai Lama's five-point plan of 1987 might offer a renewed prospect of a peaceful and acceptable solution of the Tibetan question, and appeals to the Chinese Government to reconsider its refusal of the Dalai Lama's October 1991 request to visit Tibet and in a positive spirit to invite him to visit Tibet in 1993;

14. Urges the resumption of negotiations between the Tibetan government in exile and the Chinese authorities;

15. Urges that genuine self-determination be considered in these negotiations and, as a first step and sign of goodwill, recommends the incorporation of all Tibetan territories into a single administrative and political unit;

16. Is aware that Tibet will not find its way to democracy by its own efforts and that, on the termination of its one-sided dependence on the People's Republic of China, economic support measures will be needed to enable the country to use its natural resources independently and to bring its economic and politcal isolation to an end;

17. Calls upon the Commission to make the granting of assistance to China conditional on the observance of basic human rights and freedoms, particularly in Tibet, and to report on the situation in Tibet annually;

18. Urges the Commission to ensure in its relations with China that an appropriate percentage of funds, projects and scholarships is allocated to Tibet;

19. Insists that EEC-funded or supported projects in Tibet must genuinely serve the interests of the Tibetan people and involve a majority of Tibetans at all levels and that, where this cannot be achieved immediately, provision must be made for Tibetans to be trained in order to replace the Chinese mamagers, experts and technicians sent to the country;

20. Instructs its President to forward this resolution to the Council, the Commision, the governments of the Member States, the Government of the People's Republic of China, the Dalai Lama and the Secretary-General of the United Nations.

Doc. 8.4

Exchange of Letters between the European Union and the Government of Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer

Sir,

With reference to my letter dated 14 November 2008 and your letter dated 5 December 2008, I have the honour to confirm the intention of the European Union to conclude with the Government of Kenya an Exchange of Letters with a view to defining the conditions and modalities for the transfer of persons

suspected of having committed acts of piracy on the high seas and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya, and for their treatment after such transfer.

This exchange of letters is concluded in the framework of the EU Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the coast of Somalia (operation 'Atalanta').

Furthermore, this exchange of letters does not affect the participant's rights and obligations under international agreements and other instruments establishing international courts and tribunals, and relevant domestic laws and is concluded in full respect of:

— United Nations Security Council Resolutions (UNSCR) 1814 (2008), 1838 (2008), 1846 (2008), 1851 (2008) and successor UNSCRs,
— the 1982 United Nations Convention on the Law of the Sea (UNCLOS), in particular Articles 100 to 107,
— International Human Rights Law, including the 1966 International Covenant on Civil and political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Accordingly, I have the honour to propose, as set out in the Annex to this letter, such provisions defining the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by EUNAVFOR, and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya, and for their treatment after such transfer.

I would be grateful if you could confirm, on behalf of the Government of Kenya, your acceptance of those provisions.

This Instrument will be applied provisionally from the date on which it is signed and will enter into force

when each of the participants has completed its own internal procedures. This Instrument will continue to have effect until six months after either participant has given the other signatory written notification of a decision to terminate the instrument. This Instrument may be varied by mutual arrangement between the signatories. Termination of this instrument will not affect any benefits or obligations arising out of the application of this Instrument before such termination, including the benefits to any transferred persons as long as they are held in custody or are prosecuted by Kenya.

After the termination of the Operation, as defined in the Annex to this letter, all benefits of EUNAVFOR, as defined in that Annex, under this Instrument may be exercised by any person or entity designated by the State exercising the Presidency of the Council of the EU. A designated person or entity may, inter alia, be a diplomatic agent or consular official of that State accredited to Kenya. After the termination of the Operation, all notifications that were to be made to EUNAVFOR under this Instrument will be made to the State exercising the Presidency of the Council of the EU.

Please accept, Sir, the assurance of my highest consideration.

For the European Union

ANNEX

PROVISIONS ON THE CONDITIONS OF TRANSFER OF SUSPECTED PIRATES AND SEIZED PROPERTY FROM THE EU-LED NAVAL FORCE TO THE REPUBLIC OF KENYA

1. Definitions

For the purposes of this Exchange of Letters:

(a) 'European Union-led naval force (EUNAVFOR)' means EU military headquarters and national contingents contributing to the EU operation 'Atalanta', their ships, aircrafts and assets;

(b) 'operation' means the preparation, establishment, execution and support of the military mission established by EU Council Joint Action 2008/851/CFSP and/or its successors;

(c) 'EU Operation Commander' means the commander of the operation;

(d) 'EU Force Commander' means the EU commander in the area of operations as defined within Article 1(2) of EU Council Joint Action 2008/851/CFSP;

(e) 'national contingents' means units and ships belonging to the Member States of the European Union and to other States participating in the operation;

(f) 'sending State' means a State providing a national contingent for EUNAVFOR.

(g) 'piracy' means piracy as defined in Article 101 of UNCLOS;

(h) 'transferred person' means any person suspected of intending to commit, committing, or having committed, acts of piracy transferred by EUNAVFOR to Kenya under this Exchange of Letters.

2. General principles

(a) Kenya will accept, upon the request of EUNAVFOR, the transfer of persons detained by EUNAVFOR in connection with piracy and associated seized property by EUNAVFOR and will submit such persons and property to its competent authorities for the purpose of investigation and prosecution.

(b) EUNAVFOR will, when acting under this Exchange of Letters, transfer persons or property only to competent Kenyan law enforcement authorities.

(c) The signatories confirm that they will treat persons transferred under this Exchange of Letters, both prior to and following transfer, humanely and in accordance with international human rights obligations, including the prohibition against torture and cruel, inhumane and degrading treatment or punishment, the prohibition of arbitrary detention and in accordance with the requirement to have a fair trial.

3. Treatment, prosecution and trial of transferred persons

(a) Any transferred person will be treated humanely and will not be subjected to torture or cruel, inhuman or degrading treatment or punishment, will receive adequate accommodation and nourishment, access to medical treatment and will be able to carry out religious observance.

(b) Any transferred person will be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide without delay on the lawfulness of his detention and will order his release if the detention is not lawful.

(c) Any transferred person will be entitled to trial within a reasonable time or to release.

(d) In the determination of any criminal charge against him, any transferred person will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

(e) Any transferred person charged with a criminal offence will be presumed innocent until proved guilty according to law.

(f) In the determination of any criminal charge against him, every transferred person will be entitled to the following minimum guarantees, in full equality:

(1) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(2) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice;

(3) to be tried without undue delay;

(4) to be tried in his presence, and to defend himself in person or through legal assistance of his own choice; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(5) to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(6) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(7) not to be compelled to testify against himself or to confess guilt.

(g) Any transferred person convicted of a crime will be permitted to have the right to his conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of Kenya.

(h) Kenya will not transfer any transferred person to any other State for the purposes of investigation or prosecution without prior written consent from EUNAVFOR.

4. Death penalty

No transferred person will be liable to suffer the death sentence. Kenya will, in accordance with the applicable laws, take steps to ensure that any death sentence is commuted to a sentence of imprisonment.

5. Records and notifications

(a) Any transfer will be the subject of an appropriate document signed by a representative of EUNAVFOR and a representative of the competent Kenyan law enforcement authorities.

(b) EUNAVFOR will provide detention records to Kenya with regard to any transferred person. These records will include, so far as possible, the physical condition of the transferred person while in detention, the time of transfer to Kenyan authorities, the reason for his detention, the time and place of the commencement of his detention, and any decisions taken with regard to his detention.

(c) Kenya will be responsible for keeping an accurate account of all transferred persons, including, but not limited to, keeping records of any seized property, the person's physical condition, the location of their places of detention, any charges against him and any significant decisions taken in the course of his prosecution and trial.

(d) These records will be available to representatives of the EU and EUNAVFOR upon request in writing to the Kenyan Ministry of Foreign Affairs.

(e) In addition, Kenya will notify EUNAVFOR of the place of detention of any person transferred under this Exchange of Letters, any deterioration of his physical condition and of any allegations of alleged improper treatment.

Representatives of the EU and EUNAVFOR will have access to any persons transferred under this Exchange of Letters as long as such persons are in custody and will be entitled to question them.

(f) National and international humanitarian agencies will, at their request, be allowed to visit persons transferred under this Exchange of Letters.

(g) For the purposes of ensuring that EUNAVFOR is able to provide timely assistance to Kenya with attendance of witnesses from EUNAVFOR and the provision of relevant evidence, Kenya will notify EUNAVFOR of its intention to initiate criminal trial proceedings against any transferred person and the timetable for provision of evidence, and the hearing of evidence.

6. EUNAVFOR Assistance

(a) EUNAVFOR, within its means and capabilities, will provide all assistance to Kenya with a view to the investigation and prosecution of transferred persons.

(b) In particular, EUNAVFOR will:

(1) hand over detention records drawn up pursuant to paragraph 5(b) of this Exchange of Letters;

(2) process any evidence in accordance with the requirements of the Kenyan competent authorities as agreed in the implementing arrangements described in paragraph 9;

(3) endeavour to produce statements of witness or affidavits by EUNAVFOR personnel involved in any incident in relation to which persons have been transferred under this Exchange of Letters;

(4) hand over all relevant seized property in the possession of EUNAVFOR.

7. Relationship to other rights of transferred persons.

Nothing in this Exchange of Letters is intended to derogate, or may be construed as derogating, from any rights that a transferred person may have under applicable domestic or international law.

8. Liaison and disputes

(a) All issues arising in connection with the application of these provisions will be examined jointly by Kenyan and EU competent authorities.

(b) Failing any prior settlement, disputes concerning the interpretation or application of these provisions will be settled exclusively by diplomatic means between Kenyan and EU representatives.

9. Implementing arrangements

(a) For the purposes of the application of these provisions, operational, administrative and technical matters may be the subject of implementing arrangements to be approved between competent Kenyan authorities on the one hand and the competent EU authorities, as well as the competent authorities of the sending States, on the other hand.

(b) Implementing arrangements may cover, inter alia:

(1) the identification of competent law enforcement authorities of Kenya to whom EUNAVFOR may transfer persons;

(2) the detention facilities where transferred persons will be held;

(3) the handling of documents, including those related to the gathering of evidence, which will be handed over to the competent law enforcement authorities of Kenya upon transfer of a person;

(4) points of contact for notifications;

(5) forms to be used for transfers;

(6) provision of technical support, expertise, training and other assistance upon request of Kenya in order to achieve the objectives of this Exchange of Letters.

Chapter 9: FINANCING

Learning objectives and structure of the lecture:

The question of the financing of international organizations is of the utmost practical relevance, as the availability of adequate funds enables international organizations to fulfull their purposes and functions. This chapter is thus focused on three fundamental aspects of the issue– income, expenditures, and the adoption and administration of the budget.

To understand the topic and gain more in-depth knowledge on these aspects in the context of the UN, we start with the exercise contained in Section B of this chapter. You will work in groups on finding answers to questions which we will subsequently discuss and use as a basis for explaining the above-mentioned aspects of the financing of international organizations.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organisations Law* (2015), pp. 113 – 129.
- Excerpts from *Certain Expenses of the United Nations* Advisory Opinion (Doc. 9.1)
- For additional documents see the respective section in Moodle.

A. Introduction

In the question of financing, three main aspects need to be considered: (1) income, (2) expenditures, and (3) the adoption and administration of the budget.

Income

To plan and implement an organization's activities and programmes, the income of sufficient funds must be ensured. Generally, there are three main types of income source: (1) contributions and voluntary contributions, (2) credits, and (3) own income.

Most international organizations cover their expenses with contributions from member states, who are legally obliged to pay some sort of contribution or fee. If they do not pay, such a situation is considered a violation of the obligations assumend upon membership, with possible legal consequences. Another important question to be clarified within every organization, is how to define the amount of the contributions which each member must make. The simplest way is to establish that all members pay the same amount, such as with OPEC. In practice, however, the costs of international organizations are often high (e.g., the UN) and hence almost unbearable for the smallest states. Therefore, systems other than equal shares are more common in practice. Such systems appear more just as they take into consideration various factors such as capacity to pay (assessed mainly on the country´s gross national product), interest in the work of the organization or size of the population. Although the distribution of costs with consideration to these aspects appears fair, there are certain limits, reflecting the fact that even the smallest states may fully benefit from the services of the organization. Moreover, all members, including small countries, have equal voting rights. To address this, international organizations often determine a certain minimum amount to be paid by every Member state (in the case of the UN it is 0.001 %) or a maximum amount for larger states. Contributions may also beof *voluntary* nature. This often concerns "additional" activities of the organization, i.e.,

activities which not all members want to be involved in. states voluntarily pay extra contribution to support programmes or activities which run short of money or which they want to expand. Voluntary contributions from states are similar to gifts, such as with the United Nations Childern´s Fund (UNICEF), which receives considerable gifts from states as well as from individuals.

Every international organization usually has some income of its own, while the sources of such funds vary. These may include selling poststamps and souvenirs, taxes paid by the staff of the organization (very common in practice), or taxation (import duties, etc.). For example, the EU budget is funded chiefly (99%) from the EU´s own resources including:

- customs duties on imports from outside the EU, and sugar levies,
- a standard percentage levied on the harmonised VAT base of each EU country
- a standard percentage levied on the gross national income (GNI) of each EU country.

Other revenues of the EU budget include:

- taxes on EU staff salaries,
- contributions from non-EU countries to certain programmes,
- fines on companies for breaching competition laws.

Some organizations ensure a part of their income from investments and loans.
For example, the World Bank draws considerable income from the investment of its capital, but we may also think of income e.g., from bank interest or office space rental. Some organizations have the power to contract loans (e.g., the IAEA) and some do so only occasionally. For example, in 1947 the UN borrowed some 65 million USD for the construction of its headquarters in New York. In 1961, the UN issued bonds for 200 million USD to avert serious crises caused by deficits in the UN budget. Even though the UN Charter does not provide the UN with the competence to borrow money, the legal basis for such loans can be found in the implied powers theory.

Expenditures

International organizations incur expenditures, which can be classified according to the activities of the organization (e.g., in the FAO there are costs for fisheries, costs promoting the production of corn, etc.), or according to the instruments used: personnel, meetings, buildings, or equipment. Regardless of this – rather theoretical – classification, a distinction can be made between administrative and operational costs. In most international organizations, the major share of their budget goes for running the organization, i.e., for administrative purposes. For example, in the case of UN specialized agencies, administrative costs constitute about 90 per cent of their expenditures.
On the other hand, there are a few organizations, such as the European Space Agency (ESA) or the EU, which spend most of their budget on projects and activities.

Adoption of the budget and supervisionof its implementation

The budget of an international organization is an act containing estimates of income and expenditures; it is of a legally binding nature for member states and the organization itself. At the same time, it constitutes the legal basis for the payment of contributions and authorizes the organization to incur certain expenditures. The budget is usually prepared by the administration, and various bodies may participate in its preparation, but finally

it must be approved by the appropriate organ, following the appropriate procedure. Most international organizations have specific rules for the adoption of their budgets, although they are often not contained in the constituent instrument, but rather in detailed financial regulations as part of internal rules of the organization.

When planning the budget, some organizations need to observe the so-called "balanced-budget requirement", requiring that total revenue must equal total expenditure. However, the actual revenue and expenditure often differ from the estimates.

The administration of the budget and supervisionof its implementation is an important task, ensuring the regularity of all financial transactions and efficient use of resources. This task is usually vested in a special unit within the administrative body of the international organization. Apart from the monitoring ensured through internal audit, the final supervision of the budget administration is often carried out by independent external auditors (e.g., in the EU the Court of Auditors).

B. Problems and questions

United Nations Budget

The first peacekeeping operations of the UN were set up in the 1960s. In this first period some UN member states (France, USSR, and its satellite states) refused to participate in financing the operations, arguing that such financing went beyond the common expenses of the organization. (Note that peacekeeping operations were not foreseen in the UN Charter. Currently their legal basis is Chapter VI and/or Chapter VII UN Charter. However, they do not constitute forces as foreseen by Article 42 UN Charter).

Q1: Is it possible to divide the expenses of the UN into standard expenses and extraordinary expenses, with the consequence that member states are not legally obliged to contribute to extraordinary expenses (covering e.g. peacekeeping operations)? Work with the ICJ Advisory Opinion on Certain Expenses from 20. June 1962.

Q2: Describe the process of budget approval in the UN

Q3: Can a member state of the UN be sanctioned for not paying its obligatory contribution to the UN budget?

Q4: J. David Singer wrote in the 1960s. in his book Financing International Organisations: The United Nations Budget Process*: "Until the policy decisions of the various organs are translated into budget items, there is no visiting mission to encourage Togoland´s movement toward eventual self-government, no ceasefire observer in the Middle East, no rehabilitation commission in South Korea, and no public administration advisor in Santiago."*
What does this say about the practical relevance of the financing of international organizations?

Can you provide examples and details on financing crises within the United Nations?

Q5: Where an international organization is a member in another international organization (e.g. EU is member in FAO), who must pay contributions - the member organization only, its member states or both? Find out and explain.

Q6: In 1946, the UN Committee on Contributions calculated that on a scale of contributions based exclusively on the capacity to pay, the US should pay almost 50% of the UN budget.

What are the pros and cons of such a system, where one or a few countries pay large shares compared to the vast majority of other members? What is the current contribution of the USA to the UN budget?

C. Materials

Doc. 9.1

CERTAIN EXPENSES OF THE UNITED NATIONS
(Article 17, Paragraph 2, of the Charter)
International Court of Justice
ADVISORY OPINION OF 20 JULY 1962
General List No. 49

(...)

***151** *Resolution 173I (XVI) of General Assembly requesting advisory opinion.-Objections to giving opinion based on proceedings in General Assembly.-Interpretation of meaning of "expenses of the Organization".-Article 17, paragraphs I and 2, of Charter.-Lack of justification for limiting terms "budget" and expenses".-Article 17 in context of Charter.-Respective functions of Security Council and General Assembly.-Article II, paragraph 2, in relation to budgetary powers of General Assemb1y.-Role of General Assembly in maintenance of international peace and security.-Agreements under Article 43.-Expenses incurred for purposes of United Nations.-Obligations incurred by Secretary-General acting under authority of Security Council or General Assembly.-Nature of operations of UNEF and ONUC.-Financing of UNEF and ONUC based on Article 17, paragraph 2.-Implementation by Secretary-General of Security Council resolutions.-Expenditures for UNEF and ONUC and Article 17, Paragraph 2, of Charter.*

(...)

***162** Passing from the text of Article 17 to its place in the general structure and scheme of the Charter, the Court will consider whether in that broad context one finds any basis for implying a limitation upon the budgetary authority of the General Assembly which in turn might limit the meaning of "expenses" in paragraph 2 of that Article.

The general purposes of Article 17 are the vesting of control over the finances of the Organization, and the levying of apportioned amounts of the expenses of the Organization in order to enable it to carry out the functions of the Organization as a whole acting through its principal organs and such subsidiary organs as may be established under the authority of Article 22 or Article 29. (...)

***164** By Article 17, paragraph 1, the General Assembly is given the power not only to "consider" the budget of the Organization, but also to "approve" it. The decision to "approve" the budget has a close connection with paragraph 2 of Article 17, since thereunder the General Assembly is also given the power to apportion the expenses among the Members and the exercise of the power of apportionment creates the obligation, specifically stated in Article 17, paragraph 2**,** of each Member to bear that part of the expenses which is apportioned to it by the General Assembly. When those expenses include expenditures for the maintenance of peace and security, which are not otherwise provided for, it is the General Assembly which has the authority to apportion the latter amounts among the Members. The provisions of the Charter which distribute functions and powers to the Security Council and to the General Assembly give no support to the view that such distribution excludes from the powers of the General Assembly the power to provide for the financing of measures designed to maintain peace and security.

Chapter 10: PRIVILEGES AND IMMUNITIES

Learning objectives and structure of the lecture:

After this lecture, you should understand and be able to explain what privileges and immunities are and what their legal basis is in the context of international organizations. We again use the example of the United Nations, which will deepen your knowledge of this organization and some of aspects of its privileges and immunities, such as headquarters agreements.

We start the lecture with a group activity on the Dumitru Mazilu Case and the privileges and immunities of the UN to frame the topic of the lecture before the lecturer explains the background of the topic (what privileges and immunities are, what their respective legal supports are, and the problems of applying ius legationis to international organizations). The last part of the lecture is dedicated to discussion on questions related to Headquarters Agreements.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organisations Law* (2015), pp. 130 - 153
- For additional documents see the respective section in Moodle.

A. Introduction

States and their representatives (political leaders, diplomats, consular officials) enjoy and are granted a variety of privileges and immunities in their mutual relations. For example, diplomats are exempt from certain forms of taxation and civil duties in the state where they are accredited; diplomatic missions and belongings are inviolable; diplomats also enjoy immunity from personal arrest, detention or from seizure of their baggage.

The rules regulating these privileges and immunities are among the classical branches of international law. Even though there are no precise definitions allowing a sharp distinction between the two notions, immunity is usually used to describe immunity from suits in the courts of a foreign state, i.e. it prevents domestic authorities from legal examination of the situation. In contrast, privileges make exemptions or modifications from domestic substantive or procedural law.

Like states, international organizations (their representatives, officials and experts performing missions for the international organization) enjoy privileges and immunities. However, the justification for this (the reason immunity is granted to states and their representatives) does not apply to international organizations: state immunity is based on reciprocity, and two fundamental principles – sovereignty and equality (par in parem non habet jurisdictionem). In contrast to states, international organizations are not considered sovereign equals and are unable to grant or withdraw sovereign immunity on the basis of reciprocity. So, what reason is there for granting immunities to international organizations? Article 105 of the UN Charter may provide us with a hint, stipulating that:

1. *The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.*
2. *Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organisation.*

Article 105 apparently considers privileges and immunities necessary for the effective exercise of UN´s functions. This approach is called **functional necessity,** and it is the predominant approach used in the literature to explain the basis for recognizing the privileges and immunities of international organizations. These enable international organizations to pursue their functions more effectively and permit organizations to operate free from unilateral control by host countries.

As for the legal support for privileges and immunities, there have been attempts at a universal convention to govern the main aspects of this field and be applicable to all organizations uniformly[6]. These attempts failed and today this area of law is characterized by a broad variety of multilateral and bilateral agreements.

An important role is played by the **constituent instruments** of international organizations. They usually contain at least a general provision expressing privileges and immunities granted to the organization (cf. Art. 105 UN-Charter, Art. 40 Statute of the Council of Europe, Art. XV Statute of the International Atomic Energy Agency). Such provisions are supplemented by detailed rules contained in **separate multilateral agreements**, such as the 1946 *Convention on the Privileges and Immunities of the United Nations* (→Doc. 10.1), which also became a prototype for such agreements for other international organizations. A further important source is **headquarters or host agreements**, i.e. bilateral agreements on privileges and immunities with the state hosting the international organization´s headquarters. Additionally, **specific agreements** may be concluded, which grant specific privileges and immunities, e.g. so-called Status of Forces Agreements (SOFA) concerning peacekeepers, or conference agreements. Finally, the **domestic law** of states should be mentioned, as it creates the legal framework for the implementation of privileges and immunities.

One could think also of **customary international law** as a legal basis of privileges and immunities. However, unlike rules concerning states and their representatives, there is no consensus that such rules have developed in the context of international organizations. Some argue that it is a principle of international law that international organizations and their representatives have privileges and immunities; some go even further by saying that customary international law is a legal basis for the privileges and immunities necessary for the fulfilment of the functions of international organizations.

[6] The UN International Law Commission worked for 31 years on the topic „Relations *between States and International Organizations*", but abandoned the topic in 1992. Also, the ILC´s work based 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character* has still not entered into force due to lack of number of necessary ratifications.

B. Problems and questions

Q1: Can the immunity of international organizations (and their representatives and experts) be waived? Find relevant provisions concerning the UN and answer the question on this basis

Q2: The privileges and immunities of the UN:

- *Who exercises jurisdiction in the New York headquarter of the UN? What does this mean for the right to enter the Headquarters District?*
- *What is the function of, or how does the agreement enable, the UN?*
- *Can the USA restrict travel to and from the headquartrs e.g. because it regards a person as persona non grata on its territory?*

Q3: Study the following cases and prepare a short presentation for your colleagues, focusing on background of the case, the main legal questions raised, and the conclusions of the court.

- *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, International Court of Justice, Advisory Opinion (1989 ICJ Rep. 177)
- *Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights,* International Court of Justice, Advisory Opinion (1999 ICJ Rep. 62)
- *767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire to the United Nations*, 988 F.2d 295 (2d Cir. 1993).
- *United states of America v. Palestine Liberation Organisation*, 695 F. Supp. 1456 (S.D.N.Y. 1988)
- *Entico v UNESCO* [2008] EWHC 531 (Comm)

C. Materials

Doc. 10.1

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Adopted by the General Assembly of the United Nations on 13 February 1946

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory ofeach of its Members such legal capacity as may be necessary for the exercice of its functions and the fulfilment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization;

Consequently, the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

Article I

JURIDICTIONAL PERSONALITY

Section 1

The United Nations shall possess juridical personality. It shall have the capacity:

(a) to contract;

(b) to acquire and dispose of immovable and movable property;

(c) to institute legal proceedings.

Article II

PROPERTY, FUNDS AND ASSETS

Section 2

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.

Section 3

The premises of the Untied Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4

The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5

Without being restricted by financial controls, regulations or moratoria of any kind,

(a) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6

In exercising its rights under section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7

The United Nations, its assets, income and other property shall be:

(a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are,

in fact, no more than charges for public utility services;

(b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8

While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

FACILITIES IN RESPECT OF COMMUNICATIONS

Section 9

The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10

The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

THE REPRESENTATIVES OF MEMBERS

Section 11

Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest of detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) inviolability for all papers and documents;

(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also

(g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12

In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

Section 14

Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15

The provisions of sections 11, 12 and 13 are not applicables between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

Section 16

In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V
OFFICIALS

Section 17

The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governements of all Members. The mames of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18

Officials of the United Nations shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(c) be immune from national service obligations;

(d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19

In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities exemptions and facilities accorded to diplomatic envoys, in accordance with

international law.

Section 20

Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themsleves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21

The United Nations shall cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article.

Article VI

EXPERTS ON MISSIONS FOR THE UNITED NATIONS

Section 22

Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded :

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) inviolability for all papers and documents;

(d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23

Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

UNITED NATIONS LAISSEZ-PASSER

Section 24

The United Nations may issue United Nations laissez-passer to its officials. These laissez-passers shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provision of section 25.

Section 25

Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26

Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not be holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

Section 27

The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28.

The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII

SETTLEMENT OF DISPUTES

Section 29

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;

(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30

All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Artricle 65 of the Statue of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

Final article

Section 31

This convention is submitted to every Member of the United Nations for accession.

Section 32

Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the Convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33

The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34

It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention.

Section 35

This Convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36

The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this Convention so far as that Member of those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

Doc. 10.2

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT (Excerpts)

The States Parties to the present Agreement,

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with the power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas article 4 of the Rome Statute provides that the International Criminal Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functionsand the fulfilment of its purposes;

Whereas article 48 of the Rome Statute provides that the International Criminal Court shall enjoy in the territory of each State Party to the Rome Statute such privileges and immunities as are necessary for the fulfilment of its purposes;

Have agreed as follows:

Article 1

Use of terms

Forthe purposes of the present Agreement:

(a) "The Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conferenceof Plenipotentiaries on the Establishment of an International Criminal Court;

(b)"The Court" means the International Criminal

Court established by the Statute;

(c)"States Parties" means States Parties to the present Agreement;

(d)"Representatives of States Parties" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;

Article 2

Legal status and juridical personality of the Court

The Court shall have international legal personality and shall also have such legal capacity as may be necessary forthe exercise of itsfunctions andthe fulfilment of its purposes. It shall, in particular, have the capacity to contract,toacquire and to dispose of immovable and movable property and to participate in legal proceedings.

Article 3

General provisions on privileges and immunities of the Court

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

Article 4

Inviolability of the premises of the Court

The premises of the Court shall be inviolable.

Article 5

Flag, emblem and markings

The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.

Article 6

Immunity of the Court, its property, funds and assets

1.The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution. (….)

Doc. 10.3

AGREEMENT BETWEEN THE UNITED NATIONS AND THE UNITED STATES REGARDING THE HEADQUARTERS OF THE UNITED NATIONS (Excerpts)

Signed June 26, 1947, and Approved by the General Assembly October 31, 1947

The General Assembly,

Whereas the Secretary-General pursuant to resolution 99 (1) of 14 December 1946 signed with the Secretary of State of the United States of America on 26 June 1947 an Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations; and

Whereas the Secretary-General in accordance with the said Resolution has submitted the said Agreement to the General Assembly;

Having studied the report prepared on this matter by the Sixth Committee;

Endorses the opinions expressed therein;

Approves the Agreement signed on 26 June 1947; and

Authorizes the Secretary-General to bring that Agreement into force in the manner provided in Section 28 thereof, and to perform on behalf of the United Nations such acts or functions as may be required by that Agreement.

The United Nations and the United States of America:

Desiring to conclude an agreement for the purpose of carrying out the resolution adopted by the General Assembly on 14 December 1946 to establish the seat of the United Nations in the City of New York and to regulate questions arising as a result thereof;

Have appointed as their representatives for this purpose: The United Nations:

Trygve Lie, Secretary-General, and The United States of America:

George C. MARSHALL, Secretary of State,

Who have agreed as follows:

ARTICLE I. DEFINITIONS

SECTION 1

In this agreement:

(a) The expression "headquarters district" means:

(1) the area defined as such in Annex 1;

(2) any other lands or buildings which from time to time may be included therein by supplemental agreement with the appropriate American authorities;

(b) the expression "appropriate American authorities" means such federal, state, or local authorities in the United States as may be appropriate in the context and in accordance with the laws and customs of the United States, including the laws and customs of the State and local government involved;

(c) the expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946, as acceded to by the United States;

(d) the expression "United Nations" means the international organization established by the Charter of the United Nations, hereinafter referred to as the "Charter";

(e) the expression "Secretary-General" means the Secretary-General of the United Nations.

ARTICLE II. THE HEADQUARTERS DISTRICT

SECTION 2

The seat of the United Nations shall be the headquarters district.

SECTION 3

The appropriate American authorities shall take whatever action may be necessary to assure that the United Nations shall not be dispossessed of its property in the headquarters district, except as provided in Section 22 in the event that the

United Nations ceases to use the same, provided that the United Nations shall reimburse the appropriate American authorities for any costs incurred, after consultation with the United Nations, in liquidating by eminent domain proceedings or otherwise any adverse claims.

SECTION 4

(a) The United Nations may establish and operate in the headquarters district:

(1) its own short-wave sending and receiving radio broadcasting facilities, including emergency link equipment, which may be 932922-51-13 used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable United States regulations) for radio-telegraph, radio-teletype, radio-telephone, radiotelephoto, and similar services;

(2) one point-to-point circuit between the headquarters district and the office of the United Nations in Geneva (using single sideband equipment) to be used exclusively for the exchange of broadcasting programmes and inter-office communications;

(3) low power, micro wave, low or medium frequencies, facilities for communication within headquarters buildings only, or such other buildings as may temporarily be used by the United Nations;

(4) facilities for point-to-point communications to the same extent and subject to the same conditions as committed under applicable rules and regulations for amateur operation in the United States except that such rules and regulations shall not be applied in a manner inconsistent with the inviolability of the headquarters district provided by Section 9 (a);

(5) such other radio facilities as may be specified by supplemental agreement between the United Nations and the appropriate American authorities.

(b) The United Nations shall make arrangements for the operation of the services referred to in this section with the International Telecommunication Union, the appropriate agencies of the Government of the United States and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters.

(c) The facilities provided for in this section may, to the extent necessary for efficient operation, be established and operated outside the headquarters district. The appropriate American authorities will, on request of the United Nations, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the United Nations of appropriate premises for such purposes and the inclusion of such premises in the headquarters district.

SECTION 5

In the event that the United Nations should find it necessary and desirable to establish and operate an aerodrome, the conditions for the location, use and operation of such an aerodrome and the conditions under which there shall be entry into and exit therefrom shall be the subject of a supplemental agreement.

SECTION 6

In the event that the United Nations should propose to organize its own postal service, the conditions under which such service shall be set up shall be the subject of a supplemental agreement.

ARTICLE III. LAW AND AUTHORITY IN THE HEADQUARTERS DISTRICT

SECTION 7

(a) The headquarters district shall be under the control and authority of the United Nations as provided in this agreement.

(b) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the headquarters district.

(c) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local courts of the United States shall have jurisdiction over acts done and transactions taking place in the headquarters district as provided in applicable federal, state and local laws.

(d) The federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or transactions taking place in the headquarters district, shall take into account the regulations enacted by the United Nations under Section 8.

SECTION 8

The United Nations shall have the power to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district. Any dispute, between the United Nations and the United States, as to whether a regulation of the United Nations is authorized by this section or as to whether a federal, state or local law or regulation is inconsistent with any regulation of the United Nations authorized by this section, shall be promptly settled as provided in Section 21. Pending such settlement, the regulation of the United Nations shall apply, and the federal, state or local law or regulation shall be inapplicable in the headquarters district to the extent that the United Nations claims it to be inconsistent with the regulation of the United Nations. This section shall not prevent the reasonable application of fire protection regulations of the appropriate American authorities.

SECTION 9

(a) The headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General.

(b**)** Without prejudice to the provisions of the General Convention or Article IV of this agreement, the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavouring to avoid service of legal process.

SECTION 10

The United Nations may expel or exclude persons from the headquarters district for violation of its regulations adopted under Section 8 or for other cause. Persons who violate such regulations shall be subject to other penalties or to detention under arrest only in accordance with the provisions of such laws or regulations as may be adopted by the appropriate American authorities.

ARTICLE IV. COMMUNICATIONS AND TRANSIT

SECTION 11

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials; (2) experts performing missions for the United Nations or for such specialized agencies; (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States; (4) representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter; or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

SECTION 12

The provisions of Section 11 shall be. applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States.

SECTION 13

(a) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that Section, they shall be granted without charge and as promptly as possible.

(b) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11 and, specifically, shall not be applied in such manner as to require any such person to leave the United States on account of any activities performed by him in his official capacity. In case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity, it is understood that the privileges referred to in Section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(1) No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General or the principal executive officer of the appropriate specialized agency in the case of any other person referred to in Section 11;

(2) A representative of the Member concerned, the Secretary-General or the principal Executive Officer of the appropriate specialized agency, as the case may be, shall have the right to appear in any such proceedings on behalf of the person against whom they are instituted;

(3) Persons who are entitled to diplomatic privileges and immunities under Section 15 or under the General Convention shall not be required to leave the United States otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States.

(e) This section does not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by Section 11 come within the classes described-in that section, or the reasonable application of quarantine and health regulations.

(d) Except as provided above in this section and in the General Convention, the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there.

(e) The Secretary-General shall, at the request of the appropriate American authorities, enter into discussions with such authorities, with a view to making arrangements for registering the arrival and departure of persons who have been granted visas valid only for transit to and from the headquarters district and sojourn therein and in its immediate vicinity.

(f) The United Nations shall, subject to the foregoing provisions of this section, have the exclusive right to authorize or prohibit entry of persons and property into the headquarters district and to prescribe the conditions under which persons may remain or reside there.

SECTION 14

The Secretary-General and the appropriate American authorities shall, at the request of either of them, consult as to methods of facilitating entrance into the United States, and the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters district and do not enjoy the rights referred to in this Article.

ARTICLE V. RESIDENT REPRESENTATIVES TO THE UNITED NATIONS

SECTION 15

(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,

(2) Such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,

(3) Every person designated by a Member of a specialized agency, as defined in Article 57, paragraph 2, of the Charter, as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the

headquarters of such agency in the United States, and

(4) Such other principal resident representatives of members of a specialized agency and such resident members of the staffs of representatives of a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the Member concerned, shall whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries.

ARTICLE VI. POLICE PROTECTION OF THE HEADQUARTERS DISTRICT

SECTION 16

(a) The appropriate American authorities shall exercise due diligence to ensure that the tranquillity of the headquarters district is not disturbed by the unauthorized entry of groups of persons from outside or by disturbances in its immediate vicinity and shall cause to be provided on the boundaries of the headquarters district such police protection as is required for these purposes.

(b) If so requested by the Secretary-General, the appropriate American authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters district, and for the removal therefrom of persons as requested under the authority of the United Nations. The United Nations shall, if requested, enter into arrangements with the appropriate American authorities to reimburse them for the reasonable cost of such services.

ARTICLE VII. PUBLIC SERVICES AND PROTECTION OF THE HEADQUARTERS DISTRICT

SECTION 17

(a) The appropriate American authorities will exercise to the extent requested by the Secretary-General the powers which they possess with respect to the supplying of public services to ensure that the headquarters district shall be supplied on equitable terms with the necessary public services, including electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, etcetera. In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly, to ensure that the work of the United Nations is not prejudiced.

(b) Special provisions with reference to maintenance of utilities and underground construction are contained in Annex 2.

SECTION 18

The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district. The United Nations shall on its part take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters district are not prejudiced by any use made of le land in the headquarters district by the United Nations.

SECTION 19

It is agreed that no form of racial or religious discrimination shall be permitted within the headquarters district.

ARTICLE VIII. MATTERS RELATING TO THE OPERATION OF THIS AGREEMENT

SECTION 20

The Secretary-General and the appropriate American authorities shall settle by agreement the channels through which they will communicate regarding the application of

the provisions of this agreement and other questions affecting the headquarters district, and may enter into such supplemental agreements as may be necessary to fulfill the purposes of this agreement. In making supplemental agreements with the Secretary-General, the United States shall consult with the appropriate state and local authorities. If the Secretary-General so requests, the Secretary of State of the United States shall appoint a special representative for the purpose of liaison with the Secretary-General.

SECTION 21

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the SecretaryGeneral, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

ARTICLE IX. MISCELLANEOUS PROVISIONS

SECTION 22

(a) The United Nations shall not dispose of all or any part of the land owned by it in the headquarters district without the consent of the United States. If the United States is unwilling to consent to a disposition which the United Nations wishes to make of all or any part of such land, the United States shall buy the same from the United Nations at a price to be determined as provided in paragraph (d) of this section.

(b) If the seat of the United Nations is removed from the headquarters district, all right, title and interest of the United Nations in and to real property in the headquarters district or any part of it shall, on request of either the United Nations or the United States be assigned and conveyed to the United States. In the absence of such a request, the same shall be assigned and conveyed to the sub-division of a state in which it is located or, if such sub-division shall not desire it, then to the state in which it is located. If none of the foregoing desire the same, it may be disposed of as provided in paragraph (a) of this Section.

(c) If the United Nations disposes of all or any part of the headquarters district, the provisions of other sections of this agreement which apply to the headquarters district shall immediately cease to apply to the land and buildings so disposed of.

(d) The price to be paid for any conveyance under this section shall, in default of agreement, be the then fair value of the land, buildings and installations, to be determined under the procedure provided in Section 21.

SECTION 23

The seat of the United Nations shall not be removed from the headquarters district unless the United Nations should so decide.

SECTION 24

This agreement shall cease to be in force if the seat of the United Nations is removed from the territory of the United States, except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein.

SECTION 25

Wherever this agreement imposes obligations on the appropriate American authorities, the Government of the United States shall have the ultimate responsibility for the fulfillment of such obligations by the appropriate American authorities.

SECTION 26

The provisions of this agreement shall be complementary to the provisions of the General Convention. In so far as any provision of this agreement and any provisions of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall

narrow the effect of the other; but in any case of absolute conflict, the provisions of this agreement shall prevail.

SECTION 27

This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently to discharge its responsibilities and fulfill its purposes.

SECTION 28

This agreement shall be brought into effect by an exchange of notes between the Secretary-General, duly authorized pursuant to a resolution of the General Assembly of the United Nations, and the appropriate executive officer of the United States, duly authorized pursuant to appropriate action of the Congress.

In witness whereof the respective representatives have signed this Agreement and have affixed their seals hereto.

Done in duplicate, in the English and French languages, both authentic, at Lake Success, this twenty-sixth day of June, 1947.

ANNEX 1

The area referred to in Section 1 (a) (1) consists of:

(a) the premises bounded on the East by the westerly side of Franklin D. Roosevelt Drive, on the West by the easterly side of First Avenue, on the North by the southerly side of East Forty-Eighth Street, and on the South by the northerly side of East Forty-Second Street, all as proposed to be widened, in the Borough of Manhattan, City and State of New York, and

(b) an easement over Franklin D. Roosevelt Drive, above a lower limiting plane to be fixed for the construction and maintenance of an esplanade, together with the structures thereon and foundations and columns to support the same in locations below such limiting plane, the entire area to be more definitely defined by supplemental agreement between the United Nations and the United States of America.

ANNEX 2

MAINTENANCE OF UTILITIES AND UNDERGROUND CONSTRUCTION

SECTION 1

The Secretary-General agrees to provide passes to duly authorized employees of the City of New York, the State of New York, or any of their agencies or sub-divisions, for the purpose of enabling them to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters district.

SECTION 2

Underground constructions may be undertaken by the City of New York, or the State of New York, or any of their agencies or subdivisions, within the headquarters district only after consultation with the Secretary-General, and under conditions which shall not disturb the carrying out of the functions of the United Nations.

Chapter 11: SETTLEMENT OF DISPUTES

Learning objectives and structure of the lecture:

International organizations contribute towards the peace and stability of the international community. They not only enable states to achieve common goals (effectively), but by being forums for discussion they fulfill the important function of eliminating disputes. But how precisely do they do this? There are lot of different mechanisms in operation, ranging from highly developed, defined and complex judicial bodies, such as the courts of the European Union, to rather flexible mechanisms, such as the old GATT.

This chapter thus focuses on the issue of settlement of disputes, especially at the UN´s International Court of Justice as the most prominent and important organ for settling disputes through judicial means. We work with the fundamental document of the ICJ, the ICJ Statute, and with its help explore various aspects of the topic, such as the typology of procedures or jurisdiction of international courts. This will help us to understand how international courts work, their various features, and how they differ from national courts.

Required reading prior to the lecture:

- Jan Klabbers, *An Introduction to International Institutional Law* (2009), pp. 229 – 249.
- For additional documents see the respective section in Moodle.

A. Introduction

Current international law contains an obligation to settle disputes peacefully (cf. Art. 2[3] UN-Charter), and provides examples of mechanisms which can be used for this purpose. Art. 33 UN-Charter stipulates:

> *"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."*

States may also create separate international organizations, so-called treaty-based organs, the principal goal of which is to settle disputes. Dispute settlement is thus not just one function of such an organization, but the main purpose for which it was established. Examples include the *International Tribunal for the Law of the Sea*, established on the base of the *UN Convention on the Law of the Sea* (1982) and vested with power to settle disputes between currently 162 members (161 states and the EU[7]), or the *Permant Court of Arbitration*, established by the *Hague Treaty on Peacefull*

[7] The EU had already recourse to the Tribunal in the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)*. The dispute was however not decided by a judgment, as both parties to the dispute reached an agreement and asked in 2009 the Tribunal for discontinuation of the case.

Settlement of Disputes (1907). However, there is a broad variety of mechanisms for the settlement of disputes. Their design and competences depend on various factors, such as the size, needs and functions of the organization. For example, the *Court of the European Union* is not only the guardian of legality in the EU, but also guarantees the unity of EU law (especially through the preliminary reference procedure) and has traditionally been considered a motor of the integration process.

As explained in the chapter on institutional structures, international organizations usually have an organ at their diposal whose mandate covers the elimination of disputes. As to the aspects covered, conflicts may generally concern not only the functioning of an organization but other matters not directly related to the organization´s life. For our purposes. the second category is not of concern. With regard to the first category, covering issues of direct concern for the organization, international judicial organs primarily fulfil the task of judicial monitoring of the legality of the organization´s decisions, but may also exercise administrative jurisdiction over staff members or interpret rules to promote their uniform application by national courts (cf. the Court of Justice of the European Union).

Disputes to be settled by international judicial organs can be also distinguished according to the entities involved:

- disputes between member states,
- disputes between the organization and a member state,
- disputes between a member state and an organ of the organization, and
- disputes between the organization and its staff.

Most disputes occurring in the international community understandably involve states. Therefore, the jurisdiction of international judicial organs covers first and foremost interstate conflicts. Interestingly, the organization itself often does not have *locus standi* before its own judicial organ, which consequently cannot decide disputes involving it. This is the case too with the *International Court of Justice*, which may only hear contentious cases involving states (Art. 34 ICJ Statute). This, however, does not mean that other types of disputes are not settled - organizations may have recourse to other means of dispute settlement, such as arbitration or claims commissions. Compared to judicial settlement, both mechanisms have a certain advantage: the organization remains in control as its consent is necessary for the establishment of an arbitral tribunal or claims commission.

Apart from the jurisdiction to decide contentious cases, the judicial organs of international organizations are often equipped with advisory jurisdiction. The advantage of advisory jurisdiction is apparent – advisory opinions are not legally binding, i.e. the power remains with the applicant entity to draw conclusions from the advisory opinion handed down. Moreover, a strict judicial settlement does not necessarily foster a common community project and its spirit.

Among the judicial bodies of international organizations, the International Court of Justice enjoys a special position. It is one of the main UN organs, but the only body not administered by the Secretariat, and it has its own budget, ensuring its independent functioning. In recent years, there has been growing confidence inthe ICJ

The ICJ can decide in contentious cases and may issue advisory opinions. In contentious proceedings, only states can be parties and thus the jurisdiction does not need to be explained here in detail. It is sufficient to mention that jurisdiction in such cases is of facultative nature, i.e., based entirely on the consent of states. Art. 36 ICJ Statute recognizes four basic ways in which a state can consent: (1) by concluding a special agreement, (2) by providing for the Court´s jurisdiction through a provision (compromisory clause) in a more general treaty or convention, (3) by accepting the Court´s compulsory jurisdiction unilaterally and pro future (optional clause), or (4) by accepting it on the basis of tacit consent simply by the initiation of proceedings before the Court (*forum prorogatum*). We may mention that in the event of a dispute as to whether the Court has jurisdiction, the question is settled by the decision of the Court (Art. 36[6] UN Charter). The ICJ can order provisional measures to protect rights (Art. 41 ICJ Statute). Judgments of the ICJ are final and without appeal, and binding between the parties and with respect to the specific case. If new facts come to light which can be considered decisive, which were unknown at the time when the ICJ gave its judgment, parties to the dispute may lodge a claim for revision of the judgment (Art. 61 UN Charter). If the parties disagree as to the sense or scope of the judgment, an interpretation of the judgment may be requested from the Court (Art. 60 UN Charter).

The jurisdiction of the ICJ to render advisory jurisdiction is enshrined in Article 96 of the UN Charter and regulated in more detail in ICJ Statute. In contrast to contentious cases, international organizations too (even if not all) may request an advisory opinion; this is the only way for them to come before the ICJ. Art. 96 UN Charter provides:

a) *The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.*

b) *Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.*

Advisory proceedings have further features distinct from contentiousness, arising from the special nature and purpose of the advisory function. The first step is the filing of a written request for an advisory opinon of the ICJ. During the proceedings, international organizations and states may express their views through the submission of written statements. The main difference to contentious proceedings is that advisory opinions are not legally binding, except in rare cases where it is decided in advance that they shall have binding effect (e.g., as in the *Convention on the Privileges and Immunities of the United Nations* and the *Headquarters Agreement between the United Nations and the United states of America*). It is then the decision of the applicant body or organization what effect (if at all) to give to the Courts views and conclusions. Althoughadvisory opinions of the ICJ do not have legally binding effect, they do carry great legal weight and moral authority.

We may note that the UN system also contains other tribunals than the ICJ. Besides an administrative tribunal created by the General Assembly to decide staff disputes, a number of specialized judicial mechanisms based on human rights treaties have come

into existence, e.g. the *Committee against Torture*, the *Committee on the Rights of the Child*, the *Committee on the Elimination of Discrimination against Women*, or monitoring organs of the *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*. Such bodies can hardly be viewed as judicial bodies, as they can issue only suggestions and recommendations. Some may even entertain complaints and communications made by states or even individuals, but they cannot make binding decisions. Their impact, however, should not be disregarded. Among other things, the opinions of these bodies are often regarded as authoritative interpretations of the underlying treaties.

The UN system also contains tribunals, the legal basis of which is a resolution of the UN Security Council. In 1993, the *International Criminal Tribunal for Former Yugoslavia* was created (UN SC Res. 827) to prosecute persons responsible for serious violations of international law committed on the territory of the former Yugoslavia. A similar tribunal was created in 1994 (UN SC Res. 955) in reaction to the tragic events in Rwanda. Although these tribunals are of an *ad-hoc* nature and aim at prosecution of individuals, they contribute to international peace and security by providing justice and thus assist mutual reconciliation between nations. Further tribunals within the UN system include the *UN Compensation Committee* (deciding on compensation of war damages claims brought by individuals, governments or corporations) or the already-mentioned *International Tribunal for the Law of the Sea* in Hamburg, Germany, created under the 1982 *Law of the Sea Convention* to decide maritime disputes.

B. Problems and questions

Q1: What is the effect of an international judicial decision?

- *Does it bind the states?*
- *Does it bind organizations?*
- *Does it bind other member states?*
- *Does it bind non-member states?*
- *Does it bind individuals?*

Q2: Can an international organization be party to a dispute before the ICJ?

Q3: In which two types of cases can the ICJ have jurisdiction? What are the differences between these types of cases?

Q4: Does the ICJ have compulsory jurisdiction? Who determines the situation if jurisdiction is in question?

Q7: On what four bases may the Court's jurisdiction be founded?

C. Materials

Doc. 11.1

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I - ORGANIZATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more

judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II - COMPETENCE OF THE COURT

Article 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III - PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

l. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2 It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV - ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire

to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V - AMENDMENT

Article 69

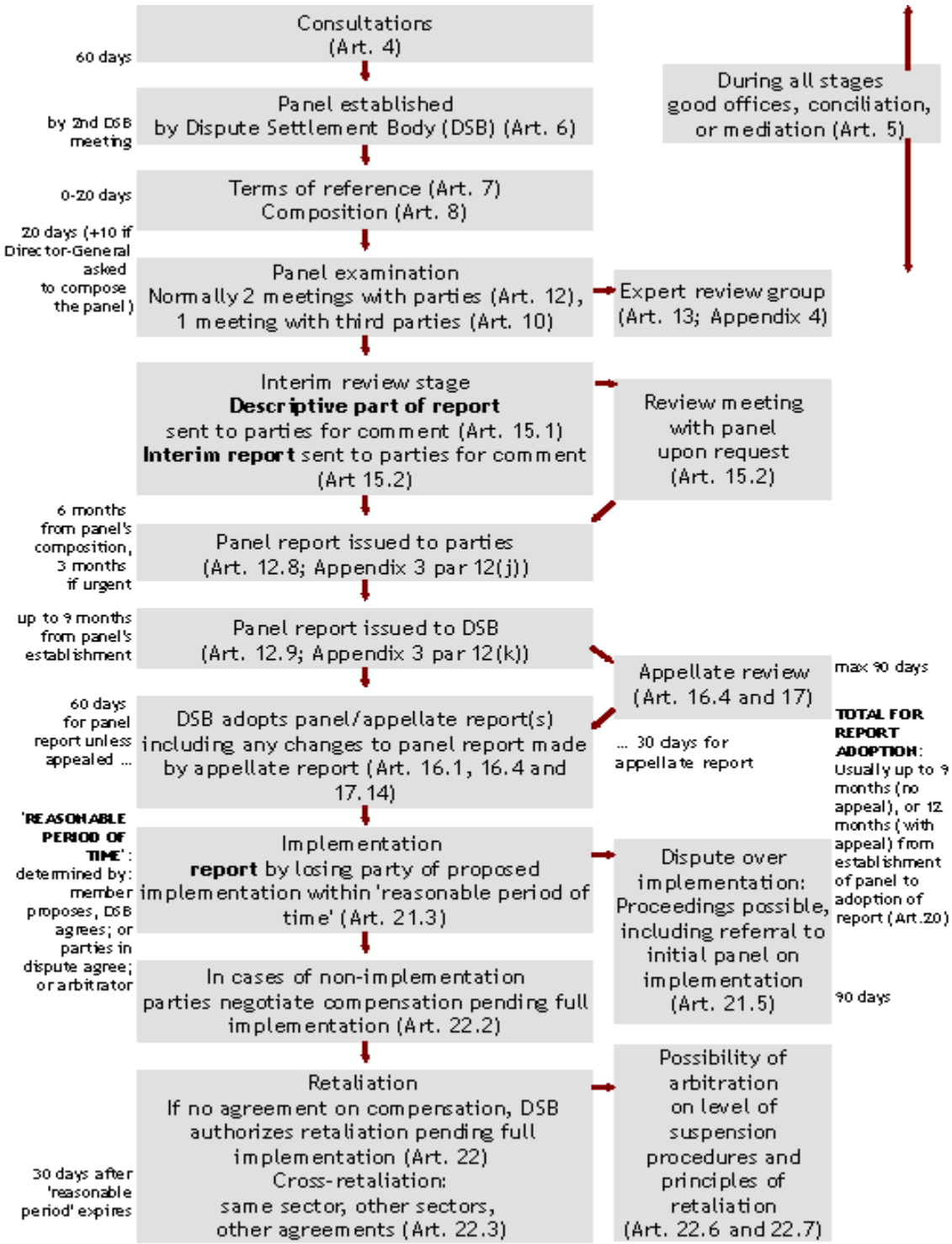
Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

Doc. 11.2

FLOW CHART OF THE WTO DISPUTE SETTLEMENT PROCESS



Source: www.wto.org (last visited 9 January 2012

Chapter 12: THE RESPONSIBILITY AND LIABILITY OF INTERNATIONAL ORGANIZATIONS

Learning objectives and structure of the lecture:

International organizations nowadays act in almost all fields of interest in international law, including vital areas such as the maintenance of international peace and security, international trade, protection of human rights, or the environment. Their actions affect states, individuals, companies, and other actors. Such a development naturally raises the question of what the consequences should be if an international organization acts wrongfully. Is the UN liable if the Security Council requires a state to act in breach of its human rights obligations? Is the EU responsible if it precludes member states from complying with binding resolutions of the UN Security Council, resulting in a violation of the UN Charter? Is the World Bank responsible for funding the construction of a dam in Brazil, leading to serious human rights violations, such as forcing native inhabitants to flee and the destruction of property without compensation? This lecture provides the necessary knowledge to answer these questions, by focusing on the legal basis and requirements of responsibility of international organizations, as well as the international law norms addressing these questions. With the help of the Tin Council Case, we explore the relationship between the responsibility of international organizations and their member states.

Required reading prior to the lecture:

- Jan Klabbers, *Introduction to International Organizations Law* (2015), pp. 306 – 339
- For additional documents see the respective section in Moodle.

A. Introduction

According to a well-established principle of international law, applicable both to states and international organizations[8], every internationally wrongful act of an international legal person entails the international responsibility of the wrongdoer. Hence in the context of international organization, the question of responsibility and liability plays an important role. *Shaw* even considers responsibility "*a necessary consequence of international personality and the resulting possession of international rights and duties*".[9] This was confirmed by the ICJ´s advisory opinion in the case of the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* (ICJ Rep 1980, 73, 89-90):

> *"International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties."*

[8] Cf. Art. 3 of the UN ILC Draft Articles on Responsibility of International Organisations.
[9] Shaw, p. 1311.

Firstly, we should distinguish between the notions of accountability, responsibility, and legal liability. The definitions are not clear, but for our purposes it is sufficient to understand that responsibility isunderstood as accountability for acts which are wrongful under international law; liability in international law is sometimes used to describe accountability for lawful acts which nevertheless result in damage, or is sometimes applied to the actions of private operators (e.g. in space law).

Secondly, we must ascertain to what extent the specific legal nature of international organizations prevents application of the same legal rules which govern the international responsibility of states. The *ILC Draft on the Responsibility of International Organizations* suggests that norms on state responsibility have been transferred to large extent to international organizations.

The elements of the responsibility of an international organization are thus similar to those of a state:(1) there must be a breach of an obligation stemming from international law, and (2) the breach must be attributable to the organization. Controversial, however, is the question regarding the character of an international organization as a multilayer entity: who bears responsibility? Is it the international organization itself, or its member states, or the organization and member states? Moreover, is there a difference if the responsibility is invoked by a member state or a third party?

Unfortunately, there is no definitive answer to these questions. The basic rule is that it is the international organization itself who bears responsibility, provided the abovementioned preconditions are met. Perhaps the central question of current debates on the responsibility of international organizations is to discover the role played by the member states of an organization. Views differ: some authors see international organizations as entities fully separate from their member states, with the consequence of strict reliance on the principle that only theentity can be responsible for the conduct attributed to it, i.e. member states are held responsible only if the the behaviour of the organization can be attributed to them too. Others see international organizations only as vehicles for member states, which basically control them, and thus it is just to attribute the organization´s behaviour cumulatively, or at least subsidiarily, to member states.

The question of the responsibility of member states becomes significant especially in the case of the responsibility of an international organization towards a third party. Once an international organization goes bankrupt, for instance, naturally the question arisesof whether, or under what conditions, creditors can recourse to its member states. Such a case shows that strict adherence to a view excluding any form of responsibility of member states, enabling them to hide behind their own creation no matter what it does, may give rise to serious unfairness.

The literature therefore seeks remedy to such cases in two different ways. So-called **secondary member state responsibility** enables the injured party to present its claim to the organization; if the organization fails to provide remedy, the third party is entitled to proceed against member states. The other form of subsidiary responsibility is usually described as **indirect responsibility**. At the core of indirect responsibility is the idea that member states are responsible towards the organization to enable it to meet

obligations towards third parties. In practice thid means, for example, that if an international organization runs out of money, its member states are obliged to make it financially capable of meeting obligations. Both above-mentioned approaches have pros and cons, but their acceptance in practice (especially of indirect responsibility) is very limited.

Also intensively discussed is the question of the circumstances under which the interest of the third party prevails over the principle of sole responsibility of international organizations; in other words, when is it justified to pierce the corporate veil of international organizations, ignore the possible responsibility of the organization, and go to straight to member states to provide relief for third party? Such a discussion remains largely academic, but four basic scenarios have been put forward: (1) when the international organization violates the most basic principles of international law (e.g. commits genocide or aggression), (2) when the organization abuses its separate legal personality, (3) when member states exercise insufficient control over the organization with the consequence that it acts *ultra vires*, and (4) when member states create an international organization for a certain purpose, but do not equip it with sufficient funds and facilities (cf. the International Tin Council Case).

B. Problems and questions

Q1: The International Tin Council (ITC), an international organization made up of several leading tin-producing and consuming nations, for decades of its existence had supported artificially high prices for tin while the world use of tin dropped. In 1985, the world tin market collapsed, and trading in the metal was temporarily suspended for fear that falling tin prices would start a downward spiral in the prices of other metals. The ITC had run out of money and its debt towards private creditors was about several hundred milion pounds. How would you solve the situation on the basis of international legal rules governing the responsibility of international organizations? Provide possible solutions and related legal argumentation! Materials

Doc. 12.1

Draft articles on the responsibility of international Organizations

(UN Doc. A/66/10, pp. 54-68)

Responsibility of international organizations

Part One

Introduction

Article 1

Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present draft articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

Article 2

Use of terms

For the purposes of the present draft articles,

(a) "international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to states, other entities;

(b) “rules of the organization” means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;

(c) “organ of an international organization” means any person or entity which has that status in accordance with the rules of the organization;

(d) “agent of an international organization” means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

Part Two

The internationally wrongful act of an international organization

Chapter I

General principles

Article 3

Responsibility of an international organization for its internationally wrongful acts

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

Article 4

Elements of an internationally wrongful act of an international organization

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(a) is attributable to that organization under international law; and

(b) constitutes a breach of an international obligation of that organization.

Article 5

Characterization of an act of an international organization as internationally wrongful

The characterization of an act of an international organization as internationally wrongful is governed by international law.

Chapter II

Attribution of conduct to an international organization

Article 6

Conduct of organs or agents of an international organization

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

Article 7

Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

Article 8

Excess of authority or contravention of instructions

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

Article 9

Conduct acknowledged and adopted by an international organization as its own

Conduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to

the extent that the organization acknowledges and adopts the conduct in question as its own.

Chapter III

Breach of an international obligation

Article 10

Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

Article 11

International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

Article 12

Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 13

Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

Chapter IV

Responsibility of an international organization in connection with the act of a State or another international organization

Article 14

Aid or assistance in the commission of an internationally wrongful act

An international organization which aids or assists a state or another international organization in the commission of an internationally wrongful act by the state or the latter organization is internationally responsible for doing so if:

(a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that organization.

Article 15

Direction and control exercised over the commission of an internationally wrongful act

An international organization which directs and controls a state or another international organization in the commission of an internationally wrongful act by the state or the latter organization is internationally responsible for that act if:

(a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that organization.

Article 16

Coercion of a state or another international organization

An international organization which coerces a state or another international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced state or international organization; and

(b) the coercing international organization does so with knowledge of the circumstances of the act.

Article 17

Circumvention of international obligations through decisions and authorizations addressed to members

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member states or international organizations to commit an act that would be internationally wrongful committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member states or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member states or international organizations to which the decision or authorization is addressed.

Article 18

Responsibility of an international organization member of another international organization

Without prejudice to draft articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in draft articles 61 and 62 for states that are members of an international organization.

Article 19

Effect of this Chapter

This Chapter is without prejudice to the international responsibility of the state or international organization which commits the act in question, or of any other state or international organization.

Chapter V

Circumstances precluding wrongfulness

Article 20

Consent

Valid consent by a state or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that state or the former organization to the extent that the act remains within the limits of that consent.

Article 21

Self-defence

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

Article 22

Countermeasures

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a state or another international organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with the substantive and procedural conditions required by international law, including those set forth in Chapter II of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member state or international organization unless:

(a) the conditions referred to in paragraph 1 are met;

(b) the countermeasures are not inconsistent with the rules of the organization; and

(c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible state or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member state or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 23

Force majeure

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) the organization has assumed the risk of that situation occurring.

Article 24

Distress

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) the act in question is likely to create a comparable or greater peril.

Article 25

Necessity

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(a) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member states or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(b) does not seriously impair an essential interest of the state or states towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(a) the international obligation in question excludes the possibility of invoking necessity; or

(b) the organization has contributed to the situation of necessity.

Article 26

Compliance with peremptory norms

Nothing in this Chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27

Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:

(a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) the question of compensation for any material loss caused by the act in question.

Part Three

Content of the international responsibility of an international organization

Chapter I

General principles

Article 28

Legal consequences of an internationally wrongful act

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

Article 29

Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

Article 30

Cessation and non-repetition

The international organization responsible for the internationally wrongful act is under an obligation:

(a) to cease that act, if it is continuing;

(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31

Reparation

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

Article 32

Relevance of the rules of the organization

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member states and organizations.

Article 33

Scope of international obligations set out in this Part

1. The obligations of the responsible international organization set out in this Part may be owed to one or more states, to one or more other organizations, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a state or an international organization.

Chapter II

Reparation for injury

Article 34

Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

Article 35

Restitution

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36

Compensation

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article 37

Satisfaction

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

Article 38

Interest

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39

Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

Article 40

Ensuring the fulfilment of the obligation to make reparation

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this Chapter.

Chapter III

Serious breaches of obligations under peremptory norms of general international law

Article 41

Application of this Chapter

1. This Chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

Article 42

Particular consequences of a serious breach of an obligation under this Chapter

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.

2. No state or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this

Chapter applies may entail under international law.

Part Four

The implementation of the international responsibility of an international organization

Chapter I

Invocation of the responsibility of an international organization

Article 43

Invocation of responsibility by an injured State or international organization

A State or an international organization is entitled as an injured state or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

(a) that State or the former international organization individually;

(b) a group of states or international organizations including that state or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State or that international organization; or

(ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Article 44

Notice of claim by an injured State or international organization

1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.

2. The injured State or international organization may specify in particular:

(a) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;

(b) what form reparation should take in accordance with the provisions of Part Three.

Article 45

Admissibility of claims

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.

2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

Article 46

Loss of the right to invoke responsibility

The responsibility of an international organization may not be invoked if:

(a) the injured State or international organization has validly waived the claim;

(b) the injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 47

Plurality of injured States or international organizations

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

Article 48

Responsibility of an international organization and one or more states or international organizations

1. Where an international organization and one or more states or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.

2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(a) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(b) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible states or international organizations.

Article 49

Invocation of responsibility by a State or an international organization other than an injured state or international organization

1. A state or an international organization other than an injured state or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with draft article 30; and

(b) performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under draft articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

Article 50

Scope of this Chapter

This Chapter is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

Chapter II

Countermeasures

Article 51

Object and limits of countermeasures

1. An injured state or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

Article 52

Conditions for taking countermeasures by members of an international organization

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

(a) the conditions referred to in article 51 are met;

(b) the countermeasures are not inconsistent with the rules of the organization; and

(c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.

2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 53

Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) obligations for the protection of human rights;

(c) obligations of a humanitarian character prohibiting reprisals;

(d) other obligations under peremptory norms of general international law.

2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(a) under any dispute settlement procedure applicable between it and the responsible international organization;

(b) to respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

Article 54

Proportionality of countermeasures

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 55

Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State or international organization shall:

(a) call upon the responsible international organization, in accordance with draft article 44, to fulfil its obligations under Part Three;

(b) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured state or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) the internationally wrongful act has ceased; and

(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

Article 56

Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

Article 57

Measures taken by States or international organizations other than an injured sSate or organization

This Chapter does not prejudice the right of any state or international organization, entitled under article 49, paragraphs 1 to 3, to invoke the responsibility of another international organization, to take lawful measures against that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

Part Five

Responsibility of a State in connection with the conduct of an international organization

Article 58

Aid or assistance by a State in the commission of an internationally wrongful act by an international organization

1. A state which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

Article 59

Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that state under the terms of this draft article.

Article 60

Coercion of an international organization by a state

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(b) the coercing State does so with knowledge of the circumstances of the act.

Article 61

Circumvention of international obligations of a State member of an international organization

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the state's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the state, would have constituted a breach of the obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

Article 62

Responsibility of a State member of an international organization for an internationally wrongful act of that organization

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:

(a) it has accepted responsibility for that act towards the injured party; or

(b) it has led the injured party to rely on its responsibility.

2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

Article 63

Effect of this Part

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

Part Six

General Provisions

Article 64

Lex specialis

These draft articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

Article 65

Questions of international responsibility not regulated by these draft articles

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an internationally wrongful act to the extent that they are not regulated by these draft articles.

Article 66

Individual responsibility

These draft articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

Article 67

Charter of the United Nations

These draft articles are without prejudice to the Charter of the United Nations.