

International Organizations and the Idea of Autonomy

Institutional Independence in the
International Legal Order

Edited by
Richard Collins and
Nigel D. White



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International Organizations and the Idea of Autonomy

International Organizations and the Idea of Autonomy is an exploratory text looking at the idea of intergovernmental organizations as autonomous international actors. In the context of concerns over the accountability of powerful international actors exercising increasing levels of legal and political authority, in areas as diverse as education, health, financial markets and international security, the book comes at a crucial time. Including contributions from leading scholars in the fields of international law, politics and governance, it addresses themes of institutional autonomy in international law and governance from a range of theoretical and subject-specific contexts. The collection looks internally at aspects of the institutional law of international organizations and the workings of specific regimes and institutions, as well as externally at the proliferation of autonomous organizations in the international legal order as a whole. Although primarily a legal text, the book takes a broad, thematic and inter-disciplinary approach. In this respect, *International Organizations and the Idea of Autonomy* offers an excellent resource for both practitioners and students undertaking courses of advanced study in international law, the law of international organizations and global governance, as well as aspects of international relations and organization.

Richard Collins is a lecturer in the School of Law at the University of Sheffield, where he teaches in the areas of public law and public international law.

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Preface

This is a book about the autonomy of international organizations, but is also a book about the idea of autonomy in a broader sense. The book has its origins in a seminar series delivered at the University of Sheffield's Centre for the study of Law in its International Context (CLIC) between September 2008 and May 2009. Academics and practitioners were invited to talk on the topic of the autonomy of international organizations, as well as broader themes of institutional independence in particular areas of international law. In doing so, it became clear just how central the 'idea of autonomy' was in so many different aspects of international law – for example, in the achievement of justice in international affairs through advancing international cooperation; in terms of advancing particular governance and regulatory goals; or in relation to issues of institutional fragmentation, accountability and aspects of judicial independence in the international legal order.

In its conception, therefore, the editors were keen to avoid presenting a volume on just the autonomy of international organizations, but wanted to tackle distinctive aspects of institutional autonomy, looking internally at the workings of particular organizations or institutional law generally, and externally, at the proliferation of autonomous institutions and regimes in the international legal order as a whole. It is for this reason that the book took the rather more ambiguous title of *International Organizations and the Idea of Autonomy*, and it was with this goal in mind that the editors approached the topic in the way that we did, inviting scholars to participate from both law and politics, as well as those working on the threshold of both disciplines looking at aspects of global governance and international regulation beyond the state.

The editors would like to express their thanks to those who took part in the initial workshop and seminar series. Many of the papers delivered in the series have made their way in some form into this volume (including those by Jean d'Aspremont, Patrick Capps, Nicholas Tsagourias, Garrett W. Brown, Eric De Brabandere, John Merrills, Duncan French, Paul James Cardwell and Tarcisio Gazzini), although our thanks also go to Ralph Wilde, Allison Duxbury and Catherine Brölmann, all of whom gave papers in the series but were unable to contribute to the book.

Particular thanks go to Richard Burchill and Aurel Sari, both of whom stepped in to provide chapters for the book at a late stage, and to Jan Klabbers for his

support for the project overall, and in particular for agreeing to give his paper as the *James Muiruri Annual International Law Lecture* in Sheffield in May 2009 (see <http://www.sheffield.ac.uk/law/clic/jamesmuiruri.html>).

Additional thanks go to colleagues in the School of Law at Sheffield who contributed to the initial workshop (Tawhida Ahmed, Dimitrios Kyritsis and Sorcha Macleod), to Harriett Godfrey, Sarah Beedham and Katja Samuel for their assistance throughout the year, and to Duncan French for his advice and support in planning and preparing the book.

Finally, the editors would like to express their gratitude to Kate Wilkinson for her editorial assistance in putting together the final manuscript of the book, as well as editorial staff at Routledge, particularly Khanam Virjee, for their support and patience during this time.

Richard Collins and Nigel D. White
Sheffield and Nottingham, July 2010

List of abbreviations

ACHR	American Convention on Human Rights
ASEAN	Association of South-East Asian Nations
BIS	Bank for International Settlements
BISD	(WTO) Basic Instruments and Selected Documents
BIT	Bilateral Investment Treaty
CAC	Codex Alimentarius Commission
CFI	Court of First Instance of the European Communities
CFSP	Common Foreign and Security Policy
CG18	Consultative Group of Eighteen
CIMMYT	International Maize and Wheat Improvement Center
CITES	Convention on International Trade in Endangered Species
CIVPOL	United Nations Civilian Police
CoE	Council of Europe
CoP	Conference of the Parties
COREPER	Committee of Permanent Representatives
CRTA	Committee on Regional Trade Arrangements
CTEU	Consolidated Version of the Treaty on European Union
CTFEU	Consolidated Version of the Treaty on the Functioning of the European Union
DARIO	Draft Articles on the Responsibility of International Organizations
DPC	Defense Planning Committee
EBRD	European Bank for Reconstruction and Development
EC	European Community (<i>or</i> Communities)
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ECOSOC	United Nations Economic and Social Council
EEA	European Economic Area
EEC	European Economic Community
ENP	European Neighbourhood Policy
EPC	European Political Cooperation
ESDP	European Security and Defence Policy
EU	European Union

FAO	Food and Agriculture Organization of the United Nations
FRY	Former Republic of Yugoslavia
G7	Group of Seven
G8	Group of Eight
G20	Group of Twenty
GAERC	General Affairs and External Relations Council
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
GEF	Global Environmental Facility
GESAMP	Scientific Aspects of Marine Environmental Protection
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICANN	Internet Corporation for Assigned Names and Numbers
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCROM	International Centre for the Study of the Preservation and Restoration of Cultural Property
ICITO	Interim Committee for the International Trade Organization
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDOC	Investigation and Disciplinary Office of the Commission
IGO	Intergovernmental Organization
IJC	International Joint Commission
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organization
ILOAT	International Labour Organization Administrative Tribunal
IMF	International Monetary Fund
IMO	International Maritime Organization
IO	International Organization
IR	International Relations
ITLOS	International Tribunal for the Law of the Sea
ITO	International Trade Organization
ITU	International Telecommunication Union
IUCN	International Union for Conservation of Nature and Natural Resources
KEDO	Korean Peninsula Energy Development Organization
KFOR	Kosovo Force
MARPOL	International Convention for the Prevention of Pollution by Ships
MEA	Multilateral Environmental Agreement
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OAS	Organization of American States

OAU	Organization for African Unity
OECD	Organisation for Economic Co-operation and Development
OIOS	Office of Internal Oversight
OLAF	European Anti-Fraud Office
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Cooperation in Europe
OSPAR	Paris Convention for the Protection of the Marine Environment of the North-East Atlantic
PCIJ	Permanent Court of International Justice
PIU	Public International Union
QAB	Quasi-Autonomous Body
SARPs	Standard and Recommended Practices
SPS	Sanitary and Phytosanitary Measures
TEC	Treaty establishing the European Communities
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TMB	(WTO) Textiles Monitoring Board
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCHS	United Nations Centre for Human Settlements
UNCIO	United Nations Conference on International Organization
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNMIK	United Nations Mission in Kosovo
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
UNTAET	United Nations Transitional Administration in East Timor
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
US/USA	United States of America
USSR	Union of Soviet Socialist Republics
WFP	World Food Programme
WHO	World Health Organization
WMD	Weapons of Mass Destruction
WMO	World Meteorological Organization
WTO	World Trade Organization

Foreword

*José E. Alvarez**

When one asks, as I have, a UN lawyer about whether the UN makes law, the usual instantaneous response is denial, followed by the explanation that, after all, ‘the UN is merely the agent of states and does only what its members want’. When pressed, however, the same official will also take credit, for example, for devising a number of the legal niceties incorporated into the respective statutes for the ICTY and ICTR – tasks that were delegated by the UN Security Council to the Secretary General subject only to very general parameters. As we all know, those statutes, along with the work of another UN expert body, the International Law Commission, helped to inspire much of what is now contained in the Rome Statute for the International Criminal Court. This volume explores the gap between the usual disclaimers that international organizations (IOs) lack ‘sovereign’ powers and the reality that what they do very much affects sovereign states (and others). (Indeed, one of the authors in this collection, Viljam Engström, attempts to explain precisely why IOs (and those who work for them) straddle such seemingly contradictory positions.) In a shrewd move, the editors of this book have chosen to explore this theme through the relatively neutral (and less politically loaded) terminology of ‘autonomy’ rather than ‘sovereignty’. As with concepts such as ‘legitimacy’, the notion of ‘autonomy’ leaves much in the hands of those charged with writing about it. The result is an enriching (and refreshing) re-examination of age-old themes that is likely to reinvigorate interest in the study of IOs for years to come.

The editors of this collection of essays, Richard Collins and Nigel White, note in their introduction that those who established the first IOs probably did not anticipate where their innovative creations would lead. One suspects that the same could be said of this volume, which originated in a seminar series at the University of Sheffield. It is likely that neither Collins nor White anticipated precisely what their proposal would yield. They should be pleased with the product of their risk-taking.

The contributors to this volume problematize the idea of autonomy in a number of respects. Although all of the contributors are based in Europe, there is surprising divergence among them as to what ‘autonomy’ is; whether, whatever it is, the appropriate measure (or counterpoint) are the powers sovereign states enjoy; and whether increasing the level of autonomy that IOs enjoy is a good thing that

should be seen as part of international lawyers' progress narrative. A number of the contributors explore the legal autonomy of IOs, particularly through the familiar terminology of 'subjecthood' or 'legal personality'. This is the starting point of authors such as Frédéric Dopagne, who explores the idea (taken up within the ILC's ongoing project to draft articles on the responsibility of IOs) of whether IOs can generally impose sanctions and countermeasures, or Tarcisio Gazzini, who examines the extent to which IOs are permitted to depart from the views of some of their members through formal voting rules. Others, such as Jan Klabbers, Jean d'Aspremont, Jan Wouters, Nicolas Hachez and Pierre Schmitt, explore comparably legalistic terrain but focus on the political and legal techniques by which control may be exercised over the acts and activities of IOs or their employees. Two of the authors, Edoardo Chiti and Ramses Wessel, adopt the rubric of 'global administrative law' associated with my own home institution, namely my NYU colleagues Richard Stewart and Benedict Kingsbury. Others, such as Richard Collins, Garrett Wallace Brown and Patrick Capps, take on more overtly theoretical or jurisprudential inquiries. They consider the connections between institutional autonomy and older debates over the 'primitive' nature of international law (Collins), the alleged contest between global governance and sovereignty (Brown) or the possible futures open to Kant's republican states (Capps). Two of the contributors consider the topic from the standpoint of international relations theory (Bob Reinalda and Bertjan Verbeek). A number of others consider the autonomy of sub-species of IOs: namely, of international courts and tribunals (John Merrills), specific UN organs (Nigel White), regional arrangements within the UN or regional organizations (Richard Burchill), the European Union (Nicholas Tsagourias and Paul James Cardwell), and the WTO (Mary Footer). And one author even explores the question of autonomy where IOs as such do not exist, namely within multilateral environmental agreements (Duncan French).

But even when the topics or organizations addressed here are familiar to students of the field, the overarching rubric of 'autonomy' frequently yields novel insights. The essays here, including those focused squarely on newer concerns emerging in the wake of the post-9/11 activities of some of these organizations (such as the essays by Aurel Sari and Eric De Brabandere), also begin to address collective activities that were never envisioned by those 'present at the creation' of these organizations. If, as a number of the authors here suggest, the next generation of IO scholarship is likely to focus on their accountability and responsibility, a volume like this one that candidly addresses the autonomy of IOs is a good place to start that conversation.

Note

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