

INTERNATIONAL LAW IN JAPANESE PERSPECTIVE

Evolving Constitutions of International Organizations

Tetsuo Sato



KLUWER LAW INTERNATIONAL

Evolving Constitutions of International Organizations

*A Critical Analysis of the Interpretative
Framework of the Constituent Instruments
of International Organizations*

by

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EVOLVING CONSTITUTIONS OF INTERNATIONAL ORGANIZATIONS

International Law in Japanese Perspective

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Preface

In the present book, I have advocated an emerging doctrine of the interpretative framework of constituent instruments as the constitutions of international organizations. I have argued that, under the influences of the inherent dynamism of international organizations, the interpretative framework of the constituent instruments of international organizations is not the same as that of ordinary treaties, and that the interpretation of the constituent instruments of international organizations deviates from the interpretative framework regulated by the law of treaties as codified by the Vienna Convention on the Law of Treaties. I have presented, as an alternative interpretative framework to that of ordinary treaties, a doctrine of constituent instruments as the constitutions of international organizations rather than as the (founding) treaties. In advocating this new doctrine of the interpretative framework, I have been careful not to attempt to construct a fragile house of cards. As the current doctrines and practices of States and international organizations do not support such a construction, the best way would be to construct a moderate but solid doctrine which could be sufficiently justified by actual practices and which could be further improved upon and refined, but even this has yet to be made.

In my opinion, the interpretative framework as constitutions differs from that as treaties in two respects: (1) on the quantitative aspect of the teleological extent admitted, in the sense that constituent instruments are interpreted within the teleological framework so that their efficient functioning and effective activities could be assured and promoted, and that predominant consideration is given to the "efficiency" and "effectiveness" of international organizations to the extent that the teleological reasoning deviates from the textual interpretative framework in the law of treaties; (2) on the qualitative aspect of legal significance possessed by the practice of the organs of international organizations, in the sense that the practice of international organizations affects, in feedback, the interpretations of constituent instruments so that it gives them an evolutionary nature, and that this "subsequent practice" of the organs is given the legal value which deviates qualitatively from the textual interpretative framework in the law of treaties. Certainly each of these two aspects has sometimes been referred to in different contexts by other writers. These two, however, have never been, with sufficient development and refinement, synthesized in this new doctrine of constituent instruments as the constitutions of international organizations.

In the field of international organizations where amendments of their constituent instruments are as exceptional as those of the United Nations, it is through the process of interpretation and application of constituent instruments that political evolutions and changes will be transformed into legal arguments. In this sense interpretation could be qualified as the "concept charnière (hinging concept)" between politics and the law.

We have seen that military enforcement measures were applied to Iraq in 1991 in a manner close to, if not the same as, that expected by the Charter. A series of "authorizations" of the use of force by peace keeping forces and/or Member States were allowed. An international tribunal to prosecute those responsible for serious violations of international humanitarian law were established both for former Yugoslavia and Rwanda. All of these activities were authorized under Chapter VII of the United Nations Charter. We must analyze and judge the legality of these activities in the light of the relevant provisions of Chapter VII. Here the possible conclusions reached are closely related to the position one might take in understanding the legal nature of Chapter VII and the Charter of the United Nations itself.

These and other similar activities will continue in the future in both the United Nations and other international organizations. We are expected to analyze and judge the legality of these activities in the light of the relevant provisions in their constituent instruments.

The emerging doctrine of the interpretative framework of constituent instruments as the constitutions of international organizations, which has gradually formed since 1950s and is now more or less established, will give a useful perspective in understanding the possible evolution of international organizations in the present and the future.

Tetsuo SATO

Kunitachi, Tokyo
October 1995

Acknowledgements

This monograph is a shortened, although somewhat revised, version of my book *Kokusai Soshiki no Sôzôteki Tenkai (Creative Evolution of International Organizations)* (Keiso Shobô, 1993) [in Japanese], which was submitted to Hitotsubashi University as a dissertation for the degree of Ph. D. in 1993.

I dedicate this monograph to two eminent professors of international law who both passed away several years ago: Professor Takeshi Minagawa of Hitotsubashi University and Professor Leo Gross of the Fletcher School of Law and Diplomacy. I owe much to them.

First of all, I would like to express my gratitude to His Excellency Shigeru Oda, Judge of the International Court of Justice and its Vice-President during 1991-1994 for recommending that my monograph be published as one of the new series under his general editorship, *International Law in Japanese Perspective*.

The idea of and the basis for the present monograph dates back to my Master's thesis submitted to Hitotsubashi University in 1980 under the supervision of Professor Minagawa. I later had the opportunity of studying as a Fulbright grantee at the Fletcher School of Law and Diplomacy, Tufts University during 1981-1983 under the supervision of Professor Leo Gross as well as Professor Alfred P. Rubin. After developing the original idea during these and later years, I published three articles on this issue in English: "Constituent Instruments of International Organizations and Their Interpretative Framework --- Introduction to the Principal Doctrines and Bibliography", 14 *Hitotsubashi Journal of Law & Politics* 1-22 (1986); "Status of Constituent Instruments of International Organizations in the Law of Treaties --- With Particular Reference to the Notion 'Relevant Rules of the Organization'", 16 *id.* 25-47 (1988); "An Emerging Doctrine of the Interpretative Framework of Constituent Instruments as the Constitutions of International Organizations", 21 *id.* 1-63 (1993). This idea was developed further in the article "Kokusai Soshiki Setsuritsu Bunsho no Kaishaku Purosesu (I), (II), (III)" ("Interpretation Process of Constituent Instruments of International Organizations (I), (II), (III)") [in Japanese], 16 *Hogaku Kenkyu (Law & Politics)* (Hitotsubashi University Research Series) 45-186 (1986), 19 *id.* 3-180 (1989), 21 *id.* 71-336 (1990). For this latter article, I was awarded the honor of the 24th (1991) Mine'ichiro Adachi Memorial Prize in Japan. The above-mentioned book in Japanese is based on this article.

In the course of the examination for the doctoral degree, I had the benefit of the invaluable advice of the three examiners, Professors Jun'ichi Akiba, Wakamizu Tsutsui and Yoshio Otani. I was also guided by the helpful suggestions of Professor Hisaji Uchida of Daito Bunka University in his excellent review of my book published in 93 *Kokusaiho Gaiko Zasshi* (*The Journal of International Law and Diplomacy*) 194-99 (1994). Furthermore, Professors Jean Combacau of l'Université Paris - II and Aleth Manin of Paris - I (at that time) kindly read and commented on my English article during my period of research at l'Université Paris - II during 1990-1992. In gathering materials for my research, I was assisted by Ms. Y. Kamijo, research assistant of Hitotsubashi University, Professor Y. Saito of Asia University and Mr. Y. Kawamura in the Legal Office of the United Nations. The English in my monograph was greatly improved by the efforts of Professors Beverly I. Nelson, R. Siani and John Middleton of Hitotsubashi University.

I wish to thank sincerely all of the above and those whom I have failed to mention for their help and advice during the past fifteen or so years in developing the idea which originally came to me at the very beginning of my career as an international lawyer.

Finally, I am very pleased to record my deep gratitude to my parents, Shigeo and Tsuyako, and to my dear wife, Yoko, and two little daughters, Maori and Marumi.

T. S.

Abbreviations

ACC	Amazonian Cooperation Council
ADB	Asian Development Bank
AfDB	African Development Bank
A. F. D. I.	Annuaire Français de Droit International
ALADI	Latin American Integration Association
ARABSAT	Arab Corporation for Space Communications
ASEAN	Association of South East Asian Nations
BEU	Benelux Economic Union
CAEU	Council of Arab Economic Unity
CARICOM	Caribbean Community
CARIFTA	Caribbean Free Trade Association
CACEU	Central African Customs and Economic Union
CMEA	Council for Mutual Economic Assistance
COMECON	Council for Mutual Economic Assistance
EAC	East African Community
EC	European Communities
ECOWAS	Economic Community of the West-African States
ECR	Reports of the Court of Justice of the European Communities (European Court Reports)
EFTA	European Free Trade Association
ESA	European Space Agency
FAO	Food and Agricultural Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
IDA	International Development Association
IDB	Inter-American Development Bank
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILC	International Law Commission
I. L. M.	International Legal Materials
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INTELSAT	International Telecommunication Satellite Organization
INTERSPUTNIK	International System and Organization of Space Communications
INMARSAT	International Maritime Satellite Organization
ITO	International Trade Organization
ITU	International Telecommunication Union

LAES	Latin American Economic System
LAFTA	Latin American Free Trade Association
LAIA	Latin American Integration Association
LAS	League of Arab States
LN	League of Nations
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
Recueil des cours	Recueil des cours de l'Académie de droit international
R. G. D. I. P.	Revue Général de Droit International Public
UEAC	Union of Central African States
UN	United Nations
U. N. C. I. O.	United Nations Conference on International Organization (San Francisco, 1945)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UPU	Universal Postal Union
WEU	Western European Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	Warsaw Treaty Organization <i>or</i> World Trade Organization

Note: As for the other abbreviations, this book generally conforms to the style of *A Uniform System of Citation* (15th ed. 1991) published by the Harvard Law Review Association.

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