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Series editor's preface

In the twentieth century much of international diplomacy, and in turn, international law, has been developed in the context of international organisations. Given the undisputed importance of international organisations there are surprisingly few contemporary monographs that deal with them on the basis that there is a general body of law applicable to them. This book is therefore a welcome addition to the Melland Schill series. It cleverly blends complex theories with an extensive account of practice. It manages to present the functioning and operation of international organisations in an interesting and accessible manner. Debates over competence and decision-making procedures often appear abstract and formalistic – 'lawyers' law'. However, they reveal much about the constitutional structure of international society and its direction.

Dominic McGoldrick,
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Preface

Inter-governmental organisations appear to be a central component of modern international society. The sheer number, variety and complexity of these institutions create an impression of chaotic activity, sometimes of immense importance, sometimes of profound impotence. Organisations can act in a governmental capacity; on other occasions they resemble the simple diplomatic conferences of the nineteenth century, with the result that some organisations challenge the supremacy of the nation State, others simply facilitate the continued dominance of the established international actors.

One way of trying to make sense of the legal and political evolution of international organisations is to assess the various approaches to international order. Although such a theoretical analysis can be seen as abstract, it has immense practical implications in that these approaches each have a shaping effect on the development of the personality, powers and practice of international organisations; this is primarily because they reflect the various political philosophies of the States represented in these institutions. The current prevalence of one approach to the status and role of organisations is mainly explained by the ideology of the dominant group of States in the international order. However, it is unlikely that one single approach can explain the legal and political development of institutions due to the fact that historically each organisation will have been differently influenced due to the changing geopolitical shape of the world. In addition, there are often quite wide variations in approach within what are sometimes only temporary groupings or alliances of States, for instance between the revolutionary and Marxist approaches of the Non-Aligned and Socialist States united during the 1960s and 1970s; or between the functionalist, rationalist and realist approaches of Western States. Furthermore, account must be taken of approaches which challenge the established State-centred orthodoxies, for instance the critical approach. In some ways the critical arguments for a more just and equitable approach to world order accord with the agendas of non-governmental organisations, although a detailed account of the influence of these organisations is beyond the scope of this book.

These different approaches are used throughout this book in an attempt not only to explain the political shape of international organisations, but also to clar-

Preface

ify often obscure doctrinal debates about the legal nature and attributes of institutions. In other words, the law of international organisations, concerning issues such as legal personality, voting, suspension, powers, and decision-making capacity, is not simply described in formal terms because that does not fully explain the development and content of the law. Furthermore, as these organisations expand their competences, there is an inevitable clash between organisations of different types, reflecting different approaches to world order, principally between universal, regional and functional organisations. The current institutional structure of the international legal and political order is discussed in order to provide an assessment of how problems of overlap and supremacy are dealt with in law and in practice.

The powers and practice of organisations in the areas of trade and economic matters are not the subject of separate treatment, but are dealt with throughout the book. However, three areas of substance are discussed, namely: collective security, human rights, and environmental matters, in order to assess the impact of international organisations in developing, supervising, and perhaps enforcing, laws in these areas. These chapters not only provide an analysis of organisational powers and practice in areas of fundamental importance, but help to clarify aspects of the legal and political attributes of institutions, and the division of competence between them.

N. D. White
Nottingham
August 1995

Abbreviations

ACC	Administrative Committee on Co-ordination
ADF	Arab Deterrent Force
<i>A.J.I.L.</i>	<i>American Journal of International Law</i>
ALADI	Latin-American Integration Association
A/PV	General Assembly Provisional Records
ASEAN	Association of South East Asian Nations
ATS	Antarctic Treaty System
BFSP	British and Foreign State Papers
<i>Bull.EC</i>	<i>Bulletin of the European Communities</i>
<i>B.Y.B.I.L.</i>	<i>British Year Book of International Law</i>
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CITES	Convention on Trade in Endangered Species
CMF	Commonwealth Monitoring Force
<i>CMLR</i>	<i>Common Market Law Reports</i>
COG	Commonwealth Observer Group
COMECON	Council for Mutual Economic Assistance
COMSAT	Communications Satellite Corporation
CSCE	Conference on Security and Cooperation in Europe
CTS	Consolidated Treaty Series
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECA	Economic Commission for Africa
ECB	European Central Bank
ECE	Economic Commission for Europe
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
ECR	European Court Reports
ECSC	European Coal and Steel Community

Abbreviations

EDC	European Defence Community
EEC	European Economic Community
EFTA	European Free Trade Association
EHRR	European Human Rights Reports
EPC	European Political Cooperation
ERTA	European Road Transport Association
EU	European Union
Euratom	European Atomic Energy Community
FAO	Food and Agriculture Organisation
G7	Group of Seven Industrialised Countries
GAOR	General Assembly Official Records
GATT	General Agreement on Tariffs and Trade
GEF	Global Environmental Facility
GSO	Geostationary Orbit
HRC	Human Rights Committee
IAEA	International Atomic Energy Agency
IATA	International Air Transport Association
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organisation
I.C.J. Rep.	International Court of Justice Reports
I.C.L.Q.	<i>International and Comparative Law Quarterly</i>
I.J.I.L.	<i>Indian Journal of International Law</i>
ILC	International Law Commission
I.L.M.	<i>International Legal Materials</i>
ILO	International Labour Organisation
I.L.R	<i>International Law Reports</i>
IMF	International Monetary Fund
IMO	International Maritime Organisation
INMARSAT	International Maritime Satellite Organisation
INTELSAT	International Telecommunications Satellite Organisation
ITU	International Telecommunications Union
Keesing's	<i>Keesing's Record of World Events</i>
LAFTA	Latin-American Free Trade Association
LNTS	League of Nations Treaty Series
MEP	Member of European Parliament
NAFTA	North American Free Trade Association
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
N.I.L.R	<i>Netherlands International Law Review</i>
NPFL	National Patriotic Forces of Liberia
OAPEC	Organisation of Arab Petroleum Exporting Countries
OAS	Organisation of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development

Abbreviations

OECS	Organisation of Eastern Caribbean States
OEEC	Organisation for European Economic Cooperation
OJ	<i>Official Journal</i> (of the European Communities)
ONUC	United Nations Operation in the Congo
ONUCA	United Nations Observer Group in Central America
ONUEN	United Nations Observer Mission to Verify the Electoral Process in Nicaragua
OPEC	Organisation of Petroleum Exporting Countries
OSCE	Organisation on Security and Cooperation in Europe
PAUTS	Pan American Union Treaty Series
P.C.I.J.	Permanent Court of International Justice
PLO	Palestine Liberation Organisation
SCOR	Security Council Official Records
S/PV	Security Council Provisional Records
SWAPO	South West African People's Organisation
UKTS	United Kingdom Treaty Series
UDI	Unilateral Declaration of Independence
UNAVEM	United Nations Angola Verification Mission
UNCIO	United Nations Conference on International Organisations
UNCTAD	United Nations Conference on Trade and Development
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organisation
UNIFIL	United Nations Interim Force in Lebanon
UNIIMOG	United Nations Iran–Iraq Military Observer Group
UNIPOM	United Nations India–Pakistan Observation Mission
UNITA	National Union for the Total Independence of Angola
UNITAF	Unified Task Force
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOMIL	United Nations Observer Mission for Liberia
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
UNSF	United Nations Security Force
UNTAG	United Nations Transition Assistance Group
UNTEA	United Nations Temporary Executive Authority
UNTS	United Nations Treaty Series
UNTSO	United Nations Truce Supervision Organisation
UPU	Universal Postal Union

Abbreviations

WEU	Western European Union
WHO	World Health Organisation
WMO	World Meteorological Organisation
WTO	World Trade Organisation
YB	Yearbook (of the European Convention on Human Rights)
ZANU	Zimbabwean African National Union

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Theories of international organisation

International lawyers tend to define and describe international (here meaning inter-governmental) organisations in a narrow, formalist or 'black letter' fashion. Professor Virally, for instance, gives us the following working legal definition of an international organisation:

... an organization can be defined as an association of States, established by agreement among its members and possessing a permanent system or set of organs, whose task it is to pursue objectives of common interest by means of co-operation among its members.

Such an approach then leads to an analysis of the various aspects of the definition – the inter-State nature of international organisations, 'their voluntaristic basis, their possession of a permanent system of organs, their autonomy and their co-operative function',¹ followed by attempts to assess each international organisation in terms of its 'fit'.

Such descriptive analyses help to give an understanding of the legal nature and legal functions of an organisation, but they fail to provide either a systemic or contextual understanding of international organisations. International organisations have evolved in terms of their legal powers and functions because they are part of a wider economic and political system. Indeed, if one takes a traditional Marxist approach to law, the whole legal 'superstructure' of norms and institutions are simply a product of the changing economic and technological conditions in international society.² Marxism too can be accused of being far too narrow with its simple instrumentalist approach. It can be argued, for instance, that law does often have a determining effect and that it is simply not a reflection of the material base.³ The point is that international organisations need to be examined, whether for legal, economic, or political reasons, in their wider context. In this, the system theories of the political scientist can be of value. This can take the form of either macro-analysis, helpfully defined by Professor Abi-Saab as consisting of

efforts ... to explain alterations in the structures and functions of the international organization by changes in the international system. This can be viewed in two ways: either the international organization is considered a system and the international

system is looked on as its environment; or the organization is considered an element (actor or subsystem) of a broader set, the international system.

Or micro-analysis which views the international organisation itself as the system to be analysed.⁴ The purpose, in this chapter, will not be to undertake a pure systems analysis of international organisations, but to take the approach into account, and analyse the various theories concerning the structure of the international system.

The idea behind this chapter will be to give the reader a conceptual and contextual framework which can be used to analyse the substantive workings of international organisations. This will entail an examination of the narrow functionalist approach taken by the World Court in its judgments (for example in the *Reparation* case – see below), to the wider functionalism of David Mitrany, as well as the other main evolutionary approach to world order – rationalism. The more overtly politicised revolutionary, realist and critical approaches will be considered. Pieces of evidence gleaned from the practice of international organisations will be given, but the emphasis will be on the theoretical rather than the practical, the aim being to assess the relative value of these approaches, particularly in providing an explanation for the recent, somewhat frenetic, activity of international organisations.

Functionalism

Functionalism, that is, an analysis of the international system, its actors and norms, in terms of the areas of co-operation needed to make the system work at various levels of efficiency or justice, takes on many forms from the relatively narrow legal approach to interpreting the constitutions of international organisations, to the much wider political theory which looks at how the system works and how it may develop.⁵

The International Court of Justice's advisory opinion in the *Reparation*⁶ case embodies the narrow legal approach to functionalism. The Court, in opining whether the United Nations had the capacity to bring an international claim in the name of the Organisation for the death of one of its agents, stated that

Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective action of States has already given rise to instances of action upon the international plane by certain entities which are not States. The 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.

As will be seen, this bears a resemblance to the functionalist approach of the political scientist, who sees increased State co-operation in the performance of certain functions as part of the development of the international order. However, the Court's approach is not truly that of the political scientist, at least the macro-ana-