

The Protection of Regional or Other Interests as Structural Element of the Decision-Making Process of International Organizations

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I. Introduction

According to the United Nations Convention on the Law of the Sea (UNCLOS)¹ the composition of the International Tribunal for the Law of the Sea consisting of 21 judges shall assure “the representation of the principal legal systems of the world and equitable geographical distribution”.² The respective rule³ provides that there shall be no fewer than three members from each of the five geographical groups as established by the General Assembly of the United Nations which means, that six seats out of a total of 21 were not regionally allocated. The conference of states parties to UNCLOS, however, decided that five judges should come from the African, five from the Asian, four from the Latin American and Caribbean, four from the Western European and finally three from the Eastern European group and thus provided for a total regional allocation of the 21 members of the Tribunal.⁴ This decision was a problematic one under the given circumstances since one of the candidates came from a state (Israel) not affiliated with any regional group.

The discussions which preceded the decision of the states parties to UNCLOS were one of the many indications that states continue to place

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- 1 I thank Ms Britta Kröger for her assistance and suggestions. Doc. A/CONF.62/122 and Corr.1–11. Cf. for the whole text, R. Platzöder, *The 1994 United Nations Convention on the Law of the Sea*, 1995.
 - 2 Annex VI, Article 2, para.2.
 - 3 Annex VI, Article 3, para.2.
 - 4 See Report of the Fifth Meeting of States Parties, para. 13 – 31, Doc. SPLOS/14 of 20 September 1996.

utmost importance upon a regionally balanced composition of international fora of limited membership and upon the application of the principle of equitable geographical distribution of the seats available. The principle, in practice, remains one of the main elements for structuring international organizations.

The ongoing attempts of a restructuring of the Security Council face the same problem. Responding to a General Assembly resolution⁵ member states to the United Nations have expressed their views that in the discussed increase in the membership of the Security Council the principle of equitable geographical representation has to be reaffirmed.⁶ Most of them have justified the prevailing applicability of that principle by pointing out that the Security Council acts on behalf of the world community and thus membership in it has to be "representative". However, several member states have also stressed that other structural considerations are equally important, such as efficiency and the representation of those making special political, military and financial contributions.

This article will show that focusing on an equitable geographical distribution of seats in an organ with limited membership no longer properly reflects the realities of international relations. Regional affiliations have become of a lesser significance; the participation of states in international organizations is governed to an increasing degree by particular interests. Hence, the adequate integration of existing economic or political or other interests has become mandatory in particular with respect to economic and financial international organizations.

Apart from that the decision-making process of international organizations not only depends upon the composition of the respective decision-making organs, but also upon their decision-making procedure.

The structuring of the decision-making process in international organizations takes place on two different levels. Firstly, by establishing a respective decision-making procedure, and, secondly, by structuring the organization as such so that different organs with a different composition are established which either have different and independent functions or which have to cooperate. Very often both approaches are combined. All international organizations have a plenary organ in which member states participate on an equal footing beside a limited membership organ which exercises specific functions either alone or together with the plenary organ. The United Nations, e.g., is organized in that way. The functions to act under Chapter VII of the United Nations Charter are conferred upon the

⁵ A/RES/47/62 of 11 December 1992.

⁶ See report of the Secretary-General containing the replies received from member states (Doc. A/48/264 of 20 July 1993).

Security Council,⁷ and the General Assembly shall not make any recommendation with regard to a dispute or a situation while the Security Council is exercising its functions unless the latter so requests.⁸ Concerning the admission of new members, however, both organs have to cooperate so that the decision-making procedures applied in the two organs both have a bearing. The application of this approach is further refined in the law of international organizations, in particular in United Nations related ones. This has resulted, as will be seen, in complicated organizational structures concerning decision-making. Such structures serve two different, but inter-related objectives. Firstly, to provide an organizational structure for decision-making which is open to take into consideration all states' interests involved and integrate them into the decision of the international organization. The integration of all interests involved is one of the prerequisites for the acceptability of the decisions taken. Secondly, the structure for a decision-making procedure of an international organization contains an element of protection of states' interests or of groups of states as a kind of minority right.

The necessity of a protection of states' interests as well as of those of groups has only become relevant with the abolition of the unanimity principle in favour of the majority rule. Under the reign of the unanimity principle there was no need for mechanisms to safeguard individual states' interests since every state had the possibility to protect itself through its negative voting right. However, the unanimity principle disguises the differences which exist between states in respect of their interests and makes it impossible to truly articulate state community interests. Hence, shifting the focus of international law on the protection of community interests with its procedural consequence namely the shift towards majority decisions was unavoidable and is the prerequisite for a progressive development of international law not only providing for the coordination

⁷ See J. Delbrück, "On Article 24", 397 et seq., in: B. Simma (ed.), *The Charter of the United Nations. A Commentary*, 1994.

⁸ The Security Council is a political organ, operating in a political context. Thus it has a range of discretion of when and how to act. This seems to be the underlying philosophy of the Secretary-General's report on Libya. In his report to the Security Council of 3 March 1992 he concluded: "From the foregoing, it will be seen that while resolution 731 (1992) has not yet been complied with, there has been a certain evolution in the position of Libyan authorities. ... The Security Council may wish to consider this in deciding on its future course of action" (Doc. S/23672, at page 3, para. 6; see in this respect M. Reisman, "The Constitutional Crisis in the United Nations", *AJIL* 87 (1993), 83 (88 et seq.).

of states activities but requesting the cooperation of states on the basis of agreed common values.

The necessity of protecting individual states' interests through an appropriate structure of the decision-making process of international organizations has also been caused by the different functions international organizations perform in international relations. International relations are to a declining degree formed by bilateral negotiations; negotiations are undertaken rather on universal or regional multilateral levels and international organizations represent the appropriate fora for such negotiations. Besides, international organizations, particularly those in the economic and financial sector, take up functions concerning coordination and programming of economic and financial activities of states or even, such as the Security Council, may take decisions binding upon all member states. To the extent that the individual state loses its possibility to voice its interests directly vis-à-vis other states and is rather embedded in the network of multilateral negotiations, a growing necessity emerges to protect the rights of individual states and their particular interests. The structuring of an organizational decision-making process has always been seen under the point of view of protecting rights and interests; this necessity increases when an international organization has the right to take decisions which are binding upon member states. Hence, a direct link exists between the structure of the decision-making process and the functions of the respective international organizations. In cases where international organizations have only recommendatory functions the necessity of protecting particular states' interests is less evident although such recommendations play an increasing role in shaping international relations.

As far as the interdependence of functions and the structure of the decision-making procedure of an international organization are concerned, one further element has to be taken into consideration. Very often the functions of international organizations are described in rather general terms. Nevertheless, such functions serve as a basis for decisions of such organizations exercising discretionary power as to whether or how to act. A case in point is the interpretation of Article 39 of the United Nations Charter by the Security Council. According to the policy pursued by the Security Council not only the possibility of an international conflict, but also grave and persistent violations of human rights may be qualified as threat to international peace.⁹ Such interpretation of the mandate is cov-

⁹ B. Simma, "Does the UN Charter provide an Adequate Legal Basis for Individual or Collective Responses to Violations of Obligations Erga Omnes?", in: J. Delbrück (ed.), *The Future of International Law Enforcement. New Scenarios — New Law. Proceedings of an International Symposium of the Kiel Institute of International Law, March 25 to 27,*

ered by the functions assigned to the Security Council through Chapter VII which is "open-textured".¹⁰ A threat to peace is and was designed to be subjectively determined.¹¹ Further, by using such functions, the Security Council develops, as was intended, new law. Generally speaking, vesting international organizations with discretionary functions represents a mechanism for progressively developing international law. In general, states are only bound by new international law by consent, which serves as a mechanism protecting their interests. If such law, however, is developed by a limited membership organ and on the basis of the majority rule, the protection of such interests is to be achieved through mechanisms inherent in the structure of the decision-making procedure.

Attempting to protect their interests vis-à-vis decisions of international organizations in an increasing number of fields, states have introduced several mechanisms in international law. Such mechanisms include the introduction of qualified majorities, veto rights, over-representation of a regional group or an interest group in a body with limited membership, the attribution of permanent seats for particular states, the voting in chambers or groups and the consensus principle. All these mechanisms alike protect the interests or rights of states or groups by vesting them with a decision-making power which exceeds the numerical impact these states would have otherwise. As a consequence, the decision-making process of international organizations which make use of such a system is not based on the number of states, but rather on the weighting of interests.

II. Structural Elements in the Decision-Making Procedure

A common mechanism to protect the interests of potentially affected states is the requirement of qualified majorities. As far as international organizations take decisions on substance by majority, in general, a two-thirds

1992; 1993, 125 et seq.; H. Gading, *Der Schutz grundlegender Menschenrechte durch militärische Maßnahmen des Sicherheitsrats — das Ende staatlicher Souveränität?*, 1996, 67 et seq., (180); see also T.M. Franck, "The Security Council and "Threats to the Peace". Some Remarks on Remarkable Recent Developments", in: P.M. Dupuy (ed.), *Le Développement du Rôle du Conseil de Sécurité*, Académie de Droit International, 1993, 83 et seq.; J. Mayall, "Introduction", in: J. Mayall (ed.), *The New Interventionism 1991–1994: United Nations experience in Cambodia, former Yugoslavia and Somalia*, 1996, 2 et seq.

¹⁰ H.L.A. Hart, *The Concept of Law*, 1961, 120.

¹¹ Reisman, see note 8, 93.

majority is required. However, occasionally higher or lower majorities are necessary for reaching decisions. E.g., the statute of the IMF¹² requires for certain fundamental decisions a majority of 85 per cent, which gives the United States a veto right. The combination of an extreme majority with weighted votes thus results in a far-reaching form of protecting individual states' interests.

In the context of the law of the sea the same mechanism is used; it is, however, further refined. UNCLOS distinguishes for the Council of the International Sea-Bed Authority between different categories of issues, each with a separate decision-making system. The original system was significantly modified by the Implementation Agreement which transformed the voting procedure into a system based upon chambers, the term "chamber" explicitly used in Section 3 para. 9 of the Implementation Agreement.¹³ UNCLOS as modified by the Implementation Agreement in 1994, identifies at least three different categories of decisions in the Council for which particular decision-making procedures exist. However, all efforts to reach a decision by consensus have to be exhausted before the Council may proceed to vote. Thus, consensus is the principal mechanism by which decisions are to be taken.¹⁴ This means that at first all efforts have to be exhausted to accommodate all major interests. For the adoption of decisions falling within the first category, namely questions of procedures, the rule of the simple majority of members present and voting applies.¹⁵

¹² Articles of Agreement of the IMF, UNTS Vol. 2 No. 20. Amended effective 11 November 1992, by modifications approved by the Board of Governors in Resolution No.45-3, Article XIX Sec.7 lit.b.

¹³ Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, *ILM* 33 (1994), 1313 et seq.; see R. Wolfrum, "The Decision-Making Process According to Sec. 3 of the Annex to the Implementation Agreement: A Model to be Followed for Other International Organizations?", *ZaöRV* 55 (1995), 310 (312 et seq.).

¹⁴ The Implementation Agreement by emphasizing the necessity to reach a consensus in fact returns to the system applied by the Third United Nations Conference on the Law of the Sea; see T.T.B. Koh/S. Jayakumar, "Negotiating Process of the Third United Nations Conference on the Law of the Sea", in: M. Nordquist (ed.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. I, 1985, 29 (99).

¹⁵ Article 161 para. 8 lit.a UNCLOS in connection with Section 3 para. 5 of the Annex to the Implementation Agreement. The request for Advisory Opinions (Article 191 UNCLOS) or the establishment of subsidiary organs (Article 162 para. 2 lit.d UNCLOS), mostly qualified as mere procedural questions, are considered questions of substance in the Convention and require higher majorities, accordingly.

Decisions on all matters belonging to the second category of questions, namely questions of substance, are taken by a two-thirds majority of members present and voting, provided that such majority includes a majority of the members of the Council. The Implementation Agreement requires that such decisions are not opposed by a majority in any one of the chambers.¹⁶ The third category embraces questions to be decided upon by consensus.¹⁷

The chambers which are important for decisions under the second category are constituted by the three interest groups of states, consumers respectively importers, investors and exporters. The developing countries under the fourth interest group and from the 18 members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole are treated as a single chamber for the purpose of voting.

This chambered voting system ensures that three consumers or three investors or four exporters can block substantive decisions in the Council. The majority developing countries need to block such decisions may be higher depending upon their representation under the respective categories in the Council.¹⁸ States elected to the Council, not being developing countries or not belonging to a specific interest group, have no equivalent

¹⁶ Section 3 para. 5, Annex to the Implementation Agreement.

¹⁷ The Convention on the Law of the Sea is the first international agreement containing a definition of consensus (Article 161 para. 8 lit.e), which is described as the "absence of any formal objection". Definitions of consensus may be found in other instruments such as the Final Declaration of the Preparatory Meeting for the Conference on International Cooperation where it is stated that consensus is the principle "according to which decisions and recommendations are adopted when the chair has established that no member delegation has made any objections" (Doc. A/C.2/299 of 27 October 1975) or the recommendation annexed to the provisional rules of procedure of the World Population Conference, where it is stated that consensus is understood to mean "according to United Nations Practice, a general agreement without a vote, but not necessarily unanimity" (Doc. E/CONF.60/2); see E. Suy, "The Meaning of Consensus in Multilateral Diplomacy", in: R.J. Akkerman/P.J. van Krieken/C.O. Pannenberg (eds), *Declarations on Principles — a Quest for Universal Peace*, 1977, 259 et seq.; B.B. Ferencz, *New Legal Foundations for Global Survival: Security Through the Security Council*, 1994, 195 et seq.; F.H. Paolillo, "The Institutional Arrangements for the International Sea-Bed and their Impact on the Evolution of International Organizations", *RdC* 188 (1984), 135 et seq., (236).

¹⁸ The Message from the President of the United States to the Senate, 103rd Congress, 2nd Sess., Treaty Doc. 103-139, 69 speaks of 11.

possibility to block decisions on the question of substance unless they join in the 13 votes needed to block an overall two-thirds majority in the Council.

The system shows the following: The decision-making procedure features the protection of states representing particular interests rather than groups formed by geographical considerations. It does not provide for a veto of a single state, but, however, for a veto of a group of states. These interest groups will, however, be only in a position to exhaust their possibilities if they can agree amongst themselves.

It is evident that the protective function of such qualified majorities is of a negative nature, only, since the respective minority has the possibility to block certain decisions, despite its numerical inferiority. This is not satisfactory where particular interest groups are interested in positive decisions, such as the group of importers as identified in Article 161 para. 1 lit. a of UNCLOS which is interested in the adoption of plans of work in deep sea-bed mining. Within the law of the sea context this problem has been solved by ensuring the automatic approval of such plans of work which fulfil certain requirements.¹⁹ Other international organizations have developed different mechanisms. They all have the result that the taking of decisions is disassociated from the numerical strength and based on different criteria reflecting their economic or financial impact in the organization. In the Board of Governors of the IBRD, for example, certain states being in a numerically inferior position may theoretically enforce the adoption of positive decisions on the basis of their voting power by making use of the fact that such decisions require a simple majority only.²⁰ Hence, the combination of the principle of weighted voting with a reduction of the votes needed for decisions ensures that numerically few but financially dominant states may govern the decision-making of an organization.

The system of weighted voting is applied in the decision-making process of the IBRD, the IMF and in most of the Regional Development Banks. Within the Board of Governors of the IBRD, which makes the fundamental decisions, every single member state is represented by a Governor.²¹ In voting each Governor controls 250 votes "plus one addi-

¹⁹ Paolillo, see note 17, 135 et seq., 237, rightly points out that the automatic approval was only accepted from developing countries under the condition that it did not embrace a production authorization.

²⁰ See Article V Section 3 lit. b Articles of Agreement of the International Bank for Reconstruction and Development, UNTS Vol. 2 No. 20 (b), as amended 16 February 1989.

²¹ Article V Section 2 lit. a.

tional vote for each share of stocks held".²² In order to conduct business a quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two thirds of the total voting power.²³ The same system applies to the Executive Directors. Five are appointed by members having the largest number of shares, the rest is chosen by the Governors of the remaining members.²⁴

The result of this system is that, e.g. six of the members of the World Bank govern more than 50 per cent of the votes in the Board of Governors. The United States alone have 17.2 per cent of the total votes, in comparison to the Maldives, e.g. which have only 0.08 per cent of the votes. Thus the six industrialized countries, namely United States, United Kingdom, Germany, Japan, France and Canada, are in a position to dominate the decision-making process in the Board of Governors of the IBRD, since decisions taken there are decided by simple majority.

The same system applies to the IMF. Each member has 250 votes plus one additional vote for each part of its quota equivalent to one hundred thousand special drawing rights.²⁵ In general, decisions require a simple majority of votes cast.²⁶ Specific decisions, such as the determination of charges for the use of the Fund's facilities, call for a majority of 70 per cent of the total voting power;²⁷ other decisions even require a majority of 85 per cent.²⁸ The 85 per cent rule enables the United States to veto any decision requiring such majority. Equally groups of industrial states, such as the European states, have the same possibility. As far as decisions are taken by simple majority in these organizations, the weighted voting works in favour of the above-mentioned economically strong, capital-exporting countries and to the detriment of other states. However, since most of the decisions in the IBRD as well as in the IMF are taken without formal voting, which means by consensus, the voting power of these states does not have its full bearing.

The precedent of the World Bank is followed, at least in principle, as far as the weighted voting is concerned by most of the Regional Development Banks — the African Development Bank,²⁹ the Inter-American

22 Article V Section 3 lit. a.

23 Article V Section 2 lit. d.

24 Article V Section 4 lit. b.

25 Article XII Sec. 5 lit. a Articles of Agreement, see note 12.

26 Article XII Sec. 5 lit. c.

27 Article XII Sec. 6 lit. d.

28 Article XIX Sec. 7 lit. b.

29 Agreement establishing the African Development Bank, 4 August 1963; UNTS Vol. 510 No.7408. As amended 1982, following entry in force of resolution 05-79 of the Board of Governors, Article 35.

Development Bank,³⁰ the Asian Development Bank,³¹ and the Caribbean Development Bank³² as well as the Development Fund established by the OPEC states.³³ This is quite remarkable since the developing countries are in general opposed to any form of weighted voting which they look upon as a violation of state equality. However, as far as the Development Fund of the OPEC states is concerned, the connection between voting power and financial input is less significant than in the IBRD.³⁴ The inter-relationship between voting rights and financial input differs. In the Inter-American Development Bank 93 per cent of the votes are connected to the financial input; the United States dispose of more than 35 per cent of the votes which gives them a blocking power. In the Asian Development Bank the total voting power of each member state is made up of basic votes which are distributed equally among all members, and proportional votes depending upon the member's subscription to the capital stock of the Bank. Member states are organized in constituencies represented in the Board of Directors through the directors and alternates. This introduces an element of chambers as in the Council of the International Sea-Bed Authority. This approach seems to gain further ground since the Global Environmental Facility also establishes constituencies.³⁵ Also the African Development Bank, which includes only developing countries from Africa, introduced the mechanism of weighted voting. According to this statute, each member shall have 625 votes and, in addition, one vote for each share of the capital stock of the bank held by that member.³⁶ The only example amongst the regional banks without weighted voting is the Central American Bank for Economic Integration³⁷ which requires an equal financial input of all of its members.

³⁰ Agreement establishing the Inter-American Development Bank, 8 April 1959; UNTS Vol. 389 No. 5593, as amended 1995, Article VIII Sec. 4.

³¹ Agreement establishing the Asian Development Bank, 4 December 1965; UNTS Vol. 571 No. 8303.

³² Agreement establishing the Caribbean Development Bank, with Protocol to provide for procedure for amendment of Article 36 of the Agreement, done at Jamaica 18 October 1969, (Entered into force 26.1.1970), Article 32.

³³ Article 5.03 of the Agreement establishing the OPEC Fund for International Development, as revised 27 May 1980 and Article 6 of the Rules of Procedure of the Ministerial Council.

³⁴ Article 5.03 of the Agreement establishing the OPEC Fund for International Development.

³⁵ See Annex E of the Instrument for the Establishment of the Restructured Global Environment Facility, *ILM* 33 (1994), 1283 et seq.

³⁶ Article 35 Sec. 1, Articles of Agreement, see note 29.

³⁷ UNTS Vol. 455 No. 6544.

Several of the aforementioned organizations distribute so-called basic votes. They reflect the principle of state equality. In the Inter-American Development Bank only seven per cent of the totality of votes are distributed as basic votes, in the IBRD and the IMF 10 per cent and in the Asian Development Bank at least 20 per cent. This percentage is a significant indicator of the degree to which the decision-making process of such international financial organizations is determined by interests or is structured in accordance with the principle of state equality.

One further element of protecting particular states' interests is endorsing them with the right of veto.³⁸ Technically the veto may be regarded as a form of weighted voting since the negative vote of one particular state carries more weight than the affirmative vote of the majority.³⁹ The right of veto of the permanent members of the Security Council constitutes a significant exception to the principle of sovereign equality of states. This exception was justified during the negotiations of the United Nations Charter because of the political and military predominance of the permanent members after World War II and because of the functioning of the peace-keeping system depending upon the support of these states. The composition of the Security Council and especially the privileges attributed to its permanent members gain special significance through the powers of the Security Council. It is based upon the pragmatic consideration that in practice certain states, for the benefit of the community of states at large, have to carry the main burden for the maintenance of international peace and security and thus shall play a decisive role in any relevant decision-making. The increase in membership of the United Nations has already led to the demand of increasing the membership of the Security Council. In response thereto in 1963 four non-permanent seats were added to the already existing six.⁴⁰ In theory, this expansion gave the non-aligned states as a group a veto power, thus putting this group on an equal level with each of the permanent members.

The further increase in membership and, in particular, the expanded activities of the Security Council since the end of the Cold War have reinforced the demands for a restructuring of the Security Council. The

³⁸ That states use such power in their national interest was for example evident when China vetoed S/RES/1094 (1997) of 20 January 1997 for the reason that Guatemala had close ties with Taiwan — cf. the article of C. Walter — in this issue — note 164.

³⁹ As to the veto system of the Security Council see B. Simma/S. Brunner, "On Article 27", in: Simma, see note 7, 434 et seq.; R. Wolfrum, "Voting and Decision-Making", in: R. Wolfrum (ed.), *United Nations: Law, Politics and Practice*, 1400 et seq., Vol.2, 1995.

⁴⁰ A/RES/1991 A (XVIII) of 17 December 1963.

decision-making in the Security Council, including the question of the veto, is an important element in the discussion of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council established by A/RES/48/26 of 3 December 1993.⁴¹ Several proposals were circulated on this issue. Some of them suggested that the right to veto should be curtailed and rationalized and that veto power should only apply to action taken under Chapter VII of the Charter.⁴² Other states, however, objected to proposals on any limitation in the scope and use of the veto.

III. Structural Elements in the Composition of International Organizations

Efficient protection of states' interests only concerns the decision-making procedure. A means not only to safeguard affected states' interests but also to encourage these states' participation is to form function- and interest-related organs in the framework of international organizations. Whether such structures have always been introduced adequately is a question which deserves further consideration taking into account the interests at stake and the legitimacy of their protection.

Traditionally, limited membership organs are composed on the basis of the equitable geographical distribution principle. Although the basis of calculation differs widely, such an approach is meant to strike a balance between the various geographical regions. It is the underlying idea that the share each region receives depends upon the number of states which exist in the respective region. To that extent this approach is based upon the principle of equality of states. Occasionally this approach has been justified by referring to the need to introduce the system of democracy into international relations. However, this starting point is misleading. The principle of equality of states neglecting the different size of populations does not strive for democracy. On the contrary, under the principle of equality of states the people in small states theoretically have more influ-

⁴¹ See for example Doc.A/50/47 and Add. 1. This and the following proposals are dealt with in detail in the article of I. Winkelmann, in this issue. See also the latest proposal Doc.A/AC.247/1997/CRP.1 of 20 March 1997.

⁴² See proposal by the Movement of the Non-Aligned Countries, Doc.A/50/47/Add. 1, Annex VII; further suggestions for a limitation of the right to veto were put forward by Mexico (Annex V) and Uruguay (Annex VII).

ence on the shaping of international relations than those in highly populated states.

The principle of equitable geographical distribution is e.g. applied to the composition of the ECOSOC⁴³ and the Council of the FAO.⁴⁴ In other cases, however, it is coupled with a mechanism to protect particular interests. This is true for the IAEA⁴⁵ and the ICAO,⁴⁶ amongst others.

The system applied to the Board of Governors of IAEA is of particular interest since it recognizes specific interests within a regional context. In that respect it differs from the ones which only include or give preference to the states having the largest interest in a given subject matter. According to the amendments of the Statute in 1984 of the 35 members of the Board of Governors 13 are designated by the Board itself, the others are elected by the General Conference.⁴⁷ The Board is required to designate the 10 members most advanced in the technology of atomic energy, including the production of source materials, and the member most advanced in nuclear technology in each of the following areas not represented by these ten: North America, Latin America, Western Europe, Eastern Europe, Africa, the Middle East and South Asia, South East Asia and the Pacific, and the Far East. The amendment has still not been ratified. But in 1984 it was agreed that the Board would start acting as if it had entered into force.

The composition of the Industrial Development Board of UNIDO⁴⁸ and the structure of its decision-making procedure provides a further example of protecting regional interests. The Industrial Development Board consists of 53 members of the organization, elected by the General Conference, of which 33 are to be from developing countries, 15 from the developed market economy countries and five from the countries in list D

⁴³ See A/RES/2847 (XXVI) of 20 December 1971.

⁴⁴ UNTS Vol. 1 No. 10; for the purpose of Council elections, the membership of FAO is divided into 7 regional groups, each with a fixed number of seats. Africa — 48 members, 12 seats; Asia — 20 members, 9 seats; Europe — 40 members, 10 seats; Latin America and Caribbean — 33 members, 9 seats; Near East — 22 members, 6 seats; North America — 2 members, 2 seats; South West Pacific — 9 members, 1 seat. North America is clearly over-represented.

⁴⁵ UNTS Vol. 276 No. 3988, Amendments Vol. 471 No.3988; Vol.1082 No.3988.

⁴⁶ UNTS Vol. 15 No. 102.

⁴⁷ Each region has a fixed quota.

⁴⁸ A/RES/2152 (XXI) of 17 November 1966. UNIDO has undergone a major reform process within the last three years, concerning its services and programmes. The new organizational structure, which left the above mentioned decision-making procedure aside, took effect on 1 March 1996.

of UNIDO's constitution. An over-representation of states from list B and D of the constitution is evident when comparing how many states belong to each category. Since most of the decisions on substance in the Board require a two-thirds majority, neither can any category alone take a decision, nor can any category alone block a decision. This system in effect provides for a parity amongst groups.

The composition of limited membership organs on the basis of regional groups presumes that states from the same region are likely to pursue similar or at least less disparate interests. This assumption is not necessarily correct any more. In particular in financial or economically oriented organizations the regional grouping has been replaced by financial or other considerations. Such considerations may supersede or supplement regional considerations.

One mechanism of securing the interests of particular states or groups thereof is the establishment of limited membership organs in which certain states are over-represented. The Security Council is such a case in question. Of the ten non-permanent members five are elected from African and Asian states, one from Eastern European, two from Latin American and Caribbean and two from Western European and other states. Taking the composition of the Security Council as a whole, or even the distribution of the ten seats of non-permanent members, the group of Western European and other states is over-represented compared with the composition of the General Assembly. On the basis of such an assessment the Open-ended Working Group has reached the agreement that the Security Council should be expanded ensuring its representative character. However, views differed as to whether only the number of non-permanent seats should be expanded⁴⁹ or the number of permanent seats, too.⁵⁰ It has been pointed out⁵¹ that enlarging the number of permanent seats of the Security Council may have a cascade effect on the composition of other United Nations bodies.

It has in fact to be taken into consideration that the present permanent members are over-represented in most of the United Nations organs or fora. This is particularly the case with respect to the ILC,⁵² the Committee

⁴⁹ Proposal by Italy, Mexico and Turkey (Doc.A/49/965) and by Italy (Doc.A/50/47, Annex IX).

⁵⁰ Proposals by the African states (Doc.A/50/47, Annex IV), Monaco (Doc.A/50/47, Annex XI), Australia (Doc.A/50/47, Annex XIII), Germany (Doc.A/50/47, Annex XIV) and by Austria, Belgium, the Czech Republic, Estonia, Hungary, Ireland, Slovenia (Doc.A/49/965, page 68).

⁵¹ By Argentina (Doc.A/49/965, page 52).

⁵² A/RES/36/39 of 18 November 1981.

on the Peaceful Uses of Outer Space,⁵³ the Special Committee on Peace-Keeping Operations,⁵⁴ the Committee on Relations with the Host Country,⁵⁵ the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.⁵⁶ Although the statute of the ICJ⁵⁷ does not directly so specify, the five permanent members of the Security Council have de facto permanently sent members to the Court.

In the executive organs of the Common Fund for Commodities⁵⁸ and of the IFAD,⁵⁹ among others, the representation of specific financial or economic interests focuses more prominently.⁶⁰ Other, more recent examples are the Executive Boards of the UNDP/UNFPA,⁶¹ UNICEF⁶² and, more clearly, the Global Environment Facility⁶³ and the Council of the International Sea-Bed Authority.⁶⁴

The earliest example for such a protection of specific, namely financial interests was the composition of the directory of the IBRD and the IMF. In both organizations the five states having the largest number of shares have the right to appoint one director each. The others are elected by the Governors of the remaining members. As a consequence thereof, 11 of the directors come from industrialized countries and only 9 from developing countries. Such representation of particular states or groups is enhanced if the limited membership organ has its own powers vis-à-vis the plenary organ.⁶⁵ Such system was further refined in the subsequent financial

53 A/RES/1472 (XIV) of 12 December 1959, A/RES/1721 (XVI) of 20 December 1961.

54 A/RES/2006 (XIX) of 18 February 1965.

55 A/RES/2819 (XXVI) of 15 December 1971.

56 A/RES/3499 (XXX) of 15 December 1975.

57 UNCIO Vol. XV, 355.

58 See Agreement Establishing the Common Fund for Commodities, Doc. TD/IPC/CF/CONF.24 of 27 June 1980.

59 Doc.A/CONF.73/15 of 13 June 1976.

60 For a general evaluation of international organizations in this respect see W.J. Feld/P.S. Jordan, *International Organizations: A Comparative Approach*, 2nd edition, 1988.

61 See A/RES/48/162 of 20 December 1993, Annex I.

62 A/RES/48/162 of 20 December 1993.

63 Instrument for the Establishment of the Restructured Global Environment Facility, *ILM* 33 (1994), 1283 et seq.

64 The legislative history of Article 161 is described by K.E. Yost, "The International Sea-Bed Authority Decision-Making Process: Does it give a Proportionate Voice to the Participant's Interests in Deep-Sea Mining?", *San Diego L. Rev.* 20 (1983), 659 et seq.

65 This is not the case in the IBRD and in the IMF. The reason for that is

organizations which, however, altered the impact the weighted voting system had by combining it with the protection of groups.

The structure of the decision-making procedure in the Governing Council of the Common Fund for Commodities⁶⁶ is based upon the system of weighted voting and thus follows the example of IBRD and IMF. Each member disposes of 150 basic votes; an additional number of votes has to be added in accordance with the amount of a state's directly contributed capital. The votes of each member state are spelled out in Schedule D of the Agreement. The allocation of votes to the individual member depends upon its share of directly contributed capital compared to the share of the capital provided by the respective groups of states. The totality of votes is distributed amongst the various groups of states. Forty seven per cent of the votes are allocated to the Group of 77, forty two per cent to industrialized states, eight per cent to Eastern Europe and three per cent to China. For the most important decisions of the fund, particularly those having financial implications for member states, the agreement requires a three-quarters majority, other decisions are taken by a two-thirds or simple majority. This system has the effect that the accumulation of votes with a particular state is detrimental to the other states of the same group.

The organizational structure of IFAD⁶⁷ and in particular its decision-making procedure is even more influenced by the grouping of member states. The original members of IFAD (Article 3 Sec.2) are separated into three categories: OECD countries (Category I); OPEC states (Category II) and Developing Countries (Category III). The composition of these

that the interests of the investing states have been already secured in the plenary organ and, accordingly, there was no necessity for further safeguards within the organizational structure.

A different example can be taken from the statute of the European Investment Bank according to which the directors alone have the decision concerning credit and security. The reason for that is that in the Governing Council of the European Investment Bank all states are represented with equal vote, whereas the weighted voting is applied only for the directors.

⁶⁶ Doc.TD/IPC/CF/CONF.24 of 27 June 1980.

⁶⁷ See Agreement establishing the IFAD adopted on 13 June 1976 Doc. A/CONF.73/15 of 13 June 1976 — with amendment entered into force 11 March 1987. IFAD was established in reaction to the world food crisis in 1972. The initiative came from the 4th Mtg. of the Non-Aligned Countries. The main objective of the organization is to mobilize additional financial resources on concessional terms for agricultural development in developing member states, see E. Savignon, "Le Fonds International de Développement", *AFDI* 24 (1978), 660 et seq.

groups does not fully reflect the traditional pattern. The voting system applicable to the Governing Council and the Executive Board attempts to achieve a balance amongst these groups rather than amongst member states.

In the Governing Council of IFAD 1,800 votes are distributed equally among the categories. Within the groups, the 600 votes are distributed in a different way. In category I, 17.5 per cent of the votes (105 out of 600) are equally split among the members, thus following the principle of equality of states. The other 82.5 per cent are distributed among the members of that category in accordance with the respective financial input (Article 6 Sec.3-Schedule II). In consequence thereof few member states control more than half of the votes of this category. The members of Category I elect six delegates as Executive Directors who control the same number of votes as they were elected with. Thus, the weighted voting system applies to the Board, too. The voting power in Category II is distributed in a similar way except that 25 per cent of the votes are divided equally amongst the members of this category. The remaining 75 per cent are distributed in proportion to the countries' capital assets (Schedule II). In Category III a different system prevails; the 600 votes are distributed equally amongst its members (Schedule II). Their Executive Directors are selected according to regional criteria; each of them has 100 votes.⁶⁸ The voting in the Governing Council and in the Executive Board does not take place in groups but by individual members (Rules of Procedure of the Governing Council Rule 33 para.2). Although decisions in the Governing Council (with only few exceptions) only require a simple majority, a two-thirds quorum is needed, as well as a simple majority within each category (Article 6 Sec.2). In the Executive Board three-fifths of the votes are necessary for ordinary decisions and at least half of all the votes must be cast (Article 6 Sec.6). This procedure enables each category to protect its group interests, assuming there is a common ground within that group. Further, member states with major capital assets may be in a position to protect their interests within their category whereas protecting individual states' interests in Category III is difficult due to the sharing of 600 votes amongst many members.

In effect the decision-making system of IFAD provides for parity amongst groups and for a group veto. Further it encourages the cooperation among groups.

⁶⁸ P.H. Frankenfeld, "IFAD — International Fund for Agricultural Development", in: Wolfrum, see note 39, 694 et seq. (696), Vol.1.

The emphasis on groups of states is further increased in the structure of the Global Environment Facility.⁶⁹ The Facility is an innovation in international relations; its rationale is to provide financial support for activities of developing countries that promote the protection of the global environment. It is based upon the idea that present polluters of the global environment, namely industrialized states, by providing funds, encourage the cooperation of future polluters to cooperate in the promotion of common interests concerning the global environment.⁷⁰ The new structure of the Facility⁷¹ consists of an Assembly, a Council and a Secretariat. The Council is central in this structure. Its composition and decision-making procedures combine various elements of decision-making arrangements in international organizations, particularly the World Bank Group. The Council is constituency-based; its members represent constituency groupings.⁷² 18 constituencies are composed of recipient countries of which 16 are developing country groupings and two are the transitional economy countries. 14 constituencies are non-recipient (developed countries). The

⁶⁹ See Instrument for the Establishment of the Restructured Global Environment Facility, *ILM* 33 (1994), 1283 et seq.

⁷⁰ J.C. Dernbach, "The Global Environment Facility. Financing the Treaty Obligations of Developing Nations", *Env'tl. L. Rep.* 23 (1993), 10124 et seq.; A. Jordan/J. Workman, "Additional Funds, Incremental Costs and the Global Environment", *Revue of the European Community and International Environmental Law* 3 (1994), 81 et seq.; S.A. Silard, "The Global Environment Facility: A New Development in International Law and Organization", *Geo. Wash. J. Int'l L. & Econ.* 28 (1995), 607 et seq. (609); V. Shiva, "Global Environment Facility: Perpetuating Non-democratic Decision-making", *Third World Economics* 31 March 1993, 17 et seq.; Lin Gan, "The Making of the Global Environmental Facility: An Actor's Perspective", *Global Environmental Change* 3 (1993), 256 et seq.; D. Airman, "The Global Environment Facility: Haunted by the Shadow of the Future", in: R.O. Keohane/M.A. Levy (eds), *Institutions for Environmental Aid: Pitfalls and Promise*, 1996, 55 et seq.

⁷¹ As to the initial structure see Silard, above, 635 et seq.; relating to the new structure see P.H. Sand, "The Potential Impact of the Global Environment Facility of the World Bank, UNDP and UNEP", in: R. Wolfrum (ed.), *Enforcing Environmental Standards: Economic Mechanisms as Viable Means?*, 1996; H. Sjöberg, *From Idea to Reality: The Creation of the Global Environment Facility*, GEF Working Paper No. 10, 1994.

⁷² III. Article 16. The respective provision reads: "The Council shall consist of 32 Members, representing constituency groupings formulated and distributed taking into account the need for balanced and equitable representation of all Participants and giving due weight to the funding of all donors."

seats of the recipient countries are distributed in accordance with the principle of equitable geographic distribution among the regions, referred to as constituencies, namely Africa having six, Asia and Pacific six, Latin America and Caribbean four and Central and Eastern Europe and Former Soviet Union two seats. These constituencies establish amongst themselves the principles on how to allocate these seats. The non-recipient constituencies will be formed through a process of consultation among interested participants, the grouping of the states will be guided by total contributions.

Different from the executive directors of the IBRD, each member of the Council may separately cast the votes of each participant in the constituency represented (Article 25 lit. c(ii)). However, voting is intended to be the exception as decisions are to be taken by consensus (Article 25 lit.b).

Although group-based, the structure as well as the decision-making procedure of the Council reveals individual rather than group interests. This reflects that the financial functions of the Facility are exercised towards states rather than groups.

International Commodity Agreements represent a model for protecting economic interests of particular groups of states. They differentiate between exporting and importing members and provide for a parity among those two groups.⁷³ According to Article 10 of the International Cocoa Agreement, for example, each of the two groups holds 1,000 votes in the Council. Votes are distributed within the exporting group by attributing five votes to each member and in proportion to the average volume of the respective exports of cocoa in the preceding three years. Within the importing group, votes are, in general, distributed equally. In the International Natural Rubber Agreement the distribution of votes in the Council mainly follows the average amount of export or import, respectively. Both agreements provide for most decisions being taken by a simple majority in both categories.⁷⁴

The Council of the International Sea-Bed Authority (consisting of 36 members) also protects groups' rather than individual states' interests. This is a reflection of the functions of the Council of the International Sea-Bed Authority which administers a common space where individual

⁷³ See, for example, Article 3 of the International Cocoa Agreement, 1993, Doc.TD/COCOA.8/17/Rev. 1 of 16 July 1993 or Article 4 of the International Natural Rubber Agreement, 1995, Doc.TD/RUBBER.3/11/Rev. 1.

⁷⁴ Article 12 para. 3 of the International Cocoa Agreement provides for a particular procedure when a two-thirds majority is required and the decision is blocked by one member.

states' interests have to recede into the background. Section 3 para. 15 of the Annex to the Implementation Agreement⁷⁵ identifies four different interest groups which have to be represented in the Council. Four members must belong to those states parties which "have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area". Among this consumer group one state from the Eastern European region having the largest economy in that region in terms of gross domestic product and the state, on the date of the entry into force of the Convention, having the largest economy in terms of gross domestic product have a guaranteed seat if such states wish to be represented in this group. The Implementation Agreement has changed Article 161 para. 1 lit.a UNCLOS with a view to accommodating the interests of the United States and of Russia. By referring to the "State, on the date of entry into force of the Convention" instead of to the "largest consumer", the United States now has a guaranteed seat in the Council. Russia's seat is equally protected under the notion of the "largest economy" in the Eastern European region. The structuring of this group is clearly interest oriented. However, it differs from the example of the IBRD, UNIDO or the Global Environment Facility since the seat of the state with the largest economy does not allow for adjustments responding to changes in the economic development of states. In that respect the composition of the Council of the Authority slightly resembles the composition of the Security Council as far as permanent membership is concerned.

Four further seats of the Council are attributed to the eight states parties having made "the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals".⁷⁶ Another four members of the Council represent those states parties which are major net exporters of the categories of minerals to be derived from the Area. The group has to include "at least two developing states whose exports of such minerals have a substantial bearing upon their economies". The fourth interest group consists of six developing states parties representing special interests.⁷⁷ The other half of the members of the Council

⁷⁵ Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, *ILM* 33 (1994), 1313 et seq.(1323).

⁷⁶ Under Article 161 para. 1 lit.b UNCLOS one further seat was guaranteed to the states of the Eastern European region. This has been omitted by the Implementation Agreement.

⁷⁷ These special interests include large populations, nations which are land-locked or have short coastlines, major importers of the minerals to be

are not elected so as to represent special interests, but according to the principle of equitable geographical representation. However, none of the 18 seats under this category have to be distributed according to this principle, instead through the distribution of these seats an equitable geographical distribution of the seats in the Council as a whole shall be achieved. The application of this principle has the result that an over-representation of a group under one or all special interest categories lowers the share of states from the same region under the principle of equitable geographical distribution. Section 3 para. 15 lit.e of the Annex to the Implementation Agreement as well as Article 161 para. 1 lit.e UNCLOS, however, contain a safeguard clause in this respect. Each geographical region has at least one guaranteed seat under this rule.⁷⁸

Further safeguards exist ensuring that the interest groups are autonomous in deciding who will represent them in the Council. Such a safeguard is provided for in the Convention. According to Article 160 para. 2 lit.a UNCLOS members of the Council are elected by the Assembly, Article 161 para. 2 lit.c further stipulates that "each group of States Parties"⁷⁹ to be represented in the Council is represented by those members, if any, which are nominated by that group." Section 3 para. 10 of the Implementation Agreement has further specified this provision with a view to strengthening the autonomy of the groups of states concerning their representation in the Council.⁸⁰ The Assembly may only confirm the proposals made by the respective groups of the states parties.⁸¹

derived from the Area, potential producers of such minerals, and least developed states.

⁷⁸ The geographical regions shall be Africa, Asia, Eastern Europe, Latin America and Caribbean and Western Europe and Others.

⁷⁹ The term "group of States Parties" as used in Part XI of the United Nations Convention on the Law of the Sea and in Section 3 para. 10 of the Implementation Agreement embraces the interest groups referred to in Section 3 para. 15 (a) to (d) of the Annex to the Implementation Agreement as well as the regional groups listed in Section 3 para. 15 (e). Hence, for the determination of the electorate and the eligible states parties the exact definition of the interest groups is of utmost importance. Since the definition of the interest groups given in the Convention as well as in the Implementation Agreement is all but precise the Implementation Agreement mandates the Assembly to establish lists of countries fulfilling the criteria for membership in the interest groups.

⁸⁰ Each group shall nominate as many candidates as the number of seats required to be filled. If there are more potential candidates than seats, the principle of rotation shall apply. However, it is up to each group to implement the rotation principle.

⁸¹ Paolillo, see note 17, 246; R. Wolfrum, *Die Internationalisierung staats-*

The third mechanism supplementing the two former ones is the establishment of an organizational structure which enforces cooperation between the plenary and the limited membership organ. Thereby the protection of interests as provided by the limited membership organ is extended to the plenary organ. This system is applied, amongst others, by the UNIDO as well as by the International Sea-Bed Authority.

The structure of the UNIDO⁸² has the special feature that the distribution of competences amongst different organs (General Conference, Industrial Development Board) protects the interests of the major contributors. Most of the actions of the General Conference require an initiative of the Industrial Development Board.

This system also applied by other international organizations has been perfected in the International Deep Sea-Bed Authority already referred to. Theoretically, the Assembly is the supreme organ of the International Sea-Bed Authority. However, this does not reflect its relationship vis-à-vis the Council. The mandated cooperation between the plenary organ, the Assembly and the limited membership organ, the Council, has been used to protect the interests as represented by the interest groups. Already Part XI of UNCLOS has identified several issues to be decided in cooperation with the Assembly and the Council. These were the consideration and approval of rules, regulations and procedures on the equitable sharing of benefits⁸³ and on deep sea-bed mining activities,⁸⁴ the adoption of the budget⁸⁵ and the establishment of general policies.⁸⁶ The Implementation Agreement has strengthened this system of cooperation between Assembly and Council in three respects, thus making use of the precedent set by the UNIDO.

According to Section 3 para. 1 of the Annex to the Implementation Agreement of UNCLOS the general policies of the Authority shall now be established by the Assembly in collaboration with the Council. This eliminates the prerogative the Assembly formerly had on this issue. Further, Section 3 para. 4 of the Annex to the Implementation Agreement states that decisions "of the Assembly on any matter for which the Council also has competence" shall be based upon the recommendations of the Council. This provision significantly strengthens the position of the Council. Moreover, the right of initiative has been established on behalf of the Council for decisions of any other budgetary, financial or adminis-

freier Räume, 1984, 547.

82 A/RES/2152 (XXI) of 17 November 1966.

83 Article 162 para. 2 lit.o (i); Article 160 para. 2 lit.f(i).

84 Article 162 para. 2 lit.o (ii); Article 160 para. 2 lit.f (ii).

85 Article 162 para. 2 lit.r; Article 160 para. 2 lit.h.

86 Article 160 para. 1; Article 162 para. 2 lit.s.

trative matter. Decisions having a financial or budgetary implication⁸⁷ shall additionally be based upon the recommendations of the Finance Committee.⁸⁸ The composition of the Finance Committee ensures the participation of the four interest groups and, until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the participation of the five major contributors.⁸⁹ Since decisions on questions on substance in the Finance Committee are taken by consensus (Section 9 para.8) and the respective decisions of the Council or the Assembly have to be based upon recommendations of the Finance Committee, the decision-making power in respect of such issues rests with the Finance Committee rather than with the Assembly or the Council.

In assessing the relationship between the Council and the Assembly it has to be stated that the Implementation Agreement caused a transfer of competences from the plenary organ, the Assembly, to organs with a limited membership, namely the Council and the Finance Committee. Since the composition of these organs reflects particular states' interests and the decision-making procedure is tailored in a way so as to protect such interests, this will be the factor dominating the decisions of the International Sea-Bed Authority.

IV. Conclusion

A function-related structure of the decision-making process of international organizations is one of the prerequisites of their efficient functioning. Only to the extent that an international organization encourages the participation of all states the interests of which are affected and provides for a decision-making process in which such interests can be voiced and integrated in the decision of the organization's actions, will resolutions be implemented. It is unrealistic to strive, as a general rule, for a decision-making procedure of international law merely based on the principle of one state one vote. Such an approach would neglect the fact that states form a highly differentiated community. In decision-making of international organizations — as in the words of the ICJ⁹⁰ — the principle has to

⁸⁷ Section 3 para. 7 of the Annex to the Implementation Agreement.

⁸⁸ Section 9 para. 7 of the Annex to the Implementation Agreement contains a list of financial or budgetary issues falling within the competence of the Finance Committee. This list is not exhaustive. The term "having financial or budgetary implications" used in Section 3 para. 7 of the Annex to the Implementation Agreement is definitely wider.

⁸⁹ Section 9 para. 3 of the Annex to the Implementation Agreement.

⁹⁰ ICJ Reports 1969, 3 et seq. (42 et seq.).

be applied that law cannot come into being without the consent of those most seriously affected. However, the more general the mandate of an international organization is, the more difficult it is to identify those states primarily involved. This is one of the root causes why it is difficult to agree on a future composition of the Security Council, particularly as far as the permanent membership and the voting power is concerned. Taking into consideration the functions of the Security Council, the capabilities as well as the readiness of member states to participate in peace-keeping or peace-making operations should be the decisive factor. However, these are not necessarily relevant criteria concerning the composition of other United Nations organs or fora.

The application of the principle of equitable geographical distribution of seats has to be seen from this point of view, too. The allocation of seats in limited membership organs has to take into consideration the increase of independent states and the interest they have in the progressive development of international law. In that respect this principle guarantees that the plurality amongst the state community is expressed in those organs forming a common will. Regional groups may be instrumental in serving any further purpose. The formation of a common will of the international community of states requires an integrative effort which should be undertaken on different levels: Regional groups may, in this respect, serve as pre-clearance fora. However, the introduction of the principle of equitable geographical distribution should only prevail if the functions of the respective organization or organ so require. Its application is less justifiable if the organization or organ in question is not involved in further developing the body of international law but takes specific decisions of a judicial or administrative nature. In the former case it would be more coherent to emphasize the full representation of all major legal systems.

The law of international organizations shows that there is a clear trend, at least as far as economic and financial international organizations are concerned, to replace or modify the principle of a regional representation of states by additionally reflecting their substantial interests. This development mirrors the fact that regional groups have lost coherence, substantive interests have become more dominating and weaken regional allegiances. Two considerations have to be taken into account when the structure of a decision-making process reveals special interests. These special interests have to be defined so as to respond to the function of the said organization. Moreover, the mechanisms, particularly the identification of particular states' interests have to be designed in order to be open to further development. Only through such a mechanism can the acceptability of an organization be preserved on a permanent basis.