The Complexification of the United Nations System

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In its own way, matter has obeyed from the beginning that great law of biology, to which we shall have to recur time and again, the law of "complexification".

Pierre Teilhard de Chardin[1]

Not only matter and biology, but our understanding of the Universe[2] as well as the organizations that people create for their governance appear to obey the law of complexification. Indeed, human institutions show many of the traits of biological systems, including a striving to grow as far as resources allow, a tendency to proliferate and a resistance to annihilation unless survival by successors is assured. The type of international phenomena described below can be observed in most national governments, few of which can still be described completely or even meaningfully in terms of just the principal constitutional structures such as a legislature, a chief executive and some senior courts, without taking account of ministries, departments, services, regulatory agencies, specialized subsidiary courts, and permanent or *ad hoc* commissions and coordinating bodies.

Just half a century ago, the Charter of the United Nations laid down a rather simple structure for the Organization: internally it would consist of six principal and a number of subsidiary organs;[3] externally it would be surrounded by a halo of specialized agencies with which it

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1 *The Phenomenon of Man*, 1955, Book One, Chapter I.3.A. The term "complexification" is discussed by Julian Huxley (the first Director-General of UNESCO) in his Introduction to the Perennial Library edition, 1975.

2 For example, during the past half century (the period of UN evolution described in this study) our understanding of the universe evolved from observing the galaxies, stars, planets, moons, comets and asteroid that could be seen through the then best telescopes, to grasping phenomena such as super clusters of galaxies, globular clusters, black holes, quasars, pulsars, gamma-ray bursters, supernova, red dwarfs and white giants, binary systems, the Oort Cloud and the Kuiper Belt, not to speak of the hypothesized "cold dark matter"; similarly, during this period, we have progressed from conceiving the atom in terms of just protons, neutrons and electrons, to a whole zoo of sub-atomic particles, including quarks of various flavors and colors, neutrinos, miscellaneous mesons and speculations about Higg's boson, gravitrons, strings, WIMPS and yet more exotic manifestations.

3 See United Nations Charter Arts 7, 22, 29 and 68, and Article 26 of the ICJ Statute.

would maintain defined close relationships[4] and which would be part of the "UN System". By today, this simple scheme has proliferated into a veritable jungle of miscellaneous entities, including numerous quasi-autonomous bodies (described in Section I.), treaty organs (Section II.), enhanced treaty organs (Section III.), two categories of specialised agencies and other related organizations (Section IV.), and a variety of other entities and arrangements in part designed to coordinate these many new actors (Sections V. and VI.).

This study will endeavour to describe and classify these various types of new structures, through which a substantial — if not the predominant — part of the work of the United Nations and of the UN System is currently carried out. It should be understood that this exercise in institutional taxonomy is — because of space limitations — not intended as a complete, authoritative description of all the entities mentioned and of their histories.[5] Rather, it is but an academic essay to bring some order into the chaos resulting on the one hand from the very pliability of international administrative law, which is still largely uncodified and therefore easily permits convenient experimentation, and on the other from the rather ambivalent feelings of national governments that see the need for collective action in many areas yet hesitate to create still more potentially powerful permanent international structures. An attempt is also made to introduce some new terminology designed to clarify discussion in this murky field.

I. Simple and Complex Subsidiary Organs and Quasi-Autonomous Bodies

The United Nations Charter does not describe the types of subsidiary organs it refers to in Arts 7 para.2, 22 and 29. However, five of the principal organs listed in Article 7 para.1 and established by later Chapters are all simple, in that each consists of only a single structure: a political

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4 See in particular United Nations Charter Arts 17 para.3, 57–58 and 63.

5 Much useful data about the institutions described herein, as well as about many others, can be found in the annual *United Nations Handbook* published by the New Zealand Ministry of Foreign Affairs and Trade, which also contains a very full List of Acronyms. The Acronyms used in this article, including some specifically developed for this study, appear for the most part in the Annex hereto, except for those in the list of Abbreviations used for this book.

body in case of the General Assembly and the three Councils and an administrative one in case of the Secretariat; only the ICJ is complex, in that it consists of a judicial body and an administrative one (the Registry). The single subsidiary body established by the Charter itself is the Military Staff Committee, a simple political/expert body.[6] It might therefore be assumed that the subsidiary organs that are foreseen would also be predominantly simple ones, and that indeed has been the nature of almost all the political,[7] expert,[8] judicial,[9] military[10] and secretariat

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6 United Nations Charter Article 47.

7 Political or representative bodies are those that consist of states, which appoint the representatives that actually constitute the body. For example, the *Ad Hoc* Committee on the Indian Ocean, the Committee on Conferences, the Committee on the Exercise of the Inalienable Rights of the Palestine People, and the United Nations Commission on International Trade Law (UNCITRAL) all established by the General Assembly; the Functional Commissions, such as the Commissions on Human Rights and on the Status of Women, established by the Economic and Social Council (ECOSOC); and the several Sanctions Committees established by the Security Council.

8 Expert bodies are those whose members are persons selected, at least nominally, in their individual capacity and not as governmental representatives — though nationality is taken into account at least insofar as it is normally provided that such bodies shall not have more than one member of any nationality. Examples include the International Law Commission (ILC), the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Committee on Contributions, all established by the General Assembly; the *Ad Hoc* Group of Experts on International Cooperation in Tax Matters established by ECOSOC; and the Sub-Commission on Prevention of Discrimination and Protection of Minorities established by the Commission on Human Rights of ECOSOC.

9 Judicial organs are ones whose members act as judges (whether or not that is their normal capacity), in that they perform their functions independently not only of their national governments but also of the organ that established the judicial body and of all other international organs. One example is the Administrative Tribunal established by the General Assembly. The two International Criminal Tribunals, for the Former Yugoslavia and for Rwanda, established by the Security Council, are also judicial organs, but they are not simple ones, as they consist of several organs: true judicial ones, the Trial and Appeals Chambers, and two separate secretariat ones, the Prosecutor and the Registry.

10 Military organs are the peace-keeping operations, for the most part established by the SC, consisting of: a Commander (normally a high-ranking military officer seconded by a state to the UN Secretariat — and thus

organs[11] that have been established. It should also be noted that some subsidiary organs are empowered by their mandates to establish sub-subsidiary organs.

Although probably unanticipated by the drafters of the Charter, over the years a number of complex subsidiary organs have been established. Many of these are, in effect, mini-intergovernmental organizations (IGOs), that consist of at least one political body and an executive head who directs a special secretariat for the organ. Indeed, the substantive interchangeability of some of these complex organs with specialized agencies (which, of course, are IGOs) can be illustrated by the fact that one short-lived specialized agency, the International Refugee Organization (IRO) was, on its dissolution, replaced by a complex subsidiary body, the UN High Commissioner for Refugees (UNHCR) and his Office, while the United Nations Industrial Development Organization (UNIDO), which originated as a General Assembly-established subsidiary organ, was replaced by the current specialized agency with the same name and substantially the same structure. In any event, unanticipated or not, these bodies actually carry out much of the substantive (as distinguished from the important political) work of the Organization, such as caring for refugees UNHCR and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), nurturing children (United Nations Children's Fund (UNICEF)), conducting academic programmes (United Nations University (UNU)), financing development programmes (United Nations Development Programme (UNDP)), and their collective budgets considerably exceed that of the central organization.[12]

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serving as a UN staff member); a number of military units made available by states (the personnel of which — officers and troops — remain in the direct employ of their states); a civilian component consisting of UN secretariat officials; and, sometimes, a police component (composed similarly to the military ones, from units borrowed, as such, from states). The Commander-in-Chief of all such operations is, in effect, the UN SG.

11 Secretariat organs are ones that consist of international civil servants. These include substantive organs that perform most of the actual, continuing work of the Organization, and also merely administrative ones dealing with questions of the civil service itself, e.g., Staff Associations and Staff Councils, Joint Advisory Committees, etc.

12 For 1994 UN members were assessed about US$ 1.2 billion for the Regular Budget (A/RES/48/231 C of 23 December 1993); for the biennium 1994–1995 voluntary contributions, largely to QABs, totaled over US$ 6.4 billion (or about US$ 3.2 billion for 1994), not including the substantial

Because they are structured like IGOs, and because of certain aspects of their composition and operations (described in the following sub-Sections), many of these complex organs enjoy a considerable degree of autonomy from their parent organs, and indeed from the central United Nations structure. They can, of course, never be completely independent, because they are not established by a treaty but by a resolution of a principal organ (mostly the GA), and that organ can at any time, by altering that resolution, change their structures, mandates and authorized methods of operation, and can indeed completely abolish or replace them.[13] In other words, they lack independent legal personality, but partake of that of the United Nations.[14] Although normally referred

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(or about US$ 3.2 billion for 1994), not including the substantial contributions in kind and cash to the WFP (Section V.1(a) below).

13 A major problem in analyzing the legal structures or the mandates of QABs is that although the initial, establishing resolution is usually formulated as a "statute" (see, e.g., the Statute of the Office of the UNHCR, see note 18), later changes to that instrument are not made in a codified form, i.e., by amending, adding, or deleting particular provisions — so that at any given time there would exist an up-to-date coherent constitutional instrument — but usually consists of just individual paragraphs of routine resolutions relating to or just mentioning the QAB. This is particularly problematic because the QABs, as living entities akin to IGOs, naturally keep altering and evolving, sometimes also reinventing themselves, in response to changes in demands for their services, the activities of other international bodies and the availability of resources; their mandates change, normally expand, sometimes as specifically directed by their parent organs and often essentially spontaneously. Thus the UNHCR, which was initially charged mostly with assisting European World War I and II refugees, soon found others under its purview arising from subsequent conflicts in all parts of the world; later responsibilities were added for persons displaced within their own countries, and even for persons still located in or close to their own communities but needing care because of ongoing conflicts around them. UNDP evolved from a mere collection and distribution agent for financial contributions from developed states, through designated IGOs (the Executing Agencies), to underdeveloped states, into a body carrying out many activities of its own and sometimes assisting governments directly. UNICEF, UNCTAD, etc. have all also experienced sea changes, into something rich and strange — at least from the point of view of their founders.

14 This is an important consideration from many points of view, but in particular it means that these QABs (defined *infra* in this paragraph) are automatically covered by the Convention on the Privileges and Immunities of the United Nations (CPIUN), UNTS Vol. 1 No.I-4.

to as "organs", which technically they are within the classification established by Charter Article 7, they are probably better characterized as "bodies", for they themselves have organs. Consequently, it is suggested that they be referred to as Quasi-Autonomous Bodies (QABs), and this term will be used herein.

Because QABs do not constitute an official category with a formal definition, but rather are those complex subsidiary UN organs/bodies that share, to a greater or lesser extent, the characteristics described under the headings below, it is not possible to establish a definitive list. However, the principal exemplars are: the already mentioned UNHCR, UNRWA, UNICEF and UNDP, as well as the United Nations Environment Programme (UNEP), the United Nations Centre for Human Settlements (UNCHS), the UNU and the United Nations Conference on Trade and Development (UNCTAD). In addition one might mention a former such body, the above mentioned UNIDO, which converted into a specialized agency, as well as a joint UN/FAO (Food and Agriculture Organization of the United Nations) organ, the World Food Programme (WFP).[15] Finally, in addition to these relatively massive operations, programmes and funds, there are a number of smaller bodies that share the indicated characteristics but which will not be described further in this study, of which the following are examples: International Research and Training Institute for the Advancement of Women (INSTRAW); United Nations Interregional Crime and Justice Research Institute (UNICRI); United Nations Development Fund for Women (UNIFEM); United Nations Institute for Training and Research (UNITAR); United Nations Institute for Disarmament Research (UNIDIR); and United Nations Research Institute for Social Development (UNRISD); as well as numerous regional institutes and centres established by the five ECOSOC Regional Commissions and by the UNU.

Although the QABs listed above and described in this Section are all ones established by the United Nations itself (i.e., by its principal organs), it should be noted that some of the specialized agencies and other organizations of the UN System have also created similar bodies, with essentially the same characteristics.[16]

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15 See Section V.1(a) below.

16 I.F.I. Shihata, the retiring General Counsel of the World Bank, referred to the Global Environment Facility (GEF) (see Section V.1 (c) below) as an "entity which has all the characteristics of a new international organization except a fundamental one, at least from a legal viewpoint: It is not endowed

1. Appointment of the Executive Heads of QABs

Although Charter Article 101 para.1 provides that the "staff shall be appointed by the Secretary-General under regulations established by the General Assembly", the executive heads of almost all QABs are appointed by some device requiring the SG to secure the approval of or at least to consult with some other organ. That requirement is expressed in various ways, such as:

(a) The Commissioner-General (originally the Director) of UNRWA is appointed by the UN SG in consultation with the Governments represented on the Advisory Committee of UNRWA;[17]

(b) The UNHCR is "elected by the General Assembly on the nomination of the Secretary-General";[18]

(c) The SG of UNCTAD "shall be appointed by the Secretary-General of the United Nations and confirmed by the General Assembly";[19]

(d) The Rector of UNU is appointed, from a short list prepared by a special Nominating Committee, by the UN SG in consultation with and with the concurrence of the DG of UNESCO;[20]

However expressed, it is clear that such executive heads are not the unfettered choices of the UN SG, as the UN-Charter appears to require for all staff members,[21] and thus he cannot necessarily count on their

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with a juridical personality of its own but is a semi-autonomous entity that relies heavily on the World Bank as its main 'implementing agency' and as the Trustee of its [Global Environment Trust] Fund.-[I]ndeed, some commentators have argued that the restructured GEF has expanded or will expand the four financial institutions of the World Bank Group to five, a suggestion the truth of which will depend on the evolution of this new quasi-organization." Id., "The Environment, Arms Control, Human Rights and the World Bank", Appendix 1 of *Administrative and Expert Monitoring of International Treaties*, 1999, 247 et seq., (248-49).

17 A/RES/302 (IV) of 8 December 1949, para. 9 (chapeau).

18 A/RES/428 (V) of 14 December 1950, Annex, para. 13.

19 A/RES/1995 (XIX) of 30 December 1964, Part II, para. 27.

20 Charter of the United Nations University, Doc.A/9149/Add.2 (1973), adopted by the General Assembly by A/RES/3081 (XXVIII) of 6 December 1973, article V.1.

21 Although some constitutional objections appear to have been raised within the secretariat at the time of the adoption by the GA of the first such provision that constituted a clear departure from Charter Article 101 para.1, i.e. the method of appointing the UNHCR, these were not formally presented

unconditional loyalty. Indeed since, as pointed out in sub-Section 3 below, each of the QABs also has a political organ, the executive head must, both to ensure support for his programmes and to secure extension of tenure, maintain good relations with that organ and in particular with its leading members. It is, incidentally, not clear whether the SG can by himself dismiss an executive head whose appointment is not entirely in his hands — especially if the appointment, as of the UNHCR, is formally made by the GA.

Another indication of the status of the executive heads of the major QABs[22] is that they participate in the Administrative Committee on Coordination (ACC),[23] which originally consisted of only the UN SG (as chair) and the executive heads of the specialized agencies and later also of the IAEA. As explained in sub-Section V.3, this body is the major co-ordinating organ of the UN System.

2. Appointment of the Staffs of QABs

A further strengthening of the independence of the QABs and a corresponding weakening of any central control is that for many of them their staffs are appointed by their executive heads, rather than by the

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to or considered by the GA. As appears from the text above, such departures have by now become so routine that their acceptance can be considered to constitute, in effect, an amendment or at least an agreed interpretation of the Charter — such as the interpretation of Charter Article 27 para.3 to the effect that an abstention of a permanent member of the SC does not defeat the requirement that substantive decisions can only be taken with the concurring affirmative votes of all the permanent members (see the Advisory Opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, ICJ Reports 1971, 16 et seq., (22), paras. 21–22). It should also be noted that the practice of formally fettering the choice of the SG in respect of the selection of top officials appears to be spreading; by para. 2(b) of A/RES/48/141 of 20 December 1993, the GA determined that the High Commissioner for Human Rights (who heads the Human Rights Centre — which cannot be characterized as a QAB) "be appointed by the [UN SG] and approved by the [GA]".

22 That is, UNCTAD, UNEP, UNDP, UNFPA, UNICEF, WFP, UN International Drug Control Programme (UNDCP), UNHCR and UNRWA.

23 See Section V.3 at note 149.

UN SG — again an apparent departure from Charter Article 101 para.1. Although in some instances this is by explicit delegation by the SG, which would fulfil the Charter requirements, sometimes it is the GA that has decreed such "delegation":

(a) For UNRWA it is provided that "[t]he Director [now the Commissioner-General] shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable";[24]

(b) The UNHCR is empowered to appoint a Deputy High Commissioner, as well as the staff of the Office of the High Commissioner, who "shall be responsible to him in the exercise of their functions" and who are to be "chosen from persons devoted to the purposes of the Office of the High Commissioner";[25]

(c) The staff of UNITAR is appointed by the Executive Director and is responsible to him, though the UN SG is to be consulted in selecting senior officials;[26]

(d) The staff of UNU is appointed by the Rector.[27]

Even if not required to do so by the resolutions establishing some of the other QABs, the UN SG has, as indicated above, delegated to the executive heads of several of these the power to appoint their own staffs — sometimes subject to restrictions such as consultations in respect of

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24 A/RES/302 (IV) of 8 December 1949, para. 9(b). As a result of this resolution, UNWRA is the sole UN body that has Staff Regulations different from those adopted by the GA for the rest of the UN Secretariat; indeed, UNRWA has two sets of such Regulations, one for its small international staff and the other for the "area" staff, under which some 17,000 Palestinians serve under conditions considerably different from those applying to all other UN staff members.

25 A/RES/428 (V) of 14 December 1950, Annex, paras. 14 and 15 lit.(a),(b). In its Judgement No. 526 (*Dewey v. SG UN*) of 31 May 1991, UNAT held that unless the UNHCR had explicitly agreed to consult the SG with regard to the appointment of a Deputy, there was no such consultation requirement and therefore the SG could not dismiss the Deputy UNHCR on the ground that he had been appointed without such consultations.

26 Statute of UNITAR as promulgated by the SG in November 1965 (ESCOR, 41st Sess., Annexes, a.i. 28, Doc.E/4200, Annex I), later amended in 1967, 1973, 1979, 1983, 1988 and 1989, article IV.3.

27 UNU Charter, see note 20, arts V.3.c and VIII.6–7.

the choice of senior staff. This has, for example, be done in respect of UNDP, UNCTAD and UNEP. The refusal of the UN SG to do so in respect of UNIDO, and the failure of the GA to direct him to do so, was evidently one of the main motivating factor in the decision by the 1974 UNIDO General Conference to start the process that led to the eventual conversion of that QAB into the present specialized agency.

Even though the UN SG thus has by compulsion or voluntarily lost the power to appoint and to administer the staffs of the QABs, he somewhat anomalously remains responsible for dealing with complaints that these may bring to the UN Administrative Tribunal, where he is indicated as the formal defendant in all cases, except those brought against the Commissioner-General of UNRWA. Also as a result of the wording of arts 20 and 22 of the Convention on the Privileges and Immunities of the United Nations (CPIUN)[28] it is he who remains responsible for waiving — and thus also for asserting — the immunity of all UN officials (including those serving QABs) and experts on mission (even those appointed by the executive heads of QABs) — and this authority has not been delegated to any executive head.

3. Political Bodies of the QABs

Each of the QABs has one or sometimes two political bodies, technically subsidiary organs of either the GA or of ECOSOC. For example:

(a) UNRWA has an Advisory Commission of 10 member States designated by the GA — a group that remains largely invariant.

(b) UNHCR has an Executive Committee of the High Commissioner's Programme, consisting at present of 53 states (including UN non-member Switzerland) — also a group that remains largely invariant.

(c) UNCTAD has both a Trade and Development Board (TDB), now consisting of all members of UNCTAD[29] that wish to participate (at present 145),[30] as well as periodic Trade and Development Con-

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28 See note 14.

29 The membership of UNCTAD consists of all members of the United Nations, of any specialized agency or of the IAEA (A/RES/1995 (XIX) of 30 December 1964, Part II, para. 1).

30 When UNCTAD was established, the TDB consisted of 55 members elected by the Conference according to a specified pattern of geographical distribution (A/RES/1995 (XIX) of 30 December 1964, Part II, para. 5, and

ferences — though the Conferences do not participate directly in the governance of UNCTAD.

(d) UNEP has a Governing Council of 58 members elected by the GA according to a specified geographical formula.[31] There is also a Committee of Permanent Representatives, and recently the Council has created a 36-member High-Level Committee of Ministers and Officials in Charge of Environment.[32]

(e) UNU has a Governing Council of 28 persons, of whom 24 are appointed jointly by the UN SG and the UNESCO DG, who serve in their individual capacities and not as governmental representatives, while the Rector of the University, the UN SG, the UNESCO DG and the Executive Director of UNITAR (himself the head of a QAB, appointed by the UN SG) serve *ex officio*.

(f) By a 1993 GA resolution, the former governing bodies of UNDP/UNFPA and of UNICEF were re-christened "Executive Boards", and now consist of 36 states each, according to a defined geographic distribution.[33] By the same resolution the process of negotiating with FAO similar changes in the governing organ of the WFP was initiated.[34]

These organs have different powers and responsibilities *vis-à-vis* the respective executive heads, and of course they report to the GA, in some cases through ECOSOC.[35] However, because the Assembly rarely has time to review their work, it normally contents itself with adopting, after brief debates, any resolutions these bodies may propose to it. Normally, these bodies have close relationships with the respective executive head, who may, depending in large part on personality, and in part on the statutory provisions governing the QAB and on financial considerations, be able to substantially dominate these political organs. Rarely

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Annex). The present arrangement concerning the composition of the TDB was endorsed by A/RES/51/167 of 16 December 1996, para. 1.

31 A/RES/2997 (XXVII) of 15 December 1972, Part I, para. 1.

32 Doc.UNEP/GC/DEC/19/1B of 4 April 1997.

33 A/RES/48/162 of 20 December 1993, Annex I, paras. 21 and 25.

34 Ibid. and also para. 30. See also Section V.1(a) below.

35 By the above-mentioned 1993 resolution, the GA also specified its responsibilities and those of ECOSOC in respect of the governing bodies of the UN development funds and programmes (those listed in para. (f) of the preceding text) (ibid. paras. 11–20), as well as the tasks of these bodies (ibid., para. 22).

have these organs, especially the larger ones, been able to control a popular executive head.

4. Financing the QABs

The United Nations Charter foresees only one method of financing the expenses of the Organization: contributions assessed on member States by the GA.[36] This was a sensible and acceptable way of financing the types of political and administrative activities that are the ones foreseen by the Charter, that is running the political and judicial organs and the secretariat support for these. Indeed, for the only operational activities directly provided for in the Charter: military operations to be mounted under Charter Article 42, it appears to have been expected that each member would bear the costs of the military units that it made available pursuant to Arts 43 and 45.

It soon became clear, however, that the Organization would, initially in the wake of World War II, have to carry out and finance major relief operations, especially for refugees and children. For these separate bodies were set up (now recognizable as the QABs), such as UNICEF, UNRWA and UNHCR, and these activities were financed by voluntary contributions by the states most able to bear these burdens. When some years later, with the unexpectedly sudden accomplishment of decolonization, the need arose for major development programmes, these too (e.g., the United Nations Expanded Programme of Technical Assistance (EPTA) and the Special Fund, later merged as UNDP) were structured and financed in much the same way. This pattern was later replicated for other types of operations, such as the protection of the environment through UNEP.

There were, of course, political reasons for these developments. In the first place, the major contributors, while prepared to accept being assessed for the relatively modest costs of the infrastructure of the Organization, were not willing to give open access to their purses for the much higher expenses of operational activities — particularly once these started to include the potentially unlimited costs of development. Secondly, as reflected in sub-Section 3 above, they saw to it that the political organs of the operational QABs would be weighted towards the large contributors, which would thus be able to control the distribution of the funds; as these organs were, under the pressures of the more and

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36 United Nations Charter Article 17 para.2.

more populist GA, made to reflect more fully the number of states in the various geographic/political groupings, contributions to those bodies where that tendency was most apparent started to drop off.

Most QABs are financed entirely from voluntary contributions, or from quasi-contractual arrangements with states under which these bodies are compensated directly for certain services they provide. A few receive some funds from the UN's Regular Budget financed from assessed contributions and used almost exclusively for the central administrative functions of these bodies. Except for the latter, which constitute part of the budget proposals that the SG presents to the GA, the budgets of these QABs are drawn up by their respective executive heads and submitted for approval or merely for comments to the respective governing organs. Naturally, budgeting based on uncertain voluntary contributions has its complications, even though pledging conferences are held at which states are invited to announce in advance their expected contributions to most of the QABs. In any event, neither the UN SG, nor the GA, are in a position to fulfill, in respect of these bodies, the financial controls foreseen respectively by Charter Arts 97 (designating the SG as the "chief administrative officer of the Organization") and 17 para.1 (designating the GA as the organ that considers and approves the budget of the Organization). When it is recalled that several of the QABs have annual throughputs that approximate or in some cases even exceed the Regular Budget and that collectively they dwarf it,[37] it is seen how great the loss of direct financial control of the central organs has become. Consequently the UN itself (not to speak of the entire UN System) does not have an overall consolidated budget.

5. Some Difficult-to-Classify Organs

It is not clear whether the two International Criminal Tribunals, for the Former Yugoslavia and for Rwanda, should be characterized as QABs. Both are complex subsidiary organs of the Security Council (SC), consisting on the one hand of a judicial organ divided into several separate Trial Chambers for each Tribunal and a common Appeals Chamber, which in turn are composed of judges headed by a President whom (one

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[37] See supra note 12. In making this statement, no account is taken of the numerous peace-keeping budgets, which in the mid-90s collectively greatly exceeded the Regular Budget, though in recent years they have been, deliberately, much reduced.

for each Tribunal) they elect, and on the other two separate secretariats: the Prosecutor (who is the same for both Tribunals) and staff, and the Registry, headed by a Registrar; though not exactly co-equal, none of these three organs controls the others. The judges are elected by a complex procedure involving both the SC and the GA; the Prosecutor is appointed by the SC on the nomination of the SG, and her staff by the SG on the recommendation of the Prosecutor; the Registrars are appointed by the SG after consultation with the President of the respective Tribunal, and their staffs by the SG on the recommendation of the Registrars. In principle, the Tribunals are financed entirely by the UN Regular Budget, but voluntary contributions are encouraged. Though on the basis of these characteristics one might decide against QAB status, it must also be recalled that all these organs, and the Tribunals as a whole, must by their very functions be independent of all the principal organs.

The five Regional Commissions of ECOSOC, each of which is a complex subsidiary organ (consisting of a Commission composed of states and of a secretariat headed by an Executive Secretary, and of a number of subsidiary organs), should probably not be considered to be QABs because they are financed substantially from the UN Regular Budget, their executive heads are appointed by the SG, though after consultations with the respective Commission, and their staffs, though appointed and governed by the Executive Secretaries, these act by explicit rather than by imposed delegation from the SG. Thus, at least two of the four specified criteria of QABs do not apply.

6. Summary and Conclusions about QABs

The operational activities of the United Nations are largely carried out by several substantial and by numerous small QABs, which technically are subsidiary organs of the GA or of ECOSOC,[38] but which are gov-

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[38] It is sometimes difficult to tell whether a particular organ is a subsidiary of the GA or of ECOSOC, since the principal organ that establishes a particular subsidiary is not necessarily the one to which that organ reports or that exercises routine supervision over it. For example, the Committee for Programme and Co-ordination (CPC) was established by E/RES/920 (XXXIV) of 3 August 1962 and E/RES/1171 (XLI) of 5 August 1966; nevertheless, the GA assigned CPC major responsibilities in the budgeting process by A/RES/41/213 of 19 December 1986, Part II, and even refers to CPC as "acting as a subsidiary organ of the General Assembly", ibid. Annex I, para. 2; see also note 140. However, as ECOSOC, pursuant to

erned by executive heads who are only nominally subject to the SG, and by special political organs. Because the QABs rely largely on independent sources of financing, they escape the Charter-foreseen fiscal controls of the SG and the GA. Though their political organs normally submit annual reports to the GA, directly or through ECOSOC, some of these merely describe the proceedings of the reporting organs rather than the activities and financing of the QABs,[39] and in any event usually receive only the most cursory attention in the principal organs. This is so even though these activities collectively involve financing and staff far greater than those of the central secretariat, and even though these activities constitute, for the general public and even for many governments, the most important manifestations of the work of the Organization.

The result is that the United Nations is, in fact, considerably more decentralized than foreseen in the Charter or than realized by casual or even informed observers of the Organization. This makes both coordination and strivings for administrative reforms more difficult. It also complicates assignment of responsibility and determination of accountability.

Although it can hardly be said that that state of affairs has been achieved deliberately, it reflects a certain distrust by the governments that govern the Organization, of that entity itself, and in any event of its principal organs. In particular, the SG has been deprived of much of his potential authority in administering the Organization as a whole — probably reflecting a reluctance by many states to make his power grow as much as the functions of the Organization itself have. And though the GA nominally reigns supreme over all these organs and the bodies they compose,[40] its actual authority is considerably diluted, especially in respect of those operations that involve the greatest costs.

Charter Article 60, functions "under the authority of the General Assembly", the distinction is for most purposes not of great importance.

39 See e.g., the 1998 Reports of the Trade and Development Board to UNCTAD (Doc.A/52/15) and of the Governing Council of UNEP (Doc.A/52/25).

40 On the other hand, it can be argued that all the QAB governing organs, as well as the Conferences of Parties (COPs) to various arms control and environmental treaties described below, are merely different manifestations of the GA, since all their members are appointed by the same governments.

II. Treaty Organs

Old-style multilateral treaties used to be just that: legal instruments negotiated at conferences convened by the interested states, whose obligations were spelled out in its text, with the monitoring of their implementation left to the parties and no provisions for change or development except for occasional extension clauses. By contrast, most modern multilateral treaties are negotiated within or under the aegis of intergovernmental organizations (IGOs) and most may be characterized as "living" instruments, in that they provide for some collective activities, or for monitoring compliance by some international organ, and/or for some mechanism by which they can be amended or expanded. The carrying out of these activities or of any monitoring and the operation of the mechanism for developing the treaty are either entrusted to IGOs (usually to either the organization that sponsored the treaty, or to one established by that instrument) or to isolated organs that in effect operate under the care of the sponsoring IGO; these organs, described more fully in this Section, are "treaty organs" (TOs).

While Section IV. examines a number of examples of IGOs established by multilateral treaties, the present one is concerned with those in which a particular treaty instead merely establishes certain political and/or expert organs that are to be serviced by a "host" IGO, usually the "parent" — notably the United Nations or a related agency.[41] As discussed in Section III., it is sometimes not possible to distinguish readily between these two alternatives, except to note that if a body created by a treaty has a full set of organs and its own international personality then it should be characterized as an IGO,[42] while if that is not

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41 Certain treaties actually create both IGOs and treaty organs and may also assign functions to the parent IGO. For example, the 1982 UN Convention on the Law of the Sea (UNCLOS) (see note 81) created the ISA and ITLOS, which are two independent IGOs (see Section IV.(e/f)), while at the same time it also established the Commission on the Limits of the Continental Shelf, which is a treaty organ of the United Nations (see sub-Section 3(b) below); in addition, UNCLOS also assigned a number of functions directly to the SG (see UNCLOS arts 16 para.2, 75 para.2, 76 para.9, 84 para.2 and Annexes V, article 3(c)–(e), Annex VI, article 4 para.4, Annex VIII, article 3(e)). The substantive functions thus assigned should be distinguished from mere depositary functions, which the SG performs in respect of hundreds of multilateral treaties, most but not all of which were concluded under the auspices of some UN organ.

42 See note 16.

the case then it is a mere TO. In a sense, TOs are thus IGOs *manquées*, lacking a secretariat of their own as well as international legal personality.[43]

Finally, a multilateral treaty may simply assign certain functions to an IGO, usually its parent,[44] but sometimes to another IGO,[45] which are to be performed without the guidance of any TO; these situations will not be further examined in this study, except to note that the assumption of such functions, as is also true when an IGO is designated to service a TO, requires the explicit or at least implicit acceptance by the IGO concerned.[46]

TOs are thus products of a treaty, usually sponsored by an IGO, and not, like its normal organs, established by either its constitution or by a resolution of one of its principal (usually) or subsidiary organs. This means that the "parent" (or "host") IGO is not in a position to change the composition, mandates, powers or procedures of a TO it is servicing — only the states parties to the treaty can do so, either by formal amendment or to the extent the treaty permits, by some other procedure.[47]

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43 Evidently, QABs are also IGOs *manquées*, even though they have a full complement of organs, because they clearly have only the legal personality of their parent IGO.

44 With respect to UNCLOS, see note 41; with respect to the Single Convention on Narcotic Drugs, see note 79.

45 For example, the Non-Proliferation Treaty (sub-Section 2(b), below) assigned the important substantive function of monitoring treaty compliance to the IAEA — while leaving the function of reviewing and extending the treaty to the COPs serviced by the United Nations, under whose auspices the treaty had been concluded.

46 When a multilateral treaty is concluded under the direct auspices of an IGO organ, for example the several human rights treaties promulgated directly by the GA, the very fact of such promulgation implies that that organ consents to any functions that the treaty assigns to the IGO. If the promulgation is by an intergovernmental conference, even if convened by an IGO organ (as is usually but not invariably the case), then it is desirable and usual that the competent senior IGO organ specifically endorse the treaty or otherwise indicate the readiness of the organization to perform the required functions; see, e.g., in respect of UNCLOS, A/RES/37/66 of 3 December 1982, para. 7.

47 This point was made by the UN Legal Counsel in a legal opinion of 17 August 1976 relating to the CERD, established by the International Covenant on the Elimination of All Forms of Racial Discrimination, UNTS Vol.

The question then is, should TOs be considered to be organs of the IGOs that services them. In respect of IGOs, such as the United Nations, whose Charter appears to recite in Article 7 an exhaustive list of the types of organs the Organization may have (i.e., principal or subsidiary), at first glance the answer would appear to be in the negative. Indeed, when the question was apparently first raised in the context of Charter Article 96 para.2 (i.e. whether the proposed Human Rights Committee to be established under the then draft First International Covenant on Human Rights (the precursor of the ICCPR[48]) could request advisory opinions of the ICJ), the SG advised ECOSOC that this could not be done because the proposed Human Rights Committee could not be considered an organ of the United Nations.[49] Nevertheless, the GA seems to have referred to the Permanent Central Opium Board (established by a 1925 treaty[50]) and the Drug Supervisory Body (established by a 1931 treaty[51]) as "other organs of the United Nations".[52] Later, the United Nations Legal Counsel explicitly held that

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660 No.I-9464 (*UNJYB* 1976, 200, reproduced in: *Repertory of Practice of United Nations Organs* (hereinafter *Repertory*), *Supplement No. 5*, Vol. 1, Article 7, para. 9, p. 85.

48 See note 55.

49 See Doc. E/1732 of 26 June 1950, referred to in the study of Article 96 in the *Repertory*, see note 47, Vol. 5, para. 208. However, in light of the developments cited in the following sentences of the text above, it might be appropriate to reconsider this conclusion, i.e. that TOs are not "organs of the United Nations" within the meaning of Charter Article 96 para.2.

50 Agreement Concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium of 11 February 1925, LNTS Vol. 51 No.I-1239, as amended by the Protocol of 11 December 1946, UNTS Vol. 12 No.I-186.

51 International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 13 July 1931, LNTS Vol. 139 No.I-3219, as amended by the Protocol of 11 December 1946, UNTS Vol. 12 No.I-186.

52 A/RES/875 C (IX) of 4 December 1954, title, cited in the study of Article 7 in *Repertory*, Vol. 1, paras. 22–23 ("Organs established by treaty") which concludes that even though organs such as the Permanent Central Opium Board, the Drug Supervisory Body, or the International Bureau for Declarations of Death cannot be considered as subsidiary organs (not having been established by the resolution of a senior organ), because "their expenses are included in the budget of the United Nations, their staffs are appointed by the Secretary-General ... they may be considered as part of the Organization."

treaty organs "are organs of the United Nations" and proceeded to draw conclusions from that status.[53] Such a determination would also follow from the considerations stated at the end of the following paragraph.

The salient fact about treaty organs is that, unlike the principal and subsidiary organs of an IGO that are established by the direct or delegated will of all members of the organization, TOs reflect the will of only the parties to their treaty — most but not necessarily all of which are members of the IGO, and which rarely include all the members of the organization and may in some instances include only relatively few. Though TOs are usually financed by the parties to the treaty, that is not always so, and in those other instances, as well as in those in which a treaty simply assigns functions to an IGO, all the members of the IGO may be financing an activity of direct concern to only some. Nevertheless, the public, including the media, only rarely make these fine distinctions, and will attribute — usually but not necessarily in a positive tone — the activities and decisions of a TO to the IGO itself. Thus the persona of an IGO includes not only its own organs *stricto sensu* but also those established by multilateral treaties for which it has assumed responsibility. More importantly, it is no longer possible to study an IGO without giving due weight to the activities of its TOs.

TOs come in many guises, and different types are characteristic of different types of treaties. The sub-Sections below will briefly explore in turn those created by UN treaties in the fields of human rights, arms control and some miscellaneous subjects, and finally some TOs of IGOs other than the United Nations. It will appear (also from Section III.) that TOs relating to a particular subject (e.g., human rights) tend to be similar to other TOs relating to the same subject; this probably reflects, at least in part, the caution of negotiators who, once a particular TO model has been successfully negotiated in a given field, will tend to follow that model, rather than experimenting with models from other areas with which the specialized negotiators are less familiar.

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53 See note 47. In support of the Legal Counsel's determination it might also be noted that the members of human rights monitoring bodies have been held to be "experts on mission for the United Nations" within the meaning of article VI of CPIUN (see note 14) (*see also Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion,* ICJ Reports 1989, 9 et seq. [*Mazilou* case], 177 et seq., (194, para. 48).

1. Human Rights TOs

Best known of all treaty organs — and indeed the ones to which the term was originally applied[54] — are the expert monitoring organs established by the major human rights treaties, such as the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights (ICCPR)[55] and the Committee on the Elimination of Discrimination Against Women (CEDAW) of the Convention on the Elimination of All Forms of Discrimination Against Women.[56] It should, however, be noted that the Committee on Economic, Social and Cultural Rights (CESCR) is *not* a TO, but rather is a subsidiary organ of ECOSOC, to which the International Covenant on Economic, Social and Cultural Rights (ICESCR)[57] assigned the task of monitoring that instrument.

Each of these human rights TOs consists of a number of experts, elected in their individual capacities by the states parties to the respective treaty. They largely carry out their several mandated functions at multi-week sessions, and they present reports to the GA[58] — which considers these in its Third (Social, Humanitarian and Cultural) Committee — rather than to the states parties to their treaties. There is also no mechanism whereby these states can address instructions or recommendations to these treaty bodies; instead, the GA frequently makes recommendations to these TOs,[59] but it cannot, unlike for its own subsidiary organs, direct them, restructure them or change their mandates. Occasionally points of friction may arise, for example when that Assembly wishes to limit the servicing of these organs in ways corresponding to the rules applicable to other UN organs (e.g., limiting the length of sessions; the provision of written records) — but ultimately the Assembly has recognized that even in this sphere its powers are

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54 See note 49.

55 UNTS Vol. 999 No.I-14668, Part IV.

56 UNTS Vol. 1249 No.I-20378, Part V.

57 UNTS Vol. 993 No.I-14531, Part IV; see note 87.

58 E.g., the HRC submits an annual report that in recent years has appeared as Supplement No. 40 to GAOR; similarly CERD reports appear as Supplement No. 18, CEDAW's as No. 38, CAT's as No. 44.

59 See e.g., A/RES/52/97 of 12 December 1997, para. 7 (addressed to CEDAW); A/RES/52/110 of 12 December 1997, Part I (addressed to CERD); A/RES/52/116 of 12 December 1997, paras. 9, 11, 12 (addressed to the HRC).

limited. Except for CEDAW, which is serviced by the Division for the Advancement of Women of the Department of Economic and Social Affairs in New York (the Division having recently moved from Vienna), the other human rights TOs (as well as the CESCR) are serviced by the Human Rights Centre in Geneva, and this function has indeed become the principal task of that secretariat unit.

The financing of these human rights TOs differs from treaty to treaty. In some, the states parties bear the entire cost (as calculated by the UN SG); in others the UN has *ad initio* assumed that burden; while in still others the treaty provides for sharing. As the UN, which perforce must also act as the collecting agent for assessments due for this purpose from states parties, has experienced substantial and recurrent defaults of these relatively minor payments, it has suggested to the states parties that the respective treaties be amended to provide for direct UN financing, and the process for doing so is under way.[60]

Finally it should be noted that although each of these treaties ostensibly creates only a single TO, the expert monitoring organs referred to above, implicitly each also establishes another TO: the meeting of the states parties to the treaty, a political organ, whose principal function is to elect the members of the expert body, but which may also consider other matters relating to the treaty. These meetings too are serviced by the UN Secretariat.

2. Arms Control TOs

Most major multilateral arms control treaties concluded under the auspices of the United Nations (and at least one that was otherwise negotiated) contain provisions for periodic or episodic meetings of the parties for the purpose of reviewing the provisions of these instruments and possible also for revising and extending them. When such treaties establish IGOs — normally for the purpose of monitoring compliance by the states parties — these organizations, acting through their political organs, in effect carry out these reviews through their normal processes and deal with any amendments that are proposed.[61] However, if no im-

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[60] E.g., with respect to the CERD (see note 47), see A/RES/47/111 of 16 December 1992 and A/RES/52/110 of 12 December 1997, Part II.

[61] See, for example, article XV of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, *ILM* 32 (1993), 800 et seq., (804) that established the

plementing IGO is established, then the tasks of convening and servicing the meetings of the states parties for the purpose of review, amendment and extension, is assumed by the United Nations. For example:

(a) The 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (Partial Test Ban Treaty – PTBT) does not call for review conferences, but does provide for conferences to consider amendments to be convened by the three Depositary States.[62] In the late 80s the GA with increasing urgency recommended to the parties to take the steps to convene such a conference for the purpose of converting the Partial into a Comprehensive Treaty and directed the SG to provide the necessary services; an Amendment Conference was in deed convened at UN Headquarters in January 1991.[63]

(b) The 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) calls for: quinquennial Review Conferences of the parties, an Extension Conference 25 years after entry-into-force, and possible Amendment Conferences.[64] The Amendment Conferences (of which there have been none) are to be convened by the Depositary Governments; the treaty is silent on who is to convene the Review Conferences and the Extension Conference, though implicitly it is the Depositary Governments. However, in practice, all the arrangements for these Conferences, including for the respective Preparatory Committees, have been made by the UN SG at the request of the GA, which also debates and adopts resolutions concerning these meetings.[65]

Organization for the Prohibition of Chemical Weapons (OPCW), and arts VII and VIII of the Comprehensive Nuclear Test-Ban Treaty (ibid. 35 (1996), 1439 et seq., (1455-56) that is to establish the Comprehensive Nuclear Test-Ban Treaty Organization (CTBTO).

62 UNTS Vol. 480 No.I-6964, article II.1.

63 See in particular A/RES/44/106 of 15 December 1989; in later resolutions it followed up, e.g. A/RES/45/50 of 4 December 1990 and A/RES/46/28 of 6 December 1991.

64 UNTS Vol. 729 No.I-10485, respectively arts VIII.3, X.2 and VIII.1–2. In connection with the indefinite extension of NPT agreed to at the 1995 Review and Extension Conference, it was decided that henceforth the review process would be strengthened by the holding of normally three but up to four session of the Preparatory Committee for each quinquennial Conference, *ILM* 34 (1995), 961 et seq., (968).

65 See e.g. A/RES/51/45 A of 10 December 1996.

(c) The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological Weapons Convention — BWC) calls for a review conference of the parties to be convened in Geneva.[66] Such Conferences have indeed been held in 1980, 1986, 1991 and 1996, and inter-sessionally Preparatory Committees, expert committees and an *ad hoc* (Negotiating) Group established by the Conferences have been meeting. All these meetings have been serviced by the SG at the request of the GA.[67]

(d) The 1977 Convention on the Prohibition of Military or any other Hostile Uses of Environmental Modification Techniques (ENMOD Convention) provides for Review Conferences and also for a Consultative Committee of Experts to which problems arising in relation to the objectives of or in the application of the Convention can be referred, both to be convened by the Depositary (the UN SG).[68] Review Conferences have indeed met in 1984 and 1992, but the Consultative Committee has not yet been convened.[69]

(e) The 1980 Convention on Prohibitions on the Use of certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Inhumane Weapons Convention), provides for Conferences to consider proposed amendments to the Convention or to any Protocol thereto, to consider proposals for new Protocols, or to review the scope and operations of the Convention and its Protocols, to be convened by the Depositary (the UN SG) at the request of specified numbers of parties.[70] The first Review Conference was convened in October 1995 and continued in January and in April/May 1996.[71]

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66 UNTS Vol. 1015 No. 14860, article XII.

67 See, e.g., A/RES/50/79 of 12 December 1995.

68 UNTS Vol. 1108 No.I-17119, respectively arts VIII and V.1–2.

69 See A/RES/46/36 A of 6 December 1991, noting the preparations for the Second Review Conference, including the establishment of a Preparatory Committee and requesting the Secretary-General to assist in this process as well as in the Conference itself, and A/RES/47/52 E of 9 December 1992 at which the GA considered the report of the Conference.

70 UNTS Vol. 1342 No.I-22495, article 8 paras.1–3.

71 The GA first urged the states parties to convene the conference (e.g., A/RES/46/40 of 6 December 1991) and then welcomed its results (A/RES/51/49 of 10 December 1996).

(f) The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction[72] was, unlike the several treaties referred to above, not concluded under the auspices of the United Nations, but nevertheless assigns to the UN SG a great number of different functions, including the convening of meetings of the states parties, Special Meetings, Review Conferences and Amendment Conferences.[73] The GA welcomed the adoption of the Convention and instructed the SG to carry out the functions assigned to him thereunder.[74]

Although the provisions of these successive arms control treaties relating to the convening of various types of meetings of the parties, and of some meetings of experts, differ somewhat, with the later ones making it more explicit that this function is assigned to the UN SG, in fact all the conferences of the parties that have been convened have taken place on UN premises, serviced by the UN Secretariat (the Department for Disarmament Affairs under its present and various previous names), with UN officials serving as Secretaries-General; the same has been true of the various related preparatory and inter-sessional committees. Furthermore, the GA has generally taken account of each such conference, both in anticipation (in some instances calling for the convening of non-automatic meetings) and later considering and reacting to their reports. Because such meetings are convened on UN premises and using UN staff and other resources, they are fitted into and considered part of the UN Conference calendar.[75] In reporting on these meetings, the media, unsurprisingly, refers to them as "UN conferences".

In light of these circumstances it seems appropriate to consider all these conferences and meetings of the parties to UN-sponsored and even some other arms control treaties, as well as of expert groups estab-

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72 *ILM* 36 (1997), 1507 et seq. (Note that the designation "United Nations" Convention is erroneous, because the Convention was adopted at a diplomatic conference in Oslo convened by a number of interested states and not by any organ of the United Nations).

73 Ibid., arts 8, 11–13, 14 para.1.

74 A/RES/52/38 A of 9 December 1997, para. 4 and A/RES/53/77 N of 4 December 1998, para. 5.

75 See the "Draft revised calendar of conferences and meetings of the United Nations and of the principal organs of the specialized agencies, the International Atomic Energy Agency and treaty bodies established under the auspices of the United Nations", GAOR 53rd Sess., Suppl. No. 31 (Doc.A/53/32), Annex; see also e.g. A/RES/52/198 of 18 December 1997 (relating to the Desertification Convention, see note 103), para. 17.

lished at such conferences and meetings, to be United Nations TOs. In considering the totality of the disarmament activities of the Organization, which are otherwise carried out through several different principal and subsidiary organs, both political and secretariat,[76] account must, and in practice is, taken of these ever more numerous TOs.

Finally attention should be called to an important but in its origins somewhat obscure body: the Conference on Disarmament (CD), which the GA has repeatedly characterized as "the single multilateral disarmament forum" of the international community[77] and within which some of the major multilateral disarmament treaties have been negotiated. It was originally established in 1959 as a result of intergovernmental consultations (principally between the United States and the USSR — but carried out under the auspices of the GA) as the Ten-Nation Committee on Disarmament, and as a result of later consultations successively became the Eighteen-Nation Committee on Disarmament and the Conference of the Committee on Disarmament, until it acquired its current name in 1983. It was always recognized that it was not a formal UN organ,[78] but it is serviced by the UN Secretariat at the UN Office at Geneva (UNOG), its SG is appointed by the UN SG, it reports to the GA and receives recommendations from it, and its budget is part of the UN Regular Budget. Though the informal agreements on which it is based can probably not be characterized as "treaties", the Conference on Disarmament is in effect a TO of the UN.

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76 These organs include the First Committee of the GA, as well as the GA itself meeting at its episodic Special Sessions on Disarmament (SSODs), the Disarmament Commission, the Secretariat's Department for Disarmament Affairs, the Advisory Board on Disarmament Affairs and the United Nations Institute for Disarmament Research (UNIDIR).

77 A formula first pronounced at the First Special Session on Disarmament (A/RES/S-10/2 of 30 June 1978, para. 120 — which also sets out in considerable detail the understandings concerning its composition, methods of work, and reporting) and ritualistically repeated ever since, e.g., in A/RES/52/40 A of 9 December 1997, para. 1.

78 Mainly because the Western States did not wish to create a precedent in the United Nations of an organ in which Western and Eastern European States were represented in equal numbers.

3. UN TOs established by Other Treaties

Although the above-mentioned two categories are the best known examples of treaty organs, there are many others, and indeed some earlier ones. To cite just a few examples:

(a) The International Narcotics Control Board (INCB), the successor to the above-mentioned Permanent Central Narcotics Board and the Drug Supervisory Body, was established by the 1961 Single Convention on Narcotic Drugs[79] but also performs functions under the 1971 Convention on Psychotropic Substances and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;[80] it consists of 13 members appointed by ECOSOC in their personal capacity, on the basis of nominations in part by WHO and in part by UN members or by non-UN parties to the Single Convention. Its secretariat, headed by a Secretary appointed by the UN SG, is serviced by the UN Office at Vienna (UNOV).

(b) The Commission on the Limits of the Continental Shelf established by Annex II to UNCLOS[81] consists of 21 expert members serving in their personal capacities and elected by the states parties to the Convention at meetings of these parties convened by the UN SG. Both the Commission and these meetings of parties are thus TOs of the UN, serviced by the Division for Ocean Affairs and the Law of the Sea of the UN Office of Legal Affairs.

(c) Review Conferences, to be convened by the UN SG, are called for by the 1995 (UN) Agreement on the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement).[82]

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79 UNTS Vol. 520 No. 7515 of 30 March 1961, article 9, as amended by the Protocol of 25 March 1972, UNTS Vol. 976 No. 14151. It should be noted that the Single Convention, aside from establishing the INCB, also assigns (by article 8) tasks to ECOSOC's [Functional] Commission on Narcotic Drugs, a UN subsidiary organ.

80 Respectively, UNTS Vol. 1019 No.I-14956, and UNTS No.I-27627 of 20 December 1988, article 12.

81 The 1982 UN Convention on the Law of the Sea, UNTS Vol.1833-1835 No.I-31363, *ILM* 21 (1982), 1261 et seq.

82 *ILM* 34 (1995), 1542 et seq., article 36.

4. TOs of Other UN System IGOs

The phenomenon of treaty organs is by no means confined to the United Nations, but is becoming an ever-more important feature in many other UN System organizations, and indeed also for many IGOs outside that system, such as regional organizations (for example, the Council of Europe) that produce multilateral treaties.

One of the UN specialized agencies, the World Intellectual Property Organization (WIPO), operates almost entirely as the host of numerous treaty organs created by a series of treaties on intellectual property rights, some of which long predate the establishment of WIPO, while others were negotiated under its auspices. In effect, the prime function of that organization is to service all these treaties and to assist states in negotiating new ones.

Another specialized agency that is acting increasingly, though not exclusively, as the host of a number of TOs, is the International Maritime Organization (IMO). To a lesser extent such functions are also performed by other UN System organizations, such as FAO, the IAEA and UNESCO.

The World Bank, formally the International Bank for Reconstruction and Development (IBRD), a UN specialized agency, presents a somewhat different picture. It has sponsored four major international agreements: the Articles of Agreement of the International Finance Corporation (IFC)[83] and of the International Development Association (IDA),[84] as well as the Convention for the Settlement of Investment Disputes Between States and Nationals of Other States[85] that established the International Centre for Settlement of Investment Disputes (ICSID) and the Agreement Establishing the Multilateral Investment Guarantee Agency (MIGA).[86] Although the IBRD provides the secretariats of IDA, ICSID and MIGA, and a substantial part of that of IFC, none of these are TOs of the Bank, as the treaties establishing them specify that they are independent IGOs; indeed, IFC and IDA are UN specialized agencies in their own right.

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83 UNTS Vol. 264 No.I-3791 of 25 May 1955.

84 UNTS Vol. 439 No.I-6333 of 26 January 1960.

85 UNTS Vol. 575 No.I-8359 of 18 March 1965, *ILM* 4 (1965), 532 et seq.

86 UNTS Vol. 1508 No.I-26012 of 11 October 1985, *ILM* 24 (1985), 1598 et seq.

5. Summary and Conclusions about TOs

When states members of an IGO wish to regulate their conduct in ways not provided for in its constitutional treaty, then they generally cannot do so by resolutions of any of the IGO organs but must formulate another treaty. In doing so they then have to consider whether any collective action to be taken for the implementation of the treaty should be entrusted to the parent IGO itself or whether a new IGO is to be created — or to take the intermediate step of merely establishing some political and/or expert organs and having those serviced by the secretariat of the parent IGO, i.e., to establish treaty organs. The choice is essentially a practical one depending on the range of functions to be performed, though often tinged with political consideration, such as: whether some influential members of the IGO neither wish to accept the new obligations nor to have the IGO associated with their implementation, or whether those willing to accept these obligations do not wish to have states that do not do so exert any influence over such implementation.[87]

Experience shows that often enough and in particular in certain specialized areas, the preferred option is to create one or more TOs. As demonstrated above, the United Nations has been particular prolific in doing so. These treaty organs then exist in a symbiotic relationship with their host organization, drawing their administrative support from the latter while giving it the ability to carry out, under the control of these special organs, activities in which the entire IGO membership does not wish to join. For many UN System IGOs, including the United Nations itself, these TO-directed activities are becoming a significant part of the organizations' operations.

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87 This, in effect, was the situation under the ICESCR (see note 57), which provides that ECOSOC should monitor its implementation. When the Council first did so through a Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, the objection was raised that members of the Council not parties to the Covenant were participating in the selection of these experts while numerous parties that did not happen to be on the Council were excluded from that selection. Consequently, ECOSOC, by its resolution 1985/17 of 28 May 1985, somewhat clumsily retrofitted the Covenant with a close approximation of a TO, the Committee on Economic, Social and Cultural Rights, which, though a subsidiary organ of the Council, has its members selected by the parties to the Covenant.

III. Environmental Entities: TOs or IGOs?

Many of the ever-growing number of treaties for the protection of the environment appear to be almost deliberately vague as to the type of entities they charge with their implementation. These treaties establish what at first sight appears to be almost complete international organizations: there is at least one political organ (a meeting or Conference of the Parties — COPs), sometimes some expert organs, and a secretariat — except that that secretariat is attached to or forms part of the secretariat of an existing IGO or of a QAB (often UNEP) of such an IGO (the UN).[88] The financing is usually provided by the parties, perhaps after an initial period when the United Nations supplies what might be considered as start-up funds. For example:

(a) The 1973 [Washington] Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) establishes a COP and a secretariat, the latter to be provided by the Executive Director of UNEP.[89] Pursuant to the latter provision, a special UNEP unit was established in Geneva; the UNEP Executive Director appoints the SG of CITES, who in turn appoints, in consultation with UNEP, the rest of the staff, who are UN staff members.[90]

(b) The 1979 [Bonn] Convention on the Conservation of Migratory Species of Wild Animals (CMS) established a COP, a Scientific Council of experts, and a secretariat,[91] the provisions relating to

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88 Actually, probably the first world-wide treaty that followed the above-described pattern was the 1971 (UNESCO) (Ramsar) Convention on Wetlands of International Importance Especially as Waterfowl Habitat (UNTS Vol. 996 No.I-14583, *ILM* 11 (1972), 969 et seq., which by article 8.1 assigns the secretariat duties to the International Union for the Conservation of Nature and Natural Resources (IUCN — or World Conservation Union), which itself is a somewhat peculiar IGO (its members include states, governmental ministries and NGOs) at the periphery of the UN System, having been established by a UNESCO-convened conference in 1948 (see description in Doc.A/53/234, Annex I).

89 UNTS Vol. 993 No.I-14537, *ILM* 12 (1973),1088 et seq., as amended in 1979, TIAS 11079, and 1983 (not yet in force), arts XI and XII.

90 The appointments of these staff members, as is generally also true of those of the UN or UNEP secretariat units established for the other treaties listed below, are restricted to service with that unit.

91 UNTS Vol. 1651 No.I-28395, *ILM* 19 (1980), 15 et seq., arts VII–IX.

which are similar to those specified above for CITES, except that it is located in Bonn.

(c) The 1979 [ECE] Convention on Long-Range Transboundary Air Pollution (LRTAP) establishes an Executive Body, to be constituted within the framework of the Senior Advisers to the Economic Commission for Europe (ECE) Governments on Environmental Problems, and assigns to the Executive Secretary of the ECE the task of carrying out specified secretariat functions;[92] this is done by a unit of the Commission's secretariat in Geneva.

(d) The 1985 Vienna Convention for the Protection of the Ozone Layer (Ozone Convention) establishes a COP and a secretariat (which also acts in that capacity for the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer) to be provided on an interim basis by UNEP,[93] an arrangement that was made permanent by the first COP; consequently that secretariat is part of UNEP and functions in Nairobi. The Montreal Protocol also established a Multilateral Fund, which is governed by an Executive Committee;[94] the latter established for the Fund a separate secretariat, which is associated with GEF (see sub-Section V.1(c) below) and is located in Montreal.

(e) The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), establishes a COP and a secretariat, to be designated by the first COP from existing competent and willing IGOs.[95] At that meeting UNEP was designated, and it established a special secretariat unit in Geneva.

(f) The 1992 United Nations Framework Convention on Climate Change (UNFCCC) establishes a COP, subsidiary bodies of expert governmental representatives for scientific and technological advice and for implementation, and a secretariat, to be designated at the first COP.[96] Pursuant to this provision, an "institutional linkage"

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92 UNTS Vol. 1302 No. I-21623, *ILM* 18 (1979), 1442 et seq., arts 10–11.

93 Vienna Convention: UNTS Vol. 1513 No.I-26164, *ILM* 26 (1987), 1529 et seq., arts 6–7; Montreal Protocol: UNTS Vol. 1522 No.I-26369, *ILM* 26 (1987), 1550 et seq., arts 11–12.

94 Montreal Protocol (ibid.), article 10.5.

95 UNTS Vol. 1673 No.I-28911, *ILM* 28 (1989), 657 et seq., arts 15–16, in particular 16.3.

96 UNTS Vol. 1771 No.I-30822, *ILM* 31 (1992), 849 et seq., respectively, arts 7, 9, 10 and 8, in particular 8 para.1 and 8 para.3.

was proposed by the UN SG to the COP[97] and those arrangements were separately approved by the COP[98] and by the GA;[99] they provide that the Executive Secretary be appointed by the UN SG in consultation with the Bureau of the COP, that the staff members are UN staff, that this operation be financed by the states parties except that the conference servicing costs be temporarily borne by the UN Regular Budget, etc.[100] By an agreement the secretariat concluded with Germany, it is situated in Bonn. The Convention also provides for a "financial mechanism", which is to have defined characteristics and is to be carried out by an entity or entities entrusted therewith by the COP;[101] the latter designated the GEF (see sub-Section V.1(c)), which had been reconstituted precisely to meet those characteristics and the similar ones under the Biodiversity Convention.

(g) The 1992 [UN] Convention on Biological Diversity establishes a COP, a Subsidiary Body on Scientific, Technical and Technological Advice composed of governmental representatives with relevant expertise, and a secretariat, under conditions similar to those of the Basel Convention, except that UNEP established the special secretariat unit in Montreal. The Convention also provides for a financial mechanism along lines similar to those provided in UNFCCC, and the COP has also entrusted this to GEF.[102]

(h) The 1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Especially in Africa (Desertification Convention) established a COP, a Committee on Science and Technology composed of governmental representatives with relevant expertise, and a permanent secretariat, under conditions similar to those of UNFCCC.[103] Pursuant to this provision, an Interim Secretary has been appointed by the UN SG, the staff members are UN staff and are situated in Ge-

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97 Doc.FCCC/CP/1995/4/Add.4, Appendix.

98 Decision 14/CP.1, recorded in Doc.FCCC/CP/1995/7/Add.1.

99 A/RES/50/115 of 20 December 1995, para. 2.

100 See generally the report of the Secretary-General set out in Doc.A/50/716 of 2 November 1995.

101 Convention, see note 96, Article 11.

102 UNTS Vol. 1760 No.I-30619, *ILM* 31 (1992), 818 et seq., arts 23, 25, 24 (in particular 24 para.2) and 21.

103 UNTS Vol. 1954 No.I-33480, *ILM* 33 (1994), 1328 et seq., arts 22–24, in particular 23 para.3.

neva. The Convention also establishes a Global Mechanism for the mobilization and channeling of substantial financial resources, to be "housed" in an IGO identified by the first COP;[104] pursuant to that provision the International Fund for Agricultural Development (IFAD — a specialized agency) was chosen.

(i) The 1998 [UNEP/FAO] Convention for the Application of Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention) established a COP and a secretariat, which at least initially is to be provided jointly by the UNEP Executive Director and the FAO DG, but might later be transferred by the COP to one or more other competent IGOs.[105]

In addition, there are a number of regional treaties, particularly those that relate to regional seas, that have essentially the same institutional structure: a COP and a secretariat supplied by a designated body, usually UNEP.[106]

The reason it is so difficult to classify whatever entities are created by these treaties is that arguments of seemingly equal weight can be made for their status as TOs of the UN or as independent IGOs. On the one hand, nowhere do any of these treaties state that they are establishing an "organization" (which is normally done by treaties that create IGOs, whether as their main object or only incidentally[107]); there is no provision for international legal personality or for privileges and immunities;[108] and their secretariats are, at least initially, farmed out to an ex-

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104 Ibid., article 21.paras 4–5, and see A/RES/52/198 of 18 December 1997, para. 5.

105 Doc.UNEP/FAO/PIC/INC.5/3, Appendix I, of 11 September 1998, arts 18 and 19, in particular 19 paras. 3–4.

106 See, e.g., the 1983 (Cartagena) Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, UNTS Vol. 1506 No.I-25974, *ILM* 22 (1983), 221 et seq., arts 16 and 15.

107 For example, the 1983 International Tropical Timber Agreement (UNTS Vol. 1393 No.I-23317) explicitly creates the International Tropical Timber Organization, which is continued by article 3 para.1 of the 1994 Agreement, *ILM* 33 (1994), 1014 et seq.

108 As long as the secretariats are provided by the UN directly or by UNEP, no questions of privileges and immunities need arise; the staff members and their premises are covered by CPIUN, and representatives to COP meetings are normally national diplomats; in any event, there are seat agreements with those host states (e.g., Germany) that do not already have com-

isting IGO. On the other hand, some of these entities (i.e., their secretariats, especially authorized by their COPs) have entered into seat or conference agreements in their own names, rather than in that of the United Nations,[109] which at least suggests that the states parties to those agreements were prepared to accept that the former had sufficient legal personality to do so — though it may merely indicate that these states, eager to act as hosts, are prepared to overlook this technical problem so as to be able to perfect the desired arrangements. Because of doubts raised by some such states, the COPs created by several of these treaties have adopted resolutions purporting to confer legal personality and privileges and immunities on some of these treaty-created entities; though evidently not as solid as treaty-based provisions, these resolutions might be considered as at least binding on the states that voted for them.[110]

The probable reason for these ambiguous formulations is that when such a treaty is initially negotiated there may be uncertainty or disagreement as to how successful the new regime will be, and an unwillingness, at least on the part of some states, to create yet another IGO, certainly before the need for one is clear.[111] As a regime solidifies and its

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prehensive headquarters agreements with the UN, and conference agreements for meetings away from the seat.

109 See, e.g., the report of the Secretary-General on the implementation of the Desertification Convention — see note 103 — referring to the headquarters agreement concluded on 18 August 1998 between the secretariat established by the Convention and the Government of Germany (Doc.A/53/516 of 19 October 1998); also referred to in A/RES/53/191 of 15 December 1998, para. 4.

110 E.g., the COP of the Montreal Protocol (see note 93), at its 6th Mtg. in October 1994 adopted Decision VI/16 conferring on the Multilateral Fund established by an amendment to the Protocol, juridical personality, the legal capacity to enter into contractual arrangements, to acquire and dispose of property, and to institute legal proceedings, and necessary privileges and immunities for the Fund and its officials. On the basis of this resolution, the Canadian Government concluded a seat agreement with the Fund. For a different instance in which a resolution may have to be considered as a treaty-like agreement by those who adopted it, see sub-Section VI.2(c) below.

111 Such ambivalence, especially it would seem concerning environmental institutions, also appears to have marked the establishment of UNEP itself. The GA resolution by which this was done, in the wake of the 1972 Stockholm Conference (A/RES/2997 (XXVII) of 15 December 1972), is titled "Institutional and financial arrangements for international environmental

activities become more important to its parties, there may be a move to establish greater independence and the original TOs[112] may be recognized as organs of an inchoate IGO that may be "morphed" into a fully developed one. Others, however, may remain closely attached to the United Nations (directly or through UNEP), and thus continue to be considered as TOs. Thus all these institutions may ultimately not end up with the same classification.

IV. Specialized Agencies and Other UN System IGOs

Arts 57 and 63 para.1 of the United Nations Charter define "specialized agencies" as "established by intergovernmental agreements and having wide international responsibilities ... in economic, social, cultural, educational, health and related fields" which are to be brought into relationship with the United Nations through agreements negotiated with ECOSOC and approved by the GA. Specialized Agencies (SAs) are mentioned in several provisions of the Charter, in most instances in relation to ECOSOC, though Article 17 para.3 provides that the GA is to approve any financial and budgetary arrangements with SAs and review their administrative budgets. Although the Charter also refers to other international agencies[113] it is not suggested that any of these would have special relations with the United Nations.[114]

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co-operation", and nowhere indicates clearly that it is establishing a new organ to be called the "United Nations Environment Programme". Instead it establishes, seemingly without organic connections, the Governing Council of UNEP (the only place where that term appears), the Environmental Secretariat (defined as "small"), an Environment Fund and an Environment Co-ordination Board (which was soon replaced).

112 Technically, in these environmental regimes only the COP, and perhaps an expert body, are TOs; if and when an independent IGO is formed, most likely by creating an independent secretariat, all these (i.e. the COP, any expert body, and the secretariat) become the organs of the IGO.

113 See, for example, Arts 48 para.2 and 52 (regional agencies).

114 It should be noted that over the years, and especially in recent ones, the GA has granted observer status to an increasing number of IGOs, including many of a regional character, not otherwise formally associated with the UN System (e.g., A/RES/52/6 of 22 October 1997 relating to the Andean Community), or has concluded cooperation agreements with them (e.g., Agreement of 29 September 1991 between the UN and the Latin American Economic System, UNTS Vol. 1651 No.II-1061), or has adopted

In all, 17 organizations became specialized agencies.[115] Some of these, such as ITU and UPU, pre-date the United Nations by nearly a century; ILO was established as part of the League of Nations; FAO and WHO have their roots in earlier organizations established before World War II and restructured thereafter; the Bretton Woods Institutions (IMF and IBRD) were born essentially contemporaneously with the United Nations at the end of the War; and most of the others were, in effect, established by the United Nations itself, through conferences at which their constitutions were adopted; the last one, UNIDO, is one of the latter and it succeeded a UN QAB with the same name and functions.

Although all SAs may have been intended to be created equal, from the beginning they were in effect grouped into two classes, differentiated by the precise terms of their relationship agreements. The two Bretton Woods institutions entered into relationships that were somewhat more distant from the central organization; in particular, they accepted only very conditioned obligations to take account of GA recommendations,[116] and they did not undertake to join in any common system of staff administration; subsequently two of the four derivative agencies of the IBRD, namely IFC and IDA, became SAs in their own right, on terms similar to that of their parent. Later IFAD, in negotiating its relationship agreement, argued that it too should be classed with the other International Financial Institutions, but the GA rejected this.[117]

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resolutions concerning cooperation (e.g., with the Organization of the Islamic Conference, A/RES/37/4 of 22 October 1982 and annually thereafter). These actions do not cause any structural changes in the UN System, but rather testify to the increasingly important role of the UN and especially to the central political position of the GA in the world community as a whole — perhaps not yet Tennyson's Parliament of Man (*Locksley Hall*, line 128) but at least as Mankind's Forum.

115 One of these was the International Refugee Organization (IRO), which was dissolved in 1950 and whose functions were, in effect, taken over by then newly established UNHCR.

116 See article IV of the UN/IBRD Relationship Agreement (UNTS Vol. 16 No.II- 109), the implementation of which later became most controversial between the two organizations; see the Report of the Secretary-General on "Consultation with the International Bank for Reconstruction and Development", GAOR 22nd Sess., Annexes, Agenda Item 66, A/6825.

117 When the draft Relationship Agreement with IFAD, which did not include a provision relating to the common system, was under consideration by the

Thus, from the beginning, the UN System or Family consisted of the United Nations itself and of its growing number of SAs. The main characteristics of the System were, and in effect still are:

(I) For all SAs:

(i) Authorization by the GA, pursuant to Charter Article 96 para.2, to request advisory opinions of the ICJ;

(ii) Acceptance of the CPISA,[118] adopted by the GA, which also authorized their staffs to use the UN *Laissez-Passer*;

(iii) Participation in the ACC.[119]

(II) In addition, for the inner circle of non-Bretton Woods SAs:

(i) Participation in the "common system of salaries, allowances and other conditions of service" (the common system),[120] which is designed to prevent emoluments-based competition among the UN System IGOs and also centralizes the extremely complicated function of developing and maintaining arrangements concerning current emoluments and future benefits at hundreds of duty stations at which both international officials from all over the world as well as local staff are employed for short or long periods;

GA, the Assembly first adopted a resolution inviting IFAD to participate in the common system (A/RES/32/102 of 13 December 1977); only after a positive response was received from the IFAD organs simultaneously meeting in Rome, did the Assembly at the recommendation of its Fifth Committee first approve the new article IX of the Agreement providing for cooperation with the common system (A/DEC/32/428 A of 15 December 1977) and later that day approved the amended draft Agreement (A/RES/32/107 of 15 December 1977). The text is now set out in UNTS Vol.1080 No.II-806.

118 A/RES/179 (II) of 21 November 1947, UNTS Vol. 33 No.I-521.

119 See sub-Section V.3 below.

120 For a list of the organs that implement the common system, see sub-Section V.3 below. The provisions of the Relationship Agreements between the UN and various SAs and other IGOs participating in the common system are set out in the Annex to *ICSC Statute and Rules of Procedure*, Doc.ICSC/1/Rev.1 (1987).

(ii) Participation in the Panel of External Auditors, and later also in the JIU;[121]

(iii) Examination of their administrative budgets by the GA's ACABQ;

(iv) For most, basing the rates of assessments of their members on those adopted by the GA for the UN Regular Budget.

Soon, however, some anomalous organizations joined the UN Family:

(a) The IAEA could not become an SA principally because its relationship agreement was not negotiated with ECOSOC (as required for SAs by Charter Arts 57 and 63 para.1), reflecting the fact that the Agency's international security related activities might require it to have access to the SC rather than to ECOSOC.[122] However, because nuclear energy also has important economic and social implications, for most practical purposes the Agency became an inner circle SA in all but name.

(b) The living remains of the still-born International Trade Organization, namely ICITO/GATT,[123] although technically not an IGO at all, participated in the common system and in some other ways acted as an SA.

(c) The World Tourism Organization, a successor to a line of NGOs, was reorganised as an IGO in 1975 specifically so that it could become a UNDP Executing Agency.[124] In 1977 it concluded an Agreement on Co-operation and Relationship with the UN, which closely resembles the agreements with the inner circle SAs, except that it does not refer to the common system; nevertheless, in 1995 the Organization conformed the conditions of service of its staff to

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121 Cf. in this respect W. Münch, "The Joint Inspection Unit of the United Nations and the Specialized Agencies", *Max Planck UNYB* 2 (1998), 287 et seq.

122 See P.C. Szasz, *The Law and Practices of the International Atomic Energy Agency* (IAEA), 1970, Section 12.1. Even though not technically an SA, the GA did authorize the Agency to request advisory opinions (see, ibid., Section 12.1.4.1).

123 Respectively the Interim Commission of the International Trade Organization and the General Agreement on Tariffs and Trade, both based on texts negotiated at the UN's 1947 Havana Conference to establish ITO.

124 World Tourism Organization Statute, 27 September 1970, UNTS Vol. 985 No.I- 14403, article 3.1.

the common system in order to be able to join the UNJSPF.[125] Because the Agreement was not concluded through ECOSOC, the Organization did not become an SA.

From early days, there had been some IGOs established by UN sponsored multilateral treaties that did not become parts of the UN System. Some were too small and narrow in concept to fit the Charter definition of SAs, such as the numerous commodity organizations established by a series of UNCTAD-sponsored treaties or the International Tropical Timber Organization.[126] Others, like the Asian Development Bank, created by a treaty[127] concluded under the auspices of ECOSOC's Economic Commission for Asia and the Far East (ECAFE) (now the Economic and Social Commission for Asia and the Pacific — ESCAP), is an essentially regional international financial institution and consequently does not belong in a family of essentially universal organizations. Special mention should be made of the University for Peace, which was established by an international agreement and a Charter, both adopted by the GA, and whose Council includes one representative each designated by the UN SG, the UNESCO DG, the UNU Rector and the UNITAR Executive- Director, as well as ten representatives of the academic community appointed by the UN SG in consultation with the UNESCO DG; nevertheless, it has no financial or reporting ties to the UN proper, though its Charter provides that it is to seek to establish a close relationship with UNU pursuant to an agreement to be concluded between the two institutions, and to maintain close links with UNESCO.[128]

Since the formal completion of the conversion of UNIDO from a QAB to a SA, none of the several significant UN-related IGOs that have been established have aspired to SA status. Some have concluded relationship agreements with the United Nations that resemble the SA (and IAEA) agreements, and some have managed to benefit from some features of the system that are usually restricted to System members

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125 A/RES/32/156 of 19 December 1977, and A/DEC/50/455 of 23 December 1995.

126 See note 107.

127 Articles of Agreement of the Asian Development Bank, UNTS Vol. 571 No.I- 8303 of 4 December 1965, *ILM* 5 (1966), 262 et seq.

128 See respectively arts 6.1 (a) (iii) and (b)(i) and 4.2-3 of the Charter of the University for Peace which, together with the International Agreement for the Establishment of the University for Peace (UNTS Vol.1223 No.I-19735), is annexed to A/RES/35/55 of 5 December 1980.

(e.g., use of the United Nations *Laissez- Passer*; participation in UNJSPF), but for the most part they can at most be considered somewhat peripheral members of the United Nations Family. For example:

(d) The World Trade Organization (WTO), the successor to the anomalous ICITO/GATT, has not concluded any relationship agreement with the United Nations and is withdrawing from participation in the common system, including UNJSPF.[129]

(e/f) The International Seabed Authority (ISA) and the International Tribunal for the Law of the Sea (ITLOS), both established by UNCLOS, have concluded respectively a Relationship Agreement and a Cooperation and Relationship Agreement with the United Nations[130] that resemble the inner circle SA agreements, including the provisions concerning the common system. However, these agreements, not having been entered into by ECOSOC but having been submitted directly to the GA, do not constitute these organizations as SAs and therefore contain no authorization to request ICJ advisory opinions.

(g) The Organization for the Prohibition of Chemical Weapons (OPCW), established by the 1993 Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction [131], has been authorized by the GA to issue *Laissez- Passers* to members of its inspection teams.[132] It has not yet concluded any type of relationship agreement with the United Nations, which for even stronger rea-

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[129] Such withdrawal is not at all a simple procedure, as discussed in the report of the Pension Fund Board to the GA (Doc.A/53/9/Add.1 of 24 November 1998). The decision that the new WTO would not continue its predecessor's (ICITO's) participation in the common system was actually taken by the Ministers of the participating states at the Marrakesh meeting, just before formally adopting the Agreement Establishing WTO, as recorded in a Ministerial Decision of 14 April 1994 on "Organizational and Financial Consequences flowing from Implementation of the Agreement Establishing the World Trade Organization" (*ILM* 33 (1994), 1269 et seq.) so as to permit aligning the conditions of service of WTO staff with the better ones of the Bretton Woods Institutions — a goal that was, in the event, not accomplished.

[130] Respectively A/RES/52/27 of 26 November 1997, Annex, and A/RES/52/25 of 8 September 1998, Annex.

[131] *ILM* 32 (1993), 800 et seq.

[132] A/RES/51/230 of 22 May 1997.

sons than those relating to the IAEA would in any event not constitute it an SA.

In addition, with respect to two organizations whose constitutional instruments have recently been adopted under the aegis of the United Nations, and which are now awaiting formal establishment on the entry into force of these instruments, it should be noted:

(h) The Comprehensive Nuclear Test-Ban Treaty, which is to establish the CTBTO, merely refers to "cooperative arrangements with other international organizations" and "agreements and arrangements with ... international organizations",[133] without any special reference to the United Nations. For the same reasons as related to the IAEA and the OPCW, that is the need to maintain closer relations with the SC and possibly the GA, than with ECOSOC, specialized agency status is not foreseen.

(i) The Statute of the International Criminal Court (ICC) provides that "[t]he Court shall be brought into relationship with the United Nations through an agreement ...".[134] For the reasons indicated below, it is not expected to become an SA.

Thus the number of substantial organizations that exist within the UN System but that lack formal ties to its administrative structure, is likely to grow.

The major reason for this development is that most of the new IGOs (except WTO and possibly the ISA) do not fulfill the Charter Article 57 para.1 subject matter criteria that were quoted at the beginning of this Section. The OPCW and CTBTO, even more than the IAEA (which also has important economic and health related functions), deal solely with questions of military security and it would be inappropriate for them to coordinate activities through ECOSOC or ECOSOC-created machinery (e.g., ACC). Such coordination would similarly be inappropriate for the two new courts: ITLOS and ICC.

There appear, however, to be other more subtle reasons why organizations that could qualify as SAs, such as WTO and possibly the ISA, fail to do so, and for the others not to strive to secure at least the same sort of quasi-SA status that the IAEA attained in 1958:

(i) Some states and possible some administrators appear to deem adherence to the common system an unwanted burden, possibly for

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133 *ILM* 35 (1996), 1439 et seq., arts II.A, para. 8 and II.B, para. 26(i). See also note 61.

134 *ILM* 37 (1998), 999 et seq., article 2.

contradictory reasons. On the one hand, some states consider that certain of the benefits that have accrued to international staff over the past decades to be unjustified and expensive. Some executive heads and staff, on the other, have concluded that the common system professional salary scales, tied as they are to that of the United States civil service, have not adequately reflected the rise in private pay scales for similarly qualified persons, making it difficult to recruit and retain qualified technical staff.[135]

(ii) Some states appear to resist the relatively high level of international privileges and immunities that are provided for in the CPIUN[136] and the CPISA.[137] Though prepared to provide substantial protection for weapons inspectors and having done so directly in their constitutional treaties, OPCW and CTBTO have resisted drawing up privileges and immunities agreements to cover their entire staff and the organizations themselves — thus failing to follow the example of the IAEA which, when it was determined that it could not participate in CPISA, adopted an Agreement[138] that followed that text practically word for word.

A probably unintended consequence is that these new organizations are not qualified, under Charter Article 96 para.2, to be authorized by the GA to request advisory opinions from the ICJ.[139] On the other hand, there is no constitutional or other serious obstacle to the participation of these organizations in the various coordination and control organs of the UN System, described in sub-Section V.3 below, to the extent that this is considered desirable.

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135 See note 129.

136 See note 14.

137 See note 118.

138 Agreement on the Privileges and Immunities of the International Atomic Energy Agency, UNTS Vol. 374 No. 5334 of 1 July 1959. It should, however, be recalled that in approving the Agreement the Board of Governors did so "without committing the Governments represented on the Board" and that it invited member States "to consider and, if they see fit, to accept this Agreement" (Doc. INFCIRC/9/Rev.2, 2) — hardly a ringing endorsement.

139 In this connection it should be kept in mind that in practice the SAs have made only minimal use of this facility: one request each by IMCO (predecessor of IMO), UNESCO and WHO, in about half a century.

V. Joint Bodies

1. Joint Substantive Organs

Explicit or implicit in the constitutions of all organizations is the power of their organs to establish subsidiaries — which, of course, are obliged to function within the legal system of the organization that established them. Although an organ may be able to establish subsidiary organs that can perform functions that the parent cannot (for example, the GA has established the UNAT, and the SC has established two war crimes tribunals), they cannot be authorized to perform functions beyond the powers of the organization itself.

It is not explicitly foreseen in any constitutional instrument that two or more organs established under it should be able to establish a joint subsidiary organ, but there is no reason to exclude that possibility in principle, and indeed, there have been several examples in the United Nations of the same organ being assigned tasks by both the GA and by ECOSOC.[140] Conceptually more difficult is the establishment by two independent IGOs of a joint subsidiary organ, that is an organ that partakes of the legal personality of both. Nevertheless, there are several examples of such constructs — which at least illustrate that what may be theoretically difficult can sometimes be done in practice.

(a) The WFP is a joint subsidiary organ of the UN and of FAO (an SA). It was established in 1961, and several times reorganized, by resolutions adopted separately by the GA[141] and by the FAO Conference, and is governed by a set of rules adopted by both ECOSOC and the FAO Council. It is now supervised by an Executive Board of 36 states, half elected by ECOSOC and half by the

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[140] See note 38. Aside from the example cited therein, there are numerous instances of the GA assigning tasks to ECOSOC organs, such as the Functional Commissions (and at the same time expanding their membership for the purpose of fulfilling that task), such as by A/RES/52/100 of 12 December 1997, para. 46, deciding that the Commission on the Status of Women is to serve as the preparatory committee for the "high-level plenary review" in the year 2000 of the implementation of, *inter alia*, the 1995 Beijing Platform of Action, and by A/RES/52/111 of 12 December 1997, para. 29(d), deciding that the Commission on Human Rights will act as the preparatory committee for the world conference on racism, racial discrimination, xenophobia and related intolerance.

[141] The first such was A/RES/1714 (XVI) of 19 December 1961, and the latest reorganization was approved by A/RES/50/8 of 1 November 1995.

FAO Council; the executive head is the Executive Director, appointed jointly by the UN SG and the FAO DG. The Programme, which also administers the GA-established International Emergency Food Reserve, is the largest multilateral food aid arrangement, and indeed one of the largest resource transfer operations in the UN System (aside from the IFIs). Its staff of over 4,000 are governed by the FAO Staff Regulations and Rules, adapted to take into account that the executive head is the WFP Executive Director rather than the FAO Director-General.

(b) The ITC was established by the GATT Contracting Parties in 1964 but has since 1968 been operated jointly by UNCTAD (a UN QAB) and by GATT; in "Administrative Arrangements" concluded in 1974 the Centre is characterized as "a subsidiary organ of both the United Nations and GATT", which is to "be accorded a degree of separate identity" [142]; after the establishment of WTO, negotiations were entered into to replace GATT as co-parent by the new organization. ITC is supervised by the Joint Advisory Group of the International Trade Centre UNCTAD/WTO and its executive head is appointed by the UN SG. The Centre applies the UN Staff Regulations and Rules and the UN Financial Regulations and Rules.

(c) The GEF was established by the World Bank in 1991 as a "pilot program", and was restructured in 1994, after extensive negotiations among participating states, by the Instrument for the Establishment of the Global Environment Facility, which was formally approved by separate decisions by the following three Implementing Agencies: the World Bank (an SA), by resolutions of its Executive Directors and Board of Governors; UNDP (a UN QAB), by a decision of its Executive Board; and by UNEP (also a UN QAB), by a decision of its Governing Council.[143] The Establishing Instrument provides for the following organs: an Assembly of the representatives of all participating states; a Council of 32 members (from 3 "constituencies") and 32 alternates, appointed by the participant

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[142] See Doc.A/C.5/1604 of 16 September 1974 (also reproduced in Doc. A/C/5/52/45 of 17 March 1998), para. 3(a) and Annex, para. 2, noted by the GA at its 2325th Mtg. on 18 December 1974. For a history of ITC, see the report of the Secretary-General Doc.A/C.5/52/25 of 2 December 1997, para.3, and the Attachments to the report by the UN Secretariat Doc.A/C.5/52/45 of 17 March 1998.

[143] All these decisions, as well as the text of the GEF Establishing Instrument, are reproduced in *ILM* 33(1994), 1273 et seq.

states in each constituency; a Scientific and Technical Advisory Panel, established by UNEP in consultation with UNDP and the World Bank; and a secretariat supported administratively by the World Bank and headed by a CEO/Chairman appointed by the Council on the joint recommendation of the three Implementing Agencies. As the Legal Counsel of the World Bank has pointed out, the GEF is practically an IGO, except for the fact that has not been accorded legal personality;[144] thus it is, in effect, a joint organ of the three Implementing Agencies, all members of the UN family. In turn, it has become the principal means of financing projects under several environmental conventions (see Section III.), including the ones on ozone protection, biodiversity and climate change.

(d) The Intergovernmental Panel on Climate Change (IPCC) was established in 1988, jointly by UNEP (a UN QAB) and the World Meteorological Organization (WMO — an SA), originally to do preliminary work leading towards the UNFCCC[145] (which was ultimately negotiated under the auspices of the GA) and now to provide continuing advice to the organs established by that treaty.

(e) The Consultative Group on International Agricultural Research (CGIAR) is a semi-formal arrangement cosponsored by FAO (an SA), UNDP and UNEP (both UN QABs) and the World Bank (an SA), which originated and chairs the Group, whose members include about 60 states, foundations and other NGOs and which supports over a dozen research institutes around the world.

(f) The Pan-American Health Organization (PAHO) is simultaneously a regional agency of WHO (an SA of the UN System) and a specialized agency of the Organization of American States (OAS) — which is a regional organization not part of the UN Family.

2. Interorganizational Organizations

Can IGOs go beyond establishing joint organs (which have the legal personality of at least one of those organizations, and perhaps of all of the founders), and actually create Interorganizational International Organizations (IOOs) that have their own legal personality and not merely that of any of those IGOs, just as IGOs established by states have their

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144 See note 16.

145 See note 96.

own legal personality and not that of their members? Whatever the theoretical considerations may be, such organizations have actually been created within CGIAR (sub-Section 1(e), above), when for particular reasons it was desired to (re-)establish certain of the sponsored research institutes not on the basis of the national law of the host state (the usual pattern) but as an international organization — without, however, negotiating an intergovernmental treaty.[146]

3. Administrative Organs of a Joint Character

The multitude of organizations and organs that constitute parts of the UN System often have mandates, and consequently programmes and activities, that overlap,[147] necessitating the existence of some coordinating devices. On the political level this function is performed, separately or together, by the GA, by ECOSOC (which has a Charter responsibility in respect at least of the SAs[148]) and, under their supervision, by ECOSOC's Committee for Programme and Co-ordination (CPC). On the administrative level, numerous arrangements and institutions have been established, normally by the GA, sometimes by entrusting certain such functions to an organ it itself has established, and sometimes by establishing an organ and inviting other UN System IGOs to accept it as a joint organ; in addition, the GA has also established certain organs to which it has entrusted activities that also extend to other such IGOs.

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[146] See the May 1988 Agreement between the International Bank for Reconstruction and Development and the United Nations Development Programme on the Establishment of the Centro Internacional de Mejoramiento de Maiz y Trigo (CIMMYT), which specifies that CIMMYT "is hereby established as an international organization possessing full juridical personality in accordance with the Constitution set forth in the Annex attached hereto"; article 2 of that Constitution specifies that: "CYMMYT ... enjoys international status and shall operate as an integral part of [CGIAR]". To make assurance doubly sure, the Agreement also specifies that "neither the Co-Sponsors (IBRD and UNDP) nor any member of CGIAR shall be responsible or liable, individually or collectively, for any debts, liabilities or obligations of CIMMYT".

[147] There are many natural overlaps, such as, for example, in respect of safety provisions for workers in the nuclear industry, which naturally falls within the purview of the IAEA, ILO and WHO; this is recognized in IAEA Statute, article IV.A.6.

[148] United Nations Charter Arts 58 and 60.

The principal coordinating organ is the ACC, established by ECOSOC.[149] Initially it consisted of just the UN SG, as Chair, and the executive heads of all the SAs; later the IAEA Director General and the executive heads of the QABs were added. ACC has two main subsidiaries: the Consultative Committee on Administrative Questions (CCAQ), which itself has two forms, dealing respectively with financial (CCAQ(FB)) and personnel (CCAQ(PER)) issues and consisting, respectively, of the heads of the financial and personnel services of each common system organization; and the Consultative Committee on Programme and Operational Questions (CCPOQ), which has a number of subsidiary bodies. In addition there are a number of standing and *ad hoc* bodies for particular issues.

The administration of the common system (in which only certain UN System IGOs participate)[150] involves a number of organs: The International Civil Service Commission (ICSC), established by the GA as an expert joint inter-agency organ[151] "for the regulation and coordination of the conditions of service of the [UN] common system"; the UNJSPF[152] and its uniquely composed Board[153] in which all IGOs that follow the common system may participate; and the Administrative Tribunals of ILO (ILOAT) and the UN (UNAT), which between them have jurisdiction over all common system staff.[154] The administrations are represented in and before these various organs by CCAQ(PER); the staffs are represented by two alliances of staff representative organs (unions): the Federation of International Civil Servants' Associations

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149 E/RES/13 (III) of 21 September 1946.

150 See Section IV., para. II(i).

151 Some of the SAs indicated, while agreeing to the jurisdiction of the Commission, that they could not accept it as a joint organ because there was no provision for such in their constitutional instruments.

152 The UNJSPF Regulations were first adopted by A/RES/248 (III) of 7 December 1948, and have been amended almost annually since.

153 The UN Joint Staff Pension Board is a tripartite organ, consisting of an equal number of representatives: elected by the GA or by the legislative bodies of other participating IGOs; appointed by the UN SG or by the executive heads of other IGOs; and elected by the staff of the UN or other IGOs. Moreover, the number of representatives of each IGO (in all the above categories) roughly reflects the size of its staff. See Rules of Procedure of the United Nations Joint Staff Pension Board, Doc.JSPB/G.4/Rev.14 of 1 January 1990, Annex II, Appendices 1 and 2.

154 The IMF and the World Bank, which do not participate in the common system, each have their own pension funds and administrative tribunals.

(FICSA) and the Co-ordinating Committee of Independent Staff Unions and Associations (CCISUA);[155] even the retired staff are represented by the Federation of Associations of Former International Civil Servants (FAFICS), which in turn consists of local AFICSs.

Again in respect of many of the common system IGOs, some financial coordination is provided by the following organs: the GA's powerful ACABQ of 16 experts appointed on a personal basis by the GA;[156] the Panel of External Auditors, consisting of the elected External Auditors of the UN (3 at any given time) and of each of the common system SAs and the IAEA (mostly one each);[157] the JIU, consisting of up to 11 inspectors appointed on a personal basis by the GA.[158]

VI. Temporary Entities

Most of the organizations, organs and structures discussed above are of a permanent or at least standing nature. Though most may be altered, or even entirely abolished, generally they persist — in some instances even after their original functions have faded away, sometimes by assuming other tasks.[159] It appears that it is often more difficult to abolish an entity than to create one; from time to time it has been suggested that certain types of entities should only be established with sunset provi-

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155 Although the staff representative organs of a particular IGO have the legal personality (and thus benefit from the privileges and immunities) of their IGO, it is not entirely clear where the legal personalities of FICSA and CCISUA are located.

156 Provided for in Rules 155–157 of the Rules of Procedure of the GA (Doc.A/520/Rev.15); over the years, the Committee has received many new standing and special assignments.

157 Established by A/RES/1438 (XIV) of 5 December 1959. These External Auditors are, for each IGO, the heads of the governmental audit service of states elected by the IGO organ in which all members are represented.

158 Established by A/RES/2150 (XXI) of 4 November 1966; JIU Statute approved by A/RES/31/192 of 22 December 1976. See note 121.

159 Thus it has been repeatedly suggested that the UN Trusteeship Council, which is *functio officio*, be reinvented as the senior environmental organ of the UN System — for which neither its composition nor its Charter-assigned tasks make it at all suitable.

sions.[160] There are, however, some important entities that are established for only a limited period, but that may nevertheless have major impacts.

1. Conferences

Conferences convened by an IGO are, in effect, temporary organs of that organization. While some of these conferences are indeed short, one-time affairs, others are of a different nature.

(a) Arguably, the most important UN conferences are the major theme meetings, such as those relating to the Environment, Human Rights, Women, Population, Social Development, etc. It should be understood that the actual culminating meeting, usually of a few weeks, is preceded by years of intensive work in which the entire UN System is likely to be engaged. These preparations are orchestrated by a preparatory commission, which itself may be an *ad hoc* organ, or may be a standing one to which this is just a temporary assignment; there are likely to be regional and thematic meetings, all geared to preparing documentation for the big event and to negotiating the outcome of the conference, which is likely to be a solemn declaration. During this process units relating to the work of the conference may be implanted in various related IGOs and QABs, as well as in the participating states — and these units are likely to persist even after the conference is over, to assist in and to monitor the implementation of such declarations. In addition, the sponsoring IGO or organ (usually the GA) may create a new permanent subsidiary organ (sometimes a QAB) for the purpose, and it itself may carry out periodic (often quinquennial) reviews — and, often some two decades later, convene another conference on the same theme. It should be noted that both the Conferences and their preparatory bodies are complex ones, consisting of meetings of state representatives and of a dedicated secretariat headed by a SG appointed by the UN SG.

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160 This, indeed, is already the practice in respect of peace-keeping and similar "blue helmet" operations, which with very few exceptions have in the past decades been established by the Security Council for just six months at a time; once that period is close to expiring, the Council must re-authorize, which it only does if its leading members are agreed that there is still merit in continuing the operation — otherwise it automatically terminates.

(b) Another type of important meetings are treaty-making conferences or conferences of plenipotentiaries,[161] which include "codification conferences". These too are usually carefully and lengthily prepared, first through an expert organ (such as the ILC), then a representative preparatory committee, culminating in a usually multi-week conference, which may have several sessions over a period of years. Most important multilateral treaties emerge from such conferences.

(c) As pointed out in Sections II.2 and III. above, conferences of the parties to arms control and environmental treaties are usually convened on a regular basis, to review implementation and to consider changes or supplements to the treaty. They thus form part of the regular governance of these treaty regimes.

(d) In some instances, organs called "conferences" are part of the regular structure of certain QABs, such as of UNCTAD and of the old, pre-SA UNIDO. Though not participating in the regular governance of the QAB, they set the longer range programmes and goals for the body.

2. Preparatory Commissions

A different type of temporary bodies are preparatory commissions established to ease the birth of a new IGO after its constitutional treaty has been adopted.[162] These PrepComs function for an indefinite period

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[161] These are sometimes misleadingly referred to as "plenipotentiary conferences", which suggests that these meetings have unlimited mandates — while actually they only have the power to adopt treaty and related instruments on a narrowly defined subject.

[162] These Preparatory Commissions should be distinguished from mere preparatory committees for conferences, for these are just subsidiary bodies of the organ (usually principal) that is convening the conference; however, the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INFCCC), established by A/RES/45/212 of 21 December 1990, was kept in operation even after the Convention (see note 96) was adopted and for some time even after it entered into force, holding sessions until February 1995 to prepare for the first COP under the Convention in March/April 1995.

(in some instances for decades[163]) until the principal treaty enters into force and the IGO it established can be set up with the assistance of instruments (rules of procedure, headquarters agreements, rules for functional operations, etc.) drawn up by the PrepCom for formal adoption by the competent IGO organs.

Thus these PrepComs function on the one hand as quasi-organs of the incipient IGO, but meanwhile their legal status depends on the instrument by which they were established. Essentially, there are the following possibilities:

(a) PrepComs can be established by a treaty, which can either be an instrument adopted in parallel with the constitutional instrument of the new IGO (but, unlike the latter, entering into force on signature)[164] or by a portion of that instrument that enters into force (unlike the substantive provisions) on adoption or as otherwise specified.[165] When so established, they are potentially full-fledged though temporary IGOs, having legal personality, privileges and immunities, their own secretariats, etc.[166]

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163 The PrepCom of IMCO (the original name for IMO) functioned from 1948 to 1958, when the IMCO Constitution finally came into force. A special case is the Interim Commission for the International Trade Organization (ICITO), which was designed as the PrepCom for ITO, but then became the long-time secretariat (from 1948 to 1995) of GATT (see Section IV.(b)).

164 For example, the 26 June 1945 Interim Arrangements Concluded by the Governments Represented at the United Nations Conference on International Organization, which established the Preparatory Commission for the United Nations (*UNCIO* Vol. XV, 512–513, US Executive Agreements Series No. 461).

165 For example, the Annex to the Statute of the IAEA of 26 October 1956 (UNTS Vol. 276 No.I-3988), para. A of which specifies that: "A Preparatory Commission shall come into existence on the first day this Statute is open for signature." It should be recalled that the final clauses of all treaties implicitly enter into force on adoption, for otherwise these could not function to bring the treaty itself into force.

166 That was the situation of the IAEA Preparatory Commission (idem), whose independent legal status was recognized both by the United States, where the PrepCom started its operations (Executive Order No. 10727, *Federal Register*, 22 (1957) 7099 et seq.) and by Austria (by means of an Agreement concluded on 24 July 1957, Doc.IAEA/PC/14), where it completed its work; see Szasz, see note 122, Sections 3.1, 3.2.2 and 3.2.4.

(b) PrepComs are frequently established by resolutions of the organ that adopts the constitutional treaty for the future IGO, which organ is usually a conference convened by a principal organ of the "parent" IGO, such as UNCLOS III.[167] When so established, the PrepCom becomes a temporary subsidiary organ of the parent IGO, which is serviced by the latter, though the financing therefor may be provided either by that IGO or by the future states parties of the new IGO.

(c) A peculiar aberration occurred in establishing the PrepCom for the CTBTO (Section IV. para.(h)) by a resolution adopted at an *ad hoc* meeting of the signatory states convened some weeks after the Convention[168] had been opened for signature, which resolution specifies that the Preparatory "Commission shall have standing as an international organization, authority to negotiate and enter into agreements, and such other legal capacity as necessary for the exercise of its functions and the fulfillment of its purposes."[169] As the group of signatory states did not itself constitute either an IGO or even an organ of the future CTBTO (though under the resolution itself the signatory states constitute the PrepCom), the legal status of their resolution and of the organ they created is in some doubt — unless one considers the resolution as expressive of an implicit agreement (i.e. a treaty) among the states that adopted it and those that sign the Convention later and thereupon join the PrepCom.

However established, PrepComs are complex organs, consisting of a representative body (the Commission itself) and of a secretariat. Should the latter be provided by the parent IGO, then the Commission functions in effect as a TO of that organization.

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[167] UNCLOS III, by its Resolution I adopted on 30 April 1982, *ILM* 21 (1982), 1253 et seq. (in a package together with the Convention itself) and annexed to the Final Act of 10 December 1982, established the PrepCom for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea (i.e. one Commission for two separate IGOs).

[168] Which had been adopted by the GA by A/RES/50/245 of 10 September 1996.

[169] Doc.CTBT/MSS/RES/1 of 19 November 1996, Annex, para. 7.

VII. Concluding Observations

The growth and elaboration of the UN System during its first half century reflects a number of countervailing factors: on the one hand the need for additional types of activities as the community of states is confronted more and more frequently and urgently with problems that require global or at least regional solutions; on the other the concerns of governments that the international structures already established to deal with these problems are becoming too many (for practical oversight and control) and too powerful (sometimes requiring even major states to yield). The result has been the invention of various hybrid structures: Quasi-Autonomous Bodies (QABs); Treaty Organs (TOs) that may be permanent or merely in transition to IGO status; both attached (to the UN System) and unattached Intergovernmental Organizations (IGOs); joint substantive or administrative organs; temporary organs; and several other devices described or at least mentioned above.

The natural fecundity of this essentially need-driven but politics-controlled process has been quite successful in creating the many entities required to carry out the ever-growing though often unacknowledged demand for international governance. But the twists and turns that are sometimes required to secure agreement for a particular advance have left the international landscape littered with what in PC ("politically correct") terminology should be called "challenged structures", i.e. ones that do not have all the necessary legal components for unambiguous decision making or for the execution of such decisions. Though with sufficient good will almost any device can be made to work, when confronted by serious controversy some may not be in a position to respond reliably. And while the morphing of TOs into full-fledged IGOs may be considered as splendid examples of legal flexibility, there are still some practical reasons why stability and certainty of juridical forms is desirable.

It would therefore appear timely to conduct a serious review of what has been accomplished in the field of international organizational law since the establishment of the United Nations, examining in particular the extensive *ad hoc*ery of recent years, perhaps with a view to codifying and enhancing that which has proven to be successful and, without attempting to restore the pristine simplicity of the original design, discarding or reformulating some of the less fortunate experiments.

Having said this, it should be recognized that essentially international organizations are flourishing — perhaps to the regret of some — in response to multiple demands, often not clearly expressed, by the in-

ternational community. The protean life force resulting from that demand is responsible for both the observed growth and for the increasing complexity of the United Nations System. The challenge is to harness that force so that complexification does not lead to an impenetrable organizational jungle but rather enhances the flexibility of the System to respond to the increasing need for world governance.

Annex

List of Acronyms

ACABQ	Advisory Committee on Administrative and Budgetary Questions
ACC	Administrative Committee on Coordination
AFICS	Association of Former International Civil Servants
BWC	Biological Weapons Convention
CAT	Committee Against Torture
CCAQ(FB)	Consultative Committee on Administrative Questions (Financial & Budgetary)
CCAQ(PER)	Consultative Committee on Administrative Questions (Personnel)
CCISUA	Co-ordinating Committee for International Staff Unions and Associations of the United Nations System
CCPOQ	Consultative Committee on Programme and Operational Questions
CD	Conference on Disarmament
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CGIAR	Consultative Group on International Agricultural Research
CIMMYT	Centro Internacional de Mejoramiento de Maiz y Trigo
CITES	Convention on International Trade in Endangered Species

CMS	Convention on the Conservation of Migratory Species of Wild Animals
COP	Conference of the Parties
CPC	Committee for Programme and Co-ordination
CPISA	Convention on the Privileges and Immunities of the Specialized Agencies
CPIUN	Convention on the Privileges and Immunities of the United Nations
CTBTO	Comprehensive Test-Ban Treaty Organization
DG	Director-General
ECAFE	Economic Commission for Asia and the Far East (now called ESCAP)
ECE	Economic Commission for Europe
ENMOD	Convention on the Prohibition of Military or any other Hostile Uses of Environmental Modification Techniques
EPTA	United Nations Expanded Programme of Technical Assistance (now merged into UNDP)
ESCAP	Economic and Social Commission for Asia and the Pacific (formerly called ECAFE)
FAFICS	Federation of Associations of Former International Civil Servants
FICSA	Federation of International Civil Servants' Associations
GA	General Assembly (of the UN)
GEF	Global Environment Facility
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICITO	Interim Commission for the International Trade Organization
ICSC	International Civil Service Commission
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation

IFI	International Financial Institution
IGO	Intergovernmental Organization
ILC	International Law Commission
ILOAT	International Labour Organisation Administrative Tribunal
IMCO	Inter-Governmental Maritime Consultative Organization (former name of IMO)
INCB	International Narcotics Control Board
INFCCC	Intergovernmental Negotiating Committee for a Framework Convention on Climate Change
INSTRAW	International Research and Training Institute for the Advancement of Women
IOO	Interorganizational Organization
IPCC	Intergovernmental Panel on Climate Change
IRO	International Refugee Organization
ISA	International Seabed Authority
ITC	International Trade Centre
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
IUCN	World Conservation Union (originally International Union for the Conservation of Nature)
JIU	Joint Inspection Unit
LRTAP	Long Range Transboundary Air Pollution
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-governmental Organization
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
OAS	Organization of American States
OPCW	Organization for the Prohibition of Chemical Weapons
PAHO	Pan-American Health Organization
PIC	Prior Informed Consent
PTBT	Partial Test Ban Treaty
QAB	Quasi-Autonomous Body
SA	Specialized Agency
SC	Security Council (of the UN)
SG	Secretary-General

SSOD	Special Session on Disarmament (of the UN GA)
TO	Treaty Organ
UNAT	United Nations Administrative Tribunal
UNCHS	United Nations Centre for Human Settlements
UNCLOS	United Nations Convention on the Law of the Sea
UNDCP	United Nations International Drug Control Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNIDIR	United Nations Institute for Disarmament Research
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UNOG	United Nations Office at Geneva
UNOV	United Nations Office at Vienna
UNRISD	United Nations Research Institute for Social Development
UNU	United Nations University