CHAPTER 19

Neutrality, quasi-neutrality, and non-belligerency

1. GENERAL

As indicated in the previous chapter, hostile relations between states comprise not only (a) war in the traditional sense, but (b) non-war armed conflicts and breaches of the peace.

Corresponding to these two categories, there are two kinds of status of the parties outside the range of such hostile relations: (a) the status of *neutrality* in a war proper; and (b) the status of non-participation or non-involvement by states or non-state entities in a non-war conflict. The latter status, (b), is sometimes (as in the case of the Korean conflict, 1950–1953) loosely referred to as neutrality,[1] but there are certain differences between it and neutrality proper. It is perhaps better to refer to it as *quasi-neutrality*, or in certain cases simply as *non-belligerency*.

Neutrality

In its popular sense, neutrality denotes the attitude of a state which is not at war with belligerents, and does not participate in the hostilities. In its technical sense, however, it is more than an attitude, and denotes a *legal status* of a special nature, involving a complex of rights, duties, and privileges at international law, which must be respected by belligerents and neutrals alike.[2] This status of neutrality has been the subject of a long and complicated development, at each stage of which the content of the status has varied with the nature of warfare, and with the conditions of political power in the international community of states.

Neutrality gradually developed out of bilateral treaties stipulating that neither party to the treaty should assist the enemies of the other if one party were engaged in war. It was realised that it was to the general

1. Note, eg, the definition of states not participating in the Korean hostilities as 'neutral nations', in art 37 of the Korean Armistice Agreement of 27 July 1953, for the purposes of the appointment of a Neutral Nations Supervisory Commission. For an up-to-date treatment of the international law as to neutrality, see Yoram Dinstein 'The Laws of Neutrality' in (1984) 14 *Israel Yearbook on Human Rights* 80–110.
2. The international law status of neutrality should be distinguished from the *policy* of 'neutralism' (see Chapter 5, above at p 122). Yet to some extent neutralism or 'non-alignment' may be regarded as an ad hoc unilaterally declared status (sometimes multilaterally as under art III of the Charter of the Organisation of African Unity, May 1963) of dissociation from the 'cold war', involving neither rights nor obligations.

convenience of belligerent states to prevent assistance being furnished to enemies. Originally such cases of neutrality were isolated and sporadic, and stopped far short of the notion of a general status. Certainly the idea that neutral duties devolved on all non-participants in a given war was a much later development. The term 'neutrality' appeared as early as the seventeenth century, but no systematic doctrine emerged until the eighteenth century, when it was discussed by Bynkershoek and Vattel. By that date theory and practice united in acknowledging the right of independent states to hold aloof from war, and their duty in such case to be impartial as between the belligerents.

In the nineteenth century, neutrality developed much more extensively than in all its previous history. Most historians attribute this to the part played by the United States as a neutral in the Napoleonic Wars, when Great Britain was aligned against Napoleon and his continental satellites. The United States Government refused to allow the equipping or arming of vessels in American territory on behalf of the belligerents, and it prevented the recruitment of American citizens for service in the belligerent forces. At the same time Great Britain was endeavouring to block neutral commerce with France, and many rules as to neutral and belligerent rights evolved as compromise solutions of a conflict of interests between the British and United States Governments. Also, during the years of the Napoleonic Wars, Lord Stowell presided over the British Prize Court, and the newly developing law as to neutral rights and duties owed much to his intellect and genius as a judicial legislator. Later in the century the American Civil War gave rise to several disputes on questions of neutrality between the legitimate United States Government and Great Britain. Out of these arose the famous *Alabama Claims Arbitration* of 1872, concerning the construction and fitting out in England of commerce-destroying vessels for the Confederate Navy. The United States Government alleged a breach of neutrality in that the British Government had failed to exercise due care to prevent the equipping of the vessels, and their despatch to the Confederates, and a claim for damage suffered through the activities of the vessels (one of which was *The Alabama*) in the Civil War was sustained by the arbitrators.

Other important factors which favoured the development of neutrality in the nineteenth century were the permanent neutralisation of Belgium and Switzerland,[3] which supplied useful precedents for neutral rights and duties, and the general growth of great unified sovereign states. It was clearly to the interests of the latter to be able to maintain unrestricted commercial intercourse with belligerents without being drawn into war, as it was plainly to the interests of the belligerents to prevent assistance being given to their enemies by such countries. Moreover, conditions were peculiarly favourable to neutrality inasmuch as the principal wars

3. See above, pp 121–123.

fought in the nineteenth century were wars of limited objectives, unlikely to embroil states other than the participants, so that there was little risk of threat to neutrals as long as they observed the rules. In these circumstances the generally recognised rules of neutrality, some of them embodied in instruments such as the Declaration of Paris 1856, and in the Hague Convention of 1907, commanded the support of, as they corresponded to the interests of most states.

However, in the First World War (1914–1918)—which developed almost into 'total war'—as in the Second World War (1939–1945), most of the recognised rules of neutrality proved quite out of date, could not be applied in many instances, and instead of assisting to maintain the impartiality of states, virtually forced them into the struggle (as in the case of the United States in 1917). In its turn the Second World War was convincing proof of the archaism of the nineteenth century conceptions of neutrality. Neutral status proved to be a condition no less hazardous than that of belligerency. One neutral state after another was 'rolled up', and the two most powerful neutrals—Russia and the United States—were each attacked without warning. It is plain that in the future neutrality can only operate within a limited and quite unpredictable field, and it is questionable whether it is in the general interest to preserve an institution of so uncertain a value. At the same time, under the general approach currently of states that 'limited' wars should be 'contained' so as not to escalate into larger conflicts, the status of neutrality of non-involved states can usefully serve to influence the desired containment.

The trend towards restriction of the scope of neutrality has been confirmed by a significant post-war development, namely, the conclusion of regional security treaties, such as the North Atlantic Security Pact of 4 April 1949, in which the states parties have voluntarily renounced in futuro a right of claiming neutrality in the event of a war in which their co-parties to the treaties have been attacked, and instead will assist the states thus attacked. To this pact, the United States, formerly the most influential neutral state in past wars and the most insistent on neutral rights, is a party.

Rational basis of neutrality

Neutrality is often justified by reference to the following considerations:

1. that it serves to localise war;
2. that it discourages war;
3. that it enables states to keep out of war;
4. that it regularises international relations.

The Second World War conclusively demonstrated the fallacies of (1) and (2), inasmuch as the neutrality of states such as Norway, Denmark, Holland and Belgium proved an irresistible temptation to forcible invasion, and prevented more effective arrangements for their joint

defence, with the consequence that these states were speedily overrun by superior German forces. The result was to increase Germany's power in Europe, to bring Italy into the war on Germany's side, and eventually to encourage Japan to precipitate hostilities in the Pacific. Thus, far from localising or discouraging war, the effect of neutrality was to transform a European struggle into a world conflict.

As to (3), it was virtually in defence of its neutrality that the United States entered the First World War on the side of France and Great Britain. Moreover, despite the care taken in the Second World War by Russia and the United States to preserve their neutrality, attacks by Germany and Japan, respectively, forced them into the war only two years after its outbreak in 1939.

As to (4), the experience of the League of Nations from 1920 to 1940 showed that the institution of neutrality is quite inconsistent with the maintenance in international relations of the rule of law. The unjustified reliance of states members of the League on traditional notions of neutrality contributed towards preventing the League machinery from functioning on the outbreak of the Second World War.

More convincing and more cogent are the two rationales for the institution of neutrality, according to Professor Dinstein:[4] (i) the wish of neutral states to have guarantees that they will sustain minimal injury as a consequence of the hostilities; and (ii) assurance to belligerents that neutral states will not aid or abet any adversary belligerent.

Before this war began, a fundamental change had taken place in the attitude of most states towards the status of neutrality. Far from insisting on neutral rights or belligerent duties, states were now prepared to make all possible concessions to avoid any chance of a clash with the belligerents. The First World War had shown how a neutral state like the United States could be drawn into war in defence of its neutral rights, and no state wished to repeat that experience. States were determined if possible to keep out of a general war. In 1936–1937 this attitude was reflected in the non-intervention policy of France and Great Britain towards the Spanish Civil War.

This new attitude was particularly illustrated by the attitude of the United States in 1939–1940, before Germany overran and conquered Western Europe in the summer of 1940, and by its 'Neutrality' law passed by Congress in 1937. The 'Neutrality' Act of 1937 was a misnomer; it was really a measure to ensure no contacts between the United States and belligerents which could possibly involve her in war in defence of neutral rights.

After Germany's victories in Western Europe in June 1940, the United States appeared to veer in an entirely opposite direction. Convinced that Germany's aim was world domination, the United States initiated a series

4. Dinstein, op cit, n 1, above at p 80.

of measures to aid Great Britain in the war against Germany and Italy which would have been unthinkable some twelve months previously. Whereas before she had been ready to renounce neutral rights, she paradoxically now appeared to show disregard for neutral duties, transferring destroyers to Great Britain, sending her arms, and ammunition, and patrolling dangerous sea-lanes. In addition Congress passed the Lend-Lease Act of March 1941, which made it possible to provision and equip the armed forces of Great Britain and her allies. The legality of the Lend-Lease Act and of the other measures adopted by the United States before her entry into the Second World War was justified on three grounds at least:

a. The breach by Germany and Italy of the Briand-Kellogg Pact of 1928 for the Outlawry of War, and the fact that these Powers were guilty of gross aggression against neutral states.
b. The principle of self-preservation as against Powers like Germany and Italy, which intended to show no respect for the rights of neutrals. There was the additional consideration here that if the United States had allowed Great Britain to be conquered, international law itself would not have survived.
c. The evidence of conspiracy on the part of the Axis Powers to launch an attack on the United States in the immediate future.

Moreover, after the United States became a belligerent, she showed little traditional regard for neutral rights. Together with Great Britain, she brought pressure to bear on European neutrals to withhold supplies from the Axis Powers. This pressure increased in measure as Allied victories removed any possibility of a threat to these neutrals from Germany, if they should cease to trade with Axis countries, until in 1944–1945 the American attitude was uncompromisingly that neutral exports of vital products to Germany would not be countenanced.

Neutrality and the United Nations Charter

Member states of the United Nations have no absolute right of neutrality. By article 41 of the United Nations Charter they may be under a duty to apply enforcement measures against a state or states engaged in war, if so called upon pursuant to a decision by the Security Council. Under paragraph 5 of article 2 they are also bound to give every assistance to the United Nations in any action under the Charter and to refrain from giving assistance to any state against which preventive or enforcement action is being taken by the Organisation.

Neutrality is not, however, completely abolished. Even where preventive or enforcement action is being taken by the United Nations Security Council, certain member states may not be called upon to apply the measures decided upon by the Council or may receive special exemptions (see articles 48 and 50). In this event their status is one of

'qualified' neutrality inasmuch as they are bound not to assist the belligerent state against which enforcement measures are directed, and must also assist the member states actually taking the measures (see article 49). It seems also that where the 'veto' is exercised by a permanent member of the Security Council so that no preventive or enforcement action is decided upon with reference to a war, in such cases member states may remain absolutely neutral towards the belligerents.[5]

Commencement of neutrality

Immediate notification of neutrality is desirable, and is regarded as necessary by most states. Although a non-belligerent state is entitled to declare itself as a neutral, it is not under any legal obligation to do so. In the Second World War, immediately after its outbreak in September 1939, almost all neutral states announced their neutrality at once and specifically communicated the fact to the belligerents. Certain of these states were then members of the League of Nations, and the declarations of neutrality were regarded as necessary statements of intention not to be bound by the obligations of the League Covenant.

Quasi-neutrality and non-belligerency

States and non-state entities, not participating in a 'non-war' armed conflict, have a status which yet remains to be defined by rules of international law.

If the events in the Korean conflict of 1950–1953 supply any guide, it is clear that there is no rigid or fixed status of quasi-neutrality or non-belligerency as in the case of neutrality in a war proper, but that the nature of the status must depend on the special circumstances of the particular conflict concerned.

Moreover, where a 'non-war' armed conflict is subject to the peace enforcement action of the Security Council of the United Nations, or to United Nations 'peacekeeping' (see Chapter 20 below), the status of a quasi-neutral, or non-belligerent, whether a member state of the United Nations or not, is governed by the provisions of the United Nations Charter,[6] and by the terms of any decision or recommendation made by the Security Council under these provisions, or of any recommendations of the General Assembly as to such 'peacekeeping'.

5. On the subject of neutrality and qualified neutrality under the operation of the provisions of the United Nations Charter, see Norton in (1976) 17 Harvard ILJ 249–252, 309–311, Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 746–750, and Dinstein, op cit, n 1, above, at p 81.
6. See art 39–51.

2. RIGHTS AND DUTIES IN GENERAL OF (a) NEUTRALS, AND (b) QUASI-NEUTRALS AND NON-BELLIGERENTS

(a) Rights and duties in general of neutral states

The status of neutrality involves rights and duties inter se of neutral states on the one hand, and of belligerent states on the other. Rights and duties here are *correlative*, that is to say, a right of a neutral state corresponds to a duty of a belligerent, and a right of a belligerent state to a duty of a neutral. From the standpoint of either the neutral or the belligerent state, also, the duties of these states may be classified as:

i. duties of abstention;
ii. duties of prevention;
iii. duties of acquiescence.

Applying this classification, the general duties of a neutral state may be described as follows:

(i) Abstention. The neutral state must give no assistance—direct or indirect—to either belligerent side; for example, it must not supply troops, or furnish or guarantee loans, or provide shelter for a belligerent's armed forces.

(ii) Prevention. The neutral state is under a duty to prevent within its territory or jurisdiction such activities as the enlistment of troops for belligerent armies, preparations for hostilities by any belligerent, or warlike measures in its territory or territorial waters.

(iii) Acquiescence. The neutral state must acquiesce in the acts of belligerent states with respect to the commerce of its nationals if they are duly warranted by the laws of war, for example, the seizure of vessels under its flag for the carriage of contraband, adjudications by Prize Courts, and so on.

Similarly, the duties of belligerent states may be summarised as:

(i) Abstention. A belligerent state must not commit warlike acts on neutral territory or enter into hostilities in neutral waters or in the airspace above neutral territory, nor may it interfere with the legitimate intercourse of neutrals with the enemy, nor may it use neutral territory or waters as a base for belligerent operations, or as a starting point for an expedition.

(ii) Prevention. A belligerent state is duty bound to prevent the ill-treatment of neutral envoys or neutral subjects or injury to neutral property on enemy territory occupied by it.

(iii) Acquiescence. A belligerent state must, for instance, acquiesce in internment by a neutral state of such members of its armed forces as take refuge in neutral territory, or in the granting of temporary asylum by neutral ports to hostile warships so that necessary repairs may be effected.

If a belligerent or a neutral state violates any one of such duties and the breach results in damage to the other, it is in general liable for the damage caused and must furnish pecuniary satisfaction to that state. In the *Alabama Claims Arbitration* (1872), the arbitrators awarded the United States a sum of 15,500,000 dollars in gold as indemnity in full satisfaction of all claims subject of the arbitration, arising out of Great Britain's failure to prevent the construction and fitting out of *The Alabama* and other commerce destroyers for arming and use by the Confederates.

As regards the above-mentioned duties of prevention a neutral state is not an insurer for the performance of these duties, or, put another way, these duties are not absolute. The neutral state is bound only to use the means at its disposal in fulfilling its obligations; for example, if unable to prevent a much stronger state from violating its neutrality, it does not become liable to the injured belligerent state for the non-performance of its duties.

With regard to the several duties of abstention of a belligerent state mentioned above, one or two important points should be mentioned. If a neutral state abstains from taking action against a belligerent violating neutral territory, etc, or if that neutral state is too weak to prevent such violation, then the opposing belligerent is entitled to intervene on the neutral territory, etc. Belligerent warships have a right of innocent passage through neutral territorial waters, but the right must not be abused. They may also, for the purpose of refuelling, repairs, etc, take refuge in neutral ports (although not more than three at the same time), and here, according to British practice, may only stay 24 hours after notice from the neutral state, subject to an extension for sufficient reasons, for example, weather or urgent repairs. If the time-limit is exceeded, the ship and crew must be interned.

Reference should also be made to certain other rights and privileges of belligerent states. Their special rights in regard to neutral trade and neutral shipping are considered in section 3 below. In addition to these, belligerents enjoy the so-called privilege of *angary*, ie, of requisitioning any neutral ships or goods physically within their jurisdiction, but not brought there voluntarily, subject to the property being useful in war and being urgently required by them, and subject to the payment of full compensation.[7] Also, according to the practice in two World Wars belligerents are, it seems, entitled to notify war zones or 'operational sea zones', on the high seas, and to designate the safe routes of passage that may be taken by neutral vessels. In the case of the Falklands conflict of April–June 1982, when on 28 April 1982 the British Government notified a 200-mile 'Total Exclusion Zone' (TEZ) around the Falkland Islands,

7. If the goods are within the jurisdiction and have been brought there voluntarily, reasonable and not full compensation for requisitioning will be paid to the owner.

ships and aircraft which were in the Zone without the express authority of the Ministry of Defence in London, were to be treated as hostile and liable to be attacked by British forces. Further, in the event of the enemy resorting to illegal warfare, belligerents may adopt reprisals (ie, measures otherwise illegal at international law) irrespective of the fact that injury may thereby be done to neutrals, provided only, according to British practice, that such reprisals are justified by the circumstances of the case and do not involve an unreasonable degree of inconvenience for neutrals.[8]

The situation in the Persian Gulf in 1984–1988 during the course of the Iraq-Iran War (1980–1988) must be regarded as without precedent in the history of neutrality. As the Gulf coastal states and territories have become a main source of oil supplies for the rest of the world, there is a constant transit of tankers through the Gulf. During the above-mentioned period, 1984–1988, both belligerents were responsible not only for laying mines in the Gulf waters, but for hundreds of attacks on neutral tankers or merchant vessels and on the neutral warships by which these were escorted or protected. If this conduct by the belligerents was on the footing that the whole of the Gulf constituted a war zone closed to neutral shipping, it was nevertheless their obligation to assign duly regulated free lanes or channels for the necessary peaceful passage of neutral ships.[9] The United States, the United Kingdom and other concerned neutral countries were unmoved by the risks, and resolutely followed a policy of enforcing their rights of entry and transit as neutrals to the extent, on occasions, of armed action and of the operation of minesweepers to remove mines laid by the belligerents in Gulf waters.

Neutrality does not exclude sympathy between a neutral state and a belligerent, provided that this sentiment does not take the active form of concrete assistance to that belligerent. Similarly, gifts or loans of money by private citizens of the neutral state to the belligerent or other similar transactions, or individual enlistments by such private citizens in that belligerent's armed forces are not prohibited by the rules of neutrality. Such impartiality as is required of neutrals is confined to the duties of abstention, prevention, and acquiescence mentioned above. This distinction between the neutral state and its citizens has obviously been affected by the increasing range of state controls over all private transactions, and over persons. Under the impact of these controls, the duties of a neutral state must necessarily become more strict so far as liberty of action by its citizens is concerned. For example, it is probably now the duty of a neutral state not to sanction the private export of arms and ammunition.

8. See *The Zamora* [1916] 2 AC 77.
9. See Dinstein, op cit n 1 ante, pp 101–102.

Unneutral service[10]

Traditionally, the doctrine of *unneutral service* relates to the duties of neutral citizens in maritime warfare, and was regarded as an analogue of the doctrine of contraband. Confusion is due to this analogy, because it seemed to confine unneutral service to the *carriage* or *transport* by neutral vessels of persons and despatches, which assist one belligerent, and against which its opponent is empowered to take measures by confiscation and (if necessary) by destruction of the vessel.

It is, however, a doctrine much broader than this analogy suggests; nor in these days is it confined to ships at sea, but must include aircraft, which in time of war are commonly used for the transport of persons[11] important to a belligerent's war effort. Summing up the doctrine of unneutral service, it may be laid down that it is the duty of the owners or persons in charge of a neutral vessel or aircraft not by any acts or conduct on their part to employ the vessel or aircraft for objects or purposes (other than carriage of contraband or breach of blockade[12]) which may advance the belligerent interests of one state and injure the same interests of the opponent. For such acts or conduct, a belligerent who is or may be injuriously affected thereby, may stop the vessel or aircraft, and remove therefrom the persons[13] improperly carried, and—in more serious cases—capture the vessel, and condemn it or certain portions of its cargo by proceeding before a Prize Court.[14]

The more usual guilty activities of unneutral service are transport of members of the enemy armed forces, carriage of despatches to the enemy, taking a direct part in the hostilities, operating under charter to the enemy, and the transmission of intelligence in the interests of the enemy.

(b) Rights and duties in general of quasi-neutrals and non-belligerents

States and non-state entities which do not participate in 'non-war' armed conflicts are not subject, it is clear, to the same stringent duties as neutral

10. For discussions of the doctrine, see Stone *Legal Controls of International Conflict* (1954) ch XVIII, and *Supplement* 1953–1958 (1959) pp 892–893, and Dinstein, op cit, pp 105–108.
11. During the Second World War, the refusal of the British authorities to grant 'navicerts' or ship warrants (see below p 592) for particular neutral vessels, because of undesirable passengers or undesirable members of the crew, left little practical room for cases of unneutral service by the transport of persons important to the enemy's war effort; cf Medlicott *The Economic Blockade* in the series 'History of the Second World War, United Kingdom Civil Series' (ed W.K. Hancock) (1952) Vol I, pp 450–452, and (1959) Vol II pp 161 et seq.
12. See below, in section 3 of this chapter.
13. The category of persons, the carriage of whom may involve an unneutral service, includes serving members of the armed forces, reservists subject to orders of mobilisation, and semble, now, scientists important to the enemy's war effort.
14. For the effect of Chapter III of the Declaration of London 1909, in laying down different penal consequences according to the nature of the act of unneutral service, see Stone, op cit, ch XVIII, s IV and Dinstein, op cit, pp 105–106.

states in a war proper, nor have they rights against the contestants as plenary as the rights of neutrals.

Practice supplies, as yet, no conclusive guide as to the extent of the rights and duties involved.

However, the contestants and quasi-neutrals or non-contestants concerned may always agree as to the extent of their respective rights and duties, inter se. As to one special point, the right of quasi-neutrals or non-contestants to protect the lives and property of nationals and to evacuate them, if necessary, seems not to be disputed by the great majority of states.[15] Where possible, due regard must be paid to the impact of principles of human rights.

In the case of an armed conflict which is subject to the peace enforcement action of the United Nations Security Council, the rights and duties of quasi-neutrals and non-belligerents whether member states of the United Nations or not may be determined by decision or recommendation of the Security Council. The matter may also be governed by recommendations of the General Assembly, eg, so far as United Nations 'peacekeeping' is concerned (see Chapter 20 below); these have permissive, although not binding force.

Mention should be made of paragraph 6 of article 2 of the United Nations Charter, under which the Organisation is to ensure that non-member states shall conform to the 'Principles' laid down in the article for the maintenance of peace and security; and one of such 'Principles' (see paragraph 5) is to give the United Nations assistance in any action under the Charter, and to refrain from giving assistance to any state against which the United Nations is taking peace enforcement action.

3. ECONOMIC WARFARE AND BLOCKADE: IMPACT UPON (a) NEUTRALS, AND (b) QUASI-NEUTRALS

During the nineteenth century and until the advent of total war in 1914, and again in 1939, neutral trading and shipping relations with belligerents, were regulated largely by the rules of *contraband* and *blockade*.

These rules were, in essence, rooted in a limited conception of the economic pressure which could be applied to weaken a belligerent's capacity for war, the main concern of a contestant who resorted to contraband interception, or to blockade, being to interrupt the flow by sea of vital goods, which might help the enemy in its war effort. There was also an assumption underlying the rules that supplies from neutral

15. Under article 75 of Protocol I on international armed conflicts, additional to the Geneva Red Cross Conventions of 1949, citizens of neutral or quasi-neutral states, resident in the territory of or otherwise under the power of a contestant state, are to enjoy the 'fundamental guarantees' of humane treatment provided for by that article.

states would always be channelled directly to coasts or ports of the particular enemy belligerent concerned and not by indirect routes.

However, in the course of the First World War, and again during the Second World War, Great Britain, for whom these wars were life and death struggles, was obliged to challenge the validity of so limited a conception of economic pressure and of so fallacious an assumption, and accordingly departed from the traditional nineteenth century rules of contraband and blockade (see below). Besides the traditional system was ineffective to deal with stratagems such as the smuggling by neutral seamen of small contraband objects or articles, which might nevertheless be vital to the enemy war effort, and other forms of assistance to the enemy, for example, the transport of neutral technicians for employment in enemy war production.

Moreover, in the Second World War, Great Britain and then the United States (after its entry into the war) adopted far-reaching theories of economic warfare, which were carried into practical execution for the first time on a considerable scale. Under the new concept of economic warfare, economic pressure was not to be limited primarily to the traditional expedients of contraband interception and blockade, but was to be conducted by multifarious other methods and operations, in order effectively to weaken the enemy's economic and financial sinews, and therefore his ability to continue the struggle; for example, through such procedures as the use of 'navicerts'[16] to control 'at source' exports from overseas neutral countries to enemy and European neutral territory, the pre-emption or so-called 'preclusive purchase' of essential products or materials, the prevention or control of enemy exports, the withholding of credits to neutral suppliers and other forms of financial pressure, and the compulsory rationing of neutral states in essential products and materials so as not to allow an accumulation of excess commodities which might be exported to the enemy, or which might tempt the enemy to invade these states. By 1944–1945, the Allies were able to go so far as uncompromisingly to make European neutrals practically withhold all exports of essential products or materials to Germany.

Moreover, as the war progressed, the purpose was not merely to deny vital goods to the enemy and to ration neutrals, but to conserve all available supplies of scarce products for the Allies.

An almost unlimited range of techniques and expedients, not restricted to contraband and blockade controls, was adopted in the waging of this economic warfare, as is made plain in Professor Medlicott's searching survey[17] of this type of warfare during the Second World War.

16. See p 592 below.

17. See *The Economic Blockade* (1952) Vol I and (1959) Vol II in the series, 'History of the Second World War, United Kingdom Civil Series' (ed W.W. Hancock). Professor Medlicott makes it clear that the concept of economic warfare included attacks on the

If any conclusion is justified by the practice of the Second World War as examined in this survey, it is that in conducting economic warfare, a belligerent is now entitled under international law to subject neutrals to any kind of pressure or restriction necessary, either on the one hand to strengthen itself, or on the other hand to weaken the enemy economically and financially, provided: (1) that the inconvenience to neutrals is, as far as possible, minimised; and (2) that the belligerent concerned stops short of causing actual grave injury to neutrals (for example, denying them the bare minimum of food and other necessaries).

The new concept of economic warfare, as thus put into practice, with its wide permissible limits, has by reflex action necessarily had the result, too, of removing a number of the qualifications upon the doctrines of contraband and blockade, which originated in the period when economic pressure in time of war was conceived in the narrowest of terms. It is perhaps not today seriously disputed that the modifications to these two doctrines, made in the course of two World Wars, will endure.

Accordingly, contraband and blockade as separate doctrines of the laws of war and neutrality, must now be treated as special topics within the larger field of economic warfare. It should not, however, be overlooked that in a special case, an operation of blockade may involve primarily naval or military aspects, rather than those of an economic character.

Although from time to time, new expedients of economic warfare were justified ostensibly on the ground of reprisals for violations of international law by the enemy,[18] practice throughout the Second World War showed that Allied belligerents did not rest the validity of economic warfare solely on this narrow basis.

Contraband

Contraband is the designation for such goods as the belligerents consider objectionable because they may assist the enemy in the conduct of war.

The importance of the conception of contraband is due to certain rules enunciated by the Declaration of Paris 1856, which are now recognised to be part of international law. The effect of these may be stated as follows: Belligerents may seize enemy contraband goods which are being carried to an enemy destination on neutral ships, or neutral contraband goods which are being carried to an enemy destination on enemy ships.[19] These rights of seizure are conceded by international law in view of the

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enemy's economy by sabotage behind the enemy front, and bombing of factories and communications; see Vol II at pp 630 et seq.

18. Note, eg, the Reprisals Order-in-Council of 31 July 1940, referred to below, p 593.

19. The same principles are presumably applicable to carriage by air in neutral or enemy *aircraft*, although there appears to be no reported Prize Court case as to the condemnation of aircraft on such grounds.

obvious necessity for belligerents, in the interests of self-preservation, to prevent the importation of articles which may strengthen the enemy.[20]

A distinction is drawn between *absolute* and *relative* contraband. Articles clearly of a warlike or military character are considered to be absolute contraband; for example, arms of all kinds, military clothing, camp equipment, machinery for the manufacture of munitions, and gun-mountings. Articles useful for purposes of peace as well as of war are considered to be relative contraband, for example, food, fuel, field-glasses, railway rolling stock, and if intercepted on their way to the enemy government or to the enemy forces are treated as absolute contraband and are liable to seizure by a hostile belligerent. It is doubtful if the distinction is now of any practical value.

Besides absolute and relative contraband, there is a third class of goods, known as 'free articles', which must never be declared contraband, inasmuch as they are not susceptible to use in war; for example, chinaware and glass, soap, paint and colours, and fancy goods.

So far states have not reached general agreement on what articles fall within each of the three categories mentioned, except that by universal admission instruments of war or warlike materials are absolute contraband. Even jurists and Prize Court judges have seldom been in accord on the matter, and the practice of the states shows little uniformity and many anomalies.

An attempt was made by an instrument known as the Declaration of London 1909, to draw up agreed lists of goods in the three classes, but the Declaration did not come into force for want of ratifications. Both in the First and Second World Wars, the belligerents declared goods to be absolute or relative contraband which in the nineteenth century were universally acknowledged to be non-contraband. Thus almost overnight the pedantic opinions of text-writers, the carefully drafted clauses in treaties, and the weighty judgments of Lord Stowell and other Prize Court judges were relegated to a back store-room, while the belligerents were restrained only by considerations of policy and expediency from declaring every type of article and material to be contraband. The very extensive lists of contraband drawn up by Great Britain in both wars were eloquent testimony to the desuetude of former rules and usages. By the time of the Second World War, both by practice and according to British judicial decisions, the Declaration of London was regarded as devoid of any authority. The impact of 'total war', at first in 1914, and then with much greater effect in 1939, completely revolutionised the conditions of warfare.

20. At common law, however, it is not illegal for citizens of the United Kingdom, as a neutral state, to trade in contraband with a belligerent country or to 'run' a blockade; accordingly contracts made with such an object are not illegal under domestic law (see the authorities cited in *Carver's Carriage By Sea* (13th edn, by R. Colinvaux, 1982) Vol I, pp 597–599).

In view of the enormous range of equipment required for modern war, of the much more advanced use of scientific weapons and instruments, and of the possible production of *ersatz* or substitute war materials, it could scarcely be predicted of any article or substance that it did not have a warlike use. For the sake of self-preservation, belligerents had necessarily to adapt themselves to these exigencies, and the old rules and usages as to contraband were disregarded by them when official lists of contraband covering every conceivable kind of article or material were drawn up.

Destination of contraband; doctrine of continuous voyage or continuous transportation

Usually the simplest case of seizure of contraband is one in which the goods are clearly of hostile destination. A number of cases invariably arise in which the purpose of supplying the enemy is sought to be achieved more indirectly, as where citizens in a neutral state adjacent to enemy territory purchase contraband for resale to the enemy in order to avoid interception at sea.

In circumstances such as these the doctrine of continuous voyage or continuous transportation becomes applicable. This consists in treating an adventure which involves the carriage or goods in the first instance to a neutral port, and then to some ulterior and hostile destination as being for certain purposes one transportation only to an enemy destination, with all the consequences that would attach were the neutral port not interposed. Accordingly, if these goods are contraband, they are liable to seizure. The doctrine was expounded in classical terms by Lord Stowell in *The Maria*.[1]

In the American Civil War, the United States Supreme Court applied the doctrine systematically to nearly all cases of breach of blockade or of contraband. Furthermore, United States courts took it upon themselves to draw presumptions as to hostile destination from all kinds of unexplained facts, for example, if the bill of lading were made out to order, or the manifest of cargo did not disclose the whole cargo, or a consignee were not named, or if the ship or cargo were consigned to a firm known to have acted as an enemy agent, or if there were a notorious trade in contraband between a neutral port and enemy territory.

Till 1909, it was nevertheless doubtful whether the doctrine was subject to general approval; at all events, it was not supported by a uniform practice. However, the Declaration of London 1909, which as mentioned above did not come into force, laid it down that the doctrine applied to absolute contraband, but did not apply to conditional contraband except in a war against an enemy possessing no seaboard.

In the First World War, the doctrine received its fullest executive and

1. (1805) 5 Ch Rob 365.

judicial application by Great Britain. British Orders-in-Council enunciated the doctrine in the widest terms, going far beyond the terms of the Declaration of London 1909. British courts also applied the doctrine systematically to a large number of cases, and in *The Kim*[2] it was declared that:

> '... the doctrine of continuous voyage or transportation, both in relation to carriage by sea and to carriage over land, had become part of the law of nations at the commencement of the present war, in accordance with the principles of recognised legal decisions, and with the views of a great body of modern jurists, and also with the practice of nations in recent maritime warfare.'

As illustrating the wide scope of the doctrine the following principles were accepted by British courts: (1) that contraband goods might be seized on their way to a neutral country if there existed an intention to forward them to an enemy destination after their undergoing a process of manufacture; (2) that, notwithstanding that the shippers of contraband goods might be innocent of any intention of an ultimate hostile destination, yet if on the consignees' side the goods were in fact purchased for delivery to the enemy they were liable to confiscation.

The courts of other belligerents also accepted and applied the doctrine of continuous transportation.

In practice, the system of cargo and ship 'navicerts',[3] ie, certificates given by a diplomatic or consular or other representative in a neutral country to a neutral shipper, testifying, as the case might be, that the cargo on board a neutral vessel was not liable to seizure as contraband, or that the voyage of a particular ship was innocent, left little room for the application of the doctrine of continuous transportation. 'Navicerts' were first introduced by the Government of Queen Elizabeth in 1590, but were not used on a large scale in modern conditions of maritime warfare until 1916 when they were instituted by the Allies. 'Navicerts' were again introduced on the outbreak of the Second World War in 1939. Vessels using 'navicerts' were normally exempted from search, although there was no complete guarantee against interception or seizure, which might take place because of the discovery of fresh facts or because the destination of the cargo had become enemy occupied territory. A 'navicert' might, or course, be refused on grounds which would not be sufficient to justify belligerent seizure of a ship or its cargo, and subsequent condemnation by a Prize Court (see below). For example, at certain stages of the war, 'navicerts' were, temporarily, not granted for the consignment to neutral territory of commodities needed by the Allies, such as rubber and tin.

Originally the mere absence of a 'navicert' was not in itself a ground

2. [1915] P 215 at 275.
3. 'Aircerts' and 'mailcerts' for goods sent from neutral countries by air and mail, were also introduced.

for seizure or condemnation. However, after the occupation of France and the Low Countries by Germany in June 1940 changed the whole circumstances of the Allied maritime blockade, Britain issued the Reprisals Order-in-Council (dated 31 July 1940), the effect of which was:

a. that goods might become liable to seizure in the absence of a 'navicert' to cover them; and
b. that there was a presumption that 'unnavicerted' goods had an enemy destination.

The Order did not make 'navicerts' compulsory in every sense for neutral shippers, but it heightened the risk of interception and seizure of cargoes by putting the onus on the shipper of establishing the innocence of the shipment. The legality of the Order was of course questioned, but it was justified as a legitimate act of reprisal[4] to simplify the blockade, and to put increased pressure on the enemy, and also possibly as a method of regulating neutral trade through a system of passes.[5]

Neutral vessels were also required to equip themselves with ship warrants, which were granted upon covenants, inter alia, not to engage in contraband trading, to search the ship for smuggled contrabands, etc. In the absence of a ship warrant, 'navicerts' might be refused, and bunkering and other facilities at Allied ports withheld.

By the system of 'navicerts' and ship warrants, British authorities were able, inter alia, to police the smuggling of small contraband objects or articles,[6] the employment of undesirable seamen, and the transport of technicians who might assist the enemy war effort.

Consequences of carriage of contraband; condemnation by Prize Courts

Contraband is, in the circumstances mentioned above, liable to seizure, and under certain conditions even the vessel carrying the contraband cargo is liable to seizure. Seizure by a belligerent is admissible only in the open sea or in the belligerent's own territorial waters; seizure in neutral territorial waters would be a violation of neutrality.

According to British and continental practice, the right of a belligerent state to seize contraband cargoes or vessels carrying them is not an absolute one but requires confirmation by the adjudication of a Prize Court established by that state. The origin of Prize Courts and of Prize Law goes back to the Middle Ages when there were frequent captures of piratical vessels. In England, for example, the Court of Admiralty would

4. The right of retaliation by a belligerent for a violation of international law by the enemy is a right of the belligerent, not a concession by the neutral. Cf as to reprisals, as a justification for extensions of the doctrine of contraband, Medlicott, op cit, Vol I p 9.
5. The statistics 1943–1945 show that at least 25 per cent of applications for 'navicerts' were refused.
6. 'Navicerts' were refused and ship warrants withdrawn if precautions were not taken by the shipping company and masters concerned to prevent such smuggling.

inquire into the authority of the captor and into the nationality of the captured vessel and of the owners of her goods. This practice was extended to captures made in time of war and it gradually became a recognised customary rule of international law that in time of war the maritime belligerents should be obliged to set up courts to decide whether captures were lawful or not. These courts were called Prize Courts. They are not international courts but municipal courts, although they apply international law largely. Every state is bound by international law to enact only such regulations, or statutes, to govern the operation of Prize Courts, as are in conformity with international law.

The structure of Prize Courts varies in different countries. In certain states, Prize Courts are mixed bodies consisting of judges and administrative officials, but in the United Kingdom and the United States they are exclusively judicial tribunals.[7]

If the Prize Court upholds the legitimacy of the seizure, the cargo or vessel is declared to be 'good prize' and to be confiscated to the captor's state. Jurisdiction is exercised in accordance with international law, unless otherwise directed by statute. The decree of condemnation is accompanied by an order for sale under which the purchaser acquires a title internationally valid. Thenceforward, what becomes of the prize is no concern of international law, but is solely a matter for municipal law to determine.

Seized ships or goods in the custody of the Prize Court pending a decision as to their condemnation or release, may be requisitioned subject to certain limitations, one of which is that there is a real issue to be tried as to the question of condemnation.

Blockade

The law as to blockade represents a further restriction on the freedom of neutral states to trade with belligerents.

A blockade occurs when a belligerent bars access to the enemy coast or part of it for the purpose of preventing ingress or egress of vessels or aircraft of all nations. The blockade is an act of war, and if duly carried out in accordance with the rules of warfare, is effective to deny freedom of passage to the shipping or aircraft of other states. Under the Declaration of Paris 1856, which is declaratory of prior customary international law, a blockade is binding only if effective, and the effectiveness of a blockade is conditioned by the maintenance of such a force by the belligerent as is 'sufficient really to prevent access to the enemy coast'.

Ships which break a blockade by entering or leaving the blockaded area are liable to seizure by the belligerent operating the blockade in the same way as contraband cargoes, and after capture must be sent to a port

7. Prize jurisdiction is exercised in the United Kingdom by the Admiralty Court of the Queen's Bench Division of the High Court.

for adjudication on their character as lawful prize. Generally, the cargoes carried by such ships will also suffer condemnation by a Prize Court unless those who shipped the goods prove to the court's satisfaction that the shipment was made before they knew or could have known of the blockade.

The practice of states varies greatly as to what is deemed to constitute a breach of blockade. For instance, practice is not uniform on the point whether a neutral vessel must have actual formal notice of the blockade. According to Anglo-American juristic opinion and practice, it is sufficient to establish presumptively that those in charge of the neutral vessel knew that a blockade had been established. The commander of a neutral vessel who sails for an enemy port knowing that it is blockaded at the beginning of the voyage ought to expect that it will be in the same state when he arrives in the vicinity of the port; and anything which can be proved to affect him with knowledge at the date of departure, for example, publication of a declaration of blockade, will render the vessel and its cargo liable to the penalties for breach of blockade. According to the French theory, the neutral vessel is not affected by presumptions as to continuance or cesser of blockade, but the commander of the vessel on approaching the blockaded area is entitled to individual warning from one of the blockading squadrons, the fact of the notification being entered in the vessel's log-book with specific mention of the hour, date, and place of notification. It is only for subsequent attempts to enter the blockaded area that the neutral vessel is liable to seizure.

Apart from the matter of actual or constructive notice to neutral vessels, it is an established rule of international law that a blockade must be properly declared and notified to neutral states with a specific statement as to the date when the blockade begins and the geographical limits of the coastline to which access is barred. Second, in accordance with the rule of effectiveness, the blockade must be maintained by a sufficient and properly disposed force, rendering ingress or egress by other vessels a matter of material danger. This principle is supported by authoritative British judicial pronouncements. Thus Dr Lushington declared in *The Franciska*[8] that:

> '... (the blockaded place) must be watched by a force sufficient to render the egress or ingress dangerous; or, in other words, save under peculiar circumstances, as fogs, violent winds, and some necessary absences, the force must be sufficient to render the capture of vessels attempting to go in or come out most probable.'

Similarly, Lord Chief Justice Cockburn stated in *Geipel v Smith*:[9]

> 'In the eye of the law, a blockade is effective if the enemies' ships are in such

8. (1855) 2 Ecc & Ad 113 at 120.
9. (1872) LR 7 QB 404 at 410.

> numbers and position as to render running the blockade a matter of danger, although some vessels may succeed in getting through.'

The size of the blockading force and the distance at which it operates from the blockaded coast are alike immaterial, provided this test of danger to neutral vessels be satisfied. Thus in the Crimean War in 1854, a single British cruiser commanding the one navigable approach to the Russian port of Riga at a distance of 120 miles was deemed sufficient to constitute a blockade of the port. United States judicial decisions and practice are to the same effect as the British authorities.

In the First World War, the British Navy enforced a 'long-distance' blockade of Germany through ships and squadrons operating often more than one thousand miles from German ports. The objections raised to this type of blockade were that it extended across the approaches to the ports and coastline of neighbouring neutral countries and that it was in many respects ineffective. It was first instituted in 1915 as a reprisal for the German decision to attack British and Allied merchantmen in the waters surrounding the British Isles without regard for the personal safety of the passengers or crew. Under British Orders-in-Council, neutral vessels carrying goods of presumed enemy destination, origin, or ownership could be required to proceed to a British port to discharge their cargoes, and might be forbidden to move to a German port. If neutral vessels under colour of permission to proceed to a neutral port, sailed for a German port, they were liable to seizure and condemnation if subsequently caught. Such a blockade was probably not justified according to the rules followed in the nineteenth century, either as a retaliatory measure or as a blockade in the strict sense of that term. The British Government, however, justified the 'long-distance' blockade of Germany by reference to the changed conditions of war, stating that a modern blockade could only be effective by covering commerce with the enemy passing through neutral ports.[10] The 'long-distance' blockade was reinstituted in 1939 in the Second World War, and its rational justification[11] was likewise the necessity for waging 'total' economic warfare against the enemy. In both wars, France took action similar to that of Great Britain. Without Great Britain's predominant naval power in relation to the enemy, the blockade could not have been enforced.

10. Medlicott, op cit, Vol I, p 4, has pointed out that the traditional blockade presupposed 'naval action close to an enemy's coasts', and had 'little relevance to a war in which modern artillery, mines, and submarines made such action impossible, and in which the enemy was so placed geographically that he could use adjacent neutral ports as a channel for supplies'.
11. Apart from the ground of reprisals for illegal enemy activities. See on the British blockade during the Second World War, Tucker 'The Law of War' in 62 *US Naval War College International Law Studies* (1980) 233 at p 243.

Belligerent right of visit and search

Co-extensive with the right of seizing contraband or of capturing ships in breach of blockade, belligerents have by long established custom the right to visit and search neutral vessels on the high seas in order to determine the nature of the cargo and to check the destination and neutral character of the vessel. This right must be exercised so as to cause neutral vessels the least possible inconvenience. If suspicious circumstances are disclosed in the case of a particular neutral vessel,[12] that vessel may be taken into port for more extensive inquiry and if necessary for adjudication before a Prize Court.

Formerly the right of visit and search was qualified by severe restrictions, designed to protect neutrals from unnecessary or burdensome interference with their commerce. In both the First and Second World Wars, the exigencies of 'total war' caused belligerents to disregard these limitations. Contrary to the rules that search should precede capture and that it should generally not go further than an examination of the ship's papers and crew and cursory inspection of the cargo, neutral vessels could be required to call at contraband-control bases,[13] or if intercepted on the high seas might be sent to port for thorough searching even in the absence of suspicious circumstances, considerable delays occurring while the vessels were so detained. On the British side, this practice of searching in port instead of on the high seas was justified on three main grounds:

a. the growth in size of modern cargo vessels, rendering concealment easier and a thorough search more lengthy and difficult;
b. the danger from submarines while the search was being conducted;
c. the need for considering the circumstances of the shipment in conjunction with civilian authorities, for example, of the Ministry of Economic Warfare.

Several international law purists criticised the British defence of the practice, but the overpowering circumstances which rendered the practice necessary could not be gainsaid.

This inconvenience to neutral vessels could, for all practical purposes, be avoided by obtaining a 'navicert'[14].

Economic warfare and quasi-neutrals or non-belligerents

Generally speaking, in the absence of a specific agreement that belligerent rights shall be applicable to a non-war armed conflict, a contestant cannot, in regard to quasi-neutrals or non-belligerents, resort to contraband

12. There is a right to *detain*, in addition to visiting and searching, provided that there are reasonable grounds for suspicion, appearing in connection with the search; see *The Mim* [1947] P 115.
13. See Medlicott, op cit, Vol II, p 154. Search would also include the examination of mail, and ascertaining whether any passengers possibly useful to the enemy, eg technicians, were being transported.
14. See above p 592.

interception or to blockade. Yet in the course of the India–Pakistan conflict, in September 1965, measures closely resembling a blockade were adopted, although not recognised as such by third states, save to the extent of making arrangements to overcome difficulties as to the passage of their shipping.[15] Again, in the case of the India–Pakistan hostilities of December 1971, both India and Pakistan officially announced what articles would be treated as contraband.[16]

However, apart from matters of contraband or blockade, contestants can have recourse to any means of economic pressure, notwithstanding that this may cause damage or inconvenience to quasi-neutrals or non-belligerents, although there is possibly a duty to minimise the damage or inconvenience as far as possible.

Where the conflict is one subject to the peace enforcement jurisdiction of the United Nations Security Council, quasi-neutrals, whether member states of the United Nations or not, must submit to any measures of economic warfare[17] decided by the Security Council, although if they find themselves affected by special economic problems arising out of the action taken by the Security Council, they may consult that body regarding a solution of such problems (see article 50 of the United Nations Charter). United Nations 'peacekeeping' operations (see Chapter 20 below), raise very different considerations, as here we are in the area primarily of General Assembly recommendations, which leave room for states to opt in, or out of support for economic measures in aid of 'peacekeeping'.

15. As to the coastal control operated by the French Government 1956–59 (of the nature of a quasi-blockade), with regard to the Algerian conflict, see R. Pinto (1965) I Hague Recueil des Cours 546–548. In the course of the 'incursion' into Cambodia (Khmer Republic), now Kampuchea, in May 1970, United States and South Vietnamese warships cut off supply routes by sea to a stretch of the Cambodian coastline in what appeared to be a partial blockade; however, the existence of a blockade was officially denied.
16. Certain non-belligerent maritime countries, eg, the United States, drew the attention of ships of their registry to these announcements; see as to the United States, 66 AJIL (1972) 386–387. For the texts of India's contraband declaration, and Pakistan's contraband proclamation, see ibid.
17. This could include the 'complete or partial interruption of economic relations' (see art 41 of the Charter).

International institutions

CHAPTER 20

International institutions[1]

1. THEIR STATUS AND FUNCTIONS AS SUBJECTS OF INTERNATIONAL LAW

As we have seen in a previous chapter,[2] the subjects of international law include not only states, but international institutions such as the United Nations, the International Labour Organisation, and similar bodies.[3] The word 'institution' is here used in its widest sense as nomen generalissimum for the multiplicity of creations for associating states in common enterprises.

Although strictly speaking the structure and working of these bodies and associations are primarily the concern of that department of political science known as international organisation or administration, their activities nonetheless materially impinge upon the field of international law. It is important to see in what way they come within the range of international law or contribute towards its development.

In the first place, just as the functions of the modern state and the rights, duties, and powers of its instrumentalities are governed by a branch of municipal law called state consitutional law, so international institutions are similarly conditioned by a body of rules that may well be

1. For general works on the subject, see D.W. Bowett *The Law of International Institutions* (4th edn, 1982); R.L. Bindschedler 'International Organisations; General Aspects' *Encyclopaedia of Public International Law* Vol 5 (1983) pp 119–140; Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 318 et seq; H.G. Schermers *International Institutional Law* (1974, 3 vols); Kirgis *International Organisations in their Legal Setting* (1977); and Reuter *International Institutions* (1958).
2. See Chapter 3, above, pp 65–66.
3. The expansion in number, and in the scope and functions of international organisations has been remarkable during the present century. By 1950 there were, according to an official United States publication, *International Organisations in which the United States Participates* (1950), over 200 international bodies, of which about 60 could be described as major international institutions. Since 1950 the number has materially increased; see *United States Contributions to International Organisations* (1976) passim. The emergence of a very large number of regional organisations throughout the world in the post-1950 period has undoubtedly contributed to this increase. In regard to the history of the growth of international organisations since the latter part of the nineteenth century, see Bowett, op cit, pp 1–13, Potter *Introduction to the Study of International Organisation* (1948), and Mangone *A Short History of International Organisation* (1954) ch 3.

described as international constitutional law. These international bodies having important duties to perform on behalf of the international community, whether of a world-wide or regional character, provide that community with its constitutional framework.

This constitutional structure does not follow precisely the same pattern as in the constitutions of modern states, but there are significant analogies. For instance international institutions perform as organs of the international society a large number of functions which can be classified as executive, legislative, and judicial in the same manner as the functions of modern states. As to international executive functions, it is true that there is no central executive organ with the same degree of authority over the international community as any government wields over a modern state, but the administrative powers that would have been vested in such a central international body if it had existed, are possessed cumulatively by and distributed over a number of international institutions, each with separate and different responsibilities; for example, the executive function of maintaining or enforcing world peace belongs to the United Nations, the supervision of world labour conditions is a special power of the International Labour Organisation (ILO), and the improvement of world education and learning is a particular duty of the United Nations Educational, Scientific and Cultural Organisation (UNESCO). If these individual responsibilities were discharged in toto by one instead of by several international bodies, the world would possess the organic counterpart of the executive in a modern state.

With regard to international legislative functions these are performed on a limited scale by several organs, including the United Nations General Assembly, the International Labour Conference, and the World Health Assembly. To a similarly restricted extent, international judicial functions are vested in the International Court of Justice, and can be vested in other international tribunals.

However, there is no such thing as a separation of powers under the constitutions of most international institutions, which may, through their organs,[4] exercise legislative or judicial, or quasi-legislative or quasi-judicial powers, in the same way as they carry out administrative or executive functions. Nor are certain international institutions executive organs in the strict sense, being merely consultative and advisory only.

Varied indeed may be the legal structure of these organisations; they may be true corporate entities, collectivities of states functioning through organs taking decisions,[5] or loose unincorporated associations meeting

4. For instance, the Commission of the European Economic Community (Common Market) under the Treaty of Rome of 25 March 1957, establishing the Community, exercises at the same time, regulatory, quasi-judicial and administrative powers.
5. See classification in *South West Africa Cases, 2nd Phase* ICJ 1966, 6 at 30.

only in periodical conferences, sometimes largely hingeing on an element of continuity represented by a secretariat or secretarial Bureau.[6]

Besides, there are three important general points to be noted:

1. The functions of certain international institutions may be directed primarily to inspiring co-operation between states, ie, so called '*promotional*' activities, and only in a secondary degree to the carrying out directly of any necessary duties, ie, so-called '*operational*' activities. Thus the Food and Agriculture Organisation of the United Nations (FAO) and the World Health Organisation (WHO) are much more 'promotional' than 'operational' bodies.
2. Even so far as they are 'operational', international institutions are as a rule empowered only to investigate or recommend, rather than to make binding decisions.
3. In most instances, international institutions are but little removed from an international conference, in the sense that any corporate or organic decision depends ultimately on a majority decision of the member states, ie, the agreement of the corporators.[7]

Most international institutions are keyed not so much to the taking of binding executive decisions, as to the making of non-mandatory recommendations for the guidance of their organs, and of their member states.

Apart from the law and practice (based on their constitutions and on general principles of international law) of such bodies, there is another direction in which international institutions may influence the development of international law. In the past, when states were almost exclusively the subjects of the law of nations, the traditional body of international law developed through custom, treaty, and arbitral decisions as the product of the relations of states inter se. But international institutions, as subjects of international law, can have relations not only between themselves, but also with other subjects including states, so that in addition to the relations between states, we have the two following kinds of relations that can lead to the formation of new rules of international law: (1) relations between states and international institutions; and (2) relations between international institutions themselves. This was strikingly demonstrated by the conclusion of the Vienna Convention of 1986

6. Eg, the Hague Conference on Private International Law. However, even an unincorporated international organisation may have, according to its charter or by reason of its contractual or other activities, the character of a legal entity, separate from its members; see *Maclaine Watson & Co Ltd v Department of Trade and Industry* [1987] BCLC 707 (Ch Div) on the nature of the International Tin Council (ITC).
7. It is a question of construction of the relevant instruments or treaties whether the corporators (ie the member states) are entitled to exercise any powers appertaining to the institution, or whether this is a matter of organic or institutional action only; *South West Africa Cases, 2nd Phase* ICJ 1966, 6 at 29.

on the law of treaties between States and International Organisations or between International Organisations. Already there have been significant instances of rules evolving from these two relations. As to (1), relations between states and international institutions, in 1948, for example, there arose the question whether in respect of injuries suffered by its agents in Palestine (including the assassination of Count Folke Bernadotte, United Nations Mediator), the United Nations could claim compensation as against a de jure or de facto government, even if not a government of a member state of the organisation, for the damage to itself through such injuries. Pursuant to a request for an advisory opinion on this point, the International Court of Justice decided in 1949 that the United Nations as an international institution was entitled to bring such a claim.[8] With regard to (2), relations of international institutions inter se, the practice of these bodies in concluding agreements with each other is materially affecting the rules of law and procedure concerning international transactions.

That is quite apart, too, from the relations between international institutions and individuals, which, as in the case of relations between states and individuals, already foreshadow the growth of important new principles of international law. An illustration is to be found in the Advisory Opinion, just mentioned, of the International Court of Justice, where the Court had to consider whether the United Nations, in addition to suing for compensation for the damage to itself through injuries suffered by its agents, could also recover damages for the actual loss or harm caused to such agents, or to the persons (for example, relatives) entitled through them to compensation. In effect, the question was whether the United Nations could espouse the claims of its agents in the same way as states, under the rules of state responsibility for international delinquencies, can sponsor claims by their nationals. This involved reconciling the dual position of agents of the United Nations, as servants on the one hand of the Organisation, and as nationals on the other hand entitled to the diplomatic protection of their own states. The solution adopted by the majority of the Court was that the United Nations was entitled to bring such a claim, inasmuch as its right to do so was founded on the official status of its agents irrespective of their nationality, and was therefore not inconsistent with the agents' privilege of receiving diplomatic protection from their own states.[9]

One general consideration needs to be stressed. The true nature and purpose of present-day international institutions cannot be understood unless we realise that certain of these bodies represent one kind of

8. See *Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations* ICJ 1949, 174.
9. ICJ 1949, 184–186.

instrumentality whereby states are associated in a common purpose of improving human welfare.[10]

Finally, reference should be made to the regional international institutions, the purposes of which are largely integrative and functional, such as the European Economic Community (EEC, the Common Market). These would require a study in themselves, to such an extent do they constitute novel precedents in the law of international organisations.[11] Nor are they necessarily limited in their scope to the region or community which is being integrated; their ramifications may extend further through 'association' conventions or Agreements as, eg, the three Lomé Conventions successively concluded in 1975, 1979 and 1984 respectively associating the EEC with certain African, Caribbean, and Pacific States.

2. GENERAL LEGAL NATURE AND CONSTITUTIONAL STRUCTURE

Functions and legal capacity

International institutions are defined by reference to their legal functions and responsibilities, each such institution having its own limited field of activity. The constitutions of these bodies usually set out their purposes, objects, and powers in special clauses. For example, article 1 of the United Nations Charter (signed 26 June 1945) defines the 'Purposes' of the United Nations under four heads, of which two in particular are the maintenance of international peace and security, and the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Similarly the constitutions of other international bodies, for example, of the International Labour Organisation (see Preamble and article 1 referring to the 'objects' of the Organisation), and of the Food and Agriculture Organisation of the United Nations (see Preamble and article 1 referring to the Organisation's 'Functions'), contain provisions defining their special objects and responsibilities.

The definition in each constitution of the international body's particular field of activity is analogous to the 'objects' clause in the memorandum of association of a limited company under British companies legislation. In both cases, the corporate powers of the international institution on the one hand and of the limited company on the other, are determined by the statement of functions or objects. The analogy can be

10. Indeed, the whole field of action of many international institutions has become dominated in the last decade by the aspect of aid and technical assistance to less-developed countries.

11. On regional institutions generally, see Part Two, 'Regional Institutions' (pp 159–251) of Bowett *The Law of International Institutions* (1982), and Henkin, Pugh, Schachter, and Smit *International Law; Cases and Materials* (2nd edn, 1987) ch 19, 'Regional Economic Communities' (pp 1413–1482).

carried further inasmuch as the recent practice in the constitutions of international organs of defining the 'objects' in as general and comprehensive a manner as possible resembles the present-day methods of company lawyers in drafting 'objects' clauses in very wide terms to preclude any doubts later arising as to the legal capacity of the company concerned.

As international institutions are defined and limited by their constitutional powers, they differ basically from states as subjects of international law. In their case, problems such as those raised by the sovereignty or jurisdiction of states cannot arise, or at least cannot arise in the same way. Almost every activity is prima facie within the competence of a state under international law, whereas practically the opposite principle applies to an international organ, namely, that any function, not within the express terms of its constitution, is prima facie outside its powers. As the International Court of Justice has said referring to the United Nations:[12]

> 'Whereas a State possesses the totality of international rights and duties recognised by international law, the rights and duties of an entity such as the Organisation must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.'

Thus no international body can legally overstep its constitutional powers. For example, the International Labour Organisation cannot constitutionally purport to exercise the peace enforcement functions of the United Nations Security Council, and order (say) a cease-fire in the event of hostilities between certain states.

Besides its express powers, an international organ may have under its constitution such functions as 'are conferred upon it by necessary implication as being essential to the performance of its duties'.[13] Thus in the Advisory Opinion mentioned above on *Reparation for Injuries Suffered in the Service of the United Nations*,[14] the majority of the International Court of Justice held that by implication from its Charter, the United Nations had the power of exercising diplomatic protection over its agents, and could therefore sponsor claims on behalf of such agents against governments for injuries received in the course of their official duties. In a later Advisory Opinion,[15] the Court held that the

12. ICJ 1949, 180.
13. ICJ 1949, 182, following the Permanent Court on this point.
14. ICJ 1949, 174.
15. See *Advisory Opinion on Effect of Awards made by the United Nations Administrative Tribunal* ICJ 1954, 47. The United Nations has, semble, also implied power: (1) To undertake the temporary administration of territory, as part of a peaceful settlement of a dispute between two states, and with their consent; cf the assumption of temporary administration of West New Guinea 1962–1963 by the United Nations Temporary Executive Authority (UNTEA) under the Indonesia–Netherlands Agreement of 15 August 1962. (2) To borrow money by way of bonds or other securities for its purposes

United Nations General Assembly had implied power to create a judicial or administrative tribunal, which might give judgments binding the General Assembly itself. There is some weight of opinion to the effect that in appropriate cases, an international institution may possess impliedly not only such powers as are necessary for the performance of its duties as outlined in its constituent instrument, but also powers which may be incidental or related to such duties, or the due performance of such duties.[16]

In relation to the corporate nature of international bodies, the question arises whether they possess legal personality: (a) at international law; and (b) at municipal law.

In the case of the League of Nations, although the Covenant did not expressly confer juridical personality, the general view was that the League had both international and municipal legal personality. This was based partly on the principle that such personality was implicitly necessary for the efficient performance by the League of its functions, and partly on its practice in repeatedly acting as a corporate person, for example concluding agreements with the Swiss Government, taking over property and funds, etc.

The constitution of the League's present successor—the United Nations—likewise contained no express provision as to legal personality, the draftsmen assuming that this was more or less implicit from the context of the Charter taken as a whole, in particular, article 43 of the Charter, enabling the Security Council to enter into military agreements with member states. It was however provided in article 104 of the Charter that the United Nations should enjoy in the territory of each of its members 'such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes'. Subsequently, in February 1946, the United Nations General Assembly approved a Convention on the Privileges and Immunities of the United Nations which by article 1 provided that the United Nations should possess 'juridical personality' and have the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings. The Convention was followed by legislation in several states, but according to the municipal law of certain countries,[17] under the Convention in conjunction with article 104 of the Charter, the United Nations would probably be regarded as having legal personality even without such legislation. In this way, the municipal legal personality of the United Nations may be considered well established. As to the Organisation's international legal personality, the International Court of Justice in its Advisory Opinion mentioned above,

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under the Charter; cf the General Assembly Resolution of 20 December 1961, authorising the issue of United Nations bonds to a total of 200 million dollars.

16. Bowett, op cit, pp 337–338.

17. As to whether art 104 is 'self-executing' in the United States, see above, p 84, n 12.

on the right of the United Nations to claim compensation for injuries to its agents, decided that the United Nations is an international legal person, having such status even in its relations with non-member states.[18]

Apart from the United Nations Charter, the constitutions of other international institutions, both general and regional,[19] contain provisions similar to article 104 of the Charter or to article 1 of the Convention on the Privileges and Immunities of the United Nations (see, for example, article 39 of the Constitution of the International Labour Organisation, article XV (1) of the Constitution of the Food and Agriculture Organisation of the United Nations, and article IV (1) of the articles of Agreement of the International Monetary Fund). In accordance with the Advisory Opinion of the International Court of Justice, mentioned above, the majority of these institutions would be deemed to possess international legal personality. As to municipal legal personality, however, the various provisions in their constitutions reflect no coherent doctrine as to how such personality is to be recognised at municipal law. For instance, article 47 of the International Civil Aviation Convention of 1944, dealing with the legal capacity of the International Civil Aviation Organisation (ICAO), provides that:

> 'The Organisation shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the Constitution and laws of the State concerned.'

This formula seems to leave states parties free to grant or withhold the privilege of legal personality if their municipal law so permits, whereas the corresponding provisions in most other constitutions of international bodies bind states members fully to recognise such personality.

Classification

It is difficult to suggest a satisfactory classification of international institutions.[20]

Classification of such bodies according to functions, for example as economic, political, social, etc, or even as judicial, legislative, and administrative, leads to difficulty owing to the overlapping of their responsibilities. It is likewise unsatisfactory to classify international organisations according as, on the one hand, their constituent instruments are in the form of a convention between states, or, on the other hand, as these instruments are in the form of a convention between governments; as

18. ICJ 1949, 179–180.
19. See, as to the European Economic Community (Common Market), arts 210–211 of the Treaty of Rome of 25 March 1957, establishing the Community.
20. See Bowett, op cit, pp 10–12.

regards the major permanent international organisations now currently operating, some of which are based on inter-state constituent instruments, others on the intergovernmental form of such instruments, it is difficult to discern reasons of substance for one rather than the other form.

The possible distinction between: (a) global or world-wide bodies, for example, the United Nations and the International Civil Aviation Organisation (ICAO), and (b) regional bodies, for example, the South Pacific Commission, and the Council of Europe, will become less important in time, because of the general tendency of global bodies to establish their own regional organs or regional associations.

A suggested distinction is that of international institutions into those which are *supra-national* and those which are not. A *supra-national* body is generally considered to be one which has power to take decisions, directly binding upon individuals, institutions, and enterprises, as well as upon the governments of the states in which they are situated, and which they must carry out notwithstanding the wishes of such governments. The European Coal and Steel Community, created by the Treaty of 18 April 1951, is regarded as such a supra-national body, inasmuch as it may exercise direct powers of this nature in regard to coal, iron and steel in the territories of its member states. So also is the European Economic Community (Common Market), established by the Treaty of Rome of 25 March 1957. International bodies, not of the supranational type, can only act, or execute decisions by or through member states. The defect in this classification resides in the fact that the word 'supra-national' is one which lends itself so easily to misunderstandings.

Then there is also the special category of international public corporations, controlled by governments, as shareholders, or otherwise. These differ from the usual type of international organisations insofar as they are corporations governed by the municipal law of the place where their headquarters are situated, as well as by the conventions establishing them. An illustration is the European Company for the Chemical Processing of Irradiated Fuels (EUROCHEMIC) established under the Convention of 20 December 1957.

Co-ordination of international institutions

The draftsmen both of the League of Nations Covenant and of the United Nations Charter attempted to solve the problem of integrating international institutions and co-ordinating their working. Their purpose was a highly practical one, to ensure that these bodies should function as an organic whole, instead of as a group of dispersed and isolated agencies.

Under article 24 of the Covenant, it was provided that there should be placed under the direction of the League all international bureaux already established by general treaties, provided that the parties to such treaties consented, as well as all such international bureaux and all commissions

for the regulation of matters of international interest thereafter constituted. These provisions, for various reasons, resulted in only six international bodies, including the International Air Navigation Commission and the International Hydrographic Bureau being placed under the direction of the League. Of course, apart from these six institutions, there was co-ordination between the League of Nations and the International Labour Organisation up to the date of the League's dissolution, by reason of the following:

i. organic connection, members of the League for example being ipso facto members of the International Labour Organisation;
ii. a common budget;
iii. the vesting of certain functions of the International Labour Organisation in the Secretary-General of the League, for example custody of the original texts of International Labour Conventions; and
iv. actual co-operation between the two bodies in investigating certain economic and social problems.

More concrete and detailed provisions for the co-ordination of international bodies were included in the United Nations Charter. Their effect may be summarised as follows:

a. The international institutions described as 'the various *specialised agencies*,[1] established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields', were to be brought into relationship with the United Nations through agreements entered into between these institutions and the United Nations Economic and Social Council, such agreements to be approved by the United Nations General Assembly and by each such institution (articles 57 and 63, paragraph 1, of the Charter).
b. The United Nations Economic and Social Council was empowered to co-ordinate the activities of the international institutions entering into such agreements through consultation with and recommendations made to them, and through recommendations made to the General Assembly and member states of the United Nations (article 63, paragraph 2).
c. The United Nations, through its organs, was to make further recommendations for co-ordinating the policies and activities of these institutions (article 58).
d. Regular reports and observations thereon were to be obtained from these institutions through the Economic and Social Council in order mainly to ensure that they were giving effect to the recommendations made to them (article 64).

1. It should be noted that the language of art 57 seems somewhat narrower than the corresponding provisions of art 24 of the League of Nations Covenant, and does not cover all organs carrying on any kind of international activity.

e. The Economic and Social Council was empowered to arrange for reciprocal representation between it and the 'specialised agencies' at their respective meetings (article 70).

Parallel provisions for co-ordination are also to be found in the constitutions of other international bodies, both of the 'specialised agencies' and of institutions not in this category, including provisions for relationship with the United Nations, for common personnel arrangements, and for common or mutual representation.[2]

Through the application in practice of these provisions the net of co-ordination has been cast not only wider, but deeper. The 'specialised agencies'—the name applied to the bodies brought or to be brought into relationship with the United Nations—have become for all practical purposes major operating arms of the United Nations, or to use a striking phrase in one official report, its 'specialised organisational tools'.[3] Further, through its Economic and Social Council (ECOSOC), the United Nations has been able to make continuous scrutiny of the activities of the 'specialised agencies' to ensure that they function with some kind of organic unity.

Co-ordination and co-operation are also provided for by inter-organisation agreements, consisting of:

1. Relationship agreements between United Nations and the specialised agencies under article 57 and 63 of the Charter.
2. Agreements between the specialised agencies themselves.
3. Agreements between a specialised agency and a regional organisation (for example, that between the International Labour Organisation and the Organisation of American States).
4. Agreements between regional organisations.

Category (1) of the relationship agreements between the United Nations and specialised agencies contain elaborate provisions in a more or less common form for:

a. reciprocal representation at their respective meetings;
b. enabling United Nations organs and the specialised agencies to place items on each other's agenda:
c. the reciprocal exchange of information and documents;

2. Eg, co-operative relations between the Organisation of American States (OAS) and the United Nations are provided for in the Charter of the former, and the Treaty of Rome of 25 March 1957, establishing the European Economic Community (Common Market), provides that the Community may conclude agreements with international organisations, creating an association for joint action, etc (see art 238).
3. Report of President of the United States to Congress on the United Nations 1948, p 12. Although not a specialised agency, but unofficially known as a 'related agency', the International Atomic Energy Agency (IAEA) has also been brought into working relationship with the United Nations, and with specialised agencies having a particular interest in atomic energy, by special agreements with these institutions.

d. uniformity of staff arrangements under common methods and procedures;
e. consideration by the specialised agencies of recommendations made to them by the United Nations and for reports by them on the action taken to give effect to these recommendations;
f. uniformity of financial and budget arrangements;
g. undertakings by each specialised agency to assist the United Nations General Assembly and Security Council in carrying out their decisions; and
h. obtaining Advisory Opinions from the International Court of Justice with regard to matters arising within the scope of the activities of each specialised agency.[4]

It is true that besides the bodies with which the United Nations has entered into relationship as specialised agencies, there are numerous other international institutions that have not been integrated into the one general system aimed at by the Charter. Where the definition of specialised agencies in article 57 is wide enough to cover them, these outside international organs will no doubt in due course become the subject of relationship agreements with the United Nations.[5] There is a committee of the Economic and Social Council known as the Committee on Negotiations with Inter-Governmental Agencies which, if necessary, can act upon the specific instructions of the Council, directing it to negotiate with specific international organisations determined by the Council.

The Economic and Social Council has a primary responsibility by consultation and other action for maintaining co-ordination, particularly in the economic, social, and human rights fields. But there is also a special

4. From time to time, also, the United Nations General Assembly and the Economic and Social Council have adopted resolutions designed to make co-ordination more effective, emphasising the necessity of avoiding duplication of effort, and calling for a greater concentration of effort on programmes demanding priority of effort, with particular reference, recently, to economic, social, and human rights activities. A recent illustration was the lengthy resolution adopted by the General Assembly on 19 December 1986 for a detailed review and study of the efficiency of the administrative and financial functioning of the United Nations.
5. International, regional, and national *non-governmental* organisations (NGOs), also, may collaborate on a *consultative* basis with the Economic and Social Council under art 71 of the United Nations Charter. The Council has granted to certain such bodies 'consultative status' in categories I and II respectively. Those of category I status may propose items for inclusion in the provisional agenda of the Council and its commissions. The Council may, besides, consult ad hoc with certain non-governmental bodies, not enjoying category I or category II status, but which are on the Council's Roster. All such bodies may send observers to meetings, and may consult with the United Nations Secretariat. NGOs play an influential role in United Nations decision-making processes. Cf also the Council of Europe Convention of 1986 on the Recognition of the Legal Personality of International Non-Governmental Organisations, and see Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 319–320.

organ known as the Administrative Committee on Co-ordination (ACC), which was established pursuant to a resolution of the Council, composed of the Secretary-General of the United Nations, the executive heads of the specialised agencies and the Director-General of the International Atomic Energy Agency (IAEA), with the following duties, inter alia: The taking of appropriate measures to ensure the fullest and most effective implementation of the agreements between the United Nations and related agencies, the avoidance of duplication or overlapping of their respective activities, ensuring consultation on matters of common interest, the consideration of possibilities of concerted action, and the solution of interagency problems. The Director-General for Development and International Economic Co-operation and the executive heads of the various programmes and separate organisations within the United Nations system also participate fully in the proceedings of the Administrative Committee on Co-ordination. Within the framework of this Committee, which is itself assisted by a Committee known as the Organisational Committee, there are also inter-agency consultative committees, including the Joint United Nations Information Committee, the Consultative Committee on Administrative Questions (CCAQ), which exists in two variants, viz. Financial and Budgetary (CCAQ(FB)) and Personnel (CCAQ(PER)), the Consultative Committee on Substantive Questions (CCSQ), which also exists in two variants, viz. Operational Activities (CCSQ(OPS)) and Programme Matters (CCSQ(PROG)), and technical working groups on different aspects. Aided by these organs,[6] the specialised agencies have followed the general practice of co-operating in common fields of activity. There is frequent inter-agency consultation, particularly as most specialised agencies have adopted rules providing for prior consultation before taking action in matters of common concern to each other.

The specialised agencies are entitled to attend meetings of the Economic and Social Council and of its subsidiary organs, and to make statements at such meetings. They also may attend and make statements at meetings of the Main Committees of the General Assembly, at meetings of the subsidiary bodies thereof, and at United Nations Conferences. Similar rights are enjoyed by the 'related agencies', an expression that covers organisations for practical purposes assimilated to specialised agencies, such as the International Atomic Energy Agency (IAEA) and the General Agreement on Tariffs and Trade (GATT).

On 3 August 1962, the Economic and Social Council set up a Special

6. Other co-ordinating bodies or units established for administrative purposes are: (a) the Advisory Committee on Administrative and Budgetary Questions appointed by the General Assembly, which reports on questions of administrative and budgetary co-ordination; (b) the International Civil Service Commission dealing with common administration policies; (c) the Joint Panel of External Auditors; (d) the Joint Inspection Unit; (e) the United Nations Joint Staff Pension Fund.

Committee on Co-ordination with the following principal duties: (a) to keep under review the activities of the United Nations family in the economic, social, human rights, and development fields; (b) to study the reports of the Administrative Committee on Co-ordination, appropriate reports of the United Nations organs, the annual reports of agencies in the United Nations family, and other relevant documents, and to submit its conclusions to the Council in the form of a concise statement of the issues and problems in the domain of co-ordination arising from these documents, which should call for special attention by the Council. This Special Committee, whose name was changed in 1966 to that of the 'Committee for Programme and Co-ordination', proceeded to hold joint meetings with the Administrative Committee on Co-ordination and the Advisory Committee on Administrative and Budgetary Questions. By resolution of 13 January 1970, the Council reconstituted the Committee for Programme and Co-ordination to perform wider programming, reviewing, and co-ordinating functions as to the activities of the United Nations family in economic and social fields, and enlarged the Committee to a membership of 21 (formerly 16).

A major step was taken on 24 May 1976, when the Economic and Social Council, in the light of the fact that the economic and social sectors of the United Nations system were currently under examination by an ad hoc Committee on the Restructuring of the Economic and Social Sectors of the United Nations system, approved consolidated terms of reference for the Committee for Programme and Co-ordination. An important provision of these terms of reference was that the Committee should 'function as *the main subsidiary organ* of the Economic and Social Council and the General Assembly for planning, programming and co-ordination'.[7] Wide-ranging powers were conferred on the Committee, including powers as to programmes and priorities, and as to guidance to be given to the United Nations Secretariat in the implementation of Council and Assembly resolutions, while it was to assist the Council in the performance of the Council's co-ordination functions within the United Nations system. For the purpose of the due performance of its responsibilities, the Committee was to study the reports of the Administrative Committee on Co-ordination, of the Joint Inspection Unit, and of the institutions within the United Nations family, while it was to co-operate and consult jointly with the Administrative Committee on Co-ordination and the Joint Inspection Unit. Under a resolution of the UN General Assembly, adopted on 17 December 1987 on the recommendation of ECOSOC, the Committee was from 1988 onwards to be composed of 34 member states, elected for three-year terms on the basis of the following geographical

7. The first session of the Committee in its capacity as the main subsidiary planning, programming, and co-ordination organ of the Council and Assembly took place from 10 May to 11 June 1976.

distribution: 9 seats for African states, 7 for Asian states, 7 for Latin American and Caribbean states, 7 for Western European and other states, and 4 for Eastern European states.

By an earlier resolution adopted on 19 December 1986 the General Assembly had sought to give effect to the recommendations made in the 1986 Report of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations. According to the resolution, the recommendations in the Report should be implemented by the UN Secretary-General and the relevant UN organs and bodies. In particular, ECOSOC, assisted by other bodies, especially the Committee for Programme and Co-ordination, was to fulfil the recomendation for a careful in-depth study of the intergovernmental structure in the economic and social fields with the purposes, inter alia, of avoiding duplication, streamlining, overlapping reduction, and strengthening the co-ordination in the above-mentioned economic and social fields under the leadership of the UN Secretary-General. Apart from this, effect was to be given to the recommendation that the reports of the Joint Inspection Unit should be adequately dealt with at the intergovernmental level, such Unit to put more emphasis on evalution as contributing to better co-ordination, with the Unit correspondingly being renamed the Joint Inspection and Evalution Unit. Moreover, there should be increased co-operation between that Unit and the Joint Panel of External Auditors.

Organic structure and composition

The organic structure and composition of the specialised agencies and other international bodies vary in the case of each institution. Nevertheless, they have some features in common:

(1) Constitutional seat or headquarters. The constitutions of international institutions usually fix the location of the headquarters, but this is sometimes left by the member states for later decision or agreement with the government of the territory of the site.

(2) Membership. The constitution usually provides that original signatories may become members upon ratification or acceptance of the instrument, while other states may become members upon admission by a special majority vote of the competent organs of the particular international body concerned. Where a clause in a constitution defines the conditions under which such other states may be admitted to membership, it is imperative, according to the International Court of Justice,[8] that such conditions be strictly adhered to. Under certain constitutions of the specialised agencies (for example, the Constitution of the United Nations Educational, Scientific and Cultural Organisation, UNESCO) the privilege of admission to membership on acceptance of the constitution is

8. See ICJ 1948, 61 et seq.

allowed to member states of the United Nations. In the case of certain specialised agencies, too, for example, the World Health Organisation (WHO) and the International Telecommunication Union (ITU), territories or groups of territories may be admitted to 'associate membership', a status which entitles them to participation in the benefits of the organisation without voting rights or the right to become a member of an executive organ. Under the Constitution of the International Labour Organisation (ILO), territories may be represented at the International Labour Conference by or through advisers appointed to the delegation of the member state responsible for the territory or territories concerned.

(3) Conditions of withdrawal by, or expulsion and suspension of, members. There is no uniform or coherent practice in this matter. For example, although the constituent instruments of the majority of international organisations contain express provisions for a right of a state to withdraw from membership, no article of the United Nations Charter confers an express right of withdrawal upon member states. Most usually members are allowed to give a twelve months' written notice of intention to withdraw; but the provisions of the constitutions vary as to the minimum period of time following admission to membership, when notice may be given; and as to whether the effectiveness of the notice depends upon the prior performance of financial or other obligations. As regards expulsion of members for failure to fulfil obligations, less value is attached to this as a disciplinary measure than before the Second World War; the modern tendency is to make no provision for expulsion, but to allow suspension of a member's privileges, including voting rights, for default in financial or other obligations, until these obligations are met.

(4) Organs.[9] Here, there is a necessary distinction between *principal organs*, and *regional* and *subsidiary organs*.

The standard *principal organs* consist of:

a. A policy-making body known usually as an 'Assembly' or 'Congress', representative of all member states, with power to supervise the working of the organisation, and to control its budget, and, more frequently, also with power to adopt conventions and other measures, and to make recommendations for national legislation (for example, the Assembly of the World Health Organisation, WHO). Variations may occur in the frequency of sessions (varying from annual to quinquennial meetings), the number of delegates, the range of this organ's supervisory powers, and the authority which may be delegated to the smaller executive body (see below).
b. A smaller executive body or council, usually elected by the policy-making organ from among the delegates to it, and representative of

9. See on this subject, Z.M. Klepachi *The Organs of International Organizations* (1978).

only a specific number of member states. Sometimes it is required that the members of this body should be selected so as to be fairly representative of the states of most importance in the specialised field (aviation, shipping and maritime transport, and industrial production) in which the organisation is active; this is so, for instance, with the Council of the International Civil Aviation Organisation (ICAO), and with the Governing Body of the International Labour Organisation (ILO). In other instances, it is required that this body should be fairly representative of all geographical areas, as, for example, with the Executive Council of the Universal Postal Union (UPU). Or, also the members may be chosen from different states, but with primary emphasis on their personal or technical qualifications, as in the case of the Executive Board of the United Nations Educational, Scientific, and Cultural Organisation (UNESCO), and the Executive Committee of the World Meterological Organisation (WMO). The degree of executive authority of this organ may vary from the level of supreme control in regard to the member states over a particular subject matter (as in the case of the High Authority of the European Coal and Steel Community, under the Treaty of 18 April 1951), to the level of mere advice and recommendation as in the case of the Council of the International Maritime Organisation (IMO).[10]

c. A Secretariat or international civil service staff. Most constituent instruments of international organisations stipulate that the responsibilities of such staff shall be exclusively international in character, and that they are not to receive instructions from outside authorities. To reinforce this position, such instruments generally contain undertakings by the member states to respect the international character of the responsibilities of the staff and not to seek to influence any of their nationals belonging to such staff in the discharge of their responsibilities.

As to the international position of members of Secretariats, a serious problem did arise in 1952 and subsequent years with regard to the question of 'loyalty' investigations of officials by the government of the country of which they were nationals. Although such personnel should abide by the laws of their country of nationality, particularly if the headquarters of the institution be situated in that country, it is open to question whether they should be liable to dismissal or other injurious consequences for refusing legitimately on grounds of privilege to answer questions by commissions of inquiry regarding their loyalty to their country, and their alleged involvement in subversive activities previously, or while engaged

10. Formerly known as the Intergovernmental Maritime Consultative Organisation (IMCO). The new name of this body became effective as from 22 May 1982.

upon their international responsibilities.[11] These are matters which require definiton by international convention.

Regional and subsidiary organs.
These have been created with relative freedom, thus accentuating, inter alia, the tendency towards decentralisation in modern international institutions. Instances of this flexibility of approach are:

a. Regional conferences, for example, of the International Labour Organisation (ILO), or regional councils, for example of the Food and Agriculture Organisation of the United Nations (FAO).
b. The appointment of advisory or consultative committees, either generally or for particular subjects (for example, the Consultative Committees of the International Telecommunication Union, ITU).
c. The establishment of so-called *functional* commissions or committees, dealing with specialised fields of action (for example, the Functional Commissions of the United Nations Economic and Social Council, and the special technical Commissions of the World Meteorological Organisation, WMO, dealing with aerology, aeronautical meteorology, etc). The United Nations Commission on International Trade Law (UNCITRAL), in regard to which the Sixth Committee (Legal) of the United Nations General Assembly exercises largely an overseeing role may, semble, be regarded as such a functional commission.
d. The Administrative Conferences of the International Telecommunication Union, ITU, at which the representatives of private operating agencies may attend.
e. The delegation by Commissions of their functions to a Sub-Commission; eg, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which is a Sub-Commission of the United Nations Human Rights Commission.
f. The creation of bodies or units with distinct appellations or titles, such as 'Agency' (eg the United Nations Relief and Works Agency for

11. In November 1952, the Secretary-General of the United Nations sought the opinion of a special committee of jurists on this question and related aspects. The opinion given, while emphasising the necessity for independence of the staff of the Secretariat, was none the less to the effect that a refusal to answer such questions on grounds of privilege created a suspicion of guilt which, in a suitable case, ought to disentitle the employee to remain a Secretariat official. See *United Nations Bulletin* (1952) Vol 13, pp 601–603. This opinion was acted upon by the Secretary-General. The United Nations Administrative Tribunal did not, however, give full support to the committee's views; cf its judgment in *Harris v Secretary-General of the United Nations* (1953). The Administrative Tribunal of the International Labour Organisation held in several cases, that a refusal to answer loyalty interrogatories was not a sufficient ground for declining to renew the appointment of an official of the United Nations Educational Scientific and Cultural Organisation (UNESCO); see, eg, its judgment in *Duberg*'s Case (1955) ICJ 1956, 77, referred to in another connection by the International Court of Justice in its advisory opinion on the judgments of this tribunal. The subject is discussed in Bowett *The Law of International Institutions* (4th edn, 1982) pp 97–99.

Palestine Refugees in the Near East, UNRWA), 'Conference' (eg the United Nations Conference on Trade and Development, UNCTAD), 'Fund' (eg, the United Nations Children's Emergency Fund, UNICEF, and the United Nations Fund for Population Activities, UNFPA), and 'Programme' (eg, the United Nations Environment Programme, UNEP, and the United Nations Development Programme, UNDP).

Another manifestation of this flexible devolution of powers is the formation of 'working parties', or of inner groups of states most competent collectively to deal with certain problems within the framework of the organisation.

(5) Voting rights. Voting by a majority of members has become the more usual requirement for the adoption of decisions, resolutions, etc, and it is seldom that unanimity is now prescribed. Special systems of 'weighted' voting rights are applied in some instances (for example, by the International Bank for Reconstruction and Development, and the International Monetary Fund), the number of votes being calculated upon a scale depending on the amount of financial contributions, or actual shares of capital. To that extent, more recent voting procedure tends 'to reflect the power and interests of the subscribing nations with particular reference to the extent to which individual nations will be affected by the organisation's activities or relied upon to execute its decisions'.[12] There is a recent tendency, however, that has become more common, to reach decisions by consensus.[13] For the more important decisions, for example, admission of members, or amendment of the constitution, a two-thirds majority is the more usual rule. The special voting procedure in the United Nations Security Council is discussed below in this chapter.[14]

(6) Reports by member states. The constitutions of these bodies usually provide for the supervision of reports by member states on the action taken in fulfilment of their obligations.

(7) The adoption of conventions and recommendations for action by member states. This is discussed below in the present chapter.[15]

(8) Budgetary questions. The more usual constitutional provisions are that the Secretary-General or Director-General, or other executive head of the Secretariat, formulates the estimates of future expenditure, that these are reviewed and passed by the policy-making body, subject—in some cases—to intermediate examination by a budgetary committee of that body, and by the executive organ, and that the total amount is

12. 61 Harvard LR (1948) 1093, reviewing Koo *Voting Procedures in International Political Organisations* (1947). For an up to date discussion of this complex subject, see Bowett *The Law of International Institutions* (4th edn, 1982) pp 401–408 where, at pp 401 et seq, the decline of the former principle of unanimity is examined.
13. As to decisions or resolutions by consensus, see p 52, n 6, above, in Ch 2.
14. At pp 643–645.
15. See below, pp 624–625.

apportioned among the member states in shares determined by the policy-making body. The control by the specialised agencies over financial and budgetary matters is subject to the supervisory and recommendatory powers of the United Nations General Assembly. These powers of the General Assembly are of the most general nature, extending not only to administrative expenses stricto sensu, but other expenditure in fulfilling the purposes of the United Nations, including costs incurred by the Secretary-General in connection with any authorised measures to maintain international peace and security,[16] and these may be apportioned among the member states.[17]

3. PRIVILEGES AND IMMUNITIES[18]

It is clear that to operate effectively and properly to discharge their functions, international institutions require certain privileges and immunities in each country where they may be located permanently or temporarily. Also the agents and servants, through whom such institutions must work, similarly require such privileges as are reasonably necessary for the performance of their duties. Moreover, in principle, the income and funds of such organisations should be protected from state fiscal impositions.

Obviously, this was a matter that needed to be dealt with by provisions in international conventions. It could not be left merely for separate solution by the laws and practice of the states participating in each international institution. So far as the United Nations was concerned, it was provided in general terms in article 105 of the Charter that the Organisation should enjoy in the territory of each member state such privileges and immunities as were necessary for the fulfilment of its purposes, that representatives of member states and officials of the Organisation should similarly enjoy such privileges and immunities as were necessary for the independent exercise of their functions in relation

16. See *Advisory Opinion on Certain Expenses of the United Nations (Article 17, paragraph 2 of the Charter)* ICJ 1962, 151. Recommendations for budgeting reforms were made by the above-mentioned Report in 1986 of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations; see p 615, above.

17. *Financial Support:* The funds of international institutions are provided principally by: (a) contributions from the member states, equal, or graduated according to population or economic position; (b) the earnings or profits of the institution itself. On the budgeting of international organisations, see Bowett *The Law of International Institutions* (4th edn, 1982) pp 68, 412–421.

18. On the subject, see Henkin, Pugh, Schachter, and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 958–979; Bowett *The Law of International Institutions* (4th edn, 1982) pp 345–362; Ling 'Comparative Study of the Privileges and Immunities of UN Member Representatives and Officials with the Traditional Privileges and Immunities of Diplomatic Agents' (1976) 33 Washington & Lee LR 91.

to the United Nations, and that the General Assembly might make recommendations or propose conventions for the detailed application of these general provisions. Similar stipulations on this subject were inserted in the various constitutions of the 'specialised agencies', and in treaties and agreements relative to general and regional[19] international institutions, in some instances in a more specific and more detailed form.

In February 1946 the General Assembly adopted a Convention on the Privileges and Immunities of the United Nations, providing principally for the following:

i. immunity of the United Nations' property and assets from legal process except when waived;
ii. inviolability of the Organisation's premises and archives;[20]
iii. freedom from direct taxes and customs duties for its property and assets;
iv. equivalent treatment for its official communications to that accorded by member states to any government;
v. special privileges, including immunity from arrest, inviolability of documents, and freedom from aliens' registration for representatives of member states on organs and conferences of the United Nations;
vi. special privileges for certain United Nations officials of high rank, including the status of diplomatic envoys for the Secretary-General and Assistant Secretaries-General, and special immunities for other officials, for example, from legal process for acts performed or words spoken in their official capacity, from taxation, and from national service obligations;
vii. a laissez-passer or special travel document for United Nations officials.

In November 1947, the General Assembly adopted a convention for the co-ordination of the privileges and immunities of the specialised agencies with those of the United Nations. This convention contained similar standard provisions to those mentioned above as being contained in the Convention on Privileges and Immunities of the United Nations, but it also consisted of separate draft annexes relating to each specialised agency, containing special provisions for privileges and immunities which needed to be made having regard to the particular nature of each specialised agency; for example, the draft annex as to the International Labour Organisation provided for the immunities to be extended to employers'

19. See, eg, arts 5–11 of the Agreement on the Status of the North Atlantic Treaty Organisation (NATO), National Representatives, and International Staff of 20 September 1951.

20. Section 9 of the Agreement of 1947 with the United States for the Headquarters of the United Nations at New York provides for inviolability of what is known of the Headquarters District. The United States has also concluded a Headquarters Agreement with the Organisation of American States (OAS).

and workers' members of the Governing Body, subject to waiver by the Governing Body itself. Each specialised agency was to be governed by the standard provisions, and was authorised to draw up, in accordance with its own constitutional procedure, a special annex of additional amended privileges based on the draft annex. Under certain of the 'protocolary' provisions of the Convention, the full details of which need not concern us, member states of each specialised agency undertook to apply the standard provisions of the Convention in conjunction with the special provisions of each annex when finally and properly drawn up. This seems a workmanlike, if complicated, solution of a difficult problem.

The related questions of the status of the headquarters (premises and territory) of the United Nations and of the specialised agencies[1] have been regulated by special agreements (including the agreement between the United Nations and the United States of 1947). These agreements reveal the following common general features:

i. The local laws are to apply within the headquarters district, subject to the application of staff administrative regulations relative to the Secretariat.
ii. The premises and property of the organisation are to be immune from search, requisition, confiscation, etc., and any other form of interference by the local authorities.
iii. Local officials cannot enter except with the consent of the organisation.
iv. The local government must use diligence to protect the premises against outside disturbance and unauthorised entry.
v. The headquarters are exempt from local taxes or impositions, except charges for public utility services (for example, water rates).
vi. The organisation enjoys freedom of communication, with immunity from censorship.

Regional and field offices of international organisations have also, in some cases, been covered by privileges and immunities agreements with the host state; cf the case of the World Health Organisation (WHO) Regional Office in Egypt which was the subject of an Agreement of 25 March 1951 between the WHO and Egypt that was considered by the

1. The International Atomic Energy Agency (IAEA), at Vienna, which is not a specialised agency, but a 'related agency' (see p 613), entered into a Headquarters Agreement with the Austrian Government on 1 March 1958. In respect of the UN Headquarters Agreement of 1947, see Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 974–979, and the *Advisory Opinion of the International Court of Justice on the Applicability of the Obligation to Arbitrate under the UN Headquarters Agreement 1947* (26 April 1988; interpretation of disputes clause in the Agreement).

International Court of Justice in 1980 in an Advisory Opinion arising out of the proposed transfer of the Office to another country.[2]

Privileges and immunities wider than those provided in the two conventions (or in municipal legislation) may, as a matter of practice, be granted by states to an international institution. Also, the constitution of an international institution may contain its own detailed code of provisions as to the privileges and immunities of the institution, and officials thereof (see, for example, the Articles of Agreement of the International Finance Corporation, of 25 May 1955, article VI, sections 2–11). The matter may, too, be regulated by bilateral agreement (as for example the Agreement of 27 November 1961, between the United Nations and the Congo Republic relating to the privileges and immunities of the United Nations Operation in the Congo and that of 27 February 1964, between the United Nations and Yugoslavia for the 1965 World Population Conference).[3]

Generally speaking, as a study of the two conventions and other instruments shows, the object in granting privileges and immunities to international institutions has been not to confer on them an exceptional rank or status of extra-territoriality, but to enable them to carry out their functions in an independent, impartial and efficient manner. The privileges and immunities are subject to waiver. It is left to the good sense of such international institutions to decide in the light of the justice of the case, and of possible prejudice to the organisation, when these should be pressed,[4] and to the practical discretion of states to determine how liberal the authorities should be in giving effect thereto.

2. *Advisory Opinion on the Interpretation of the Agreement of March 25, 1981 between the WHO and Egypt* ICJ 1980, 73. The privileges and immunities of judges of the International Court of Justice and of the Registrar of the Court were, inter alia, dealt with in an exchange of correspondence between the President of the Court and the Netherlands Minister for Foreign Affairs in June 1946; see *Yearbook of the International Court of Justice, 1986–1987* pp 15, 114.
3. Such bilateral agreements may even govern the privileges and immunities of a peace-keeping force; eg, the UN-Cyprus Exchange of Letters, New York, 31 March 1964, as to the Force in Cyprus.
4. See, eg, art V, s 20, of the General Convention of 1946 on the Privileges and Immunities of the United Nations under which, in regard to officials, other than the Secretary-General, it is the latter's 'right and *duty*' to waive immunity in any case where immunity would impede the course of justice, and can be waived without prejudice to the interests of the United Nations. Cf the *Ranollo* Case 67 NYS (2d) 31 (1946) (chauffeur of the Secretary-General prosecuted for speeding while the Secretary-General was riding in the car concerned—defendant's immunity not pressed). For a case in which immunity from proceedings was allowed to China's representative accredited to the United Nations, see *Tsiang v Tsiang* 86 NYS (2d) 556 (1949).

4. LEGISLATIVE AND REGULATORY FUNCTIONS OF INTERNATIONAL INSTITUTIONS[5]

There is no world legislature in being, but various kinds of legislative measures may be adopted by international institutions, and powers of promoting the preparation of conventions are vested in the General Assembly, the Economic and Social Council, the United Nations Commission on International Trade Law (UNCITRAL), and the International Law Commission of the United Nations. Six of the specialised agencies are indeed largely regulative institutions, namely, the International Labour Organisation, the World Health Organisation, the World Meteorological Organisation,[6] the International Civil Aviation Organisation, the International Telecommunication Union, and the International Maritime Organisation (formerly the Inter-Governmental Maritime Consultative Organisation, IMCO). Mention may be made of the following special legislative or quasi-legislative techniques of these bodies:

a. The adoption of regional Regulations or operating 'Procedures' (for example, by regional meetings of the International Civil Aviation Organisation).[7]
b. The participation of non-governmental representatives in the legislative processes (for example, workers' and employers' delegates in the International Labour Conference, and private operating agencies at Administrative Conferences of the International Telecommunication Union).
c. Regulations (such as, eg, the smallpox vaccination certificate regulations of 1956) adopted by the World Health Assembly, which come into force for all members, except those who 'contract out', ie, give notice of rejection or reservations within a certain period.
d. The adoption of model regulations as an annex to a Final Act or other instrument.
e. The approval of codes or charters of guidelines for domestic implementation by the Governments of member states; eg, the International Code on the Marketing of Breastmilk Substitutes approved in 1981 by the World Health Organisation.

5. See C.H. Alexandrowicz *The Law-Making Functions of the Specialised Agencies of the United Nations* (1973); Bowett *The Law of International Institutions* (4th edn, 1982) pp 140–147; Edward McWhinney *United Nations Law Making* (1984) passim. For criticism of the regulatory activities of United Nations bodies, see Jeane J. Kirkpatrick 'Regulation in the United Nations' in *Regulation* January–February 1983, pp 38–45.
6. As to the regulatory régimes of this Organisation and of the World Health Organisation, see David M. Leive *International Regulatory Régimes: Case Studies in Health, Meteorology, and Food* (1976).
7. The various legislative and regulatory expedients employed within the framework of this Organisation are well analysed in Thomas Buergenthal's valuable book, *Law-Making in the International Civil Aviation Organisation* (1969).

This development has been accompanied by the emergence, parallel to that in municipal law, of the similar phenomena of: (1) Delegated legislation; for example, the powers given to the Council of the International Civil Aviation Organisation to amend or extend the annexes to the International Civil Aviation Convention of 7 December 1944. A specially important case is that of the powers conferred upon the Council and the Commission of the European Economic Community (Common Market) to frame and promulgate Regulations, general in their scope, and directly binding upon the citizens and enterprises of member states of the Community (see article 189 of the Treaty of 25 March 1957, establishing the Community). In addition to Regulations there are the 'directives', binding states, receiving these, with regard to the end-result, but leaving them with some initiative in the matter of ways and means. (2) The making of *subordinate* law; for example, the adoption by the United Nations General Assembly of its own Rules of Procedure, and of the so-called 'Administrative Instruments', ie, the Treaty Registration Regulations,[8] the Statute of the Administrative Tribunal, and the Staff Regulations.

Finally, reference may be made to certain organisations, apart from the United Nations and the specialised agencies, and apart from the EEC, which have been most active in recent years in the preparation of, and promoting the adoption of multilateral law-making conventions or treaties; these are the Rome International Institute for the Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, and the Council of Europe.[9]

5. INTERNATIONAL ADMINISTRATIVE LAW

As in municipal law, not only administrative, but quasi-judicial functions have been conferred upon the organs of international institutions. In this connection, reference may be made, by way of illustration, to the number of quasi-judicial powers bestowed on the Commission of the European Economic Community (Common Market), eg, to determine whether a measure of state aid granted by a member state is incompatible with the Common Market, or is applied in an unfair manner (see article 93 of the Treaty of 25 March 1957 establishing the Community).

In turn, this has made it necessary to provide for judicial review, that is to say, the exercise of a supervisory jurisdiction to ensure that such organs do not exceed their legal powers.

Thus, the Court of Justice of the European Communities has, under the Treaties of 18 April 1951, and of 25 March 1957, establishing respectively the European Coal and Steel Community and the European Econ-

8. See above, p 461, n 1.
9. See as to the Council of Europe, Henkin, Pugh, Schachter, and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 1026–1033.

omic Community (Common Market), jurisdiction to review the legality of acts or decisions of certain organs of the Communities on the grounds, inter alia, of lack of legal competence, procedural error, infringement of the Treaties or of any rule of law relating to their application, or abuse or misapplication of powers. This supervisory jurisdiction is not to apply to the conclusions upon questions of fact considered by these bodies.[10] Another example of such judicial review is the provision in the Statute of the Administrative Tribunal of the United Nations (which deals with complaints by United Nations staff concerning alleged breaches of the terms of their employment, etc) enabling the International Court of Justice to determine by advisory opinion whether the Tribunal has exceeded its powers, or erred in law or procedure. The Administrative Tribunal of the United Nations and the similar Tribunal of the International Labour Organisation are themselves working illustrations of the vitality of international administrative law.[11]

Mention may also be made of the powers given to the organs of some international institutions to determine questions concerning the interpretation or application of the constituent instrument of the institution; for example, the Council of the International Civil Aviation Organisation under articles 84–86 of the International Civil Aviation Convention of 7 December 1944, and the Executive Directors and Board of Governors of the International Monetary Fund under article XVIII of the Articles of Agreement of the Fund.

Finally, as in the municipal administrative domain, there has developed the practice whereby an organ of an international institution delegates an inquiry to a smaller committee or other body; for example, complaints as to infringements of trade union rights come for preliminary examination before the Committee on Freedom of Association, on behalf of the Governing Body of the International Labour Organisation.[12] This committee is to some extent a quasi-judicial body.

6. QUASI-DIPLOMATIC AND TREATY RELATIONS OF INTERNATIONAL INSTITUTIONS

Not only is the accreditation of permanent missions by member states to the United Nations and the specialised agencies well-established, but there have been some instances of quasi-diplomatic appointments by United

10. See generally Wall *The Court of Justice of the European Communities* (1966), Valentine *The Court of Justice of the European Communities* (1965, 2 vols), and Wyatt and Dashwood *The Substantive Law of the EEC* (1980).
11. As to the jurisdiction and activities of these Administrative Tribunals, see Bowett *The Law of International Institutions* (4th edn, 1982) pp 317–331.
12. For example, as at May 1983, there were 78 cases pending before the ILO Committee on Freedom of Association, concerning 41 countries in all regions; see *ILO Information* May 1983, p 2.

Nations organs, for example, the appointment in 1949 of a United Nations Commissioner to assist the inhabitants of Libya in attaining independent self-government, and the appointment in 1960 of a Special Representative of the Secretary-General in the Congo.[13] The EEC has set a unique precedent by accrediting permanent diplomatic missions to four countries already, viz the United States, Canada, Japan, and Australia. Apart from these cases, the United Nations, the specialised agencies, and the related agencies under the provisions of their relationship agreements and inter-agency agreements for reciprocal representation and liaison, exchange and receive representatives from each other.

Treaty relations

The constitution of certain international institutions expressly contemplate the exercise of a treaty-making power; for example, the United Nations Charter provides for the conclusion of trusteeship agreements, of relationship agreements with the specialised agencies, and of military agreements between the Security Council and member states (see article 43). Besides, international institutions must, as a matter of implication from their constitutions, have such treaty-making power as is necessary for the performance of their functions. Semble, such treaty-making power may be delegated; cf for example, the Agreement signed at the end of 1982 between the United Nations High Commissioner for Refugees and the Government of Pakistan with regard to Afghan refugees. Wide treaty-making power has, in some instances, been conferred upon regional international institutions, eg, the European Economic Community (Common Market), under article 238 of the Treaty of Rome of 25 March 1957, establishing the Community. Lastly, and conclusively, on 21 March 1986 there was concluded the Vienna Convention on the Law of Treaties between States and International Organisations and between International Organisations; this represented definitive international recognition of the treaty-making power of international organisations.

At all events, a large number of international bodies have de facto entered into treaties, both inter se and with states and other entities.

13. Note also the case early in 1962 of the United Nations 'liaison mission' which visited outposts in the Congo. It has also become commonplace in recent years for the United Nations or its specialised agencies to send missions to different countries for various purposes. Eg, in May 1983, the United Nations Secretary-General sent a mission to Iran and Iraq to visit civilian areas to determine the extent of the war damage due to the Iran-Iraq hostilities while fact-finding missions despatched to determine the extent of violations of human rights have become an established procedure of the human rights functions discharged by the United Nations (see Robert Miller in *Australian Yearbook of International Law* 1970/1973, pp 40 et seq). Then, in the case of the International Labour Organisation (ILO), there are the missions or 'direct contact missions' sent to investigate complaints of alleged infringements of the right to freedom of association (see *ILO Information* December 1982, p 2, and May 1983, p 2). All such missions are despatched with the consent of the receiving states.

These instruments reveal a significant flexibility and simplicity, with but limited deference to Chancery traditions. In passing, reference may also be made to the absence from these agreements of the usual formal or 'protocolary' clauses,[14] and to the analogy to ratification in the usual requirement in these instruments that the agreement concerned is to come into force only when 'approved' by the policy-making body of the institution.

7. DISSOLUTION OF INTERNATIONAL INSTITUTIONS; AND SUCCESSION TO RIGHTS, DUTIES AND FUNCTIONS

Dissolution

International institutions become dissolved: (a) if created for a limited period only, upon the expiration of that period; (b) if of a transitional nature, upon the passing of the situation or the fulfilment of the purpose for which they were created; (c) by decision of the members, express or implied. It would seem that such decision need not necessarily be unanimous, but that it is sufficient as a practical matter if it be by a substantial majority, including the votes of the greater Powers. Thus, the League of Nations and the Permanent Court of International Justice were declared to be dissolved by Resolutions of the League of Nations Assembly in plenary session on 18 April 1946, without the individual assent of all member states or of all parties to the Statute of the Court.[15] In the absence of any express contrary provision in the constituent instrument, there is implied power in the members or corporators of an international institution to dissolve it.

The *liquidation* of the assets and affairs of the dissolved organisation is another matter. Practice here supplies no guide. In the case of the League of Nations, there were special circumstances, inasmuch as all parties concerned desired to vest as much as possible of the assets upon dissolution in the United Nations and the specialised agencies.[16]

Succession and international institutions

Where problems arise of the succession of one international institution to the rights, duties, etc, of another,[17] the question of the transmission of

14. See p 462, above.
15. Note, also, that it was by a Protocol signed by delegates to the World Health Conference at New York on 22 July 1946, that the *Office International d'Hygiène Publique* was dissolved.
16. See Myers 'Liquidation of League of Nations Functions', 42 AJIL (1948) 320 et seq, and Bowett *The Law of International Institutions* (4th edn, 1982) pp 377 et seq.
17. According to Bowett, op cit, p 382, there is no rule of automatic succession between a predecessor international institution and its successor.

constitutional *functions*, in addition to the passing of rights and duties, is involved.[18]

First, it is essential that the successor institution shall expressly or impliedly have constitutional competence to take over the rights and functions of the predecessor. For example, article 72 of the Constitution of the World Health Organisation enabled the Organisation to take over resources and obligations from bodies of cognate competence, and in virtue of that constitutional authority, the functions and assets of the Health Organisation of the League of Nations duly passed to the World Health Organisation.

Second, the successor institution cannot take over a function which does not lie within its constitutional competence, a principle which explains the non-passing, as a rule, of political functions. Thus in 1946 the Executive Committee of the Preparatory Commission of the United Nations advised against the transfer of the League's political functions to the United Nations, the political responsibilities of the two bodies being markedly dissimilar.[19] It may be mentioned, however, that the United Nations did take over from the League certain functions which it was desirable in the interests of the international community that it should possess, namely, the custody of treaties, the international control of narcotic drugs, the suppression of the traffic in women and children, and inquiries concerning the status of women.

A novel question of implied succession came before the International Court of Justice in 1950, and was dealt with in its *Advisory Opinion on the International Status of South West Africa*.[20] From that Advisory Opinion, the principle emerges that where an international organ such as the League of Nations Permanent Mandates Commission, which is discharging certain functions in the international sphere, is dissolved, and the continued execution of those functions has not been provided for by treaty or otherwise, those functions may then automatically devolve upon an international organ, such as the Trusteeship Council of the United Nations, which is discharging cognate functions in regard to a similar field of activity.[1] The Court's view was, in fact, that in respect of the Mandated Territory of South West Africa, although South Africa had

18. The succession of an institution to the powers of another which has ceased to be, involves different considerations from the case of a reconstituted organisation. Quaere, whether the Organisation for Economic Co-operation and Development (OECD), which replaced the Organisation for European Economic Co-operation (OEEC), with wider geographical and other powers, was a case of 'reconstitution'.
19. See Myers, loc cit, pp 325–326.
20. ICJ 1950, 128.
1. But this organ would not necessarily be bound by the *procedure* followed by its predecessor; see *Advisory Opinion on the Admissibility of Hearings of Petitioners by the Committee on South West Africa* ICJ 1956, 23 (General Assembly could authorise oral hearings of petitioners, notwithstanding contrary practice of Permanent Mandates Commission).

not, as she was so entitled, accepted the supervision of the United Nations General Assembly and Trusteeship Council, these bodies could none the less discharge the similar functions of supervision of the extinct Mandates Commission.[2]

If the constituent instrument of the successor institution sets out the precise terms and conditions under which the functions of the predecessor devolve upon the new body, the question of succession is governed by these express provisions. No better illustration of this principle can be given than certain provisions contained in the present Statute of the International Court of Justice, successor to the Permanent Court of International Justice (see, eg, articles 36–37).

8. THE UNITED NATIONS

The United Nations is a pivotal organ of world government, and the most important of all international institutions. As we have seen earlier in this chapter[3] through it are integrated those international bodies known as the 'specialised agencies', but this function of co-ordinating international organs by no means exhausts its responsibilities. At the date of writing, it has a membership of some 160 states, making it for all practical purposes a universal organisation.

The true name of the Organisation is the 'United Nations', although it is often referred to as the 'United Nations Organisation' or 'UNO' or 'UN'.

The United Nations may be defined in a simplistic way as an organisation of independent states which have accepted the obligations contained in the United Nations Charter signed at San Francisco on 26 June 1945. On the one hand, however, this definition needs to be amplified by considering the origins of the Charter and the nature of the machinery created under it. On the other hand, such consideration serves to give only an incomplete picture. It must be stressed that it would be perhaps more correct to describe the United Nations, in the light of its present structure, as distinct from its form as contemplated in the Charter, as a system rather than as an organisation, stricto sensu, for it operates through a multiplicity of related or associated organs and units—some with a certain degree of autonomy—which are interconnected and integrated into one complex. The body or main stem of the United Nations is represented by the organs expressly named in the Charter, but from this initial basis there have evolved ramifications on a scale unprecedented for any other international institution; these are not mere offshoots, but

2. There can be no succession of rights from an international institution to individual member states where they did not possess previously the rights claimed to pass; *South West Africa Cases, 2nd Phase* ICJ 1966, 6 at 35.
3. See above, pp 610 et seq.

organs and units, and as well Special and Ad Hoc Committees designed to play a significant role in international affairs. Leaving aside the specialised and 'related' agencies, these ramifications include such entities as the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the UN Conference on Trade and Development (UNCTAD), the UN Environment Programme (UNEP), the UN Capital Development Fund, the UN Development Programme (UNDP), the Special Committee against Apartheid, the Ad Hoc Committee on the Indian Ocean, and the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation.

Origins

The principles stated in the Charter were derived from the conceptions and plans of the wartime Allies, which first found expression in:

a. The Atlantic Charter subscribed to by the President of the United States and the Prime Minister of Great Britain in August 1941.[4]
b. The United Nations Declaration signed by 26 nations on New Year's Day 1942 after Japan had opened hostilities in the Pacific.
c. The Moscow Declaration of October 1943, issued by the Governments of the United States, Great Britain, the Soviet Union and China, recognising the need for establishing a general international organisation based on principle of the sovereign equality of all peace-loving states, and open to membership of all states large or small, in order to maintain international peace and security.

In the late summer and early autumn of 1944, draft proposals for such an organisation were worked out at Dumbarton Oaks by representatives of these four Powers. Then at the Yalta Conference in February 1945, of leaders of the Big Three—the United States, Great Britain, and the Soviet Union—the decision was taken, at a time when final victory against Germany was imminent, to call a general conference of about 50 nations to consider a constitution based on the Dumbarton Oaks proposals. At Yalta, agreement was also reached on voting procedure and arrangements in the proposed Security Council of the new Organisation. Two months later, a Committee of Jurists representing 44 countries met at Washington and drafted a Statute for the proposed International Court of Justice, which was to be an integral part of the proposed Organisation.

The Conference to consider the Dumbarton Oaks proposals held its discussions at San Francisco from 25 April to 26 June 1945, and succeeded in drawing up the present United Nations Charter, containing also the Statute of the International Court of Justice. The debates were by no means free of disagreements, particularly between the Four Sponsoring Powers—the United States, Great Britain, the Soviet Union and China—and the delegates of the so-called 'middle' and 'small' Powers over such

4. For discussion of the Atlantic Charter, see Stone *The Atlantic Charter* (1943).

matters as the 'veto' in the Security Council, and the functions of the General Assembly. In the circumstances, it is remarkable that in the short space of two calendar months there should have emerged an instrument so detailed and comprehensive as the Charter.

It is of importance to notice the main differences between it and the Dumbarton Oaks drafts.[5] They are as follows:

1. The principles and purposes of the United Nations were broadened in scope and the obligations of the member states defined in more precise terms.
2. The powers of the General Assembly were extended.
3. The United Nations was given enlarged authority in the economic, social, cultural, and humanitarian fields.
4. Provisions were added to the Charter concerning the encouragement of human rights and fundamental freedoms.
5. Important modifications were made in the provisions as to regional arrangements and regional agencies.
6. The trusteeship provisions.
7. The Economic and Social Council was made a principal organ of the United Nations with far-reaching responsibilities in its particular sphere.

The United Nations came into being on 24 October 1945 ('United Nations Day'), on the Charter receiving the ratifications necessary to bring it into force, being those of China, the Soviet Union, Great Britain and the United States, and of a majority of the other signatories. The first meeting of the General Assembly was held in London on 10 January 1946, while only three months later there took place the last session of the League of Nations Assembly for winding up the League as a going concern.

Differences between the United Nations and the League of Nations

The dissolution of the League of Nations should not obscure the fact that the United Nations Charter owes much to the League experience, and for its provisions drew heavily on the League's traditions, practice and machinery. Yet although the United Nations is successor to the League and in many ways patterned on it, there are fundamental differences between the two institutions which need to be noted:

a. The obligations of member states of the United Nations are stated in the most general terms, for example, to settle disputes peacefully, to fulfil in good faith their obligations under the Charter, etc. The obligations of member states of the League on the other hand were stated and defined in the League Covenant in the most specific manner,

5. See Evatt *The United Nations* (1948) pp 17 et seq, and cf Bowett *The Law of International Institutions* (4th edn, 1980) pp 17–22.

for example in the detailed procedures they bound themselves to follow in respect of the settlement of disputes without resorting tc war (articles 12, 13, and 15).

b. In the United Nations there are, apart from the Secretariat, five principal organs, the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, and the International Court of Justice, and the respective spheres of each organ are carefully defined so as to prevent overlapping. In the League, there were, apart from the Secretariat, two principal organs only, the Assembly and the Council, and each was able to deal 'with any matter within the sphere of action of the League or affecting the peace of the world' (articles 3 and 4 of the Covenant).

c. More emphasis is given in the Charter than in the League Covenant to economic, social, cultural, and humanitarian matters.

d. There are substantial differences between the 'sanctions' provisions in article 16 of the League Covenant and the provisions for 'preventive' and 'enforcement action' in Chapter VII of the Charter. The United Nations (through the Security Council) is not limited in taking 'enforcement action', as was the League of Nations, to situations where member states have gone to war in breach of their covenants and obligations under the Charter; it can take such action if there is merely a threat to the peace, or if a breach of the peace or an act of aggression has been committed. Moreover, the members of the United Nations have bound themselves in advance to provide armed forces on terms to be agreed with the Security Council, and the Security Council is to be advised and assisted by a Military Staff Committee in the direction of these forces. There were no similar stipulations in the League Covenant.

e. Under the Charter, decisions are by majority vote, although in the Security Council, decisions, except on procedural matters, must have the concurrence of the five Great Powers, who are the permanent members. In the League all decisions of importance required unanimity. It would however be unfair to regard this contrast as unfavourable to the League, for not only: (a) were there several exceptions to the rule of unanimity, including the provisions in article 15 of the League Covenant that the votes of parties to a dispute were not to be counted when the League Council made its report and recommendations thereon, but (b) the effectiveness of the League Covenant depended on its observance by the member states rather than on the organic decisions of League bodies, whereas under the United Nations Charter, the emphasis is on the organic decisions of bodies such as the Security Council, and less on the specific obligations of member states.

'Purposes' and 'Principles'

The 'Purposes' of the United Nations are stated in article 1 of the Charter from which it appears that the United Nations is primarily an organisation for maintaining peace and security, with the additional functions of developing friendly relations among nations, of achieving international co-operation in economic, social, cultural, and humanitarian matters, of developing respect for human rights and fundamental freedoms, and of providing a means for harmonising international action to attain these aims. It is questionable whether these general objectives, constituting the raison d'être of the Organisation, can be regarded as embodying rules of law, authorising its organs and member states to take action not specifically provided for in the operative articles of the Charter.

Article 2 of the Charter also sets out certain 'Principles'. Two of these 'Principles' are laid down for organic observance by the United Nations itself, namely, that the basis of the United Nations shall be the sovereign equality of all its members and that it shall not intervene (except where 'enforcement action' is called for) in matters 'essentially' within the domestic jurisdiction of any state (paragraph 7 of article 2 of the Charter).[6] Four other 'Principles' are set down for observance by member states, namely, that they should fulfil their obligations under the Charter, settle their disputes by peaceful means, not threaten or use force against the territorial integrity or political independence of any state, and give assistance to the United Nations while denying such assistance to any state against which preventive or enforcement action is being taken.

Membership

The members of the United Nations consist of: (a) original members; and (b) members admitted in accordance with article 4 of the Charter.

The original members are those states which having participated in the San Francisco Conference of 1945 or having signed the United Nations Declaration on New Year's Day 1942, sign and ratify the Charter.

As to members other than the original members, article 4 of the Charter provides that membership is open to 'all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations', and that such admission will be effected by a decision of the General Assembly upon the recommendation of the Security Council (this

6. For comment, see Bowett, op cit, pp 24–25. The corresponding provision in the League of Nations Covenant, dealing with the powers of the Council of the League, namely paragraph 8 of article 15, was in these terms: 'If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter *which by international law is solely* within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement'. The italicised words should be contrasted with the expression 'essentially' used in paragraph 7 of article 2 of the Charter.

in effect means by at least a two-thirds vote of the General Assembly on the recommendation of at least nine members of the Security Council including the five permanent members).

In its Advisory Opinion on *Conditions of Membership in the United Nations* (1948),[7] the International Court of Justice by a majority held that article 4 lays down five conditions by way of exhaustive enumeration, and not merely by way of illustration, namely, that any new applicant must: (a) be a state; (b) be peace-loving; (c) accept the obligations of the Charter; (d) be able to carry out these obligations; and (e) be willing to do so. The Court also ruled that a state member voting on the admission of a new state (whether on the Security Council recommendation or on the General Assembly decision) is not entitled to make its consent to the admission of an applicant dependent on the fulfilment of conditions other than those prescribed in article 4, and in particular is not entitled to make such consent dependent on the admission of other applicants. In the Court's view a state member must in voting have regard only to the qualifications of a candidate for admission as set out in article 4, and not take into account extraneous political considerations.

Under present usage and procedure (see, for example, rule 60 of the Rules of Procedure of the Security Council) the Security Council practically decides in the first instance on the application of a state for admission as a new member, and by reason of the 'veto' may fail to make an effective recommendation. The International Court of Justice has, however, ruled that the General Assembly cannot by its own decision admit a new member state, where the Security Council has failed to make any recommendation as to admission to membership, favourable or otherwise.[8] The General Assembly remains, of course, always free to reject a candidate recommended by the Security Council.

In December 1955, a remarkable expedient was adopted to overcome admission blockages in the Security Council. Sixteen states were admitted as new members of the United Nations as the result of a so-called 'package deal', whereby one group of voting states made its affirmative vote for certain candidates conditional on an affirmative vote by another group for the remaining candidates. By a strained, if not utterly elastic construction of the Advisory Opinion, above, on *Conditions of Membership in the United Nations* (1948), this 'deal' was considered not to be inconsistent with the Court's opinion that a conditional consent to admission is not permitted by the Charter.

Articles 5–6 of the Charter deal with the suspension or expulsion of member states, which is effected by a decision of the General Assembly on the recommendation of the Security Council. Members may be sus-

7. See ICJ 1948, 61 et seq.
8. See ICJ 1950, 4.

pended from exercising the rights and privileges of membership if preventive or enforcement action is taken against them by the Security Council, or be expelled if they persistently violate the principles of the Charter.

It is to be noted that there are no express provisions in the Charter permitting a member state to withdraw unilaterally from the United Nations, whereas in the case of the League of Nations Covenant, it was provided in paragraph 3 of article 1 that any member state might, after two years' notice of its intention to do so, withdraw from the League, provided that all its international obligations and all its obligations under the Covenant had been fulfilled at the time of such withdrawal. Commission I of the San Francisco Conference of 1945 adopted the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the United Nations; the highest duty of member states should be to continue their co-operation within the Organisation for the preservation of peace and security. This view was approved by the Conference in plenary session. However, it was recognised that member states could not be compelled to remain if the Organisation proved ineffective as a peace-maintaining body, or if amendments to the Charter, not concurred in by them, should change their rights and obligations.[9]

Organs of the United Nations

The United Nations differs from the League of Nations in its *decentralised* character, the powers and functions under the Charter being distributed among six '*principal*' organs: (1) The General Assembly. (2) The Security Council. (3) The Economic and Social Council. (4) The Trusteeship Council. (5) The International Court of Justice. (6) The Secretariat. Each organ has sharply defined spheres of action, and although in a sense the residue of authority is vested in the General Assembly, the latter's powers are mainly supervisory and recommendatory, so that possibly some particular field of international action may be outside the operational competence of the United Nations. As distinct from the principal organs, there are the '*subsidiary*' organs of the United Nations, as to which there is a considerable degree of flexibility, since paragraph 2 of article 7 of the Charter provides that 'such subsidiary organs as may be found necessary may be established in accordance with the present Charter', and articles 22 and 29 empower the General Assembly and the Security Council respectively to establish subsidiary organs deemed necessary for the performance of their functions. Instances of the exercise of these powers are referred to below.

9. See Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 477–479.

The General Assembly[10]

The General Assembly is the only principal organ of the United Nations consisting of all members, each member having only one vote, though allowed five representatives. It meets regularly once a year, but can meet in special session if summoned by the Secretary-General at the request of the Security Council or of a majority of the members of the United Nations, or at the request of one member concurred in by a majority of the members.

It is essentially a deliberative body, with powers of discussion, investigation, review, supervision and criticism in relation to the work of the United Nations as a whole (see article 10 of the Charter), and of the various other organs of world government provided for in the Charter including the specialised agencies. Generally speaking, its powers are limited to making recommendations and not binding decisions, although it is empowered to take certain final decisions, for example, as to the budget or as to the admission, suspension or expulsion of members. However, its recommendations, while not creating legal obligations, may operate with permissive force to *authorise* action by member states.[11] Votes on 'important' questions such as the election of the non-permanent members of the Security Council and other questions specifically enumerated in article 18, paragraph 2, of the Charter are to be taken by a two-thirds majority; other questions, including the determination of additional 'important' questions requiring a two-thirds majority vote, are to be dealt with by a simple majority vote. The five Great Powers, who are permanent members of the Security Council, have no right of 'veto' as they do when voting in the Council.

The General Assembly's powers and functions consist of the following:

i. powers of discussion and recommendation in relation to the maintenance of international peace and security;
ii. the direction and supervision of international economic and social co-operation;
iii. the supervision of the international trusteeship system;
iv. the consideration of information as to non-self-governing territories;
v. budgetary and financial powers whereby it has exclusive control over the finances of the United Nations;
vi. powers of admitting, suspending and expelling states members (see above);

10. As to the General Assembly, its structure and powers, see Bowett, op cit, pp 42–58, and Finley *The Structure of the United Nations General Assembly* (1977).
11. It is, however, doubtful whether such recommendations could authorise independent international institutions, eg, the International Bank for Reconstruction and Development (World Bank) to take action, which their competent organs had not duly decided upon.

vii. powers in relation to the adoption of amendments to the Charter (see articles 108–109);
viii. the election of members of other organs;
ix. the receipt and consideration of reports on the work of the United Nations; and
x. the adoption of international conventions.

But, as article 10 of the Charter shows, its powers of discussion and recommendation are not limited to these matters.

Although the primary responsibility for the maintenance of peace and security belongs to the Security Council, the General Assembly is given in this connection certain facultative or permissive powers of consideration and recommendation. It 'may consider' the general principles of co-operation in the maintenance of peace and security including the principles as to disarmament and armament regulation, and may make recommendations on the subject to the member states or to the Security Council (article 11, paragraph 1); it 'may discuss' any specific questions relative to the maintenance of peace and security brought before it by a member state or by the Security Council or by a non-member and make recommendations thereon (article 11, paragraph 2); it 'may recommend' measures for the peaceful adjustment of any situation likely to impair the general welfare or friendly relations among nations (article 14); and it 'may call the attention' of the Security Council, as the body primarily responsible for enforcing peace to any situation likely to endanger peace and security (article 11, paragraph 3). There is one general restriction on these powers of recommendation, namely, that while, in the exercise of its functions under the Charter, the Security Council is actively dealing with any dispute or situation, the General Assembly—although it is not precluded from discussion—is not to make a recommendation in regard thereto unless the Security Council so requests (article 12, paragraph 1). But to prevent important matters relating to peace and security from being 'frozen' on the Security Council agenda and therefore from coming under the searchlight of General Assembly procedures, it is provided that the Secretary-General is with the Security Council's consent to notify the General Assembly when such matters are being dealt with, and immediately the Security Council ceases to deal with them.

Within these limits, it is remarkable that in practice the General Assembly has been able to take a leading role in questions of international peace and security. It has discussed some of the leading political problems brought before the United Nations such as those relating to Palestine, Greece, Spain, Korea, Suez, the Congo, and the Middle East, and also taken concrete action with reference to them. For instance, in regard to Palestine, it appointed a Special Committee in 1947 to investigate the facts, and subsequently in 1948 appointed a Mediator to secure peace between the parties in strife, and later a Conciliation Commission. As

mentioned below, it materially contributed to the settlement of the Suez Canal zone conflict in October–November 1956, and in September 1960, it authorised the continued maintenance in the Congo of a United Nations Force.

The stultifying result of the 'veto' upon the work of the Security Council brought about a further significant development, under which the General Assembly impinged more and more upon the broad field of peace and security, to the extent of making general, and even specific, recommendations in this domain, although it could not of course compel compliance with these recommendations. Moreover, it came to be accepted that a matter might be removed from the agenda of the Security Council by a procedural vote, thus eliminating the use of the 'veto' to preclude a matter from being brought before the General Assembly.

Illustrations of the General Assembly's achievements in the domain of peace and security are the following:

a. The recommendations made by the General Assembly in April 1949 for setting up a panel of individuals to serve on commissions of inquiry and conciliation, and that the Security Council examine the desirability of using the procedure of rapporteurs or conciliators for disputes or situations brought before the Council for action.[12]
b. The so-called 'Uniting for Peace' General Assembly Resolution of 3 November 1950, providing for emergency special sessions at 24 hours' notice on the vote of any seven members of the Security Council, or a majority of member states, if the Security Council failed to act because of the 'veto', and pursuant to which there were set up a Peace Observation Commission, to observe and report on the situation in any area where international tension threatened international peace and security, and a Collective Measures Committee, to consider methods which might be used collectively to maintain and strengthen international peace and security.
c. The General Assembly recommendations on 17 November 1950, as to the appointment of a Permanent Commission of Good Offices.
d. The several General Assembly Resolutions relative to the situation in Korea, 1950–1953, including the Resolution of 1 February 1951 pursuant to which there was set up an Additional Measures Committee, composed of members of the Collective Measures Committee, which reported on measures of economic enforcement action to be taken.
e. The General Assembly's labours in the field of disarmament,[13] leading initially in 1961 to the establishment of an Eighteen-Nations Disarmament Committee, which was the predecessor body for the Committee on Disarmament (CD), composed of representatives of 40 member states, with the mandate of conducting negotiations for

12. Approved, in effect, by the Security Council in May 1950.
13. Partly, it is true, in pursuance of art 11, para 1, referred to, p 638 above.

general and complete disarmament under international control and for arms control agreements, which Commission was re-christened at the 1984 session as the 'Conference on Disarmament', and leading as well to the reinstitution by it of the United Nations Disarmament Commission (UNDC), while it also held in 1978 and 1982 two Special Sessions on Disarmament and proclaimed in 1969 and 1980, respectively, successive Disarmament Decades.

The part played by the General Assembly in November 1956 in effecting a cease-fire in the Suez Canal zone conflict, involving Israel, Egypt, France, and Great Britain, represented perhaps the high water mark of its work on peace and security. After Security Council action had proved impossible because of the 'veto', a special emergency session of the Assembly was convened for 1 November 1956, by a vote of seven members of the Security Council, in pursuance of the 'Uniting for Peace' Resolution, mentioned above. At this session, the Assembly adopted Resolutions for a cease-fire by all contestants, and for the creation of a United Nations Emergency Force[14] to guarantee peaceful conditions in the Suez area, with the ultimate consequence that peace and order were restored.

Another instance of significant General Assembly action, pursuant to the 'Uniting for Peace' Resolution, occurred on 19 September 1960, when the General Assembly authorised the Secretary-General to continue to take vigorous action pursuant to the earlier Resolutions of the Security Council for United Nations military assistance to maintain law and order in the Congo.[15]

The General Assembly's continued interest in the field of peace and security was also illustrated by its resolution, adopted on 4 November 1982, calling upon the United Kingdom and Argentina to resume negotiations, under United Nations auspices, to find as soon as possible a peaceful solution to the sovereignty dispute over the Falkland Islands which had led to the conflict of April–June 1982. It was true that the resolution was unacceptable to the United Kingdom which, apart from

14. *United Nations Forces:* The respective powers of the Security Council and of the General Assembly to establish United Nations field forces are discussed by Sohn 52 AJIL 229–240. Clearly, the Security Council may authorise the creation of an observer group force (as in Lebanon in 1958), eg, to supervise a truce. It is, however, a matter of controversy whether either organ may establish forces in order to restore or maintain peace and security, in the absence of a valid decision of the Security Council to institute enforcement action under Chapter VII of the Charter; see below, pp 652–653 as to the Security Council and the Congo situation. See also Bowett *United Nations Forces* (1964), and pp 655–657 below as to United Nations peacekeeping. Reference should be made also to the use of the Swedish Stand-by Disaster Relief Unit, made available through the United Nations pursuant to a tripartite agreement between that body, Peru and Sweden, for rehabilitation work in Peru following the earthquake in May 1970. What has been called 'disaster preparedness' presumably falls within the international humanitarian powers of the United Nations (cf art 1, para 3 of the Charter).

15. See also below, p 652, n 13.

other considerations, opposed it for not making provision for the principle of self-determination to be applied to the Falkland Islanders.

Reference may also be made to the creation by the General Assembly, in 1947, of an Interim Committee (the so-called 'Little Assembly') to assist it in its duties in relation to maintaining peace and security.[16] This Committee was made necessary by the fact that the General Assembly is under continual pressure at its annual sessions to dispose of a heavy agenda, and needs to make its own arrangements for keeping in touch with questions of peace and security. It was thought that through such a body as the Interim Committee, with a watching brief over all matters of peace and security and with the power to carry out special studies or inquiries, the General Assembly could effectively discharge its functions in relation to peace and security without detracting from the authority of the Security Council or intervening in the Council's work.

The Interim Committee reported in 1947–1948 to the General Assembly on two important matters which it investigated:

a. The adoption of practices and procedures designed to reduce difficulties due to the 'veto' in the Security Council.[17]
b. Methods for promoting international co-operation in the political field:[18]

This Interim Committee is but one example of the decentralisation that the General Assembly did effect internally, to cope with its work. It has established Procedural Committees, Main Committees[19] which meet in connection with plenary sessions, Standing Committees (such as the Committee on Contributions, the Advisory Committee on Administrative and Budgetary Questions, and the Joint Panel of External Auditors), and subsidiary bodies for important political and security matters, such as the Disarmament Commission,[20] subject to a duty of reporting to the Security Council.

16. Cf L.C. Green 'The Little Assembly', in *The Year Book of World Affairs*, 1949 pp 169 et seq.
17. This report formed the basis of a General Assembly recommendation in April 1949, that permament members of the Security Council confer on the use of the 'veto', that they refrain from using it in certain specific cases, and that they treat certain questions as procedural.
18. Including recommendations as to rapporteurs or conciliators in Security Council matters, and a panel of persons to serve on commissions of inquiry and conciliation, adopted by the Assembly; see above, p 639. As to the Interim Committee, see Bowett, op cit, p 49.
19. These are the First (Political and Security Questions), Special Political Committee (sharing the work of the First (Committee), Second (Economic and Financial Questions), Third (Social, Humanitarian, and Cultural Questions), Fourth (Trusteeship and Non-Self-Governing Territories), Fifth (Administrative and Budgetary Questions), and Sixth (Legal Questions).
20. Established on 11 January 1952, in replacement of the two former Commissions, the Atomic Energy Commission and the Commission for Conventional Armaments.

The General Assembly is in addition given the mandatory power, as distinct from the facultative or permissive powers set out above, of initiating studies and making recommendations for the purpose of promoting international co-operation in the political field and of encouraging the progressive development of international law and its codification (see article 13, paragraph 1, a).[1]

As to (ii), the direction and supervision of international economic and social co-operation, the General Assembly exercises the powers and functions of the United Nations in this sphere (articles 13 and 60), the Economic and Social Council being under its authority. As referred to above,[2] it also approves the 'relationship agreements' negotiated by the Economic and Social Council with the 'specialised agencies', and is authorised to make recommendations for co-ordinating the work and policies of these agencies.

One of the General Assembly's most important functions is to elect members of other organs (see (viii)); thus it elects the ten non-permanent members of the Security Council (article 23), the members of the Economic and Social Council (article 61), and by a system of parallel voting in conjunction with the Security Council, the fifteen judges of the International Court of Justice. It also appoints the Secretary-General.

Finally, mention should be made of its international legislative functions (see (x)). Already it has approved and adopted the texts of several international conventions, including the Conventions on the Privileges and Immunities of the United Nations, and of the Specialised Agencies of 1946 and 1947 respectively, and the Genocide Convention of 1948, while it took the final decision to summon such law-making Conferences as the Geneva Conference of 1958 on the Law of the Sea, the Vienna Conferences of 1961, 1963, and 1968–9 on Diplomatic Relations, Consular Relations, and the Law of Treaties, and the Third United Nations Conference on the Law of the Sea (see Chapter 9, above), resulting in conventions on these subjects. It also served as the main forum for the conclusion of the conventions and other instruments governing state activities in outer space (see Chapter 7, above).

The Security Council[3]

The Security Council is a continuously functioning body, consisting of fifteen member states; five are permanent and are named in the Charter, being China, France, the Soviet Union, Great Britain and the United

1. In execution of this power, the General Assembly in 1947 established the International Law Commission.
2. See pp 610–611.
3. On the Security Council, see Bowett, op cit, pp 26–42; S.D. Bailey *The Procedure of the United Nations Security Council* (1975); and Kerley 'The Powers of Investigation of the United Nations Security Council' 55 AJIL (1961) 892.

States. Ten[4] non-permanent members are elected by the General Assembly for a term of two years, and in their election due regard is to be specially paid in the first instance to the contribution of member states to the maintenance of peace and security, to the other purposes of the United Nations, and to equitable geographical distribution (article 23). There are provisions for participation in the Security Council's discussions by states other than permanent and non-permanent members: (a) any member state of the United Nations may participate without vote in a discussion of any question brought before the Security Council if the Council considers the interests of that member state are specially affected (article 31); (b) any such member state or any non-member state, if it is a party to a dispute being considered by the Security Council, is to be invited to participate without vote in the discussions concerning the dispute (article 32). There have been proposals since 1985 to enlarge the membership of the Security Council on the ground of ensuring a claimed more equitable geographical distribution of seats on the Council. This might also involve increasing the number of permanent members.

Voting procedure in the Security Council

The voting procedure in the Security Council requires special consideration. Each member of the Council has one vote. Decisions on procedural matters are to be made by an affirmative vote of nine members (the former affirmative vote required was of seven members). Decisions on all other matters (ie, non-procedural matters) are to be made by an affirmative vote of nine members, including the concurring votes of the five permanent members, provided that in decisions under Chapter VI (pacific settlement of disputes) and under paragraph 3 of article 52 (pacific settlement under regional arrangements) a party to a dispute shall abstain from voting. It is here that the so-called 'veto' operates, as if a permanent member does not affirmatively vote in favour of a particular decision, that decision is blocked or 'vetoed', and fails legally to come into existence.[5]

There are certain exceptions to the rigidity of the 'veto' provisions, both under the Charter and in practice. Under the Charter, as mentioned above, in connection with decisions concerning the pacific settlement of disputes, whether under Chapter VI or under article 52, paragraph 3 (reference of a dispute to regional settlement), any permanent or non-permanent member, if a party to the particular dispute under consider-

4. Formerly, the number was six, but this was increased to ten under amendments to the Charter which came into force in 1965.
5. Before the amendments which raised the number of non-permanent members from six to ten, and the required affirmative vote from seven to nine, the five permanent members could, in effect produce a block 'veto' by all abstaining from voting; this is no longer possible. Although a Security Council resolution may be vetoed, even though there is a majority in favour, quaere whether a member state may rely on the majority view as justifying *unilateral* domestic action by it; see note by W.M. Reisman 'The Legal Effect of Vetoed Resolutons' in 74 AJIL (1980) 904–907.

ation, must abstain from voting (article 27, paragraph 3). The exception in practice is that the voluntary abstention of a permanent member from voting has consistently been interpreted as not constituing a bar to the validity of a Security Council decision;[6] the legality of the practice was upheld by the International Court of Justice in the Advisory Opinion of 21 June 1971, on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, in which it ruled that a Security Council Resolution of 1970 declaring illegal the continued presence of South Africa in South West Africa (Namibia) was not invalid by reason of the abstention from voting of two permanent members.[7] A more difficult question is whether the absence of a permanent member from proceedings in which a vote has been taken (eg, the absence of the Soviet Union when the decisions as to Korea were taken on 25 and 27 June 1950) should be taken as equivalent to an abstention, as did happen. The theory of 'implied concurrence' applicable to abstentions, according to some writers, seems to be legally irrelevant.[8]

Since the inception of the Security Council, the permanent members' right of veto has been the subject of questionings. Such questionings were foreshadowed at the San Francisco Conference, and publicists and writers claimed that the original doubts have been justified inasmuch as the power of veto has been abused.[9] The central theory behind the right of veto is that since the permanent members as Great Powers naturally bear the main burden of responsibility for maintaining peace and security, no one permanent member should be compelled by a vote of the Security Council to follow a course of action with which it disagrees. In other words, the possibility of division among the Great Powers on particular questions of collective security was foreseen. At the San Francisco Conference, the Four Sponsoring Powers (Great Britain, the United States, Russia and China) issued a Joint Interpretative Statement pointing out that the veto should be retained, as any steps going beyond mere discussion or procedural preliminaries might initiate a 'chain of events' which in the end could or should require the Security Council to take enforcement action, and that such action must naturally attract the right of veto.[10] The same Statement added that the Great Powers would not use their powers 'wilfully' to obstruct the operations of the Security

6. See Bowett, op cit, pp 31–32. As to Portugal's claim that the Security Council Resolution of 9 April 1965, authorising the United Kingdom to take steps to prevent the arrival at Beira of vessels taking oil to the Rhodesian régime, was invalid because of the abstention from voting of two permanent members, see Cryer *Australian Year Book of International Law*, 1966 pp 93–96.
7. See ICJ 1971, 16 at 22.
8. Cf Bowett, op cit, p 32.
9. See Evatt *The United Nations* (1948) pp 55 et seq.
10. See *United Nations Documents*, 1941–45 (pub 1946, by Royal Institute of International Affairs) pp 268–271, for text of the Statement.

Council. Undoubtedly as the veto has been used, Security Council procedure has been stultified, and attempts have been made to find ways to liberalise the voting practice, while keeping within the limits of the principles justifying the veto. It is clear that the following are subject to the right of exercise of the veto: (a) the actual decision whether a question to be put to the vote is one of procedure or of substance;[11] (b) any executive action; (c) a decision to carry out any wide investigation of a dispute. But the mere preliminary discussion of a subject, decisions on purely preliminary points, and the hearing of statements by a state party to a dispute would not be within the scope of the veto.[12] Questions concerning the admission of new member states, or concerning the suspension of existing member states are deemed to be of a non-procedural character, whereas a question of acceptance or non-acceptance of the credentials of a government is treated as one of a procedural kind. Perhaps it is well to remember also that the veto is not the main obstacle to the Security Council reaching its full stature as an organ for maintaining peace and security. One learned writer has said: '.... In a curious way it [the veto] may have preserved the United Nations by allowing or forcing it to yield to reality.'[13] Even if there were no veto, it is probable that some alternative methods of obstructing the Security Council's work would have been resorted to, leading to equal abuses and absurdities, or that, as occurred in the League of Nations, certain Powers might have quitted the Organisation.

Powers and functions of the Security Council[14]

The Security Council has been given primary responsibility under the Charter for maintaining peace and security, in order that as a smaller executive body with a permanent core of membership of the Great Powers, it can take effective decisions to ensure prompt action by the United Nations. Under article 25 of the Charter, the member states agree to abide by and to carry out the Security Council's decisions. Although the Security Council has primary responsibility for maintaining peace and security, this responsibility is not exclusive. The General Assembly has powers of

11. The so-called 'double veto' arises if a permanent member should veto such a decision. However, on at least one occasion, the 'double veto' was ousted, the President of the Security Council ruling the matter to be procedural; see Stone *Legal Controls of International Conflict* (1954) pp 224–225 and *Supplement* 1953–1958 (1959) p 870. As to the use of the veto, see also Edward McWhinney *United Nations Law Making* (1984) pp 87 et seq.
12. On 8 September 1959, the President of the Security Council ruled (against protest by the representative of the Soviet Union) that the appointment of a sub-committee to examine statements concerning Laos, etc, being for the establishment of a subsidiary organ under art 29 of the Charter, was a procedural matter. He also ruled that the draft Resolution to determine whether the question of this appointment was procedural, was not subject to the veto (thereby excluding the 'double veto').
13. See W.M. Reisman in 74 AJIL (1980) 907.
14. See generally S.D. Bailey *The Procedure of the United Nations Security Council* (1975).

discussion and recommendation in regard to the subject, and action may be taken under regional arrangements or by regional agencies (see articles 52–53 of the Charter). Nor should it be forgotten that, generally speaking, action by the Security Council must be brought within the four corners of a particular article or particular articles in Chapters VI or VII of the Charter, and even then because of the 'veto' or other voting disagreement no action may be decided upon. On the other hand, on one view, the Security Council has general overriding powers for maintaining peace and security, not limited to the specific express powers in Chapters VI or VII, as like other international organs, it has such implied powers as are necessary and requisite for the proper fulfilment of its functions.[15] If this view be correct, the Security Council could take action on a matter which did not come within the express terms of Chapters VI or VII.[16]

The principal powers and functions of the Security Council relate to the following matters:

i. the pacific settlement of international disputes;
ii. preventive or enforcement action to maintain peace and security;
iii. regional agencies and regional agreements;
iv. the control and supervision of trust territories classified as 'strategic areas' (see Chapter 5 above);
v. the admission, suspension, and expulsion of members (see above);
vi. amendments to the Charter (see articles 108–9);
vii. the election in conjunction with the General Assembly, of the fifteen judges of the International Court of Justice.

In relation to (i) above, the pacific settlement of disputes, the powers of the Security Council as provided for in Chapter VI of the Charter are as follows:

a. The Security Council 'shall, when it deems necessary' call on the parties to a dispute, the continuance of which is likely to endanger peace and security, to settle that dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, action by regional agencies or under regional arrangements, or other peaceful means (article 33).[17] An example of the exercise of this power was that in regard to the complaint by Chad to the Security Council against Libya, when in April 1983 the Council called on both states to settle their differences 'without undue delay and by peaceful means' on the basis of the Charters of the United Nations and of the Organisation of African Unity (OAU). In the case of the Argentine occupation of the Falkland Islands in 1982, the Council initially (on 1 April) called

15. Cf *Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations* ICJ 1949, 182.
16. See also below p 652, as to the Security Council and the Congo situation.
17. Under art 33, it is the duty of parties to such a dispute to seek a peaceful solution by these means.

on Argentina and the United Kingdom to refrain from the use or threat of force, and then (on 3 April) called for an immediate withdrawal of Argentine forces from the Islands and an immediate cessation of hostilities, and in addition called on both parties to 'seek a diplomatic solution to their differences and to respect fully the purposes and principles of the United Nations Charter'. But if the parties fail to settle it by these means—no time limit for such failure is indicated—whether at the request of the Security Council or otherwise, they must refer the dispute to the Security Council. Thereupon, if the Security Council deems that the continuance of the dispute is in fact likely to endanger peace and security it shall decide: (1) whether to recommend 'appropriate procedures or methods' of settlement, or (2) whether to recommend actual terms of settlement (Article 37).

b. The Security Council may investigate not only any kind of dispute, but also 'situations'[18] which are such that they may lead to international friction or give rise to a dispute, in order to determine whether the dispute or 'situation' is likely to endanger peace and security (article 34). This investigation is a preliminary to further action by the Security Council. Such disputes or 'situations' may be investigated by the Security Council of its own motion, or be brought to its attention by member states of the United Nations (whether parties or not to the dispute), or by non-member states which are parties to the dispute (article 35), or by the General Assembly (article 11, paragraph 3), or by the Secretary-General under his power to bring to the Security Council's notice any 'matter' which in his opinion threatens the maintenance of peace and security (article 99).

c. During the course of any dispute or situation, the continuance of which is likely to endanger peace and security, the Security Council may recommend 'appropriate procedures or methods' of settlement. In general, legal disputes are to be referred to the International Court of Justice (article 36).[19]

d. If all the parties to any such dispute so request, the Security Council may recommend terms of peaceful settlement (article 38).

There are several points in connection with the Security Council's powers of settling disputes that call for comment. First, its powers of calling upon the parties to settle disputes by peaceful means (article 33) or of recommending procedures or methods of adjustment (article 36) or of recommending terms of settlement (articles 37 and 38) are rec-

18. The words 'which might lead to international friction or give rise to a dispute' in art 34 qualify the word 'situation', and not the word 'dispute'; see Hasluck *Workshop of Security* (1948) pp 43–44.

19. The significance of this provision in art 36 was stressed by the International Court of Justice in the case of the *United States Diplomatic and Consular Staff in Tehran* ICJ 1980, 3 at para 40. See also *Nicaragua v United States (Jurisdiction)* ICJ 1984, 392, paras 89–90.

ommendatory only, and limited to disputes which are likely to endanger peace and security. It has no such powers with regard to all disputes, although it may investigate any dispute to see if it is likely to endanger peace and security (article 34). Whether, apart from Chapter VI of the Charter, it has any powers at all with regard to disputes in general is an open question. Second, a not very clear or happy distinction is drawn between 'disputes' and 'situations' (note that a situation' is not mentioned in article 27, paragraph 3, as to voting). The Security Council can under article 34 investigate 'situations' which may lead to international friction or give rise to a dispute to see if they are likely to endanger peace and security, but its only other express power with regard to a 'situation' is the power under article 36 of recommending procedures or methods of adjustment for a 'situation' likely to endanger peace and security. Who determines whether the circumstances amount to a 'dispute' or a 'situation'? Sometimes 'disputes' and 'situations' overlap, and a 'situation' may itself be in the nature of a 'dispute'. Is this a matter for the Security Council to decide? On several occasions rulings as to the question have been given by the Chairman of the Security Council, although it has been suggested that whether a matter is a 'dispute' or a 'situation' depends on the terms of the complaint bringing it to the Security Council's notice.[20] Third, what are the circumstances which constitute a 'dispute'? Certain of the cases that have come before the Security Council are quite unlike text book disputes, ie, clear differences between states over a contested issue, being rather complaints over situations seemingly of remote concern to the complainant state (for example, the Ukrainian complaint in 1946 as to conditions in Greece). Generally speaking, the Security Council has determined what specific acts in regard to the settlement of disputes come within its powers under the Charter, as, for example, in the case of Trieste in 1946–7 when it accepted the responsibility of appointing a Governor.[1] It also undertakes its own investigations of the relevant aspects of the dispute, not necessarily being bound by any statements of the parties in conflict.[2]

The more important responsibilities of the Security Council arise with reference to (ii), preventive or enforcement action under Chapter VII.

20. Art 32 of the Charter, under which a non-member of the Security Council, party to a *dispute* under consideration by the Council, may be invited to participate in the discussion, does not apply to a 'situation'; see *Advisory Opinion* of the International Court of Justice *on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* 21 June 1971 (South Africa not invited to the discussion by the Council in 1970 of the 'situation' in South West Africa; decision by Council that South Africa's continued presence there was illegal); see ICJ 1971, 16 at 22–23.

1. See Hasluck, op cit, pp 44–45.

2. See Keriey, 'The Powers of Investigation of the United Nations Security Council' 55 AJIL (1961) 892. As regards fact-finding, see Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 583–585.

The Security Council is empowered to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to make recommendations or decide what enforcement measures are to be taken to maintain or restore peace and security (article 39). It may call on the parties involved to comply with provisional measures,[3] and take account of any failure to comply therewith (article 40).

Attention should be drawn to one difference as to the dispute-settling powers of the Council, on the one hand, and its enforcement powers, on the other hand. In the context of paragraph 1 of article 1 of the Charter the former power is to be exercised 'by peaceful means, and in conformity with the principles of justice and international law'. These criteria, in particular that of conformity with international law, are not expressed in terms as governing the suppression of threats to the peace, breaches of the peace, and acts of aggression.

There are two kinds of enforcement action which can be decided by the Security Council: (1) Measures not involving the use of armed force. The Security Council may call upon member states to apply complete or partial interruption of economic relations, and of all means of communication, and to sever diplomatic relations. (2) Action by air, sea, or land forces where the measures under (1) are inadequate. This may involve a blockade of one of the parties concerned. The Security Council may decide whether the action necessary to carry out its enforcement decisions is to be taken by all or some member states only, and to mitigate any possible hardships, member states are to co-operate mutually in carrying out the Security Council decisions (articles 48–49). Also, if any member or non-member is faced with special economic problems arising from carrying out the preventive or enforcement action decided upon, it has the right to consult the Council on these (article 50).

These far-reaching powers of the Security Council have to be considered in conjunction with other provisions in Chapter VII of the Charter, namely, those providing for a Military Staff Committee composed of the Chiefs of Staff of the five permanent members, to advise and assist the Security Council on the military aspects of enforcement action (as well as on disarmament and armament regulation). In addition, article 43 provides for agreements between the Security Council and member states as to the armed forces and other assistance they can make available for enforcement action; this provision so far as concerns the armed assistance, etc, to be furnished to the Security Council has not yet been carried into execution although the Military Staff Committee has been considering principles and methods in this connection. The result is that the Security Council has not yet the necessary concrete basis for acting in a decisive

3. Eg, in the case of the Falklands affair of 1982, the Security Council by resolution of 3 April 1982, called, inter alia, for the immediate withdrawal of the Argentine forces from the Falkland Islands.

manner with the aid of member states and the Military Staff Committee, as intended by the provisions of Chapter VII of the Charter. However, as shown below, this was deemed not to preclude it, in the case of the Korean conflict and of the Congo situation, from validly authorising measures, with a view to restoring or maintaining international peace and security.[4]

Although member states of the United Nations are entitled to defend themselves individually or collectively against an armed attack, this right of self-defence is not to impair the primary authority and responsibility of the Security Council for enforcement action to maintain or restore peace (article 51).[5]

In its Advisory Opinion of 21 June 1971, on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, the International Court of Justice ruled that the Security Council's primary authority and responsibility for maintaining peace entitled the Council to make a binding determination (as it did in a Resolution in 1970) that the continued presence of South Africa in the Territory of South West Africa was illegal because its mandate for the Territory had terminated through failure to comply with its obligation to submit to the supervision of United Nations organs; see ICJ 1971, 16 at 54.

The question may be asked—are there any legal or practical limitations on the Security Council's far-reaching powers under the Charter? Legal limitations are those in articles 1 and 2 of the Charter concerning the 'Purposes' and 'Principles' of the United Nations; for example, the adjustment or settlement of international disputes that may lead to a breach of the peace is to be brought about by 'peaceful means, and in conformity with the principles of justice and international law' (paragraph 1 of article 1), and apart from enforcement action, the United Nations is not to intervene in matters 'essentially within the domestic jurisdiction of any state' (article 2). But even such legal limitations have to be adjusted to the circumstances; for instance the Security Council has in practice adopted the view that questions will cease to be 'essentially' matters of domestic jurisdiction if in its opinion they raise issues of international concern transcending state boundaries.[6] As to practical limitations on its

4. See also *Advisory Opinion on Certain Expenses of the United Nations (Article 17, paragraph 2 of the Charter)* ICJ 1962, 151.
5. It was contended by Russia and certain other States that the North Atlantic Pact of 1949 was a violation of the Charter in that it permitted joint military action without the authority of the Security Council. In answer to this the signatories of the Pact stated that it was an agreement enabling the parties to co-ordinate beforehand plans for self-defence under art 51. See also Beckett *The North Atlantic Treaty, the Brussels Treaty, and the Charter of the United Nations* (1950).
6. Hasluck, op cit, pp 56–57. This involves essentially a political judgment on the part of the Security Council; cf Bowett, op cit, p 25.

powers, in addition to the 'veto', there is the limitation that every decison depends on receiving the agreement of a proportion of the members.[7]

Other important duties fall upon the Security Council under Chapter VIII of the Charter in connection with regional agencies and regional arrangements (see (iii) above).[8] It is to encourage the pacific settlement of local disputes by such means (article 52), and where appropriate may use these means for enforcement action under its authority. Generally speaking no enforcement action is to be taken by regional agencies or under regional arrangements without the authority of the Security Council except in regard to ex-enemy states. To preserve its primary authority, all action taken or intended to be taken under regional arrangements or by regional agencies to maintain peace and security is to be reported to the Security Council.

The Korean conflict, and the Congo and Rhodesian situations and the Security Council

The Korean conflict 1950–1953 provided a significant testing-ground of the Security Council's effectiveness as a peace enforcement body. At the time of the crossing by North Korean troops into South Korean territory in June 1950, the Soviet Union was absent from the Security Council, and the Nationalist Chinese Government, to whose credentials the Soviet Union objected, was represented on the Security Council. Hence the subsequent Security Council Resolutions, finding that a 'breach of the peace' had been committed, recommending assistance to the South Korean authorities, and providing for a Unified United Nations Command under United States direction, were taken without the Soviet Union's concurrence. The Resolutions did, however, receive the supporting vote of Nationalist China.

The Soviet Union challenged the validity of the Resolutions on the ground that any such vote thereon required her positive concurrence under the voting provisions of the Charter, and also the concurrence of the Government of the People's Republic of China, which was in its view

7. In his 1982 Report to the General Assembly, the United Nations Secretary-General made some significant suggestions designed to enable the Security Council to play a more active role in preventing conflicts rather than examining faits accomplis; these included: (a) more effective action through conciliation and compromise; (b) a more forthright role allowable to the Secretary-General under art 99 of the Charter (bringing peace and security threats to the Council's attention); (c) a diplomatic 'early warning' system, based on systematic fact-finding in potential conflict areas; and (d) effective follow-up action and support for Council resolutions, and getting Governments to give due effect to such resolutions.
8. The Soviet Union maintained that the North Atlantic Pact of 1949 was not a true regional agreement under Chapter VIII inasmuch as: (a) it comprised states located in two continents, America and Europe; and (b) it did not relate to true regional questions. The United States Government declared that the Pact was no different from the inter-American Security Arrangements of 1945 (Mexico City), 1947 (Rio de Janeiro), and 1948 (Bogotá) which are consistent with Chapter VIII.

the true legal government. In reply to the Soviet Union's contention, it was maintained that for purposes of determining whether the Soviet Union had or had not concurred, an absence had necessarily to be disregarded in the same way as, in practice, an abstention from voting,[9] and that the Chinese Nationalist Government rightly represented China.

The subsequent reappearance of the Soviet Union in the Security Council proved that United Nations intervention in the Korean hostilities had been made possible only by an unusual conjunction of circumstances—a situation favouring the non-exercise of the 'veto', the presence of American troops in Japan, and the possibility of appointing an American Staff in command of United Nations forces. Moreover, upon a close analysis of their terms, the Security Council Resolutions actually adopted were difficult to support as being a valid exercise of the powers conferred by articles 39–43 of the Charter (quaere, eg, whether the Security Council could make a 'recommendation',[10] as distinct from a decision, that member states furnish armed assistance). For this reason some writers have inclined to view that the 'United Nations' action in Korea was such in name only, but not in substance, and was nothing more than a voluntary, collective effort under United Nations licence to restore and maintain peace and security in that area.

In the case of the Congo situation, 1960–1964, the Security Council's action[11] was without precedent. It resulted in the despatch of a United Nations Force to the newly independent Congo, not by way specifically of enforcement action against a state under Chapter VII of the Charter, but as military assistance for the purpose of preserving law and order in relation to, and pending the withdrawal of Belgium troops, as called for by the Security Council's Resolutions. After the Belgian troops had been withdrawn, the United Nations Force was maintained in the Congo for the same purpose, and more particularly in order to prevent the occurrence of civil war and to reduce inter-tribal fighting. Primary responsibility for carrying out the Security Council's mandate fell upon the Secretary-General. The basis of the Security Council's action was primarily that the internal strife in the Congo might, in the absence of such action, deteriorate into a threat to international peace.[12] Thus, it would seem, although this is not undisputed, that the Security Council (as also the General Assembly[13]) may *authorise* measures with a view to maintaining

9. See also above, p 644.
10. See Stone *Legal Controls of International Conflict* (1954) pp 228 et seq, and *Supplement* 1953–1958 (1959) pp 870–871.
11. By Resolutions of 14 July, 22 July and 9 August 1960 (initial action).
12. Although this became controversial; some states objected that certain operations of the United Nations Force amounted to intervention in internal conflicts.
13. In an emergency special session called under the 'Uniting for Peace' Resolution, the General Assembly by a Resolution of 19 September 1960 in effect authorised the continuance of action under the Security Council's Resolutions.

international peace and security, notwithstanding that these measures do not strictly fall within the pattern of enforcement action under Chapter VII,[14] and without the necessity of explicit adherence to the procedural requirements of the provisions in the Chapter.

However, in 1962–1963, the operations of the United Nations units in the Congo, involving the clearing of road blocks and the establishment of effective control in the Katanga area, assumed the character of veritable military enforcement measures; this action has been regarded by some commentators[15] as going beyond the scope of the role merely of 'peace-keeping' and/or 'policing', which was thought to be envisaged by the earlier Security Council Resolutions. The Congo cannot be regarded as a very clear case of the interpretation and application of the provisions of Chapter VII of the Charter, and remains controversial.

In the case of the Rhodesian situation, in 1965 and following years, there were initially three important Security Council Resolutions directed against the Rhodesian régime, established by unilateral declaration of independence from the United Kingdom. There were two Resolutions, to begin with, for so-called 'voluntary' sanctions of enforcement action, namely those Resolutions adopted in November 1965 (of a general nature) and April 1966 (more specific in character, and, inter alia, empowering the British Government to take steps 'by the use of force if necessary' to prevent ships taking oil to ports from which it could be supplied or distributed to Rhodesia).[16] The third Resolution was that adopted in December 1966 for selective 'mandatory' sanctions[17] (although there was no specific provision for enforcement if a state failed to apply them); this

14. The expenses incurred by the Secretary-General in taking such measures are expenses of the United Nations which may be apportioned among the member states by the General Assembly under art 17, para 2 of the Charter; see *Advisory Opinion on Certain Expenses of the United Nations (Article 17, paragraph 2 of the Charter)* ICJ 1962, 151.
15. See article by Professor Leo Gross 'Domestic Jurisdiction, Enforcement Measures and the Congo', *Australian Year Book of International Law*, 1965, 137 at pp 155–157.
16. This was indeed the first time that the Security Council had made such a grant of authority to a single United Nations member to take forcible action, which would otherwise be unlawful. See generally Cryer 'Legal Aspects of the *Joanna V* and *Manuela* Incidents, April 1966', *Australian Year Book of International Law*, 1966 pp 97–98.
17. These included prohibition of the import of certain products and commodities from Rhodesia, and action to prevent certain exports and transfers of funds to Rhodesia, and as well as the supply of armaments, aircraft, and motor vehicles. The Resolution made specific reference to arts 39 and 41 of the Charter. On 6 April 1976, the Security Council, acting upon a recommendation from its Sanctions Committee, reaffirmed its earlier Resolutions as to mandatory and other sanctions against the Rhodesian régime, declared again that the situation in Southern Rhodesia constituted a threat to international peace and security, stated that it was acting under Chapter VII of the Charter (arts 39–51), and expanded the mandatory sanctions to include other items.

was indeed the first time that mandatory enforcement action had been decided by the Security Council. There was an additional Resolution in 1968, followed by subsequent related Resolutions on the Rhodesian situation. The situation constituted by the self-declared independent régime was declared to be a threat to international peace and security;[18] there appears to be little doubt about the legitimacy of this determination, which was one that was within the province of the Security Council to make, although there can be arguments, as in the Korean case, with regard to the applicability of the terms of articles 39–43 of the Charter. The vital point remains whether a situation, in a large sense within the domestic sphere, since it turned so much on the relationship of the new régime with the United Kingdom, is stricto sensu one within the ambit of Chapter VII of the Charter. There persists the uneasy thought that the gates are being opened wider than contemplated by those who originally drafted Chapter VII of the Charter; eg, quaere whether parent governments can activate the Security Council to take enforcement action against insurgents, or whether a federal government could similarly approach the Council for measures to be taken against a unilaterally seceding state, where, of course, there are circumstances somewhat similar to the situation in Rhodesia.

These measures against Southern Rhodesia now belong to past history, although constituting a precedent for future Security Council action. On 21 December 1979, having regard to the decision that there should be created a new state, Zimbabwe, with majority rule, the Council decided to call upon member states to terminate the measures. Sanctions were dissolved, and the inalienable right of the people of Zimbabwe to self-determination was reaffirmed.

It is relevant to mention another instance of a mandatory embargo decided upon by the Security Council. By two Resolutions of August and December 1963, the Council had called for a ban on the sale and shipment of arms and related materials to South Africa. By Resolution adopted in November 1977, this ban was made mandatory. The Council also set up a Committee to supervise the implementation of the embargo, which Committee has since periodically reported to the Council on its work.

Lastly, reference should be made to the precedent established by the resolution of the Security Council, of a mandatory nature, adopted in July 1987 for the implementation of a cease-fire in the Iraq-Iran war that had continued since 1980. This cease-fire ultimately took effect by acceptance of the belligerents in August 1988.

18. According to one view, this threat lay in the possibility of violent action by African States against Rhodesia, because of the treatment by the Rhodesian régime of the majority African population.

United Nations 'peacekeeping'[19]

The word 'peacekeeping' is not used in the United Nations Charter, yet in the last fifteen years the 'peacekeeping' concept has emerged to receive as much attention as any other current or projected programme of United Nations action. Broadly speaking, United Nations peacekeeping has served as an anti-escalation device.

The use of the word 'peacekeeping' seems somewhat unfortunate. To be more precise, the issues involved are in what circumstances, in the absence of Security Council enforcement action, interposition forces, groups, or missions can be sent by the United Nations to areas of conflict, with functions related to the restoration or maintenance of peace, or the mitigation of deteriorating situations (eg, for observation, truce supervision purposes, cease-fire monitoring, negotiation, restoring freedom of movement).[20] Clearly any such interposition, where the Security Council has made no determination, is dependent upon the consent of the states concerned, as to the locality where the force, etc, is to function, as to the importation of supplies, and as to contacts with the conflicting entities or forces. Thus peacekeeping by the United Nations is essentially consensual, and in theory of a defensive or protective nature only. The Security Council has alone, under the Charter, executive responsibility to establish and operate a force compulsorily in the territory of a member state. According to the Secretary-General of the United Nations no peacekeeping operation 'could function or even exist without the continuing consent and co-operation of the host country' (see document S/7906, 26 May 1967). This was the principal justification for the withdrawal of the United Nations Emergency Force (UNEF) from Egyptian territory, prior to the Israeli-Arab hostilities of 5–10 June 1967, although for other reasons (eg, the applicability of a 'good faith' accord for the continued presence of UNEF), the withdrawal has been the subject of controversy.

There continues to be a deep division of opinion among member states, resulting in two independent impasses, one legal, and the other practical.

19. On the subject of such 'peacekeeping', see Cassese (ed) *United Nations Peace-Keeping* (1978), and Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (1st edn, 1980) pp 967 et seq.

20. Illustrations have been the UN Emergency Forces in the Suez and Sinai areas, the UN Truce Supervision Organisation in Palestine, the UN Force in Cyprus, the UN Mission in the Dominican Republic (established in May 1965), and the UN Military Observer Group in India and Pakistan. The peacekeeping forces have been designated under various titles, eg, 'Truce Supervision Organisation', 'Disengagement Observer Force', and 'United Nations Force'. These would not exhaust the variety of the tasks which are contemplated by the protagonists of UN peacekeeping. According to L. L. Fabian *Soldiers Without Enemies, Preparing the United Nations for Peacekeeping* (1971) p 17, through United Nations peacekeeping 'cease-fires have been monitored, borders patrolled, troop disengagements supervised, truces guaranteed, hostile armies insulated at safe distances, internal security maintained, and essential governmental functions preserved'.

Some countries are adamant that peacekeeping must be confined within the scope of Security Council action under Chapter VII; others hold that the consensual character of peacekeeping enables authorisation by the General Assembly or by the Secretary-General, within the ambit of the wider purposes of the Charter; while others object altogether to the principle of United Nations peacekeeping forces. In any event, the practical aspect of reliable financing of peacekeeping, in the absence of readiness by all states to accept mandatory assessments of contributions, is one that must be solved, even if the controversy over the legal issue could be settled. The system of voluntary contributions, eg, in relation to the funding of the United Nations peacekeeping operation in Cyprus (UNFICYP), has proved to be one fraught with difficulties.

In the case of the peacekeeping forces in the Congo (ONUC) and in Cyprus (UNFICYP), entrusted with functions of maintaining law and order, difficulties were revealed with reference to the observance of two necessary restraints upon a peacekeeping force, namely, not to intervene in internal strife, and as far as possible not to apply force beyond the necessities of self-defence.

It can be seen that the United Nations peacekeeping concept is one beset with endemic problems and difficulties. Indeed, in his 1982 Report to the General Assembly, the United Nations Secretary-General singled out United Nations peacekeeping as one key area which needed to be reinforced. On the one hand, this could, according to him, be achieved by the strengthening of military capacity, but there were obstacles to be surmounted in such an approach. On the other hand, a desirable improvement would be achieved if member states individually and collectively provided firmer guarantees for the authority of peacekeeping operations. In that connection, the Secretary-General made reference to the two multinational forces (MFOs) established in 1982–1983 in Sinai and Beirut, respectively, outside the framework of the United Nations, but performing much the same role as United Nations peacekeeping forces; the creation of such MFOs reflected adversely on the capacity of the Security Council to discharge its responsibilities in respect to the maintenance of peace and security.

The Sinai peacekeeping force, referred to by the Secretary-General, or to give it its correct name, the Sinai Multinational Force and Observers, was envisaged in relation to the Middle East Peace Treaty of 1979 between Egypt and Israel as requiring to be established in the absence of United Nations involvement. It was an alternative to the United Nations force contemplated in the Treaty, and came into being pursuant to a Protocol signed on 3 August 1981 by the Arab Republic of Egypt and the State of Israel. By other documentation, the Sinai MFO, which took up stations in 1982, embraced units from other countries in addition to those of the United States. The Sinai MFO provided the precedent for the Beirut MFO in the same year. The legality of such MFOs can hardly be open to

question, inasmuch as the Security Council does not have exclusive responsibility in the peace and security field, but according to the express terms of paragraph 1 of article 24 of the United Nations Charter '*primary* responsibility' in that area. In practice, MFOs have been shown to involve their own special difficulties, in addition to some of those which have afflicted United Nations peacekeeping forces.

For the sake of completeness, it should be mentioned lastly that the latest establishment of a UN peacekeeping force, at the date of writing, is that of the UN Iraq-Iran Military Observer Group (UNIIMOG) to supervise the cease-fire that took effect in August 1988 in the Iran-Iraq war, and to monitor the withdrawal of troops along the 1,200-kilometre frontier.

The Economic and Social Council[1]

This organ, operating under the authority of the General Assembly, is concerned with promoting economic and social progress and better standards of human welfare as well as the observance of human rights and fundamental freedoms. The United Nations Charter recognises that progress in these fields is essential to maintain peaceful and friendly relations between nations. The members of the Economic and Social Council are elected by the General Assembly for three years, and retiring members are eligible for re-election.[2] Representatives of any member state or of the 'specialised agencies' can participate in its discussions without vote.

Its particular role with respect to the co-ordination of the activities of the 'specialised agencies' has already been discussed in this chapter. Besides this part of its activities, it initiates studies, surveys, and reports on various economic, social, health, and related matters, and prepares draft conventions for submission to the General Assembly on matters within the scope of its powers, and is empowered to call international conferences on these matters (article 62 of the Charter). It has also played a primary part in the organisation of the programme of technical assistance for undeveloped countries. All decisions are taken by a majority of the members present and voting.

The Economic and Social Council's work is 'sectionalised' through special Commissions of which four are regional economic commissions concerned with special problems in particular areas—Europe, Asia and the Far East, Africa, and Latin America; the others, the so-called 'Functional Commissions', deal with particular subjects such as Human Rights, Transport and Communications, Narcotic Drugs, Population, and Status of Women. There is semble no limit on the number of functional or ad hoc committees, commissions, etc, which may be established under the

1. See as to the Economic and Social Council, Bowett, op cit, pp 58–72.
2. See para 2 of art 61 of the United Nations Charter.

aegis of the Council to deal with special subjects within its competence. In pursuance of decisions of 1982 the Council has taken steps towards streamlining its work, including the rationalisation of its processes of regional co-operation.

Of the three other principal organs of the United Nations, the Trusteeship Council and the International Court of Justice have been discussed above, in Chapters 5[3] and 17[4] respectively, and the Secretariat may now be referred to. The Secretariat consists of the administrative staff of the United Nations, and really represents an international civil-service. Its chief administrative officer is the Secretary-General, who is appointed by the General Assembly on the recommendation of the Security Council.[5] The independent, international character of the Secretariat is specially safeguarded by the provisions of articles 100–101 of the Charter, which are expressed to bind both member states and officials of the Secretariat.[6]

9. THE INTERNATIONAL LABOUR ORGANISATION AND OTHER 'SPECIALISED AGENCIES' AND 'RELATED AGENCIES'

The International Labour Organisation (ILO) was originally created under Part XIII of the Treaty of Versailles 1919, but subsequently, to dissociate the Organisation as far as possible from the League of Nations and from the Treaty itself, this section of the Treaty was detached, and its clauses renumbered, and it emerged with the new title of the 'Constitution of the International Labour Organisation'.[7] This Constitution was amended in 1945, 1946, 1953, 1962, and 1964. Formerly the International Labour Organisation had some organic connection with the League of Nations but that was altered by the constitutional amendments

3. See above, pp 118–119.
4. See above, pp 490–512.
5. For discussion of the role of the Secretary-General in carrying out the provisions of the Charter, and in giving effect to decisions of United Nations organs, see Stein 'Mr. Hammarskjold, the Charter Law and the Future Role of the United Nations Secretary General' 56 AJIL (1962) 9–32. See also Meron *The United Nations Secretariat* (1977), and Schwebel *The Secretary-General of the United Nations; His Political Powers and Practice* (1952). On the question of the Secretary-General taking a more forthright role under section 99 of the UN Charter, in addition to 'quiet diplomacy' (eg, fact-finding, problem-monitoring, taking advice from military advisers), see Edward McWhinney *United Nations Law Making* (1984) p 223, and Henkin, Pugh, Schachter and Smit *International Law; Cases and Materials* (2nd edn, 1987) pp 583–586.
6. See above, p 617, for a reference to the 'loyalty' investigations of Secretariat officials.
7. On the history of the ILO, see Henkin, Pugh, Schachter, and Smit *International Law; Cases and Materials* (2nd edn, 1987) p 1402; Alcock *The History of the ILO* (1971); Sir Harold Butler *Confident Morning* (1950) ch IX (pp 155 et seq), entitled 'Birth of the ILO'.

of 1945 and 1946, and in the latter years it became a specialised agency linked with the United Nations by a special relationship agreement.

From the outset, the main object of the Organisation has been to promote international co-operation in the sphere of industry and labour so that economic competition between states or other like conditions shall not militate against the realisation of minimum as well as uniform labour standards throughout the world. The Organisation's efforts are principally directed to bringing the legislation and practice of each state into line with the most enlightened modern conceptions as to the treatment of labour, and with changing economic and social conditions in each such country. The idea of social justice underlying its work has been made more manifest in the amendments to the Constitution of 1945 and 1946, and was given particular solemn expression in the Declaration of Philadelphia adopted by the International Labour Conference in 1944 and annexed to the Constitution. That Declaration reaffirms the principles that labour is not a commodity, that freedom of expression and association are essential to international progress, and that poverty is a danger to prosperity, and it also recognises that the obligation of the Organisation is to further among nations world programmes designed to achieve full employment, higher standards of living, the provision of facilities for the training and transfer of labour, and the extension of social security measures.

The outstanding feature of the International Labour Organisation is its tripartite character, as it is representative in its organs of governments, employers, and employees.

The three main organs of the Organisation are: (1) the International Labour Conference; (2) the Governing Body; (3) the International Labour Office.

The International Labour Conference is a policy-making and legislative body, being in effect a 'world industrial Parliament'. It consists of four representatives in respect of each member state, two representing the government and one each labour and management respectively in that country. Delegates speak and vote independently. Voting is by a two-thirds majority. The Conference promotes labour legislation in each state, by adopting: (a) Recommendations; and (b) conventions. A Recommendation enunciates principles to guide a state in drafting labour legislation or labour regulations, and for this reason has been termed a 'standard-defining instrument'.[8] States, however, are under no binding obligation to give effect to a Recommendation, although they are duty bound to bring it before the appropriate national legislative authority. A convention is in the nature of a treaty, although it is adopted by the

8. See *The International Labour Code* (edn of 1939), published by the International Labour Office, p xii, and *The Impact of International Labour Conventions and Recommendations* (ILO publication, 1976) passim.

Conference and not signed by delegates of the member states. Primarily, it is conceived as a model for domestic legislation. Member states are under an obligation to bring the convention before the competent authorities for the enactment of legislation or other action (article 19 of the Constitution). If a member state obtains approval for a convention, it is bound to ratify it, and thereupon assumes the obligation of applying its provisions. Also that member state is bound to report annually on the measures it has taken to bring its legislation into accord with the Convention.

The Governing Body, which meets several times a year, is more or less the executive organ of the Organisation. It has a similar tripartite character to that of the Conference, being composed of 56 members, 28 representing governments, 14 representing management and elected by the employers' delegates to the Conference, and 14 representing labour and elected by the workers' delegates to the Conference. The Governing Body appoints the Director-General of the International Labour Office, proposes the Budget of the Organisation and supervises the work of the Office and of the various Committees and Commissions.

The amendments of 1945 and 1946 to the Constitution were made principally with a view to strengthening the provisions for the application of conventions adopted by the Conference, to make the Organisation completely independent of League of Nations machinery, and to enable it to co-operate more fully with the United Nations and other international institutions. This involved a thorough redrafting of article 19 of the Constitution concerning the obligations of member states with reference to conventions and Recommendations, including the addition of an obligation for member states to report from time to time on their relevant law and practice even where the competent authorities had not approved of the instruments submitted to them for approval and other action, and including also more specific provisions as to the application of these instruments within federal states. Further by article 19 of the Constitution, the term 'Convention' was substituted for the former misleading term 'Draft Convention', and in article 13 provision was made for the independent financing of the Organisation.

Besides conventions and Recommendations (so far more than 160 conventions and more than 170 Recommendations have been adopted) the Organisation has through its organs adopted less formal instruments to express its policies; for example, resolutions, conclusions, observations, codes of guidelines, and reports. Collectively all these instruments form an International Labour Code embodying world standards of labour policy. At the date of writing, there have been more than 5,000 ratifications of ILO Conventions. Other important features of the Organisation's machinery are the provisions in articles 24–25 of the Constitution conferring on industrial associations of employers and workers the right to make a representation to the Governing Body that a member state

has failed to observe effectively a convention binding it; several such representations have been made. Then there is the procedure of complaint by member states set out in articles 26 to 34; this may lead to the appointment of a Commission of Inquiry and action against the state not fulfilling its obligations, to induce it to comply therewith. Supervision of the implementation of ILO instruments is carried out by a Committee of Experts on the Application of Conventions and Recommendations.

The third organ of the International Labour Organisation, the International Labour Office, represents the administrative or civil service staff of the Organisation, discharging very similar functions to those of the United Nations Secretariat and acting as a publishing house.

In the last two decades the International Labour Organisation has moved strongly into the field of expert advice and technical assistance, manpower organisation, productivity and management, education and development, the working environment, occupational health and safety, social security, and workers' education.

The 'specialised agencies' and 'related agencies'[9]

Besides the International Labour Organisation, there are the various 'specialised agencies' and 'related agencies', each corresponding to certain aspects of world affairs demanding organic direction by a specialised international administrative body. Thus the Food and Agriculture Organisation of the United Nations (FAO) is concerned with improving living standards and the nutrition of peoples, and with promoting the increased production and more efficient distribution of food and agricultural products.[10] The field of education, culture, knowledge, and science is covered by the United Nations Educational Scientific and Cultural Organisation

9. The term 'related agencies' is used to cover an institution such as the International Atomic Energy Agency (IAEA) which is not a specialised agency, but which has a working relationship with the United Nations, and the General Agreement on Tariffs and Trade (GATT).

10. Considerations of space have precluded a detailed treatment of each of the related agencies. However: (a) The sections in the present chapter dealing with the organic structure and composition of international institutions, their integration and co-ordination, etc, have been expanded in order to supply more detail as to the related agencies. (b) Much of the ground that would have been covered in separate detailed analyses of each body has already been included in the preceding portions of the chapter. (c) There is contained in the readily available and inexpensive publication in its latest edition, *Everyman's United Nations*, a concise treatment of each specialised agency, of the International Atomic Energy Agency (IAEA), and of the system of meetings of the contracting parties under the General Agreement on Tariffs and Trade (GATT) of 30 October 1947 to which a new Part IV (encouragement of development of the less-developed countries) was added in February 1965. For more detailed information, the reader is referred to the latest current edition of the *Yearbook of the United Nations*, and to the constitutions of the agencies related to the United Nations (see the *United Nations Treaty Series*). See also Oppenheim *International Law* (8th edn, 1955) Vol 1, pp 977–1029, C.H. Alexandrowicz *World Economic Agencies: Law and Practice* (1962) and Bowett *The Law of International Institutions* (4th edn, 1982) passim.

(UNESCO), the sphere of international air navigation and air transport by the International Civil Aviation Organisation (ICAO), international banking and economic and monetary matters by the International Bank for Reconstruction and Development, the International Monetary Fund, and the affiliated International Finance Corporation, international cooperation in matters of shipping, navigation, and maritime safety by the International Maritime Organisation (formerly the Inter-Governmental Consultative Organisation, IMCO), the organisation and improvement of postal services throughout the world by the Universal Postal Union (UPU), whose origins as an institution date back to 1874–5, and the peaceful uses of atomic energy by the International Atomic Energy Agency (IAEA), established in 1956. Other bodies are the International Telecommunications Union (ITU), the World Health Organisation (WHO), the World Meteorological Organisation (WMO), the World Intellectual Property Organisation (WIPO), the United Nations Industrial Development Organisation (UNIDO), the International Fund for Agricultural Development, the International Development Association (IDA), and the World Tourism Organisation (WTO), whose titles indicate the particular functions they perform.

As to such agencies, it may be said in conclusion that they have so far fulfilled two objects, implicit in their establishment:

1. That, not only should they buttress and give vitality to the United Nations, but that they should draw strength from their association with the United Nations.
2. The involvement of the national authorities of different states into more direct and continuous association with the work of international institutions.

Note on bibliography

Treatises
Lists of the principal international law treatises are given in the following works:

a. Ingrid Delupis *Bibliography of International Law* (1975) pp 25–48.
b. J. Robinson *International Law and Organisation. General Sources of Information* (1967) pp 37–130.
c. Oppenheim *International Law* (8th edn, 1955) Vol 1, pp 99–105.

State practice and the practice of international institutions
The most authoritative compilation as to British practice (although a number of volumes remain to be published) is the *British Digest of International Law*, edited by the late Clive Parry, with the late Judge Sir Gerald Fitzmaurice as Consulting Editor. See also *British and Foreign State Papers*, covering the period from 1812 onwards.

With regard to United States practice, there are the following important compilations:

Moore *Digest of International Law* (1906) 8 vols.
Hackworth *Digest of International Law* (1940–1944) 8 vols.
Marjorie M. Whiteman *Digest of International Law* (1963–1973) 15 vols, the successor Digest to *Moore* and *Hackworth*, and the *Annual Digests of United States Practice in International Law* (covering United States practice since 1973, and published by the Department of State).

See apart from these, *Foreign Relations of the United States, Diplomatic Papers* (formerly published under the earlier titles of *Papers Relating to Foreign Affairs*, and *Papers Relating to the Foreign Relations of the United States*) covering the period since 1861.

Two important collections of basic documents on United States foreign relations, embracing the period 1941–1955, are *A Decade of American Foreign Policy: Basic Documents*, 1941–1949, and *American Foreign Policy*, 1950–1955: *Basic Documents* (published by the Department of State). Volumes in this series for the year 1956 and following years have been issued under the title *American Foreign Policy: Current Documents*. See also the *Restatement of the Foreign Relations Law of the United States* (rev edn, 1986).

On French practice, there is the important compilation, Kiss *Répertoire de la Pratique Française en Matière de Droit International Public* (1962).

Schiffer *Répertoire des Questions de Droit International Général posées devant la Société des Nations* (1942), is a compilation devoted to the practice of the League of Nations. As to the practice of the United Nations, see *Repertory of*

Practice of United Nations Organs, in 5 vols, with Supplements, and *Répertoire of Practice of the Security Council, 1946–1951* (1954), with Supplements.

Treaties and conventions

For the texts of modern or recent treaties and conventions, reference should be made to the following official compilations: (i) the British Treaty Series (from 1892 onwards); (ii) the League of Nations Treaty Series; (iii) the United Nations Treaty Series (published in pursuance of article 102 of the Charter).[1]

Hudson *International Legislation*, published by the Carnegie Endowment for International Peace in 9 volumes, 1931–1950, and covering the period as from 1919, is an unofficial compilation of the more important multilateral treaties and conventions concluded in this time. The texts of the older instruments are printed in such collections as those of Martens, Dumont, Hertslet, Malloy, and other compilers of treaties listed in Oppenheim, above, Vol I, pp 108–111, and are now being reprinted in *The Consolidated Treaty Series, 1648–1918* (annotated), edited by Clive Parry. See also Professor Parry's *Index of British Treaties, 1101–1958*. For the texts of International Labour Conventions, see *The International Labour Code*, 1951 (1952), 2 vols, published by the International Labour Office, and *Conventions and Recommendations adopted by the I.L. Conference*, 1919–1966 (1966).

For a useful guide to compilations of treaties, for purposes of research, see Ervin H. Pollack *Fundamentals of Legal Research* (1967) pp 421–450.

Judicial and arbitral Decisions

The decisions and opinions of the Permanent Court of International Justice and of the International Court of Justice are published in the official reports of these two Courts.

Hudson *World Court Reports* 4 vols, 1934–1943, published also by the Carnegie Endowment for International Peace, is an unofficial collection in convenient form of the decisions and opinions of the Permanent Court.

See also generally as to the case law of both courts, E. Hambro and A.W. Rovine *The Case Law of the International Court* 12 vols, 1952–1974, and J.H.W. Verzijl *The Jurisprudence of the World Court* Vol I (1922–1940), published 1965, and Vol II (1947–1965), published 1966.

For the municipal judicial decisions of all countries on points of international law, from 1919 onwards, see the *Annual Digest of Public International Law Cases*, the title of which was changed in the 1933–1934 volume to the *Annual Digest and Reports of Public International Law Cases*, and which as from 1950 has been published annually under the title, *International Law Reports*. Decisions of British Courts are to be found in the collection, Clive Parry (ed) *British International Law Cases* (first vol. published 1964). See also Clive Parry and J.A. Hopkins *Commonwealth International Law Cases*.

The principal awards and adjudications of the Permanent Court of Arbitration are reprinted in Scott *Hague Court Reports* (1916), a second series of which was published in 1932. Other collections of arbitral decisions are the *United Nations Reports of International Arbitral Awards*, Moore *History and Digest of Inter-*

1. Treaties and international agreements entered into by the United States, 1895–1949, are published in the *Statutes at Large*; from 1950 onwards in the compilation, *United States Treaties and Other International Agreements*.

national Arbitrations to which the United States has been a party (1898) 6 vols, the same author's *International Adjudications Ancient and Modern* (1929–1936) and De la Pradelle and Politis *Recueil des Arbitrages Internationaux*.

Schwarzenberger *International Law as Applied by International Courts and Tribunals* Vol I, *General Principles* (3rd edn, 1957), Vol II, *Law of Armed Conflict* (1968), Vol III, *International Constitutional Law* (1976) and Vol IV, *International Judicial Law* (1986) are valuable major accounts of international law based mainly on international judicial and arbitral decisions.

General

Throughout this book, there are references in the footnotes to certain articles, treatises, and textbooks, most of which are readily accessible, and may be consulted for wider reading on each of the different branches of the subject.

The leading periodical in English in international law is the *American Journal of International Law* (AJIL) (quarterly). Mention may also be made of the *Canadian Yearbook of International Law* (*Annuaire Canadien de Droit international*) and of the *Australian Year Book of International Law*, which have been newcomers from the Commonwealth to the field of the periodical literature of international law. An important annual publication in India is the *Indian Year Book of International Affairs*, the 1964 issue of which contained a number of historical studies.

Leading and important foreign periodical publications include the *Annuaire Français de Droit International* and *Revue Générale de Droit International* (French), the *Netherlands International Law Review*, the *Soviet Year-book of International Law* (Soviet Association of International Law), and the *Japanese Annual of International Law*.

Current, continuing compilations of legal documentary materials include *International Legal Materials* (American Society of International Law), and the *United Nations Juridical Yearbook* (United Nations).

For bibliographies on international law, see Ingrid Delupis, op cit, J. Robinson, op cit, and Clive Parry *The Sources and Evidences of International Law* (1965).

A select bibliography on the law and practice of treaties is contained in the United Nations publication, *Laws and Practices concerning the Conclusion of Treaties* (1953) pp 141–189.

In the *Yearbooks* of the International Court of Justice (the latest at the date of writing is the *Yearbook*, 1986–1987), there is much useful information concerning the Court, its adjudications, and its functions generally. Prior to the *Yearbook*, 1964–1965, these annual volumes contained an extensive bibliography of books, articles, and studies published concerning the Court, but the bibliographies are now being published separately in annual issues.

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