Chapter 1 in D. Sarooshi, ed., *Mesures de réparation et responsabilité à raison des actes des organisations internationales/Remedies and Responsibility for the Actions of International Organizations* (Hague Academy of International Law, Martinus Nijhoff) (2014)

CHAPTER 1:
International Organizations: Personality, Immunities, Responsibility, and Remedies

Dan Sarooshi*

1. Introduction

The law of international organizations is undergoing profound changes. This has been caused in large part by the increasingly important role that international organizations have played in exercising powers conferred on them by national governments. This phenomenon has led to concerted attempts by States, international courts and tribunals, and domestic courts to seek to ensure accountability for these exercises of power by imposing corresponding limits on international organizations.

This volume is focused on several key aspects of this accountability process: the content of the rules of international law relating to when can an international organization be held responsible for its breach of a primary rule of international (the law codified in the UN draft Articles on the Responsibility of International Organizations ("DARIO")), when can an international organization plead immunity from jurisdiction of national and possibly international tribunals, and what remedies can be taken against an international organization.

The chapters in this volume are the result of research conducted by outstanding junior academics who were participants in the 2011 Centre for Studies and Research in International Law and International Relations of the Hague Academy of International Law. This author had the good fortune of being the Director of both the English and French sections of the Centre for Research and enjoyed immensely providing supervision and guidance to these talented young academics.

* Professor of Public International Law, University of Oxford; Barrister, Essex Court Chambers, London; and Senior Research Fellow, The Queen's College, Oxford. The Editor would like to express his great appreciation to Dr Philippa Webb for her excellent assistance with the editing of these chapters; and to the Curatorium of the Hague Academy and in particular its Secretary-General Professor Yves Daudet for their encouragement and support.

This book is divided into three main parts of unequal length: the first deals with issues of responsibility of international organizations under international law. A large number of the chapters in this first part are concerned with the central question of whose actions count for the purposes of establishing an organization's responsibility. The first chapter by Dr Yifeng Chen addresses squarely the role played by the issues of attribution and causation when establishing the responsibility of an international organization. The next three chapters by Drs Pinzauti, Couzigou, and Šmuclerová consider the issues of attribution and responsibility based on the nature of the relationship that is established by the conferral by States of powers on international organizations. Dr Pinzauti provides a broad ranging introductory chapter focused on this theme which considers a number of important issues, including models of responsibility that are appropriate when considering the responsibility of international organizations; the limits of the approach adopted by the International Law Commission in its DARIO; and the responsibility of Member States of acts by international organizations, including for violations by the organization of the principle of due diligence. Dr Couzigou examines more specifically the relationship of agency that may be established between States and an international organization and the implications of this relationship for the responsibility of the international organization; while Dr Šmuclerová considers the reverse conferral (a delegation) of powers by an international organization back to States and the implications for both the State and organization that flows from the exercise by States of these delegated powers. Finally in this first part of the book, there are two case studies relating to the limitations on, and responsibility of, international organizations. Dr Beulay considers the limitations on UN organizations in the context of the operations conducted by the UN High Representatives who are often charged with administering territories on behalf of the organization – exercising in some cases the plenitude of governmental powers; while Dr Zasova then goes on to consider the important issue of the criminal responsibility of officers and agents of an international organization.

The second part of the book focuses on the way in which the law of responsibility for international organizations has been developed and applied by various courts and tribunals. Dr Abrisketa Uriarte provides a review of this topic in the context of international and European courts and tribunals; while Dr Vezzani considers the matter in a thorough manner in the context of international arbitration. Dr Koutroulis in the final chapter of this part provides a thoughtful treatment of how national courts have sought to impose constraints on the acts of international organizations.

The third and final part of the book considers the interrelated issues of the immunities of international organizations from domestic courts and remedies against international organizations. Dr Irmscher considers in his chapter on immunities the human rights issues arising from the right of persons to have access to domestic court, and Dr Namountougou considers the law and practice relating to waivers by organizations of their immunities. Finally, in a thoughtful chapter, Dr Ahlborn challenges the approach taken by the UN International Law Commission in the DARIO to the issue of remedies against international organizations.

This present introductory chapter seeks to set the scene for the detailed consideration of these issues in the chapters that follow by exploring in brief the emergence of international organizations onto the international law scene and some of the concomitant developments that this has caused in the law and in the concept of sovereignty.

More specifically, this chapter focuses, first, on the development of international law relating to the legal personality of international organizations, including in this context a brief consideration of the issue of immunity; and then, secondly, turns to discuss the relationship between States and international organizations and the implications of this relationship for the responsibility of States and in some cases the responsibility of international organizations.

2. The development of international law relating to international legal personality: the curious case of international organizations

One of the landmark cases in this area is, of course, the ICJ advisory opinion in the *Reparation for Injuries suffered in the Service of the United Nations* case, *ICJ Reports* 1949, p.174. The ICJ clearly established that an international organization can possess international legal personality and pursuant to that personality may well be able to exercise certain powers and have certain capacities on the international plane and indeed the domestic plane.

But the Court was equally clear in saying that this recognition of the international legal personality of the UN is not the same thing as saying that the competences of the Organization are analogous to those of a State: it is States, in the Court's view, that are the omniscient beings on the international legal plane and international organizations by comparison are at best mere mortals.

The ICJ stated at page 179 of its Advisory Opinion:

> "In the opinion of the Court, the [United Nations] Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.
>
> Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is 'a super-State', whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims."

This approach was later confirmed by the ICJ in the *Legality of the Threat or Use of Nuclear Weapons* case, *Advisory Opinion, ICJ Reports, 1996*, p.66 when the Court stated at para.25:

> "The Court need hardly point out that international organizations are subjects of international law which do not, unlike States, possess a general competence.

> International organizations are governed by the 'principle of speciality', that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them."

International organizations have been established in a variety of ways, but what is common in all cases is some form of international agreement or instrument between States governed by international law. The existence of such an international agreement was previously the main criterion employed by the law to distinguish international organizations from non-governmental organizations: this is certainly the approach adopted by the UN[1], and also the approach taken by the International Law Commission in its work on the responsibility of IOs.[2] International law has, however, developed to be agnostic on the related issue of how an organization can be created. International law does not require what I call the "big bang" approach to creation: the law recognizes that it is possible for an organization to be created by evolution over time.

The big bang approach I am talking about here is that the creation of an international organization by States can only be done by the formal adoption of a constituent treaty. This has certainly been the most common form of establishment of an international organization, but it is certainly not the only way. An agreement by States to establish an international organization can also be expressed in several other ways, including a decision to establish an organization by government representatives assembled in a conference without using a treaty and thus without the formal requirement of subsequent ratification of the treaty by States. This was the way the Asian-African Legal Consultative Committee was originally established and the basis on which it was operated.[3] It is also the way that OPEC (the Organization of the Petroleum Exporting Countries) was created by a resolution adopted by a conference of States in 1960.

What is of interest is that international law allows an entity to evolve over time into an international organization. The following section contains two case-studies detailing how a private law foundation can be transformed over time into an international organization or

[1] See also ECOSOC Resolutions 1296 (XLIV), 23 May 1968 and Resolution 1996/31, 25 July 1996.
[2] See *Report of the International Law Commission*, 55th Session (2003), UN Doc. A/58/10, at 38).
[3] It was only at the 43rd Session of the Organization in 2004 that it was decided formally to adopt a new and revised Text of Statutes which are in effect a constituent instrument of the Organization.

something akin to an international organization with international legal personality, possessing powers and functions on both the international and domestic planes.

The first case considers the transformation of the International Union of Official Travel Organizations ("IUOTO"), an NGO governed by Swiss law, into the World Tourism Organization ("WTO");[4] while the second is provided by the transformation of the Global Fund to Fight AIDS, Malaria, and Tuberculosis which was initially a Swiss private law foundation into something akin to an international organization with international legal personality, possessing powers and functions on both the international and domestic planes.

2.1. The Case of the World Tourism Organization

The IUOTO was initially established in 1946 as a private law association governed by the Swiss civil code.[5] Due, however, to increasing changes in the complexity and international nature of tourism and the increasing importance of tourism to broader economic, social, and cultural goals, the IUOTO itself considered that it needed to transform itself from an international non-governmental organization "governed by private law to an inter-governmental institution governed by public [international] law."[6]

The internal IUOTO process leading to its transformation into the WTO started in 1966 at the 79th meeting of the IUOTO Executive Council in Madrid which approved a proposition to modify the legal statutes of the Union and created a working group to study the effects and consequences of this change.[7]

---

[4] The WTO was subsequently transformed again in 2003 into a UN Specialized Agency and is now known as the UNWTO: In 2003 the WTO General Assembly approved the transformation of the WTO into a United Nations Specialized Agency by resolution 453(XV). This transformation into a Specialized Agency was made effective by the adoption by the United Nations General Assembly of its resolution A/RES/58/232. The World Tourism Organization added the letters "UN" to the start of its previously used abbreviation "WTO" in English and also to the corresponding version in Russian, by approval of the UN General Assembly in December 2005. The UNWTO's abbreviation remains OMT in French and Spanish. Since the period being discussed in this briefing paper predates the change in the WTO's name, I shall refer throughout mainly to the "WTO" and not to the "UNWTO".

[5] J. Castaneda, 'Une nouvelle méthode pour la création d'organismes internationaux le cas recent de l'U.I.O.O.T.", XVI *Annuaire Français de Droit International* (1970), p.40.

[6] 'The Creation of the World Tourism Organization', *Annals of Tourism Research* (November, 1973), p.8.

[7] Obtained from the history section of the UNWTO web-site.

The first major step in the direction to transform the IUOTO into an international organization was taken at the XXth IUOTO General Assembly,[8] held in Tokyo in October 1967,[9] where a resolution was adopted recommending that governments create an intergovernmental tourism organization. It was envisaged that the transformation of the organization would enable it to deal with all matters concerning tourism on a world-wide scale, and would put it in a better position to establish co-operation with other relevant organizations, especially those within the UN system.[10]

Following this decision by the IUOTO General Assembly in Tokyo, the IUOTO Executive Committee put forward a draft international convention designed to be the constitutive treaty of an intergovernmental tourist organization. In October 1968 this draft constituent treaty was circulated to the Ministries of Foreign Affairs of all States whose national tourist organizations were IUOTO Members.[11] Simultaneously, these countries were invited to attend a conference in Sofia in May 1969 with a view to drafting, adopting, and opening for signature this constitutive treaty. Prior to the Sofia meeting, however, the IUOTO Executive Committee met in Cairo in March 1969, and their examination of the comments received from States on the draft convention indicated that there was far from unanimous support for the creation of an independent tourist organization outside the UN system.[12] According to an article in the *Annals of Tourism Research*, the countries which raised objections were not, however, opposed to the establishment of an international organization provided that it was functionally linked with the UN, and that it preserved its administrative and financial autonomy.[13] As a result, the Executive Committee decided to broaden the objectives of the Sofia Conference, beyond the negotiation and conclusion of a constituent treaty, to include all available options likely to lead to the creation of an international organization for tourism.

At the subsequent Sofia Conference held in May 1969, a resolution was adopted by the States present which provided in part:

---

[8] See *supra* n.6.
[9] This appears to be confirmed in UN General Assembly Resolution 2529 (XXIV), operative paragraph 2.
[10] 'Creation of the Inter-Governmental World Tourism Organization', *Annals of Tourism Research* (May/June 1975), pp.240-241.
[11] *Ibid*, p.241.
[12] *Ibid*.
[13] *Ibid*.

> "Convinced accordingly that the establishment of an inter-governmental organization is the most appropriate and effective way to rationalize and further strengthen efforts in the national and international planes in the ever expanding field of tourism, especially as the International Union of Official Travel Organizations, which has so far endeavored to play this role, is limited in its operation because it is a non-governmental organization."[14]

The *Annals of Tourism Research* (1975) states that "The negotiations connected with the work of the [Sofia] Conference revealed a very strong opinion in favor of the creation of the inter-governmental organization. Two-thirds of the participants voted in favor. This majority was composed of the developing countries but included a number of industrialized States."[15] The Conference also invited ECOSOC to approve and adopt a series of guidelines for the creation of an inter-governmental tourism organization and to recommend its creation to the UN General Assembly.

Subsequently, the XXI^st^ IUOTO General Assembly met later that year in Dublin in October 1969 and adopted a resolution which reaffirmed "its determination to set up, as promptly as possible and by the most appropriate means, a tourism organization of inter-governmental character."[16] There was, however, a recognition in this resolution that the classic procedure for establishing an international organization as indicated by the Sofia Conference did not necessarily represent the only, or indeed the best, way to establish a world tourism organization, and that there were other procedures which may make it possible to reach an agreement more rapidly amongst governments. Specifically, the resolution proposed a solution "which consisted of adapting the present Statutes of the Union to the inter-governmental character of an international tourist organization at an Extraordinary General Assembly which would be convened by its President."[17] This difference in approach between the Sofia Conference – made up solely of States – and the resolution adopted by the XXI^st^ IUOTO General Assembly likely derives from the fact that the General Assembly was comprised of both States and non-State members of the IUOTO.

---

[14] *Ibid*.
[15] *Ibid*, p.242.
[16] *Ibid*.
[17] *Ibid*.

The report of the Sofia Conference (the Intergovernmental Conference on Tourism) was transmitted by the UN Secretary-General to the UN General Assembly. Subsequently, the UN General Assembly adopted resolution 2529 (XXIV) on 5 December 1969[18] which also called for the establishment of an international organization on tourism in the following terms:

> "*Acknowledging* the vital contribution that international tourism is making to the economic, social, cultural and educational progress of mankind and in safe-guarding world peace,
> *Taking into account* the important role that tourism can play in the national economy, particularly in that of the developing countries,
> *Considering* the active interest taken by the United Nations, its organs and specialized agencies in various fields related to tourism, and the continuing need for co-ordination of their activities in these fields,
> *Conscious* of the leading role that the Union has hitherto played in the field of tourism and the technical ability and experience that it has built up,
> *Recognizing,* nevertheless, that the operational capacity of the Union in the field of tourism has been limited by its status as a non-governmental organization,
> *Taking note* of the determination, reaffirmed by the General Assembly of the Union in its resolution XXI/5, to set up as promptly as possible and by the most appropriate means a tourism organization of an inter-governmental character,
> *Further taking note* that in that resolution the Union recognized that the procedure indicated by the Intergovernmental Conference on Tourism for the creation of an intergovernmental tourism organization within the United Nations does not necessarily constitute the only means of establishing the best organization for world tourism,
> 1. ***Believes* that a formula that would allow agreement to be reached more readily among Governments for the establishment of an international tourism organization of an intergovernmental character, particularly to assist the developing countries would be:**
> **(a) The conversion of the International Union of Official Travel Organizations into an intergovernmental organization through a revision of its statutes;**

[18] Adopted by the UN General Assembly without opposition with 96 votes in favour and 7 abstentions: 'Creation of the Inter-Governmental World Tourism Organization', *Annals of Tourism Research* (May/June 1975), p.242.

> (b) The establishment of operational links between the United Nations and the transformed Union by means of a formal agreement;
> 2. *Takes note* of the recommendation contained in resolution XXI/5 of the … [GA of the IUOTO] requesting the President of the Union to entrust a working group with the preparation of its draft revised statutes, bearing in mind the principles laid down by the General Assembly … at its twentieth session … in Tokyo … and by the Intergovernmental Conference on Tourism … held at Sofia … and to convene an extraordinary General Assembly of the Union to draw up and adopt the statutes of an intergovernmental organization.
> 3. *Recommends* those States whose national official tourist organizations are members of the [IUOTO] to take joint action at its forthcoming extraordinary General Assembly to amend the statutes of the Union in order to give the organization an intergovernmental character;
> 4. *Invites* States whose national official tourist organizations are members of the Union to approve and adopt, in accordance with their respective internal procedures, the procedure outlined in paragraph 3 above for the creation of an international tourism organization of an intergovernmental character and, accordingly, to give the necessary instructions and powers to their representatives to the Union; … .” (Emphasis added.)

This UN General Assembly resolution is significant since it affirms the process of transforming an NGO governed by Swiss law (the IUOTO) into an international organization by means of the revision and adoption by States of the IUOTO’s Statutes.

The envisaged Extraordinary General Assembly of the IUOTO was held in Mexico City in September 1970, and the IUOTO General Assembly voted in favor of creating the World Tourism Organization by approving the revised IUOTO Statutes [now entitled “The Statutes of the World Tourism Organization”]. The voting record was 70 States voting in favor, 12 abstentions, and no votes against the approval by the General Assembly of the revised Statutes. This approval by the Assembly of the revised Statutes did not, however, bind States (even those who voted in favor of the approval in the Assembly) on an *individual* basis.[19] In

[19] It is for this reason that Ambassador Castaneda of Mexico stated that “Cette résolution, qui est une manifestation de la volonté de l’Assemblée et non des Etats, n’était pas en réalité nécessaire, et, une certaine mesure, fait double emploi avec le vote même.” (J. Castaneda, ‘Une nouvelle méthode pour la création

order for a State to become a Member of the new international organization it had to make, pursuant to Article 5(2) of the Statutes of the World Tourism Organization, a formal declaration that it adopted the Statutes and accepted the obligations of membership. The IUOTO General Assembly even proposed to States the text of such a declaration which was as follows (with a variant for those governments that could not bind their States without a subsequent domestic ratification or referendum):

> "The government of …, having knowledge of the resolution …, adopted by the extraordinary general assembly, as well as the revised statutes contained in the annex, formally declares that it approves the statutes of the proposed World Tourism Organization, and accepts the obligations inherent in membership."[20]

It was clearly understood that a number of States would need to obtain *domestic ratification* pursuant to their internal constitutional and other lawful requirements before being able to give their final consent to be bound by the Statutes. Accordingly, Article 42 of the WTO Statutes adopted in Mexico City in September 1970 provided as follows:

> "During the year following the entry into force of the present Statutes [1976], States whose national tourism organizations were members of IUOTO at the time of adoption of these Statutes and which have adopted the present Statutes subject to [domestic] approval may participate in the activities of the Organization with the rights and obligations of a Full Member."

As at December 1974, States which fell within Article 42 included Australia, Austria, Bolivia, Canada, France, Federal Republic of Germany, Israel, Italy, Libya, Portugal, Switzerland, Uganda, and Uruguay.[21] These States were thus able, without being actual Members, to participate in the activities of the WTO for a limited duration, and this included, importantly, the work of the WTO Preparatory Consultative Committee.[22]

---

d'organismes internationaux le cas recent de l'U.I.O.O.T.", XVI *Annuaire Français de Droit International* (1970), p.40 at p.632.)

[20] My translation from the French text contained in J. Castaneda, 'Une nouvelle méthode pour la création d'organismes internationaux le cas recent de l'U.I.O.O.T.", XVI *Annuaire Français de Droit International* (1970), p.40 at p.632.

[21] 'Establishment of the World Tourism Organization', *Annals of Tourism Research* (Nov/Dec 1974), p.83 at p.87.

[22] *Ibid*.

Article 36 of the WTO Statutes required that 51 States whose national tourism organizations were IUOTO Members at the time of the Extraordinary General Assembly at Mexico City must ratify the Statutes before they will enter into force one hundred and twenty days after the 51st ratification,[23] thereby giving life to the WTO. The WTO Statutes entered into force on 2 January 1975 pursuant to Article 36 of the Statutes, and it was on this date that the WTO formally came into existence as an international legal person.

The first General Assembly of the WTO opened in Madrid on 12 May 1975, and saw many operational issues being discussed and finalized including the following:[24] the adoption of budget and financial regulations;[25] the adoption of a formula for fixing contributions of Full, Associate, and Affiliate Members;[26] the adoption of staff regulations; the approval of an agreement on co-operation with the UN; the election of officers; the appointment of the Secretary-General; and the location of the WTO's headquarters.[27]

2.2. The Case of the Global Fund to Fight AIDS, Malaria and Tuberculosis and Issues of Privileges and Immunities

The Global Fund to Fight AIDS, Malaria and Tuberculosis ("the Global Fund") was established in 2002 in Switzerland, ostensibly as a private Swiss foundation established under Swiss law. It is an international financing institution dedicated to attracting and distributing resources to prevent and treat AIDS, malaria, and tuberculosis and its work is estimated to have saved millions of lives. The Global Fund seeks to work below the formal level of the

[23] Article 36 of the Statutes provide: "The present Statutes shall enter into force one hundred and twenty days after fifty-one States whose official tourism organizations are Full Members of IUOTO at the time of adoption of these Statutes have formally signified to the provisional Depositary their approval of the Statutes and their acceptance of the obligations of membership."

[24] 'Creation of the Inter-Governmental World Tourism Organization', *Annals of Tourism Research* (May/June 1975), p.244.

[25] The budget was adopted at $5 million for a two year period, and it was decided that no nation should contribute more than 5% of the total budget.

[26] The contributions were scaled to reflect the GNP and tourism income of Member States. The contribution of Affiliate Members was at the time fixed at $500 per year, and the membership of the latter had to be approved by their national governments.

[27] The Government of Spain offered the Organization a new headquarters building at a construction cost of not less than $11 million, and after several rounds of voting the WTO General Assembly decided to select Spain as the site of the headquarters.

nation State to promote partnerships between government, civil society, the private sector, and the communities directly affected by the three diseases.

The Global Fund has 59 States who participate in its work, but it also has a strong civil society component: for example, full members of the Global Fund Board include persons who actually suffer from the three diseases and various major donors to the Global Fund such as the Bill & Melinda Gates Foundation. The Global Fund is one of the best-funded international organizations in the world. Between the period 2002 to 2015, 54 donor governments have pledged US$ 28.8 billion and have already paid US$ 24 billion to the Global Fund,[28] quite apart from the very significant contributions made by private foundations such as the Gates Foundation.[29] The Global Fund is continually giving away its money to fund the fight against the three diseases and it has supported more than 1,000 programs in 151 States.

Initially the Global Fund had concluded with the World Health Organization ("WHO") an Administrative Services Agreement (ASA) such that Global Fund officials were formally employed by the WHO so that these Global Fund officials enjoyed the privileges and immunities of WHO officials.

The Global Fund (despite its formal status as a Swiss private law foundation) and its officials have also given extensive privileges and immunities within Switzerland pursuant to the Headquarters Agreement between the Global Fund and the Swiss Federal Council dated 13 December 2004.[30] The Headquarters Agreement also states in relation to the Global Fund's legal personality the following in Article 1:

> "The Swiss Federal Council recognizes for the purposes of this Agreement the international juridical personality and legal capacity in Switzerland of the Global Fund to Fight AIDS, Tuberculosis and Malaria …."

Moreover, the Global Fund had also entered into a Trust Fund arrangement with the World Bank with whom it kept its assets in the United States thereby allowing Global Fund property

[28] See: http://www.theglobalfund.org/en/donors/public/
[29] See: http://www.theglobalfund.org/en/donors/private/gatesfoundation/
[30] The formal title being the Agreement between the Swiss Federal Council and the Global Fund to Fight AIDS, Malaria and Tuberculosis in view of determining the legal status of the Global Fund in Switzerland.

to enjoy the Bank's immunity from legal process and execution within the United States pursuant to the US International Organizations Immunities Act 1945. Finally, in terms of privileges and immunities, the Global Fund has been granted extensive privileges and immunities within the United States by its designation as an international organization enjoying privileges and immunities pursuant to s. 288 of the U.S. International Organizations Immunities Act of 1945. The U.S. President in an Executive Order dated 13 January 2006 officially designated the GF as "a Public International Organization Entitled to Enjoy Certain Privileges, Exemptions, and Immunities" when he stated:

> "By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1 and 16 of the International Organizations Immunities Act … it is hereby ordered as follows:
> Section 1. Designation. The GF to Fight AIDS, Tuberculosis and Malaria (GF) is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.
> Section 2. Non-Abridgement. The designation in section 1 is not intended to abridge in any respect privileges, exemptions, or immunities that the GF otherwise may have acquired or may acquire by law."

The Global Fund at a certain point decided that it wanted to terminate the ASA, and did so with effect from January 2009. With the termination of the ASA there was a real need for the Global Fund to enjoy privileges and immunities under international law to ensure that the Global Fund and its officials could continue to do their important work focused on the fight against the three diseases without having to pay significant sums of money – through taxes of various types and forms, including, e.g., taxes on currency transfers – to the various States where it had programs and also to protect Global Fund staff who may, e.g., have to investigate a country program for fraud or other potentially problematic reasons.

The high level of protection enjoyed by the Global Fund, its assets, and its officials within Switzerland and the United States did not change as a consequence of the termination of the ASA. However, in the rest of the world the GF and its officials now face a number of serious risks as a consequence of the termination of the ASA, and these include the following: Global

Fund officials, even while travelling in the performance of their official functions, would not be immune from arrest or detention; Global Fund officials would not be immune from any legal process for acts and words spoken or written in the discharge of their duties; Global Fund officials may be subjected to different levels of taxation by their States of nationality leading to Global Fund resources being diverted into the treasuries of these States and the Global Fund not being able to fix comparable salary levels for comparable posts; Global Fund officials would not be immune from national military service obligations as may be required by their State of nationality; Global Fund officials would not possess the right to use the UN *laissez-passer* with its associated privileges or indeed be accorded any such travel privileges; and the additional risks to the Global Fund itself is that it may be sued by present or former employees in any courts and the Global Fund and its assets will not be immune in relation to the enforcement of any such court decision.

In relation to Global Fund officials, the termination of the ASA meant that there was a need for the Fund to ensure that it could maintain the independence of its officials from their States of nationality and otherwise to provide them with protection in relation to the discharge of their duties on behalf of the Global Fund. The following finding by the ICJ in the *Reparations* case is of particular relevance here:

> "Having regard to its purposes and functions already referred to, the [UN] Organization may find it necessary, and has in fact found it necessary, to entrust its agents with important missions to be performed in disturbed parts of the world. Many missions, from their very nature, involve the agents in unusual dangers to which ordinary persons are not exposed. For the same reason, the injuries suffered by its agents in these circumstances will sometimes have occurred in such a manner that their national State would not be justified in bringing a claim for reparation on the ground of diplomatic protection, or, at any rate, would not feel disposed to do so. Both to ensure the efficient and independent performance of these missions and to afford effective support to its agents, the Organization must provide them with adequate protection.
>
> …
>
> **In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action**

> **of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization** (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised … ." (Emphasis added.)

The Global Fund subsequently engaged with a number of its donor and recipient States and together they drafted a treaty that confers privileges and immunities on the Global Fund.[31] This treaty – the Agreement on Privileges and Immunities of the Global Fund to Fight AIDS, Tuberculosis, and Malaria – was adopted by the Global Fund Board in 2010 when it adopted a decision recommending to all Global Fund States, and indeed all States, that they ratify this treaty, and the process of ratification of this treaty is now ongoing.

The rationale here for the conferral by States of such privileges and immunities on the Global Fund, despite its formal status as an international organization being unclear, is that this was possible since the conferral of privileges and immunities on an organization is within the sole gift and discretion of States. The generally accepted privileges and immunities of international organizations operate to exempt an organization from the adjudicative and enforcement jurisdictions of the State[32] – in practice, international organizations and their officials are immune from all forms of legal process within States, they do not have to pay certain taxes, and the police and other arms of the executive branch of government cannot exercise certain of their powers in relation to the international organization or its officials. As such, it is entirely open to States to conclude a treaty that confers privileges and immunities on an entity with an international mandate and objectives, and this is precisely what happened in the case of the Global Fund.

Indeed there is precedent for a similar – though certainly not identical – approach in the case of the International Committee of the Red Cross ("ICRC"). The ICRC like the Global Fund is a private association under Swiss Law, and they are both listed by the Swiss Federal

[31] This author had the privilege of assisting the Global Fund in drafting this treaty and in its subsequent negotiations with States over its content.

[32] An international organization is still bound by the laws of the States in which it operates: see H. Schermers and N. Blokker, *International Institutional Law* (5th ed., 2011), p.1037.

Department of Foreign Affairs in its document entitled "International Organizations in Switzerland" under the heading "Other [i.e. non-UN System] international organizations in Switzerland".

The ICRC, however, is widely recognized as enjoying privileges and immunities that are comparable to those of the United Nations and other international organizations. These privileges and immunities are largely contained in the Headquarters Agreements and concomitant legislation in the nearly 80 countries in which the ICRC carries out significant operations, but before an international tribunal the ICRC has had to rely on privileges and immunities under customary international law, most notably before a Trial Chamber of the UN International Criminal Tribunal for the former Yugoslavia ("ICTY") in the 1999 decision in the *Simic* case.[33]

The ICTY decision in the *Simic* case concerned the Prosecutor's proposal in the criminal trial of Simic and others to call a former ICRC employee who was willing to give evidence of facts that came to his knowledge by virtue of, and during, the course of his official acts as an ICRC employee. The ICRC opposed this before the ICTY on the basis that the testimony of a former ICRC employee would involve a violation of, *inter alia*, the ICRC's international mandate and its privileges and immunities under customary international law.

The ICTY held in the *Simic* case that:

> "It is widely acknowledged that the ICRC, an independent humanitarian organization, enjoys a special status in international law, based on the mandate conferred upon it by the international community."

An important way in which this mandate is conferred on the ICRC is by the Geneva Conventions, and the ICTY went on to state that "As is well known, the Geneva Conventions enjoy nearly universal participation as virtually all States are parties to the four Geneva Conventions. … The Trial Chamber is of the view that, by accepting to be bound by the

[33] *Prosecutor v. Simic et al.*, *Decision on the Prosecution Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness*, Case No. IT-95-9-PT, 27 July 1999.

Geneva Conventions, the States party to them have agreed to the special role and mandate of the ICRC."[34]

Although the Global Fund may not be able to claim that it operates on the basis of a mandate conferred upon it by a treaty as such, all this means is that it would not be easy at present for the Global Fund to claim that it enjoys the privileges and immunities of an IO under customary international law.

But there is nonetheless a strong case to be made that the Global Fund is carrying out a mandated conferred by the international community.

In the case of the Global Fund, Section II of the Framework Document of the Global Fund, entitled "Purpose", provides as follows: "The purpose of the Fund is to attract, manage and disburse additional resources through a new public-private partnership that will make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis and malaria in countries in need, and contributing to poverty reduction as part of the Millennium Development Goals."

It is arguable that in order to achieve these purposes it is necessary for the Global Fund to be able to operate on the international plane with a large degree of independence from its donor and recipient States. Otherwise it would not, for example, be possible for the Global Fund to ensure that the grants it makes are being used effectively and in a financially accountable way by recipient States to reduce in a "sustainable and significant" way the impact caused by HIV/AIDS, tuberculosis, and malaria. The Global Fund has also concluded a number of agreements with recipient States which imposes obligations on these States in relation to use of Global Fund grants and this requires the GF to have a position of detachment in order to ensure these States are complying with their obligations.[35] All of this is quite apart from the

[34] It was, in large part, on the basis of this special status that the ICTY found that the ICRC has a right under customary international law to non-disclosure of the information in the knowledge of a former employee before the ICTY, and on this basis the ICTY decided that the evidence sought to be presented by the Prosecutor should not be given.

[35] Moreover, the GF in its Foundation Board and Secretariat possesses a power of binding decision-making that is independent from that of its participant States. Also, the GF By-Laws provide in Article 7.1. that the voting members of the Foundation Board shall consist of: "[1] Seven representatives from developing countries, one [State] representative based on each of the six World Health Organization ("WHO") regions and one additional [State] representative from Africa. [2] Eight representatives from donors [States]. [and 3] Five representatives from civil society and the private sector …."

requirement for the Global Fund to provide functional protection to its officials as explained above.

The real potential problem here in my view is whether there exists adequate mechanisms by States to exercise control over an international institution such as the Global Fund to ensure that it does not abuse the privileges and immunities granted to it by States. It will be for each State to consider the decision-making processes of an international institution such as the Global Fund and to decide for themselves whether these are in its view appropriate such that it is willing to confer privileges and immunities on the specific institution.

However it should be said that this accountability concern arises wherever there is some form of immunity from a State's law or its courts, and this book in many of the chapters that follow examine this issue in considerable detail.[36] This chapter now turns to examine the relationship between States and international organizations and the implications of this relationship for the responsibility of States and in some cases the responsibility of international organizations.

3. The relationship between States and international organizations and the issue of responsibility for unlawful acts by an organization

States confer powers on international organizations to allow them to achieve specified objectives. However when considering issues of responsibility – whether of the organization or State or both – there needs to be careful consideration given to the nature of the specific relationship between a State and an international organization since these vary greatly in practice.[37] Indeed the mechanism by which these powers can be conferred by States on an organization also varies – they may be conferred by means of a State's ratification of a constituent treaty which provides for such conferrals[38] or they may be conferred by States on an *ad hoc* basis outside the context of a membership scenario.

A useful way of analysing these relationships is to consider the degree to which a State has given away, or conferred, its powers to an international organization. These conferrals of

[36] See in particular Chapters 8-11.
[37] Chapter 3 of this book also considers this issue in detail.
[38] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, *ICJ Reports, 1996*, 66, at 79, para. 25.

powers can be considered as being on a spectrum that has at one end a conferral of power which establishes an agency relationship between the State and the international organization and at the other extremity there is a conferral of power which involves the "transfer" of powers to the international organization. The intermediate category of conferral can usefully be characterized as a "delegation" by States of powers to an international organization.

There are three characteristics of conferrals that can be used to ascertain the degree to which powers have been given away by a State, and thus within which category a particular conferral of powers can be placed. First is the question of revocability: can a State lawfully revoke its conferral of powers onto an international organization? Second is the degree to which States retain control over the exercise of powers by the international organization. The third is whether an international organization possesses an exclusive right to exercise conferred powers or whether States have retained the right to exercise powers concurrently with the international organization.

In the case of an "agency relationship",[39] the conferral of powers is revocable on a unilateral basis; States can exert direct control over the international organization's exercise of powers; and States retain the right to exercise powers concurrent with, and independent of, the organization's exercise of powers. In the case of a "delegation of powers",[40] the conferral of powers is revocable on a unilateral basis; States cannot exert direct control over the international organization's exercise of powers, but States retain the right to exercise powers concurrent with, and independent of, the international organization's exercise of powers. An example of a delegation of powers is the conferral by States of powers on the United Nations.

Finally, in the case of a "transfer of powers", the conferral of powers is irrevocable according to law; States cannot exert direct control over the international organization's exercise of powers and nor do States retain the right to exercise powers concurrent with, and independent of, the international organization's exercise of powers, that is, a State has consented to be bound by obligations that flow from the international organization's exercise of conferred powers. It is particularly difficult to measure the precise degree to which States have given

[39] On the existence of such agency relationships, see D. Sarooshi, 'Conferrals by States of Powers on International Organizations: The Case of Agency', 74 *BYIL* (2004), 291-332; and see Chapter 4 of this book.
[40] On this issue of delegation of powers, see also Chapter 5 of this book.

away their powers in the case of transfers. It is for this reason that there is a need to distinguish between "partial transfers" and "full transfers". The difference between these two sub-categories depends on the extent to which States can be said to have consented to be bound by obligations that flow from an international organization's exercise of conferred powers.

In the case of 'partial transfers', a State agrees to be bound by obligations that flow from the international organization's exercise of powers on the international plane. An example of a partial transfer is provided by the case of the WTO dispute settlement system where States have consented to be bound on the international plane by decisions of the WTO panels and Appellate Body in a case. In the case of 'full transfers', however, the State has also agreed to give direct effect within its domestic legal order to the obligations that flow from the international organization's exercise of powers such that they can be relied on by persons within the State without the need for separate domestic legislation. The best, and most obvious, instance of a 'full transfer' is the case of the European Union where, for example, Council regulations have direct effect within the legal systems of member States and will, in the view of the European Court of Justice, prevail over all domestic law sources.

These categories are not watertight compartments and especially in the 'delegation' and 'transfer' categories a State's relationship with an international organization may well have elements of both types of conferrals of power.

Yet these categories are very useful when considering the differing relationships between States and international organizations and can help clarify a number of the consequences that flow from these relationships, including, for present purposes, issues of responsibility. This chapter will limit itself to a consideration of the issues of responsibility relating to transfers and delegations of power.[41]

[41] In the case of agency relationships between States and international organizations, see *ibid*.

3.1. Transfers of Powers to International Organizations and the Issue of Responsibility

The question here is whether States can be held responsible on a primary or secondary basis for an internationally wrongful act committed by an international organization exercising transferred powers. It is useful to consider this matter in relation to the separate categories of a 'partial' and 'full' transfers of powers since they have differing consequences. We recall from above that a partial transfer of powers is where the decision by an international organization in the exercise of transferred powers imposes an international legal obligation on the State to comply with the decision; while the case of a full transfer is where the international organization's decision has direct effect within the State's internal legal order without the need for domestic legislative enactment.

3.1.1. Partial transfers of powers

In case of a "partial transfer of power" the State is bound on the international plane to comply with decisions of an international organization over which the State has no direct control. But the lack of direct control by a State over an internationally wrongful act committed by an international organization does not exclude all potential bases of responsibility for the State. Control is sufficient but not of course always necessary for establishing attribution for the purposes of State responsibility. There is still arguably a potential basis for attributing the internationally wrongful acts of an international organization to transferring States by application of article 5 of the International Law Commission's articles on State responsibility. This provision, relating to the conduct of persons or entities exercising elements of governmental authority, states:

> "The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or <u>entity</u> is acting in that capacity in the particular instance." (Emphasis added.)

It seems clear that such an "entity" could include an international organization which exercises conferred powers of government. The Commission's commentary on article 5 states that "[t]he justification for attributing to the State under international law the conduct of 'para-statal' entities lies in the fact that the internal law of the State has conferred on the entity in question the exercise of certain elements of the governmental authority."[42] But the commentary provides a limitation to the potential scope of application of this provision when it states that "[t]he formulation of article 5 clearly limits it to entities which are empowered by internal law to exercise governmental authority."[43]

In my view article 5 clearly does apply in the case of a full transfer of powers since a transfer of powers will, by its nature, have taken place pursuant to an internal law of the State, but it is also arguably applicable in the case of a partial transfer of powers where a State will have *agreed under its internal law* to be bound by the international organization's exercise of powers on the international plane.

In addition to this potential case of attribution there are arguably three other potential bases for States being held responsible for internationally wrongful acts of an international organization exercising partially transferred powers. Two of these bases flow from the State's *own* acts or omissions.

The first is where a State's implementation within its domestic legal system of a decision by an international organization involves the State committing an internationally wrongful act. In the case of partial transfers of powers, the international organization's decision does not have direct effect within the State's legal system and as such the State can choose not to give domestic legal effect to a decision where this would involve the commission of an internationally wrongful act. If the State were, however, to implement the international organization's decision and commit an internationally wrongful act, then it would clearly be held responsible under international law for this act pursuant to article 1 of the ILC Articles on State Responsibility. And yet this is obviously problematic for the State concerned, since it is being required in such a case to disobey an obligation on the international plane which flows from the international organization's exercise of transferred powers. It is for this reason that, when States transfer powers to an international organization, they must try and ensure that the

[42] 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001', Report of the International Law Commission on the Work of its Fifty-third Session (A/56/10), *YILC* (2001), vol. II, Part Two, pp.31-143.
[43] *Ibid*.

international organization's exercise of powers cannot lead to the imposition on them of obligations that are inconsistent with a prior treaty obligation owed to another State (or indeed to another international organization) that is not a party to the treaty that transfers powers.

In practice, however, it may be very difficult for a State to determine in advance whether the transfer of powers to an international organization may lead to such a conflict of treaty obligations. A possible way to avoid such a conflict is for the negotiating States to decide, where possible, to "delegate" and not "transfer" their powers to an international organization so that they will not be bound to comply with decisions taken by the international organization when exercising conferred powers.

The second case where a State's responsibility can be engaged in relation to the exercise by an international organization of partially transferred powers is where a State aids or assists the international organization in the commission of an internationally wrongful act. This responsibility flows from the application, *mutatis mutandis*, of article 16 on State responsibility, which provides as follows:

> "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."

If these conditions in (a) and (b) are met in a case, then a State may be held responsible for the act of rendering assistance to an international organization in its commission of an internationally wrongful act in the exercise of partially transferred powers. However, in the case of a partial transfer of powers, the primary responsibility of the State would only arise in relation to the actions taken by the State to implement the international organization's decision within its domestic legal system.

An important element of the acts of aid or assistance covered by article 16 is that they are entirely voluntary and, since in the case of partial transfers the State is bound on the international plane by decisions of the international organization, then the State can only be held primarily responsible for those voluntary acts of aid or assistance rendered to an international organization within its domestic legal system where it is not so bound.

Finally, there is a potential secondary responsibility of States that flows from the commission by an international organization of an internationally wrongful act in the exercise of partially transferred powers. This secondary responsibility is arguably engaged where States actively pursue or support the particular decision in the international organization that causes the commission of the internationally wrongful act.

It is even arguable that States should take action within the international organization – e.g., by voting against a decision – to try and ensure that the international organization does not commit an internationally wrongful act, and that the failure to do so may engage a secondary responsibility of the State for the act of the international organization. This rule of secondary responsibility is necessary, arguably, to ensure the systemic integrity of international law. Otherwise it would be a simple matter for States to avoid their obligations under international law by establishing an international organization to which they transfer powers and then disclaim all responsibility for the way in which those powers are exercised within the international organization.

3.1.2. Full transfers of powers

In the case of a full transfer of powers the decision of the international organization binds the State on the international plane but also has direct effect within a State's legal system. In these cases the main basis for the internationally wrongful acts of an international organization being attributable to a transferring State is by application of article 5 of the ILC Articles on State Responsibility. Cases of full transfers are clearly instances where States have conferred on an international organization "the exercise of certain elements of governmental authority" and thus, according to article 5, "shall be considered an act of the State under international law".

Moreover, the main limitation placed by the Commission's commentary on the scope of application of article 5 – that it is limited "to entities which are empowered by internal law to exercise governmental authority" – is more than adequately fulfilled in the case of full transfers where decisions of the international organization go further to have a direct effect within the State's legal system. A good example of the potential application of article 5 is where an international organization exercises transferred powers in such a way that it violates the human rights obligations owed by States. In such cases, a State cannot successfully contend that its hands were tied by the international organization's exercise of transferred powers. The jurisprudence of the European Court of Human Rights is instructive on this point, particularly the decision of the Court in the *Waite and Kennedy* case. The Court was concerned, in part, with the question whether the United Kingdom could be held responsible on an individual basis for an alleged act of the European Council that was said to be in violation of the European Convention on Human Rights. The act in question was a decision of the European Council that laid down provisions concerning the election of the members of the European Parliament which in effect excluded those persons who were living in Gibraltar, a dependent territory of the UK, from having the right to participate in the election.

The UK Government contended, *inter alia*, that, while there may be circumstances where a party to the European Convention on Human Rights might infringe its Convention obligations by entering into other treaty obligations that were incompatible with the Convention, they considered that in the present case the position was not the same since "acts adopted by the Community or consequent to its requirements could not be imputed to the member States, together or individually, particularly when those acts concerned elections to a constitutional organ of the Community itself."[44] Moreover, at the hearing the Government suggested – based presumably on article 8 of the ILC Articles on State Responsibility – that to engage the responsibility of a State under the Convention requires the State to have a power of effective control over the act complained of and that, in the case of the Community provisions relating to the election of the European Parliament, the UK Government had no such control. This argument lacks cogency. In addition to article 8 there is still in the case of full transfers by State of powers to international organizations the potential basis of attribution provided by article 5 on State responsibility. The European Court in the *Matthews* case made several pronouncements in support of the application of article 5 in cases of full transfers (*in casu*, to the European Community). The Court found in its judgment that, although the European Convention does not exclude States parties being able to confer powers on international

[44] *Matthews v the United Kingdom*, European Court of Human Rights, Judgment of Feb. 18, 1999, para. 26.

organizations, it does require, however, that if such conferrals take place then Convention rights must continue to be "secured". The Court went on to state that member States' responsibility under the European Convention "continues even after such a transfer".[45]

In the end, however, the European Court did not have to deal directly with the issue of UK responsibility for a Community act since it found that the 1976 Act was not a "'normal' act of the Community, but is a treaty within the Community legal order". Accordingly, the Court based the responsibility of the UK on its subsequent acceptance of the Act, being as it was an "international instrument" which was "freely entered into by the United Kingdom". In the context of our discussion above, this represents the commission by the UK of its own internationally wrongful act rather than having an internationally wrongful act of the European Community attributed to the UK.

There is, finally, a potential secondary responsibility of States in the case of full transfers where States have actively pursued or supported within the international organization the decision that mandates the commission of the internationally wrongful act. The considerations relating to this secondary responsibility are the same as those pertaining in the case of a partial transfer of powers already considered earlier.

3.2. Delegations of Powers to International Organizations and Issues of Responsibility

In the case where an international organization commits an internationally wrongful act then article 3 on the responsibility of international organizations makes clear that this engages the international responsibility of the international organization. The remaining question is whether such an act can be attributed to a State that has delegated powers to an international organization thus establishing a State's primary responsibility under international law. In the case of agency relationships, the issue of responsibility is clear: effective control (a definitional element of agency) exercised by States over an international organization means that its acts are attributable to States. In cases of delegations, however, such control does not exist and, applying by analogy the International Law Commission's articles on State responsibility, there would seem to be no other possible bases for attribution of an

[45] *Ibid*, para. 32.

international organization's wrongful acts to delegating States. But this only relates to the issue of State responsibility for an international organization's acts. There are three other circumstances where a State should arguably be held responsible in connection with an internationally wrongful act by an international organization that exercises delegated powers. In all three cases the responsibility of the State does not flow from its relationship with the international organization to which it has delegated powers, but from its own acts or omissions.

We recall that in the case of delegations a State is not bound by the international organization's exercise of delegated powers. Where, accordingly, a State chooses to participate in, or implement domestically, an internationally wrongful act committed by an international organization exercising delegated powers, then the State will be held responsible on a primary basis for its own commission of an internationally wrongful act pursuant to the Commission's article 1 on State responsibility. The State cannot seek to escape responsibility for its own acts in such cases by hiding behind the non-binding decision of an international organization in the case of delegations of powers.

The second case where a State's responsibility can be engaged in relation to the exercise by an international organization of delegated powers is where a State aids or assists the international organization in the commission of an internationally wrongful act pursuant to the application, *mutatis mutandis*, of article 16 on State responsibility as already explained above in the case of a transfer of powers. However, the argument in relation to article 16 applies with greater force in the case of delegation of powers, since any aid or assistance given by a State to an organization in such cases is entirely voluntary and as such a State will very likely be caught by article 16.

Finally, there is also the arguable secondary responsibility of the State that is engaged where States actively pursue or support within the international organization the decision that causes the commission of the internationally wrongful act.

4. Concluding Remarks

The modern history of international law comprises the history of States. The future history of international law will likely be written to a greater extent by international organizations.

International organizations are today increasingly exercising sovereign powers – whether it is the European Union or the World Trade Organization – and the exercise of these powers are effecting important normative and societal changes within States.

One of the numerous problems this raises is that international organizations are relying on the concept of State sovereignty in their exercise of powers rather than there being serious consideration given as to what sovereignty means – or rather should mean – in the context of an international organization.[46]

The complex and fascinating serious of issues that arise from these exercises of powers by international organizations and their activities more generally requires a far greater engagement by the legal academy, and in this context the choice of international organizations as a topic of study by the Curatorium of the Hague Academy, and its Secretary-General, is to be commended.

[46] On this issue, see D. Sarooshi, *International Organizations and Their Exercise of Sovereign Powers* (2005), Chapter 1.