

Lesson 6 STRUCTURE OF IOs

International Institutional Law
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TYPES OF ORGANS

- **Regular organs** – listed in the constituent treaty, which also defines their respective powers
- **Subsidiary organs** – created by a regular organ

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REGULAR ORGANS

1. Plenary body

- All MS are represented
- Usually the components represent their governments
- Meets regularly (e.g. once a year)
- Tasks usually include setting standards common to all and adopting binding decisions

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REGULAR ORGANS

2. Executive body

- Meets and takes decisions at shorter notice
- Its tasks usually include engaging in regulatory and executive activities
- organ of restricted composition, but this composition may vary

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REGULAR ORGANS

3. Administrative body (Secretariat or similar)

Independent staff charged with the every-day work of the Organization

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REGULAR ORGANS

4. Parliamentary assembly

- Not all organizations have one
- Members may either be representatives of national parliaments (e.g Parliamentary Assembly of the CoE) or be directly elected by citizens of the MSs (eg. EU Parliament)
- Tasks vary considerably from one IO to the other

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REGULAR ORGANS

5. Judicial bodies

- Not all IOs have a judicial body, some have more than one (e.g. the UN)
- Judges are independent, although they are usually nationals of MSs
- Tasks vary considerably from one IO to the other:
 1. Solving disputes between MSs (e.g. ICJ)
 2. Solving disputes between staff and IO (e.g. administrative tribunals)
 3. Settling disputes between the IO and MSs (e.g. ECJ, Infringement procedure (art. 258 TFEU))
 4. Judging on the validity of acts adopted by the IO (e.g. ECJ, Action for annulment)
 5. Act as a point of reference for domestic judges (e.g. ECJ, preliminary ruling procedure)

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REGULAR ORGANS

6. Other bodies

- **Consultative bodies** (e.g. EU Committee of the Regions, EU Economic and Social Committee)
- **Other bodies performing specific tasks** (e.g. UN Trusteeship Council)

N.B Regular organs may be added amending the constituent treaty (e.g. EU Court of Auditors introduced with the Maastricht Treaty)

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SUBSIDIARY ORGANS

Organs created by a regular organ

- ➔ When the power to create subsidiary organs is not expressly provided for in the constituent treaty, subsidiary organs may be created on the basis of the theory of implicit powers

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POSITION OF MEMBER STATES

Obligation to cooperate

Art. 4(3) TEU

Pursuant to the **principle of sincere cooperation**, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Art. 2 UN Charter

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

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STRUCTURE OF THE UN

Principal organs (Art. 7(1) UN Charter)

1. General Assembly

- Plenary organ – max 4 representatives for each State, but just 1 vote

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STRUCTURE OF THE UN

1. General Assembly

- Voting (art. 18)
 - Important questions (2/3 majority)
 - recommendations with respect to the maintenance of international peace and security,
 - the election of the non-permanent members of the Security Council,
 - the election of the members of the Economic and Social Council,
 - the election of members of the Trusteeship Council
 - the admission of new Members to the United Nations,
 - the suspension of the rights and privileges of membership,
 - the expulsion of Members,
 - questions relating to the operation of the trusteeship system,
 - and budgetary questions
 - Other questions, including decision to qualify another question as important (majority of the members present and voting)
 - Consensus

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STRUCTURE OF THE UN

1. General Assembly

➤ Functions and powers

- Certain functions are expressly stated in the Charter
 - 1- approve budget art. 17
 2. Codify customary rules art. 13
- may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter
- *except as provided in Article 12*, it may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters

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STRUCTURE OF THE UN

2. Security Council

➤ Composition:

- 5 Permanent Members,
- 10 Members elected by GA for a term of 2 years, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.
 - 5 Asia and Africa
 - 1 Eastern Europe
 - 2 Latin America
 - 2 Western Europe and other States

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STRUCTURE OF THE UN

➤ Voting

- Procedural matters: affirmative vote of 9 Members
- All other matters: affirmative vote of 9 Members, including concurring votes of 5 Permanent Members
 - By practice, **abstention of a permanent member** does not prevent the adoption of the decision
 - By practice, **absence of a permanent member** does not prevent the adoption of the decision
- So called: “double veto”: PM may exercise their veto power on any decision concerning whether a matter is merely procedural or not

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STRUCTURE OF THE UN

➤ Functions and powers

primary responsibility for the maintenance of international peace and security

➤ Chapter VI – **pacific settlement of disputes (conciliatory powers)**

- The SC may call upon the parties to settle their dispute by peaceful means (art. 33)
- It may investigate any dispute likely to endanger the maintenance of international peace and security (art. 34)
- It may recommend appropriate procedures or methods of adjustment (art. 36)

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STRUCTURE OF THE UN

➤ Chapter VII – Actions with respect to threats to peace, breaches of the peace, and acts of aggression (*coercive powers*)

- ✓ **Conditions for action (Art. 39)**
 - Threat to peace (includes piracy, people smuggling, terrorism etc.)
 - Breach to the peace
 - Act of aggression
- ✓ **Provisional measures (art. 40)** - e.g. cease-fire
- ✓ **Measures not involving the use of force (art.41)** - Sanctions
- ✓ **Measures involving the use of force (art.42)**

States were required, under art. 43, to make available to the SC, on its call and on the basis of a special agreement, armed forces and facilities necessary for the purpose of maintaining international peace and security. Military Staff Committee in charge of strategic direction of the forces ---- AGREEMENTS NEVER ADOPTED!



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STRUCTURE OF THE UN



Alternative measures:

- UN missions (*ad hoc*, under the authority of the Secretary General)
- Authorization to use force (authorized States do not act under the direction of the UN)

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STRUCTURE OF THE UN

3. Secretariat

- Secretary General
appointed by the General Assembly upon the recommendation of the Security Council.
- ✓ Chief administrative officer – appoints staff
- ✓ May bring matters threatening peace and security to the attention of the SC
- ✓ Performs functions entrusted to him by GA, SC, ESC, TC (e.g. direction of peacekeeping missions)
- Staff

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STRUCTURE OF THE UN

4. International Court of Justice

15 judges elected by the GA and the SC regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Seats in the Hague

Functions:

- Settling disputes between States (**contentious jurisdiction**) --- judgments
- delivering advisory opinions at the request of the GA, SC or other organs of the UN and specialized agencies authorized by the GA (**advisory jurisdiction**, art. 96 Charter) ----- non binding advisory opinions

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STRUCTURE OF THE UN

5. Economic and Social Council

- **Composition:** 54 members elected by the GA (for 3 years)
- **Voting:** majority of the members present and voting.
- **Functions:**

Acts under the authority of the GA (art. 60 Charter)

- It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
- It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
- It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.
- Shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be₂₁ required for the performance of its functions.

STRUCTURE OF THE UN

6. Trusteeship Council

Ceased to function at the end of the decolonization process (1994, independence of Palau)

STRUCTURE OF THE UN

7. Subsidiary organs

Art. 7(2) UN Charter

Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 22 Charter

The General Assembly may establish such subsidiary organs *as it deems necessary for the performance of its functions*.

Article 29 Charter

The Security Council may establish such subsidiary organs *as it deems necessary for the performance of its functions*.

Article 68 Charter

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions *as may be required for the performance of its functions*. ²³

STRUCTURE OF THE UN

7. Subsidiary organs (Art. 7(2) UN Charter)

- May the GA, the SC, and the ECOSOC create an organ which performs functions that the principal organ itself cannot perform? Or may they only delegate powers to the subsidiary organ?
- May the subsidiary organ bind its own creator?

ICJ, *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion 1954.

STRUCTURE OF THE UN

Relationship between organs

- ECOSOC acts under the authority of the GA (art. 66 UN Charter)
- Trusteeship Council is subordinate to the GA (art. 87 UN Charter)
- **Relationship between GA and SC?**

Article 12 UN Charter

While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

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STRUCTURE OF THE UN

➤ Relationship between SC and ICJ?

Lockerbie case 1992

- A bomb explodes aboard a plane over Lockerbie (Scotland)
- UK and USA ask Lybia to extradite suspected offenders. Lybia refuses, the SC adopts sanctions against Lybia (resolution under CH. VII of the Charter)
- Lybia asks the ICJ to adopt interim measures against UK and USA, claiming they were breaching the 1971 Montreal Convention on Civil Aviation, which provides for the obligation *aut dedere aut judicare*
- UK and USA ask the Court to refrain from adopting provisional measures, simply because the SC was seized of the matter

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STRUCTURE OF THE UN

➤ Relationship between SC and ICJ?

Lockerbie case 1992

- The ICJ refused to adopt provisional measures, but not simply because the SC was seized of the matter, but rather because it considered that a resolution adopted by the SC under Ch. VII might prevail over conflicting obligations stemming from the Montreal Convention (art. 103 UN Charter). It left this issue for the merits, but the case never reached the merits stage, because the parties agreed to discontinue the case.
- Libya had agreed that the two accused, Abdelbaset Ali Mohamed Al Megrahi and Ali Amin Khalifa Fhimah, be tried by five Scottish Judges sitting in a neutral Court, in the Netherlands.

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STRUCTURE OF THE UN

➤ Relationship between SC and ICJ?

- ✓ **The fact that the SC is seized of the matter does not prevent the ICJ from exercising its judicial functions**
- ✓ **Whether the ICJ is in a position to judge the legality of a SC resolution is still open to debate**

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