

# Table of Contents

Preface .....	V
---------------	---

## First Part: Fundamentals

### § 1 Concept and Theory of International Organisations

I. Introduction – About Working with this Book .....	3
II. Definition .....	5
1. The Concept of International Organisations .....	5
2. Particular Features .....	5
3. Similar and Differing Concepts .....	7
a) Regimes of Differing Organisational Density .....	7
b) Supranational Organisations .....	8
c) Public Law Categories .....	9
d) Non-State Organisations .....	10
e) Hybrid Forms of International Administration .....	11
III. Theories of International Organisations in International Law and International Relations .....	12
1. Realism and Neo-Realism .....	13
2. Idealistic Theories .....	13
3. Institutionalism .....	15

### § 2 History of International Organisations

I. The 19th Century: Peace Congresses and Administrative Unions as Early Forms of International Organisations .....	18
1. “Congresses” and “Conferences” .....	18
2. Administrative Unions .....	19
3. River Commissions .....	20
II. The League of Nations and the Interwar Period .....	20
III. The United Nations and Developments After 1945 .....	22

### § 3 International Organisations within the Constitution of the International Community

I. How International Organisations Constitutionalise Public International Law .....	28
1. The Constitution of the International Community .....	28
2. Constitutional Elements .....	30
a) Functions and Institutions .....	30
b) Aims and Values .....	30
II. Elements of an International Separation of Powers .....	31
1. Executive Function .....	31
a) International Organisations as an Alternative to World Government .....	31
b) Political Governance .....	31
c) Implementation .....	32
d) Internal Administration .....	33

2. Rule-Making .....	33
a) Rule-Making in the International Community .....	33
b) Typology of Rule-Making by International Organisations .....	34
aa) Treaties and International Organisations .....	34
bb) Binding Secondary Rule-Making .....	36
(1) Specialised Agencies of the UN .....	36
(2) Security Council .....	38
cc) Non-Binding Legal Provisions .....	39
dd) Techniques of Reference .....	40
c) Public International Law or New Legal Order? .....	41
d) Unanswered Questions of Legitimacy .....	42
3. Dispute Settlement and Adjudication .....	43
III. Effects of the Law of International Organisations at the Domestic Level .....	47
1. The Issue .....	47
2. Constitutional Law (particularly in Germany) .....	47
3. The Structure of Rule-Making and Administration of the Respective International Organisations .....	49

## Second Part: General Principles and Rules of the Law of International Organisations

### § 4 Treaty Basis, Creation, Extinction, and Succession

I. Founding Treaty .....	55
1. Participants .....	55
2. Conclusion and Entry into Force .....	56
3. Modifications and Amendments .....	58
4. Function, Legal Nature, Interpretation .....	63
a) The Founding Treaty as an Organisation's Constitution .....	63
b) The Organisation's Constitution and Dynamics of Interpretation .....	63
c) From Public International Law to a Legal Order sui generis .....	64
d) Interpretive Power .....	65
II. Extinction and Succession .....	66
1. Extinction .....	66
2. Succession .....	67

### § 5 Legal Personality

I. Foundations and Preconditions of International Legal Personality .....	71
1. General Remarks .....	71
2. Theoretical Approaches .....	72
3. Criteria for International Legal Personality .....	74
II. Consequences of International Legal Personality .....	75
1. Scope .....	75
2. Legal Capacity under International Law .....	76
a) Power to Conclude Treaties .....	76
b) Participation in Diplomatic Relations .....	78
c) Liability .....	80
3. Relationship with Non-Member States .....	80
III. Capacity to Act under Domestic Law .....	81
IV. Privileges and Immunities .....	83
V. Relation to the Host State .....	87
1. Seat .....	87
2. Headquarters Agreement .....	88

## **§ 6 The Doctrine of Powers**

I. Concept .....	91
II. Basic Principles of the Attribution of Powers .....	92
1. The Principle of Specialty .....	92
a) The Principle .....	92
b) Doctrinal Background .....	93
2. Interpreting Power-Confering Provisions .....	94
3. The Doctrine of Implied Powers .....	94
III. Consequences of Ultra Vires Acts .....	95
IV. Distribution of Competences between International Organisations .....	97
1. Institutional Differentiation within the International Community as a Problem ....	97
2. Coordinating Mechanisms .....	97
3. Further Developments of Competence Theory .....	98

## **§ 7 Responsibility and Liability**

I. Responsibility in International Law, Liability and the Law of International Organisations .....	101
II. Responsibility and Attribution .....	103
1. Action by Organs and Personnel of an Organisation .....	103
2. State Action for International Organisations .....	103
3. Attribution of Private Action .....	105
III. Complementary Responsibility of the Member States .....	106
1. Member States' Responsibility under International Law .....	106
2. Member State Direct Responsibility for Economic Activity .....	107
IV. Perspectives .....	109

## **§ 8 Membership**

I. Becoming a Member .....	111
1. Original Members .....	111
2. Accession .....	112
a) Right to Admission? .....	112
b) Conditions for Admission .....	113
aa) Formal Conditions .....	113
bb) Substantive Conditions .....	114
c) Admission Procedure .....	116
II. Membership Status .....	119
1. Rights and Obligations .....	119
2. Graduated Membership .....	120
3. Associate Membership .....	121
4. Observer Status .....	122
5. Limitation of Membership Rights as a Sanction .....	123
III. Termination of and Succession to Membership .....	124
1. Grounds for Termination .....	124
a) Dissolution of the Organisation .....	125
b) Withdrawal .....	126
c) Expulsion .....	128
d) Extinction .....	128
2. Membership Succession .....	129

## **§ 9 Organs and Decision Making**

I. General Features .....	131
1. Functions and Types of Organs .....	131
2. Levels of Organs (Main Organs and Subsidiary Organs) .....	132
II. Types of Organs .....	135
1. Plenary Organ .....	135

## *Table of Contents*

2. Executive Organs of Limited Membership and Specialised Organs .....	137
3. Permanent Administrative Organs .....	139
a) Secretary-General .....	139
b) Secretariat .....	141
4. Parliamentary Organs .....	142
5. Dispute Settlement Organs .....	145
a) PCIJ and ICJ .....	145
b) Other Mechanisms for the Settlement of International Disputes (notably WTO Dispute Settlement and ITLOS) .....	147
III. Composition of the Organs .....	148
IV. Decision-Making Procedures .....	149
1. Weighted Voting .....	149
a) Equality of Votes ("One State, One Vote") .....	149
b) Weighted Voting on the Basis of Population .....	150
c) Weighted Voting on the Basis of Economic Strength .....	150
2. Required Majorities .....	151
a) Unanimity .....	152
b) Majority Decisions .....	152
c) The Specific Situation of the Veto in the Security Council .....	153
d) Consensus .....	155
V. Separation of Powers and Institutional Balance .....	156

### **§ 10 Finance and Personnel**

I. Finances .....	160
1. The Budget and the Principle of Completeness in Earnings and Expenditures .....	160
2. Income .....	161
3. Expenditure .....	165
4. Budget Competence and Budget Decision Making .....	168
a) Budget Competence .....	168
b) Budget Procedure .....	170
5. Auditing .....	172
II. Personnel .....	172
1. The Political Importance .....	172
2. Statistical Information and Criteria of Selection .....	173
3. Law Governing the Service and Legal Position of International Civil Servants ....	175
4. Efforts for Reform within the UN .....	177

## **Third Part: Substantive Legal Regimes**

### **§ 11 Peace and Security**

I. The System of Collective Security of the United Nations .....	181
1. General Principles .....	181
a) Peaceful Settlement of International Disputes and the Prohibition of the Use of Force .....	182
b) Collective Enforcement Measures and Self-defence .....	183
c) Peacekeeping Forces .....	183
2. Competences within the United Nations .....	184
a) Security Council and General Assembly .....	184
b) The Secretary-General .....	186
c) Peacebuilding Commission .....	187
3. The Legal Structure of Chapter VII UN Charter .....	188
a) Threat to the Peace, Breach of the Peace and Act of Aggression .....	188
b) The Development of the Notion of "Peace" .....	188
aa) Inter-State Force as Starting Point .....	189

bb) Civil Wars .....	189
cc) Massive Human Rights Violations? .....	190
dd) Threats to the Peace by Private Actors (International Terrorism) .....	191
ee) Concrete or Abstract Threats? .....	191
c) The Function of Art. 39 within Chapter VII UN Charter .....	192
d) Provisional Measures under Art. 40 UN Charter .....	193
e) Non-Military Measures under Chapter VII .....	193
f) Military Enforcement Action under Art. 42 UN .....	197
g) Discretion of the Security Council – Limits and Judicial Control .....	198
II. Maintaining Peace and Security through Regional Organisations .....	201
1. The Notion of Regional Organisations .....	202
a) Criteria for the Qualification of an International Organisation as “Regional” ..	202
b) Specific Structural Requirements .....	203
2. Peaceful Settlement of International Disputes by Regional Organisations .....	205
3. Enforcement Action by Regional Organisations .....	206
a) The Notion of “Enforcement Action” in Art. 53 para 1 UN .....	206
b) “Utilisation” by the Security Council on the Basis of Art. 53 para 1 UN .....	208
c) Different Forms of Authorisation .....	210
4. Regional Peacekeeping Forces .....	211
5. Specific Regional Organisations .....	212
a) Organization of American States (OAS) .....	212
b) African Union (AU) .....	213
c) Organization for Security and Cooperation in Europe (OSCE) .....	215
d) North Atlantic Treaty Organization (NATO) .....	217
e) Other Regional Organisations .....	219

## **§ 12 The Institutional Organisation of International Human Rights Protection**

I. Human Rights Protection as Organisational Challenge .....	221
1. Treaty-Based and Non-Treaty/Charter-Based Surveillance Mechanisms .....	222
2. Universal and Regional Mechanisms .....	222
3. The High Commissioner for Human Rights as a Forum for Coordination of the Universal Mechanisms .....	223
II. The Organisation of Universal Human Rights Protection .....	224
1. UN General Assembly and Economic and Social Council .....	224
2. Commission on Human Rights and Human Rights Council .....	225
a) Historical Development and Organisational Issues .....	225
b) Establishment of the Human Rights Council .....	226
c) Major Differences between the Human Rights Commission and the Human Rights Council .....	226
d) Universal Periodic Review Mechanism – UPRM .....	228
e) Special Procedures .....	229
f) Human Rights Council Advisory Committee and Individual Complaint Procedure .....	230
3. Treaty Bodies and Applicable Procedures .....	232
a) Introductory Remarks .....	232
b) State Reports .....	232
c) Inquiries .....	233
d) State-to-State Complaints .....	234
e) Individual Complaints .....	235
f) Prevention .....	236
g) Future Perspectives for Human Rights Protection through Treaty Bodies .....	237
4. Security Council .....	239
5. Evaluation .....	240

III. The Organisation at the Regional Level .....	240
1. Europe .....	240
a) Council of Europe .....	241
aa) European Convention on Human Rights (ECHR) and European Court of Human Rights (ECtHR) .....	241
bb) Human Rights Protection in the Council of Europe outside the ECHR ....	242
b) OSCE .....	244
c) European Union .....	245
d) Accession of the EU to the ECHR .....	247
2. America .....	248
3. Africa .....	249
4. Similarities and Differences .....	250
IV. Independent Human Rights Institutions (Paris Principles) .....	251
V. The Role of International Criminal Law in Human Rights Protection .....	252
VI. Human Rights Protection Against Acts of International Organisations .....	255
1. General Principles .....	255
2. The Issue of Attribution .....	256
3. Bosphorus Test of the ECtHR .....	257
4. Applying the Bosphorus Test to Targeted Sanctions .....	259
5. Targeted UN Sanctions and the Application of EU Human Rights .....	260
6. Alleged Human Rights Violations Caused Directly by Acts of International Organisations (i.e. without National Implementation) .....	261
VII. The Outreach of Human Rights Treaty Bodies beyond their Treaty Functions .....	264

### **§ 13 Economy and Development**

I. The Law of Organisation in Inter- and Transnational Economic Relationships .....	267
1. The World Economic Order and its Standard-Setting and Organisational Tasks ...	267
2. Plurality in Organisation .....	268
3. Universal and Regional Organisations .....	269
II. Universal Economic Organisations .....	270
1. Specialised Agencies of the United Nations .....	270
a) The Bretton Woods Organisations .....	270
aa) IMF .....	270
(1) Creation and Development of the System of Bretton Woods and of the IMF .....	270
(2) Legal Position and Tasks of the IMF .....	271
(3) Institutional Structure .....	272
bb) The World Bank Group .....	273
(1) The World Bank: Tasks and Institutional Structure .....	273
(2) Further Elements of the World Bank Group .....	274
b) International Labour Organisation (ILO) .....	275
aa) Aims and Tasks .....	275
bb) Institutional Structure .....	276
cc) Rule-Making and Implementation .....	276
c) Development Organisations .....	277
2. The World Trade Organisation (WTO) .....	278
a) On the Creation of the WTO .....	278
b) Structure of the WTO-Agreements and their Substantive Rules .....	279
c) Membership .....	280
d) Institutional Structure and Decision-Making .....	280
e) Settlement of Disputes .....	281
f) Criticism and Reform .....	281
3. Forms of Co-operation outside the UN and WTO .....	282
a) The Group of Eight (G8) .....	282
b) Paris Club .....	283
4. The Organisation for Economic Co-operation and Development (OECD) .....	283
a) The Bank for International Settlement (BIS) and the Basel Committee on Banking Supervision .....	284

b) The Organisation of Petroleum Exporting Countries (OPEC) .....	285
III. Regional Economic Integration .....	285
1. EU (EC), EEA and EFTA .....	286
2. NAFTA .....	286
3. MERCOSUR .....	287
4. ASEAN .....	288

## **§ 14 Environment**

I. The Institutional Law of International Environmental Protection .....	291
1. Creation and Development of International Environmental Law and the Law of International Organisations .....	291
2. Regulatory and Organisational Tasks of International Environmental Law .....	293
3. Plurality of Organisations .....	294
4. Rule-Making and Implementation .....	294
II. Universal Environmental Protection Organisations .....	295
1. UNEP .....	295
a) Legal Basis, Membership and Tasks .....	295
b) Organ Structure and Working Methods .....	296
c) Reform .....	297
2. CSD .....	297
3. Special Organisations .....	297
a) Climate Change .....	297
b) Protection of Species and Biodiversity .....	298
c) Protection of the Oceans .....	299
III. Environmental Protection in Other International Organisations .....	299

## **Fourth Part: Outlook**

### **§ 15 Perspectives**

I. International Organisations as an Element of Global Governance .....	303
1. The Idea of Global Governance as Part of the Governance Discussion .....	303
2. The Role of International Organisations in the Process of Global Governance .....	305
II. International Organisations and the Renaissance of International Administrative Law .....	306
1. Terminological Remarks .....	306
2. International Administrative Law as Global Administrative Law – and the Role of International Organisations .....	308
Table of Abbreviated Citations .....	311
Index .....	313