International Organization

2nd Edition

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Chapter 4

International Organizations as Political Systems

How do the constitutional and institutional structures of international organizations affect policy-making? Just as in football the size of the pitch and the goal, as well as the rules of the game, affect the players' tactics, so the composition and competencies of international organizations have a significant influence on policy-making. This is what we mean by the polity dimension. We shall tackle the constitutional structure of international organizations first and then deal with their institutional structure.

The constitutional structure of international organizations

Despite the absence of a central law-making and law-implementing body, international politics is not devoid of legal norms. International politics is governed by principles, norms, and rules which possess a legal quality through the general recognition of the procedures which give rise to them. Even international anarchy itself is based on a legal principle, namely that of the sovereign equality of states, which is part of general international law. This legal principle, together with other general rules of international law such as *pacta sunt servanda* (treaties must be observed), form the nucleus of the constitution of the international community of states. All institutions and procedures which contribute to the continuing development of international law are based on these constitutional principles. Besides the general rules of international law, there are two further primary sources of international law – customary international law and international treaty law.

The international law of treaties is of great importance for the creation of international organizations as subjects of international law. It represents the legally binding basis for the validity of the founding treaties of international organizations (Seidl-Hohenveldern & Loibl 2000: 44–52). In general, international organizations are set up by a treaty between three or more states. Such treaties are frequently negotiated at diplomatic conferences before being signed and then ratified upon approval by the competent organs of each signatory state. For

example, the founding treaty of the UN – the UN Charter – was drawn up and signed in 1945 by representatives of 50 countries who had convened in San Francisco for the UN Conference. The representatives negotiated on the basis of proposals worked out by China, the Soviet Union, the UK and the USA in 1944 at Dumbarton Oaks. However, international organizations can also be established by the decision of an existing international organization if this right was granted in its founding treaty. For example, the UN can create new Subsidiary Organs through resolutions of the General Assembly (Jacobson 1984: 84–6). UNCTAD (1964), UNIDO (1966) and UN Women (2010) are examples of organizations established in this way within the UN system. However, the transformation of UNIDO into a UN Specialized Agency required a diplomatic conference of member states (1979) and ratification of the founding treaty.

Founding treaties normally outline the organization's mission, establish its various organs and determine the allocation of competencies between them. They thus act as a sort of 'constitution'. As for their precision and ambition, they vary considerably. For example, the EU treaties are very detailed and ambitious. Besides general statements about the organization's mission and structure they also contain both policy programmes and clauses authorizing the formulation of further policy programmes. The UN Charter, by contrast, is both less detailed and less ambitious. Although the Charter contains statements about the UN's general mission and its organizational structure, apart from Chapter VII it hardly defines any policy programme which could be implemented without further elaboration. Paradoxically, the UN Charter thus more closely resembles the constitution of a state than the treaties of the EU.

Constitutions of international organizations are subject to formal and informal change. Formal changes can occur either through a procedure prescribed in the constitution itself or through a new (complementary) treaty signed by the member states. Informal changes occur on the basis of customary international law (Seidl-Hohenveldern & Loibl 2000: 217–29).

Articles 108 and 109 of the UN Charter provide for the possibility of both a change of individual clauses and a partial or total revision of the Charter. Amendments to the Charter come into force when they have been adopted by a vote of two-thirds of the member states in the General Assembly and ratified by two-thirds of the member states of the UN, including all the permanent members of the Security Council. Revisions of the Charter can be decided by a General Conference of the UN member states, if accepted and ratified by two-thirds of its members, again including all the permanent member states of the Security Council. With respect to constitutional change, the EU treaties contain somewhat different provisions. In general, a change in the EU

constitution occurs through an intergovernmental conference followed by ratification by all member states. However, in the case of accession of new members or the association of states the approval of the European Commission, the European Parliament (EP) and the Council will suffice.

In the case of the UN, formal constitutional changes have so far only dealt with the size and composition of the main organs – especially the Security Council. The EU, however, has seen many important constitutional changes. First, there are the extension treaties due to the accession of Denmark, Ireland and the UK (1973), Greece (1981), Portugal and Spain (1986), Austria, Finland and Sweden (1995) and Estonia, Cyprus, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (2004), as well as Romania and Bulgaria (2007). Second, there are the treaties dealing with the common organs in 1965 (Council, Parliament, Commission and Court of Justice), the treaty establishing direct elections to the European Parliament (1979), the Single European Act (1986) and the Treaties of Maastricht (1992), Amsterdam (1997), Nice (2001) and Lisbon (2007).

Since formal changes to constitutions of international organizations are difficult to achieve, informal constitutional changes play an important role. The legal source of such informal changes is not the international law of treaties but rather customary international law. The most prominent example of such a constitutional change is the remarkable transformation of the right to veto any substantive decision given to the permanent members of the Security Council. According to Article 27 of the UN Charter, a decision of the Security Council originally required a positive vote of each of its permanent members. The continuing practice of considering abstentions by its permanent members as not constituting a veto of a Security Council resolution led, based on the Namibia Report of the International Court of Justice (ICJ) of 1971, to a constitutional change in the right of veto (Simma et al. 2002).

The institutional structure of international organizations

The institutional structure of international organizations generally provides for the creation of the following organs (Amerasinghe 2005; Jacobson 1984: 86–93; Klabbers 2009; Seidl-Hohenveldern & Loibl 2000: 112–16):

1. a plenary organ representing all state (and, if applicable, non-state) members; for example a general conference, a general assembly or a council of ministers as the organization's highest authority;

2. an executive council or board to manage and supervise day-to-day business, usually consisting of elected state (and, if applicable, non-state) members;
3. an administrative staff led by a secretary-general, a director-general or a commission responsible for policy advice and implementation as well as administrative tasks;
4. a court-like body or a court of binding arbitration in cases of disputes among members, between the administrative body and another organ or a member;
5. a parliamentary assembly of directly elected representatives of the member states' electorate or of delegates from national parliaments that debates, reviews and, in certain cases, approves of the organization's policies;
6. an organ representing civil society organizations and/or other private actors or sub-national, regional or local administrative bodies.

Plenary organs

The plenary organs of intergovernmental organizations are based on the principle of member states' sovereignty as well as being at the same time an institutional expression of their sovereignty. Thus all states have their own representatives, acting according to their governments' instructions. Despite the emergence of inclusive, multipartite organizations in which state and non-state actors hold membership rights, in most plenary organs, such as the General Assembly of the UN or the Council of the EU, it is still only governments that are represented. The plenary organs are frequently at the centre of international organizations' decision-making.

Figure 4.1 The institutional structure of international organizations

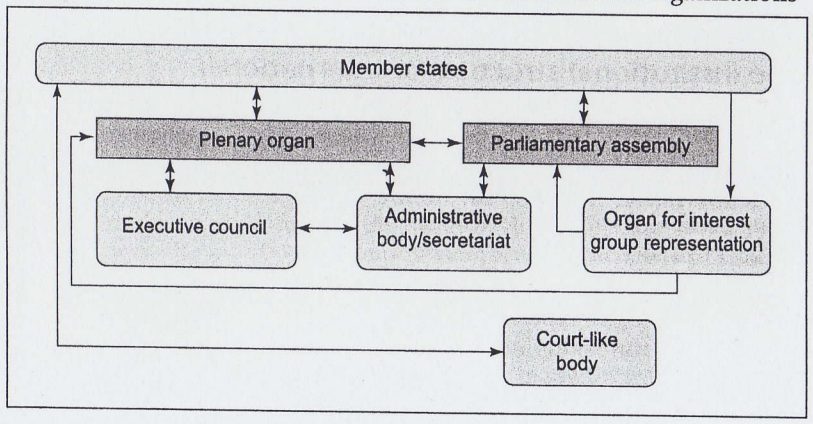
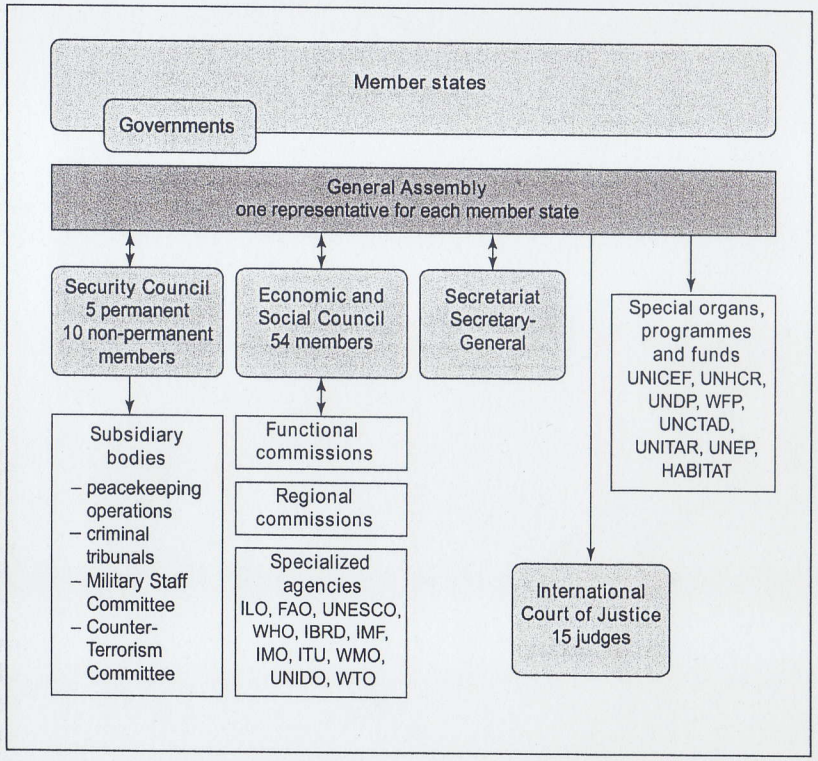
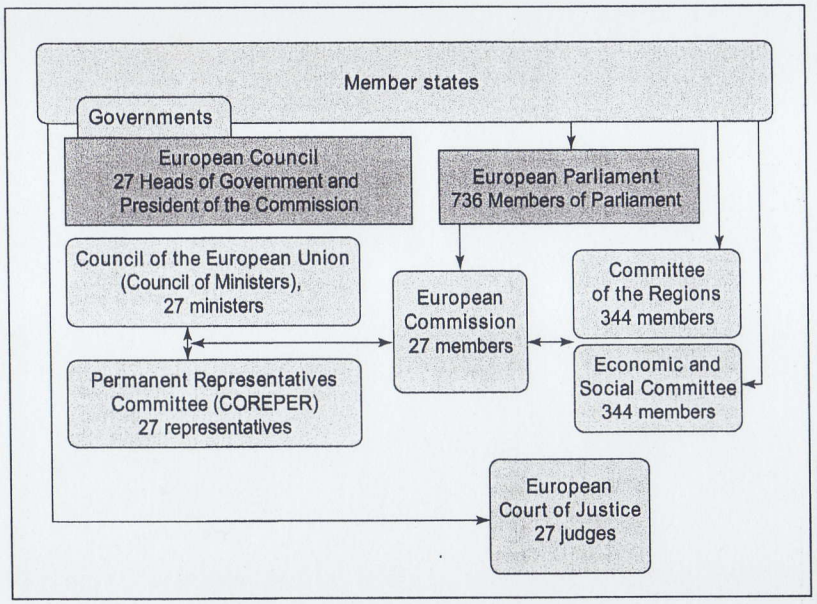


Figure 4.2 The institutional structure of the United Nations (UN)



The policy-making procedures in plenary organs vary considerably. This variation can concern both the number of votes required for reaching a decision and the weighting given to the votes of different members. The number of votes required can be situated on a continuum ranging from the principle of unanimity to that of a simple majority. The closer the procedure in the plenary organ is to the principle of unanimity, the more arduous and time-consuming it is to reach decisions (Lister 1984: 7–11; Tsebelis 2002). In extreme cases, decisions cannot be reached at all. However, decisions reached on the principle of unanimity are easier to implement. This can be illustrated by the EU where, until the Single European Act of 1986, decisions within the Council of the EU had to be taken unanimously. Any member failing to implement a unanimous decision would in effect act against its own vote. Infringing a previously accepted decision can also lead to a loss of credibility and reputation. Therefore compliance with these decisions tends to prevail even if short-term interests may provide incentives for non-compliance.

Figure 4.3 The institutional structure of the European Union (EU)



The effects of decision-making procedures within plenary organs based on the majority principle are reversed: there is a better chance of reaching decisions, but it is less likely that states will comply with these decisions. For powerful states, in particular, it is always an option to disregard a majority decision with which they do not agree. The experience of decision-making by majority in the UN General Assembly underlines this. In order to improve the probability that decisions can be made and implemented, many international organizations adopt the practice of deciding by a qualified majority (say, two-thirds or more). Qualified majority voting has become a special feature of the EU. Introduced with the Single European Act of 1986, it was limited to decisions concerning the common market. With the Treaties of Maastricht, Amsterdam, Nice and Lisbon, however, it was extended to various issue areas such as the environment, education, economic development and job creation (Nugent 2006: 79–128; Schmuck 1998: 34).

Another procedure helping to strike the right balance between the probability of reaching a decision and the likelihood of compliance is a consensus procedure. Thus a resolution is deemed to have been accepted unless one of the members explicitly objects. In the UN General Assembly, for instance, the President may not call for a formal vote but rather ascertains the existence of a general agreement on the proposed resolution. Contrary to the case of majority voting, the consensus procedure gives the minority the option to block decisions that are not acceptable to them. At the same time, however, this procedure allows for an overwhelming majority to make decisions as long as the interests of the minority are not ridden over roughshod (Wolfrum 1995).

The weighting of votes is another way to reconcile smooth decision-making with a high level of compliance. By giving powerful states more voting power than small states, majority voting can be introduced while, at the same time, reducing the risk that powerful states will simply disregard decisions made by a majority of smaller states. The weighting of votes can be based on the population of member states or their economic power. The former holds true for the Council of the EU and the latter for the Board of Governors of the International Monetary Fund (IMF) and the World Bank. However, weighting of votes may raise serious issues of legitimacy undermining weaker states' support to the organization and putting a strain on intraorganizational relationships.

The plenary organ of the UN is the General Assembly, which convenes at least once a year for a regular session from September to December. All member states are represented, with one vote each. The General Assembly examines and approves the organization's budget, determines the members' contributions and elects, in conjunction with the Security Council, the UN Secretary-General and the judges of the International Court of Justice (ICJ). Furthermore, it can voice an opinion on practically all problems of international politics in the form of legally non-binding resolutions. These decisions are normally reached by a simple majority of the representatives present and voting. For important questions the UN Charter requires a two-thirds majority for decisions in the General Assembly (Article 18), but in practice, resolutions are mostly voted upon by a majority of over two-thirds. Often there is even consensus or unanimity (Peterson 2005, 2007; Wolfrum 1995).

The plenary organ of the EU is the Council of the EU (sometimes also referred to as the Council of Ministers), consisting of member states' ministers – either the foreign ministers or other ministers responsible for the issue area under consideration. On so-called 'first-pillar' issues such as economic and monetary affairs, trade, agriculture, the environment and culture, it is the central decision-making organ of the Union. At this point we should note that the Maastricht Treaty (1992) organized the EU around three 'pillars': the first or so-called 'community' pillar dealing with economic, monetary and environmental affairs; the second pillar dedicated to the EU's common foreign and security policy and the third pillar dedicated to police and judicial cooperation. While the Treaty of Lisbon (2007) has formally abolished

the pillar structure of the EU, we still use the metaphor of 'pillars' in this book. We believe it is still helpful for analytical purposes because there continue to be considerable differences in the EU's institutional provisions for policy-making in these different issue areas.

The 1957 Treaty of Rome had already provided for decision-making by qualified majority for what came to be known as first-pillar issues. However, France blocked the transition from unanimity voting to majority voting within the Council through its 'empty-chair policy' (1965–66). In the Luxembourg Compromise of 1966 member states agreed on their right to veto decisions pertaining to vital national interests. Thus they introduced the principle of unanimity for decisions which one of the member states considered to affect its vital national interests. It was only through the decisions made at the EC summit of 1974 and the Single European Act of 1986 that the principle of qualified majority rule was reintroduced, at least in some issue areas. This procedure was then extended to some 40 per cent of the issue areas under the Union's jurisdiction with the Treaties of Maastricht in 1992 and Amsterdam in 1997 (Maurer 1998: 48–54, 60–2; Nugent 2006: 87–103). This trend towards qualified majority decisions continued with the Treaty of Nice in 2001 and the Treaty of Lisbon in 2007.

With the coming into force of the Treaty of Lisbon in December 2009, the default voting method for the Council is now qualified majority voting, except where the treaties require a different procedure (e.g. a unanimous vote). The rules for qualified majority voting set in the Treaty of Nice remain in place until 2014. Accordingly, a qualified majority in Council decisions are deemed to have been reached when the majority of member states is in favour, approximately 74 per cent of voting weights are in favour, and, after examination requested by a member state, it is established that the qualified majority corresponds to at least 62 per cent of the total EU population. From 2014 on, the calculation of qualified majority will be based on the double majority of member states and the Union's population. More precisely, this double majority will be achieved when a decision is taken by 55 per cent of the member states representing at least 65 per cent of the Union's population. Moreover, from 2014 onwards a new version of the 1994 'Ioannina Compromise' will take effect, which allows small minorities of EU member states to voice their opposition to a decision of the Council and to call for its re-examination. In practice, however, many decisions in the Council are reached unanimously or by consensus (Kent 2008; T. Müller 2000: 316–21; Nugent 2006: 211–15).

The Council is not only the plenary organ of the EU's first pillar but also of its second and third pillars. For the Common Foreign and Security Policy (CFSP) – the 'second pillar' of the Union – unanimous decision-making was required before the Lisbon Treaty. Furthermore, the position of the Council (of Ministers) as the most important

decision-making organ has been weakened by the fact that the heads of state and government of the member states which constitute the European Council often decide to negotiate and deliberate about common foreign policy issues themselves. Before the coming into force of the Treaty of Amsterdam in May 1999 the principle of unanimity was required for all decisions in either the Council of the European Union (Council of Ministers) or the European Council. The treaty of Amsterdam allowed for 'constructive abstention' of a certain number of member states (the total number of their weighted votes must not exceed one-third), thus making it possible not to join the common line without, at the same time, preventing the adoption of such decisions by the majority. The Treaty of Lisbon has considerably extended the circumstances under which the Council can decide by qualified majority even in the second pillar (see Chapter 7). The 'third pillar' is cooperation between member states on matters of police and judicial affairs. With the Treaty of Lisbon, there has been a change from unanimous decisions to qualified majority voting in this pillar as well (Niemeier 2010).

When reviewing plenary organs we also need to mention the Board of Governors of the IMF and the World Bank. Their decisions are based upon weighted voting and are taken with a qualified majority. Article XII, paragraph 5a of the IMF Articles of Agreement gives each member state an equal basic number of 250 votes. This is increased by one vote for each quota of 100,000 Special Drawing Rights (SDRs) in the case of the IMF and an equal amount of share capital in the case of the World Bank (Tetzlaff 1996: 80–2). This weighted voting right gives the countries with the largest number of shares, that is, the Western industrialized nations, and especially the USA, a decisive influence in the decision-making organs of the two organizations. In the case of decisions such as the replenishment of capital and change of quotas, which require a qualified majority vote (approximately 85 per cent), the USA and the member states of the EU have de facto veto rights.

Executive councils

Executive councils of international organizations meet more frequently than the plenary organs, indeed, some meet in permanent session. Their main task is to supervise the administrative body of the organization and to take on the implementation of policy programmes decided by the plenary organ. Executive councils are always smaller than plenary organs. In executive-multilateral organizations, executive councils are composed of member states' representatives, often elected by the plenary organ of the organization. In inclusive, multipartite organizations such as the Global Fund or EITI, the executive council (or rather the 'board') is formed by representatives of state and non-state (civil society and/or business) constituencies. Moreover, some

executive councils have a mixture of permanent and non-permanent members. Thus the UN Security Council has five permanent members with a right of veto (China, France, Russia, the UK and the USA), and ten non-permanent members without a veto right. In the ILO Governing Body the ten chief industrial countries are permanently represented. Where members are elected to these bodies there is repeated evidence that the larger, politically and economically important (donor) countries are chosen, as is the case of the Economic and Social Council of the United Nations (ECOSOC) or the Executive Board of the UN Development Programme. In addition, the allocation of seats on governing bodies or executive councils often has to satisfy principles of fair regional representation. For instance, this holds for the election of the members of the Security Council and of ECOSOC.

The division of competencies between the plenary organ and the executive council is of major importance for the decision-making process of international organizations. Giving the executive council important competencies has similar effects to introducing majority voting in a plenary organ. While it is easier to reach decisions in the executive council because the number of participants is limited, precisely because of such limited numbers compliance with these decisions by all members of the organization is more difficult to achieve. The effects of keeping the major decision-making competencies within the plenary organ are the reverse: decisions may be easier to implement, but reaching them is often much more arduous. Hence the question of a sound distribution of competencies between the plenary organ and the executive council remains with us, with the result often being a compromise between the probability of reaching decisions and the likelihood of their effective implementation.

The system of governing bodies and executive councils in the UN system is special insofar as it follows a functional differentiation. Among the UN principal organs, the Security Council is responsible for all questions pertaining to international peace and security, while ECOSOC deals with economic, social and cultural problems of international politics. The competencies of ECOSOC, which can make only legally non-binding decisions by simple majority, are rather modest. It functions mainly as a coordinating body for different UN Special Organs and Specialized Agencies. The 54 members, 18 of whom are elected annually by the General Assembly for a three-year period, meet two to three times a year (Rosenthal 2007; Taylor 1993).

The UN Security Council, by contrast, has far-reaching competencies. It can, according to Chapter VII of the UN Charter, pass legally binding resolutions, including resolutions about military and non-military sanctions. Such resolutions are binding not only on UN member states but also on non-members and even on individuals. Thus, groups such as the former Taliban regime in Afghanistan or rebel organizations like UNITA in Angola can be the targets of legally binding Security Council resolutions, as can be individuals such as state leaders (Slobodan Milošević) or leaders of terrorist groups (Osama Bin Laden) who have been violating UN Charter principles. Of the Security Council's ten non-permanent members, five are elected each year by the General Assembly for a two-year term. The election is bound by the following geographical distribution: three states from Africa, two from Asia, two from Latin America and the Caribbean, two from Western Europe and Others and one from Eastern Europe. Decision-making in the Security Council depends partly on the issue under consideration. While decisions on procedural matters require a majority of nine of the total of 15 permanent and non-permanent members (Article 27, paragraph 2 of the Charter), decisions on all other matters require the same majority but can, in addition, be vetoed by any one of the five permanent members (Article 27, paragraph 3). Since, in practice, most matters the Security Council has to deal with are not considered 'procedural' but rather 'other matters', this extends the right of veto to each of the permanent members on nearly all questions (Bailey & Daws 1998: 250–2; Malone 2007).

Due to their limited membership, most regional organizations, in contrast to global organizations, can do without executive councils. For example, the Council of Europe does not have an executive council beside its plenary organ, the Committee of Ministers. However, the EU is an exception. The range of its tasks could not be managed by the Council of Ministers alone. Thus the Committee of Permanent Representatives (COREPER) assumes the responsibilities of an executive council: at least with respect to economic policies (the 'first pillar'), it functions as the coordinator between the Commission and the Council and deals with day-to-day business. It meets at least once a week in order to coordinate relevant policies and to prepare the agenda for Council meetings. However, with respect to the CFSP (the former 'second pillar'), COREPER has to share competencies with the Political and Security Committee. This executive council, composed of the political directors of the foreign ministries, meets twice a week to establish the guidelines within which COREPER acts as coordinator for CFSP matters (Regelsberger 2004: 67–71).

Administrative staff

An administration is a necessary part of the institutional structure of any international organization – no matter whether it is a rather intergovernmental or a rather supranational organization, no matter whether it is a programme or an operational organization and no matter whether it is an executive-multilateral or inclusive, multipartite organization. Since the administrative staff, often called the secretariat,

bureau or commission, gives expression to the supranational element in international organizations, it is frequently mistaken for the international organization as a whole. Unlike the members of intergovernmental organs – the plenary organs or executive councils – the members of the administrative staff are not representatives of member states' governments and are therefore independent of instructions from the governments of their countries of origin. Initially, the administrative staff only provided technical services in the preparation for meetings of the plenary organs or executive councils. However, nowadays, with more and more organizations becoming more supranational, it frequently exerts an independent influence on policy-making in international organizations (Mathiason 2010).

The UN Secretariat's members are chosen on the basis of ability and suitability as well as political-geographical distribution. UN personnel constitute an international civil service and are not allowed to follow instructions from the governments of their countries of origin or other member states. The Secretary-General presides over the Secretariat and is elected by the General Assembly for a period of five years on the recommendation of the Security Council (Beigbeder 2000; Rivlin & Gordenker 1993). The Secretary-General can exert influence on decision-making in the General Assembly and the Security Council by preparing reports. For example, the Secretary-General's reports on the humanitarian situation in Bosnia in the early 1990s and in Sudan in the early 2000s had a decisive effect on the decisions made in the Security Council (Chesterman 2007).

The administrative staff of the EU, called the European Commission, has extraordinarily wide competencies. Within the EU, and more precisely its first pillar, the European Commission is the only body that can submit draft proposals for legislative acts to the Council. The Council is thus dependent on proposals from the Commission for its law-making activities. Therefore, the Commission is the engine of law-making in the EU and has, independently of the Council, far-reaching law-making competencies. This holds especially true for the areas of the agricultural policy, the internal market, and the Regional and Structural Funds. Besides its involvement in law-making, the Commission also monitors the application of European laws in member states and can, in case of their non-compliance, file lawsuits before the European Court of Justice (ECJ) (Jönsson & Tallberg 1998; Wallace 2010: 70–5). The Treaty of Lisbon (2007) has created the post of a High Representative of the Union for Foreign Affairs and Security Policy which merges the former positions of the High Representative of the Common Foreign and Security Policy and the Commissioner for External Relations. The High Representative presides over the Foreign Affairs Council (of ministers) and is one of the vice-presidents of the Commission. The post is backed up by a considerable diplomatic

corps, the European External Action Service. This reform strengthens the role of administrative staff in the EU's foreign policy, which has traditionally been the domain of intergovernmental policy-making.

According to the Treaty of Lisbon, the (currently) 27 members of the Commission are proposed for a four-year period by the member states in mutual consultation and elected (no longer merely 'approved') by the European Parliament. Every member state is represented by one of the 27 commissioners. The Treaty of Lisbon mandates a reduction of the number of commissioners to two-thirds of the member states from 2014. Thus, membership in the Commission would rotate among EU member states. However, after the Treaty of Lisbon was rejected in (the first run of) a referendum in Ireland (2008), the European Council amended the number of Commissioners upwards. In effect, each member state will continue to be represented by one commissioner. However, it is important to note that members of the Commission are independent of the governments of their state of origin.

The head of the Commission is the President. The Commission's staff is organized into departments known as 'Directorates-General' (DGs) and 'services'. Each DG operates in a specific policy-area and is headed by a Director-General who is answerable to one of the commissioners. In the 1960s and 1970s it was mostly top civil servants from member states who were nominated as commissioners; since the 1980s more and more senior politicians from member states have been nominated. The independence of the Commission is strengthened by the fact that it cannot be dismissed by the Council or by member states. That right rests with the European Parliament, which can pass a motion of no-confidence with a two-thirds majority (Diederichs 2000: 144–53).

Courts of justice

Some international organizations have courts of justice or court-like bodies as part of their institutional structure. Their task is to decide on disputes between the members of the organization, between the organization and its members, or, in special circumstances, between organs of the organization. In some international organizations these bodies function as supranational courts in which independent judges exercise compulsory jurisdiction. The Appellate Body of the WTO is a case in point. In other organizations, however, these bodies can hardly be regarded as being supranational; they cannot exercise compulsory jurisdiction and the judges are politically dependent state representatives. Usually these bodies are meant to support intergovernmental efforts at dispute settlement through political compromise rather than to adjudicate disputes supranationally. The panels in the old GATT dispute-settlement systems are a good example of this type of dispute-settlement body (Keohane et al. 2000; Zangl 2006, 2008; Zangl & Zürn 2004).

The International Court of Justice (ICJ) in The Hague is the relevant body for the United Nations and the European Court of Justice (ECJ) in Luxembourg settles disputes for the EU. While the 15 judges of the ICJ are elected separately by the UN Security Council and the General Assembly, with an absolute majority required in both organs, the 27 judges and eight advocates-general of the ECJ are appointed unanimously by the EU member states – in practice, each member state proposes one judge of its nationality who is then accepted by the other 26 member states. The political independence of the judges is guaranteed in both courts. However, the ICJ's capacity to decide in cases of a legal dispute between states is rather limited, because the court does not have compulsory jurisdiction. Thus, before the court can deal with a dispute the disputant states must accept the court's authority to decide. The ECJ, by contrast, can exercise compulsory jurisdiction. The states submit to its jurisdiction as a result of their membership of the EU. Hence, no member state that has been charged with violating its commitments under European law can prevent the court from giving a ruling. Through its binding rulings the ECJ asserts the supremacy of European law over national law and implements it in conjunction with the courts of the member states. The ECJ thus has competencies that are comparable to those of national administrative and constitutional courts (Alter 2001; Panke 2010).

Parliamentary assemblies

Although most intergovernmental organizations like – most prominently – the UN do not have parliamentary assemblies, some organizations, such as the EU, the Council of Europe and the OSCE, do have them. Their task is to provide legitimacy for the intergovernmental organization's decision-making process. However, the competencies of, as well as the representation in, these assemblies vary considerably. Since 1979 the members of the European Parliament have been elected directly; the members of the parliamentary assemblies of the Council of Europe and the OSCE are delegated by member states' national parliaments. The EP has generally accrued major rights (Rittberger 2005), but the parliamentary assemblies of the Council of Europe and the OSCE play only a minor role.

Only since the 1990s has the EP become a supranational institution. Until then its law-making authority hardly went beyond a consultative role. The members of the EP could submit their opinions but the Council, the Union's main law-making organ, was free to ignore them. With the cooperation procedure introduced by the European Single Act of 1987, these opinions had to be taken seriously. The Parliament's opinions have influenced the legislative process in the Council to the extent that in a second reading the Council could only ignore them by rejecting them unanimously. However, the EP has possessed veto power only since the introduction of the co-decision procedure in the Treaty of Maastricht of 1992. If the Council and the Parliament fail to reach agreement even after the second reading a joint Conciliation Committee is set up. If this committee also fails to reach a consensus the proposed legislation is deemed not to have been adopted. Thus the EP has become the second legislative organ beside the Council. This role was affirmed by the Treaty of Amsterdam of 1997 and the Treaty of Nice of 2001. These treaties allowed the EP to exert influence through the co-decision procedure on about 70 per cent of all legal acts of the Council (Maurer 1998: 68, 2000; Rittberger 2005; Young 2010a). In the Treaty of Lisbon of 2007 the 'co-decision procedure' (renamed 'ordinary legislative procedure') has been extended to further fields including immigration, penal judicial cooperation, police cooperation and some aspects of trade policy and agriculture. As a result, the EP now has a role to play in almost all EU lawmaking.

Representation of non-governmental actors

So far, we have mainly focused on the institutional structure of international organizations of an (open) executive-multilateral type. This seems justified since most, and the most relevant, international organizations such as the UN, the WTO or the EU are still open executive organizations rather than inclusive, multipartite organizations. However, as we have stressed earlier, representation of non-governmental actors in international organizations has increased. Not only have inclusive, multipartite organizations such as the Global Fund or EITI been created in which state and non-state actors are members of the plenary organ and/or the executive council (usually called 'board'), endowed with varying, but substantial participatory rights in the decision-making process. Most international organizations have tried to increase their legitimacy by opening up for a more or less formalized participation of non-state actors. For that purpose, they allow for non-governmental actors' consultative status and have created organs and procedures for the representation of civil-society groups, business actors, or regional and local administrative bodies. However, the opportunities that these organs and procedures offer to non-state actors in terms of effective participation in decision-making vary considerably (Aviel 2010; Steffek 2008).

Within the UN, ECOSOC is an open intergovernmental body that provides formal access for NGOs. According to Article 71 of the UN Charter and ECOSOC resolutions 1296 (1968) and 1996/13 (1996), NGOs can be granted consultative status (Alger 2002; Chinkin 2000). The Committee on Non-Governmental Organizations of ECOSOC examines NGOs' applications. Currently, more than 3200 NGOs such

as Amnesty International, Greenpeace, and Transparency International enjoy consultative status in ECOSOC. They are allowed to make oral or written statements in ECOSOC sessions and to submit proposals for the agenda of ECOSOC sessions and its subsidiary organs (Schulze 2002). Besides participating in ECOSOC meetings, NGOs can also take part in global conferences convened by the UN. This enables the UN to take the interests articulated by non-governmental actors into consideration. In the area of protection of the environment and of human rights, NGOs have become remarkably influential participants in global conferences held under the auspices of the UN (Brühl 2003; Steffek 2008). After registration by the WTO Secretariat NGOs 'concerned with matters related to those of the WTO' (Article V, WTO Founding Treaty) can also attend and speak in plenary sessions of the WTO Ministerial Conference.

Within the political system of the EU, the Economic and Social Committee (ESC) is the main organ in which NGOs can formally present their concerns in hearings before the Commission, Council and Parliament. In addition, the Committee of the Regions established in 1993 by the Treaty of Maastricht gives regional and local authorities some access to decision-making in the EU. Its 344 members aim to aggregate regional and local concerns at the European level and to channel these into EU decision-making. The committee must be consulted by the Commission, the Council and the Parliament in areas such as education, employment and the environment. However, so far it has largely been unable to fulfil its own ambition of being an effective link between European citizens and the EU (Keating 2008; Mittag 2000).

Conclusion

In sum, the policy-making of international organizations is affected by their constitutional and institutional structures. International organizations are normally established by founding treaties, which are based on the international law of treaties. These founding treaties or 'constitutions' shape policy-making by outlining the organization's mission, establishing its organs and determining the allocation of competencies between them. Furthermore, we observed that the constitutional structure of international organizations is not fixed but subject to formal and informal change. Focusing on institutional structure, we examined the typical organs of international organizations and how they shape the process of policy-making.

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Chapter 6

Decision-making in International Organizations: the Conversion Process

What goes in is one thing, what comes out is another. Between the inputs to international organizations and the outputs they produce lies a vital conversion process that may belie or fulfil actors' expectations. In this chapter, we take a systematic look at how inputs are transformed into outputs in international organizations. For this purpose, we distinguish five models of decision-making in international organizations, none of which can account adequately for all types of decision-making. Different models of decision-making apply to different types of decisions: *how* these decisions are typically reached is shaped by the kinds of decisions that are taken. We first introduce the five models of decision-making and then show how they are systematically linked to different types of decisions.

The five models are (Allison 1975; Allison & Zelikow 1999; Barnett & Finnemore 2004; Wilson & DiIulio 1997):

1. intergovernmental negotiations;
2. majority voting;
3. centralized rational choice;
4. standard operating procedures;
5. bureaucratic politics.

Decision-making models

Intergovernmental negotiations

The intergovernmental-negotiations model reflects the idea that decisions within political organizations are generally reached through negotiations between the most powerful actors representing divergent interests within these organizations (Wilson & DiIulio 1997). Hence, decisions require a compromise, an agreement on the lowest common denominator of all the interested parties or a broad package deal.

From this point of view, decisions at the state level, although formally taken by state organs such as the parliament or the government,

are reached through negotiations among the most powerful interest groups within the state. State organs appear mainly as mediators and brokers that are acceptable to all the interested actors. Government and parliament may influence the negotiations without, however, dominating them. If we apply this model to international organizations it is the states – especially powerful states – and their representatives which control decision-making (Steinberg 2002; Stone 2008). The administrative staff appear as mediators or brokers between the differing, possibly competing, member states' interests. No decision-making authority is delegated to the international organization's bureaucracy; policy-making remains entirely member-driven. An important drawback of intergovernmental decision-making is that negotiations which require consensus from all members for a decision to be taken can easily stall. The decisions that are taken, however, will often reflect merely the lowest common denominator of the member states' diverse interests. In terms of problem-solving effectiveness such decisions are hardly ever optimal.

For the EU this model accounts adequately for the 'big' decisions laid down in the Treaties of Maastricht, Amsterdam, Nice and Lisbon (Finke 2009; Moravcsik 1998). As for the UN, the decisions concerning the Framework Convention on Climate Change and the Convention on Biological Diversity taken at the UN Conference on Environment and Development in Rio de Janeiro in 1992 and the follow-on agreements, the Kyoto Protocol of 1997 and the Cartagena Protocol of 2000, can also be grasped by this model of intergovernmental negotiations.

The model of intergovernmental negotiations needs to be expanded beyond member states in the case of inclusive, multipartite organizations such as the Global Fund and the Extractive Industries Transparency Initiative (EITI), in which non-state actors are members whose consent is effectively needed for decisions of the Board to be taken. These cases of public–private inter-member (rather than intergovernmental) negotiations are relatively rare. However, it is important to keep in mind that many intergovernmental negotiations are heavily informed, and influenced, by the values, interests and knowledge of non-state actors who dispose of formal and/or informal avenues of participation in member states' negotiating and decision-making processes (Steffek 2008; Tallberg 2010). Non-governmental actors' inclusion in, and influence on, intergovernmental negotiations on UN environmental agreements are a case in point (Brühl 2003).

Majority voting

As in intergovernmental negotiations, decision-making by majority vote emphasizes the interests of actors within the organization that are affected by the decisions. However, unlike the former it does not focus on negotiations between interested actors seeking a compromise, devising a broad package-deal or acquiescing to a lowest common denominator outcome; rather, it centres on the search for a majority among the actors concerned (Wilson & DiIulio 1997). Decision-making is thus characterized by attempts to form majorities through coalition-building among the relevant actors within the organization. Accordingly, political organizations' decisions do not have to reflect the interests of all the powerful actors involved but rather the interests of a majority of these actors.

In this model decision-making at the state level, and in particular in democracies, is largely influenced by powerful interest groups. State organs, such as the parliament and the government, do not simply mediate or broker the interests of these groups, but seek to arrive at a majority among the most powerful interest groups affected by the decision at hand. Hence parliament and government are part of the process in which majorities are created to support certain decisions.

By the same token, decision-making in an international organization may reflect the interests of a majority of its member states (and non-state members, if applicable), which can be partially shaped by the administrative staff of the organization itself. Unlike intergovernmental bargaining, decision-making by majority vote does not require a consensus of all member states. This mode of decision-making thus moves beyond the traditional principle of consensus in international law towards supra-state rather than interstate governance (Zangl & Zürn 2003: 161).

In this model one of the main tasks of the administrative staff is to elaborate draft decisions acceptable at least to a majority of the member states while at the same time being tolerable for the minority. This may involve the delegation of some agenda-setting and/or policy initiative competencies to the administrative staff; nonetheless, final decision-making remains with the majority of the member states. Thus, international organizations appear as 'facilitators' and 'executors' of shifting coalitions of member states. Nonetheless, it should not be overlooked that the existence of shifting (and competing) coalitions of member states provides opportunities to international bureaucracies to informally increase their autonomy and their competencies. They may do so by manipulating competing coalitions and playing them out against each other. Effective oversight of bureaucracies becomes more difficult to organize under these circumstances (Copelovitch 2010a; Nielson & Tierney 2003).

Since they can make many decisions by either qualified or simple majority, this model applies to the UN General Assembly as well as to the Council of the EU. In both organizations it is often the Secretariat or the Commission, respectively, that engineers the majority necessary for a decision (Kennedy 2007; Nugent 2001).

Centralized rational choice

In the centralized-rational-choice model of decision-making, political organizations arrive at decisions by calculating, in the light of the interests of the whole organization, the costs and benefits of all feasible options before selecting the one which best serves those interests (Allison & Zelikow 1999: 13–75; Downs 1957). Thus, decisions do not merely reflect the interests of the most powerful actors within the organization or those of the majority of these actors, but the interest of the overall organization itself. Hence, decision-making in states does not appear to be driven by powerful interest groups between which state organs such as parliament or government have to either mediate, broker or form a majority. The central decision-making organs of the state calculate the costs and benefits resulting from different alternatives in order to opt for the decision which, in the light of these cost–benefit calculations, is in the best interest of the state.

Applied to international organizations, this model holds that decision-making bodies of international organizations have to be conceived as supranational, i.e. relatively autonomous from the interests of the organization's member states, even their most powerful ones. Otherwise they can hardly arrive at decisions that are collectively rational from the point of view of the overall organization. In other words, substantial amounts of decision-making authority are pooled in or rather delegated to the international organization's bureaucracy. Different types of decisions require different degrees of autonomy. The less credible the policy commitments of member states are, the higher the independence of the international organization's organs needs to be to ensure outcomes that are pareto-optimal over a longer time-frame (Alter 2008; Majone 2001).

While presumably most decisions of international organizations are (rhetorically) defended by decision-makers as reflecting the best interest of the overall organization, only some decisions of international organizations can in fact be explained by the centralized-rational-choice model, such as the decisions of the European Central Bank to increase or decrease interest rates in the eurozone. The European Central Bank (ECB) is largely autonomous from EU member states. The Bank's central decision-making body, the Governing Council, calculates the costs and benefits to the European economies that are likely to result from various interest-rate levels. It then selects the interest rate which it believes is in the best interest of the European economies (Hix 2005: 329–34).

Standard operating procedures

This model underlines the importance of decision-making routines and bureaucratic blueprints in political organizations. It emphasizes the importance of standard operating procedures and entrenched bureaucratic cultures in administration, which to a very large extent predetermine the decisions within organizations. Decisions are therefore not so much the result of the cost–benefit calculations of rational actors but rather the product of standardized procedures and institutionalized properties of bureaucracies that are activated in recurring decision-making situations in a uniform manner (Allison & Zelikow 1999: 143–96; Barnett & Finnemore 1999, 2004).

In states this model postulates that the 'decisions' of parliaments and governments appear often only as ex-post legitimizations of the 'real' decisions that have already been taken within the standard operating procedures of the bureaucratic apparatus. Applied to international organizations, this would mean that the 'real decisions' (especially but not exclusively in day-to-day politics) are not taken by the member states but by the administrative staff of the international organization – either on their own or in conjunction with member states' bureaucrats in so-called 'transgovernmental networks' (Slaughter 2004; also see the bureaucratic politics model below). The international organization's bureaucracy enjoys broad authority and autonomy in policy-making. Theorists of bureaucratic culture expect that bureaucracies will make use of states' reliance on their standard operating procedures to enlarge their mandate (mission creep) and increase their autonomy (Barnett & Finnemore 2004; Copelovitch 2010a). Bureaucratic culture and standard operating procedures are very resilient to external demands and sticky. Member states will have a hard time controlling, reining in and reforming the international organization's bureaucracy (Weaver 2008). In this respect, the standard-operating-procedures model differs from rationalist conceptions of incentives-based steering of bureaucracies. The stickiness of standard operating procedures and bureaucratic culture which do not easily adapt to changing circumstances and challenges may also turn into a source of organizational dysfunctionalities and resilience to (necessary) reform. Routinization and functional specialization of bureaucracies, which are inherent features of standard operating procedures, may lead to an insulation of bureaucracies from feedback concerning their performance, bureaucratic universalism that ignores local differences, and even a situation in which 'means (rules and procedures) become so embedded and powerful that they determine ends', that is, organizational goals (Barnett & Finnemore 2004: 39–40). Thus, standard operating procedures are not necessarily efficient modes of decision-making.

Standard operating procedures are usually involved whenever bureaucrats in international organizations process and assess states' (or sub-state beneficiaries') applications for funding – through loans or grants – of specific projects, especially in the areas of development and

research. In such recurring situations, bureaucrats do not only define formal criteria and procedures for applications and specify substantive ones. They also routinely check whether incoming applications for funding meet the predefined criteria and procedures. This is quite evident in the operational management of EU Regional and Structural Funds, EU research grants but also World Bank and International Monetary Fund (IMF) loans (see Barnett & Finnemore; Marks 1992, 1993; Weaver 2008).

Bureaucratic politics

The bureaucratic-politics model likewise emphasizes the importance of the bureaucratic apparatus in the decision-making process of political organizations (Allison & Zelikow 1999: 255–324). However, unlike the standard-operating-procedures model which conceives of bureaucracies as monolithic actors with a common bureaucratic culture and set of interests, the bureaucratic-politics model points to the fact that different branches within the administration of political organizations might favour different decisions. Allison and Zelikow (1999: 307) have highlighted the importance of intra-bureaucratic divisions with the famous dictum: 'Where you stand depends on where you sit.' Organizational decisions are the result of negotiations and power struggles between different branches within the bureaucratic apparatus of organizations. Decisions reflect either the victory of one branch, a compromise between all the relevant branches or the lowest common denominator of all the branches involved in the process.

Within states decisions appear to be the result of the competition between different ministries or ministerial departments, each trying to impose their own positions. When it comes, for instance, to decisions about arms-control agreements foreign ministries often have a different position from defence ministries. According to this model the final decision about such an agreement must be seen as a reflection of the competition between the two.

Once again, the model can be applied to international organizations' decision-making processes (Chwieroth 2008a, 2008b; Hanrieder 2010). From this view, different subunits of the international organization's administrative staff may well share some identification with common policy-goals for the overall international organization. But at the same time, intra-bureaucratic divisions, differences of interests due to different positions in the organization and competition between sub-units (e.g. for resources) may compromise considerations of the collective good of the organization. Organizational sub-units are thus engaged in a constant process of intra-bureaucratic bargaining. This may result in the victory of one intraorganizational faction, more or less balanced compromises but also organizational deadlock and self-

undermining organizational behaviour (Hanrieder 2010). Thus, in contrast to the centralized-rational-choice model the bureaucratic-politics model points to the prevalence of persistent bureaucratic in-fighting as an important source of international organizations' inefficiencies and outright pathologies.

The bureaucratic politics of international organizations becomes even more complicated when we take into account the multiple and increasing connections of administrative staff of international organizations and member states' bureaucrats in transgovernmental networks (Slaughter 2004). Transgovernmental networks that permeate organizational boundaries are a vital component of contemporary international organizations. Thus, the model holds that much of today's global governance is not the product of intergovernmental bargaining between heads of states and ministers but rather the outcome of negotiations and coalition-building between and among bureaucratic actors inside and outside international organizations.

The decision-making model of bureaucratic politics can be exemplified, for instance, by the decisions necessary to implement the internal-market programme of the EU. These decisions are taken in a multilevel negotiating process between the supranational EU bureaucracies and the national state bureaucracies (Peters 1992; Wallace 2010; Young 2010a). In the UN system decisions with a bureaucratic-politics flavour can be found in the procedure for replenishment of resources in the World Bank (IBRD) and IMF. The decisions result from negotiating processes between both supranational and national administrations on the one hand and different branches of these administrations on the other.

Programme decisions and operational decisions

Each of the five models above can be claimed to hold true for different decisions in different organizations. Such a conclusion is hardly satisfactory as long as we cannot make statements about the relationship between the type of decision to be taken and the model according to which decisions are made in international organizations. In order to arrive at such statements we need to differentiate between two types of decisions: programme decisions and operational decisions. Programme decisions are decisions about a set of norms and rules aimed at directing the behaviour of actors. The programme decisions of international organizations mostly set normative standards for the behaviour of their member states (sometimes also of non-state members or even non-members) and are comparable to law-making at the state level. Operational decisions, by contrast, relate to the implementation of the norms and rules of existing programmes. In international organizations