

About the book

Membership is a core element of all institutional frameworks of international organizations. In that context, the book is of valuable for anyone, including scholars, students and practitioners, interested in international organizations and the law governing them.

Traditional concepts of international organization are largely based on the state-centric concepts developed after the Peace of Westphalia of 1648. These concepts are predicated on the distinction between the public and private sphere and the corresponding distinction between governmental and nongovernmental organizations, the traditional paradigm of an international organization with a treaty foundation, restrictive concepts of “subject of international law” and “international legal personality”, and the mantra that there cannot be an international organization without members.

This book proposes that the above mantras need to be rethought and revised. Contrary to conventional wisdom, international organizations do not need to have members as the parties to the constituent agreement (if there is such an agreement) do not need to become members of the new international organization that will be established; in addition, there are international organizations which do not have any formal membership structure. Membership in international organizations also does not need to be confined to states and a few international organizations. Private sector entities and other stakeholders (including sub-state actors and regulatory agencies) may be subjects of membership and full members, as well. In addition, as the relations of international organizations with their members are of an internal nature, it is not necessary for an international organization to be endowed with international legal personality for it to have members.

In their traditional forms, international organizations are clubs which reserve certain benefits to their members which in turn have certain obligations, notably, the obligation to contribute to the financing of the organization. However, this simplistic correlation of benefits and obligations of membership cannot be properly applied in case of organization producing global public goods or fighting global bads. Far-reaching changes are required to the legal and policy frameworks governing membership in international organizations. Membership of international organizations needs to become more diversified and should include full, partial, sector or affiliate membership of private sector entities, philanthropic and civil society organizations and other stakeholders. Moreover, international organizations should become hubs, platforms and fora for a great variety of actors, including sub-state actors, which also rely for funding substantially on non-state actors.

The concept of “subject of international law” also needs to be revised. It was only with the “consolidation of nation states in the sixteenth and seventeenth century and with the pivotal role attributed henceforth to the concept of sovereignty that the characteristics of what later became known as ‘subject of international law’ began to be the exclusive prerogative of States.” International law has no intrinsic constraint against the recognition of entities other than states or intergovernmental organizations as subjects of international law. Dual and hybrid organizations incorporated under national law, but with recognized international legal personality and privileges and immunities under international law, may qualify for recognition as subject of international law. Moreover, the concept of “subject of international law” is broader than that of “international legal personality”. Hence, organizations without international legal personality which act on the international plane and organizations established as trust funds or organizations characterized by “institutional ambivalence by design” may qualify for recognition as subject of international law.

The status of an organization at the time of its establishment is only a snapshot of the powers and functions which it has at that time. Entities can change beyond recognition and may qualify as international organization based on progressive institutionalization or changes to their status. Thus, the strong emphasis placed in literature on the “establishment” of international organizations (generally, by way of a treaty) is misplaced. It does not matter how international organizations are established. Whether organizations, including cooperative undertakings of sub-state actors and entities incorporated under national law, could be recognized as international organizations does not depend on the nature of the act establishing them, or on the composition and classification of their membership, but on their powers and functions and the position which recognized subjects of international law have taken in their regard.

The book proposes that it is necessary to reassess the classifications and the very concepts and definitions of “intergovernmental organization” and “international organization”. The term “intergovernmental organization” needs to be interpreted in a wider manner to comprise a wide range of international organizations not established by a treaty, including organizations created pursuant a decision of a conference of the parties to a multilateral convention, organizations established as trust funds and dual and hybrid organizations incorporated under national law. It is, however, intrinsically problematic for the very reason that it excludes all organizations not established by a government.

As regards the term “international organization”, the current definition of that term by the International Law Commission was coined in the specific context of the work of the Commission on responsibility of international organizations is not suitable to be given a general application. The term “international organization” should not be understood to comprise only public international organizations established by a treaty. Rather, given the evolution of public international law, also organizations without a treaty basis, including dual and hybrid organizations incorporated under national law, need to be recognized as international organizations. However, the term “international organization” is broader than “intergovernmental organization”. Hence, also organizations which are not established by agreement between governments or which do not have predominantly or exclusively states as members may qualify for recognition as international organization.

While traditionally, the autonomy of international organizations was defined with reference to their relationships with their members and seen as a corollary of the international legal personality of organizations established by a treaty, it is necessary to rethink this traditional approach. The institutional autonomy of an organization needs to be defined in wider terms, as organizations not established by a treaty and without a formal membership structure may also enjoy institutional autonomy. Moreover, international organizations can well function without being endowed with international legal personality or legal capacity under national law. Hence, also organizations established as trust funds without international legal personality or organizations characterized by “institutional ambivalence by design” may qualify for recognition as international organizations.

Hence, this book proposes that fundamental concepts of the law of international organizations and public international law need to be rethought and revised, and a new analytical framework for determining which entities can be classified as international organizations. It argues that the power of creation of new organizations has passed over to international organizations and other entities, such as conferences or meetings of the parties to multilateral conventions and presents an outlook on future development of international organizations. Moreover, the book analyzes the legal implications of membership and the links which exist between membership and representation in organizations’ governing bodies, as well as with organizations’ capital structures, funding mechanisms and operational modalities. It is an essential tool for anybody interested in international organizations.