

LEGITIMACY OF INTERNATIONAL ORGANIZATIONS AND THEIR DECISIONS — CHALLENGES THAT INTERNATIONAL ORGANIZATIONS FACE IN THE 21ST CENTURY*

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Introduction

The legitimacy of international organizations and their decisions has become controversial, particularly in the last two decades, and frequently the issue has been critically dealt with from the perspective of the democracy deficit. This phenomenon started with the European Union (EU), which is highly integrated, and has extended to other international organizations, such as the World Trade Organization (WTO), as well as international financial institutions, such as the International Bank for Reconstruction and Development (World Bank).

At the same time, the concept of globalization has come into general use.¹ It is generally understood that so called “global issues,” including security (civil war, failed states, terrorism, weapons of mass destruction, genocide, etc.), global environmental destruction, outbreaks of infectious disease, and the poverty which underlies these issues, have been exacerbated as a

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¹ Yoshiko Kojo, “Gurobarizeishon no Nani ga Mondaika (Rethinking Globalization: Theoretical Agenda for International Politics),” in *Sekai Ho Nenpo (Yearbook of World Law)*, vol. 24 (2005), p.3.

consequence of globalization, and threaten the existence of human beings. It is clear that since these issues cannot be resolved by individual states on their own, international and organizational response and cooperation are necessary.

Therefore, the necessity for a form of global governance has become widely accepted, especially since the end of the Cold War.

The function of global governance has been discussed extensively from the viewpoint that, even in international society where no government exists, the function of governance is necessary and possible, and that in reality some form of global governance is present in international society. A brief definition of global governance is said to be “the ability to deal with global issues appropriately.”² As for the main bodies that address these issues, we may take into consideration non-state actors such as non-governmental organizations (NGOs) and multinational companies, as well as international organizations and states. However, considering the nature of these issues, it is widely expected that universal international organizations centering on the United Nations system play the most important role as the main bodies or framework in restricting, orienting and supplementing the actions of states that otherwise possess the ability to act autonomously in the realms of politics, the economy, and the military. There is no room for argument on this point in the light of the UN’s function of granting legitimacy as an organization that represents the entire international society as well as the specialty and neutrality of the United Nations system.

On the other hand, since the end of the Cold War a respect for democracy, the protection of human rights, and the market economy, which are dominant values of the West, has come to take on the aspect of global values.

There has been a sharp increase in the operational activities of electoral assistance by the UN for states that have experienced civil war, and the ideal of democratic government has been globally accepted, especially since the 1990’s. It seems that this trend of valuing democracy has also been applied to universal international organizations centering on the United Nations system which play important roles in global governance, and that this has resulted in discussion on the democracy deficit and legitimacy deficit.³

In the following sections, having universal international organizations centering on the United Nations system in mind, first, I will (I) conduct a general overview concerning the background in which their legitimacy has come to be questioned, (II) attempt to grasp the actual conditions under which legitimacy is being questioned by conducting a bird’s eye view analysis of some key cases on which such discussion is being actively conducted, and, following in line with these two points, (III) attempt to review some of the suggestions that have been offered to improve legitimacy. Finally, I will make a general summary and point out

² Yoza Yokota, “Gurobaru Gabanansu to Konnichi no Kokusai Shakai no Kadai (Global Governance; the Challenge of Today’s International Society),” in National Institute for Research Advancement et al.(eds.), *Gurobaru Gabanansu (Global Governance; Nikkei Hyoronsha, 2006)*, p.4. Also refer to Akio Watanabe and Jitsuo Tsuchiyama (eds.) *Gurobaru Gabanansu (Global Governance; University of Tokyo Press, 2001)*.

³ See, for example, in the context of international relations - Ian Clark, *Legitimacy in International Society* (Oxford, Oxford U.P., 2005); in the context of restriction of military action - Charlotte Ku and Harold K. Jacobson (eds.), *Democratic Accountability and the Use of Force in International Law* (Cambridge, Cambridge U.P., 2003); in the context of governance - Gregory H. Fox and Brad R. Roth (eds.), *Democratic Governance and International Law* (Cambridge, Cambridge U.P., 2000); in the context of international organizations - Jean-Marc Coicaud and Veijo Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo, United Nations U.P., 2001).

some of the issues that still remain to be solved (conclusion). I will not go into depth regarding the definition of the concept of legitimacy itself, but will leave it as the general understanding of the belief that something is right and appropriate.⁴

I. *Some Background on the Legitimacy of International Organizations and their Decisions*

1. **Two Reasons Why Legitimacy did not Surface as an Issue Earlier**

It is only recently that attention has been focused on the legitimacy of universal international organizations, including that of the UN. Although the term and concept of global governance is quite new, the perspective of general interest and public function in the international society is not necessarily a recent phenomenon. Nevertheless, the legitimacy of international organizations and their decisions has never been seriously discussed. The reasons are assumed to be chiefly due to the following two points.⁵

The first reason is that the powers of international organizations were restricted and so, in general, they lacked the substantive influential powers for their legitimacy to be called into question. At the initial stage of organizing international public bodies, the effectiveness of such organizations and their activities was the primary issue. The function of many international organizations is to provide an opportunity in which member states can discuss issues of mutual concern and interest (the function of a forum), and to collect, analyze, exchange and distribute information related to the common concern (the function of information flow). In terms of the formation of norms legally binding member states, both the customary formation of norms of conduct through legally non-binding recommendations and declarations, and the drafting and adopting of legally binding treaties (which become binding only for member states which specifically accept them), remain only as indirect means. In general, international organizations do not have such legislative power as domestic legislatures possess in the sense that decisions adopted by the majority will legally bind all member states, including the objecting minority. (I will discuss the European Union and the UN Security Council as exceptional cases in a later section.)

The second reason is that, in general, international organizations are established by treaties among states; therefore, the powers and activities of international organizations have been individually and explicitly accepted by the member states, and, thus, are based on the consent of the member states. The question of legitimacy has been raised in the context of submission to the ruling by a specific person or organization, and has not been assumed to present any problem in such cases as contracts or treaties where the consent of observing bodies does exist. Viewed from the idea of the social contract according to which the governing power of the

⁴ See, for example, Takashi Inoguchi et al. (ed.), *Kokusai Seiji Jiten (Encyclopedia of International Relations)*; Koubundo, 2005), pp. 514-515 (written by Isao Miyaoka); Takashi Inoguchi (ed.), *Seijigaku Jiten (Encyclopedia of Political Science)*; Koubundo, 2000), p. 619 (written by Toshiyuki Mitoma).

⁵ Daniel Bodansky, "The Legitimacy of International Governance", *American Journal of International Law*, vol. 93 (1999), pp. 596, 597 et seq.; Gerhard Hafner, "Accountability of International Organizations — A Critical View", in Ronald St. John Macdonald and Douglas M. Johnston (comps. & eds.), *Towards World Constitutionalism, Issues in the Legal Ordering of the World Community* (Leiden, Martinus Nijhoff Publishers, 2005), p. 593.

government of a state is based on the consent of the people, a higher legitimacy may be granted in the relation between an international organization and its member states because the latter is not based on a mere hypothetical social contract but on an actual treaty among states.

2. Three Reasons Why Legitimacy has Surfaced as an Issue

Basically, legitimacy has become an issue because the two reasons described above have begun to lose validity. However, in order to grasp a concrete understanding, a more detailed explanation may be necessary. The reasons are categorized into the following three for the sake of simplicity, but they are closely related to one another.

The first reason is that in present international society international organizations have developed to play such large roles as to be as influential as states.

This trend can be seen clearly in the activities of the UN, especially in the activities of the Security Council which have been undertaken in the settlement of civil conflicts since the end of the Cold War. We are at the stage where many important issues cannot be fully understood without considering the activities of international organizations because these issues are closely related to the activities of international organizations, such as the development of International Human Rights Law accompanying activities of the UN, dispute settlement activities undertaken by the WTO, the development of International Labor Law accompanying activities of the ILO, and activities in the fight against infectious diseases undertaken by the WHO.

Viewed from the structure of the international legal order, the traditional international legal order which prevailed until the 19th century has gone through a structural transformation as a result of the organization of the international society symbolized by an increase and development of international organizations. This is a phenomenon specifically brought about by the existence and activities of universal international organizations, such as the UN and specialized agencies. The decentralized international society up until the 19th century is often called the Westphalian system because it is understood that the Peace of Westphalia, the peace treaty of the Thirty Years' War fought in the 17th century, symbolizes its birth. The structure of the international society in those days was horizontal, where some sovereign states existed in parallel and no superior power bodies existed. Based on the individual action of each state, law-making was conducted in the form of the customary international law and in most cases bilateral treaties. Likewise, the interpretation and application of laws were conducted directly by each state, and law enforcement and execution were also conducted by each state under its own power. However, law-making, interpretation and application of the law, as well as law enforcement and execution, have all gone through important transformations as a result of the organization of international society in the period of the UN, the international organization which succeeded the League of Nations. Present international society, organized by international organizations such as the UN, can be described as the UN Charter system.⁶ Although the trend to form organizations in international society has continued to grow, and the influence of international organizations, including that of the UN, has continued to gradually increase since the turn of the 20th century, these trends have become markedly more advanced during the 1980's and 90's.

⁶ Refer to Chapter 21 in Tetsuo Sato, *Kokusai Soshiki Ho (The Law of International Organizations)*; Yuhikaku, 2005) concerning the transformation of the international legal order in the organized present international society.

The second reason is that international organizations have been forced to adapt themselves to the new trend of the transformation of international society, which is symbolized by globalization, and thus have had to expand their activities from the internal sphere of the agreement, that is, the treaties upon which their own establishment was based, to the neighboring sphere of grey zone where the lawfulness of their activities is ambiguous. Thus, it can be assumed that the necessity not merely of lawfulness, but moreover of legitimacy, has been recognized, which in turn has led to a rapid increase in the number of voices calling for consideration to be given as to the legitimacy of their activities⁷ The establishment of *ad hoc* international criminal tribunals based on Chapter 7 of the UN Charter, and international legislation opposing international terrorism and the proliferation of weapons of mass destruction by the UN Security Council, which has become reinvigorated since the end of the Cold War, are among typical examples of this trend.

The trend of a deepening interdependence in international relations was responded to by international society with the establishment of international administrative unions in the latter half of the 19th century, and the League of Nations and the United Nations in the 20th century. This is recognized, in the world of international law, to have resulted in the development from a law that provides a framework for peaceful coexistence among states (an international law of coexistence) to a law that secures and promotes common interests (an international law of cooperation). The materialization of international public values in the sense of the general interests of international society has developed, if I take up the sphere of security, into a commitment to genocide prevention, terrorism prevention, and the non-proliferation of weapons of mass destruction. In response to the necessity for public bodies that bear the function to protect and promote such public interests, international organizations such as the UN have contrived novel devices. For example, when we consider the establishment of *ad hoc* international criminal tribunals based on Chapter 7 of the UN Charter, it was certainly criticized that the establishment of international criminal tribunals to punish individuals had not been anticipated. However, if this had been done through treaties among states, which is the traditional procedure for the establishment of an international court, it would have taken a longer period of time not only to draft the treaty due to the necessity to adjust the interests of various states, but also for each country to agree to participate in the adopted treaty. Moreover, a country in which many criminal offenders who would be subject to such punishment exist would, when criminal acts are carried out as a substantive policy of the government, never agree to participate in the said treaty. Herein lies a problem or dilemma inherent in the international society, where there is no alternative but to act by means of treaties which can, based on the principle of the contract, bind only consenting states in order even to realize the public interest and organization despite the fact that the public interest of the whole of international society has become apparent. The establishment of an international criminal tribunal is not the only case in which this dilemma presents itself. This dilemma constantly becomes an issue in the context where it is necessary to establish a universal system of treaty in which all states must participate to secure effectiveness, such as that for global environmental protection or the preservation of biological resources.

⁷ Tetsuo Sato, "The Legitimacy of Security Council Activities under Chapter VII of the UN Charter since the End of the Cold War", in Jean-Marc Coicaud and Veijo Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo, UNU Press, 2001), pp. 309, 340-341.

Third, the fact that the activities and decisions of international organizations have had more direct influence on private persons and companies seems to be noteworthy as a distinct reason why legitimacy has become a controversial issue, although this trend can be considered as an aspect of the overall increase in the influence of international organizations as above mentioned. For example, we may recall that it was not the ruling class but the people in Iraq who suffered from a lack of food and medicine as a result of the economic sanctions imposed on Iraq by the UN Security Council in 1990's; sanctions which were criticized by many as a violation of human rights by the UN. Moreover, there have been problems with many of the large-scale infrastructure projects that the World Bank has financed. For example, the dam construction project as well as the water delivery and drainage project in the Narmada River development in India which the World Bank decided to finance in 1985 involved the forced evacuation of more than 200,000 people, resulting in a campaign against the project on a global scale, led by NGOs in developed countries. In addition, decisions made by the Dispute Settlement Body of the WTO and regulations in global environmental treaties have exerted direct influence on private persons, companies and industries. These cases indicate that the influence of international law on domestic society has increasingly become substantial in such realms as International Economic Law, International Environmental Law and International Human Rights Law.

Thus, the main focus of the substantial decision-making powers on policies is shifting from the domestic to the international level, while the decisions of international organizations are also having more influence on private persons and companies which have traditionally been regulated by domestic law. Moreover, while member states are represented by their governments (executive bodies) in international organizations, domestic legislative bodies generally lack enough influence on domestic executive bodies in these matters, and, as a result, executive bodies are in a position to exert more influence over the decisions of international organizations. Thus, from the viewpoint of the people, being subject to the unilateral impact of decisions made at an international level over which they are allowed no significant input, it is pertinent to question not only the legitimacy of the decisions made by international organizations, but even the legitimacy of the organizations themselves. As international organizations and international law function in the same manner as domestic governing bodies and domestic law in terms of their influence on private persons and companies, we must also necessarily demand that international organizations and international law satisfy the same requirements for legitimacy, such as transparency and accountability, that the latter are subject to.

II. *Recent Cases Where Legitimacy was Questioned*

In this section, I will examine in a concise manner key cases in which legitimacy has been discussed and argued extensively, and thereby attempt to portray actual conditions where legitimacy is assumed to be a problem, focusing on the following four examples: the European Union, the UN Security Council, the WTO, and the World Bank.

1. The European Union (EU)

The European Union consists of the following three pillars: the European Communities (ECs), which are supranational organizations; the Common Foreign and Security Policy; and the Police and Judicial Cooperation in Criminal Matters. In the latter two pillars no transfer of sovereign powers from the member states is assumed and the progress here relies on intergovernmental cooperation and consensus among member states. The first pillar, the European Communities, is composed of three communities: the European Coal and Steel Community (ECSC) (which ceased to exist in 2002), the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The EEC plays a central role covering the entire sphere of the economy except for specific fields covered by the other two communities, and has changed its name to the European Community (EC), in accordance with the Maastricht Treaty (entered into force in 1993).

In general, international organizations are categorized into two types: one that focuses on cooperation in the narrow sense, aiming at promoting cooperation between states, and the other that focuses on the integration of member states. Although the member states of the European Community, which belongs to an international organization promoting integration, maintain their status as sovereign states under international law, they have transferred and lost their powers in specific areas, such as common commercial policy, to the Community. Moreover, when the Community exercises its power in other areas such as the environment, member states also lose their powers in those areas as well. Only under exceptional circumstances are international organizations promoting cooperation in the narrow sense granted the power to make decisions which are legally binding upon member states (UN Security Council described in the next section); the European Community, however, is a supranational organization that aims at integration, and its decisions may not only legally bind member states, but may also have a direct effect on private persons living in its member states. The European Community, whose main objective is “the establishment of a common market”, is granted a specific legislative power under the treaty by which it was established. EC Law, composed of primary sources such as the Treaty establishing the European Community and secondary sources such as several forms of secondary legislation enacted by Community organs like the Council and the Commission, expanded greatly through the teleological interpretation by the European Court of Justice, which valued the purpose of the Community, that is, the establishment of a common market. For instance, the legislation described above overrides the national laws of member states that contradict it under “the doctrine of the supremacy of Community law”. Moreover, “the doctrine of direct effect of Community law,” that authorizes certain sources of EC Law to give individuals rights directly, was formed in order to ensure the integrity, effectiveness and uniformity of Community law.

The integration of the European Community has reached an advanced stage, and, above all, legislation by the Community has had wide and important influence directly on the people of the member states. Therefore, there has been criticism, in terms of a “democracy deficit”, as to how the legislative powers of the Community should be exercised, and what the role of the Community itself should be. Although the legislative procedure of the European Community has evolved and is very complex, it has been basically conducted by the combination of a proposal drafted by the Commission, a decision on that proposal made by the Council, and the degree of (or non-) involvement of the European Parliament. At the base of the criticism lies a

situation where the executive bodies have jointly exercised the legislative powers, which the national parliaments have lost, by transferring part of the sovereignty of the member states to the European Community.⁸ Thus, much of the critical discourse on the European Community is said to have focused on the inadequacy of democratic representation, accountability, and citizen participation, as well as on the lack of institutional balance of powers and transparency with the consequent lack of legitimacy.⁹

European countries have traditionally placed much emphasis on democracy, and have led the forefront by ratifying the European Convention on Human Rights, adopting it within an international organization, the Council of Europe, which was founded on such principles as the rule of law and the guarantee of human rights. The fact that the European Community, composed of such countries, has been exposed to harsh criticism in regard to the democracy and legitimacy deficit, on the one hand shows that supranational governance has entered a stage where it can be compared to national governance, and at the same time demonstrates the difficulty of implementing the ideal of democracy into the framework of an international organization.¹⁰

2. The United Nations Security Council¹¹

The UN Security Council is one of the main organs of the United Nations, and is in charge of the maintenance of international peace and security, mainly through the prevention of war, which is the main purpose of the United Nations. The functions of the Security Council include the aim for the pacific settlement of disputes, based on Chapter 6 of the UN Charter, and the exercise of military or non-military enforcement measures under the collective security system, based on Chapter 7 of the Charter. Article 39, the provision at the top of Chapter 7, demands that a determination be made as to whether “any threat to the peace, breach of the peace, or an act of aggression” exists or not, as a precondition before the Council exercises its power to take enforcement measures. Article 41 prescribes the use of non-military enforcement measures. In addition, the Council has the power to adopt certain decisions that are legally binding, based on Article 25 of the Charter. The legitimacy of the power of the Council is considered to be a problem mainly over the exercise of the enforcement measures of Chapter 7. During most of the critical days in the Cold War period, which erupted soon after the UN was established, the Council was unable to fulfill its function due to the East-West opposition. The enforcement measures of Chapter 7 were only exercised in response to three cases, those being the Korean War, and the cases of Southern Rhodesia and South Africa, and it was the malfunction rather than the legitimacy of the Council that was considered to be problematic. On the other hand, enforcement measures as mandated under Chapter 7 not only drastically increased quantitatively, but also went beyond the conventional framework qualitatively during the period following the Gulf War of 1990-1991, and this intensification was the origin of the problem concerning the legitimacy of the Security Council and its decisions. When dealing with

⁸ Katsuhiro Shoji, *EU Ho: Kisoheh (EU Law: Introduction; Iwanami Shoten, 2003)* pp. 52-63.

⁹ Eric Stein, “International Integration and Democracy,” *American Journal of International Law*, vol. 95 (2001), pp. 521 et seq.

¹⁰ Eric Stein, *supra* note 9, pp. 489, 515-516.

¹¹ This section is based mainly on Chapters 12 and 20 of Tetsuo Sato, *Kokusai Soshiki Ho (The Law of International Organizations)*.

the Council from the perspective of legitimacy, it is necessary to consider first, the lawfulness of its activities, and second, the adequacy of its organizational structure.

(1) Lawfulness of Activities

There are many examples where the lawfulness of activities has been questioned, but I would like to mention three particular cases here. Firstly, the *Lockerbie* case brought about an extensive discussion over the application of Articles 39 and 41. In the bombing of a Pan Am flight over Lockerbie in Scotland in December 1988, the United States and the United Kingdom demanded that Libya deliver the suspects, based on their allegation that Libya was responsible for this incident. The US and the UK pushed for the adoption of Security Council Resolution 731 to the same effect, based on Chapter 6 of the Charter, in 1992. Libya, in order to protect its right to try the suspects in the home country rather than hand them over to foreign authorities, submitted the dispute to the International Court of Justice based on the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and demanded an order indicating interim measures of protection for its right under the Montreal Convention. Three days after the oral proceedings and before the decision, the Council adopted a legally binding decision based on Chapter 7 of the Charter, in which it ordered the delivery of the suspects to the US or the UK as well as the implementation of sanction measures in the case of the non-observance. Regarding this case, many issues concerning the essence of the powers of the Council, which is responsible for the collective security system, were discussed, including the following: whether there would exist a substantive factor that should be recognized as a “threat to the peace” should Libya refuse the request to hand over the suspects after three years since the incident; whether the Security Council, a political organ, could invalidate the decision of the International Court of Justice and enforce its own decision, and even if such a decision could be enforced, whether it would be appropriate in the light of the relations between the UN organs; and whether such a decision by the Council could be nullified by the Court should it be judged to be *ultra vires*. The case was withdrawn upon the delivery of the suspects by Libya, therefore many of the above issues have yet to be judged by the Court, and no common ground has been reached in terms of academic theory.

Secondly, if we consider the characteristics of non-military enforcement measures, the norms of conduct imposed by Resolution 661, for example, are general norms addressed to all countries, but they are restricted to the context of individual cases in relation to Iraq or Kuwait. In this sense, the norms of conduct within the decision imposing sanction measures were understood as individual execution measures. However, the recent resolutions concerning international terrorism and the non-proliferation of weapons of mass destruction, Resolutions 1373 (2001) and 1540 (2004) respectively, stepped into the domain of international legislation by imposing a set of norms of conduct on all countries; their content is general in nature rather than restricted to the context of a specific country or case. However, in general there is a controversy over whether an organ such as the Security Council, composed of only a limited number of countries, has the legislative powers to establish norms that bind all 192 countries. Therefore, in this sense, the above case is a controversial and exceptional example.

Thirdly, the Security Council decided that widespread and serious violations of international humanitarian law constituted “a threat to international peace and security” and established *ad hoc* criminal tribunals for the prosecution of suspects in the former Yugoslavia and Rwanda. These tribunals were established as judicial courts, and may be considered as

independent courts of law that paid extensive attention to the human rights of the suspects. However, it is unlikely that anyone would have expected the Security Council, an organ that was supposed to be responsible for policing and enforcement functions, would one day establish a court of justice that would punish individuals, at the time of the establishment of the UN. Therefore, there was some criticism against this innovation as being an *ultra vires* activity by the Council.

(2) Adequacy of the Organizational Structure

The number of Member States of the United Nations has increased dramatically due to the membership of developing countries; however, such changes have not been reflected in the constitution of the Security Council. In 1945 when the UN was established, it consisted of 51 Member States, with the Council comprised of 11 countries: 5 permanent members and 6 non-permanent members. With an amendment in 1965 when the UN grew to include 115 Member States, the Council was comprised of 15 members: 5 permanent members and 10 non-permanent members. As of 2008, the Member States totaled 192 countries; however, the constitution of the Council has not changed. Since the end of the Cold War, the Council has actively dealt with an ever increasing number of civil conflicts, and thus it faces the urgent task of reflecting the changes in international society in the constitution of the Council. The General Assembly established a working group for the reform of the Security Council in December 1993, and there is a general will for an early realization of the reform, as well as support from many Member States for an expansion of the permanent and non-permanent members of the Council. The main issues of concern are the number of seats in the Council after expansion, the selection method for new permanent members of the Council, and the handling of the veto, but no common ground has been reached regarding these issues.¹² Basically, these questions will be resolved according to the relative emphasis placed on two conflicting demands: one being legitimacy, in the sense that the Security Council reflects and appropriately represents the various countries in the international society, and the other being effectiveness, in the sense that the Council can realistically carry out its primary responsibility for the maintenance of international peace and security.

Thus, it is against the backdrop of the issue of the reform of the Security Council and the legally ambiguous nature of the vigorous activities of the Council, especially since the 1990's, that the necessity of legal and political control of the Council has been discussed from the perspective of legitimacy. The issues include the lack of the transparency of activities due to increases in informal consultations, the heightening of cooperative relations with the General Assembly, and the possibility of the judgment on whether a Security Council resolution is lawful or not by the International Court of Justice.

3. The World Trade Organization (WTO)

The General Agreement on Tariffs and Trade (GATT) was formed while the International Trade Organization (ITO), which aimed at the establishment of a free trade system after World War II, never entered into force because of the objection by the U.S. The GATT prohibited

¹² For example, refer to the following site on UN Reform by the Ministry of Foreign Affairs: (http://www.mofa.go.jp/mofaj/gaiko/un_kaikaku/index.html).

trade barriers other than tariffs as a general rule, reduced tariffs based on the principle of reciprocity, and was based upon the principles of most-favored-nation treatment and national treatment.¹³ The Marakesh Agreement Establishing the World Trade Organization (WTO), negotiated at the Uruguay Round which began in 1986, was opened for signature in 1994, and the WTO came into being in 1995. Even during the days of the GATT, criticism was made against the lack of transparency due to the perception that “you have to go to the GATT in order to get any information on the GATT” as well as the overemphasis on “free trade”.¹⁴ It is most likely due to the following two factors, namely the reinforcement and expansion of regulations, that the legitimacy of the WTO has surfaced as an issue.

(1) Reinforcement of Regulations

The reinforcement of regulations refers to the fact that the WTO dispute settlement mechanism, which aims at the securing of the implementation of the WTO agreements, has been drastically reinforced when compared with the level of similar procedures under the GATT. Article 22 of the GATT prescribed consultation concerning the operation of the agreement, and Article 23 prescribed reference to the Contracting Parties of a dispute. Under Article 23, a panel method was introduced and settled.¹⁵ While the GATT panel dispute resolution process was gradually established and developed, it suffered serious delays in the formation of panels and the panel process and there was no guarantee that the panel report would be adopted because these decisions were made by consensus among the Contracting Parties, including the parties to the dispute. Under the WTO dispute settlement mechanism based on the Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes, however, both the creation of panels and the adoption of panel and (newly established) Appellate Body Reports by the Dispute Settlement Body (DSB) have substantially been automated, and substantial compulsory jurisdiction in this sense has been introduced into the dispute resolution procedure of the WTO agreements. In addition, the above Understanding expressly prohibits unilateral retaliatory measures (such as those based on section 301 of the U.S. Trade Act of 1974 and other similar laws), and the Dispute Settlement Body will authorize, quasi-automatically upon request, the winning party to take retaliatory measures against the losing party when the latter does not comply with the recommendations or rulings of the DSB.¹⁶ Such retaliatory measures may have a great and direct impact on domestic industries.

(2) Expansion of Regulations

While only the trade of goods was subject to regulation under the GATT, two important domains of service and intellectual property rights have been included as subject to regulation under the WTO due to the introduction of the “General Agreement on Trade in Services (GATS)” and the “Agreement on Trade-Related Aspects of Intellectual Property Rights

¹³ Refer to “Kokusai Boeki Ho (International Trade Law)” (written by Haruo Saburi) in Akinobu Tanso et al. (eds.) *ShinPan: Kokusai Keizai Ho (International Economic Law: New Edition)*; Seirin Shoin, 1993) pp. 49 and on.

¹⁴ Kazuo Sumi, *Sekai Boeki Kikan wo Kiru (Critical Examination of the World Trade Organization)*; Meiso Shuppan, 1996).

¹⁵ Yuji Iwasawa, *WTO no Hunso Shori (Dispute Settlement of the WTO)*; Sanseido, 1995) p. 19.

¹⁶ Akira Kotera, *WTO Taisei no Ho Kozo (The Legal Structure of the WTO System)*; University of Tokyo Press, 2000) pp. 47-51, pp. 54-56, and p. 117.

(TRIPS)". On the other hand, problems concerning the conflict and/or adjustment between the trade values supported by the WTO, and non-trade values such as the environment, human rights and labor, have become important and are widely discussed. This is because disputes concerning non-trade matters that are not completely covered by the WTO agreements, such as the environment, can now be brought into the dispute resolution procedure by the request of a party that claims that it has suffered damages from trade restriction measures based on non-trade values due to the substantial compulsory jurisdiction explained above.¹⁷

Thus, conflict and/or adjustment with the trade values supported by the WTO and non-trade values such as the environment has become a significant issue as a result of the expansion of regulations under the reinforced WTO dispute settlement mechanism through the substantial compulsory jurisdiction as well as the enforcement by retaliatory measures authorized by the DSB. It is against these backgrounds that the legitimacy of the regulations of the WTO, which may have a direct and great impact on domestic industries, has surfaced as a significant issue.

4. The International Bank for Reconstruction and Development (World Bank)

The International Bank for Reconstruction and Development (World Bank) is an international finance organization that was established with the primary objective to aid in the reconstruction of Europe in the immediate aftermath of World War II. Since the rebuilding of Europe and Japan, the primary emphasis has been placed on the development of developing countries. In this effort the bank has attempted to adjust its aid policies in line with the shifting priorities of the times. The World Bank worked toward establishing economic infrastructure such as electricity and transportation until the 1960's, a period dominated by an economic growth-oriented development strategy. In the 1970's, when absolute poverty was a desperate problem in developing countries where a positive correlation between economic growth and fairness in income distribution did not always exist, it worked toward establishing basic human needs such as rural development, food, health and hygiene for the poor class. In the 1980's, when forced to respond to macroeconomic imbalances such as an increase in external debt, an international trade balance crisis, budget deficits and runaway inflation, it introduced non-project type loans that imposed on developing countries macroeconomic or sectoral policy reforms as conditions for loans (conditionality) through structural adjustment loans or sectoral adjustment loans. In the 1990's, it supported the reform of domestic social institutions for the purpose of good governance.¹⁸

In such an evolution of the aid policy, criticism increased in the 1980's against projects financed by the World Bank for destruction of the environment and violation of human rights in developing countries. The World Bank had already recognized in the 1970's the necessity to pay close attention to the impact that a project has on the environment and those people who are socially vulnerable, and had adopted general instructions and operational policies

¹⁷ Articles 20 and 21 of the GATT stipulated the range of deviation from the GATT regulation in such cases, and the interpretation and application of these provisions became problematic in the case of the restrictive measures imposed by the US on the import of tuna in order to preserve dolphins. (1991, 1994). See Akira Kotera, *Tenkanki no WTO (WTO at the Crossroads)*; Toyo Keizai Shinposha, 2003) pp. 175-197 (written by Junji Nakagawa).

¹⁸ Izumi Ono, *Sekai Ginko (The World Bank)*; NTT Shuppan, 2000) pp. 26-33. Takanobu Kiriya, "Sekai Ginko no Katsudo to Kokusai Jinken (Activities of the World Bank and International Human Rights)" in *The Horitsu Jiho*, vol. 77, no. 1 (2005) p. 12.

("safeguard policies") to deal with such concerns. However, the effectiveness of such policies was called into question by a series of circumstances that occurred after the decision to finance the Narmada projects in India in 1985. These projects attracted the attention of the global community as a result of an international campaign against the projects organized by NGOs in developed countries as well as grass-roots movements in the local villages, and the World Bank made an unprecedented decision to establish an independent commission for review in 1991. The report by this commission noted that the projects violated operational policies of the World Bank. In addition, the "Wapenhans Report," which conducted an internal evaluation of the World Bank around the same period, published a severely critical report in which it deemed 37% of the 1991 World Bank projects to be dissatisfactory. As a result of such movements, the necessity for a mechanism by which to ensure the observance of "safeguard policies" was recognized, and an inspection panel was established by the decision of the Board of Executive Directors in 1993.¹⁹

The inspection panel is an independent organ in the World Bank consisting of three members. As is presumed from the above, the gist of its function is to receive requests for inspection by affected people and, after the approval by the Board of Executive Directors, to investigate and report on whether their rights or interests are directly affected as a result of a serious violation by the Bank of its operational policies and procedures with respect to the design, appraisal and/or implementation of the project having a material adverse effect. In this sense, the panel does not function as a legal procedure that works for the relief of the alleged victims, but entrusts the approval of its investigative report as well as any subsequent decision as to whether to continue or cancel a given project to the Board of Executive Directors. Moreover, the function of the panel is not to examine whether domestic or international law is being abided by, but whether the safeguard policies established by the World Bank itself are being observed and abided by. At present there seem to be no safeguard policies or procedures that directly demand the observance of international human rights law. While the World Bank has simplified its approximately 400 safeguard policies into 60-70 since 1993, it is noted that there is a trend to reconstruct the policies themselves so that they are easier to follow and abide by.²⁰ The Board of Executive Directors consists of the government representatives from member states and has the power to approve or deny any proposal for financing activities made by the Secretariat. In this sense, the Board is in a position to supervise the Secretariat. However, as the Board is an aggregate of the governments of member states, its relations with the Secretariat are not always monolithic. In reality, it is pointed out that the Board of Executive Directors splits along the lines of lenders (mainly developed countries) and borrowers (developing countries), and the Secretariat works together with the Directors of borrower countries against the panel and the Directors of lender countries.²¹

As explained above, it is against the background that the financing activities of the World Bank have a great impact on the people whose interests are at stake that the World Bank, in

¹⁹ Kazuo Sumi, *Sekai Ginko (The World Bank)*; Yuhikaku, 1994) p. 315 and on. Takanobu Kiriyama, "Sekai Ginko niokeru Kaihatsu to Jinken no Sokoku (Conflict between Development and Human Rights in the World Bank)," in *The Journal of International Law and Diplomacy*, vol. 102, no. 4 (2004) p. 31. Satoshi Matsumoto, *Higai Jumin ga Tou Kaihatsu Enjo no Sekinin (Responsibility of Development Aid from the Perspective of the Victim People)*; Tsukiji Shokan, 2003) pp. 10-18.

²⁰ Satoshi Matsumoto, *Responsibility of Developmental Aid from the Perspective of the Victim People*, pp.148-149.

²¹ Matsumoto, supra note 20, pp. 217-218.

order to strengthen the legitimacy and in particular the accountability of its activities, established an inspection panel, which led to requests for inspection by affected people being heard. This kind of system has become somewhat of a trend as it has been introduced into the Inter-American Development Bank (IDB) and the Asian Development Bank (ADB), and also introduced into the Japan Bank of International Cooperation as well.

III. *Towards an Improvement in the Legitimacy of International Organizations and their Decisions*

One of the most remarkable trends since the end of the Cold War has been the increase in the influence of universal international organizations, including that of the UN, as well as the direct influence of these organizations on private individuals and companies in individual countries. However, the activities of these organizations have, by overstepping the legal framework of their constituent instruments and the restrictions on their powers imposed therein, begun to enter a grey zone in terms of their legality. If these activities of ambiguous legal basis are to be effective, they must be perceived by the people as being legitimate. In another words, it is necessary for universal international organizations centering on the UN system, which is in charge of global governance, to ensure that their activities be seen as legitimate. Thus, there is a demand for contemporary international organizations to build a new foundation for legitimacy, to go beyond the conventional grounds for legitimacy based on the social contractual idea of original agreement, which derive from the simple fact that they were established by multilateral treaties, that is, agreements among states. As mentioned earlier, the legal theory on international organizations has been discussed only in the context of effectiveness as being based on treaties and not in the context concerning legitimacy. At present, discussion concerning the grounds for the legitimacy of (the activities of) international organizations remains to be comparisons or analogies with the grounds for the legitimacy of (the activities of) domestic governing powers. In this section, I would like to examine two concepts, democracy and accountability; concepts that are central to the above discussion.

1. Democracy

As pointed out at the outset, there has been a strong movement toward an emphasis on democracy in international society since the end of the Cold War, and there has been criticism about the democracy deficit in international organizations. However, it is not easy to discuss the legitimacy of international organizations and their decisions from the perspective of democracy.²² First of all, the concept of democracy is ambiguous and can have various

²² According to Stein, the practices in modern democratic states may vary; however, no national model of governance is transferable to the international level; and, while the very idea of democracy needs to be redefined in the case of international organizations, there is no general theory in such a sense that has emerged so far. Stein, *supra* note 9, 0.531. According to Bodansky, democracy has a vital role to play at the domestic level; however, when it comes to relations between states, democracy does not offer a real alternative to consent nor form the sufficient basis for the foundation of legitimacy. Bodansky, *supra* note 5, pp. 612-617. Also refer to Toshiki Mogami, "Kokusai Kiko to Minshushugi (International Organizations and Democracy)," in Yoshikazu Sakamoto (ed.), *Sekaiseiji no Kozohendo 2 Kokka (Structural Transformation of World Politics 2: State*; Iwanami Shoten, 1995).

meanings, as demonstrated by the use of the term “people’s democracy” in socialist countries. Here, we shall understand that the core idea of democracy lies in the recognition of the public power, such as the power to govern, in an organized society including states, through the consent of the governed based on their free will. Even if we are to understand the concept of democracy in this sense, there are various elements to consider when applying the concept to international organizations.

For example, let us look at the decision-making system. The international legal order is based on the basic principle of the sovereign equality of states, and many international organizations have adopted the ‘one state, one vote’ system. However, even if a decision by the General Assembly, which is often considered important from the perspective of democracy, is adopted by a simple majority or 2/3 majority, there is no guarantee that this decision will have passed in the name of the majority of the world’s population, because there are many states of small size with only tens of thousands of or several hundred thousand people. Conversely, while the Security Council has been subject to criticism time and time again in terms of its composition, it is possible that its unanimous or close to unanimous decision may represent the majority of the world’s population, depending on which countries the non-permanent members are. Therefore, a majority rule based upon the ‘one state, one vote’ system may not necessarily be a democratic procedure in the sense that it does not reflect the will of the majority of the people in the world. Moreover, while a majority rule needs, in order to function effectively, some level of solidarity among the people that comprise the community, there is the lack of such a precondition in the international society.²³ Thus, in the international society consisting of sovereign and independent states and based on the principle of legal fiction, sovereign equality, we cannot simply incorporate the concept of the consent of the people into the discussion on how international organizations are to be organized.

On the other hand, the grounds for the legitimacy of contemporary national governing powers are understood to be the core democratic concept of the “consent of the governed.” The term “consent” here does not simply refer to the original “consent” hypothesized in the idea of a social contract, but also demands a constant renewal of “consent” through democratic elections. The exercise of the powers and policies of a government is only understood to embody a sufficient legitimacy when it is based on the constant “consent” of the governed as it obeys and follows such restrictions and limitations as the principles, regulations and procedures stipulated in a Constitution.

As the activities and decisions of international organizations become more and more similar to the activities of governments and domestic laws, there will be an increase in the demand for the same kind of legitimacy. The lawfulness alone of such decisions and activities in the simple sense that they are based on their constituent instruments establishing the international organizations will not be regarded as sufficient. Moreover, if such activities and decisions go beyond the internal sphere of agreement, their constituent instruments, and into the neighboring sphere of gray zone, the demand for legitimacy will increase furthermore. As international organizations are forced to adapt themselves to the drastically changing international society, the “consent” that forms the basis of their legitimacy must be a “consent” in terms of a process that is constantly being updated.²⁴

²³ Refer to Chapters 11 and 12 in Tetsuo Sato, *The Law of International Organizations*, concerning the general decision making system of international organizations.

Universal international organizations centering on the UN system have become the leading figures of global governance in working toward resolving “issues of global scale”, and this implies that these universal international organizations function as public powers in the international society. If we can understand the idea of democracy as a concept that is in search of an equilibrium between the necessity of public powers in a certain society and the necessity to control such powers to protect the people comprising the society,²⁵ then the public powers of the UN system must be accompanied by democratic control, in other words, democratic methods and procedures. Even if we consider the core idea of democracy to be the “consent of the governed”, the democratic control, methods or procedures to obtain such consent may vary depending on the characteristics of the powers of various organs of the UN. In this sense, one of the future themes that may be of particular interest is how NGOs will be involved within the framework of the UN system.

Having in mind the points mentioned above, I would like to note that the following issues have been pointed out to increase the legitimacy of international organizations and their decisions from the perspective of democracy. First, on the national level, it is important to reinforce the democratic control by the legislative body over the executive body. Since it is the executive body that participates in the decisions of international organizations which may have a significant impact within a state, the first step is to reinforce the democratic control by the legislative body vis-à-vis the executive body. In order to increase the democratic control by the legislative body, it is necessary to provide the legislative body with enough information concerning the trends and activities of relevant international organizations on a regular basis. Moreover, in order for the legislative body to maintain a proactive stance toward democratic control, it is important that the civil society, including the media, should deepen their understanding of and increase their interest in the decisions of international organizations that may have a great impact within their country. In this connection, the European Parliament has in recent years gained a great deal of attention from the perspective of a political system in which an important representative organ based on elections by the general public works under a majority voting system. Yet, it is generally agreed that the establishment of a more democratic and legitimate world assembly along the lines of the European Parliament would be unrealistic.²⁶

2. Accountability

Attempts to improve the legitimacy of international organizations from the perspective of democracy include discussions on the rule of law, transparency in the decision-making process, the disclosure of and access to information, and the efficiency and prevention of corruption in the international civil service. These are often included in the concept of accountability. While the system of legal responsibility is at the core in securing their effectiveness, especially that of the rule of law, the concept of accountability is a broad concept not limited to legal

²⁴ Bodansky, *supra* note 5, p. 609.

²⁵ Hisakazu Fujita, “Kokusai Rengo to Minshushugi (The UN and Democracy),” in Nisuke Ando et al. (eds.) *21-seiki no Kokusai Kiko: Kadai to Tenbo (International Organizations in the 21st Century: Problems and Prospects)*; Toshindo, 2004) pp. 10-11.

²⁶ Bodansky, *supra* note 5, p. 615; Stein, *supra* note 9, p. 534.

responsibility. I would like to offer some analysis on a few of the cases that I touched upon in previous sections.²⁷

I have pointed out the direct and great impact of the activities and decisions of international organizations on private individuals and companies within a country as one of the reasons why legitimacy has surfaced as an issue. If a private individual suffered damages as a result of such an impact, especially if there was a violation of human rights, it is desirable that a legal responsibility be assumed and that some kind of relief be given to the victim. To apply a system of legal responsibility, however, it is necessary that international organizations be bound by related international law, especially by the norms of human rights, and this point has not necessarily been made clear. For example, as to the question whether international humanitarian law applies to UN military activities, the UN took a negative attitude by saying, among other things, that the 1949 Geneva Conventions, which comprise the core regulations of international humanitarian law, are formulated as treaties among states to which the UN cannot be a party and that the UN does not have a system of criminal punishment for violations committed by its forces. The International Committee of the Red Cross disagreed with the UN on these and other points.

However, there have been some improvements on this issue. In 1999, the UN Secretary-General issued a Bulletin entitled 'Observance by United Nations forces of international humanitarian law', in which he set out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control. Moreover, the Committee on Economic, Social and Cultural Rights stated in its General Comment No. 8 (1997), a report which can be regarded as an interpretational guideline by the Committee of the International Covenant on Economic, Social and Cultural Rights, that insufficient attention was being paid to the impact of sanctions on some of the core content of the economic, social and cultural rights of the people in Iraq, particularly the poor vulnerable groups, in the sense that they lacked basic humanitarian supplies such as drinking water, food and pharmaceuticals as a result of the economic sanctions by the Security Council. This Committee also pointed out, in relation to individual circumstances in several countries, that some of the activities funded by the IMF and the World Bank had brought about negative impacts on the enjoyment of economic, social and cultural rights by increasing poverty and unemployment, worsening income distribution and causing the collapse of social services.

Thus, there is an increase in the perception that international organizations are subjects of international law, and in principle regulated by customary international law, which is the general international law that binds all subjects of international law, and that human rights norms will be applied to the activities of international organizations to the extent that they have become customary international law.²⁸ On the other hand, when it comes to specific relief for

²⁷ Refer to the following for reference: the report written by the Committee for the "Accountability of International Organizations", on the website of the International Law Association, which is an association of scholars in international law: International Law Association, "Accountability of International Organizations" available at http://www.ila-hq.org/html/layout_committee.htm. [accessed on Sept. 23, 2006: From the (List of Current Committees) on the above site, go to the list of Former Committees. For other materials, refer to Karel Wellens, *Remedies against International Organizations* (Cambridge, Cambridge U.P., 2002); Gerhard Hafner, *supra* note 5, pp. 585-630; August Reinisch, "Governance Without Accountability", *German Yearbook of International Law*, vol. 44 (2001), pp. 270-306.

²⁸ See, e.g., Philip Alston, *Non-State Actors and Human Rights* (Oxford, Oxford U.P., 2005); Andrew Clapham,

victims, which is the materialization of the system of legal responsibility, there are almost no mechanisms or procedures at present.

Here, let us direct our attention to the inspection panel established by the World Bank as an example of a system in which requests by affected people are to be heard. This system has received high praise as it is the first attempt ever at such a procedure by an international organization. However, this procedure does not provide for a right to remedial measures on behalf of private individuals, nor any other corrective measures such as enforceable judgments. In this sense, it remains to be one of a system for accountability and not of legal responsibility.²⁹ Even if a private individual who suffered damages from a project funded by the World Bank filed a lawsuit for compensation with a domestic court, the claim would be rejected because international organizations, including the World Bank, are generally given immunity from domestic courts' jurisdiction in their member states.³⁰ Under the responsibility system of international law, there is no international judicial organ in which a private individual who has received damages can file a complaint against the World Bank. A violation by the World Bank of its operational policies and procedures does not necessarily directly reflect a violation of international law, and it will be extremely difficult to verify the causal relationship between a conduct of the World Bank and any damages resulting there from, considering that the responsibility for the implementation of the project rests with the borrowing country. It is amidst such difficulties in the application of a legal responsibility system, that the inspection panel established by the World Bank as a mechanism for accountability has drawn much attention, and similar mechanisms have been established in other regional development banks as well.

International investigation committees have been established in some of the failed UN activities to conduct independent inquiries for the clarification of the facts and reasons of failures so that the recurrence of similar failures can be avoided. In the field of the activities of the Security Council since the end of the Cold War, well known are the Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda (UN Doc. S/1999/1257 (1999)) and the Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica (UN Doc. A/54/549 (1999)), both of which were published in 1999. There was no relief, however, for the victims in either case. These attempts of investigation and the resulting disclosures of the reports could only be evaluated as a trend for preventing the reoccurrence of similar failures, leading, in this case, to the Brahimi Report (Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305-S/2000/809 (2000)), which aimed at the improvement of peace operations.

Human Rights Obligations of Non-State Actors (Oxford, Oxford U.P., 2006).

²⁹ Sabine Schlemmer-Schulte, "The World Bank Inspection Panel: A Model for other International Organizations?" in Niels M. Blokker & Henry G. Schermers, *Proliferation of International Organizations — Legal Issues* (The Hague, Kluwer Law International, 2001), pp. 483, 510.

³⁰ International organizations generally possess a wide range of privileges and immunities with respect to domestic laws, including immunity from jurisdiction. The World Bank group, however, is partially denied immunities from jurisdiction and execution as an exception. This is based on a commercial consideration that the World Bank should not deter general investors, in order to collect funds from them for loans by issuing securities. However, in the light of the grounds that privileges and immunities are given to secure the independence of the activities of international organizations (especially from the countries where they operate), the above restrictions on the immunities from jurisdiction and execution would not apply to the general activities of the World Bank. Refer to Chapter 9 of Tetsuo Sato, *The Law of International Organizations*. See also Sabine Schlemmer-Schulte, *supra* note 29, pp. 510-512.

The prevention of corruption and the improvement of the efficiency of international civil service are constant issues for international organizations.³¹ In charge of these problems are the Office of Internal Oversight Services (OIOS) of the UN Secretariat, which is for the oversight within the UN, and the Joint Inspection Unit (JIU) under the UN General Assembly, which is the external inspection organ for the entire UN system. Even in recent years, however, the Oil-for-Food Programme in Iraq came under suspicion, and sexual exploitation and abuse by the peacekeeping missions in the Republic of the Congo have occurred. Concerning the former, Secretary-General Kofi Annan appointed an Independent Inquiry Committee chaired by former US Federal Reserve Board (FRB) Chairman Paul Volcker.

Thus we can conclude that now is the time when various methods and procedures included in the concept of accountability are being attempted while the application of a legal responsibility system is limited to certain areas.³²

Conclusion

While the function of global governance has extensively been discussed as aimed at an organizational response to and cooperation on “global issues”, the role and the influence of universal international organizations centering on the UN system have increasingly been expanding and growing. It is especially in the trend of globalization since the end of the Cold War that the legitimacy of various international organizations is being questioned, as many of these have, by overstepping the legal framework of their constituent instruments concluded several decades ago, begun to enter the neighboring sphere of grey zone in terms of their legality, which may also directly affect private individuals and companies in a country.

Universal international organizations, while expected to function as public powers in international society, have only been analyzed primarily from the perspective of effectiveness because their powers and influence were limited. Therefore, the democracy deficit and legitimacy deficit of international organizations are seriously being argued at present for the first time. However, in the international society consisting of sovereign independent states and based on the principle of legal fiction, sovereign equality, we cannot directly import arguments on democracy in the domestic context into the discussion on how international organizations are to be organized. In this paper, I have only attempted, from the perspective of the “consent of the governed” as the core principle of democracy, to point out, at the domestic level, some ways to reinforce the democratic control by the legislative body over the executive body which participates in international organizations, and, at the level of international organizations, a few methods and procedures included in the concept of accountability.

The legitimacy of international organizations and their decisions presents many issues to be discussed as well as some unique difficulties, including the introduction of the system of legal responsibility. In the light of the civil society being increasingly highly valued in the trend

³¹ Refer to Chapter 14 of Tetsuo Sato, *The Law of International Organizations*, concerning the issues related to the international civil service system.

³² Ikuo Hasuo, “Kokusai Rengo niokeru Gyosei Kansa Kino no Genjo to Kadai (Verifying the Effectiveness of the Oversight System of the United Nations),” in *The Hitotsubashi Journal of Law and International Studies*, vol. 4, no. 3 (2005), pp. 299-329 and “Kokusai Rengo to Global Governance (The United Nations and Global Governance),” in *The Hitotsubashi Journal of Law and International Studies*, vol. 5, no. 2 (2006), pp. 179-223.

of globalization, the status and significance of NGO's as important actors in civil society will be one of the issues in discussing the legitimacy of international organizations. While I have examined, as key cases, four organizations in this paper: the European Union, the UN Security Council, the WTO and the World Bank, the legitimacy of (the activities of) international organizations is also discussed in such areas of international law as international environmental law relating to the protection of the global environment, as well as international human rights law in relation to the international monitoring of the human rights situation in a given country. In the 21st century, when the role and necessity of international organizations will inevitably continue to grow, the issue of their legitimacy and the legitimacy of the decisions they make will become a great challenge to the course of their future development.