

How the Legal Personality of International Organizations Affects the Unity of International Law:  
On Mutual Relations Amongst their Respective Legal Orders

Adrien Schifano

**要旨**

The international personality of international organizations has been enjoying a growing acknowledgment, to the point that it is nowadays recognized as being a normal feature. While the issue has been intensely debated during the twentieth century, that international organizations have an international personality of their own is nowadays well admitted, as reflected in most of the major textbooks and positive international law. That international organizations enjoy a legal personality of their own amid international law means that they are, in the same standing as others such as States, subjects of the international legal order the unity of which is often asserted. The view that prevails is that of a single international legal order where different sorts of subjects having different properties coexist.

However, things are not that simple. Although international organizations having an international personality is widely acknowledged by authors, it is usually done only on principle. On the other hand, more specific studies that examine the issue tend to take the international personality of international organizations as the purpose of their demonstration but too often have their conclusion limited to affirming or negating this personality. As a result, while such a personality is often affirmed or assumed, there have not been any substantial attempts to go beyond its statement. Consequently, the consequences of allowing that international organizations are subjects of international law have been insufficiently explored.

In contrast, this study takes the international personality of organizations as a starting point and seeks for its character and practical consequences, in particular regarding the assumed unity of the international legal order. What are the distinctive traits of the international personality of international organizations? How does acknowledging to such a class of subjects of international law affect in feedback the assumption of a single international legal order? It is concluded that,

while international organizations seem to qualify as subjects of international law, they hardly coexist in such quality with States and other subjects of international law on the same plane. Therefore, recognizing that international organizations are subjects of international law prevents from assuming the unity of the international legal order.

The issue of the international personality of international organizations is examined through the angle of the relations between the proper legal orders of international organizations and the international legal order by following three steps. First, assuming that the inherent properties of a legal entity reflect on its legal personality, the characteristics of the proper legal orders of organizations are sought with a view to identifying the special characteristics of their international personality. Second, the action of the international legal over international organizations is examined. This action is found to merely consist in international law recognizing international organizations as being subjects of international law. Finally, how international organizations being subjects of international law affects the assumed unity of the international legal order is examined by giving due regard to the proper characteristics of the former that were earlier identified.

As the international personality of international organizations stems from them being specific legal orders, the properties of these legal orders are sought in order to identify the characteristics of their international personality. With a view to verify the nature of international organizations to be legal orders, focus is first given to their autonomy.

International organizations' legal orders are found to be autonomous from external instruments such as founding treaties. This autonomy is, first, ascertained from a material standpoint. The prevalence of a finalist understanding in interpreting organizations' founding treaties, coupled with a significant role of customary law for generating the rules of their proper law prevents to see in implementing such instruments as the mere realization of the parties' will. In contrast, using specific rules for interpreting founding treaties that focus on seeking for efficiency and are mostly centered on the organization itself instead of being protective of the parties' sovereignty is an invite to progressive development of their substance. In addition to such a teleological interpretation, the usual absence of mechanisms for controlling organizations' own interpretation of their constituent instruments is favorable to such developments. In particular, it allows for the development of customary rules resulting from organs' practice. It is especially significant that, in addition to performing an interpretative or a supplementary function, these customary rules that are internal to the proper legal order of each organization may also perform a modifying function.

Second, organizations' autonomy from their founding treaties is observed from a formal standpoint. In this regard, the lack of formal bounds between international organizations and their

founding treaties, as well as their secondary legislation being not binding over the States who are party to such treaties, shows that organizations' proper law is not the mere implementation of their founding treaties but is separate.

Furthermore, that such instruments being a condition for the an organization coming into existence is random in nature, since certain organizations have been established by other means, provides evidence of the autonomy of organizations *vis-a-vis* their founding treaties.

Considering now relations between international organizations and member States, autonomy of the former from the latter is ascertained. First, the study focuses on distinguishing between factual and legal elements. It is found that, although organizations are factually dependent on their members, they enjoy towards them an autonomy *de jure* that is supplemented with specific means of legal technique intended to ensuring it. Hence, whereas autonomy of organizations from their member States is maybe originally a fiction, by providing dedicated mechanisms for protecting this feature international law turns such a fiction as a reality.

Organizations' autonomy is found to extend to independence in certain circumstances. That is reflected in international organizations acting on behalf of their proper interests that is separate from those of their members. In particular, protecting such interests is reflected in the statutory independence enjoyed by organizations, which can be verified in each and every of their components, be it organs, including inter-governmental organs, agents, or officials.

Finally, organizations are found to exercise features characteristic of self-government over their proper legal orders. This is reflected in these legal orders being structured according to a proper hierarchy of both their agents and norms. Furthermore, the self-organizing power that benefits to organizations is manifested in implementing the implied powers theory in them governing over their proper legal orders.

After ascertaining autonomy of proper legal orders of international organizations, which already allows to identify certain of their properties, the study focuses on the actual functioning of these legal orders. In so doing, it is found that the concept of function, albeit imperfect and criticized for this reason, performs a central role within organizations proper legal orders by providing the criterion for their unity. The concept is, first, deciphered and its components identified. The property of proper legal orders of organizations being grounded in their functions is further examined with regard to the sphere of validity of the resulting legal orders and function providing the criterion for identifying individuals enjoying the status of being subjects of law therein. Hence, organizations' proper legal orders are found to perform the basic features necessary for recognizing them as legal orders, by providing the rules necessary for the recognition of their subjects by relying on their functions.

Second, contradictions pertaining in this functional paradigm are given attention. The incidence of organizations' functions operating as a legality principle amid their proper legal orders are identified and found to reflect a particular type of legality in allowing to disregard procedures and forms in certain circumstances. However, while the function provides organizations with certain rights, which are partly reflected in the implied powers theory but also on their organs' capacity to disregard procedures, it does not result in obligations. These legal orders are further found to mainly rely on the concept of function that shape their structures and functioning and therefore conditions their nature. Such a functional paradigm, in particular, constitutes the basis for defining organizations' powers and jurisdictions.

These characteristics give rise to two main antinomies that are observed to be arising from the international personality of international organizations when considering these as being subjects of international law. The first of these concerns lies in the lack of criteria for their recognition as subjects of international law. The second is that the operation of organizations does not usually conform with most fundamental rules of international law.

First, although it is assumed that there is a class of subjects of international law that is styled as international organizations, it does not receive any positive definition under international law. While authors have been attempting to define international organizations according to varying criteria and approaches, these remains theoretical. The widest acknowledged definition for international organizations that emphasize the criteria of their conventional basis is found mistaken. On the other hand, positive international law does not provide accurate criteria for defining international organizations except that of them having an intergovernmental basis, which is rather few. This lack of clear criteria for defining international organizations under international law is found as contradicting the statement of their international personality. If a basic feature of a legal order is to set the rules according to which its subjects are recognized and protected as such, and if international organizations are a category of subjects of the purportedly single international legal order, then it is surprising that this international legal order does not provide rules for defining how these are recognized as being subjects of law therein.

Second, organizations being subjects of international law is tested with the norms the international legal order for recognizing and protecting its subjects. Such norms are found in what may be called the fundamental principles proper to international law. However, these principles mainly pertain to States or other subjects of international law that define according to one elements out of those of territory or people, but seem irrelevant to international organizations that do not bear such features. Additionally, when considering their usual practice it appears that international organizations do not abide by legal principles proper to international law. It is therefore

contradictory to allow on the one hand that organizations are subjects of international law in the same way as States and others, while on the other their usual behavior does not reflect the normal features of such a quality in their relations with other subjects.

These two antinomies can be solved by admitting that legal relationships involving international organizations, in spite of them being subjects of international law, do not happen on the same plane as relations among States. However, it remains that recognizing that international organizations are subjects of international law plainly prevents the view of a single international legal order. With a view to progress beyond such an observation, this study attempts to examining what framework might replace that of a single international legal order, which was found as not valid.

The hypotheses considered in this regard are these of two layers of international law, one pertaining to inter-organizations relations, and the other to mixed relations, in addition to the traditional international legal order pertaining to inter-States relations. Adopting such an approach allows to dovetail the contradictory views that organizations are subjects of international law as well as them not being subjects of law within the same legal order as States. These two layers are then examined with a view to ascertaining whether they qualify as legal orders in their own right.

The first hypothesis considered is that of an international legal order framing relations between organizations and States. It was found that the layer encompassing mixed relations is composed by bilateral relations that each act as a framework performing the features necessary for identifying a legal order. Each relationship appear as being established bilaterally on the basis of personal features of the parties. In addition to such an *intuitu personae* basis, these relationships generate synalagmatic rights and obligations of the parties, in particular on the basis of their mutual obligations to cooperate in good faith, that are implied and contained in each other. As these rights and obligations constitute the very nature of such relationships, they are found as being a common feature of mixed relations. Hence, each of the particular relationship between an organization and a State thus appears as a legal order on its own by providing the norms for the parties mutually recognizing each other and being protected in their mutual relations as being subjects of law.

Furthermore, since these relationships follow a same pattern in so doing, which consists in the parties referring to the organization's function for defining the qualities according to which they recognize each other, and since such a mechanism is not resulting from the parties agreement but instead is inherent to their relationship, it is found to result in identifying a principle. This principle, which purports the pattern according to which the parties define criteria for mutually recognizing each other as being subjects of law by relying on the organization's function, is uniformly implemented in all such relationships while being particular thereto. This principle is found to

characterize an international legal order that encompasses, and is at the same time proper to, mixed relations.

The second hypothesis is that of an international legal order surrounding inter-organizations relations. First, the view that organizations would be organs of an international community, which implied them coexisting as being subjects of law on the same plane, is examined and found to be inadequate to the reality of organizations mutual relations. Second, these relations are examined and found to rely on two diverging paradigms. While inter-organizations, in a way similar to mixed relations, arise from a bilateral basis, the way they define rules for recognizing and protecting their parties as being subjects of law equal in this respect show two models coexisting. One of these models is akin to mixed relations in the parties referring to one of the organizations function or defining their relationship. In addition, another model is similar to inter-States relations by maintaining a strict equality between the parties the relationship of which is thus framed according to an external factor, which is the object of their cooperation. These two diverging paradigms coexisting in the sphere of inter-organizations relations prevents from identifying a common and uniform pattern for their relations. While these relationships are in each case bilateral in nature, no principle of general scope pertaining to these relations can be identified that would allow to characterizing a single legal order for inter-organizations relations. Hence, these relations remain bilateral in nature.

However, within the sphere of inter-organizations relations, several partial legal orders are found as surrounding the relations between certain organizations within specific systems of law. In these cases, the basis for the relations among organizations no longer remains bilateral, but allows to identifying a common framework that surrounds all the organizations involved. While being not general in scope, these systems organize the mutual relations among a variable number of organizations in a uniform way. Such frameworks are found to provide rules for recognizing and protecting the participating organizations as being equally subjects of law therein. In particular, the effective implementation of the specialty principle is made possible by such frameworks having proper organs for maintaining control and direction, albeit this last feature remains minimal, over the participating organizations. Since such frameworks show the basic features of a legal order, they can properly be described as being such. Hence, although a single legal order for framing inter-organizations relations is not identified, several partial legal orders are found as surrounding in certain cases the relations among multiple organizations.

Therefore, admitting that international organizations are subjects of international law prevent to simultaneously asserting the view of the unity of the international legal order. It is instead concluded that the appearance of international organizations as subjects of international law results

in generating three layers of legal relations that are international in nature, corresponding respectively to inter-States relations, inter-organizations relations, and mixed relations, each following distinct principles in their functioning. Of those, only that pertaining to inter-States relations conform with the idea of an international legal order as it is traditionally conceived. The two others are clearly separated. The legal framework surrounding mixed relations, although it relies on bilateral relationships established *intuitu personae*, is nevertheless found as being a legal order on its own. In addition, although the legal framework of inter-organizations relations may not qualify as being a legal order in itself, these relations nevertheless give rise to a number of partial legal orders. Therefore, admitting that international organizations are subjects of international law prevents to identifying a single international legal order; on the contrary, international organizations enjoying an international personality generates additional frameworks for the legal relations involving them that seemingly qualify as being legal orders that are international nature and supplement the one of inter-States relations.