

## A LEGAL THEORY OF INTERNATIONAL ORGANIZATION\*

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### I. Introduction

The present article proposes a new framework for the study of international organization within international law.

The author of an early classic in this field<sup>1</sup>, Josef Kunz, pointed recently to a gap in the literature which he himself had covered more than thirty years ago but which would now need again some scholarly attention.

What we therefore need today, in a period of evolution . . . of the largely embryonic character of the law of international organizations, is a treatment which is comprehensive, strictly juristic, positivistic, comparative, analytic and systematic.<sup>2</sup>

\* This article is based on the theoretical part of my doctoral dissertation in political science, *European Integration: A Comparison of Institutions*, Seattle, University of Washington, 1958, of which a summary is published in *Dissertation Abstracts*, Ann Arbor, University Microfilms, Vol. 19 (1958), pp. 863-864. Grateful acknowledgement is made to Professor Charles E. Martin, former President, American Society of International Law, and Professor Linden A. Mander of the University of Washington, both of whom guided me in writing the dissertation. Further recognition is made to Judge Philip C. Jessup of the International Court of Justice, then Hamilton Fish Professor of International Law and Diplomacy at Columbia University, and Professor Leland M. Goodrich of Columbia University, both of whom guided me in revising my dissertation under a post-doctoral grant of The Rockefeller Foundation at Columbia University in 1959-60.

1 Josef L. Kunz, *Die Staatenverbindungen*, Stuttgart, Kohlhammer, 1929.

2 Josef L. Kunz, book review of Karl Zemanek, *Das Vertragsrecht der internationalen Organisationen*, Vienna, Springer, 1957, in *Österreichische Zeitschrift für öffentliches Recht*, 1957-8, p. 518. (Translation supplied.) Kunz reviewed the same book similarly in English, see *American Journal of International Law*, 1958, pp. 565-567.

What follows is an attempt to meet these conditions. Many of its shortcomings are deliberate sacrifices for one overriding purpose: to combine a stable conceptual framework with maximal flexibility in detail.

Five considerations are basic to this method.<sup>3</sup> A few terms must now be introduced and defined.

First, independence. Every system of data classification must use some ordering principle. IGO's are our data.<sup>4</sup> Different ordering principles can be used. For instance, IGO's can be divided into regional and universal ones, and into various other categories. This has been done in many ways.<sup>5</sup> However, no single ordering principle has yet been devised which would allow us to array *all* existing IGO's in some meaningful form. Nothing comparable to the GNP (gross national product) of the economists exists in the field of IGO's. Economists would cheerfully agree that the GNP is a very crude thing. And yet, they would not do without it. For some purposes, mostly comparisons, the GNP is a useful concept. In this sense, the term and concept of constitutional independence is proposed here as a

3 The professional literature regarding these basic considerations is discussed separately in Section II below.

4 "IGO" stands for "international governmental organization," following increasing professional custom, especially for repeated references. See Amos J. Peaslee, *International Governmental Organizations*, 2 Vols., The Hague, Martinus Nijhoff, 1956, and Union of International Associations, *Yearbook of International Organizations*, 1958-9, Brussels, 1958. The following abbreviations are used for specific organizations: CE - Council of Europe; CERN - European Organization for Nuclear Research; ECSC - European Coal and Steel Community; EDC - European Defense Community; EEC - European Economic Community; EPC - European Political Community; EPPO - European Plant Protection Organization; EPU - European Payments Union; Euratom - European Atomic Energy Community; FAO - Food and Agriculture Organization; IAEA - International Atomic Energy Agency; ICJ - International Court of Justice; NATO - North Atlantic Treaty Organization; NGO - (International) Non-Governmental Organization; OAS - Organization of American States; ODECA - Organization of Central American States; OEEC - Organization for European Economic Cooperation; PCIJ - Permanent Court of International Justice; UN - United Nations; WEU - Western European Union.

5 Reviewed in Clyde Eagleton, *International Government*, 3rd Ed., New York, Ronald Press, 1957, p. 161. For bibliography, see *loc. cit.*, note 5. For the most complete, recent, organized bibliography of the entire field, see G.P. Speeckaert, *International Institutions and International Organizations*, Brussels, Union of International Associations, 1956.

common denominator for comparing IGO's. The term is defined as follows. An IGO's "independence" is its political power as reflected in its constitution. The term "constitution" is broadly used as including not only the constituent legal document but also later constitutional development and basic constitutional facts, e.g. size of budget, historical duration, and the like. An IGO's independence is thus more than its legal personality.

Second, gradation of independence. Is the United Nations independent—in the sense defined above—or is it not? Is the Council of Europe? As posed, the questions are unanswerable. Every IGO has some constitutional independence. The difference is one of degree. The degree of independence can be conceived of as being located on a scale somewhere between two theoretical extremes: (a) a unitary world state and (b) non-organized sovereign states in the nineteenth-century sense of the term. Obviously, neither extreme exists in fact today. The magnitude of an IGO's independence must therefore be greater than zero by virtue of the very existence of the IGO and smaller than infinite by virtue of the non-existence of a world state. Once created, IGO's must have a minimum of independence. Suppose an IGO consists only of one clerk and one typewriter and requires for every decision the formal consent of all member states. Even this IGO will have *some* independence, although ludicrously little. For example, the clerk may have the authority to determine the number of carbon copies that go into the IGO's permanent files. On the other extreme, an IGO may have the authority to determine the existence of a breach of international peace and to order the use of military force against sovereign states in restoring peace. However, even this extreme case --as is well known-- falls still far short of a unitary world state. The scale is entirely theoretical, and somewhere on the scale there is a place for every IGO.

Third, factor analysis.<sup>5a</sup> In trying to place an IGO on the scale of independence we encounter at once a practical problem. What are the objective signs of independence? Independence is a blanket term, and abstract. What does it consist of in the real

5a The term factor analysis is used here not in the precise sense of Louis Thurstone, *Multiple-Factor Analysis*, Chicago, The University of Chicago Press, 1947, and subsequent users of Thurstone's method in psychological research but in the common dictionary sense of identifying and analyzing relevant factors.



world? The UN Security Council is highly independent of states because it can take decisions binding on others. But the decisions are made by state-instructed delegates. The CE Consultative Assembly consists of free parliamentarians but it cannot take any decisions binding on states. Now, which of the two bodies is more independent?

We may try to solve the problem by *separately* analyzing each factor. Once the blanket term of independence has been conceptually dissolved into its component parts, the work can proceed. Ten typical characteristics of IGO's serve as factors of independence, as follows: constitutional intent; constitutional jurisdiction; status; institutionalization; subject matter; time; personnel; type of decision; procedure of decision; budget. Each such factor can be analyzed *directly*, by examining the IGO's constitution, and related evidence of law and fact. Singly they can be evaluated, and together they permit a conclusion as to the degree of an IGO's overall independence.

Fourth, factor gradation. What was said of independence as a whole applies to each factor in its own limited field. Does the UN have the authority to amend its own constitution, or not? Does the Council of Europe? As posed, these questions, too, are unanswerable. In most cases, a factor of independence is not simply present or absent. Hence, it is impossible, at least at the present stage of IGO evolution, to establish a check list of criteria of IGO independence; such a yes-or-no approach has its utility in establishing criteria for statehood,<sup>6</sup> i.e. the independence of a mature type of international legal person. To apply this method to IGO's, a fermenting type of international legal person, would be as hopeless an undertaking as that of trying 20th-century criteria of statehood on the evolving sovereignties of medieval Europe.<sup>7</sup>

IGO's normally have neither full amendment powers nor none at all. They have *some*, and the amount varies from IGO to

6 Herbert W. Briggs, *The Law of Nations*, 2nd Ed., New York, Appleton-Century-Crofts, 1952, pp. 65-67; L. Oppenheim, *International Law*, 7th Ed., London, Longmans, Green & Co., 1948, Vol. I, pp. 114-115. Note, however, an interesting challenge (if in a somewhat different context) to the yes-or-no tradition in international law: R.A.Falk, "International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order," *Temple Law Quarterly*, 1959, pp. 295-321.

7 F.A. von der Heydte, *Die Geburtsstunde des souveränen Staates*, Regensburg, Habel, 1952.



IGO. The same is true for most other factors, in most cases. Therefore, each factor is conceived of as a scale extending from the extreme of no independence to the other extreme of complete independence.

The location of an IGO on each factor scale can be directly determined by examining the constitution. A combination of all factors allows then a conclusion regarding the overall independence of an IGO.

Fifth, quantification. In the contemporary controversy over quantitative methods in political science,<sup>8</sup> we often forget that *some* form of quantification is practically inseparable from the process of comparing. Such quantification need not be expressed in numbers, nor need the comparative analyst belong to the quantitative school of thought. A familiar example may illustrate the point. Everybody will agree to the general proposition that American courts have more political power than British courts. But what exactly does "more" mean? If "more" makes sense, and of course it does, we must presuppose a scale from powerful to powerless. We must also presuppose the possibility of translating the courts' respective political roles into magnitudes on that scale. This translation is quantification.

The same principle holds true for comparisons of IGO's. It is a quantitative conclusion to say that one IGO is (in whatever respect) more independent than another. The comparative analyst *quantifies* in his own mind the *qualitative* information he finds in IGO constitutions. The professional task is that of isolating typical data from entangling irrelevancies, and of weighing the evidence systematically.

However, quantification has also another meaning. In this latter meaning it is a mere gadget for communication. Once the researcher has sifted and quantified the data in his own mind, he may or may not use numbers to express his findings. An IGO's

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8 "Typical is the struggle between the partisans of the case study and the supporters of quantification, which has moved through one field after another like an epidemic of measles through a large family. The outcome, in some instances, happily has been a gradual acceptance of the uses and limitations of each in tackling specified types of problems." David B. Truman, "The Impact on Political Science of the Revolution in the Behavioral Sciences," in *Research Frontiers in Politics and Government*, Brookings Lectures, 1955, The Brookings Institution, Washington, D.C., 1955, p. 227.

constitutional powers can be expressed as none, almost non-existent, very small, small and so on up to virtually complete and complete. Or they can be expressed as 0, 1, 2, 3 and so on up to 10. The choice between the two modes of expression will probably depend on the number of comparable items, as well as on the need to interrelate them. If only a few items are to be compared the use of numbers will clearly be out of place. Upwards of a certain amount of items to be compared, some numerical unit symbol becomes necessary. The present study contains several hundred individual findings, all of which should be interrelated.<sup>9</sup> Hence, quantification had to be used in both senses of the term.

## II. Literature

Like most new approaches to an old problem, this approach uses selected elements of basic writings in the field.

It is unnecessary to discuss the earlier classics<sup>10</sup> which have all been incorporated in, or superseded by, the writings<sup>11</sup> which

<sup>9</sup> See Table.

<sup>10</sup> For bibliographical reference see note 5 above. The use of the term "classics" implies no value judgment. I am merely referring to the body of pre-1920 knowledge generally represented by the following writings: G. Jellinek, *Die Lehre von den Staatenverbindungen*, Vienna, 1882; S. Brie, *Theorie der Staatenverbindungen*, Stuttgart, Enke, 1886; G. Moyniers, *Les Bureaux Internationaux des Unions Universelles*, Geneva, Cherbuliez, 1892; J. Hatschek, *Das Recht der modernen Staatenverbindungen*, Leipzig, 1909; P. Otlet, "L'Organisation internationale et les Associations internationales," *Annuaire de la Vie Internationale*, (Brussels) 1908-1909, pp. 31-166; P. S. Reinsch, *Public International Unions*, Boston, World Peace Foundation, 1911; L. S. Woolf, *International Government*, New York, Brentano, 1916; W. Schuecking, *The International Union of the Hague Conferences*, Oxford, Clarendon Press, 1918; F.B. Sayre, *Experiments in International Administration*, New York, Harper, 1919.

<sup>11</sup> See also notes 5 and 10 above. A working definition of "present body of knowledge" refers to the aggregate scope of the following writings: Josef L. Kunz, *Die Staatenverbindungen*, Stuttgart, Kohlhammer, 1929; Norman L. Hill, *International Administration*, New York, McGraw-Hill, 1931; R. Yorke Hedges, *International Organization*, London, Sir I. Pitman & Sons, 1935; P.B. Potter, *An Introduction to the Study of International Organization*, 5th Ed., New York, Appleton-Century-Crofts, 1948; R.L. Bindschedler, *Rechtsfragen der europäischen Einigung*, Basel, Verlag für Recht und Gesellschaft, 1954; C. Eagleton, *International Government*, 3rd Ed., New York, Ronald Press, 1957; P. Reuter, *International Institutions*, (Corbett Translation), Princeton, Princeton University Press, 1957; K. Zemanek, *Das Vertragsrecht der internationalen Organisationen*, Vienna, Springer, 1957.

constitute the present body of knowledge. From the latter group, the following features have been derived.

My basic assumption that the categories of international organization are artifacts of legal science rather than existing norms of positive law is derived from Kunz.<sup>12</sup>

Zemanek expresses the same idea negatively. He notes that positive law does not define the term international organizations.<sup>13</sup>

The dominant role of my concept of constitutional independence of IGO's is influenced by the dichotomy of centralization versus decentralization, as formulated most clearly by Kelsen but also by others.<sup>14</sup> The concept of a graduated scale is related.<sup>15</sup>

12 Kunz, *Staatenverbindungen*, pp. 69 and esp. 139, following Hatschek, *op. cit.*, formulates: "Unions of states are not creatures of law but of legal science; they are classificatory concepts of the science of law." (Translation supplied. Key term in original: "rechtswissenschaftliche Klassifikationsbegriffe.") For a recent statement of this view, see D. Sidjanski and S. Castanos, "Théorie de l'Union Internationale," *Revue Hellénique de Droit International*, 1953, (pp. 117-129), p. 127, note 1, paraphrasing and agreeing with J. Spiropoulos, *Théorie générale du droit international*, (no further bibliographical data given): "We agree with this interpretation. In trying to identify the proper characteristics of the union (of states), we are in the field of semantics. There are no legal criteria to be discovered. It is only necessary to be consistent with the name given to the treaty." (Simplified translation supplied.)

13 Zemanek, *op. cit.*, p. 8: "The concept of international organization has not been completely described in positive law in any treaty or charter." (Translation supplied.)

14 H. Kelsen, *General Theory of Law and State*, Cambridge, Harvard University Press, 1945, p. 316: "Only the degree of decentralization distinguishes a unitary State... from a federal State. And so is an international confederacy of States distinguished from a federal State by a higher degree of decentralization only." Bindschedler, *op. cit.*, p. 77, in defining "supranational" singles out what I call constitutional "independence": "The more such characteristics an (international) organ has, the more independent is its position vis-à-vis the member states of the community, and the more supranational is its position." (Translation supplied.) Also see note 15.

15 Kelsen, *loc. cit.* More recently P. Guggenheim, *Traité de Droit international public*, Geneva, Librairie de l'Université, 1953, Vol. I, pp. 235-236: "Every treaty-based community of States is in a certain sense an international federation." And: "The difference between a State and an international federation has therefore no bearing on the nature of their institutions, but on the degree of centralization of legislative and executive power." (Translation supplied.) Most recently Reuter, *op. cit.*, p. 185: "This (classic) distinction (between confederations and federations) is broadly valid but there are variations, and one has to consider them as two tendencies rather than two clearly defined categories. A rigorous distinction of this kind between federations and confederations does not correspond to reality."



There is a difference, nevertheless. Kelsen's concepts are end products logically deduced from his legal philosophy. My concepts are mere hypotheses to be refuted or confirmed by an *inductive* method.

The use of factor analysis for this purpose does not appear to have a published precedent in the field of international organization.<sup>16</sup>

While factor analysis as such is not expressly proposed in the literature, the general need is recognized and many writers use classifying schemes which distinguish certain typical characteristics of IGO's.<sup>17</sup> However, these classifying schemes are

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Rejecting this point and returning to the classic dichotomy is R. Pinto, "The Wisdom of Paul Reuter," *Journal du Droit International*, 1959, pp. 101-115. On p. 103 Pinto speaks of a "qualitative" difference. Hatschek gave the earliest formulation of IGO independence in the dichotomous, non-relativist fashion of his time: J. Hatschek, *Völkerrecht*, Leipzig, Deichert, 1923, p. 265: "Administrative unions in the narrower sense fall into two main categories: (1) Either they have supranational community organs (in German: gemeinschaftliche, überstaatliche Organe) upon which the constituent states cannot exert any influence whatsoever. These are called administrative unions with general organs. (2) Or the states can maintain continued influence upon the organs. These are called administrative unions with merely common organs (in German: mit bloss gemeinsamen Organen)." (Translation supplied, sentence structure modernized.) For two recent revivals of the classic dichotomy of federal versus confederal state see M. Usteri, *Theorie des Bundesstaates*, Zurich, Polygrafischer Verlag, 1954, p. 199: "... federal and confederal states cannot be classified under one generic term..." as cited by Heydte, book review, *Archiv des öffentlichen Rechts*, 1958, p. 112, and W.P. Murphy, "State Sovereignty Prior to the Constitution," *Mississippi Law Journal*, 1957/58, pp. 115-157, esp. p. 156.

16 The possible use of factor analysis was first suggested to me in a seminar remark by Professor Verdross in 1954. He referred to the European Coal and Steel Community as a phenomenon which is to the international lawyer what the Australian platypus is to the zoologist. Both are empirical realities which straddle the border of *otherwise satisfying* lines of classification. They are not simply intermediate forms, but they combine in one puzzling entity features of different classes. Hence Verdross' first label for the ECSC: "partial federal state (partieller Bundesstaat)." Later, he joined the majority of the profession in using the term "supranational organization (übernationale Organisation)." See A. Verdross, *Völkerrecht*, 3rd. Ed., Vienna, Springer, 1955, pp. 280-281. This term has, if not much else, a verbal basis in positive law. See Art. 9, ECSC Treaty. By now the term has taken firm roots in the professional literature. See E. Steindorff, "Literatur zur Entwicklung der Europäischen Gemeinschaft für Kohle und Stahl," *Europa-Archiv*, 1956, pp. 8967-8970. But see Overstreet, note 17 below.

17 Regarding the fundamental need which any theory of international organization has for factor analysis (under whatever name), see Kunz, *Staatenverbindungen*,

non-cumulative, overlap in content, and are not polarized with a view to one overall objective.

A major exception is the recent Princeton Study on *Political Community and the North Atlantic Area*.<sup>18</sup> The Princeton Study pioneered the basic concept of measuring a complex phenomenon ("community") by inquiring into a number of stated criteria ("conditions") so selected that each represents one constituent element of the total phenomenon.<sup>19</sup> This is in essence the same theoretical approach which is described in this study as factor analysis. Of course, there is a different overall objective. But both approaches mean to do more than merely identify common features in different phenomena. They mean to add up the parts of a whole. If all of the conditions of the Princeton Study are fulfilled, then there is a community in the Princeton Study's sense of the term. If all of my factors apply to their maximal extents, then a given IGO does in no way depend on its member states and it is in substance a unitary state.

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pp. 139-140: "The necessary prerequisite of any theory of unions of states is therefore the *analysis* and *comparison* of positive-legal structures; using Anzilotti's words, we must find out 'certain basic similarities'." (Emphasis in original, translation supplied.) Regarding particular classifying schemes which identify such "certain basic similarities" see A. Rapisardi-Mirabelli, "Théorie Générale des Unions Internationales," *Recueil des Cours*, 1925, Vol. II, pp. 345-390; P.B. Potter, "The Classification of International Organizations," *American Political Science Review*, 1935, pp. 212-224 and 403-417; G. Schwarzenberger, "Formen und Funktionen internationaler Organisationen in der heutigen Welt," *Europa-Archiv*, 1957, p. 10299-10304. A similar method was used for a limited range by A. B. Overstreet, *Sovereignty in the Constitutions of Some International Organizations*, (unpublished Ph. D. thesis) Cambridge, Harvard University, 1948. Overstreet used the following factors: universality, membership, termination, voting, amendment, and finance. He applied the factors to four IGO's.

18 K.W. Deutsch et al., *Political Community and the North Atlantic Area, International Organization in the Light of Historical Experience*, Princeton, Princeton University Press, 1957.

19 Deutsch, *op. cit.*, pp. 46, 50, 53, 54, 56, 133, 141, 148, 156, 158 and *passim* breaks the complex concept of "international community" into such component parts as values and expectations, communication processes, mobility of persons, multiplicity of transactions, mutual predictability of behavior, distinctive way of life, joint economic rewards, role of elites, outside military threat, and ethnic and linguistic assimilation. For the use of factor analysis and measurement in comparing federations (rather than IGO's) see W.S. Landecker, "The Dynamics of Political Integration in Federal Systems", *International Social Science Bulletin*, 1952, pp. 55-70.

Regarding factor gradation, the present study makes explicit what many authors implied. The Princeton Study, in general, asks only *whether or not* a condition is fulfilled. It shows, in many instances, an awareness of the fact that a condition may be met *to some extent*, i.e. neither fully nor not at all.<sup>20</sup> But the Princeton Study leaves it at that. It makes no concerted effort to index and systematize these quantitative differences.<sup>20a</sup>

The fact is widely recognized that IGO powers are not simply present or absent, but are usually present in various degrees. Specialists are aware of the simultaneous constitutional diversity among international organizations, and of differences of degree.<sup>21</sup> More frequently, however, such differences are attri-

20 *Loc. cit.*, p. 50: "widespread expectations;" p. 53: "Full-scale mobility of persons;" p. 134: "so much in common that they enjoy to a great extent a common way of life;" and "other countries... are a little less close;" p. 145: "ties are much stronger among North Atlantic countries than with outside areas;" p. 160: "conditions are to be found in... these two countries, and most of them to a high degree;" and "weaker condition," "slight reduction in the number and intensity of... conditions", "quite a drop," and "the longest drop of all." (All emphasis supplied.) All quoted instances appear in contexts which suggest an awareness of what I call "factor gradation" and what Deutsch calls "intensity of condition." Examples can be multiplied at liberty. See also G. Bebr, "European Defense Community and Western European Union: An Agonizing Dilemma," *Stanford Law Review*, 1955, pp. 169-236. This article typifies the dilemma of dichotomy versus relativism. On the one hand, the institutions are called as "fundamentally different" as are "supra-ordination" and "cooperation" (p. 200), but on the other hand, relativism is recognized (p. 207): "For the present purpose the Community powers may best be classified according to the degree of governmental participation required for their exercise."

20a The difference between a mere awareness of a gradated scale and its actual employment as a research tool is illustrated with reference to the Princeton Study in Peter H. Rohn, "Testing Deutsch's Indices of International Community," *PROD*, September 1959, pp. 7-9.

21 P.-H. Spaak, Speech made when handing over the Draft Statute of the European Political Community to the Six Ministers for Foreign Affairs on Monday, March 9, 1953, printed in Ad Hoc Assembly document, *Draft Treaty Embodying the Statute of the European Community*, published by the Secretariat of the Constitutional Committee, Paris, 1953 (?), p. 150: "Between the two extremes, represented on the one hand by a purely intergovernmental system, linking States which retain their entire sovereignty and on the other by a Constitution which would immediately pool most of the activities of our States, our Assembly has chosen a middle path -- that of setting up a Political Community of a supranational character." See also D.S. Cheever and H.F. Haviland, Jr., *Organizing for Peace*, Cambridge, Houghton and Mifflin Co., 1954, p. 7: "It would seem more accurate, however, to say that there is a whole spectrum of infinite gradations from the strongest to



buted to historical evolution. It is understood, or even taken for granted, that earlier organizations are less developed and less powerful than more recent ones.<sup>22</sup> In any case, the professional literature recognizes the legal relevance of differences of degree among international organizations.

The quantitative method follows from the other principal considerations. Any author who writes about the "greater" power of the Security Council as compared with the General Assembly has quantified the constitutional strength of IGO organs. If "greater" power means anything in a comparative study of institutions, it must implicitly assume a scale on which selected constitutional data correspond to certain locations

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the weakest organization." Also Clyde Eagleton, *The Forces That Shape the Future*, New York, New York University Press, 1945, p. 150: "I seem to have arrived at something in between the League of Nations and the federal or world state idea, and also, somewhere between a strongly centralized system and a number of separate and independent units." Also Rapisardi-Mirabelli, *op. cit.*, p. 390: "The international union, according to us, is the *form of organization* -- an organization which, as we have seen, goes from a *minimum of functions and organs* to a *maximum* which constitutes a distinct legal entity." (Emphasis in original; simplified translation supplied.)

22 J. L. Brierly, *The Law of Nations*, 5th Ed., Oxford, Clarendon Press, 1955, p. 101: "A less advanced type of the public international union is the Copyright Union." Brierly equates the degree of advancement with the complexity of institutionalization. In a similar sense, p. 92: "This development . . . has led to . . . institutions which, while they cannot yet be regarded as giving a 'constitution' to the international society, may not unfairly be described as a beginning of its constitutional law." Eagleton, *The Forces . . .*, p. 128: "The development here is the same, and as inevitable, as that which led, in the United States, to the Interstate Commerce Commission and the Federal Communications Commission." G. W. Keeton, *National Sovereignty and International Order*, London, Peace Book Co., 1939, p. 63: "... the steady growth of these international organizations (Postal Union, etc.) may therefore be regarded as the first practical inroad upon State absolutism..." G. Schwarzenberger, *International Law*, 2nd Ed., London, Stevens & Sons, 1949, p. 381: "According to the various purposes for which a classification of international institutions may be required, it is possible to distinguish between their various types according to their greater or lesser degree of stability and permanency, according to the scope and character of their membership, according to their structure, and finally according to their activities and functions. For the purpose of legal analysis, the first and last mentioned criteria are more significant than the rest." G. Burdeau, *Traité de Science Politique*, Paris, R. Pichon & R. Durand-Auzias, 1949, Vol. II, p. 542: "International relations are actually based in law on institutions, treaties, pacts, agreements whose number is equalled only by their fragility. At what point and under what conditions does this network of rules and this juxtapo-

from an assumed minimum to an assumed maximum. This epistemological fact enjoys professional recognition<sup>23</sup>

As regards the pedestrian sense of quantification, the use of numbers to express typical locations on the scale has no published precedent in the field of international organization. However, there are innumerable precedents in the general field of political science for a similar use of number symbols.<sup>24</sup> These numbers expressly disclaim the standards of accuracy normally associated with mathematical symbols in the physical sciences, and also in some social sciences. This fact is also generally recognized for political science.<sup>25</sup>

sition of international organisms integrate themselves into a federal arrangement?" (Translation supplied.) R. Yorke Hedges, *op. cit.*, p. 40: "The Concert (of Europe) was in fact, as Lord Salisbury described it, 'a rudimentary Council of the World;' it contained in it the germ of a genuine international organism." And on p. 44: "We have seen how the germ of international legislation appeared in the conference method, while the executive function was apparent in the growth of administrative unions." Verdross, *op. cit.*, p. 274, note 3: "However, these conferences constitute the first beginning of an organ of international legislation." And, p. 451: "This shows us that the UN has a *higher degree of organization* than the League of Nations whose principal organs were still mere diplomatic conferences." (Emphasis in original; translation supplied.) L. Oppenheim, *The Future of International Law*, Oxford, Clarendon Press, 1921, p. 12: "There is, indeed, only a quantitative and not a qualitative difference between a command issued by the British Government in London to the remotest part of India or Africa, and such a command as, in a federal state comprising the whole world, would issue . . . from the central government." For two recent "evolutionist" reviews of the field see P. Reuter, "Organisations internationales et évolution du droit," in *L'Evolution du Droit Public*, (no author, Studies in Honor of Mestre), Paris, Sirey, 1956, pp. 447-460, and H. Wehberg, "Entwicklungsstufen der internationalen Organisation", *Friedenswarte*, 1954, pp. 193-218.

23 V. O. Key, Jr., *A Primer of Statistics for Political Scientists*, New York, Thomas Y. Crowell Co., 1954, pp. 24-25: "Students are sometimes astonished when they collide with the realization that many of the concepts of statistics are merely mathematical synonyms for words of everyday discourse.\*\*\*All these and other expressions have implicit in them a dim notion of at least some sort of impressionistic technique of observation as a basis for the conclusion that the particular characterization is applicable."

24 For general reference to various professional evaluations of related problems, see Daniel Lerner and Harold D. Lasswell, editors, *The Policy Sciences, Recent Developments in Scope and Method*, Stanford, Stanford University Press, 1951, as well as Paul F. Lazarsfeld and Morris Rosenberg, *The Language of Social Research*, Glencoe, The Free Press, 1955, and ample bibliographical material in both books.

25 Evaluating the usefulness of numerical expression, Gunnar Heckscher, in a report on an International Political Science Association meeting, concludes:

This study uses quantification in the above two senses, but with a particular trait of its own. Every point on a factor scale represents a unit of independence. These units are interchangeable, like currency. They do not exist in the real world. They are like tons, or calories, or atoms – units theoretically assumed in order to facilitate comparisons of different matters. They are mental constructs which enable us to add up apples and pears. Only one recent instance in the professional literature makes the same theoretical point.<sup>26</sup>

This study, as distinct from the classical German-language treatments of the *Staatenverbindungen*, concentrates on modern international organizations. Thus, it disregards such obsolescent problems as “real unions”, or “suzerainties,” with which the classical authors were primarily concerned.<sup>27</sup> Instead, this study follows the English-language authors in examining only IGO’s, as shown by Reinsch, Sayre, Potter, Jenks and Eagleton.<sup>28</sup> Incidentally, the most recent German-language treatments of the general problem, while invoking the Jellinek-to-Kunz heritage<sup>29</sup>, do in fact follow the current Anglo-Saxon pattern in their exclusive concern with IGO’s.

This study follows Bindschedler in two more respects. First, it concentrates on European organizations, although not as exclusively as Bindschedler does.<sup>30</sup> Second, it does not individua-

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“If nothing but exact results can satisfy us, then we may just as well discontinue our efforts. If, on the other hand, we are humble enough to be satisfied with approximations, and if we are able always to keep in mind that they *are* approximations, then our comparisons may still prove of interest.” G. Heckscher, *The Study of Comparative Government and Politics*, London, Allen & Unwin, 1957, p. 78. (Emphasis in original.)

26 Anatol Rapoport, “Various Meanings of ‘Theory’,” *American Political Science Review*, 1958, (pp. 972-988), p. 980: “This search for primary, supposedly elemental, acts is itself inspired by the role of the atom concept in chemistry. . . . It is not so much a question of whether these ‘elementary particles’ exist: just naming them does not confer existence. It is rather a question of whether our observations can be so organized that the *assumption* that they exist gives us a heuristic and predictive advantage. Incidentally, this is the only sense in which the so called ‘elementary particles’ of physics can be said to exist.” (Emphasis in original.)

27 See note 10 above.

28 See Eagleton, *International Government*, Table of Contents, Part III ff., for a typical recent outline. Other references in notes 5, 10 and 11 above.

29 Zemanek, *op. cit.*, p. 9, note 1. Bindschedler, *op. cit.*, pp. 16-17, note 3.

30 Bindschedler treats only six selected European institutions: OEEC, EPU, CE, ECSC, EDC, EPC. My study examines, in addition to these six, eight other



lize IGO's. Every comparative study must choose a preference—either adhere to one rigid method or variously adapt a flexible method to special cases. The first alternative produces better comparisons but worse monographs, and vice-versa. This study follows Bindschedler in choosing the first alternative. The underlying idea is the same. In a field suffering from an over-abundance of variables, at least the *method* of comparison must be stubbornly constant—at whatever cost in repetitiveness.<sup>31</sup>

### III. Experiment

So far we have identified the general principles of a new method and we have compared this method to others proposed in the professional literature.

Three decisions must be taken at this point. Then we can move from theory to experiment.<sup>32</sup> First, we must select a sample of IGO's to be tested. Second, we must determine and define a number of factors which can be measured for each IGO. And third, we must establish a scale for each factor so that typical constitutional characteristics correspond to certain locations on the scale.

First, IGO selection. The horizontal headings of the Table show the results.<sup>33</sup> The selection presented a few problems. The IGO universe, most broadly interpreted, totals approximately 200 units.<sup>34</sup> Hence, given time and resources, one need not sample at all but can examine the entire IGO universe. It is a big task, but it is well within the order of magnitude of normal research projects. For this pilot study, twenty IGO's (approximately 10% of the IGO universe) have been selected. This sample covers all major types as defined by general background knowledge in the

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European IGO's, as well as six partly or wholly extra-European ones, i.e. twenty IGO's altogether.

31 Bindschedler, *op. cit.*, Table of Contents, pp. viii - xi.

32 Space does not permit a full treatment of the complex details of this methodological experiment. For details see Rohn, *op. cit.*, pp. 12-250.

33 See note 4 for abbreviations used in the Table.

34 The IGO universe of approximately 200 units is broken down approximately as follows: 130 presently existing IGO's, 30 existing and historical confederations, and 40 defunct or non-ratified IGO's. See *Yearbook of International Organizations*, *op. cit.*, A. J. Peaslee, *op. cit.*, and various treaty collections, *UN Treaty Series*, *League of Nations Treaty Series*, and *Recueil Martens*.

field. The sample emphasizes (a) the present time and (b) the Western European area, because such time and place show the widest proliferation of IGO's. However, it is not limited to such time and place, e.g. American Confederation and League of Nations. The sample also includes extreme types. There are on the one hand a federal government (USA) and, on the other, an almost non-institutional group of states (Commonwealth). The sample even includes IGO's which have never come into existence, e.g. EDC and EPC. And it includes many shades of geographical coverage from global (UN) to sub-regional (Benelux), as well as numerous shades of functional scope from almost unlimited competence (CE) to narrowly defined functions (EPU).

Second, factors. We must determine the number of factors and then define each of them. Factors do not exist as such. The analyst invents the factors. One solitary factor can do no better than the early yes-or-no inquiry. Two factors allow for a little more flexibility, but the inquiry is still very crude. And so on -- the more factors, the better. But there is a point of diminishing returns. Each additional factor reduces the importance of all others.<sup>35</sup> Most major characteristics of IGO's can be grouped into approximately ten factors. The professional literature identifies also about as many factors.<sup>36</sup> Hence, from among equally reasonable numbers in the neighborhood, the number 10 has been chosen chiefly for mathematical ease.

The ten factors, and their respective sub-factors, are defined as follows. Scales are given below in each case.

1. *Constitutional Intent*.<sup>37</sup> When states establish a particular body of law among themselves (treaty, organization, etc.), three types of general intent can be distinguished: (a) *animus contra-*

35 The problem could be solved by weighting the various factors. However, this would involve much more conceptual and mathematical subtlety than is justified in a crude pilot study.

36 See literature in the first note following each factor heading. The literature in these head notes is listed in approximate order of relevance, i.e. of similarity of approach.

37 G. Jaenicke, "Bundesstaat oder Staatenbund," in G. Schreiber and H. Mosler, (ed.) *Festschrift Bilfinger*, Cologne, Carl Heymanns Verlag, 1954, pp. 71-108, esp. pp. 78-80; E. Kordt, P. Gaudemet and E. Kern, *Der europäische Beamte*, C. H. Beck'sche Verlagsbuchhandlung, Munich, 1955, p. 12; Zemanek, *op. cit.*, p. 11.

*hendi*, (b) *animus constituendi*, and (c) *animus foederandi*.<sup>38</sup> The first intent aims merely at creating rights and obligations. The second aims at establishing a new corporate body distinct from any constituent state. The third means to take a deliberate step, small or big, in the direction toward federal union among constituent states.<sup>39</sup>

The intent can be measured. Every treaty establishing an IGO consists of a given number of articles. All of these articles reflect an intent of either *contrahendi* or *constituendi*. The ratio varies from IGO to IGO. The more the ratio leans toward *constituendi*, the higher the score. If 95% or more of the articles reflect *animus constituendi*, the score is 10. If 85% or more, it is 9, and so on down to zero (for 4% or less).

*Animus foederandi* need not correlate with *constituendi*.<sup>40</sup> It is measured separately as the intent of the IGO's founding fathers as evidenced for instance in preambles, signatorial speeches and ratification debates. Of course, the rating cannot be very exact. Nevertheless, phrases can be compared for intensity of language, explicitness, and professional comments, and the scores can reflect the same range from 0 to 10.

Sometimes, as in the present case, a factor consists of two or more component parts. These we call sub-factors. In the present case, the ratio of *contrahendi* versus *constituendi* is one sub-factor, and the degree of *foederandi* is the other. For the crude purposes of a pilot study they are assumed to have equal weight. Hence, their scores are averaged into the main factor of constitutional intent.

2. *Constitutional Jurisdiction*.<sup>41</sup> The literature suggests two principal methods of constitutional change, i.e. interpretation

38 The Latin terms are my coinage. The concepts can partly be traced to the literature cited in note 37.

39 It may seem inconsistent to fall back on a dichotomy here. However, we are now analyzing the intent of the drafters, and they evidently still think in dichotomous terms. See Spaak as cited in note 21 even when announcing an accomplished break through the classic dichotomy.

40 On the one hand, IGO institutions can be established without any federative intent whatsoever (UPU as one example for over 100). On the other, a federative intent can be embodied in non-institutional agreements (e.g. pre-1889 Pan-America, pre-1948 Pan-Europe, various Central American agreements).

41 General: Jaenicke, "Bundesstaat oder Staatenbund," *op. cit.*, esp. pp. 80-86; F. Muench, "Internationale Organisationen mit Hoheitsrechten," in *Fest-*



and amendment. Each method is measured as a sub-factor. The more authority an IGO has to change its constitution, the higher its score.

The scales spread from no authority (0) to full, exclusive and obligatory authority (10). Regarding interpretation, the intermediate values of 1 through 9 are used for various degrees of authority from the more vague, implicit and optional to the more concrete, explicit and obligatory. Regarding amendment, the intermediate values depend on the procedural ease with which an IGO can adopt an amendment. The scale spreads from unanimity to simple majority, with adjustments made for ratification where required. Even the ratification requirement itself must be broken down into differences of degree depending on the kind of majority required.

3. *Institutionalization*.<sup>42</sup> This factor has aroused much debate in my own mind as well as among those with whom the problem has been discussed. There is much to be said against this factor. However, omitting it altogether may be even worse than having it in this crude form.

The underlying idea is familiar in the literature. IGO's have evolved from institutional simplicity to complexity. At the same time, they have become more independent of states. These em-

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*schrift Wehberg*, Frankfurt, Vittorio Klostermann, 1956, pp. 301-323. Interpretation: E. P. Hexner, "Interpretation by Public International Organizations of Their Basic Instruments," *American Journal of International Law*, 1959, pp. 341-370. Amendment: E. Schwelb, "The Amending Procedure of Constitutions of International Organizations," *British Yearbook of International Law*, 1954, pp. 49-95; N. Singh, *Termination of Membership of International Organizations*, New York, Praeger, 1958; B. F. Wright, "Consensus and Continuity 1776-1787," *Boston University Law Review*, 1958, pp. 1-52.

42 C. Chaumont, "The Evolutionary Aspect of International Organization and International Cooperation," *International Social Science Bulletin*, 1953, pp. 257-277; S. Bastid, "Place de la notion d'institution dans une théorie générale des organisations internationales," in *Etudes Mestre*, Paris, Sirey, 1956, pp. 43-52; P. Reuter, "Organisations internationales et évolution du droit," in *Etudes Mestre*, *op. cit.*, pp. 447-460; J. L. Kunz, "Supranational Organs," *American Journal of International Law*, 1952, pp. 690-698; H. Wehberg, "Entwicklungsstufen der internationalen Organisation," *Friedenswarte*, 1954, pp. 193-218; C. Parry, "The International Corporation," in W. Friedmann, (ed.), *The Public Corporation - A Comparative Symposium*, Toronto, University of Toronto School of Law, Carswell, 1954, pp. 495-537; as well as the general treatments cited earlier of C. W. Jenks, K. Zemanek and F. Muench.

pirical observations may be coincidental. Nevertheless, the correlation is striking. Moreover, institutionalization has become a pervasive characteristic of our time. Where there is power in the mid-20th century, it institutionalizes itself. The more power, the more developed is its institutional body. In this sense, the degree of institutionalization serves as a measure of an IGO's independence.

The chief argument against this factor relies on the charge of tautology. The charge is true, at least in part. Conceptual overlapping cannot be completely avoided. But enough remains to justify this factor as it is.

IGO's usually have more organs than one. Often these organs differ with respect to the evolutionary phase they represent. Let us distinguish here four basic types. First, the primitive type of the *ad hoc* variety, e.g. summit meetings. Second, the classical type, e.g. the UN General Assembly. Third, the transitional type, e.g. the CE Consultative Assembly. Fourth, the statal type, e.g. the ICJ. These are broad types, and there is much variety within each. However, for this factor we are interested only in the general institutional composition of a given IGO. This we can make clear by assigning values to each type, and then calculating the combination peculiar to any given IGO. Some minor adjustments relate to the actual number of organs in an IGO and to extreme deviations from normalcy in this respect. The figures most frequently found in the Table will be: 0 for lack of organ, 1 for primitive, 3 for classical, 6 for transitional, and 10 for statal, all as defined above. The factor figure is as usual the rounded-off average.

4 *International Status*.<sup>43</sup> The inter-war disputations regarding the international status of IGO's have long become obsolete

43 Zemanek, *op. cit.*, esp. Part II; C. W. Jenks, "The Legal Personality of International Organizations," *British Yearbook of International Law*, 1945, pp. 267-275; C. W. Jenks, "Coordination in International Organization: An Introductory Survey," *ibid.*, 1951, pp. 29-89; W. Wengler, "Agreements of States with Other Parties Than States in International Relations," *Revue Hellénique de Droit International*, 1955, pp. 113-130; H. Aufricht, "Principles and Practices of Recognition by International Organizations," *American Journal of International Law*, 1949, pp. 503-509; as well as some comparative observations in the following writings: H. J. Hahn, "Euratom: The Conception of an International Personality," *Harvard Law Review*, 1958, pp. 1001-1056; C. Parry, "The Treaty-Making Power

in substance, and since the ICJ Advisory Opinion in the *Bernadotte* case such disputations are also obsolete in form. International personality is divisible and relative. An entity can have such legal personality, or status, for some purposes, but not for others. Since some entities have such personality for *all* purposes, and some for *no* purpose, the differences are gradated and can be projected on a scale. Two principal criteria suggest themselves in the literature. First, treaty-making power. Second, capacity to carry on other external relations, e.g. diplomacy, representation, observation, negotiation, working arrangements.

Again, the two sub-factors are evaluated separately on a 10-point scale spreading generally from no power to full and exclusive powers. Intermediate points typify situations in which an IGO may conclude treaties only in a varyingly limited field and with varying degrees of state supervision and varying degrees of exclusiveness.<sup>44</sup> Likewise, regarding an IGO's diplomatic or quasi-diplomatic activities, varying degrees of formality and permanence can be distinguished which fill the intermediate points between 0 and 10.

5. *Subject Matter*.<sup>45</sup> There is a remarkable paucity of specific literature in this regard. True, most comparative studies refer to the obvious fact that the functional scope entrusted to IGO's differs from one to the next, e.g. UPU and IMF. Eagleton indeed uses functional differences as the main basis for classifying

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of the United Nations," *British Yearbook of International Law*, 1949, pp. 108-149; R. Monaco, "Les Relations extérieures de la CECA," in *European Yearbook*, Vol. IV, 1958, pp. 75-93; G. Bebr, "The Relation of the European Coal and Steel Community to the Law of the Member States: a Peculiar Legal Symbiosis," *Columbia Law Review*, 1958, pp. 767-797; (no author), "The Status of International Organizations under the Law of the United States," *Harvard Law Review*, 1958, pp. 1300-1324.

44 For the special concept of exclusiveness see Jaenicke, "Staatenbund oder Bundesstaat," *op. cit.*, pp. 90-93, Section "The Monopolization by Central Organs of Foreign Relations with Third States" (Translation supplied) and extensive citation there from G. Scelle, *Manuel de droit international public*, Paris, 1948, pp. 270-271, showing some awareness of the relativity of exclusiveness: "The characteristic of the accomplished federal State (l'Etat fédéral achevé) . . . is the fact that the totality of international competences belongs to the federal government . . ." And: "It should also be noted that . . . at times governments of member States reserve some international attributes to themselves, but as a constitutional relic (à titre de survivance) and without real importance . . ." (Translation supplied.)

45 Eagleton, *International Government*, *op. cit.*, p. 161; Verdross, *op. cit.*, p. 276; Schwarzenberger, *op. cit.*, *passim*.



IGO's. The literature also registers the fact that one IGO's subject matter (function, scope) is more important than that of another.<sup>46</sup> The classical distinction between political and administrative IGO's belongs here. For our purposes this is useless. It divides ideally all IGO's into two classes, which is not enough for measurement, but in practice it cannot even accomplish this modest task. Many IGO's, especially the more recent ones, straddle the border line. There does not seem to be a single comparative study that would try to array IGO's in order of the importance of their subject matter. But this is exactly what is needed for our purposes here.

A scale which satisfies this requirement must spread from no subject matter (0, no example) to general and unlimited competence (10, e.g. legislature in a parliamentary, unitary state). Intermediate points fall into two sections, a lower one for non-operational functions, and a higher one for operational functions. In each section, the range distinguishes competences in minor and major fields (e.g. meteorology and foreign trade) as well as general competence. Details are worked out for residual powers which become important in the uppermost part of the scale, for federal or near-federal institutions. Unsolved remained the interesting problem of monopoly, or exclusiveness. Even after we have measured the width of functional competence, further gradations could be worked out by examining how exclusive or concurrent the IGO's competence is in its field.<sup>47</sup>

6. *Time*.<sup>48</sup> The literature is concerned mostly with constitutional provisions for specific periods of time, or permanence,

46 Eagleton, *loc. cit.* Also, the UN Charter itself recognizes the legal relevance of this characteristic, see Art. 57, since only agencies "having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields" qualify as "specialized agencies" of the UN.

47 For a searching discussion of, among other things, this problem see R.-J. Dupuy, "L'Organisation internationale et l'expression de la volonté générale," *Revue Générale de Droit International Public*, 1957, pp. 527-579, esp. pp. 573-574: "Within the State all recent history of the proliferation of organs takes place around the central power... In the international society, on the contrary, the technical organs do not develop around but instead of the power." (Translation and emphasis supplied.) One single aspect of IGO monopoly, i.e. foreign relations, has received much scholarly attention. See note 44 above.

48 Singh, *op. cit.*; H. Mosler, "Die Aufnahme in internationale Organisationen," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, (Makarov-Festgabe), 1958, pp. 275-317; Jaenicke, "Bundesstaat oder Staatenbund," *op. cit.*, pp. 86-88.

and with conditions of withdrawal or termination. Two observations must be made. First, empirical evidence suggests that there are various gradations between permanence and non-permanence. The length of time varies widely among the non-permanent IGO's, and indeed permanence itself can be more, or less, explicit and more, or less, safeguarded by constitutional provisions for or against withdrawal. Second, in addition to the constitutional lifetime, the actual lifetime should also be considered. Otherwise, short-lived constitutional dreams and even non-ratified IGO's would be misrepresented on this scale.

The measurement of actual time is easy. The actual age of IGO's ranges from 0 to about 100 years. Every decade of actual IGO life translates into one point on the scale.

The measurement of constitutional time is more complex. The period of time foreseen in the IGO constitution is important but it cannot be directly translated into points on the scale. Modifications must be made for the various conditions of withdrawal and other termination. The numbers in the Table reflect this double process.

7. *Personnel*.<sup>49</sup> The literature is chiefly interested in the administrative aspect of IGO personnel, variously called and defined as secretariat, staff, international civil service, *fonction publique internationale*, et cetera.<sup>50</sup> There is comparatively little interest in the top decision-making personnel.<sup>51</sup>

The purely secretarial and purely judicial organs have little distinctive value for a comparative study. Their personnel are recruited and maintained in a very similar fashion in all IGO's. We inquire only into the recruitment and tenure of IGO person-

49 Most succinctly in this sense Bindschedler, *op. cit.*, p. 75; similarly Jaenicke, "Die Sicherung des übernationalen Charakters der Organe internationaler Organisationen," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1951/52, p. 46 ff; for full coverage see M. Bedjaoui, *Fonction Publique Internationale et Influences Nationales*, London, Stevens & Sons, 1958; Kordt, *op. cit.*; G. Langrod, "Les Problèmes fondamentaux de la fonction publique internationale," *Revue Internationale des Sciences Administratives*, 1953, pp. 9-111; T.-C. Young, *International Civil Service: Principles and Problems*, Brussels, International Institute of Administrative Sciences, 1958; as well as the vast literature cited in these general works, esp. Bedjaoui.

50 See general works in preceding note (Bedjaoui, Kordt, Langrod, Young).

51 Bindschedler, *loc. cit.*, and Jaenicke, *loc. cit.*, in note 49.

nel of other (i.e. nonsecretarial and non-judicial) major organs, e.g. UN General Assembly and Security Council. They are important, and the degree of their independence of constituent states determines the IGO's independence with regard to the present factor.

Measurement is difficult. The scale breaks into two parts, depending on whether or not IGO personnel are bound by instructions from their constituent states. In each part, ascending values of independence are assigned to typical modes of recruitment and tenure with diminishing state influence in the process. Zero stands for personnel who are instruction-bound, unilaterally appointed by national governments, subject to immediate recall, and playing a primarily national role, e.g. CE Committee of Ministers. Ten stands for direct election by the people in the constituent states or by an IGO organ whose personnel are not instruction-bound, e.g. EPC Chamber of Peoples, US House of Representatives. Intermediate values correspond to other typical IGO situations, e.g. appointed by IGO from a panel of national appointees (2 points) or appointed by national legislature rather than by executive (7 points).<sup>52</sup> Upward adjustment is made in every case of fixed tenure, regardless of mode of recruitment. The idea is that tenure most probably results in increasing independence -- all other things being equal. The length of tenure determines the size of the adjustment.

8. *Decision I*.<sup>53</sup> The decision-making power of a political body is one of its chief characteristics. It is tempting to judge IGO's mainly or even exclusively on this count.<sup>54</sup> This study runs counter to all methods which rely on a single characteristic. Granted that decision-making is important, but so are other

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<sup>52</sup> E. Lochen, "A Comparative Study of Certain European Parliamentary Assemblies," in *European Yearbook*, Vol. IV, 1958, pp. 150-167; F. M. van Asbeck, "L'Application du principe représentatif dans des organisations internationales", in *Festschrift Wehberg*, *op. cit.*, pp. 39-66.

<sup>53</sup> M. Virally, "La Valeur juridique des recommandations des institutions internationales," *Annuaire Francais de Droit International*, 1956, pp. 66-97; F. B. Sloan, "Binding Force of a 'Recommendation' of the General Assembly of the United Nations", *British Yearbook of International Law*, 1948, pp. 1-33; P. Freymond, "Les 'Décisions' de l'OECE," *Annuaire Suisse de Droit International*, 1954, pp. 65-90; J.E.S. Fawcett, "Détournement de Pouvoir by International Organizations", *British Yearbook of International Law*, 1958, pp. 311-316.

<sup>54</sup> Lauterpacht, *International Law*, *op. cit.*, pp. 339-340.



factors. If decision-making, in the opinion of most authors, is of special importance, the present study reflects this opinion by devoting two main factors to this matter. The first, Decision I, treats the nature of the decision (e.g. recommendation, decision) and the sanction provided for non-compliance (e.g. censure, expulsion, military action). The second, Decision II, treats the procedure by which an IGO arrives at its decision (e.g. unanimity, majority).

Decision I can be measured by splitting it into its two components, (a) application of decision and (b) enforcement in case of non-compliance. Regarding application, the literature distinguishes between IGO decisions which apply to states and those which apply to individuals.<sup>55</sup> As in other factors the either-or inquiry blurs under the impact of empirical details in a comparative study. A decision can apply to states and individuals directly or indirectly, it can apply to both or to either, and it can have, in either case, varying degrees of qualifications regarding its obligatory force. Indeed, it can have no obligatory force at all, and it may even apply to neither state nor individual but only to the IGO itself. The scale thus ranges over several intermediate points from lack of decision-making power (0) to self-executing decisions applying to both states and individuals (10). Thus, the distinct will, which supposedly characterizes an IGO,<sup>56</sup> remains a valid concept only if understood to be relative rather than absolute.

The term enforcement suggests physical force. However, it is used here in the broad sense of sanction, i.e. that which, according to IGO law, is to happen in case of non-compliance. IGO's as a class have a wide range of such sanctions, while individually their choice is often quite limited. The scale ranges from lack of sanctions (0) to state-like forcible execution against individuals

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55 Direct application of IGO norms to individuals in member states is widely recognized as a key issue. Generally, Lauterpacht, *International Law*, *op. cit.*, p. 582; more specifically Bindschedler, *op. cit.*, p. 75, esp. paragraph 4 and note 25; also Muench, *op. cit.*, pp. 301 ff.

56 Regarding the notion of a distinct entity, a distinct formal will, see Visscher as cited in H. Rolin, "De la Volonté générale dans les organisations internationales," in *Etudes Scelle*, Paris, Pichon & Durand-Auzias, 1950, Vol. II, pp. 553-564, (p. 554); also Dupuy, *loc. cit.*, and Jaenicke, *op. cit.*, pp. 100-103, Section "The Formulation of the Will of the Union" (Translation supplied).

or constituent states (10). Intermediate points are, e.g. exhortation, obligatory consultation (1), economic sanctions (3-7, depending on various degrees) and military action (8).

9. *Decision II*.<sup>57</sup> This term refers to voting procedure, the second part of IGO decision-making. No other aspect of IGO's has received so much scholarly attention. It is the only factor on which two major monographs have been written, much periodical literature, and which almost every general treatment of IGO's, and indeed of international law, singles out for special attention. The transition from *pacta tertiis* to majority rule in international society seems to fascinate politicians as well as scholars. Big-Power veto in the UN is probably the single most debated aspect of the entire IGO field, both in professional and in popular literature.

The present study attempts to put voting procedure in its place, so to speak. It is important, certainly, but not demonstrably more so than any other main factor.

Despite the vast evidence gathered by Riches<sup>58</sup>, and despite the constitutional development since Riches (1940), much IGO commentary is still presented in dichotomous terms of unanimity versus majority.<sup>59</sup> As the basis of comparisons broadens, however, the dichotomy becomes less useful. Comparing the League Assembly and the UN General Assembly only, we can use the dichotomy. Even so, the dichotomy hides certain well-known exceptions to League unanimity as well as rather important differences among several UN procedures. But as soon as large numbers

57 Classical general: C.A. Riches, *Majority Rule in International Organization*, Baltimore, The Johns Hopkins Press, 1940; W. Koo, *Voting Procedures in International Political Organizations*, New York, Columbia University Press, 1947. For a recent discussion of the theoretical core of the problem see Judge Lauterpacht's Separate Opinion, South West Africa Case, reported in H. Lauterpacht, *International Law Reports Year 1955*, London, Butterworth & Co., 1958, (pp. 666-689), esp. pp. 669-670. For various aspects see E. McIntyre, "Weighted Voting in International Organizations," *International Organization*, 1954, pp. 484-497; D. H. Vignes, "Le Principe de l'Unanimité dans les Organisations Européennes," *Annuaire Français de Droit International*, 1955, pp. 111-119; F. A. Vallat, "Voting in the General Assembly of the United Nations," *British Yearbook of International Law*, 1954, pp. 273-298, including an historical survey of the general problem, pp. 273-279.

58 Riches, *op. cit.*

59 Even an extreme relativist, Reuter, *op. cit.*, p. 209, considers the departure from IGO unanimity as a threshold for "an open challenge to State sovereignty".

of IGO's are compared we must resort to a scale which reaches from formal consent of states (0) to simple majority or individual decision-making by common executive (10). Intermediate points are e.g. absolute unanimity (1), qualified unanimity (2),<sup>60</sup> two-thirds majority (6), as well as some higher points reserved for similar procedures in organs whose members are not bound by state instructions. It is easy to imagine how various majorities are translated into a scale. The guiding principle is: the easier the vote, the less influence is left to a state, the more independent the IGO, the higher the score on the scale.

10. *Budget*.<sup>61</sup> Until very recently, scholars paid virtually no attention to the financing of IGO's. Even in recent years very little has been published in this field, especially when compared to the wealth of literature on IGO decision-making. However, the power of the purse has asserted itself in all human organizations, public and private, as well as local, national and international. It stands to reason that an IGO will be generally the more independent of its constituent states the less it depends on them for money. This may sound trite, but it needs to be stated because few authors treat IGO finances as a source of IGO power.<sup>62</sup>

60 Perhaps the earliest recognition of the relativity of unanimity is found in A. S. Hershey, *The Essentials of International Public Law and Organization*, New York, Macmillan, 1927, pp. 429-430, esp. note 10.

61 Q. Wright, "The Mode of Financing Unions of States as a Measure of Their Degree of Integration," *International Organization*, 1957, pp. 30-40; C.-A. Colliard, "Les Principes budgétaires dans les organisations internationales," *Revue de Science Financière*, 1958, (in two parts) pp. 437-460 and pp. 679-697; C. W. Jenks, "Some Legal Aspects of the Financing of International Institutions," *Transactions of the Grotius Society*, 1943, pp. 87-132; and (unavailable to this writer) J. Salmon, *Le Rôle des organisations internationales en matière de prêts et d'emprunts*, London, Stevens & Sons (for Carnegie Endowment for International Peace), 1958. Not yet available in the drafting stage of this study was J. David Singer, "The Finances of the League of Nations," *International Organization*, 1959, pp. 255-273. See also the literature cited there on p. 255, note 2.

62 In addition to Jenks and Wright (as cited in note 60), only A.N. Holcombe, ed., *Strengthening the United Nations*, Report of the Commission to Study the Organization of Peace, New York, Harper, 1957, pp. 361-362 and Bindschedler, *op. cit.*, p. 118, examine IGO finances in our sense from the standpoint of the centralization of community power. Also concerned with financial power distribution is R. Drago, "Pondération dans les Organisations internationales", *Annuaire Français de Droit International*, 1956, pp. 529-547, and, regarding federations, Thomas R. Adam, *Modern Colonialism*, (Doubleday Short Studies in Political Science), Garden City, New York, 1955, pp. 14-15. Jenks also refers to the federal analogy, pp. 88-89, note 7.



After accepting IGO finances as one main factor we have yet to solve the problem of measurement. Two sub-factors suggest themselves. First, the source and, second, the size of IGO revenues.

As for the source, we must inquire into the legal authority which the IGO can exercise over its income. IGO's do empire-build, like most institutions. We may assume that IGO's will tend to maximize their funds within the limits of constitutional authority. Hence, we examine the constitutional authority in matters of finance. A comparison of IGO constitutions suggests a scale of financial power reaching from the most primitive forms of voluntary state contributions (0) to a central government's full powers to lay and collect taxes, impose fines, issue currency and borrow on the credit of the entire community (10). Intermediate points reflect various degrees of budgetary IGO rights depending on the procedure of determining the budget. The IGO has no power (0) if states alone determine the amount. It has very little power (1) if the constitution determines the amount, provided that the IGO has some minor influence on possible financial amendments. It has a little more but still very little power (2) if the IGO itself determines the budget by a unanimous vote. However, the power increases as the budgetary voting requirements become easier, e.g. qualified majority (3), simple majority (4). Higher scores are based on various forms of direct taxation, depending on the procedural influence which constituent states have in the process. Extra points are allowed for special constitutional provisions for minor direct revenues through fines, or authority to borrow.

As for the size of the budget, it stands to reason that money as such—wherever located and in whatever manner derived—is a source of power. We said that, in the long run, the empire-building tendencies of IGO's will maximize their funds. Thereby, the actual size of IGO budgets is related to its budgetary authority. But it need not be the same at any one time. IGO's may not yet have reached their full financial potential, or they may indeed overshoot it. The two subfactors relate to one another, but they need not correlate for any one IGO. Hence, we must measure them independently. We can easily measure the absolute size of IGO budgets, but such a comparison means little. The larger IGO's will score high, without being necessarily in a relatively better financial situation vis-à-vis their constituent states. We

may solve this problem by expressing the IGO budget as a percentage of the sum of the budgets of all its constituent states.<sup>63</sup> Then we compare these percentages and project them on the usual ten-point scale. Due to the extremely low percentages of most IGO's, the scale had to be weighted so as to allow for a more than proportionate spread in the lower range. In order to score 0, an IGO budget must be less than 0.0009% of the sum of all member states' budgets. And a score of 4 is provided for as low a percentage as 0.1% to 0.5%. Even so, 18 of the 20 IGO's tested scored below this very low level. On the other extreme, the upper range of the scale is so condensed that a score of 8 covers the range from 10% to 50%, and 10 is for the entire range of 100% or above. Thus, the vastly preponderant budgetary power of some contemporary federal governments<sup>64</sup> is rendered only inadequately by comparison with IGO's. In an even distribution, however, the differences among IGO's would not have registered at all. All IGO's would probably have scored 0 or 1, and all federal governments, 9 or 10. It seems curious that of all factors and sub-factors the one which comes closest to a true dichotomy relates to the *size* of the budget. Pre-research common-sense would have anticipated a rather gradated spread on this count. In actual fact, it shows the least gradated spread of all. Indeed, most of the tested IGO's range within two decimals of a fraction of one tenth of one percent.

#### IV. Conclusion.

All that can be concluded from the foregoing is reflected in the appended Table. Herein lies the most specific characteristic of the present study. It condenses the constitutional data of twenty organizations on one sheet of paper. In order to do this,

63 T. R. Adam, *loc. cit.*, suggests this method for comparing federations but does not work it out in systematic detail.

64 For instance, the US budget for 1955 was 482% of the sum of all state budgets in the same year. This example also shows another possible application of this method. Not only can different IGO's and federations be compared for any one time, but we can also compare one and the same IGO or federation at two different historical times. For instance, 50 years earlier the US budget was only 52% of the sum of all State budgets. In this manner we can measure and compare the rate of financial concentration in IGO's and federations, i.e. the process itself and not only the result. Figures computed from *Statistical Abstract of the United States*, 1957, Washington, Government Printing Office, 1957.

symbolic language must be used. The key to translating the numbers into plain English has been given in the preceding section. Whatever the complex details, the master key is quite simple. All constitutional data are projected on a scale which reaches from 0 to 10. Wherever there is a 10 on the Table it means that this particular constitutional characteristic of this particular organization is as centralized as its nearest counterpart in a unitary national government.<sup>65</sup> Wherever there is a 9 it means that this characteristic of this organization is nine-tenths as centralized as its nearest counterpart in a unitary national government. And so forth, in this sense, every single figure on the Table represents the degree of centralization of a particular constitutional characteristic of a particular organization. Always, 10 is the highest, and 0 is the lowest possible score. The highest is equated with what is typical of a unitary national government. The lowest is equated with what is typical of the totally unorganized family of sovereign states in pre-1815 international law.

Once this technique is understood, two kinds of conclusions can be drawn from the information assembled in the Table. One kind is on the level of gadgetry. The other may lead to new basic concepts in contemporary international law.

In the first sense, the Table is merely descriptive, like a large-scale map. Such a map is not intended for subtle distinctions. It shows general outlines, broad vistas and comparisons of major chunks of data. The Table does not "conclude" anything. It is a mere gadget which allows the reader to recall and to correlate points made earlier. Such points would inevitably have been largely forgotten at the end of a verbal description covering such a large amount of empirical data, especially since the details are among the duller routine in the field. However, the Table allows us to "remember" at will anything from among some 500 constitutional data registered. Also like a map (and unlike an index to a verbal description), the Table allows us to examine more than one feature at a time. Comparisons thus become easy. And there is an ever-ready answer to the important question: how typical is any given example? Every single instance on the Table relates both horizontally and vertically to an average figure.

<sup>65</sup> This identity is not absolute but statistical, i.e. the difference is negligible for comparative purposes on the large scale of this study.



One example will be enough to show how to use the Table. Let us suppose we want to know how IGO's compare as to constitutional amendment powers. We look horizontally along subfactor No. 2/b, "Amendment." The highest figure is 6, entered under USA. The next is 5, entered under CE. Then comes 4, under EPC. All others are below 4, mostly 1 and 0. So we have found several facts and can cross-relate them in many different ways to suit any particular research purpose. First of all, IGO's have generally little authority in amendment matters. Even the federal USA scores only 6. A unitary government would score 10. One glance at the vertical USA column shows that this is the lowest score of the USA on any of all 29 items. But is the USA typical? Are IGO's typically lower in amendment power than in other powers? We look at the extreme right column (Factor Average) and confirm this notion. The subfactor averages 1.3. None is lower than that. Only one is equally low. And the all-factor average is three times as high. Therefore, the relatively low amendment powers of the USA is typical of the constitutional profile of most IGO's.

Which IGO is the most independent on a given factor, e.g. finance? Which are the two, or three, most independent IGO's on this factor? What else do they have in common? Are there any IGO's which cover a wider subject-matter than the UN? Which? In what other respects are they more independent than the UN? Or less so? Are there any IGO's which are in any respect more independent than a typical federal government? Do regional IGO's have any structural features in common? Or do the IGO's within any one region (Europe, the Americas, Middle East) have some constitutional feature in common which distinguishes them from other areas? How similar are the so-called supranational IGO's? Are they on the whole closer to classical IGO's or to federal governments? In what details are they closer to which classical type? How typical is any given example - typical of the IGO, the factor, both, or neither? Are there even and uneven profiles of IGO's? For instance, can two IGO's be similarly independent on the whole while being very different in detail? What are some good examples for this phenomenon? Are some IGO structures typically related to certain extraneous circumstances? For instance, do all defunct (or nonratified) IGO's share

some constitutional feature? Or do those which include Communist countries in their membership have some characteristic feature in common? Is the record of peaceful coexistence in a given area related to the number or type of IGO's? Are there trends in IGO constitution making? For instance, are IGO's on the whole becoming increasingly independent? Do some factors (e.g. voting procedure) advance faster than others (e.g. amendment)? Are some characteristic of particular periods? For instance, is the well-known increase of UN powers over League powers typical of their respective periods? If so, are there exceptions? Are there countertrends?

This list of questions can be extended indefinitely. Most of these questions can be answered on the basis of the Table—but we must remember the initial word of caution. The answers are crude. The method is primitive. It is only within these understood limitations that the method claims to permit many comparisons which would otherwise remain hidden for two reasons. First, the practical difficulty of cross-relating so much verbal data would probably prevent completion. It would almost certainly preclude comparisons.<sup>66</sup> Second, while individual comparisons can always be made among a few IGO's, they will not relate to a common frame of reference. It is only the explicit and systematic framework which flags the unusual against the normal.

There are over 500 entries in the Table. Each is a shorthand expression of a constitutional characteristic of an IGO. The orthodox literature treats the same characteristics in a verbal manner, and often arrives at similar or identical conclusions.<sup>67</sup>

<sup>66</sup> The case history of the most monumental work in the field may prove this point: Jakob ter Meulen, *Der Gedanke der internationalen Organisation in seiner Entwicklung*, The Hague, Martinus Nijhoff, Volume I, 1917, covering the period from 1300 to 1800 in 396 pages; Volume II, Part I, 1929, covering the period from 1789 to 1870 in 371 pages; and Volume II, Part II, 1940, covering the period from 1867 to 1889 in 373 pages. Three volumes of similar sizes written over a period of more than twenty years cover, respectively, 500 years, 80 years and 12 years of history, and then leave off precisely where the steep increase in IGO development is just beginning, i.e. at the turn of the last century. This awe-inspiring effort shows, it seems, that the task cannot be fulfilled in this manner. It is humanly impossible (for reader as well as writer) to remember and relate all these countless data. There must be a more efficient way of organizing knowledge about international organizations.

<sup>67</sup> I tested my numerical conclusions against professional orthodoxy as follows. On May 9, 1960, I sent a questionnaire to 75 experts on international organization.

The key difference lies in the fact that 500 verbal conclusions cannot be ordered into a set of perspectives. They may make intuitive sense but they may also hide gross inconsistencies. They do not enforce a global perspective. Numerical conclusions must add up. They do not prevent error but they make error more visible. And they present each finding *automatically* as an integral part of a ubiquitous wider perspective.

Leaving now the level of gadgetry, we may pursue some of the broader implications of this study. This may lead to some new concepts in contemporary international law.

The most obvious general conclusion confirms the commonplace notion that IGO's are increasingly diverse in their constitutional characteristics. Moreover, the study shows the classical categories to be obsolete—not by metaphor,<sup>68</sup> or by deduction,<sup>69</sup> but by an inductive and explicit method.

The obsolescence of classical categories has a well-known recent analogy in a related field, that of war and peace in the legal sense.<sup>70</sup> Grob,<sup>71</sup> Jessup<sup>72</sup> and McDougal<sup>73</sup> have step-by-step relativized the classical dichotomy of peace and war.<sup>74</sup> Grob

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I received 42 replies, each ranking the same ten IGO's on a power scale from 1 to 9. The experts differed more among themselves than their average scores differed from mine. Further details on IGO's and response distribution can be made available on request pending separate publication.

68 Eagleton, *International Government*, *op. cit.*, p. 161, citing P.B. Potter that to classify international organizations would be "as difficult as to classify the pebbles on the beach."

69 Kelsen, *General Theory*, *op. cit.*, p. 316. See note 14 above.

70 The connection between war-peace and unions-of-States is more than a mere analogy. For a searching analysis of the transition from *ius ad bellum* to *ius ad foedus* see F. A. von der Heydte "Das Problem der Macht im 'klassischen' und im 'neuen' Völkerrecht," in *Rechtsfragen der internationalen Organisation* (Festschrift Wehberg), Frankfurt, Vittorio Klostermann, 1956, pp. 172-199.

71 F. Grob, *The Relativity of War and Peace*, New Haven, Yale University Press, 1949.

72 P. C. Jessup, "Should International Law Recognize an Intermediate Status Between Peace and War," *American Journal of International Law*, 1954, pp. 89-103.

73 M. S. McDougal, "Peace and War: Factual Continuum with Multiple Legal Consequences," *American Journal of International Law*, 1955, pp. 63-68.

74 This dichotomy has been one of the firmest principles of international legal scholarship throughout modern times, i.e. from Grotius *De Jure Belli ac Pacis* until such recent texts as Lauterpacht, *op. cit.*, Verdross, *op. cit.*, Guggenheim, *op. cit.*



lifted the penumbraic region around the classical categories out of the obscurity of odd exceptions into the light of systematic examination. Jessup bundled many of these exceptions together as a new category and called it intermediacy between peace and war. The dichotomy had thus become a formal trichotomy. Finally, McDougal dissolved all categories in a war-peace continuum. He postulated two polar points, war and peace, and envisaged infinite gradations in between.

Similarly, the field of subjects of international law has been relativized by steps. The various post-medieval steps are well known, e.g. sovereignty, *ius inter gentes*, treaties, alliances, confederations, federations, international administrative agencies, international organizations and supranational organizations. Each of these steps challenged some prior legal category in some particular way. In each case, international law first tried to explain the new phenomenon (whichever it was) in the classical terms and categories of the preceding period.<sup>75</sup> But, in each case, international law adjusted itself after some lapse of time. It formulated a new category which, in turn, became classical and later became obsolete under the impact of various novel phenomena.

At the present time the newest category is that of supranational IGO's, so called. They appeared in the 1950's as an intermediate type between classical IGO's and federations. This state of affairs corresponds broadly to Jessup's trichotomy of peace-intermediacy-war. If this were all, we would happily accept the trichotomy, and international law, once again, would have put its house in order for some time to come. But the present time differs from the earlier ones by an ever-increasing rate of change. The facts are well known, but the implication is not sufficiently realized. It took mankind over ten centuries from empire to sovereignty; it took some three centuries from sovereignty to the very first IGO's; about one century from the first IGO's to the classical ones of the age of World War I; and less than half a century from the simple, few, classical IGO's of the 1910's and

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<sup>75</sup> Some examples for many: sovereignty was first explained as *imperium principis in territorio suo*; early international institutions, as multilateral treaties with accession clauses; the League of Nations, as confederation or as alliance; and supranational organizations, as IGO's with sovereign rights or as partial federations.

1920's to the profuse growth of very different IGO's in the 1940's 1950's; finally, it took less than a decade from the age of the UN to the age of regionalism and functionalism, and only the latter age produced the supranational type. Despite its newness (conceived in 1950, signed in 1951 and ratified in 1952) supranationality almost became obsolete as a category in 1953-54 when the EPC, if successful, would have blurred the distinction between supranational and federal forms of government. And indeed there is some doubt now whether the new European Communities, EEC, and Euratom (conceived in 1955-56, signed and ratified in 1957), can be housed in the supranational category. Despite all deliberate similarity and some joint organs, the two new organizations are slightly retrogressive in substance<sup>76</sup> and stand between the pure supranational type (ECSC) and the classical IGO's. And yet, while less supranational than the ECSC, the two new Communities have a unique dynamic built into their constituent instruments which should take them from just below to well above the ECSC in institutional power. Given this rate and diversity of development, there can be little doubt that international society will continue to produce more novel juristic persons than our profession can assimilate into rigid categories. Given the stupendous rate of increase, our conceptual lag will widen and international law will be less and less able to mirror the legal framework of international society.

It is only in the light of such rapidly increasing diversity that I am not content with the present (or any other) trichotomy, and that I propose the step which Professor McDougal has taken in conceptualizing different forms of belligerency.<sup>77</sup> I suggest that IGO's can best be understood as different points on a continuum between no-power and full-power.

76 H.-W. Daig, "Die Gerichtsbarkeit in der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft mit vergleichenden Hinweisen auf die Europäische Gemeinschaft für Kohle und Stahl," *Archiv des öffentlichen Rechts*, 1958, pp. 132-207.

77 M. S. McDougal, "Peace and War: Factual Continuum with Multiple Legal Consequences," *American Journal of International Law*, 1955, pp. 63-68, (p. 63): "The purpose of this editorial is to suggest that decisions about 'war' and 'peace' are perhaps even more complex than the contemporary literature yet explicitly recognizes and that a mode of analysis much more comprehensive and flexible than either dichotomy or trichotomy may be required if clarity and rationality are to be promoted."

The forms of association of states which the classical theories call international, supranational, confederal and federal are all represented on the continuum. Various clusters of incidence have appeared. Others will appear. Scholars may draw lines around these clusters and call them categories - for colloquial convenience.<sup>78</sup> The lines will blur again under the impact of historical change, and they may be re-drawn in reasonable intervals. But underneath the fleeting lines lies the only stable concept in the dazzling variety of mankind's efforts to organize itself legally: *a multiple continuum of organizational power which includes all, but is not limited by, the orthodox categories.*<sup>79</sup>

78 This is probably what Professor Eagleton meant when he distinguished "baptizing rather than defining" international organizations. *International Government*, *op. cit.*, p. 161.

79 This theoretical conclusion has practical implications for legal science. Compare Rapoport, *op. cit.*, note 26 above. International lawyers begin to formulate similar thoughts. See C. W. Jenks, *The Common Law of Mankind*, *op. cit.*, Chapter 3, *passim*, and references on pp. 14-15, note 53, especially to P. C. Jessup, as well as M. S. McDougal and F. P. Feliciano, "Legal Regulation of Resort to International Coercion: Aggression and Self-Defense in Policy Perspective," *Yale Law Journal*, 1959, p. 1073, note 59. Some of the most overworked concepts appear in a fresh and non-polemical light when expressed in quantitative terms of distribution of governmental powers.



# INDICES OF CONSTITUTIONAL POWERS OF SELECTED INTERNATIONAL ORGANIZATIONS

0 = None; 1-9 = Intermediate; 10 = Comparable to Unitary Government

IGO Serial Numbers	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
IGO's	Art. of Confed.	U.S.A.	Commonwealth	League of Nat.	U.N.	NATO	W.E.U.	OEEC	E.P.U.	CERN	EPPO	C.E.	ECSC	E.E.C.	Euratom	E.D.C.	E.P.C.	Balkan Ass'y	Benelux	Nordic Council	FACTOR AVE- RAGE
<i>Factors</i>																					
1. Constitutional Intent	5	10	1	5	5	1	2	4	4	5	7	9	7	8	10	10	10	5	5	5	5.7
a. Animus Contrahendi	6	10	1	9	9	1	3	6	7	10	10	10	10	7	10	10	10	10	10	10	7.9
b. Animus Foederandi	4	10	0	0	0	0	1	2	0	0	3	8	7	5	9	9	9	0	0	0	2.9
2. Const. Jurisdiction	0	8	0	1	2	0	0	0	1	3	1	7	6	6	6	6	7	0	0	0	2.6
a. Interpretation	0	10	0	1	3	0	0	0	1	6	2	10	10	10	10	10	10	0	0	0	3.7
b. Amendment	0	6	0	0	1	0	0	0	1	1	2	5	3	1	1	1	4	0	0	0	1.3
3. Institutionalization	2	10	1	4	4	2	3	3	3	2	4	6	6	6	6	6	7	4	4	2	4.1
a. Organs	3	10	1	10	10	3	3	3	3	3	3	3	10	10	10	10	10	6	6	6	
	3	10	1	1	3	3	1	3	6	3	3	6	6	6	6	6	6	3	3	3	
	0	10	0	0	3	1	6	3	1	1	3	3	1	1	1	1	1	1	3	0	
	0	10			3																
4. International Status	10	10	0	1	4	2	2	4	1	2	4	6	4	4	4	4	7	8	1	0	3.6
a. Treaties	10	10	0	0	3	1	0	4	0	1	0	6	4	4	4	8	7	0	0	0	3.0
b. Diplomacy	10	10	0	2	4	3	3	4	2	3	4	6	3	3	5	3	8	2	0	0	4.4
5. Subject Matter	7	8	3	2	5	2	4	2	4	4	1	6	7	5	5	6	7	3	2	3	4.2
6. Time	6	10	2	2	4	3	4	1	1	2	1	4	5	5	4	5	5	2	2	1	3.3
a. Constitutional	10	10	1	1	6	5	7	1	0	3	2	7	7	9	9	7	10	4	3	1	4.9
b. Actual	1	10	3	3	1	1	1	1	1	0	1	1	1	0	0	0	0	0	0	1	1.3
7. Personnel	4	10	0	0	1	1	1	0	3	0	4	5	5	5	5	5	7	3	7	7	3.5
a. Organs	3	10		0	0				0		0	0	8	7	7	7	10				
	4	10		0	1				5		3	7	8	8	8	8	9				
	4	10											0	0	0	0	10				
8. Decision I	2	10	0	2	6	1	2	3	3	2	1	9	8	8	8	8	9	1	1	1	4.0
a. Application	4	10	0	2	4	1	3	4	4	1	2	10	10	10	10	10	10	2	2	2	4.7
b. Enforcement	0	10	0	2	8	0	0	2	2	3	0	7	6	6	6	6	7	0	0	0	3.1
9. Decision II	6	10	0	2	3	1	1	2	6	7	6	10	7	7	10	10	10	3	9	9	5.6
(Procedure)																					
a. Organs																					
10. Budget	2	10	0	2	3	2	2	2	2	3	1	2	7	3	5	2	4	0	2	2	2.7
a. Source	3	10	0	2	3	2	2	2	2	3	0	3	10	5	3	3	7	0	2	2	3.3
b. Size	1	10	0	2	2	1	1	1	1	2	1	1	4	0	0	0	0	0	1	1	1.5
IGO AVERAGE	4.4	9.6	0.7	2.1	3.7	1.5	2.1	2.1	2.8	3.0	2.4	3.4	6.9	5.8	6.0	6.1	7.4	2.2	3.2	3.0	3.9