



Introduction

I. The phenomenon of fragmentation of international organizations

Today we witness numerous ‘islands’ in the general system of international law administered by various international organizations.¹ The origin of these international organizations can be traced back to the nineteenth century, when states realized the need to solve their problems on more than a bilateral basis.² The increasing interdependence of states led first to the rise of multilateral international conferences, initially on an ad hoc and later on a periodic basis (such as the Congress of Vienna of 1815).³ More permanent modes of operation were evidenced in the creation of the Central Rhine Commission in 1804 and the European Danube Commission in 1856, which responded to commercial needs to regulate river traffic. Later, other international public administrative units emerged, such as the Universal Telegraphic Union (1865), the General Postal Union (1874), the International Bureau of Industrial Property (1883) and the International Union of Railway Freight Transportation (1890). The creation of these

- 1 See Henry G. Schermers and Niels M. Blokker, *International Institutional Law: Unity within Diversity*, 4th edn (The Hague and Boston, MA: Martinus Nijhoff, 2003), 26, defining international organizations as collections of sovereign states that have banded together as states to create, under a constitutive international agreement governed by international law usually known as a ‘charter’ or a ‘constitution’, an apparatus, more or less permanent, charged with the pursuit of certain defined common ends.
- 2 Although traces of modern international organizations already appear in the ancient Greek Achean League, through which city states sought to discourage conflict and generate co-operation. See Robert F. Riggs and Jack C. Plano, *The United Nations: International Organization and World Politics*, 2nd edn (Belmont, CA: Wadsworth Publishing, 1994), 1–15; Harold K. Jacobson, *Networks of Interdependence*, 2nd edn (New York: Knopf, 1984), 8; Philippe Sands and Pierre Klein, *Bowett’s Law of International Institutions*, 5th edn (London: Sweet & Maxwell, 2001), 1.
- 3 Gerald J. Magnone, *A Short History of International Organizations* (New York: McGraw-Hill, 1954), at 98–123. See also Sands and Klein, above n. 2, at 1–13; Jacobson, above n. 2, at 7–10; Riggs and Plano, above n. 2, at 1–15; Federic L. Kirgis, *International Organizations in their Legal Setting* (St. Paul, MN: West Publishing Co., 1993), at 1–6.

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organizations was driven by the need of states for common standards for commerce, communication and transportation.⁴

With the conclusion of the Versailles Treaty at the end of the First World War, the League of Nations – the forerunner of the United Nations – became the ‘progenitor of the modern “universal” international organization’.⁵ The League’s system, designed to prevent war, failed, however, to do so, and the organization itself collapsed with the onset of the Second World War.⁶ Correcting the League’s perceived weaknesses provided, however, much of the inspiration for later institution builders, as in the context of drafting the UN Charter.⁷ In response to the increasing need of states to co-operate, international organizations proliferated at a phenomenal rate after the Second World War.⁸

Today, with the continuing growth of states’ interdependence, the problems of governments are increasingly international and, therefore, the international community has had to devise institutions which tackle these issues most effectively.⁹ The proliferation of norm-creating

4 The functionalist historians explain the rise of these organizations also by the fact that states needed to co-operate in the wake of the new technical developments which emerged at the end of the nineteenth century. Thus it is not coincidental that the first international organizations were technical in nature, having to fulfil very specific functions relating to transnational communication and travel. On the relationship between technology development and functionalist theories, see generally Jacobson, above n. 2, at 62–7.

5 Magnone, above n. 3, at 128–56; Kirgis, above n. 3, at 6.

6 For an account of the failure of the League of Nations see Sands and Klein, above n. 2, at 13; D.W. Bowett, *The Law of International Institutions*, 4th edn (London: Stevens & Sons, 1981), at 17–18.

7 See José E. Alvarez, *International Organizations as Lawmakers* (Oxford University Press, 2005), at 22.

8 While in 1909 there were thirty-seven international organizations in the world, by 1956 there were 132 and by 1985 the number reached 378, with a decline to some 250 by the end of the century. See Charlotte Ku, *Global Governance and the Changing Face of International Law*, Acuns Reports and Papers 2 (New Haven, CT: ACUNS, 2001), available at www.reformwatch.net/fixers/22.pdf.

9 See Evan Luard, *International Agencies: The Emerging Framework of Interdependence* (Dobbs Ferry, NY: Oceana, 1977), at 2–3. Leading works in the area of international organizations are those by international lawyers who give particular consideration to the constitution of international organizations, their legal personality and institutional problems. These often deal with several organizations and place particular emphasis on the League of Nations and the UN, sometimes on a single organization such as NATO, the OAU, or the EU. See, e.g., Alfred E. Zimmern, *The League of Nations and the Rule of Law* (London: Macmillan, 1939); Clarence W. Jenks, ‘Some Constitutional Problems of International Organizations’, (1945) 22 *British Yearbook of International Law* 11; Clarence W. Jenks, ‘The Legal Personality of International Organizations’, (1945) 28 *British Yearbook of International Law* 267; Clarence W. Jenks, *The Proper Law of International Organizations* (London: Stevens, 1962). Later, Professor Henry Schermers restricted himself to

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and norm-influencing international organizations has determined the development of a large number of varied norms to regulate the conduct of both sovereign nations and individuals. The phenomenon was also attributed to other factors, including

the increased emphasis on and prominence of regionalization, with international or intergovernmental institutions having immense norm-creating or norm-influencing power sprouting up in each region; fast-paced technology-driven global changes, which gave rise to new areas of regulation such as internet technology and biotechnology; climatic changes and increased stress on natural resource utilization and the need for common environment management policies; and greater prominence and recognition of individual rights by the international community and within regional and national legal systems.¹⁰

A consequence of this has been the fragmentation of international law incorporated in various regimes – an issue discussed by the International Law Commission (ILC).¹¹ The ILC Fragmentation Report reiterated that the problem with the fragmentation is that

international institutional law concerning the structure and functions of international organizations. See Henry G. Schermers, *International Institutional Law*, vols. 1 and 2 (Leiden: Sijthoff, 1972); see also Bowett, above n. 6. For a comprehensive summary of the legal literature in the field of international organizations see Clive Archer, *International Organizations*, 3rd edn (London: Routledge, 2001), at 128 et seq.

10 Victor Mosoti, 'Institutional Cooperation and Norm Creation in International Organizations', in Thomas Cottier, Joost Pauwelyn and Elisabeth Buergi Bonanomi (eds.), *Human Rights and International Trade* (Oxford University Press, 2005), 165–79.

11 International Law Commission (ILC), Report of the Study Group, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Conclusions', A/CN.4/L.702 (18 July 2006) (ILC Fragmentation Report); see the Analytical Study finalized by the Chairman, A/CN.4/L.682 and Corr.1 (13 April 2006). See also generally Bruno Simma, 'Self-Contained Regimes', (1985) 16 *Netherlands Yearbook of International Law* 111; Philippe Sands, 'Treaty, Custom and the Cross-Fertilization of International Law', (1998) 1 *Yale Human Rights and Development Law Journal* 85, at 88; Fiona Macmillan, 'International Economic Law and Public International Law: Strangers in the Night', (2004) 10 *International Trade Law and Regulation* 115, at 118; Georges Abi-Saab, 'Fragmentation or Unification: Some Concluding Remarks', (1999) 31 *New York University Journal of International Law and Policy* 919. For a discussion of the WTO and institutional fragmentation, see Pascal Lamy, 'The WTO in the Archipelago of *Global Governance*', speech at the Institute of International Studies, Geneva, 14 March 2006, www.WTO.org/english/news_e/sppl_e/sppl20_e.htm (visited June 2008). One final note here: Stephen Krasner defines 'regimes' as 'sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations'. Stephen Krasner, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables', in Stephen D. Krasner (ed.), *International Regimes* (Ithaca, NY: Cornell University Press, 1983) 93–113, at 1.

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specialized law-making and institution-building tends to take place with relative ignorance of legislative and institutional activities in the adjoining fields and of the general principles and practices of international law. The result is conflicts between rules or rule-systems, deviating institutional practices and, possibly, the loss of an overall perspective of the law.¹²

Some commentators have shown their concern, perceiving that this erodes general international law, generating conflicting jurisprudence, forum-shopping¹³ and loss of legal security.¹⁴ The advent of this diversity of international specialized norms has sprouted an almost explosive expansion of independent and globally active, yet sectorally limited, courts, quasi-courts and other forms of conflict-resolving body.¹⁵

The concept of fragmentation is itself a fragmented concept. The problems associated with the fragmentation of international law can be seen as falling into two broad categories, reflecting two distinct points of entry. The first category refers to the fragmentation of substantive norms of international law which ensues from the complex interactions of a wide variety of substantive sources of international law, with a plethora of international treaties in addition to innumerable rules of customary international law. The difficulty posed by this type of fragmentation arises from what rule should be applicable to a given set of facts and, essentially, how to reconcile conflicts between such rules as they arise.¹⁶ In the World Trade Organization, the ‘trade and . . .’ debate is illustrative of this concern. While the WTO is preoccupied with disciplines promoting economic liberalization, other non-economic values stated in international legal conventions may in some cases seek to restrict these objectives.¹⁷ In this context, it is necessary to have a clear regulatory framework addressing the

12 ILC Fragmentation Report, above n. 11, para. 8.

13 For an example of forum-shopping involving the WTO and ITLOS see below Chapter 4, section III.A.3.b.

14 ILC Fragmentation Report, above n. 11, para. 9. 15 Abi-Saab, above n. 11, at 923.

16 This issue has been authoritatively discussed by Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (Cambridge University Press, 2003).

17 For example, the ‘trade and . . .’ problem is expressed in conflicts between trade rules and environmental norms – see, e.g., Sabrina Shaw and Risa Schwartz, ‘Trade and Environment in the WTO: State of Play’, (2002) 36(1) *Journal of World Trade* 129 – or between trade rules and agreements relating to cultural diversity – see Tomer Broude, ‘Taking “Trade and Culture” Seriously: Geographical Indications and Cultural Protection in WTO Law’, 26 *University of Pennsylvania Journal of International Economic Law* 623 (2005); and Tania Voon, ‘UNESCO and the WTO: A Clash of Cultures’, (2006) 55 *International and Comparative Law Quarterly* 635. For the status of the discussion relating to environment and human rights see below Chapter 1, section IV.

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proper relationship between these norms. Such conflicts are not peculiar to the WTO alone. Many other international regimes face the same structural problem (e.g. ‘investment and . . .’, the relationship between international humanitarian law and international human rights law, multilateral rules and regional rules, and treaty rules and international customary law).

But norm fragmentation does not only raise problems in the presence of overt normative conflicts. This also happens when different legal sources contain essentially the same substantive obligations and imperatives (or substantially similar ones), but produce different results. To give an example, the legality of the use of force in self-defence is based on both international customary law and treaty law – Article 51 of the UN Charter. Although the two norms are substantively similar, their fragmented independent existence gave rise to significant legal controversy before the International Court of Justice (ICJ) in the *Nicaragua* case.¹⁸ The list can be completed with numerous other examples of multi-‘sourced obligations’ or ‘parallel regimes’ that raise problems due to norm fragmentation.

The second category of fragmentation relates to that of international authority. The main concern in this context is not the interaction of various rules and sources, but the distribution of authority and power among international, regional and national institutions which produce, interpret and apply international law. Here, the question is, rather, who has the authority to make a determination on a particular question arising under international law – whose determination should prevail if more than one body is found to have this authority. The question is highly relevant in the context of international dispute settlement, where, as illustrated above, numerous international tribunals operate. But this phenomenon also extends to political bodies. In fact, in contrast to the lawyer’s perception of fragmentation as a problem generated by the lack of a clear norm and judicial hierarchy as evidenced in domestic law, the logic of politics locates the cause of fragmentation as being educed from the underlying conflicts between the ‘policies’ pursued by different international organizations and regulatory regimes.¹⁹ The report of the International Law Commission (ILC) Study Group on Fragmentation of International Law dealt extensively with the difficulties created by fragmentation in substantive international law, but left the institutional

18 *Military and Paramilitary Activities (Nicaragua v. US)*, Merits, 1986 ICJ 14 (27 June).

19 Andreas Fisher-Lescano and Günther Teubner, ‘Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law’, (2004) 25 *Michigan Journal of International Law* 999, at 1003.

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issues aside, stating that the ‘issue of institutional competence is best dealt with by the institutions themselves’.²⁰ This signals the difficulty of lawyers having to deal with issues involving power and authority sharing – a topic which goes beyond the remit of this book.

This is explained by the fact that international organizations were conceived in a rather functionalist manner,²¹ whereby each was assigned a specific task in its founding charter. Thus there are no clear models of how international organizations should interact in a system of shared international governance.²² Despite the post-Second World War planners having devised an ambitious world system in which each area of international concern would be addressed by some international organization,²³ their tasks could not be neatly separated. They overlap considerably, for example in the fields of trade and environment, culture, agriculture, health, intellectual property (IP), development and monetary issues. As a result, only a few international problems can be placed squarely into one category, to be resolved by reference to a single regime.²⁴

20 See Jan Klabbbers, ‘Constitutionalism Lite’, 1 *International Organizations Law Review* 31 (2004), at 31. See also Tomer Broude, ‘Principles of Normative Integration and the Allocation of International Authority: The WTO, the Vienna Convention on the Law of Treaties, and the Rio Declaration’, (2008) 6 *Loyola University of Chicago School of Law Review* 173, at 176–7.

21 The functionalist approach to international organizations can be traced back to David Mitrany, *A Working Peace System* (London: Royal Institute of International Affairs, 1943). Later this was elaborated by Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organization* (Stanford University Press, 1964). Of all of the books produced by Haas, this contribution (in its most recent edition of 2009), contains the most complete and definitive statement of ‘neo-functionalism’ – the theory of transnational integration for which he is best known. Focusing on the International Labour Organization (ILO), his work is one of the first efforts to analyse systematically the dynamics and effects of a global international institution. See also Richard A. Falk et al., *The United Nations and a Just World Order* (Boulder, CO: Westview Press, 1991), at 138; Stephen Zamora, ‘Economic Relations and Development’, in Christopher C. Joyner (ed.), *The United Nations and International Law* (Cambridge: American Society of International Law and University of Cambridge, 1997) 232–86, at 233–4; Nigel D. White, *The Law of International Organizations* (Manchester University Press, 2005), at 2–7.

22 Other explanations for the fragmented nature of international law are the lack of centralized organs, the specialized nature of many areas of international law, the different structures of international legal norms and parallel regulation at the global and regional level. See Gerhard Hafner, ‘Risks Ensuing from the Fragmentation of International Law’, in Report of the International Law Commission on the Work of its Fifty-Second Session, 2000, UN Doc. no. A/55/10, at 321.

23 This impulse is revealed by the incorporation of pre-existing international organizations into the UN system.

24 Zamora, ‘Economic Relations’.

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Since there is no central government at the international level to rule over the activity of its different branches,²⁵ fragmentation may result in incoherence between different regulatory areas.²⁶ The international economic system is also ill-served by the UN system, in which a multiplicity of agencies operate in an unco-ordinated fashion. They deal separately with economic issues that are interrelated; consequently, global economic problems are ineffectively confronted.²⁷

Constitutionalists have discussed this issue, proposing solutions which range from integrating existing international institutions to the extent they overlap or compete to less grand programmes which envision retaining the institutions but establishing some sort of hierarchy among them.²⁸ Nevertheless, nowadays it seems that there is no inclination to move towards taking any of these directions. The integration approach is undesirable from the effectiveness point of view, and it is not at all obvious that the results from a centralized organization would be better.²⁹ Although a hierarchical order would bring about more legal certainty, here, too, it is not evident that such an institutional framework would be effective in solving international problems; moreover, its creation would be fraught with difficulties. The co-ordination and reciprocal sensitivity between various regimes and their managing international organizations is therefore regarded in this study as essential in combating this problem. In this context, other scholars, too, have encouraged stronger institutional co-ordination.³⁰ While co-ordination of international organizations can

25 Devesh Kapur, 'Processes of Change in International Organizations', in Deepak Nayyar (ed.), *Governing Globalization: Issues and Institutions* (Oxford University Press, 2002), 334–55, at 354.

26 See Thomas Cottier and Panagiotis Delimatsis (eds.), *The Prospects of International Trade Regulation – From Fragmentation to Coherence* (Cambridge University Press, 2010).

27 See, e.g., David B. Steele, 'The Case for Global Economic Management and UN System Reform', (1985) 39 *International Organization* 561, at 561, calling for the establishment of a 'higher-level guiding body with an element of discretionary power, which would establish the major lines of short and medium-term global economic management'.

28 See Geir Ulfstein, 'Institutions and Competences', in Jan Klabbbers, Anne Peters and Geir Ulfstein (eds.), *The Constitutionalization of International Law* (Oxford University Press, 2009), at 68–71.

29 Ibid., at 69.

30 For an account see generally Clarence W. Jenks, 'Coordination in International Organization: An Introductory Survey', (1951) 28 *British Year Book of International Law* 29. See also Mosoti, 'Institutional Cooperation'; Jeffrey Dunoff, 'Constitutional Concepts: The WTO's "Constitution" and the Discipline of International Law', (2006) 17(3) *European Journal of International Law* 647. See also Peter Passell, 'Loading the Trade Agenda with Diverse Issues Could Backfire', *New York Times*, 9 October 1997. See also World Commission on the Social Dimension of Globalization, 'A Fair Globalization: Creating Opportunities

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be regarded as a deterrent to normative change,³¹ most of the contributors argue that the absence of a proper interaction mechanism between these institutions may result in duplication of effort and the delivery of conflicting advice to member countries, particularly in relation to institutions with quasi-universal membership. This situation ultimately leads to increased transaction costs of governance.³²

These concerns are valid for all intergovernmental international organizations alike, including the WTO and its dispute settlement system – the focus of this study. In the context of WTO dispute resolution, it is noted that the institutional sensitivity of the adjudicator – that is, the panel or the Appellate Body – vis-à-vis other international organizations is a factor which, apart from bringing about more uniformity in international law, adds to the legitimacy of the system.³³ Against this background, this study investigates the role of international organizations in WTO dispute settlement bearing in mind the desire to bring about more integration not only of substantive law but also of international authorities.

for All', March 2004, www.ilo.org/public/english/wcsdg/docs/report.pdf (visited December 2008), emphasizing the need for greater policy co-ordination among international organizations on issues on which their policies interact or mandates intersect. On the co-ordination between the WTO and WIPO see, e.g., Frederick Abbott, 'Distributed Governance at the WTO-WIPO: An Evolving Model for Open-Architecture Integrated Governance', (2000) 3(1) *Journal of International Economic Law* 63; Nikolai Khlestov, 'WTO-WIPO Co-operation: Does It Have a Future?', (1997) 10 *European Intellectual Property Review* 560; Ruth L. Okediji, 'WIPO-WTO Relations and the Future of Global Intellectual Property Norms', (2008) 39 *Netherlands Yearbook of International Law* 69.

31 Okediji, 'WIPO-WTO Relations', at 13, arguing that while contemporary arguments for inter-institutional co-operation have merit to them, it also is the case that such collaboration or co-ordination can be deployed to undermine prospects for normative change.

32 One good example is the IMF and the World Bank, which have expanded their activities throughout their existence in a manner that could have led to duplication of efforts. As argued by institutionalism (a version of functionalism that emerged in the 1980s in political science), the reduction of transaction costs is one of the features that enables international organizations to create 'conditions for orderly multilateral relations'. Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984), at 244. See also Kenneth W. Abbott and Duncan Snidal, 'Why States Act through Formal International Organizations', (1998) 42 *Journal of Conflict Resolution* 3.

33 Robert Howse, 'Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence', in Joseph H. H. Weiler (ed.), *The EU, the WTO, and the NAFTA: Towards a Common Law of Economic Integration?* (Oxford University Press, 2000), 35–69, at 62–8. See below Chapter 1, section II for a comprehensive account of institutional sensitivity as an ingredient for legitimacy in WTO dispute settlement.

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II. International organizations in the WTO

For a better understanding of the issues addressed in this study, it is necessary to start with a historic illustration of the role of international organizations in the WTO. These interactions varied in intensity over time, as the WTO evolved from a quasi-institution into a fully fledged organization. Thus the dynamics of these interfaces were largely determined by the shift in the status of the organization, from a treaty – the General Agreement on Tariffs and Trade (GATT) – into an international intergovernmental organization – the WTO. But the picture would be incomplete without going back to the very origins of the system where attempts were made to create an International Trade Organization (ITO).

A. *The International Trade Organization*

The ill-fated ITO was conceived as a multifaceted organization which had aims other than liberalized trade, or at least reflected an awareness that other interests would have to be served if liberal trade was to prevail. It was an organization which was designed as a complement to the United Nations. Indeed, Article 86(1) of the Havana Charter contemplated that the ITO would become one of the ‘specialized agencies’ referred to in Article 57 of the Charter of the United Nations. It was therefore natural that the Havana Charter would have to regulate the relationship between the ITO and other UN specialized agencies. This interaction was set out in Article 86(3), which stipulated that the ITO ‘should not attempt to take action which would involve passing judgment in any way on essentially political matters’, which were the competence of the UN. Many Charter provisions refer to co-operation with the United Nations Economic and Social Organization (ECOSOC). Article 2(2) goes as far as to suggest ‘concerted action under the sponsorship of [ECOSOC]’ to supplement national measures to avoid unemployment. Moreover, the commercial provisions of the Havana Charter did not apply to measures taken under international commodity agreements (Art. 45(1)(a)(ix)), which were provided for in another part of the Charter, or under international agreements relating to the conservation of fishing resources or to the protection of migratory birds and wild animals (Art. 45(1)(a)(x)). Article 7 of the Charter also called for members to co-operate with the International Labour Organization (ILO) in taking ‘whatever action may be appropriate and feasible to eliminate [unfair labour] conditions within its territory’ and

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in resolving any disputes over labour standards that were referred to the dispute settlement mechanism of the ITO.

In the context of the par value exchange rate system established at Bretton Woods in 1944, the balance of payments exemption from the rule of elimination of quantitative restriction was also quite important. In this context, Article 24 of the Havana Charter set out a 'coordinated policy with regard to exchange rate questions' between the International Monetary Fund (IMF) and the ITO.³⁴ Essentially, the Charter prescribed deference to IMF judgement when the ITO was called upon to deal with exchange rate issues.³⁵ The records of the Havana Charter indicate that there were some fears among the negotiators that the ITO would be subservient to the IMF; these concerns, however, were dismissed on the grounds that the 'final decision as to whether restrictions would be instituted or maintained rested with the ITO, notwithstanding determinations made by the IMF'.³⁶

Thus the ITO Charter was characterized as being quite ambitious in terms of members' obligations regarding some non-trade concerns and their responsible institutions.³⁷ It has even been claimed that the ITO never came into being in part because of controversy surrounding some of these obligations.³⁸ But since these provisions have never been tested in the dispute settlement process, it is difficult to assess how they would have played out in practice and to what extent the ITO would have taken into consideration these other organizations.

34 According to Eichengreen, the IMF and GATT were insufficiently co-ordinated in the critical early post-war years, when trade concessions by some countries might usefully have been 'traded' for elimination of exchange controls by others. Barry Eichengreen, *Globalizing Capital: A History of the International Monetary System* (Princeton University Press, 1996), at 101.

35 The ITO had essentially to accept the IMF's determination of 'all findings of statistical and other facts' relating to exchange issues, whether an ITO member had acted in accordance with the IMF Articles of Agreement in instituting trade restrictions for 'balance of payment purposes', what constituted a 'serious decline in . . . monetary reserves', what constituted 'a very low level' or 'reasonable rate of increase' in monetary reserves, and 'the financial aspects of other matters' covered in a case. See Havana Charter Art. 24(2).

36 UN Doc. E/CONF.2/C.3/SR.24, as cited in Daniel K. Tarullo, 'The Relationship of WTO Obligations to Other International Arrangements', in Marco Bronckers and Reinhard Quick (eds.), *New Directions in International Law: Essays in Honour of John H. Jackson* (The Hague, London and Boston, MA: Kluwer Law International, 2000), 155–73, at 159.

37 Tarullo, above n. 36, at 159.

38 Ibid., at 160. On the complicated relationship between GATT and ITO preparatory work see John H. Jackson, *World Trade and the Law of GATT* (Indianapolis: Bobbs-Merrill Company, 1969), at 42–9.