

Introduction

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Behind the newspaper headlines, often an international organization can be discerned. Sometimes the connection remains somewhat hidden. When the USA chides Turkey for procuring weapons from Russia, it suggests that US manufacturers should be privileged because Turkey is a member state of NATO, the US-driven Atlantic security organization. When Poland aims to withdraw from the Istanbul Convention, outlawing domestic violence, the Council of Europe expresses concern, if only because the Istanbul Convention was concluded under its auspices. And when it turns out that mailing parcels from certain countries is cheaper than mailing similar parcels domestically, it is not always immediately realized that this may have something to do with postal rates negotiated within the Universal Postal Union.

Our everyday lives owe much to international organizations, and it is probably fair to say that we are better off, overall, as a result. International air traffic is facilitated by the International Civil Aviation Organization, which ensures that aircraft are safe and pilots are well-trained. The plight of the many workers of the world has for a century been the province of the International Labour Organization. Refugees can invoke the help of the UN High Commissioner for Refugees. Migrants will sooner or later encounter the International Organization for Migration. Fishermen will do well to acquaint themselves with rules and guidelines set by regional fisheries organizations and the Food and Agricultural Organization. And since the outbreak of the Covid-19 pandemic in early 2020, few will not have heard of the World Health Organization.

Indeed, the Covid-19 pandemic may well be seen as a microcosm of the way international law operates, and how international organizations stand in the world. It is fairly obvious, for one, that a virus originating in one part of the world can rapidly spread to cover the entire globe. This owes much to international trade, travel and tourism, all of which are facilitated by international law, and subject to some form of management by

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international organizations. At the same time, overcoming the pandemic also needs to involve international law and international organizations. The latter can sometimes take mandatory measures (though this is still fairly rare), but also facilitate the exchange of relevant information, recommend effective medical approaches and can coordinate national or regional measures. One reason for this resides in the epistemic authority of such organizations, as repositories of relevant expertise: a declaration by the World Health Organization that the outbreak amounts to a ‘public health emergency of international concern’ will be taken more seriously than when the same words are spoken by, say, Kim Kardashian, or the prime ministers of Denmark or Canada.

The aim of this *Cambridge Companion to International Organizations Law* is to provide a picture of the law of international organizations as it helps to structure the work of international organizations: how they do things, in addition to what they do. In doing so, this *Companion* departs considerably from the standard approach, and does so in two ways. First, a standard approach would entail the inclusion of a chapter on the competences (powers) of international organizations; a chapter on their financing; a chapter on their privileges and immunities, et cetera. Important as these are, they do not provide a good picture of what organizations do and how they do it. The standard approach has its uses in teaching law students about international organizations, preparing them for a possible legal job within an international organization, but is less suitable for a general audience.¹

Second, the standard approach tends to pay a disproportionate amount of attention to three organizations: the UN, the EU and the WTO. Yet all three are highly atypical. The UN is the only international organization of general jurisdiction and near-universal membership. The EU is so evolved that it comes closer to the model of a state. The WTO, unlike many other international organizations, has little or no regulatory powers: it is

¹ Readers looking for comprehensive treatment of what is generally referred to as the law of international organizations might wish to consult the monumental treatise by H. G. Schermers and N. M. Blokker, *International Institutional Law: Unity within Diversity*, 6th ed. (Leiden: Martinus Nijhoff, 2018) or, less treatise and more textbook, J. Klabbers, *An Introduction to International Organizations Law*, 3rd ed. (Cambridge University Press, 2015). A textbook-like volume bringing expert authors together is J. Klabbers and Å. Wallendahl (eds.), *Research Handbook on the Law of International Organizations* (Cheltenham: Edward Elgar, 2011).

essentially a free trade agreement with a dispute settlement mechanism attached to it. By contrast, the standard approach usually pays less attention to, for example, the International Organization for Migration or the Organization for the Prohibition of Chemical Weapons, let alone the European University Institute which, its higher education mission notwithstanding, is also set up as an international organization.

In other words, this *Companion* aims to look beyond the surface level of the law of international organizations. It will focus not so much on particular legal topics or doctrines, but on the law that informs these doctrines, and it will focus not on the obvious organizations but on the patchwork of entities, clubs and networks that together make up a large chunk of the system of global governance. Put differently, if standard textbooks tend to look at the software (the specific rules often said to make up the corpus of international organizations law), the current volume aims to have an in-depth look at the operating system. This *Cambridge Companion* thus concentrates on two related issues: how organizations are legally structured, and how they themselves structure the world around them.

International organizations number at least some 300 or so, and come in all kinds of shapes and guises, dealing with all sorts of topics. Shipping? Look at the International Maritime Organization, for starters. The production of olive oil? The International Olive Council. Labour standards? The International Labour Organization. Nuclear control? The International Atomic Energy Agency. The local regulation of fisheries? The North Atlantic Fisheries Organization, among a dozen or so similar organizations from other parts of the globe. International organizations can be highly formal, solemnly created entities marking important political watersheds, as is the case with the UN arising out of World War II. They can also be set up in more modest, informal manner, such as the Paris Club (addressing debt relief), tucked away in a corner of the French Treasury Department. They can express lofty ideals, as with the UN and before it the League of Nations, or be set up for a limited period of time, with a mandate that from time to time needs to be renewed (Financial Action Task Force). They can have all the hallmarks of the rule of law, with courts and judicial review of executive action (this is rare, but it does apply to the EU), but can seemingly also be operating outside the law, as a political entity, based on what is referred to as a politically binding constituent instrument (Organization for Security and Cooperation in Europe). They can consist of states, but may

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also comprise other international organizations and perhaps even the private sector (GAVI, the Vaccine Alliance). In short, there is a bewildering variety, and this factor alone makes it difficult to say much of general validity and applicability about international organizations. What applies to the International Monetary Fund is unlikely to apply in quite the same way and quite the same manner to, say, the Organization of Petroleum Exporting Countries or the International Organization for Migration.²

This wide variety obviously limits the possibilities for comprehensive coverage, something made even more difficult by the awkward circumstance that there is no general definition of what constitutes an international organization. The absence of an authoritative definition entails that at the margins, there is considerable debate about whether an entity such as the Organization for Security and Cooperation in Europe qualifies as an international organization: it looks like one, and works like one, but is often denied to be one, claiming to have been intentionally set up as a political rather than a legal creature. That claim may never have been terribly persuasive, but cannot be dismissed out of hand.³ Likewise, there is debate on whether the various Conferences of the Parties often established under multilateral agreements and acting much like international organizations are actually to be considered as such; or whether informal networks of states and others should be considered as such;⁴ or whether international tribunals such as the International Criminal Court should be considered as such.⁵

This *Companion* starts by discussing general issues and activities, and then slowly moves on to discuss the role of international organizations in

² I have elsewhere suggested that there is actually no unified field of international organizations law: each organization forms its own legal order, and their relations with the world around them are governed by international law and the law of the states in which they operate. See J. Klabbers, 'The Paradox of International Institutional Law', (2008) 5 *International Organizations Law Review* 151.

³ The OSCE seems to have turned a corner though, and reconciled itself with being part of international law. For in-depth discussion, see M. Steinbrück Platise, C. Moser and A. Peters (eds.), *The Legal Framework of the OSCE* (Cambridge University Press, 2019).

⁴ An example might be the Contact Group on Piracy off the Somali Coast, legitimized by Security Council resolutions and bringing together a number of states, several international organizations, the insurance industry, seafarer's unions and others.

⁵ In a way the ICC possesses most of the hallmarks identified in the literature: set up by states on the basis of a treaty to perform tasks delegated by member states. Yet, one hesitates to think of the judicial task as one controlled and delegated by states.

specific policy domains. Following a discussion by the editor on how to look at international organizations generally, subsequent chapters will include a discussion of the concept of international organization (Angelo Golia Jr and Anne Peters). This will be followed by a dissection of the accountability – *vel non* – of international organizations (Megan Donaldson and Surabhi Ranganathan). Setting up any organization inevitably involves asking who will be included and who will be excluded, as Groucho Marx already realized when famously quipping to refuse to join any club that would accept him as a member. Such issues relating to inclusion and exclusion are discussed by B. S. Chimni. In the subsequent chapter, Laurence Boisson de Chazournes and Vasileios Pergantis take an in-depth look at how international organizations are set up internally.

The *Companion* continues with a chapter on what is often considered the most relevant topic of standard-setting by international organizations, by José Alvarez. This, however, is not the only thing international organizations do. Alison Duxbury, in her contribution, makes clear that international organizations do not only set standards, but also act in the field: they undertake numerous operational activities, which are both structured by law and give rise to law. And Ian Johnstone suggests that international organizations may also be relevant, in a pluralist world, as places where states can debate with themselves and with other stakeholders. Guy Fiti Sinclair suggests a further reflexivity in that international organizations teach their members states how they should operate as states, therewith piercing the classic view that international organizations merely execute the wishes of their members. René Uruena's chapter opens up the hardly explored topic of the relations between international organizations with each other. He suggests they may collaborate with each other, influence each other and compete with each other. This is followed by a discussion by Vincent Chetail of the relationship between the work of an international organization and general international law, in the specific context of the field of migration law and focusing on the International Organization for Migration.

Here then the *Companion* has arrived at discussing specific policy domains. Their delimitation, selection and nomenclature are naturally highly arbitrary, but the main idea was to avoid the all-too-familiar, and instead focus some attention on policy domains that have been somewhat neglected or that still, as policy domains, are in development. The former

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applies to health, energy and disarmament; the latter to development and resources, food security and financial stability.

Gian Luca Burci provides the chapter on global health, a not-very-well-known policy domain until rather recently. When this volume was conceived, the global health regime had rarely occupied a prominent place in discussions on international organizations – and then the Covid-19 pandemic exploded. Burci's chapter is followed by a chapter on another policy domain rarely to be found in general works on international organizations: the provision of energy is the subject of Volker Roeben's chapter. Nigel White discusses the role of international organizations in disarmament, a policy domain often seen to be based on distrust rather than trust among member states – although the incidence of trust in those others may be overrated. Isabel Feichtner subsequently discusses the position of international organizations in development, while Monica Garcia-Salmones Rovira analyzes the emergence of the international regime on food security. The final chapter, by Matthias Goldmann, discusses the role of international organizations in securing global financial stability. The volume finishes with some concluding words by the editor.