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Dissolution and succession

Introduction

While international organizations are generally created for longer periods of time, indeed usually even without any definite time period in mind,[1] not all of them manage to survive indefinitely. Some simply disappear without being succeeded to in any way; prime examples are the Warsaw Pact and Comecon, both of which were dismantled after the dissolution of the Soviet Union. On 26 June 1991, a ministerial meeting of Comecon members decided to dissolve the organization, whereas the Warsaw Pact was disbanded at a meeting of its Political Consultative Committee in Prague, on 1 July 1991.[2]

In other cases, organizations are remodelled to cope with new or unexpected demands, or are succeeded by new entities providing similar services and exercising similar functions to their predecessors. The most famous example is, in all likelihood, that of the League of Nations which, for all practical if not all legal purposes, has found a successor in the United Nations. Others include the 'reconstitution' of the OEEC into the OECD, the transformation of the Brussels Pact into the WEU, and the transition from GATT to WTO.

The main legal questions arising, whether an organization dissolves or is succeeded to, pertain to the functions, personnel, and assets and liabilities of the predecessor organization. Will they disappear? Will they continue to exist? How, if at all, will they be distributed? A preliminary question is whether dissolution (and succession) are possible to begin with, and by what modalities.

[1] An exception is the ECSC, created initially for a period of fifty years, although with the possibility of continuation.

[2] The facts are derived from Clive Archer, *Organizing Europe: The Institutions of Integration* (2nd edn, London, 1994), pp. 252–5.

Closely related is the question of who has the power to decide on such issues as dissolution. Does such power rest solely with the member-states, or does the organization itself have a say in the matter? And if the latter, which organ, and following which procedure? It is here, then, that the tense relationship between the organization and its members manifests itself once again: those who view organizations as mere vehicles for their members will easily be inclined to accept that dissolution is the sole province of the members, whereas proponents of the view that organizations have a separate identity will be more inclined to allow the organization to have some formal powers regarding its own dissolution.

The modalities of dissolution

It would be convenient were the constituent charters of international organizations to contain provisions on when, how and through what means a possible dissolution of the organization could be effected, but, alas, such is not normally the case. And understandably so: an international organization is created with a view to its performance, rather than with a view to its demise, and it might often be difficult enough to get states to agree on what the organization may do and how it should go about things – so much so that no energy is left to negotiate the topic of dissolution.

There are, however, exceptions.[3] Thus, Article VI, para. 5, of the Articles of Agreement of the World Bank provides for a 'permanent suspension' and subsequent ceasing of all activities of the Bank upon a majority decision of its Board of Governors, and lays down in some detail what will happen with outstanding obligations. Similarly, Article XXVII, s. 2, of the Articles of Agreement of the IMF provides for its liquidation by decision of the Board of Governors, presumably by majority vote.[4]

Nevertheless, these are exceptions,[5] and since guidance is rarely provided by the constitutions in any explicit terms, it must be sought elsewhere, and it is here (once again) that the precise relationship between the organization and its members may well colour the solution finally chosen.

[3] See also Art. 28 of the Agreement establishing the Terms of Reference of the International Jute Study Group, which deals with the Group's liquidation. The Agreement was concluded on 13 March 2001, and has yet to enter into force.

[4] Compare Art. XII, s. 5 (c) IMF.

[5] The fact that provisions on liquidation were included in the first place is attributed to the special financial services provided by the World Bank and the IMF. See H. G. Schermers, *De gespecialiseerde organisaties: Hun bouw en inrichting* (Leiden, 1957), p. 70.

Thus, on one view, the organization as such has the inherent power to terminate its own existence, regardless of whether or not its constitution makes any reference thereto.[6] On this view, a decision to dissolve should follow the regular decision-making procedure within the organization or, where several such procedures exist, should follow the one reserved for important decisions. Thus, such a decision may come to involve several organs. It could be argued, for example, that termination of the EC would only be possible upon a proposal by the Commission and upon the advice (perhaps even the assent) of the European Parliament; while, with respect to the UN, such an approach would amount to, probably, a decision by the General Assembly upon the recommendation of the Security Council.

While this view is not without attractions, it is not without problems either. One such problem is, as expected, the choice of the proper decision-making procedure to be followed. This alone may cause all sorts of haggling. Another is that a decision to dissolve may, where decisions are to be taken unanimously, be blocked by a single member-state. Clearly, such would create an unworkable situation.[7]

On the other hand, the main point (and possible attraction) of scenarios involving the organs of the organization concerned is that they prevent the member-states from circumventing the organization, as it were. Thus, as a matter of law, the members of an organization would not be allowed to terminate the organization's existence behind the organization's back, without the consent of the organization itself. Yet, put like this, the theory acquires a distinct air of artificiality. Surely, one might argue (and some would argue), at the end of the day the organization is but the aggregate of its members: it was created by them, so it can also be destroyed by them. Others would say, however, that this ignores the separate existence of organizations: while they may be created by states, they become actors in their own right, so surely, if liquidation is at issue, the entity to be liquidated should be consulted as well.

A second approach aims to do at least some justice to the idea that organizations may lead a separate existence, but without going so far as

[6] For an example, see *ibid.*, p. 69, finding the right of dissolution to rest with the plenary organ which would have to follow at least the procedure created for amendments.

[7] One of the worries when it came to dissolving the League of Nations was that some members would try 'to hold the Covenant in suspended animation indefinitely'. Another worry was that some would refuse to dissolve at all, and instead simply proclaim the Covenant to be terminated, thus leaving a legal mess. See Denys P. Myers, 'Liquidation of League of Nations Functions' (1948) 42 AJIL, 320–54, esp. pp. 330–1.

to enable them to decide on their own fate. This approach would allow for termination of an organization by way of concluding a subsequent agreement. Here, unanimity is built-in (in the sense that one would need all parties to the constitution to agree to a new treaty), and it is this unanimity which can be seen as a safeguard for the organization: the organization is protected by the fact that it needs only one member-state to block its liquidation.[8]

A third approach, which eventually outsmarts most of the problems of dissolution and succession by refusing to think of itself as dissolution and succession, and which has met with support in both recent practice and recent scholarship,[9] is to graft a new organization on the remains of the predecessor, or to build a new one around the remains, in whole or in part, of a predecessor.

Thus, the new WTO was built around the framework of the existing GATT, and it could be argued that the EU also has grafted itself onto an already existing structure: that of the European Community. Moreover, the EU incorporates other institutions as well, either by reference (this applies in particular to the WEU[10]) or by adopting the other's *acquis*, as with Schengen.[11] Both with the WTO and the EU, the predecessors continue to exist, and the legal problems associated with succession proper simply do not arise, or are solvable in pragmatic fashion.

For instance, there was never any worry that Community officials would lose their jobs upon the creation of the Union; at worst, they needed to get new business cards and office stationery printed. So too, a visible reminder

[8] Slightly different is the technique of concluding new constitutional documents while leaving the organization intact. This happens regularly with commodity agreements. Thus, the International Cocoa Organization was created in 1972, but will have the Sixth International Cocoa Agreement as its 'constituent' document (concluded in March 2001) if and when it enters into force.

[9] Compare, e.g., Ernst-Ulrich Petersmann, 'How to Reform the UN System? Constitutionalism, International Law, and International Organizations' (1997) 10 Leiden JIL, 421–74.

[10] Article 17 TEU provides that the WEU 'is an integral part of the development' of the EU (para. 1), and that the EU 'will avail itself of the WEU to elaborate and implement decisions and actions' (para. 3). For more details, see Ramses A. Wessel, 'The EU as a Black Widow: Devouring the WEU to Give Birth to a European Security and Defence Policy', in Vincent Kronenberger (ed.), *The EU and the International Legal Order: Discord or Harmony?* (The Hague, 2001), 405–34. See also Inger Österdahl, 'The EU and its Member-States, Other States, and International Organizations – The Common European Security and Defence Policy after Nice' (2001) 70 Nordic JIL, 341–72.

[11] See the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the TEU and EC Treaty at Amsterdam and reproduced in *Official Journal* (1997), C 340/93. That the Schengen regime functioned as an international organization is reasonably clear; whether it would qualify as a formal organization is a different matter.

of the continuity between GATT and WTO is that the Secretariat is still located in the same building in Geneva. No transfer of funds, archives or personnel proved necessary.

The drawback is, of course, that in such a case problems of co-ordination may well arise. Where old GATT law continues to exist next to new GATT law, the question of which is deemed supreme will inevitably arise; consequently, the WTO Agreement had to include a conflict rule,[12] and a separate rule had to be created with respect to existing waivers of GATT obligations.[13]

With respect to the European Community and the European Union, co-ordination questions have arisen regarding, for example, the jurisdiction of the European Court of Justice, whereas the overlap between the 'political' Union activities and 'economic' Community activities has given rise not only to special provisions making it possible to use economic instruments in order to further political goals (i.e. sanctions),[14] but also to case-law where the Court was called upon to figure out which rules were applicable in case of trade in goods which can serve both a civilian and a military purpose.[15]

In addition to this 'constitutional adaptation' (to adopt Hahn's phrase, which he used to describe the remodelling of the ILO[16] and the WEU, the OAS and even already the EC), Hahn reserves the phrase 'automatic succession' to describe the relationship between the League of Nations and the UN.[17] Additionally, he helpfully distinguishes three modes of 'conventional succession': substitution (where one or more successors take the place of a predecessor), merger (where a successor takes over another organization) and transfer (where both continue to exist, but functions are transferred).

[12] Article XVI, para. 3 WTO: 'In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.'

[13] Article 2 of the Understanding in respect of waivers of obligations under the General Agreement on Tariffs and Trade 1994 provides: 'Any waiver in effect on the date of the entry into force of the WTO Agreement shall terminate [unless lawfully extended] on the date of its expiry or two years from the date of entry into force of the WTO Agreement, whichever is earlier.'

[14] Article 301 (formerly Art. 228a) TEC.

[15] See, e.g., case C-70/94, *Fritz Werner Industrie-Ausrüstungen GmbH* v. *Germany* [1995] ECR I-3189, and case C-83/94 *Criminal proceedings against Peter Leifer and others* [1995] ECR I–3231.

[16] This had become necessary after the Second World War due to the close institutional ties between the ILO and the disbanded League of Nations. A useful overview is C. Wilfred Jenks, 'The Revision of the Constitution of the International Labour Organization' (1946) 23 BYIL, 303–17.

[17] Hugo J. Hahn, 'Continuity in the Law of International Organization' (1964) 13 ÖZöR, 167–239.

Dissolution

Dissolution without any transfer of functions or assets and liabilities to a new or already existing organization is a rare phenomenon, probably for the good reason that the tasks the disbanded organization performed continue to serve a purpose. Thus, the rationale behind an organization will usually continue to exist; it is merely the institutional arrangements which are deemed unsuitable.

Indeed, the few examples of dissolutions proper appear to demonstrate that dissolution without succession is most likely to occur after a dramatic change in political circumstances which renders the very *raison d'être* problematic. Good examples are both the Comecon and the Warsaw Pact, which were rendered obsolete with the end of the Soviet Union and the concomitant end of the Cold War. Still, mere obsolescence is not necessarily enough for, as the experiences of NATO and the WEU demonstrate (and in particular the WEU has never lived a very active existence), organizations and their members may well search for new tasks to justify their existence. In addition, then, before an organization is dissolved, its continued existence must also have become politically untenable.

Another (if atypical) case of dissolution was the dissolution of Eurochemic, a 'société internationale par actions' with its headquarters in Belgium, but founded on the basis of a treaty between states and governed, largely, by that treaty (and therewith by international law[18]).

Eurochemic, established to provide nuclear energy and educate nuclear scientists, proved to be less than a success as far as its industrial task was concerned, and its General Assembly decided that dissolution and liquidation were in order, a process that was finally completed in 1990.[19] Both the constituent document and Eurochemic's by-laws were silent on its dissolution, except for providing that dissolution was to take place on the basis of an agreement between Eurochemic and Belgium; the agreement concerned was concluded as early as 1978.

The liquidation agreement provided, among other things, that the industrial properties of Eurochemic would be transferred to a new company to be formed or, failing that, to the Belgian state; the new company would

[18] Belgian law was applicable subsidiarily, and only to the extent that it was in harmony with the constituent document.

[19] Much of this is based on Pierre Strohl, 'Les aspects internationaux de la liquidation de la société Eurochemic' (1990) 36 AFDI, 727–38.

take care of the costs of dismantling. As far as nuclear waste was concerned, Eurochemic itself would ensure its evacuation, except for highly charged waste which would be sold to an interested German company. Eurochemic would no longer be responsible for stockpiling nuclear materials, and, to the extent necessary, the newly established company would take over Eurochemic's staff.

A peculiar problem, partly inspired by Eurochemic being engaged in nuclear activities, arose in connection with the payment of the costs of dismantling. Most member-states were in agreement that together they should bear the costs, based on the thesis that Eurochemic had been, in fact, acting as their agent. One member-state however (Italy) resisted this approach, and rejected any direct or indirect liability: as Eurochemic had been an independent commercial entity, the member-states could not be held liable in any way. Eventually a compromise was found, with Italy pledging a voluntary contribution.

Also atypical is the case of the ECSC, which disappears simply due to the expiry of its founding document. The Nice Treaty will keep a number of the ECSC provisions alive (mainly those about things the ECSC shared with the other Communities), but ECSC will disappear as a separate organization. A special protocol was concluded to deal with the financial ramifications: the Protocol on the financial consequences of the expiry of the ECSC Treaty and the research fund for coal and steel.[20] The Protocol provided that assets and liabilities of the ECSC, as they existed in July 2002, would transfer to the EC which, in turn, would use the net worth to set up a Research Fund for Coal and Steel.[21]

Succession: some basic issues

The most well-known instance of succession of organizations is, in all likelihood, that of the dissolution of the League of Nations and the creation of the United Nations. Nonetheless, strictly speaking the case was not one of succession, if only for the reason that both organizations existed simultaneously for half a year: the Charter of the UN entered into force on

[20] This will be appended, by means of the Nice Treaty, to the Treaty establishing the EC.

[21] This presupposes that in July 2002, the Nice Treaty has entered into force. It will be interesting to see what happens should the entry into force of the Nice Treaty be delayed.

24 October 1945, whereas the League Assembly decided on the dissolution of the League on 18 April 1946, the dissolution taking effect the next day.

Still, for most practical purposes the UN filled the spot left by the League: its functions are similar, as is, with a few important differences such as the veto, its institutional set-up. The similarities between the two are such that they are usually compared with one another. Indeed, the UN's draftsmen must have realized as much; as Brierly points out, they have attempted to get away from being associated with the League's not-so-glorious past by using different terms, such as substituting the Security Council for the Council, and the General Assembly for the Assembly.[22]

To the extent that a transfer of functions, assets and liabilities, and staff occurred, it took place on the basis of the mutual agreement of the two organizations concerned (mostly in the form of parallel resolutions), and indeed several legal reasons suggest that it could hardly have been otherwise.[23]

For one thing, there is almost always the problem of different membership. Where the successor organization does not have membership identical to the predecessor organization, anything other than agreement would be difficult to reconcile with the basic idea of consent: why should a member of the successor but not the predecessor be obliged to take on (part of) debts or functions or even staff of the predecessor?[24]

Another problem is that, where a succession of organizations takes place, the usual scenario appears to be that the organizations concerned exist simultaneously for a while: the co-existence of the League and the UN appears to be far from exceptional. Thus, Chiu finds in an authoritative survey that in only one of seven cases was there no simultaneous existence. This concerned the subsumption of the International Technical Committee of Aerial Legal Experts (CITEJA) by the newly created ICAO in 1947, and the case is atypical at any rate as ICAO was created replacing not one but two predecessors. The other was the International Commission for Air

[22] Brierly thought this was a little childish. See J. L. Brierly, 'The Covenant and the Charter' (1946) 23 BYIL, 83–94, p. 83.

[23] Article 16(c) of the Agreement establishing the Terms of Reference of the International Jute Study Group provides for agreement in a different way: 'As the legal successor to the International Jute Organization, the Group shall assume responsibility for all the assets and liabilities of the former Organization.'

[24] It may be hypothesized that succeeding to assets will be less problematic, in much the same way as the law of treaties recognizes a difference between the creation of rights and of obligations for third parties.

Navigation (CINA), which did co-exist some eight months with ICAO.[25] Indeed, in a strict sense one can hardly even speak of succession where predecessor and successor exist alongside; it therefore seems to be a case of taking over certain of a predecessor's functions, assets and liabilities, and staff, rather than of succession strictly speaking. And then it is of course far from surprising that such 'succession' is practically always based on mutual agreement.[26]

There is, however, one notorious exception when it comes to the functions of an organization, and that is the way the League of Nations' supervisory powers concerning South Africa's Mandate over South West Africa were transferred. As is well known, no explicit transfer thereof had taken place, which did not prevent the General Assembly, in the late 1940s, from claiming supervisory powers. When South Africa resisted, the ICJ was asked for an advisory opinion, and the Court found that indeed a transfer of powers had taken place, but it remains less than clear why exactly the Court thought so. Much in the reasoning suggests wishful thinking on the part of the Court, claiming that, even though the League had disappeared, the necessity of supervision of the Mandate continued to exist. Moreover, as the Court put it, the General Assembly had in practice taken over supervisory functions (never mind South Africa's lack of co-operation), and the 'dissolution resolution' of the League of Nations Assembly, while it remained silent on the topic, was nevertheless interpreted by the Court as 'presupposing' that the supervisory powers would be taken over by the UN.[27]

All in all, there is much conjecture in the Court's reasoning, but then again any other option would have been vulnerable to criticism as well, and often to remarkably similar criticism. Thus, a finding that no supervision had been transferred would have an equally dubious basis: can one conclude from the absence of anything explicit on supervision that therefore supervision had come to an end, even in the face of humanitarian concerns? After all, the Mandate was created in the name of the sacred trust of civilization; South Africa's faithful adherence thereto seemed, in the 1940s, at least debatable.

[25] Hungdah Chiu, 'Succession in International Organisations' (1965) 14 ICLQ, 83–120, pp. 89–91.

[26] Chiu draws the same conclusion (but not on the basis of identical arguments), rejecting any automatic succession theory: *ibid.*, pp. 114–18.

[27] Hahn, 'Continuity', in particular pp. 197–8, suggests that the Court applied the idea of (automatic) succession but refused to call it by that name because of succession's private law overtones.

Assets and debts

While successions of organizations are relatively rare (especially when cases of reconstitution or constitutional adaptation are not counted) and follow their own patterns, usually on the basis of mutual agreement between the organizations concerned, nonetheless some generalities tend to recur. Thus, assets of the predecessor organization (as well as archives) tend to fall to the successor organization.[28]

Indeed, there is even some (albeit limited) judicial support for the thesis that such would be the case even without agreement. In *PAU* v. *American Security and Trust Company*,[29] at issue was whether the PAU was entitled to receive the residue of the estate of its deceased Director-General, in accordance with his will. The PAU had become, since 1948, the General Secretariat of the OAS; prior to that, it had been the administrative organ of the Union of American Republics. While the will's executor doubted that the PAU was still the same entity, the US District Court for the District of Columbia found, in 1952, that the PAU had essentially retained its identity, and therewith reached the conclusion that the PAU, 'as General Secretariat of the Organization of American States, has succeeded to the property and contractual rights it previously held as agent of the Union of American Republics'.[30]

As said, the judgment seems to offer some support for automatic succession of assets and contractual rights, but only in a limited way, as the situation surrounding the various changes of the PAU is too atypical to be able to serve as the basis for general conclusions. Moreover, the PAU as such had not ceased to exist; it had merely taken on another function in a different organization. The more likely scenario is that succession will take place by agreement, as has indeed been the basis of at least one other judicial decision.[31]

When it comes to debts of the predecessor organization, the picture is less clear. Those of the League of Nations were neatly taken care of, but

[28] See O. M. Ribbelink, *Opvolging van internationale organisaties* (The Hague, 1988), p. 212.

[29] Decision of 6 May 1952, US District Court for the District of Columbia, in 18 ILR 441.

[30] *Ibid*., p. 443.

[31] Thus, in *United Nations* v. *B*, decision of 27 March 1952, Tribunal Civil of Brussels, in 19 ILR 490, the Court found that the defendant was under the obligation to restitute money paid to him by the dissolved UNRRA to the UN, which had by agreement taken over UNRRA's rights. The Supreme Court of New York, however, in *Wencak* v. *United States*, found that the UN 'is in no sense the successor of Unrra [*sic*]', but had merely undertaken to administer UNRRA's liquidation: decision of 18 January 1956, in 22 ILR 509.

little is known about those of other organizations, such as the debts of the Caribbean and Latin American free trade areas, CARIFTA and LAFTA (succeeded by, respectively, the Caribbean Common Market (Caricom) and the Latin American Integration Association (LAIA)).[32] Where the succession is merely a reconstitution without a change in identity (as with OEEC–OECD), there is no reason why debts or assets would not continue to exist. Indeed, a well-placed observer has argued that the choice for reconstitution rather than the creation of a new legal person was inspired by a desire to prevent precisely these types of problems.[33]

Personnel

With personnel too, matters are uncertain. When the League of Nations disappeared, some of its staff found employment with the UN but, once again, mainly on the basis of agreement.[34] And indeed, the importance of agreement has also been emphasized in other contexts.[35] Thus, the Administrative Tribunal of the ILO held that, in the absence of any agreement to that effect, officials of the Pan American Sanitary Bureau could not enjoy the benefits guaranteed to WHO officials, despite the fact that the Pan American Sanitary Bureau acted as the WHO's regional office and was about to become fully integrated into the WHO.[36]

The same applies, by and large, to other cases of succession. Usually, there is no blanket take-over of staff, although some staff members may move along with the predecessor's movable assets. There is, however, often a commitment to help the predecessor's staff to find new employment, and to grant them preferential treatment with the successor organization. And of course, their experiences with the predecessor can prove useful.

Where no proper succession takes place, but merely constitutional adaptation, often the staff remains in function, at least to the extent that a

[32] Compare Ribbelink, *Opvolging van internationale organisaties*, p. 212.

[33] Hahn, 'Continuity', p. 220. Hahn was a legal adviser with the OEEC at the time of its reconstitution.

[34] See, e.g., Myers, 'Liquidation', p. 336.

[35] With respect to the GATT–WTO succession, the Director of the Legal Affairs Division of the GATT Secretariat proposed an agreement between the WTO and the contracting parties of GATT. See Frieder Roessler, 'The Agreement Establishing the World Trade Organization', in Jacques H. J. Bourgeois *et al.* (eds.), *The Uruguay Round Results: A European Lawyers' Perspective* (Brussels, 1995), 67–85, p. 83.

[36] *Brache* v. *World Health Organization*, decision of 3 November 1969 by the ILO Administrative Tribunal, in 43 ILR 459.

refashioned organization's new functions need the same type of expertise. Where functions have changed, it may be that a change in staff will also be needed.

Functions

On an abstract level, the transfer of functions brings few problems with it. After all, functions are (in contrast to assets, liabilities and archives) not under anyone's ownership, and at least hypothetically there is no objection to disbanding organization X on Monday and creating a new organization Y on Tuesday with the same functions as the ones earlier given to organization X. Indeed, there is no problem in having both exist simultaneously; and one might hypothetically even reach the conclusion, over time, that organization X has fallen into desuetude.

Nonetheless, on less abstract levels things are not so easy, as (once again) the fate of South Africa's Mandate over Namibia demonstrates. For, with functions usually also come such things as supervision and control, and to leave those to the workings of desuetude, or simply abandon them by dismantling the organization, will be messy indeed and, more importantly, will not do justice to the functions of either the new or the old organization. In addition, in some circumstances functions may be bestowed upon an organization by others. Thus, the League of Nations exercised functions as a depository of treaties, and had been given functions under conventions dealing with narcotic drugs.

Consequently, some form of transfer of functions may be useful and, once again, such transfer usually takes place on the basis of agreement in one form or another. Thus, the League's functions under drugs conventions were transferred after the acceptance of those functions by the UN had become clear, as were the League's technical functions as treaty depository.[37] As far as other functions were concerned, after it had become clear that the USSR would oppose any wholesale transfer (having been dismissed from the League in 1939, the USSR was particularly keen to make a fresh start and rejected suggestions of succession), the UN General Assembly asked the UN Economic and Social Council to consider what non-political functions and activities of the League should be taken up by the UN (and some ended up

[37] See, e.g., H. McKinnon Wood, 'The Dissolution of the League of Nations' (1946) 23 BYIL, 317–23, p. 318.

being taken partly by Specialized agencies such as the WHO or the IMF). These 'non-political' topics were to include such matters as human rights, the status of women, fiscal issues, social issues, and economic issues and employment.[38]

While quite a few instances of transfer of functions and activities were based on precise decisions, Myers has noted that it is well-nigh impossible to figure out exactly what the UN has taken over from the League of Nations,[39] and by way of example he observes that the Economic and Social Council of the UN may be regarded as a development from the League's creation of a Central Committee on Economic and Social Questions.

This alone illustrates the elusive nature of succession of international organizations. To draw general conclusions is bound to remain unconvincing, apart from the (rather obvious) conclusion that a succession based on agreement is generally deemed preferable. This way, the type of problems to which the automatic succession thesis, employed in connection with the Mandate, gave rise can be avoided, and justice can be done to the interests of the organizations concerned as well as their member-states and, where appropriate, those of third parties (creditors, for instance).

Concluding remarks

Even the dry and technical area of dissolution and succession, typically lawyer's law if ever such a thing existed, is in the end unable to escape from the workings of politics. The tension between the organization and its members, often considered the political moment *par excellence* in the law of international organizations, also colours the contents of the law in this area, so much so indeed that the law can do little else but advocate solutions based on agreement.

Such a plea for agreement, while useful, hardly exhausts the matter, for it remains to be seen whose agreement is deemed to be necessary or required: agreement between a new organization and its functional predecessor? Or also between the member-states of either one (or both of them)? And if the latter is the case, the next question automatically presents itself: is the agreement of all members required, or will a majority suffice? And this, in turn, may depend on which procedure is followed, which is in itself a

[38] Compare Myers, 'Liquidation', p. 337. [39] *Ibid*., p. 352.

question to which the answer is often the result of negotiations rather than of the strict application of rules of law.

But that, of course, is only fitting – international organizations, while endowed with legal characteristics in order to exercise legal powers, are in the end creatures of politics: inasmuch as their creation involves a political act, and inasmuch as their everyday existence involves everyday politics, it should not come as a surprise that their dissolution too is an intensely political affair.