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Issues of membership

Introduction

Usually, the constituent treaties of international organizations control who can join the organization, under what conditions, and following which procedure. Often a distinction is made between original members and those who join later, with the original members (or the founder members) being those states that have expressed their consent to be bound by the Organization's terms before the Organization's constituent instrument entered into force, or before a certain specified date, or perhaps a combination thereof. Thus, Article 3 of the UN Charter provides that original members are those who either took part in the negotiations of the Charter and signed and ratified it, or had previously signed the 1942 Declaration by United Nations and subsequently signed and ratified the Charter. The latter construction was chosen so as to accommodate Poland, which had not been in a position to take part in the negotiations in San Francisco.[1]

The distinction between original members and 'normal' members is, however, only rarely of great legal significance. Unless special provisions are made,[2] normally speaking the difference entails certain practical benefits in favour of the original members; perhaps, as has been argued in a slightly different context, in order to compensate for the fact that original members may for quite some time be subjected to obligations such as not to defeat the organization's object and purpose prior to its establishment.[3] Thus, an

[1] Compare Benedetto Conforti, *The Law and Practice of the United Nations* (The Hague, 1997), p. 4.

[2] Vignes mentions that with OPEC and the Antarctic system, the unanimous consent of original members is required in decisions on admission of new members. See Daniel Vignes, 'La participation aux organisations internationales', in René-Jean Dupuy (ed.), *Manuel sur les organisations internationales* (2nd edn, The Hague, 1998), 61–87, p. 75.

[3] Under Art. 18 of the Vienna Convention on the Law of Treaties, states are to refrain from any behaviour which may jeopardize the attainment of the object and purpose of a treaty prior to

original member does not have to apply for membership; if admitted to the negotiations, nothing bars a state from becoming a member. Those not present, however, may be subjected to admission procedures.

Membership

When it comes to deciding on membership, the point of departure is that each and every organization will have its own rules on the matter. Thus, by way of example, Article 4, para. 1, of the UN Charter provides: 'Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.' Article 4, then, lays down four conditions for membership. First, only states are allowed to join; other entities cannot join, although the founding members of the UN included several states which were not yet independent at the time: the two USSR republics Belarus and Ukraine as well as British colony India (which had already been a member of the League of Nations). Moreover, the status of Lebanon, Syria and the Philippines as independent states was not yet completely settled.[4]

With the UN, membership is not open to the other international organizations. Other organizations may have different rules, though, and on this basis the European Community has become a member of such organizations as the Food and Agriculture Organization (FAO).[5]

What exactly constitutes a state is a different matter altogether, and as the UN Charter does not provide a definition, usually resort is had to general international law. Unfortunately, though, general international law is also not very precise on the requirements of statehood. While it is clear that most entities which have an effective government, territory and population, and the capacity to enter into international relations,[6] will qualify as states, the

its entry into force. For the argument that this obligation is the corollary to certain rights that signatories possess from the time of signing, see E. W. Vierdag, 'The ICJ and the Law of Treaties', in A. V. Lowe & Malgosia Fitzmaurice (eds.), *Fifty Years of the International Court of Justice* (Cambridge, 1996), 145–66.

[4] For more details, see Bengt Broms, *The Doctrine of Equality of States as Applied to International Organizations* (Helsinki, 1959), pp. 126–9, 172–9.

[5] Note also that the WMO accepts as members dependent territories, provided they have their own meteorological service. The WTO, moreover, accepts separate customs territories; see, e.g., Asif H. Qureshi, *The World Trade Organisation: Implementing International Trade Norms* (Manchester, 1996), p. 8.

[6] These criteria derive from the unratified 1933 Montevideo Convention, and are generally considered to be the point of departure for any discussion on statehood.

matter is obfuscated in no small measure by issues of recognition. Thus, it may happen that an entity that some consider to be a state will not qualify in the eyes of others; indeed, nowadays, admission to the very United Nations establishes a strong presumption that an entity is a state.[7] After all, how could it possibly have been admitted otherwise? This does not mean that all individual member-states will be considered to have recognized the successful applicant, but at least those that voted in favour would be estopped from claiming never to have recognized the applicant.[8] Clearly, there is a certain amount of circularity in the discussion on admission and recognition, but, equally clearly, such circularity is by no means exceptional in law,[9] and is, as some would have it, perhaps even inevitable.[10]

Secondly, states applying for admission must be peace-loving, according to Article 4. Surely, that is an understandable requirement, seen in its historical context, and may have served for some time to come to terms with the aggressors of the Second World War and Franco's Spain.[11] Presently, however, as a requirement for admission, the criterion of being peace-loving does not appear to be of too much weight, and understandably so.[12] Not only is peace-lovingness to a large extent in the eye of the beholder, but it is also often thought that the best way to ensure a peace-loving attitude is actually to incorporate a potentially aggressive state in the UN. For, as long as it remains outside, it is also, as a matter of law, well-nigh untouchable; the cure of non-admission, then, may well be worse than the disease.

Third, aspirant UN members must accept the obligations of the Charter. This requirement amounts to little more than stating the obvious:[13] an

[7] See John Dugard, *Recognition and the United Nations* (Cambridge, 1987), esp. p. 164.

[8] The Commercial Tribunal of Luxembourg went further in *USSR* v. *Luxembourg & Saar Company* (decision of 2 March 1935, (1935–7) 8 AD, 114–15), holding that admission also constituted recognition by outvoted or abstaining states.

[9] See, e.g., Gunther Teubner, *Law as an Autopoietic System* (Oxford, 1993, trans. Adler & Bankowska).

[10] Sir Gerald Fitzmaurice, 'Some Problems Regarding the Formal Sources of International Law', in F. M. van Asbeck *et al.* (eds.), *Symbolae Verzijl* (The Hague, 1958), 153–76.

[11] Compare Inis L. Claude, Jr, *Swords into Plowshares: The Problems and Progress of International Organization* (4th ed, New York, 1984), p. 88. See also Broms, *Equality of States*, pp. 180–1. Compare also a provision such as article 107 UN, which creates something of a separate position for the aggressors of the Second World War.

[12] Presently, however, at least in the academic literature, the related distinction between liberal and illiberal states is gaining ground. For a useful overview, see Gerry Simpson, 'Two Liberalisms' (2001) 12 EJIL, 537–71.

[13] But see the award of the Arbitration Tribunal of the International Chamber of Commerce in *Dalmia Cement Ltd* v. *National Bank of Pakistan* (award of 18 December 1976), where sole

aspirant member that does not accept the Charter obligations clearly acts in bad faith, and reservations to the Charter, while not explicitly prohibited, are difficult to envisage. After all, reservations are not supposed to affect the object and purpose of the organization, following the International Court of Justice in the 1951 *Reservations to the Genocide Convention*[14] opinion as well as the Vienna Convention on the Law of Treaties. And since the object and purpose of the Charter are quite broad by any standard, it follows that no reservation will stand a chance of success.[15]

Fourth, aspiring members must be able and willing to carry out the obligations of the Charter. As a criterion, this too has not given rise to many problems recently; few states have ever been refused due to an alleged lack of ability to carry out the obligations flowing from membership. A similar criterion was used, however, in 1920 to deny admission of Liechtenstein into the League of Nations. Liechtenstein, being a micro-state in Europe, has traditionally placed many of its external affairs powers in the hands of Switzerland. Therefore, the Assembly of the League thought Liechtenstein would not be able to fulfil all obligations under the Covenant by which the League of Nations was established.[16]

Strictly speaking, a similar type of reasoning could have delayed admission of Germany and Japan for years. As these were constitutionally not allowed to engage in military activities, arguably they were unable to meet obligations associated with the system of collective security. Indeed, in Germany, such a situation was finally only settled by a decision of the Federal Supreme Court in 1994,[17] with the Court holding that participation in collective security measures would not infringe the German constitution.

In UN practice, of course, the matter has always been treated in pragmatic fashion: the practice not to order, but at most to authorize enforcement

arbitrator Lalive held that a war between members of the UN is not lightly to be presumed, precisely because it must be taken that 'each Member-State, if and when it is using force, intends to use it in a manner consistent with its obligations under the Charter'. See 67 ILR 611, p. 619.

[14] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (advisory opinion), [1951] ICJ Reports 15.

[15] Alternatively, it could be argued that, since the Charter predates the *Reservations to the Genocide Convention* opinion, the classic rule applies: reservations to multilateral treaties are prohibited unless specifically allowed. See generally chapter 5 above.

[16] Article 1, para. 2 of the Covenant required of an aspiring member-state that it 'shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments'.

[17] See the decision of the Federal Constitutional Court in the *International Military Operations (German participation)* case (decision of 12 July 1994), in 106 ILR 319.

action, has made it easy for states with some form of neutrality, such as Austria,[18] to reconcile their neutrality with membership of the UN.[19]

As the example of Liechtenstein already indicated, admission is to some extent based on considerations not expressly mentioned in Article 4 of the Charter. Liechtenstein is still a small state, and still lets Switzerland handle most of its external affairs, but nonetheless it was admitted into the UN in 1990. Apparently, nowadays the opinion prevails that Liechtenstein might be able to comply with its obligations under the Charter.

The political nature of admission follows also from the little caveat in Article 4: what matters is the judgment of the Organization. Thus, in theory it is possible that a state could apply for membership and would objectively meet all requirements, but still be refused, because a majority within the UN did not want it to be a member.

Such a situation occurred in the late 1940s when a number of states had applied for membership but did not get in, for reasons only loosely related to Article 4 (it concerned, amongst others, a number of states that had collaborated with Germany during the Second World War). The General Assembly, ultimately responsible for issues of admission, could not agree on whether to admit them, and it was decided to ask the ICJ for advice.

The ICJ held that the conditions mentioned in Article 4 are exhaustive:[20] thus, states may not be refused for reasons other than those mentioned in Article 4, although it conceded that Article 4 itself is cast in broad terms and 'does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down' in it.[21] Still, since admission depends on the judgment of the Organization,[22] in the end all that can be said is that applications should be judged in good faith. Needless to say, this did little to resolve the problem which gave rise

[18] The debate on Austria's admission to the UN is discussed in Broms, *Equality of States*, pp. 208–13.

[19] See, on some other possible problems for neutral states, Conforti, *The United Nations*, pp. 28–33.

[20] *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, advisory opinion, [1948] ICJ Reports 57.

[21] *Ibid.*, p. 63.

[22] In a powerful joint dissenting opinion, Judges Basdevant, Winiarski, McNair and Read underlined that resolutions on admission 'are decisions of a political character; they emanate from political organs; by general consent they involve the examination of political factors, with a view to deciding whether the applicant State possesses the qualifications prescribed by paragraph 1 of Article 4; they produce a political effect by changing the condition of the applicant State in making it a Member of the United Nations . . . The admission of a new Member is pre-eminently a political act, and a political act of the greatest importance': [1948] ICJ Reports 57, p. 85.

to the *First Admissions* case discussed above, which was only solved in 1955 when sixteen new members were admitted by way of a package deal.[23]

As Conforti correctly indicates, on the issue of membership the tension between the organization and its members may manifest itself. In his view, there are no limits on the freedom of the organs to decide on admission. Yet, the member-states voting as members of the organs are under the obligation to do so in good faith, as follows from Article 2, para. 2 of the Charter.[24]

Conforti is correct, of course, in suggesting that no good faith obligation is specifically provided for in the Charter as far as the organs are concerned.[25] Yet, to distinguish between the organs and its members in this fashion goes a long way towards denying any form of independence for the organs, relegating them to a position as little more than meeting places for their members. The consequence thereof, of course, is ultimately to deny them a distinct will, and therewith a *raison d'être*.

Article 4, para. 2, indicates the proper procedure for the admission of new member-states to the United Nations: the Security Council recommends, the General Assembly decides. As simple as this provision looks, it too came before the International Court of Justice. In this case, the *Second Admissions* opinion of 1950,[26] the main problem was the meaning of the word 'recommendation'. The General Assembly argued that, since the Security Council is only given the power to recommend (as opposed to making a binding determination), the General Assembly can also admit a member if the Council casts a negative vote.

The Court, however, disagreed: if the Security Council does not recommend a state for membership, then there is really no recommendation, and thus no basis for the General Assembly to act upon. Clearly, so the Court argued, the Charter had wanted to create some kind of balance between the two institutions, and thus made action by the Assembly conditional upon action by the Council. Neither could in isolation decide on membership. As the Court put it: 'The word "recommendation", and the word "upon" preceding it, imply the idea that the recommendation is the foundation of the decision to admit, and that the latter rests upon the recommendation. Both

[23] For a detailed description see Broms, *Equality of States*, pp. 189–207.

[24] Conforti, *The United Nations*, pp. 33–7. Article 2, para. 2 specifies that members 'shall fulfil in good faith the obligations assumed by them'.

[25] And strict positivism would probably have to argue that no such obligations could be included in any meaningful way without the consent of the organs themselves.

[26] *Competence of the General Assembly for the Admission of a State to the United Nations*, advisory opinion, [1950] ICJ Reports 4.

these acts are indispensable to form the judgment of the organization'.[27] Indeed, the Council's recommendation, as the Court put it in unequivocal terms, is the 'condition precedent' to the Assembly's decision.[28] An important implication is that, within the Security Council, the permanent members can use their veto. Thus, in 1975, the US vetoed the application of the two Vietnams.[29]

In organizations other than the UN, admission of new members may be based on different considerations. Thus the ILO Constitution is open to UN members as well as other states aspiring to membership; no formal conditions are attached.[30] The FAO Constitution provides that, next to original members, states may be allowed to join by a two-thirds majority provided they formally declare acceptance of the obligations of the Constitution.[31] And the WHO Constitution simply says to 'be open to all States'.[32]

Matters are a lot more complicated with the European Union, though. Article 49 (formerly Article O) TEU holds that membership shall be decided unanimously by the Council, having consulted the Commission and having received the assent of the European Parliament. Apart from the consideration that, since the entry into force of the Amsterdam amendments in 1999, there are general requirements relating to respect for liberty, human rights, democracy and the rule of law, the difficulty resides especially in the circumstance that the precise conditions of membership are subject to agreement between the members of the Union and the applicant states.[33] Such accession agreement shall also be subjected to approval procedures in

[27] *Ibid.*, p. 7. [28] *Ibid.*, p. 8.

[29] Compare Conforti, *The United Nations*, p. 34.

[30] See paras. 3 and 4 of Art. 1 ILO. The main requirement for non-UN members is that they muster the support of a two-thirds majority of the government delegates voting. UN members merely have to communicate their formal acceptance of the ILO Constitution. See generally Ebere Osieke, *Constitutional Law and Practice in the International Labour Organisation* (Dordrecht, 1985), p. 17.

[31] Article II, para. 2 FAO.

[32] Article 3. A simple majority decision suffices for admission, according to Art. 6.

[33] Until the entry into force of the Amsterdam amendments, accession could not, formally, take the shape of an agreement between the Union itself and the applicant, as the Union supposedly had no legal personality and no treaty-making powers. This has not stopped the Union from occasionally entering into treaty relations though. Compare, e.g., the agreement with Finland, Austria, Sweden and Norway, in *Official Journal* (1994), C 241/399. Since the Amsterdam amendments, there is a limited treaty-making power laid down in Art. 24 TEU; as this refers expressly to the Union's Foreign and Security Policy as well as Police and Judicial Co-operation, it remains unlikely that this clause would cover accession agreements. For a brief analysis, see Alan Dashwood, 'External Relations Provisions of the Amsterdam Treaty' (1998) 35 CMLRev, 1019–45, esp. pp. 1038–41.

each of the member-states, making it possible that in the end the parliament of a single member-state is in the position to reject the application of an aspirant state.

In some cases, the connection between various organizations is so close that membership in one is impossible without membership in the other. Thus, membership in the World Bank is only open for members of the International Monetary Fund;[34] with the ILO, membership follows by right for UN member-states, whereas for non-UN-members a special procedure is envisaged; and it has always been clear that a state could only join all three European Communities at the same time, and not join only one.[35]

Other forms of membership?

In the normal course of events, organizations tend to have one class of members only. Nonetheless, sometimes organizations allow for such phenomena as associate membership, partial membership and affiliate membership, and usually such anomalous forms of membership constitute pragmatic answers to problems which would be difficult to solve following prescribed procedures.[36]

Associate membership appears usually to be membership with limited rights, possibly leading up to full membership at a later date. Usually, it entails that nationals of the associate member cannot hold office within the organization concerned, and the associate member has no voting rights, although things may differ from one international organization to the next.

Interestingly, spurred by the newly found independence of many small states who subsequently applied for UN membership, in the late 1960s and early 1970s, both the US and the UK forwarded proposals to reflect somehow the special position of mini-states or micro-states within the UN. The US proposed an associate membership for those states who might not be fully able to carry out all obligations arising out of membership; the UK proposed full membership, but in conjunction with a renunciation of some of the rights of membership. Neither proposal was adopted.[37]

[34] Compare Art. II, para. 1 of the IBRD's Articles of Agreement.

[35] Except of course during the few years between 1952 and 1958 when only the European Coal and Steel Community was in existence.

[36] The Stockholm-based Institute for Democracy and Electoral Assistance (IDEA) uses associate membership as a way to accommodate non-governmental organizations. See IDEA's homepage at http://www.idea.int/institute/1-00.html (last visited 28 November 2001).

[37] See Stephen M. Schwebel, 'Mini-states and a More Effective United Nations', in his *Justice in International Law* (Cambridge, 1994), 326–36.

Within some organizations, associate membership is envisaged for entities (territories) which are not themselves responsible for the conduct of their international relations.[38] Thus, the FAO Constitution provides that such territories may become associate members, provided that the state that is responsible for the territory's international relations accepts the obligations of associate membership.[39] Something similar applies to other organizations, such as WHO,[40] UNESCO[41] and ITU.[42]

Another class, sometimes mentioned in the pertinent literature,[43] is that of partial membership, whereby a state is a full member of some organs without being a member of the parent organization itself. Thus, Switzerland is not a member of the UN, but is a member of the UN's Economic Commission for Europe as well as a party to the Statute of the ICJ. As far as the latter is concerned, Switzerland uses a provision explicitly envisaged in the UN Charter.[44] An important caveat though is that, in this case, the term 'partial membership' is hardly a term of art: it is a useful academic description, but one from which no legal consequences follow.

Yet another possibility is that occasionally entities which are not themselves responsible for the conduct of their international relations (i.e., dependent territories) have been granted associate membership of certain specified UN organs, in particular of the regional economic commissions of ECOSOC. The typical construction is that such entities are entitled to participate fully in the work of the organ, but do not have a right to vote.[45]

It may also happen that organizations give some states, or other entities, the status of observer, usually through the adoption of a resolution to that effect by the competent organ.[46] The precise meaning thereof may differ between organizations, and even from observer to observer. Sometimes it is, again, meant as something of a substitute, or starting point, for full membership: sometimes it is also to accommodate entities which cannot

[38] At one point in time, the Council of Europe counted the Saar among its associate members, until in 1956 it was included in the Federal Republic of Germany. Compare Broms, *Equality of States*, p. 311.

[39] Article II, para. 3 FAO. This is, of course, a remnant of colonial days.

[40] Article 8 WHO.

[41] Article II, para. 3 UNESCO.

[42] Article 1, para. 3 (b). Note that in ITU, associate membership also serves as a substitute for full membership for states.

[43] So, e.g., H. G. Schermers & Niels M. Blokker, *International Institutional Law* (3rd edn, The Hague, 1995), pp. 116–18.

[44] Article 93, para. 2.

[45] See, e.g., UNJY (1983), p. 186.

[46] For a general analysis, see Eric Suy, 'The Status of Observers in International Organizations' (1978/II) 160 RdC, 75–179.

become members because they are not states. Thus, the Palestine Liberation Organization (PLO) has had observer status with the UN since the 1970s (the PLO, incidentally, has been a full member of some regional organizations in the Middle East since the late 1960s and 1970s, despite lacking statehood).[47] At any rate, it is a flexible way of reflecting the political significance of such entities, for, surely, the Middle East situation requires the participation of the PLO if a solution is ever to be reached. Hence, there is something to be said for having the PLO participate in the work of the UN.[48] By the same token, the revolutionary changes in eastern Europe in the early 1990s have incited the WEU to try and accommodate eastern European states by granting them a status as 'associated partners'.[49]

Still, an organization's member-states do not always warmly embrace observers, despite the possible benefits of involving them in the political process at hand. For one thing, observers generally do not pay contributions, and are thus capable of being thought of as 'free riders'. More importantly perhaps, the rights associated with membership status may be jealously guarded by members, even to the extent of undermining the activities of the organization, for what is good for the organization is not necessarily always good for its individual member-states.[50]

Thus, the rights of observers are usually not full rights.[51] Observers usually cannot vote; they usually cannot circulate documents as official documents unless with special permission; and if the observer has a proposal relating to the organization's field of activities, it may need a full member to table the motion. It is here that the distinction between observers and full members may be most acutely visible although, as Suy cheerfully notes, observers at the UN are normally invited to receptions or cocktail parties and therewith have access to the informal decision-making arenas.[52] In

[47] Arguably, the decision to grant the PLO observer status may have been inspired (at least partly) by the General Assembly's then-popular pastime of Israel-bashing. For a suggestion to this effect, see Thomas M. Franck, *Nation against Nation: What Happened to the UN Dream and What the US Can Do about it* (Oxford, 1985), esp. ch. 11.

[48] The same rationale applies to participation of non-member-states in Preparatory Committees of international conferences: if their involvement is deemed useful, they may be allowed to participate. See UNJY (1974), pp. 175–81.

[49] Compare, e.g., Daniel Dormoy, 'Recent Developments Regarding the Law on Participation in International Organisations', in Karel Wellens (ed.), *International Law: Theory and Practice. Essays in Honour of Eric Suy* (The Hague, 1998), 323–32.

[50] Suy, 'The Status of Observers', pp. 141–2, provides some telling examples of UN members insisting that some rights are for members only and should not be extended to observers.

[51] Even so, they may be asked to present credentials; see UNJY (1971), pp. 193–5.

[52] Suy, 'The Status of Observers', p. 119.

addition, observers normally represent politically important entities, and are thus usually granted privileges and immunities similar to those of full members.[53]

Another important observation is that sometimes international organizations themselves may have observer status with other organizations. This applies in particular to the UN, which has been accepted as an observer by a number of other organizations.

State succession and membership

When states fall apart, come together, merge or gain independence, a question of importance is what will happen to the obligations incurred by the predecessor states. As far as obligations under customary international law are concerned, there is usually not thought to be much of a problem: a successor state will be as much bound by existing customary rules as its predecessor or predecessors.

With treaty obligations, things are already a lot less clear-cut. One thing to note is that succession does not guarantee continuity; in other words, a successor state may have (or be allowed) to start from scratch. In some cases it is said that succession is, or ought to be perhaps, automatic; in other cases, so-called 'newly independent' states are held to have the right to start with a clean slate, meaning that they do not succeed to any treaty obligations incurred by their predecessors.[54] As it is, the International Court of Justice has so far steered clear of the controversy, despite having had a few opportunities to contribute to clarification of the matter.[55]

Obviously, where a succession of states occurs, such succession may have important consequences when it comes to membership of international organizations.[56] Again, the point of departure is that the rules of each

[53] The UN's Office of Legal Affairs has stipulated as much with respect to, e.g., SWAPO and the PLO. See UNJY (1983), p. 227, and UNJY (1979), pp. 169–70, respectively. See also, below, chapter 8.

[54] Compare in general terms the 1978 Vienna Convention on Succession between States in respect of Treaties, in (1978) 17 ILM 1488.

[55] See, e.g., the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case (Bosnia and Herzegovina v. Yugoslavia), preliminary objections, [1996] ICJ Reports 595, and the *Legality of Use of Force* cases (Yugoslavia v. a number of NATO member-states), order of 2 June 1999, nyr, as well as the *Case Concerning the Gabcikovo-Nagymaros Project* (Hungary/Slovakia), [1997] ICJ Reports 7. For a brief analysis of the latter case on the issue of state succession, see Jan Klabbers, 'Cat on a Hot Tin Roof: The World Court, State Succession, and the Gabcikovo-Nagymaros Case' (1998) 11 Leiden JIL, 345–55.

[56] See generally Konrad G. Bühler, *State Succession and Membership in International Organizations: Legal Theories versus Political Pragmatism* (The Hague, 2001).

international organization will prevail. The problem, however, is that few organizations have their own rules on the topic, perhaps for two reasons. One is that issues of succession are relatively rare (or, more accurately, were thought to be rare when most constituent documents were drafted) and tend to come in waves. Thus, decolonization took place largely in the early 1960s; the map of Europe was seriously shaken in the early 1990s. Second, it is notoriously difficult to make rules on succession because the modalities of succession may differ greatly from case to case. While the merger of two states and the dissolution of another may both be classified as cases of succession, the differences between them are probably greater than what they have in common.

If two members merge and become one, then there is not much of a membership problem: the new state simply takes over, including possible obligations that one of the two previously existing states still needed to fulfil. That said, there may be some debate as to the exact scope or amount of those obligations. Moreover, when, as with German unification, the leading theory holds that the situation was not one of succession *per se* but rather of accession of a number of *Länder* to an entity which itself continued to exist in law,[57] then it seems to follow that no obligations were succeeded to, strictly speaking.[58]

What may pose a problem though is the question of the fate of treaties concluded under auspices of an international organization. Thus, the ILO usually casts its law-making activities in the form of a treaty; some members ratify, some members do not. In the context of German unification, the question arose whether the new Germany would be bound by ILO-sponsored conventions to which the former GDR had been a party; the new Germany denied this to be the case, and is probably correct in doing so, for one of at least two reasons. For one thing, on the theory that German unification concerned an accession rather than a merger, there is no rule of international law which stipulates that the obligations of the acceding entities become obligations of the new whole. At best, the old entities themselves

[57] When, in 1963, Malaysia added three new components to its federation, the UN's Office of Legal Affairs commented that Malaysia's membership was not in the least affected. See UNJY (1963), pp. 161–4.

[58] Germany made such an argument to the UN with respect to outstanding financial obligations of the former GDR. For more details, see Jan Klabbers & Martti Koskenniemi, 'Succession in Respect of State Property, Archives and Debts, and Nationality', in Jan Klabbers *et al.* (eds.), *State Practice regarding State Succession and Issues of Recognition* (The Hague, 1999), 118–45, esp. pp. 120–4. Similar discussions took place within UNIDO and the International Cocoa Organization. See UNJY (1990), pp. 313–14, and UNJY (1991), pp. 315–17, respectively.

remain bound (but not other parts of the new entity), although responsibility for the correct implementation and execution would come to rest with the new entity. But the territorial scope of the obligations would not necessarily and automatically alter.

Second, some authors feel that, in such a case, the *rebus sic stantibus* doctrine can play a useful role.[59] Under this doctrine, states are allowed to escape from their treaty obligations upon the occurrence of a fundamental change of circumstances, and for some the very fact of state succession constitutes such a fundamental change. While this position is difficult to reconcile both with the historical origins of the *rebus sic stantibus* doctrine and with the systematization of the law of treaties in recent decades (with a special convention being devoted to issues of state succession in respect of treaties[60]), it is also obvious that, in the absence of a possible reliance on *rebus sic stantibus*, states could end up being forced to adhere to onerous obligations that they themselves never even incurred; and clearly, in such circumstances, states may well be tempted to ignore those obligations.

Things become even more complicated when at issue is not merger or accession, but where a state dissolves. Prime recent examples of dissolution involve the Union of Soviet Socialist Republics (USSR) and the Socialist Federal Republic of Yugoslavia (SFRY).

Generally speaking, cases of succession to membership were traditionally considered from certain viewpoints: membership was deemed to be personal, attached to the (artificial) person of the state, and hence when a state disappeared its place could at best be taken by one successor state only. This remained, in a nutshell, the basic idea underlying discussions concerning succession of membership in recent cases.[61]

The case of the former USSR was relatively simple: all old USSR members agreed that Russia would be the continuation of the USSR, and therefore the Russian Federation continued to be a member of international

[59] So, e.g., Stefan Oeter, 'German Unification and State Succession' (1991) 51 ZaöRV, 349–83.

[60] Note also that Art. 73 of the Vienna Convention on the Law of Treaties claims that issues of state succession are explicitly beyond its scope, which seems to suggest that applying the *rebus sic stantibus* doctrine to cases of succession is, at the very least, not what the Convention's drafters had in mind.

[61] See generally, with respect to UN membership, Michael P. Scharf, 'Musical Chairs: The Dissolution of States and Membership in the United Nations' (1995) 28 Cornell ILJ, 29–69. Incidentally, the word 'traditionally' is a bit of an exaggeration, as the tradition consisted solely of the partitioning in 1947 of British India into India and Pakistan. Scharf argues, moreover, that the position taken by the UN at the time was not very coherent.

organizations, while the other republics simply applied for admission as new states (except, with respect to the UN, Ukraine and Belarus, which had, curiously, been original members). As an important consequence, Russia could also take up the USSR's vacant seat in the Security Council. It took a unique meeting of the Security Council at the level of Heads of State or Government, though, to seal Russia's continuity claim within the UN.[62] The alternative would have been to open up membership of the Council, but clearly that alternative was not to the liking of, in particular, the United Kingdom and France, who accordingly were in something of a hurry to settle the question of Russia filling the USSR's seat.[63]

Other types of problems arose in other settings. For instance, some organizations provide that the more important member-states in a certain issue-area will have a governing function. Thus, in the ILO, the ten most industrialized member-states are allowed to appoint members of the Governing Body. The USSR had qualified as such, but did the Russian Federation? In the end, it was decided in the affirmative.[64] Here, Russia's continuity thesis could not, as a matter of law, control the matter.

With Czechoslovakia, no continuation was identified, and both the Czech Republic and Slovakia applied again for membership of most international organizations, and were accepted without problems. Here, too, the main situation was easy, since both states had agreed to start from scratch. Neither claimed to be the continuation of the former Czechoslovakia.

Nonetheless, within some organizations the two new republics had themselves agreed that one of them would be the successor to the old Czechoslovakia, so that one of them would be entitled to continue to hold positions in governing bodies. This, however, did not work. They were generally treated as new members, and thus no succession was deemed to have occurred. After all, if membership is indeed supposed to be personal, then it would seem to follow that succession is limited to one person at a time, and ceases when that person no longer exists.

Serious legal problems arose in connection with the dissolution of the Socialist Federal Republic of Yugoslavia. Here, the issue of the continuation

[62] Thus the interpretation of N. D. White, *The Law of International Organisations* (Manchester, 1996), p. 68. Others have noted that Russia already occupied the USSR's seat before the special Security Council meeting, and do not refer to that meeting at all. So, e.g., Scharf, 'Musical Chairs'.

[63] As recalled by the former President of Finland, Mauno Koivisto, *Witness to History* (London, 1997), p. 212.

[64] See Schermers & Blokker, *International Institutional Law*, p. 75.

state was controversial. Since Slovenia, Macedonia, Croatia and Bosnia-Herzegovina had all left the SFRY, Serbia argued that it (together with Montenegro) was the only one left in the end, and thus the logical continuation of the SFRY. In strict law, the argument appears rather sound, especially in light of the recent success of a similar claim by the Russian Federation; nevertheless, the world community disagreed, and by and large refused to treat Serbia as the continuation of the SFRY. Instead, it was treated merely as one of the five successor states to the former SFRY, and thus had to file for admission as a member of most international organizations that the SFRY had been a member of.

A curious situation materialized in the UN, when the General Assembly adopted a resolution (Resolution 47/1) according to which the Socialist Federal Republic of Yugoslavia could no longer participate in the Assembly's work. This, however, according to the UN Office of Legal Affairs, did not imply that membership had come to an end:

> Yugoslav missions at United Nations Headquarters and offices may continue to function and may receive and circulate documents. At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia as it is the last flag of Yugoslavia used by the Secretariat. The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies.[65]

The alternative to treating none of the new states in the former Yugoslavia as successor members would have been to treat all successor states also as successor members but, as noted, such an approach would be difficult to reconcile with the idea that membership of organizations is personal and limited to one person at a time. Nonetheless, collective succession to membership is exactly what took place with respect to both the former Yugoslavia and Czechoslovakia within the context of the IMF and the World Bank. In order to preserve the assets of successor states, they were allowed to succeed collectively, if a number of conditions (including an acceptance of a proposed distribution of assets) were met. Another condition applied to the Yugoslavia case, derived somewhat loosely from the constituent documents, was that successors must be able to carry out the obligations of membership, and as the new Yugoslavia (i.e., Serbia and Montenegro) was subject to international sanctions, the Fund could easily, if transparently,

[65] See UNJY (1992), pp. 428–9.

reach the conclusion that the new Yugoslavia did not meet the conditions for succession.[66]

Organizations may entertain different rules on how to handle, in cases of state succession, obligations incurred under the organization's auspices (think, for example, of a treaty concluded under sponsorship of the General Assembly). While membership itself is often regarded as personal, commitments entered into under the organization's auspices need not be. Indeed, from the organization's point of view, continuity of commitment will be an important consideration; for the new state, however, its own newly found sovereign right to consent to commitments may weigh more heavily than the organization's desire for continuity.[67]

Article 4 of the 1978 Vienna Convention on Succession of States in respect of Treaties provides that, generally, the rules embodied in that Convention apply also to treaties adopted within international organizations, but 'without prejudice to any relevant rules of the organization'.[68]

Generally, the 1978 Vienna Convention favours continuity of treaty commitments, but with one important exception: so-called 'Newly Independent States' (i.e., former colonies) are allowed to start independence with a clean slate, and there is no reason to propose that this would not apply to treaties adopted within international organizations.[69]

Representation

An issue related to membership, but nevertheless distinct, is representation: which government is supposed to represent a state within an international organization? The classic problem concerns the representation of China: is this to be done by the government of mainland China, or rather by those governing Taiwan?[70]

[66] The World Bank managed to avoid this problem since states can only join if they are members of the IMF. For a useful overview, see Paul R. Williams, 'State Succession and the International Financial Institutions: Political Criteria v. Protection of Outstanding Financial Obligations' (1994) 43 ICLQ, 776–808.

[67] The arguments are usefully summarized in UNJY (1972), pp. 195–9.

[68] Note that it has been plausibly argued that, due to this Art. 4 of the 1978 Vienna Convention, the topic of succession to membership fits more appropriately in the law of international organizations than in the law on state succession; see Bühler, *State Succession and Membership*, pp. 290–1.

[69] Compare, e.g., Art. 16 of the 1978 Vienna Convention.

[70] In the context of the UN, Singh launches the curious opinion that, prior to 1971, the effective government of China (i.e. mainland China) had lost its right of representation and therewith, for all practical purposes, ceased to be a member of the UN. See Nagendra Singh, *Termination of Membership of International Organisations* (London, 1958), p. 146.

Here, too, political sympathies (or their opposite) may be influential. Generally speaking, the constituent treaties do not address the issue of representation, although it may be dealt with in the rules of procedure of the organization, and perhaps even of the various organs of the same organization.

Thus, within the Security Council a majority decision is needed to dismiss an individual's credentials. In 1971, the representative of Taiwan was dismissed in this way from the Security Council: nine members opposed his credentials for representing China. In the General Assembly as well there was agreement in 1971 to dismiss the representatives from Taiwan and let in those from the mainland: here the required two-thirds majority was mobilized.

While arguably the use of credentials in the China incident was defensible, if a mite unprincipled, at times the credentials of individuals can also be used for other reasons.[71] Thus, during most of the 1970s and the 1980s, the credentials of the representatives of South Africa were not accepted by the General Assembly, leading to the result that South Africa could not participate in the Assembly's work.[72] The same tactics have sometimes been tried with respect to Israel, but with less success.

This use of credentials is of doubtful legality. It is, after all, not what credentials of representatives are supposed to be used for: credentials are supposed to certify that Mr X rightfully represents the government of the state he claims to represent;[73] verification of credentials is not supposed to amount to an analysis of the policies of the government concerned.[74]

Nevertheless, this use of credentials may turn out to be a reasonable political solution if the choice is the stark one of either letting a state fully

[71] It may also happen that not everyone whose credentials are accepted actually participates: it has been observed that some delegates merely wish to add to their curricula vitae rather than actually participate. See Sergio Marchisio & Antonietta di Blase, *The Food and Agriculture Organization* (Dordrecht, 1991), p. 180.

[72] Note that decisions of the Assembly on credentials are not considered automatically binding on the UN's other principal organs, although they are thought to provide authoritative guidance. See UNJY (1985), pp. 128–30.

[73] It follows that they do not by definition contain full powers of signature for treaties concluded under the organization's auspices or similar matters. See UNJY (1977), p. 191.

[74] The UN Office of Legal Affairs has traditionally been somewhat hesitant to accept dual or multiple representation (i.e., an individual representing more than one state at the same time), largely on the ground that it might complicate voting, in particular when done by show of hands. See UNJY (1967), pp. 317–20. On the other hand, surely member-states have a right to decide for themselves by whom they wish to be represented.

co-operate, or expelling that state from the organization altogether or suspending its rights.[75] Clearly, the political climate of much of the 1970s and 1980s was not conducive to letting South Africa participate in activities without some form of condemnation of its policies; yet, to expel South Africa from the UN was not considered a viable option by some of the Security Council's permanent members. And where the Charter provides no middle way, it is only to be expected that some such middle way arises in practice.[76]

And in addition, although this does not apply to the UN, with some organizations expulsion is legally difficult to attain: some constituent documents do not expressly provide for expulsion. While in such cases expulsion is perhaps not necessarily completely excluded, clearly a less strenuous management technique may be given preference.

Termination of membership

Like the Covenant of the League of Nations,[77] the UN Charter provides for expulsion. Article 6 holds that the General Assembly, upon recommendation of the Security Council, may expel a member if it 'has persistently violated the Principles' contained in the Charter.

That is, to put it mildly, a rather tall order. One of the Security Council's permanent members might veto expulsion; the General Assembly may not reach the required two-thirds majority (the decision to expel is considered an important decision under Article 18 Charter, and thus requires a two-thirds majority); and even so, it is not a decision lightly taken, and for a good reason: if you expel a state, you also lose control over that state. Thus, it may be better to keep them in, and try and make them feel in other ways that their behaviour cannot be tolerated.[78]

[75] Higgins additionally suggests that if states wish to express disapproval of governments, they might consider breaking off diplomatic relations. See Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (Oxford, 1963), p. 159.

[76] For an illuminating analysis, see Dan Ciobanu, 'Credentials of Delegations and Representation of Member-States at the United Nations' (1976) 25 ICLQ, 351–81.

[77] The League expelled the USSR in December 1939, after the invasion of Finland. The incident is treated as somehow a case of voluntary withdrawal by Konstantinos D. Magliveras, *Exclusion from Participation in International Organisations: The Law and Practice behind Member-States' Expulsion and Suspension of Membership* (The Hague, 1999), p. 25.

[78] For a general analysis, see Magliveras, *Exclusion from Participation*. See also Jerzy Makarczyk, 'Legal Basis for Suspension and Expulsion of a State from an International Organization' (1982) 25 GYIL, 476–89.

Nonetheless, expulsion from organizations does occasionally take place. Thus, the IMF envisages expulsion if a member fails to meet its obligations although, with a nice euphemism, the Fund's Articles of Agreement refer to compulsory withdrawal rather than expulsion.[79] On this basis, Czechoslovakia's membership came to an end in 1954.[80]

A classic episode in the history of the Council of Europe concerned the situation of the Greek, 'colonel's regime' in the late 1960s. Greece, threatened by expulsion for its neglect of human rights,[81] withdrew just before expulsion materialized.

Another method of trying to persuade reluctant member-states of the errors of their ways, somewhat softer than expulsion, is, with respect to the UN, laid down in Article 5 of the Charter: suspension of rights and privileges of membership – and usually this relates to voting. The Article-5 situation can only be applied against members against whom preventive or enforcement action is being taken. To date, it appears never to have been used within the UN.[82]

In particular in recent years, though, it has become a rather popular practice to legislate on what will happen once a member-state breaches the organization's rules. Instead of using the notion of material breach (as laid down in Article 60 of the Vienna Convention on the Law of Treaties), the constituent documents of organizations increasingly prescribe their own systems of sanctions, and usually they refer to suspension of rights and privileges. A recent example is the Organization for the Prohibition of Chemical Weapons, where expulsion is even prohibited.[83] The gravest sanction is reference to the Security Council, possibly in the hope of enforcement action.[84] Another example is the inclusion, in Articles 6 and 7

[79] Article XV, para. 2 IMF. [80] Czechoslovakia was admitted again in 1990.

[81] Compare Art. 3 *juncto* 8 of the Statute of the Council of Europe.

[82] In 1968, a permanent subsidiary organ (UNCTAD) suspended South Africa, much to the chagrin of the UN's Office of Legal Affairs which held that the decision to suspend ought to be taken by the Assembly rather than by subsidiary organs, following the terms of Art. 5 of the UN Charter. See UNJY (1968), 195–200. South Africa's delegation has sometimes been expelled from plenary meetings of the UPU (seemingly without this affecting membership as such); see, e.g., UNJY (1969), 118–19. See also Magliveras, *Exclusion from Participation*, pp. 74–5, who seems to treat the episode as one in which formal membership came to an end.

[83] Article VIII, para. 2 CWC: 'All States parties to this Convention shall be members of the Organization. A State Party shall not be deprived of its membership in the Organization.' Hence, as long as one remains a party to the CWC, one cannot be expelled from the OPCW; whether the treaty relationship itself can be terminated against a member's will is unclear.

[84] For a general analysis, see Jan Klabbers, 'Side-stepping Article 60: Material Breach of Treaty and Responses Thereto', in Matti Tupamäki (ed.), *Finnish Branch of ILA 1946–1996: Essays on International Law* (Helsinki, 1998), 20–42.

TEU (as amended at Amsterdam), of essential bases of membership, in combination with sanctions when those essential bases (respect for liberty, democracy, human rights and the rule of law) are violated: certain rights attaching to membership, including voting rights, may be suspended.[85]

A sanction similar to that of Article 5 of the Charter is provided for in Article 19 of the UN Charter: if a member is in arrears, i.e. does not pay its contributions, it may be stripped of its voting rights within the General Assembly.[86] It has been used against Haiti, in 1963, and against the Dominican Republic in 1968. Those temporarily lost their voting rights in the General Assembly.

On paper the sanction looks automatic ('shall have no vote', and 'the General Assembly may, nevertheless, permit').[87] In practice, there does not seem to be such automatic application; indeed, the Assembly has on occasion resorted to decision-making by consensus when member-states ran the risk of losing their voting rights after being in arrears due to a disagreement of principle on the propriety of certain expenses of the UN. At any rate, it is important to realize that a suspension under Article 19 only amounts to a suspension of rights of the member-state, not to a suspension of obligations.[88]

Whether expulsion or suspension may take place in the absence of an explicit provision to that effect is debated. Some argue that, as constituent documents contain the terms upon which states join the organization, no additional sanctions may be created without their consent;[89] others might claim, however, that constituent documents are living instruments which are to serve the organization and the majority of its membership. If this

[85] See Art. 7 TEU. The situation concerning Austria in 1999–2000, after the election of a rather right-wing government, illustrates the difficulties, political and otherwise, in actually applying Art. 7. Not surprisingly, the report of the 'wise men' appointed to defuse the crisis ended up recommending prevention and monitoring mechanisms. See the 'Wise Men Report on the Austrian Government's Commitment to the Common European Values, in particular concerning the Rights of Minorities, Refugees and the Evolution of the Political Nature of the FPÖ' (2001) 40 ILM 102. The Treaty of Nice, if it enters into force, will add a procedural complement to Art. 7, essentially to safeguard the position of the accused member-state and to smoothen the process somewhat.

[86] This is not normally considered to affect such things as an organ's quorum, or the majorities required for valid decision-making. See, with respect to WMO, UNJY (1983), pp. 182–3.

[87] For a forceful argument to this effect, first published in 1964, see Stephen M. Schwebel, 'Article 19 of the Charter of the United Nations: Memorandum of Law', included in his *Justice in International Law*, 337–63.

[88] See also below, chapter 7.

[89] So, very firmly, Singh, *Termination of Membership*, pp. 79–80. See also the opinion of the legal advisor of the ITU, in UNJY (1982), pp. 214–17.

occasionally results in large-scale agreement to do something not initially envisaged (such as suspending a member's rights), then so be it. If other powers may be implied, then why not a power to suspend or even expel?

While expulsion may be the most dramatic way of terminating a state's membership of an international organization, it is by no means the only way. Obviously, termination of membership will also take place when the organization is dissolved. This does not happen every day, and the most prominent example to date is presumably the dissolution of the League of Nations. While already practically defunct, and superseded (rather than succeeded) by the United Nations, the League Assembly formally dissolved the League at a meeting in April 1946, having first settled some outstanding matters.[90]

Membership may also come to an end by means of withdrawal, or in connection with an amendment of the constituent treaty. Some organizations specifically grant a right of withdrawal, usually upon a certain period of notice,[91] and on condition that all obligations have been fulfilled.[92] But as already discussed in the previous chapter, where no specific provision is included, the general law of treaties is most likely to be applicable. After all, as Singh tersely observes with respect to the UN, if a member wishes to withdraw, it is not the purpose of the organization to persuade the member-state to continue to co-operate.[93]

In the UN, a curious situation arose in 1965 and 1966. In January 1965 Indonesia had announced it was to withdraw from the UN, something which not all other members appeared to accept. Nothing much happened, although Indonesia did indeed no longer participate in the organization's

[90] More recent examples include the termination of the Warsaw Pact and Comecon; see also below, chapter 15.

[91] This may give withdrawing members the time to change their mind, as happened when Spain decided after all not to withdraw from the League of Nations in 1928, shortly before its notice would have taken effect. For more details, see Broms, *Equality of States*, p. 133. At least within the context of the ILO, it has been held that an extension of the notice of withdrawal seems legally permissible. See UNJY (1977), pp. 248–50.

[92] Singh notes that even Germany settled its financial obligations before withdrawing from the League of Nations. See Singh, *Termination of Membership*, p. 34. At least with respect to UNIDO, it has been considered that those obligations (including financial obligations) continue until the date on which the withdrawal becomes effective. See UNJY (1987), pp. 234–5.

[93] Singh, *Termination of Membership*, p. 93. Indeed, Singh claims that there is an 'inherent right of withdrawal' which states enjoy on account of their sovereignty (*ibid.*, p. 27). As Weiler points out, moreover, to insist on the impossibility of withdrawal might be counterproductive. See Joseph H. H. Weiler, 'Alternatives to Withdrawal from an International Organization: The Case of the European Economic Community' (1985) 20 *Israel Law Review*, 282–98.

work, until in September 1966 it announced it was 'to resume full co-operation'. This was accepted without much further discussion, and thus it appears that Indonesia merely did not participate for a while. It was not regarded as having actually withdrawn, and did not have to apply for membership again.[94] Moreover, a compromise was reached over the contribution during the period of absence: Indonesia paid 10 per cent of what it would have paid had it continued participation. Still, the legal situation is not entirely clear. For the year 1965, the UN Yearbook does not list Indonesia as a member; it was not listed in the 1965 resolution on the assessment of contributions, and in various commissions and subcommissions it was replaced.[95]

Similar situations have happened in other organizations.[96] When the Soviet bloc withdrew from the World Health Organization in the 1950s, it was subtly treated not as withdrawal but as cessation of participation; and the same applied when Poland, Hungary and Czechoslovakia 'withdrew' from UNESCO between 1954 and 1963.[97] Of course if a state genuinely withdraws, but changes its mind a couple of years later, it will generally have to apply for membership all over again.

A remarkable situation arose when France withdrew from NATO, but withdrew only partially. It remained a member, but withdrew from what, arguably, constitutes NATO's showpiece: its integrated military structure.[98] France managed to justify its behaviour in legal terms by distinguishing between the original treaty and the organization founded on the treaty: it remained a party to the former but not the latter.[99]

A less spectacular, more technical way by which membership may come to an end is by amending the constituent treaty. Some international

[94] The UN followed the suggestion of the Secretary-General that Indonesia's absence be regarded as a 'cessation of co-operation' rather than a withdrawal. See UNJY (1966), pp. 222–3.

[95] Conforti, *The United Nations*, p. 38, treats the Indonesia episode as one of withdrawal followed by readmission in simplified form.

[96] No member-state has withdrawn from the EU, although EU law (EC law, at the time) stopped applying to Greenland in 1985. On the legal possibilities with respect to withdrawal from the EU, see generally Arved Waltemathe, *Austritt aus der EU: Sind die Mitgliedstaaten noch souverän?* (Frankfurt am Main, 2000).

[97] See UNJY (1966), pp. 267–9. There are, however, also 'real' examples of withdrawal, one of them being the withdrawal of the Union of South Africa from UNESCO in 1956 and its withdrawal from ILO in 1964. In 1977, the US left ILO, only to be admitted again in 1980.

[98] To complicate matters further, in 1966 France did so before it would under the NATO Treaty itself be entitled to withdraw, for this was only deemed allowable after the first twenty years, a period that ended in 1969.

[99] For more details, see Vignes, 'La participation', p. 82.

organizations provide that if the treaty is amended and a party does not accept the amendment, that state stops being a member-state.[100]

Withdrawal (and the same applies, *mutatis mutandis*, to other ways for terminating membership) may lead to all sorts of practical questions and problems. What, for example, should happen to the permanent delegation of the withdrawing state? What will be the fate of employees of the organization who are nationals of the withdrawing state? What will happen to the organization's offices on the territory of the withdrawing state? And can nationals of the withdrawing state still be eligible for scholarships sponsored by the organization? And should the withdrawing member pay its outstanding contributions, or are the remaining members free to accept another solution?[101] As membership of the state in the organization determines the bond between the organization and both the state and its nationals, it would seem that upon breaking the bonds of membership, any benefits for both the state and its nationals will also be terminated, but, having said that, much will depend on a case-by-case analysis. Some constitutions may, for example, provide that only nationals of member-states may be employees unless no qualified nationals can be found; this, in turn, might help save the employment of a national of a withdrawing state.[102]

Finally, membership may also come to an end if the state ceases to exist. This happened when, in 1958, Egypt and Syria merged for a short period of time.[103] Obviously, too, the former USSR and Yugoslavia are no longer members of any international organization. Still, having said that, statehood does not cease to exist very quickly. There appears to be a strong presumption in public international law in favour of the continuity of statehood, even if some of the requirements for statehood are no longer met. Thus, we may well argue that Somalia lacked effective government during most of the 1990s, but it has not seriously been argued that Somalia stopped being a state. Instead, UN activities in Somalia were all geared towards re-establishing effective government. Consequently, this is not the most obvious reason for membership to wither away.

[100] So, e.g., Art. 26, para. 2, of the League of Nations Covenant.

[101] This latter option was chosen when South Africa, having given the ILO notice of withdrawal in 1964, left without paying its arrears. See Osieke, *The International Labour Organisation*, p. 35.

[102] For an extensive overview of the questions that may arise, see UNJY (1985), pp. 156–83.

[103] Syria was later re-admitted following a simplified procedure, according to Conforti, *The United Nations*, p. 38. See also Broms, *Equality of States*, p. 150.

Concluding remarks

Even with a seemingly mundane topic such as that of membership, it is noteworthy that much of the law (or rather, much of the uncertainty of the law) can be traced back to different conceptions of the relation between the organization and its member-states. Those who favour state consent are reluctant to read a right to expel a member-state in the organization's constitution when no specific expulsion clause is drafted; the potential usefulness of observers to the organization's functioning is sometimes impeded, or at least limited, by the jealousy of members, and even on so esoteric a topic as whether or not to accept multiple representation, two camps can be discerned: those who claim that the organization's functioning should not be made more difficult by uncertainties as to who represents whom, and those who would claim that surely member-states have a right to decide themselves whom they will appoint as their representatives, and if their chosen representative happens also to represent another member, so what?

Hence, even on issues of membership, the law is far from clear, and even on issues of membership, much depends on policy preferences. There is, of course, nothing particularly wrong with this, as long as it is remembered that the law is to a large extent coloured by policy preferences. While this is most visible in decisions to admit or to expel a member, the same considerations apply on a great number of somewhat less spectacular issues.

As Vignes[104] has suggested, membership issues are ultimately founded on two grand ideas. One is that sovereign states submit themselves voluntarily to international organizations by becoming members; the other is that sovereign states, despite submitting themselves to organizations, nevertheless retain control over both themselves and their organizations. It is this tension which colours much of the law relating to membership.

[104] Vignes, 'La participation', esp. pp. 61–2.