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Distinguished Lecture

The Changing Structure Of International Organization*

Christoph Schreuer**

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I. PAST DEVELOPMENTS

A. The State

The State is the centerpiece of our conceptual framework of international relations. But it is useful to remember that sovereign States with equal status have not always been the dominant actors in international relations. If we look back into Roman times or the Middle Ages, we see much more hierarchical and empire oriented structures. The development towards our present system has been gradual: 1648, the Peace of Westphalia; 1806, the end of the Roman-German Empire; 1918, the collapse of Austria-Hungary and of the Ottoman empire were important stations along this road.

Our present theory of international relations is based on the interaction of co-equal sovereigns. Key concepts of international law depend on it: territorial integrity, non-intervention, self-defense, and permanent sovereignty over natural resources.

This system of co-equal sovereigns has been useful in some respects but it has also displayed shortcomings. The concentration of power with a small national elite, such as the government, has facilitated the abuse of power and totalitarianism. Such internal practices were insulated from the scrutiny of the larger community by the doctrine of domestic jurisdiction. This system has also contributed to international instability. The concentration of power with national governments has created dangerous breaking points in international relations which have repeatedly led to wars with devastating consequences.

In addition, this conceptual framework of the State being the centerpiece of international relations has inherent theoretical shortcomings. It is based on the idea of equality of States. Enormous differences in economic, military, and political power have discredited sovereign equality as a theoretical cornerstone of the inter-State system.

B. International Organizations

International Organizations started appearing in a modest fashion in the second half of the nineteenth century. The first organizations were called "administrative unions." They dealt with such practical matters as public health, the postal system, telecommunications, and railroads. It was not before the twentieth century that major political international organizations, directed primarily at international peace and security, were created. For instance, the League of Nations, created after World War I was succeeded by the United Nations after World War II.

Since 1945 we have seen an enormous growth in international organizations. It is almost impossible to keep track of all of them, but it is clear that the number of intergovernmental organizations now by far exceeds the number of sovereign States.

The tragedy of the major political international organizations is that they were reactions to past political calamities. In other words, they were primarily backward
looking. The concept underlying the League of Nations was that World War I was essentially a diplomatic accident caused by angry old men who had temporarily lost their temper and good judgment. It was believed that what was needed was a period of cooling off and mechanisms for the settlement of disputes. This system, which was based on the belief in the essentially good intentions of politicians, failed in the face of determined villains.

The United Nations, created under the impression of World War II, was based on the belief that it was necessary to check villainous outsiders through determined cooperation, especially by the “big powers.” What followed was not a system of cooperation, but a degeneration into cold war paralysis.

The dramatic events since 1989 have led to a new climate of cooperativeness and have given us a window of opportunity for the effective use of international organizations. The United Nations is no longer a place for confrontation, rather it is a forum for real decisions that matter in the real world. One obvious example is a tendency since 1990 to look for legitimacy of military action in international organizations, especially through authorization by the United Nations.

However, this impression of progress may be deceptive. It is true that war in the traditional sense has become very rare. But it is unclear to what extent, if at all, military activity has decreased. Most hostilities nowadays take place within national boundaries and are relegated to the category of civil strife.

Also, it is noted with some optimism that the veto in the Security Council has all but disappeared. We should remind ourselves that the lack of veto exercise is in good part the consequence of a new method of decision-making: compromises are hammered out in private, usually first by the group of the five permanent Members and then with the help of non-permanent Members. In other words, draft resolutions that are not assured of adoption are usually not put to the vote.

II. CURRENT TRENDS

I believe that we live in an era of transition. This assertion is illustrated in four major areas: the growing powers of international organizations; the rise of the civil society; the emancipation of world markets; and the waning of the sovereign state.

A. The Growing Powers of International Organizations

International organizations are increasingly taking over functions that were traditionally reserved to States. This assumption of functional statehood is incremental and spread over a variety of issues, such as treaty making, functional recognition of newcomers into the international community, public services, economic regulation, peace and security, lawmaking, adjudication, and protection of individuals.
1. Treaty Making

International organizations have always been involved in treaty making. Originally, this activity was restricted to a few issues, such as the particular organization's privileges and immunities, or such technical matters as loan agreements by the World Bank or safeguard agreements by the International Atomic Energy Agency. More recently, international organizations, especially the European Community, have moved into areas of more classical treaty making hitherto reserved to States. These treaties concern the environment, the UN Convention on the Law of the Sea, and membership in intergovernmental organizations such as FAO and WTO. This trend has also found its expression in the creation of a new Vienna Convention on the Law of Treaties of 1986 dealing specifically with the law of treaties involving international organizations.

2. Functional Recognition

The traditional mechanism for accepting newcomers into the international community was through recognition. This traditional method of unilateral or bilateral acts has not been replaced but has been supplemented by a new multilateral mechanism. New States have been eager to become members of regional international organizations such as the Council of Europe, and global organizations such as the United Nations, in order to obtain certificates of statehood. This trend was already apparent in the process of decolonization but has become especially obvious after the creation of new States in Central and Eastern Europe.

3. Public Services

Especially in poor countries and in collapsed States, international organizations have increasingly grown into the role of providers of basic services that are normally expected from State administrations. They are expected to provide basic health services, become involved in the distribution of food and water, attempt to restore law and order and provide basic education. They are thus seen in some parts of the world as rudimentary substitute governments even on the local level.

4. Economic Regulation

Economic policies are increasingly influenced by international organizations. This is particularly conspicuous in European integration. The Maastricht criteria for monetary union have received much media attention but are merely an example of a much more pervasive process. On the global level, the International Monetary Fund dictates key national economic policies as a condition for help. This phenomenon, which is by no means new, has recently attracted much attention in the context of the Asian economic crisis.
5. **Peace and Security**

Classical wars between States have become rare indeed. The Security Council has interpreted its powers extensively and has become involved not only in civil wars but also in situations of grave violations of human rights and in the restoration of democracy in several countries. The creation of two international criminal courts, by resolution of the Security Council rather than by treaty, is a particularly obvious example for this newly expanded role. The method by which the Security Council has achieved this result is to give a broad meaning to the concept of "threat to the peace" in Article 39 of the United Nations Charter. Peace is no longer seen merely as the absence of inter-State armed conflict. Peace is also negated by the presence of widespread and systematic violations of human rights.

6. **Lawmaking**

The role of international organizations in the making of international law is mostly preparatory. Genuine lawmaking powers exist in the areas of internal regulations such as staff regulations, or rules of procedures. Recommendations often deal with important issues of international law, but their legal consequences are uncertain.

The European Community has seen a dramatic shift towards lawmaking by international institutions. Regulations and directives are clearly binding. Over time, there has been a gradual shift in method whereby lawmaking by the Council, a body consisting exclusively of government representatives, is now increasingly supplemented by a role for the elected European Parliament.

7. **Adjudication**

The International Court of Justice (ICJ) is typical for traditional international adjudication. Only States have access in contentious proceedings. Jurisdiction is contingent upon submission. The Court of Justice of the European Communities demonstrates a considerable advance in both areas. It is open not only to States but also to organs of the Communities and, under certain circumstances, to individuals and corporations. Perhaps the European Court’s most important function is to give preliminary rulings upon the request of domestic courts. Also, its jurisdiction is compulsory and does not depend on voluntary submission.

Over time, we have seen a dramatic increase of fora for international adjudication: the Law of the Sea Tribunal is beginning to hear its first cases. Regional human rights courts have become important standard setters. Hopes for the creation of an international criminal court are high. Institutions for the settlement of mixed disputes between States and individuals or corporations such as ICSID have successfully operated for some time. This proliferation of international adjudication has already prompted some concern over duplication and coordination.
8. Protection of Individuals

Traditionally, the treatment of individuals by States was an internal matter. Foreigners were able to receive diplomatic protection from their home State. It was only with the advent of human rights systems, regional and global, that the protection of individuals has become truly internationalized. Nowadays, despite occasional attempts to the contrary, States can no longer credibly claim that issues of individual rights are within their domestic jurisdiction.

Within the European Union, the incipient European citizenship is becoming a reality. Free movement and free choice of residence are guaranteed to all Union citizens. Participation in elections throughout the Community has been secured on the local level as well as in elections to the European Parliament. The possibility of diplomatic protection by member States to nationals of other member States is also an important element in this process.

B. The Rise of the Civil Society

The phenomenon of a new civil society that is not primarily oriented towards the nation State has, as yet, found limited expression in law. What we see is an increase in the number and importance of issue oriented communities: associations that are concerned with the protection of the environment, with human rights, with women’s issues, consumers’ interests, indigenous people, disarmament and various aspects of democracy. We see people developing new loyalties and identities that transcend States. These new loyalties are increasingly based on personal choice rather than on place of birth or family background. These new identifications and communalities are based upon ideas and not upon nationality.

This phenomenon often finds its expression in non-governmental organizations (NGOs), some of which have been remarkably successful. They have also become the focus of public attention at a number of World Conferences, such as those in Rio, Vienna, Cairo and Beijing, where NGOs literally clamored at the entrance doors to be admitted to the official fora.

Sometimes these organizations, like the intergovernmental organizations described before, provide infrastructures normally expected from States. They are instrumental in helping to provide access to medicine, food, water, and other basic services as well as to economic development.

An important element in the development of the civil society are new means of communication. The Internet, as a cheap and generally accessible method of communication, has shaped peoples’ thinking worldwide. Equally important has been the almost universal acceptance of English as a common language of communication.

Epistemic communities, that is societies based on knowledge, have also contributed to this process. Scientific associations of lawyers, climatologists, medical experts such as epidemiologists, and many others now exert an important influence on global decision-making.
At the same time, we have also seen an increase of what might be described as “uncivil society.” For instance, organized international crime has become a rising threat, and has triggered increased cooperation of law enforcement on the international level.

C. The Emancipation of World Markets

Contemporary economic realities have led to a situation where national governments frequently no longer have control over their economy. Global capital transfers, reported to exceed a trillion dollars per day, are beyond the control of national central banks. The interaction of capital markets also means that States have only limited control over their own currency. Technological advances have led to a situation where the control of trade and investments is beyond the reach of national governments. States recognize increasingly that unfettered interaction of economic forces is in their interest. This, in turn, has led to competitive deregulation, especially in the area of international investments.

On a more legal level, the business community has shown a tendency to denationalize the legal framework for international transactions. In these transactions, participants may choose or create their own law. Non-national dispute settlement, especially through arbitration, is increasingly resorted to. Therefore, States even lose some control over private adjudication.

D. The Waning of the Sovereign State

All of these phenomena contribute to a situation where the once dominant position of the nation State is increasingly cast into question. This is not to say that the State and its structure will simply fade and disappear like the proverbial Cheshire cat. A more likely development is an increasing diffusion of functions and powers at different levels and with different types of actors. The State will remain but it will get relatively weaker. We will have to modify our conceptual framework of State centricity. The monopoly of power and authority will disappear, but the State will continue to play a role.

What we are likely to see is a multilayered system with additional structures and participants. Such a multilayered system is likely to provide more stability and more scrutiny over previously “internal matters.”

III. IDEAS FOR THE FUTURE

Ideas for the reform of the international political system are easily dismissed as unrealistic. Existing power structures have a tendency towards self-perpetuation. Reform has inherent risks and can lead to undesirable consequences. Moreover, if reform involves change in the Charter of the United Nations, it runs into the
formidable obstacle of Article 108 requiring the ratification by two-thirds of the Members, including all permanent Members of the Security Council.

The fact that ideas may appear unrealistic or unpopular should be no reason not to discuss them. Contemporary professors have a role to play that is somewhat akin to those of medieval court jesters. They may air ideas with impunity that other members of the retinue would not dare to utter.

A. Open International Organizations to Non-State Actors

International organizations are largely closed arenas. They are mostly restricted to States and their representatives. A drastic change would be the creation of a second chamber of the United Nations General Assembly to representatives of the civil society as described before. A less dramatic method would be to involve these representatives more seriously in committee work.

An obvious problem would be to distinguish the useful NGOs from the useless (typically those pursuing special interests) and even dangerous ones. This should not necessarily be done through a process of accreditation controlled by the accepted actors, that is the States. A more logical process would be one of self-organization, selection and accreditation by these organizations themselves. Obviously, such a process would be complicated and may take some time, but it is by no means hopeless.

B. Restructure the Security Council

The reform of the Security Council has been a much debated topic in recent years. Most of the attention has been centered on permanent seats for Germany and Japan. But there are also broader issues than the mere addition of new permanent Members. If the Security Council keeps extending its powers, as described above, it must also become more representative to enhance its legitimacy. But increased participation, especially of as yet underrepresented regions, may clash with the need to keep the Security Council effective and responsive. There should be some creative thinking in the area of reducing the damaging potential of the veto. This need not be done through its outright abolition or withdrawal from some permanent Members. Solutions such as joint veto or an override of a veto by an increased majority are definitely worth investigating.

C. Improve the Budget Process

Currently, the United Nations is held hostage by one Member that is responsible for 25% of the regular budget and an even higher percentage of the peacekeeping budget. The arrears of the United States, and to a lesser extent of other Members, have led to a situation of half paralysis and almost complete dependency. The issues
at stake have little or nothing to do with fiscal necessity and everything to do with 
power and control.

Two steps could help to improve the situation dramatically. One would be to 
reduce the maximum contribution of any one member State to, for instance, 12.5% 
or even less. The amounts involved are relatively small in terms of national budgets. 
They could be absorbed quite easily by other affluent member States.

Another step would be to introduce the principle of fiscal solidarity. This would 
mean that paying Members would automatically have to step in for a delinquent 
Member. If one Member cannot or will not pay its dues by a certain date, it will be 
incumbent upon other Members to fill the gap. This will not only alleviate the 
financial situation of the organization, it will also lead to the delinquent Member 
owing that money to those who paid. Members in good standing could then begin to 
set off their credits against those who have defaulted.

D. Introduce New Forms of Collective Lawmaking

The multilateral treaty is the prime instrument of international legislation. In 
order to become binding on a member of the international community, that member 
needs to give its formal consent in the form of ratification. This requirement of 
consent is the most limiting factor in international lawmaking. Its inadequacy is 
particularly evident in international regime building such as nuclear disarmament or 
the law of the sea. Individual members of the community are given the power to stall 
or frustrate efforts at international lawmaking.

Several methods could be investigated. One would be to extend the powers of 
the Security Council even further without going beyond the authorization contained 
in the United Nations Charter. The Security Council could become actively involved 
and could start to legislate in the area of weapons testing and general disarmament. 
These areas clearly fall within the description of “international peace and security” 
as used in the Charter. There are no legal obstacles to an extension of the regulatory 
techniques, as developed by the Security Council, to these new areas.

Article 13 of the UN Charter charges the General Assembly with the task of 
progressive development of international law but the means at its disposal, studies 
and recommendations, are woefully inadequate. At present, it would not only be 
unrealistic but also undesirable to call for legislation by majority vote in the General 
Assembly. However, new procedures and techniques may make such an idea, if not 
more realistic, at least more desirable. A call for a second chamber of the General 
Assembly of popularly elected parliamentarians is probably still premature. 
Worldwide popular elections remain a goal but would be difficult to organize at 
present. A bicameral system with an NGO body as a second chamber may be easier 
to put into place. The Security Council could continue to play an important role also 
in any legislative process. Combined majorities in the different participating bodies 
could be coupled with different procedures and different majorities, including some
super-majorities, for different issues. The lack of factual equality of the participating States would have to be factored into this process.

Methods to leave some discretion to participating States could be combined with these decision processes or could be created independently of them. This would build on the model of opting out or contracting out as currently used in specialized agencies. Certain decisions would become binding on States that do not reject them specifically. On the national level, the power to reject such decisions by international institutions could be modeled on the existing procedures for assent to treaties. In other words, the same bodies and procedures that operate to accept treaty commitments should be used to reject otherwise binding decisions of international organizations.

IV. CONCLUSION

We live in an era of momentous change. This change should not merely be an object of wonder and description. It also gives us a chance to grasp the initiative. We should not wait for another world cataclysm to build a better system on the ruins and ashes of Armageddon. I believe that history will judge us harshly if we squander this opportunity.