CONTINUITY IN THE LAW OF INTERNATIONAL ORGANIZATION

HUGO J. HAHN*

"[C]ontinuity . . . is in itself an element of legal justice."

PART ONE:

CONTINUITY IN THE PRACTICE OF INTERNATIONAL ORGANIZATIONS

A public international organization is a collective entity established by treaty or other international act and pursuing common interests of its member states. Its organs have such functions, powers and duties as the law of the organization may provide. To the extent that these functions are to meet lasting needs of the member states, their continuity must be ensured beyond changes in the objectives, jurisdiction, institutional structure or even extinction of the organization originally entrusted with those tasks. Various legal techniques have been used to obtain that continuity. Where the existence of the organization and its basic purposes remain unaffected, amendments to its constituent documents and adaptation of its institutional structure would appear to be sufficient. However, when an organization is extinguished, the proper method for securing continuity in the exercise of functions

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*LL.M. (1952), Harvard University; Dr. iur. (1953), University of Frankfurt. Assistant Legal Adviser, Organization for European Economic Co-operation, 1958-61; Assistant Legal Adviser, Organization for Economic Co-operation and Development since 1961 (on leave of absence from the German Federal Civil Service since 1958). The views expressed in this article are those of the writer alone and do not necessarily reflect the official opinion of the organization which he serves.


†This is Part One of an article to appear in two successive issues of the DUKE LAW JOURNAL. Part Two deals with the transition from the Organization for European Economic Co-operation to the Organization for Economic Co-operation and Development.

2Private international organizations are beyond the scope of this article. For the definition and an enumeration of the distinctive elements of both public and private international organizations, see, apart from the basic study by Jenks, SOME CONSTITUTIONAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS, 22 BRIT. YB. INT'L L. 11 (1945); ZEMANEK, DAS VERTRAGSRECHT DER INTERNATIONALEN ORGANISATIONEN 6 (1957), and the same author's more recent contribution to STAATSLEXIKON 302-90 (6th ed. 1959).

*MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW
which member states desire to see maintained is the devolution of those functions on another organization by means of succession.

The continued exercise of these functions by a successor institution may be provided for in treaties or other definitive arrangements of an equivalent character. There is, however, authority to support the view that even in absence of such definitive instruments the requirement of continuity in international life demands the transfer of functions from the moribund organization to another organization "in all cases where this is consistent with or indicated by the reasonably assumed intention of the parties as interpreted in the light of the purpose of the organisations in question." It may seem strange that the problem of devolution arises at all with regard to corporate entities, since the concept of corporation or body politic was originally and still is conceived to preserve certain rights in perpetual succession, which rights, if conferred on natural persons, would fail in process of time. Nevertheless, "succession" having been used for centuries to denote the substitution of one sovereign state for another and the legal consequences of such transfer, it is not surprising that the term has also gained currency in the law of international organizations.

(1954), the leading monograph on its subject matter, speaks quite appropriately of the inseparability of corporate identity and functional continuity as regards states. Id. at 6. As will be shown, the two concepts are not necessarily linked in the law of international organizations.

8 The nature of such arrangements is herein discussed.


5 1 OPPENHEIM, INTERNATIONAL LAW 168 (8th ed. Lauterpacht ed. 1955); LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT 279-80 (1958). Another proponent of this view is Sir Gerald Fitzmaurice, The Law and Procedure of the International Court of Justice: International Organization and Tribunals, 29 Brit. Yb. Int'l L. 1, 8-10 (1952) (thesis based on the 1950 advisory opinion quoted in note 4 supra). In his eloquent separate opinion in the case of Admissibility of Hearings of Petitioners by the Committee on South-West Africa [1956] I.C.J. Rep. 23, 48, 59, Judge Lauterpacht calls the devolution of the League of Nations' supervisory functions in respect of South-West Africa on the United Nations "the most important example of succession in international organization" and considers this transfer as a result of the doctrine that treaties and other international instruments must be interpreted with a view "to secure their effective operation."

6 See notably FORTESCUE, DE LAUDIBUS LEGUM ANGLAE 31-33 (Chrimes ed. 1945); see also 2 KENT, COMMENTARIES 267 (14th ed. 1896); 4 POUND, JURISPRUDENCE 207 (1959).

7 SCHWARZENBERGER, INTERNATIONAL LAW 163-64 (3d ed. 1957), gives a plausible historical explanation for the analogy drawn from the law relating to individuals.
international organizations which here, as in other fields, has drawn from the terminology acknowledged in the relations among states. In following this custom, however, it should be kept in mind that “succession,” not only as understood in private law, but also as originally used in the law of nations, refers to factual situations which are generally hardly comparable to those with which the law of international organizations must cope. If, therefore, specific principles developed in connection with state succession are susceptible of application to the law of international organization at all, they can be applied only by way of analogy.

The means for preserving continuity of international executive or rule-making functions rarely have been chosen as a consequence of legal considerations. Rather, the choice arrived at is usually contingent on elements which one might call, in a now fashionable term, “metajuridical,” if the cases at hand made it uncertain that the decision on how to ensure continuity was almost always political in nature.

Political decisions on questions of international law being founded by definition on the discretionary assessment of international relations at a given moment, not on any preconceived opinion of law, and the interests of most great powers being apparently directed at underscoring those features which justify the qualification of an event as sui generis in order to avoid a precedent possibly restricting liberty of choice in the future, the legal classification of the methods used thus far in the practice of international organizations for ensuring the con-

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9 The abundant literature on state succession tends to prove this assertion, notably monographs dealing with specific aspects of the devolution of territorial sovereignty, such as Mosler, Wirtschaftskonventionen bei Änderungen der Staatsbeziehung (1948).


12 On a corresponding phenomenon in the relations among states compare Marek, op. cit. supra note 2, pts. II-IX, 191-545.

13 On the criteria applied in the making of political decisions see Charles de Visscher, Théories et Réalités en Droit International Public 95-99, 317-23 (3d ed. 1960), and the authors listed therein.

14 International law is a “limitation of national power.” Morgenthau, Politics Among Nations 249 (2d ed. 1954).
tinuity of their functions can hardly be attempted on the basis of the motivations set forth by states in explanation of one approach or another. Yet, inasmuch as such pronouncements are evidence of the intention of the parties in a specific instance, they cannot be left aside in the interpretation of the international arrangement to which they relate, if interpretation is required.

A more appropriate classification of the means for ensuring continuity of functions in the law of international organization might result from a comparison of the factual situations in which they were used. By grouping the actual cases with a view to the comparability of the political, economic, or sociological background from which they arose, one could probably arrive at a truthful picture of the diversity of legal effects ensuing from the same or substantially similar factual developments. However, assuming the veracity of the events related, the common denominator of the different phenomena thus brought under one heading would not be a legal element, but instead the resemblance of pre-legal data to each other. That approach, then, would suffice for demonstrating the varied behavioral consequences resulting from a specific type of factual setting, rather than for showing the legal typology of the processes used to ensure continuity of internationalized functions.

The proper way of presenting this typology is probably the grouping of the cases in the light of their normative features, i.e., their classification according to the legal means employed to secure continuity. A survey of practice reveals four major headings under which the methods used to obtain continuity may be conveniently set out:

(1) treaties, or international acts equivalent to treaties, provide for the succession (conventional succession) which may take place as between:

(A) a moribund organization and an entity created for the purpose of continuing some or all of that organization’s functions together with such new tasks as may be incumbent on it by virtue of its proper law (substitution);

(B) a moribund organization and an already existing institution which, in addition to its own activities, is to continue those of the moribund organization in whole or in part (merger); or

10 Merger is distinguished here, as in corporation law, from consolidation, which means the uniting of two hitherto independent corporate entities in the form of one new institution. No instance of such a consolidation is known to the author.
(C) two organizations equally continuing to exist after some functions of one have been transferred to, or have in fact begun to be exercised by, the other (transfer);

(II) conventional international law\textsuperscript{16} does not provide for such succession or does so only in respect of certain functions or assets of an organization, while the exigencies of a specific situation call for continuity of the other functions as well, and force appropriate legal means for ensuring continuity on the parties concerned (automatic succession);

(III) political and factual situations identical with or substantially similar to those which in categories (I) and (II) gave rise to succession are dealt with by amendments to the constituent texts of an organization or to the relevant legislative acts of its organs (constitutional adaptation);

(IV) the practice of an organization adapts its functions to changing conditions and thus, by a suitable interpretation of the existing law of the organization, makes conventional and automatic succession, as well as the use of the amendment process, unnecessary (administrative adaptation).

The same set of problems or any of them may arise with regard to international organs, \textit{i.e.}, intergovernmental institutions without autonomous organization and proper legal personality, or with regard to instrumentalities of international public organizations.\textsuperscript{17}

I.

Conventional Succession

The law of international organizations has not yet brought about rules which would govern the devolution of functions from one organization to another in the absence of a treaty or equivalent international act. Usually, the silence or the lack of texts either prevents succession or leads to solutions which are punctual in nature, devoid of any link to precedents and measured to meet no more than the political, economic,

\textsuperscript{16} \textit{i.e.}, treaties and international acts equivalent to treaties.

\textsuperscript{17} The transition from preparatory or provisional organizations to permanent institutions, whatever its legal nature may be, is primarily not the result of an attempt to ensure continuity, but rather of attempts to sidestep constitutional limitations in the basic texts of those institutions themselves which did not permit bringing the definitive organizations into being at once, but only on deposit of a certain number of instruments of ratification or acceptance. On such transitions from provisional to definitive organizations, which will not be discussed here, see SCHNEIDER, \textit{op. cit. supra} note 8, at 87-89.
or legal exigencies of the moment. Rules of customary international law or even recognized usages have not yet been developed which, in the absence of international acts of a legislative character, would permit to subsume a given set of facts to pre-existing norms about succession or devolution as between international organizations. Therefore, international legislation in its manifold forms unavoidably dominates legal technique. Conceived to meet concrete issues, the solutions which international legislation has provided may suffice to discover some underlying precepts of general application. Thus far, past instances of conventional succession seem to have been left in a far-reaching doctrinal isolation. Not even a statistical survey of cases is available which could serve as a first stepping stone for the development of a doctrine of succession in this field.

There is hardly any doubt that "international law prescribes no form for international engagements." But while there is no distinction between formal and informal agreements, international engagements should continue to be distinguished according to the source of their binding effect, i.e., as to whether their obligatory force flows from a consensual arrangement among international persons, states or other entities with international personality, or from a basic covenant among the members of an international institution which provides for the validity of such subsequent acts of that institution and its organs as may be adopted in conformity with that covenant.

This distinction is based on elements of substance rather than of procedure. Quasi-conventional acts of an international institution are distinct from ordinary treaties also in that they presuppose, procedurally, a permanent organizational framework within which they are adopted, while that requirement is not essential to the negotiation of bilateral or

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18 On the meaning of this term, see 1 HUDSON, INTERNATIONAL LEGISLATION § 3, XIV-XV (1931) [hereinafter cited as HUDSON], where international legislation is defined as "the introduction of law governing the relations of states." This definition should now be widened to comprise the introduction of law governing the relations of states and the structure and functions of international institutions without any restriction as to the formal basis for the validity of an enactment.

19 See 2 DAHM, VÖLKERRECHT 121 (1961). The various forms of international legislation include treaties, quasi-conventional acts of international conferences, organs and organizations, and decisions, recommendations and resolutions of international institutions. As to the latter, see Freymond, 11 ANNUAIRE SUISSE DE DROIT INTERNATIONAL 64 (1954); Virally, La valeur juridique des recommandations des organisations internationales, 2 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 66 (1956).

20 McNair, THE LAW OF TREATIES 15 (2d ed. 1961). See also, 1 ROSSEAU, PRINCIPES GÉNÉRAUX DU DROIT INTERNATIONAL 143 (1944); 1 BERBER, LEHRBUCH DES VÖLKERRECHTS 413 (1960).
multilateral treaties. Yet the more decisive difference between the two kinds of international instruments upon which succession in the field here at issue may repose, resides in the principles governing the application and interpretation of either of them. True, the dictum of the Permanent Court of International Justice that "restrictions on the independence of States cannot . . . be presumed" continues to impose itself in international relationships devoid of an organizational character, and, more generally, the precept of restrictive interpretation persists in exercising a profound influence on the behavior of member states even of the most advanced supranational institutions within the setting of those entities. But there is also hardly any doubt that the "teleological approach" is firmly accepted as one of the main methods for judicial interpretation of the charters of international organizations and acts adopted in conformity therewith in cases concerned with the organic jurisdiction of these entities, in particular their institutional structure and procedure as well as their rights and duties as employers of international officials, but also with their treaty-making power.

Consequently, it is not surprising if the same line of reasoning is followed by the rule-making and executive organs of international institutions in their day-to-day practice under those texts. As will be seen,

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21 Case of the S.S. "Lotus," P.C.I.J., ser. A, No. 10, at 18 (1927). See also the Court's advisory opinion on Article 3, Paragraph 2, of the Treaty of Lausanne (frontier between Turkey and Iraq), P.C.I.J., ser. B, No. 12, at 25 (1925): "[I]n choosing between several admissible interpretations, the one which involves the minimum of obligations for the Parties should be adopted."


23 Examples are to be found in almost all reports of the High Authority and the Commissions. Cf., e.g., SIXIÈME RAPPORT GÉNÉRAL DE LA HAUTE AUTORITÉ SUR L’ACTIVITÉ DE LA COMMUNAUTÉ ÉCONOMIQUE DE LA CHARONNE ET D’ACIER, 83 (1960): "[L]a Communauté se trouve . . . en face d’une gamme étendue de mesures nationales, qui, en général, répondent plus à une situation nationale spécifique qu’à des nécessités communes."


25 In this respect, and perhaps in this respect only, it may no longer be an overstatement to conclude with the Court of the European Coal and Steel Community as follows: "De l’avis de la Cour, il est permis, sans se livrer à une interprétation extensive, d’appliquer une règle d’interprétation généralement admise tant en droit international qu’en droit national el selon laquelle les normes établies par un traité ou par une loi impliquent les normes sans lesquelles les premières n’auraient pas de sens ou ne permettraient pas une application raisonnable et utile." Fédération Charbonnière de Belgique v. Haute Autorité, Dec. No. 8/55, July 16, 1956, 2 REC. 133, 305 (1955-56).

26 Cf. discussion in this article and Seyersted, Can the United Nations Establish Military Forces and Perform Other Acts without Specific Basis in the Charter?, 12 ÖSTER. ZEITSCHRIFT FÜR ÖFFENTL. RECHT 188, 201 (1962).
the impact of this mode of interpretation becomes less apparent in the application of international instruments governing conventional succession than in the conclusions derived from those instruments in order to justify an automatic devolution of functions in related cases. But it should be stressed in advance that substitution as a form of conventional succession has been brought about, practically without exception, by the interplay of treaties and norms of an organizational character—charter provisions and acts of derivative international legislation, such as decisions, recommendations, and resolutions of international institutions.

A. Substitution

The instances presented under this heading have in common that from their inception the successor organizations were meant to carry on the functions of the moribund entities which became extinct as soon as the devolution of their tasks had been accomplished.

(i) First considered is that form of substitution envisaged in the constituent texts of the organization substituted for the moribund one or the terms of reference of the successor institution or where the travaux préparatoires for its establishment leave no doubt that the new entity is to replace the outgoing organization.

(a) ICAO

This is probably a correct summary description of what happened in the case of the substitution of the International Civil Aviation Organization (ICAO) for certain earlier international bodies. Article 80 of the ICAO Convention of December 7th, 1944, required member states to denounce the 1919 Convention relating to the Regulation of Aerial Navigation and the 1928 Convention on Commercial Aviation; the article specified that as between contracting parties to the ICAO Convention the latter superseded the two previous treaties.

The 1919 Convention had provided for the establishment of an International Commission for Air Navigation (ICAN). ICAN decided to dissolve and go into liquidation before the ICAO Convention

87 See on this intellectual process as a pattern of legal thought MORGENTHAU, LA RÉALITÉ DES NORMES 89 (1934) (dealing more specifically with the justification of customary law).
88 T.I.A.S. No. 1591; 2 PEASLEE, INTERNATIONAL GOVERNMENTAL ORGANIZATIONS 51 (1956).
89 8 L.N.T.S. 231; 1 HUDSON 359.
90 47 Stat. 1901 (1931); T.S. No. 840; 4 HUDSON 2354.
91 Chap. VIII, art. 34.
92 ICAN started to operate on July 11, 1922, the date on which the treaty came into force. 1 HUDSON 360.
came into effect on April 4, 1947,\textsuperscript{38} \textit{i.e.}, during the lifetime of the Provisional International Civil Aviation Organization (PICAO), which prepared the work of the ICAO after the 1944 Chicago Conference.\textsuperscript{34}

As the 1919 Convention was to be terminated and the technical annexes to the four Chicago Conferences of 1944\textsuperscript{35} provided for the exercise of all the activities pursued by ICAN thus far, PICAO and ICAN had only to agree on the technical details of the transfer of assets and functions. The plenary meeting of ICAN in London in August, 1945, suggested a standard formula for denunciation of the 1919 Convention by contracting parties thereto.\textsuperscript{36} Shortly thereafter, its Secretary-General, Mr. Albert Roper, was appointed Secretary-General of the PICAO on the understanding that he would retain his former post until the winding up of ICAN’s affairs.\textsuperscript{37} Then followed the transfer to PICAO of studies on eighteen specified subjects undertaken by ICAN, in respect of which the plenary meeting of ICAN expressed the expectation that PICAO would take suitable action on the basis of the preparatory work done by ICAN.\textsuperscript{38} It also invited ICAN member states to terminate the application in their territories of the technical annexes to the 1919 Convention and to replace them by the corresponding enactments of the ICAO Council.\textsuperscript{39} Finally, ICAN established a five-member Liquidation Committee which in its turn adopted a plan of liquidation.\textsuperscript{40} While the institution itself ceased to exist on December

\textsuperscript{38} See generally 9 HUDSON 168.
\textsuperscript{39} For the text of the Interim Agreement on International Civil Aviation see 9 HUDSON 157.
\textsuperscript{35} See U.S. DEP’T OF STATE, PUB. NO. 2282, CONFERENCE SERIES 64, INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO, ILLINOIS, NOVEMBER 1 TO DECEMBER 7, 1944, FINAL ACT AND RELATED DOCUMENTS 38 (1945).
\textsuperscript{36} Res. No. 1207, 28 BULLETIN OFFICIEL DE LA CINA 36.
\textsuperscript{37} Res. No. 1167, Interim Council of ICAO, August 15, 1945.
\textsuperscript{38} Res. No. 1217 & 18, 29 BULLETIN OFFICIEL DE LA CINA 43-44.
\textsuperscript{39} Res. No. 1219 & 20, 29 BULLETIN OFFICIEL DE LA CINA 44.
\textsuperscript{40} Res. No. 1222, 29 BULLETIN OFFICIEL DE LA CINA 45.

Resolution No. 1222 provided, \textit{inter alia}, that:

(i) member states be invited to notify their acceptance of the plan within 75 days and any state not having replied by that time should be \textit{deemed} to have accepted the plan;
(ii) in the absence of opposition, the plan would become applicable on April 1, 1947, or on the date of the coming into force of the ICAO Convention, whichever were the later date.

The minutes of the twenty-ninth session of ICAN, in Dublin, October 28-30, 1946, do not indicate whether Resolution 1222 was adopted unanimously or by a majority; they simply record that the Resolution in completed form was finally adopted by the Commission. Minutes No. 168, second sitting of October 30, 1946.

The Liquidation Plan adopted by the Liquidation Committee during its meetings of
liquidation was not completed until December 31, 1948. Archives, certain assets and obligations were transferred to ICAO on the understanding that the latter would credit the accounts of the contracting parties to the 1919 Convention with their respective shares in the liquidation. ICAO also took over claims for arrears in contributions to ICAN on the closing of accounts.

On April 1, 1949, the Council of ICAO, which in November, 1947, had already approved the proposals of the ICAN liquidation committee, noted that the liquidation of ICAN had been completed.

Another international body, the functions of which were taken over by the ICAO, was the International Technical Committee of Aerial Legal Experts, better known as CITEJA (Comité International Technique d'Experts Juridiques Aériens). It had been created pursuant to a recommendation adopted at the First International Conference on Private Air Law held at Paris in 1925 to develop a code of private international air law through the preparation of draft international conventions for final adoption at periodic international conferences on that subject. Resolution VII of the Final Act of the 1944 Chicago Conference recommended that these sessions be resumed as soon as

January 7 and 8, 1947, states in its paragraph 15 that the Committee would notify member states of ICAN as to the date of closing of the liquidation, while paragraph 16 provides that the Committee would "represent ICAN in order to carry out its liquidation and will have full powers to conclude all agreements, take all necessary steps and issue all instructions it will deem necessary."

The final report on the liquidation of ICAN on December 17, 1947 (C-WP/233 Appendix A) records that none of the contracting states opposed the original plan of liquidation which therefore became applicable, under Resolution No. 1222, on April 4, 1947. Section E of the report, entitled "Denunciation of the 1919 Convention," contains the statement that the Committee has drawn the attention of states that have not yet denounced the Convention to the fact "that ICAN, as constituted since its establishment, has ceased to exist as of December 31, 1947." Annex I to the report lists the denunciations of the 1919 Convention as of December 19, 1948. Under the heading "States who have not yet notified denunciation at December 17, 1948" appear Bulgaria, Estonia, Japan, Lettonia and Uruguay. (C-WP/233 at 27).

The day on which ICAO Convention became effective, as contemplated by ICAN Res. No. 1222, supra note 40.

"See Latchford, Co-ordination of CITEJA With the New International Civil Aviation Organization, 12 DEPT OF STATE BULL. 310 n.2 (1945). See also MEMORANDUM ON ICAO (THE STORY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION) 46-47 (1951)."
possible and that the activities of CITEJA be co-ordinated with those of PICAO and later on ICAO. Following a resolution of the Interim Assembly of PICAO, adopted at its first session in June, 1946, the Special Legal Committee of PICAO, on directions from the Interim Council, took up contact with CITEJA, which, in resolutions adopted at meetings in Cairo in November, 1946, and at its final session in Montreal in May, 1947, recommended the continuation of its work by the Legal Committee of ICAO and provided for its own liquidation, including the transfer of CITEJA files and archives for use by the successor body.

Meanwhile, PICAO and, shortly after it came into being, ICAO provided for continuity in the work of CITEJA by assigning to the Legal Committee of the ICAO the tasks of the defunct body, in addition to new functions in the field of international air law. While the terms of reference of the successor body were thus widened, jurisdictionally it was in a less independent position than CITEJA, as the latter was an autonomous international organ set up by a number of states which provided the necessary funds, while the Legal Committee of ICAO is part of the institutional structure of that organization and thus, in law, subject to the procedural and substantive decisions of constitutionally superior instances, i.e., the ICAO Assembly and the ICAO Council. The expectation that, as successor to CITEJA, the Legal Committee of ICAO would in fact enjoy as much independence as the defunct body, was therefore based on elements of fact rather than on legal considerations. The subsequent history of the new Committee confirms this view. It was a peculiarity of the two successions assumed by ICAO that there were no treaty arrangements between the two bodies providing for the take-over, which, rather, rested entirely on concurrent acts of the two organizations, ICAN and CITEJA. Furthermore, there are enough indications to suggest that unanimity principle was not entirely honored in the termination of the multilateral instruments here at issue.

46 PICAO JOURNAL 70 (June 1946).
47 PICAO JOURNAL 73 (September 1946-May 1947).
49 See Latchford, supra note 44, at 496-97.
(b) WHO

A distinctly different legal technique prevailed in the substitution of the World Health Organization (WHO)51 for the Office International d'Hygiène Publique (OHIP) established by the Agreement of December 9, 1907,52 and entrusted with the administration and supervision of existing sanitary conventions.53 When signing the WHO constitution on July 22, 1946, the governments represented at the WHO founding conference established an Interim Commission and instructed it in an instrument of the same day, _inter alia_,54 to take all necessary steps for the transfer of OHIP functions and duties to itself and to initiate the action required for the transfer of OHIP assets and liabilities to WHO upon termination of the 1907 OHIP Agreement. The desirability of appointing available personnel from the OHIP staff to the successor organization was acknowledged. Still, on July 22, 1946, all signatories of the 1907 Agreement, except Germany, Japan and Spain,55 agreed, in a protocol concerning the OHIP,56 that as between themselves OHIP's functions should be performed by WHO or its Interim Commission57 and that they should terminate or denounced the 1907 agreement according to a procedure specified in its particulars.58

The actual substitution of WHO for OHIP and the liquidation of the latter's assets was carried out first by the Interim Commission, then by WHO itself from 1946 to 1951 in collaboration with the organs of the OHIP.59 A legal highlight of this takeover was the blanket endorsement of the technical decisions adopted by the OHIP in the exercise of its function to carry out certain international sanitary conven-

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52 100 BRITISH AND FOREIGN STATE PAPERS 466.
54 Id., 2(c) at 801.
55 In January, 1952, the Executive Board of WHO noted that the Governments of the Federal Republic of Germany, of Japan and Spain had also denounced the 1907 Agreement. HANDBOOK OF RESOLUTIONS AND DECISIONS OF THE WORLD HEALTH ASSEMBLY AND THE EXECUTIVE BOARD 249 (5th ed. 1959) [hereinafter cited as WHO HANDBOOK].
57 Id., arts. 1, 2.
58 Id., arts. 3-5. The devolution of functions of UNRRA and of the Health Organization of the League of Nations on WHO was brought about in the broader context of the transition from the League of Nations to the United Nations. See text accompanying footnote 73 infra.
Another legal highlight consisted in the parallel resolutions of the OHIP Permanent Committee and of the Third World Health Assembly, both taken in May, 1950, providing for the transfer of functions and assets on liquidation, and for the continuation of specific OHIP projects as well as the acknowledgment by the appropriate WHO organs of the completion of the substitution. Also of significance were the denunciation of the 1907 agreement by all contracting parties thereto and the espousal by WHO of claims for arrearages in contributions due in respect of OHIP from 1953 on.

As a preliminary legal assessment of the transition from OHIP to WHO, it may be observed that while the protocol concerning OHIP of July 22, 1946, and the arrangement of the same day are, in their wording, in line with the unanimity principle as applied to the revision and termination of treaties, it is doubtful whether the effective carrying out of the substitution of WHO for OHIP under those international acts was also in accordance with that precept. Rather, it appears that the take-over and the dissolution of the OHIP as an international entity were completed before all contracting parties to the 1907 agreement had renounced that treaty.

(c) WMO

Proceeding chronologically within the domain of substitution, the next case in point is the transition from the International Meteorological Organization (IMO) to the World Meteorological Organization (WMO). The distinctive feature of this case is the absence of any extraneous normative element, that is, of any rule not adopted by a body of one of the two organizations involved by way of intra-organizational law-making such as a treaty abrogating an earlier international arrangement, inasmuch as the decision to transform IMO into WMO was taken in 1939 and implemented by the IMO's twelfth Conference of Directors in 1947. The IMO/WMO transition has this element in common with the two successions assumed by ICAO. Previously, IMO had been, since 1878, an association of directors of independent public meteorological services. The purpose of the reform was to make

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60 WHO Handbook 247 (November, 1948 decision of the Executive Board).
61 Id., at 248-49.
that body an inter-governmental organization whose members would consist of states and territories having such services.6

The Convention of the WMO,65 which was adopted at the 1947 Washington meeting of the IMO, provides in article 26(c) that the WMO may take over from any other international organization or agency "the purpose and activities of which lie within the purposes [of the WMO] such functions, resources, and obligations as may be transferred [to it] by international agreement or by mutually acceptable arrangements entered into between the competent authorities of the respective organizations." The WMO Convention came into force on March 21, 1950. The transformation was completed on April 4, 1951.68 This transition was put into effect at the last Conference of Directors of IMO by the adoption of a resolution providing, in the language of Article 26(c) of the WMO Convention, for the hand-over of IMO functions and assets to WMO67 and of a parallel resolution by the First World Meteorological Congress.68

This "mutually acceptable arrangement" carried out the most complete substitution feasible, the totality of the functions and assets of IMO being taken over by WMO.69 Again, the successor institution gave blanket endorsement to the technical resolutions of the outgoing organization;70 the concurrent resolutions also enumerated IMO publications which would from then on be published, maintained up to date, or completed by WMO;71 and finally specified the conditions of employment of IMO staff engaged by WMO and the compensation to the IMO staff not engaged by WMO.72

The transition from IMO to WMO is devoid of spectacular legal elements which would place it apart from the other instances of substitution. Nevertheless, it is interesting to note that, as applied by WMO, the concept of "mutually acceptable arrangements" in Article 26(c) of the WMO Constitution as a means for the carrying out of a

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65 2 Peaslee, op. cit. supra note 28, at 815 (1956). The Convention was signed on October 11, 1947.
66 Id., at 822.
68 WMO Publication No. 1/1, First Congress of the WMO, Paris, March 19-April 28, 1951, Final Report; Vol. i: Resolutions; Res. 3(i) at 1-3.
69 Id., ¶ 4, at 2.
70 Id., Res. 4(i), at 3-4.
71 Id., Res. 5(1), at 4-5.
72 Id., Res. 6(1), at 5.
transition includes concurrent resolutions of the responsible bodies of the WMO and of the other international institutions involved in the transaction. Thus, WMO followed the corresponding practice of WHO under article seventy-two of its Constitution, which contains the same term.

(2) Apart from these instances of substitution of one international entity for another moribund one, there are at least two major transitions where the functional domain of a defunct organization was split among two or more successor bodies.

(a) UNRRA

Essentially, the winding-up of the United Nations Relief and Rehabilitation Administration (UNRRA) consisted of the separation of the bundle of responsibilities incumbent on it as an all-embracing operational institution coping with post-war economic and refugee problems in their entirety and the assignment of these respective functions to the appropriate specialized agencies of the United Nations.78

The first of these hand-overs concerned the UNRRA Health Services,74 which to a considerable degree were taken over by WHO through the intermediary of its Interim Commission.75 UNRRA, under the International Sanitary Convention and the International Sanitary Convention for Aerial Navigation of December 15, 1944,76 as extended by protocols of April 23, 1946,77 prolonging the duration of those conventions, had carried out the functions of the OHIP which the latter was unable to discharge due to the war. In August, 1946, the Council of UNRRA authorized the Director-General to assign UNRRA functions under these conventions to the WHO Interim Commission.78 The other health functions of UNRRA were transferred to WHO by an agreement of December 9, 1946.79 By a resolution adopted in July, 1948, the First World Health Assembly recognized the assumption

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73 The UNRRA agreement was signed and went into force on November 9, 1943. 9 HUDSON 84.
76 9 HUDSON 236, 254.
77 9 HUDSON 251, 272.
78 3 WOODBRIDGE, op. cit. supra note 74, at 157-58. This transfer was effected as from December 1, 1946, by an exchange of letters between the Secretary-General of UNRRA and the Executive Secretary of IC/WHO on October 22, 1946. 3 WOODBRIDGE, op. cit. supra, at 351-52.
79 Id. at 352-54. The authorization is contained in UNRRA Council Res. 97. Id. at 157-58.
of UNRRA obligations and assets by the WHO Interim Commission under the 1946 agreement which, apart from dealing with the hand-over functions and assets, concerned also the possible use of UNRRA personnel by the successor body.

A second substitution concerning UNRRA was the hand-over of its child welfare functions to the International Children's Emergency Fund (ICEF), which had been founded by the United Nations General Assembly Resolution 57(1) of December 11, 1946, pursuant to a proposal of the UNRRA Council. The United Nations General Assembly Resolution creating ICEF contemplated that it would use such staff, records, and equipment as might be transferred from UNRRA during the latter's existence. But the most important contribution of UNRRA to ICEF consisted of sizeable allocations of money, which represented the larger portion of UNRRA's residual resources.

A somewhat short-lived substitution was brought about with respect to the social welfare activities of UNRRA. While the UNRRA Council had apparently envisaged lasting continuity of its work in that field by the United Nations and, in particular, the latter's Secretariat, the United Nations General Assembly provided only for continuance during 1947.

A third substitution was the transfer to the Food and Agriculture Organization of the United Nations (FAO) of technical and advisory services initiated by UNRRA to increase food production in devastated areas and assignment of the money necessary to ensure initial continuity in this work. An agreement to this effect was concluded between the two organizations in February, 1947. This agreement also provided for the assignment of UNRRA personnel to FAO for the purposes set out in the arrangement.

Finally, UNRRA's work for displaced persons, which constituted a major part of its activities, was handed over to the International Refugee Organization (IRO) as were the functions of the pre-war organization charged with this responsibility, the Intergovernmental Committee on

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80 WHO Handbook 251.
81 Res. 105, 3 WOODBRIDGE, op. cit. supra note 74, at 167-68.
83 In Res. 95, 3 WOODBRIDGE, op. cit. supra note 74, at 158-59.
85 1946-1947 U.N. YEARBOOK 691.
86 3 WOODBRIDGE, op. cit. supra note 74, at 354.
Refugees.\(^7\) Authorized by a resolution of the UNRRA Council, which outlined the policy to be observed for the continuation of UNRRA's operation, notably that repatriation to the country of origin should be encouraged and that UNRRA personnel not observing that policy should be dismissed,\(^8\) the agreement of June 29, 1947, between the Preparatory Commission of IRO and UNRRA provided continuity of UNRRA functions\(^8\) which, however, was soon drastically affected by the insufficiency of funds available for the tasks taken over by the new agency. Subsequently, in July, 1947, UNRRA relinquished further responsibility for the care of displaced persons.

The winding up of UNRRA's financial affairs followed. This involved the closing of offices and operational agencies, release of the staff, and transfer of the residual assets and activities to the United Nations.\(^9\) That transfer was the subject of an agreement between UNRRA and the United Nations in September, 1948,\(^1\) which provided for the assumption by the United Nations of residual accounting functions following the termination of the liquidation, supervision of the completion of the official UNRRA history, maintenance of UNRRA's archives, and assignment of certain UNRRA claims\(^2\) for the account of the United Nations International Children's Emergency Fund.\(^3\) The transition from the post-war period to peace, from a relief organization to specialized peacetime agencies of the United Nations had been carried out.

The medley of legal techniques employed in the winding-up of

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\(^7\) On the history of this body, see Editor's Note at 8 HUDSON 19.

\(^8\) Res. 99, 3 WOODBRIDGE, op. cit. supra note 74, at 161-64.

\(^9\) Id. at 356-58.

\(^1\) Id. at 315-20.

\(^2\) 27 U.N.T.S. 349.

\(^3\) See United Nations v. Brandes, 1952 U.N. Yearbook 818, [1952] Int'l L. Rep. 490 (No. 109), in which a Belgian court ruled that the United Nations was entitled to UNRRA's claims under the terms of the assignment made by UNRRA to the United Nations for the benefit of UNICEF. In Wencak v. United Nations, Annual Report of the Secretary-General on the Work of the Organization, U.N. Gen. Ass. Off. Rec. 11th Sess., Vol. 9, Supp. No. 1, at 107 (A/3137) (1956), the Supreme Court of New York dismissed the claim of a former refugee by decision of January 18, 1956, who had alleged injuries incurred while he was traveling on a UNRRA truck. According to the New York court, the United Nations is in no way a successor to UNRRA, as the agreement of September 27, 1948, was not an assumption of liabilities upon succession to assets.

UNRRA’s affairs offer nothing that could not already be detected in the substitutions considered earlier.

(b) IRO

The dissolution of IRO and its replacement by two other international institutions, the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for European Migration (ICEM), did not involve all the responsibilities with which IRO had been entrusted. As it was intended to be a temporary organization, IRO early concluded agreements with states providing for the turning over of specific IRO functions in order to secure continuity on extinction of IRO.\(^4\) The remaining tasks of IRO together with the assets allocated thereto were distributed between the UNHCR and ICEM. This was possible because the number of post-war refugees had been drastically reduced during IRO's existence.

The UNHCR, created by a resolution of the United Nations Gen-

\(^4\) For a list of these agreements and their texts, see Holborne, *The International Refugee Organization*, 594 (1956). The history of IRO offers another case of succession, as its Preparatory Commission concluded on June 27, 1947, an agreement with the Intergovernmental Committee on Refugees providing for the transfer of certain functions, financial obligations, personnel, and archives to PCIRO. Holborne, op. cit. supra at 591-92.

Though the Liquidator of the IRO in his REPORT at 26 denies that there was any succession in respect of IRO's assets and maintains in consequence that a "complete" liquidation took place in the winding-up of that organization, this broad statement may be too sweeping because:

(i) it is not borne out by the Statute of UNHCR, and the other relevant Resolutions of the General Assembly and of the Economic and Social Council, as set out in *United Nations Resolutions Concerning the Office of the United Nations Commissioner for Refugees* (HRC/INF/48) (1961), which provide for the assumption of a considerable part of the defunct body's tasks by UNHCR;

(ii) specific clauses in management agreements concluded between the IRO and other parties provided that IRO upon its closure will designate a successor organization to undertake rights and obligations formerly exercised by IRO. In most of these agreements UNHCR was designated as successor organization and therefore became the legal successor to IRO to the extent provided for in the agreement. E.g., arts. II.41 III.5; IV(2) of Management Agreement between IRO and Land Hessen concerning the Philipps hospital in Goddelau/Hessen together with the authorization of UNHCR succession to IRO responsibilities as required by the Agreement dated February 15, 1952 (Ref. DFO/TDS/65);

(iii) during a series of conferences between the two organizations it was agreed that certain specific IRO responsibilities would be taken over by UNHCR together with the relevant documentation; and

(iv) Resolution 106 of the IRO General Council provided that the Office of UNCHR should be consulted about the transfer of IRO responsibilities and assets to other organizations.
eral Assembly, took over the legal and political protection of refugees, together with the co-ordination of the efforts of private organizations concerned with the welfare of refugees and the money necessary for their protection. ICEM, or more precisely the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME), carried on IRO's resettlement activities and for that purpose received from the moribund institution the charter of its twelve-ship migration fleet, as well as nearly three million dollars toward the completion of the final resettlement of a specified number of refugees. IRO terminated its activities on January 11, 1952, and liquidation followed.

(3) As can be seen from the above, substitutions are usually carried out in accordance with certain principles which set the procedural and, to a lesser extent, substantive patterns for all of them. None of them has been provided for after the termination of the moribund organization. Where substitution occurred, it was the result of an arrangement negotiated with the participation, or at least on the instructions, of organs of both institutions concerned, the arrangement always being in the nature of a consensual disposition over the functions or assets, or both, of the outgoing entity.

The typology is less outspoken as regards the formal instrument providing for substitution. As a rule, it is the treaty which prevails as the main vehicle of transition. Yet, as has been seen, there have been at least two instances, CITEJA/Legal Committee of ICAO and IMO/WMO, where concurrent unilateral acts of the entities involved replaced the treaty, yet brought about the same effects as had interorganizational agreements in the other cases. One might therefore be

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89 Holborne, op. cit. supra note 94, at 561-62.
91 The present writer has been advised, after the completion of this article, that there was no transfer of the charters of the ships between the two organizations, PICMME having concluded contracts directly with the shipowners for the ships used as from the inception of PICMME's operations in February, 1952.
92 See 1951 U.N. Yearbook 524; 1950 U.N. Yearbook 588; Holborne, op. cit. supra note 94, at 565. Three agreements were made between IRO and PICMME regarding the transfer of funds for the joint UNHCR/PICMME office in Hong Kong, for the establishment of a trust fund to be administered by PICMME and for certain movements of refugees to be undertaken by PICMME. The IRO Trust Fund Agreement was concluded between the Liquidator of IRO and the Director of PICMME on July 28, 1952, and amended on September 23, 1952 (Doc. PIC/LEG/A/4/Rev.1).
tempted to classify such concurrent resolutions as quasi-agreements.\footnote{9} Still, it is submitted that this would perhaps not do justice to the specific nature of the law of international organization, which tends to develop new forms in its own right and does not depend on analogies drawn from the traditional law of nations or definitions consisting of elements derived from that law for justification.\footnote{100}

A second feature is the separation between the take-over of substantive—administrative, operational, and regulatory—functions and the winding up of the financial matters of the moribund entity. Not only are the assets sometimes assigned to bodies other than the successor to the functional responsibilities, but there is at least one case, that of UNRRA/UN,\footnote{101} where the assignment of assets was not accompanied by an assumption of liabilities.\footnote{102} Surely it is easier for an intergovernmental organization, whether moribund or successor, to ward off claims, than it is for an ordinary subject of private or public law to do the same, since the international corporate entity is usually clothed with a far-reaching jurisdictional immunity in national courts.\footnote{103} The reason why assets and functions have been split in succession was, therefore, not that claims against the successor should be excluded. Rather, the reason for this way of dealing with cases of substitution may be explained by the peculiarities of international organization.

While in the succession of states, practice has been guided by the principle that the assumption of functions of the territorial sovereign may carry with it certain—hardly overall—financial and other obligations of an economic nature,\footnote{104} such a link between function and liability

\footnote{9} The exposé by Freymond i ANNUARIE SUISSE DE DROIT INTERNATIONAL 64 (1954) has shown that even each unilateral act of a deliberative organ of an international organization may be in the nature of a quasi-agreement. See Virally, supra note 10, and 2 DAHM, VÖLKERRECHT 25-35 (1961).

\footnote{100} It should be noted, nevertheless, that the use of concurrent acts of law-making bodies is not foreign to the law of nations, evidence being, e.g., United States-Canadian co-operation in the construction of the St. Lawrence Seaway, which reposed largely on concurrent actions by the legislatures of the two nations concerned. See BAXTER, DOCUMENTS ON THE ST. LAWRENCE SEAWAY passim (1960); Cohen & Nadeau, The Legal Framework of the St. Lawrence Seaway, 1959 U. ILL. L.F. 29.

\footnote{101} See UNRRA-United Nations Agreement of September 27, 1948, 27 U.N.T.S. 149.


\footnote{103} Exceptions are, e.g., the International Finance Corporation and the International Development Association. For a review of this aspect of the immunities of international organizations, see JENKS, INTERNATIONAL IMMUNITIES 37-45 (1961).

\footnote{104} See BERBER, LEHRBUCH DES VÖLKERRECHTS 246 (1960); 1 DAHM, VÖLKER-
does not necessarily exist in succession among international organizations. As the precedents show, it is conceivable that, for non-legal reasons, a new organization assumes the functions without taking over the assets or liabilities, or both, of its predecessor. The complete separability of the substantive and financial responsibilities of an organization in its dissolution thus seems another element which distinguishes succession in the law of international organization from other instances of succession in public international law. The absence of the territorial element in the winding-up of the affairs of functional international organizations, an element which in the succession of states by its sheer existence has dictated certain solutions, appears to have permitted this separability.

Finally, in the desire to execute efficiently the provisions of an agreement or other international act relating to succession or devolution as between international organizations, the constituent instruments of the moribund institutions have not always been treated with the respect that would have been due to them as treaties or treaty-like arrangements. As has been seen, there has been at least one case, that of OHIP/WHO, where succession took place before the charter of the extinct organization had been renounced by all the contracting parties thereto. It is not contested that this was the expedient way of proceeding. Yet the fact remains that the exigencies of the law of treaties were not complied with to the fullest extent, a phenomenon which appears again in the case of merger between international organizations.

B. Merger

The distinction between substitution and merger lies essentially in the timing of the decision by the successor body to take over the moribund institution, either to carry on its work, to assume its financial liabilities, or both. While in the case of substitution the transition is part of the terms of reference of the successor from the latter’s inception, as

RECHT 100 (1958). The rule set out, e.g., in § 419 of the German Civil Code (BGB)—the conveyance or take-over of someone’s assets in their entirety entails ipso jure the assumption, by the recipient, i.e., the beneficiary of the transfer, of all the debts and obligations of the predecessor—seems to be limited in scope primarily to private law. When the precept underlying the rule has been applied in international public law, this was not the consequence of a private law analogy which hardened into a norm of customary international law, but usually the outcome of conventional or judicial measures designed to settle concrete cases or controversies, though the relative frequency of such solutions in international practice may betray the emergence of a more general principle. Cf. Scheuner, supra note 10, at 31 in respect of international public law and German constitutional law.
set out in its constituent charter or other international acts or unmistakably resulting from the travaux préparatoires, the question of merger is decided at a later date. Thus, while in substitution, the structure and functioning of the new organization is geared from the outset to replacing the outgoing entity, a merger involves subsequent adaptation.

Merger may involve more on the part of the successor organization than the usual take-over procedure found when the technique of substitution is used. The proper law of the successor, especially its constituent instrument, may require amendment to permit the modification of purposes, structure, and functions which a specific merger calls for. That amendment process may necessitate the passing of severe procedural hurdles unless the law of an international institution admits of its carrying out in more simple forms.\footnote{105 In the instances to follow here, no such difficulties had to be surmounted. The pattern observed in post-World War II substitutions was followed in almost every detail.}

**(1) IIA-FAO**

By a resolution adopted at its first session in October, 1945, the Conference of the Food and Agriculture Organization of the United Nations (FAO) recommended to its member states concerned the dissolution of the International Institute of Agriculture (IIA) by appropriate legal means. It further recommended that thereafter the assets of IIA should be transferred to, and its functions under certain international conventions assumed by, FAO.\footnote{106 See generally Schwelb, 31 BRIT. YB. INT’L. L. 49 (1954).} In accordance with these terms the Permanent Committee of the IIA, the executive body of that organization, on March 30, 1946, suggested to the General Assembly of the IIA the enactment of a resolution of dissolution\footnote{107 See Report of the First Session of the FAO Conference, Quebec, Oct., 1945, at 55.} which should also request governments parties to the Convention of June 7, 1905, on the Creation of IIA,\footnote{108 Report of the Second Session of the FAO Conference, Copenhagen, Sept., 1946, Annex I at 62.} to terminate that convention in accordance with a protocol.\footnote{109 See BRITISH AND FOREIGN STATE PAPERS 595 (1905).} In July, 1946, the protocol and the action taken by the Permanent Committee of IIA regarding the transition to FAO were approved by the General Assembly of IIA.\footnote{109 Actes de la 16ème Assemblée Générale, July 8-9, 1946, No. 3.} The protocol of March...
30, 1946, to terminate the 1905 convention provided that it should come into force upon acceptance by thirty-five members of the IIA, though at the time there were more than fifty parties to the 1905 convention and, other than the defeated states, at least Costa Rica, Mexico, Ethiopia and New Zealand did not sign the protocol. While that instrument was to come into force as between the parties to it, it also provided that the Institute should be brought to an end by the Permanent Committee after collection of all the assets of the Institute and their transfer to FAO.

The two organizations agreed that the affairs of the IIA would not be formally wound up and its assets and liabilities transferred to FAO until the Permanent Committee had collected contributions from member governments and satisfied financial obligations to the staff.¹¹¹ The protocol came into force on January 28, 1948, and on February 27, 1948, the Permanent Committee of the IIA announced the dissolution of the Institute.¹¹²

Though the 1946 resolution of the IIA General Assembly¹¹³ had instructed the Permanent Committee to perform the duties assigned to it under the protocol, it nevertheless remains that the Committee’s ordinary authority under the 1905 convention was limited to the collection of information and its normal business was conducted by majority rule. Moreover, the 1946 protocol, in addition to providing for termination of the Institute, also stated that thereafter the powers, rights, or duties attributed to the IIA by a series of international conventions should devolve on FAO instead, though there was no provision for the approval of such devolution by the parties to these conventions.

One might therefore be inclined to qualify the machinery for the implementation of the IIA-FAO merger as an outright departure from the unanimity principle in the revision of treaties.¹¹⁴ However, the IIA-FAO transition and the repeal of the 1905 convention has since been accepted by IIA members who had not accepted the 1946 protocol, such as the Federal Republic of Germany, as successor to the German Reich. That feature, like some other instances in the history of the interorganizational relations,¹¹⁵ might suggest that the revision and termina-

¹¹² DEP’T STATE BULL. 828 (1948).
¹¹³ See Actes de la 16ème Assemblée Générale, July 8-9, 1946, No. 3.
¹¹⁵ Id. at 251-52.
tion of treaties may also be brought about by a majority decision, the only states having a legal veto, in the absence of specific treaty provisions, being those whose territorial sovereignty will be affected by the new arrangements. It is submitted that the following instance of merger supports this view.

(2) IIIC-UNESCO

The take-over of the International Institute of Intellectual Cooperation (IIIC) by the United Nations Educational Scientific and Cultural Organization (UNESCO) had been foreshadowed during the 1945 conference which drew up the UNESCO constitution. However, the reference made to the IIIC by Léon Blum on that occasion was so vague that it left open the nature of the relationship to be established between UNESCO and the Institute. The merger was actually initiated by the twenty-first and last Assembly of the League of Nations which, on the proposal of its First Commission in April, 1946, adopted a resolution transferring its property rights in the IIIC to the United Nations. This transfer had been deemed necessary because, as a consequence of the dissolution of the League of Nations, the IIIC had lost its Board of Administration, which was composed of the members of the Commission on Intellectual Co-operation of the League of Nations. At the suggestion of UNESCO, the Secretary General of the United Nations proposed a draft resolution to the United Nations General Assembly. The proposal, adopted in November,

116 "Nor is it our intention to propose indirectly, however great the services it has rendered, the maintenance of the former Institute of Intellectual Co-operation. That Institute, with the working instruments it has available, which in our opinion it would be unwise to ignore—is still at your disposal, but you will make exactly such use of it as you may think fit." Conference for the Establishment of UNESCO, Preparatory Comm'n, 2d Plenary Meeting, London, June, 1945, at 28 (ECO/CONF./29). See also the statement by the delegate of France, the IIIC's host state: "As regards the organisation and personnel of the International Institute of Intellectual Co-operation, such steps could be taken as might seem most suited to the purpose in view: the existing elements might be retained or those same elements might be called upon to dissolve and merge in U.N.E.S.C.O. like snow in a great river." Id. at 132-13 (4th Comm'n Summary Reports, 3d Meeting). On the general setting of the IIIC/UNESCO transition see also UNESCO, RAPPORT DE LA COMMISSION PREPERATOIRE SUR LA CONFERENCE GENERALE (doc. UNESCO. 7) (1946); LA FRANCE ET L'U.N.E.S.C.O. (1946).


118 Id. at 252.

1946,\textsuperscript{120} recommended the continuation of IIIC activities by UNESCO on the coming into force of the latter’s constitution, invited the Secretary General of the United Nations to transfer IIIC property received by him from the League of Nations, and urged the conclusion of an agreement between IIIC and UNESCO.

Applying Article XI(2) of the UNESCO Constitution of November 16, 1945,\textsuperscript{121} which permits mutually acceptable arrangements with another specialized international organization whose functions lie within UNESCO’s field of activity for the transfer of resources and tasks to UNESCO, the two organizations, IIIC and UNESCO, worked out an agreement to that effect. After approval at the first session of the UNESCO General Conference on December 10, 1946,\textsuperscript{122} the agreement was signed on December 19, 1946.\textsuperscript{123} The arrangement envisaged the continuation of the functions of IIIC by the successor organization\textsuperscript{124} and the transfer of IIIC assets to UNESCO, provided how these assets should be used by UNESCO, and instructed the latter to give special consideration to applications from former IIIC personnel “given equal competence and merits of applicants.”\textsuperscript{125} The agreement, in accordance with its final clause, came into force on signature.\textsuperscript{126} Yet it was not until August 24, 1956, that the liquidation of IIIC assets was finally terminated and the remaining assets could be allocated in the UNESCO budget.\textsuperscript{127}

\textsuperscript{120} The Preamble of the IIIC-UNESCO Agreement refers to October 25, 1946, as the date of adoption.

\textsuperscript{121} In force since November 4, 1946. \textsuperscript{2} Peaslee, \textit{op. cit. supra} note 28, at 714.

\textsuperscript{122} See Doc. UNESCO/C/30 at 77 (1947).


\textsuperscript{124} UNESCO “shall endeavour to ensure the continuity of work done by the” IIIC. (Art.2).

\textsuperscript{125} \textit{Id.} at Art. 4.

\textsuperscript{126} The 1938 International Act concerning Intellectual Cooperation (8 Hudson 208) gave the IIIC a broader basis. Until then it had been based on the 1924 Agreement between the French Government and the League of Nations only. See Editor’s Note at 8 Hudson 208-9. The 1938 act provided that if the number of contracting parties should as a result of denunciations become less than eight, the act would no longer remain in effect. Save evidence to the contrary, it seems that in fact the substance of that rule was respected in the course of the IIIC transition. It would be interesting to know whether the corresponding procedural proviso of the 1938 act (Art.10), which imposed two years’ notice for denunciation and specified that such notice had to be addressed to the French Government, was observed or by-passed. If the answer is in the negative, as one would surmise, the tendency towards a restrictive application of the unanimity rule would have found there another expression.

\textsuperscript{127} Namely for the social sciences. \textit{cf.} UNESCO Doc. 44 Ex/Decisions of August 21, 1956 at 19 (item 10). The story of IIIC liquidation may be traced in detail on the basis of the following UNESCO documents: 29 EX/38 of February 29, 1952; 29
Few legal conclusions may be drawn from the two instances discussed under the present heading apart from the one already suggested, namely, that in a merger the arrangements governing dissolution and transition of the moribund institution tend to be applied and interpreted in such a way as to achieve an efficient and timely continuation of the tasks of the outgoing organization. Whether that approach is explained in terms of a justified review of the unanimity rule in the revision and termination of treaties, i.e., as an adjustment of a specific aspect of the law of treaties to the exigencies of international organizations, or as an outcome of political developments forcing the hands of the states and organizations concerned, the result is always an acknowledgment of the same phenomenon: the application and interpretation of organizational charters and norms enacted thereunder need no longer follow the intention of the original signatories of such a covenant, nor need be necessarily in line with the objective meaning of a rule, but must above all, ensure, in the absence of express provisions to the contrary, the efficient functioning of the international institutions concerned. The two instances examined tend to show that this principle prevails also where the member states of an international organization, or even their majority only, deem the continuity of the functions exercised by that organization desirable, but have decided at the same time to see that continuity ensured by another international agency.

The study of substitution and merger has shown that in practice the functional approach is usually applied. That is, the moribund institution is done away with as expeditiously as is reconcilable with the wishes of member states, in order that the tasks of the outgoing organization may be carried on without interruption. While during the lifetime of an organization the efficient exercise of its functions may require


128 As does Charles de Visscher, op. cit. supra note 13, at 331-35.

a strengthening of its institutions, once transfer of those functions to another international body is decided, the same underlying principle may call for the rapid dissolution of the organization. The appropriate display of internationalized functions, not the widening of the powers of the international institutions which happen to be entrusted with them,\(^{130}\) is the aim of the teleological-functional approach.

C. Transfer

There is at least one instance where a conventional transfer of functions took place between two international bodies, both of which continue to exist, OHIP and UNRRA, by virtue of the International Sanitary Convention and the International Sanitary Convention for Aerial Navigation of December, 1944.\(^ {131}\) It is true that the tasks entrusted to UNRRA under these treaties\(^ {132}\) were to revert to OHIP once the latter was no longer “unable ... to carry out effectively all of the duties and functions assigned to it” under various international sanitary conventions,\(^ {133}\) but that eventuality apparently never materialized because the OHIP was taken over by WHO before the hypothetical date of the re-transfer arrived.

II.

AUTOMATIC SUCCESSION

Automatic succession can occur only where no rules of international legislation are available to provide for or expressly justify the devolution of functions on a successor body or where they settle the succession into some functions only and leave the legal fate of the others in abeyance. Practice thus far reveals instances of the second category only. The case in point is the assumption by the United Nations and its organs of certain activities of the League of Nations. That transition is also interesting in those of its parts which constitute a conventional succession.\(^ {134}\) But for the purposes of legal typology, its more

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\(^{130}\) This thesis has been developed by the present writer in more detail in 10 JAHREBUCH FÜR INTERNATIONALES RECHT 1, 13-14, 36 (1961) and in the penetrating study by Seyersted, supra note 26, at 188, 201-14.

\(^{131}\) 9 HUDSON 236, 254.

\(^{132}\) As extended by protocols for their prolongation of April 23, 1946, 9 HUDSON 251, 272.

\(^{133}\) Preambles of the 1944 Conventions, 9 HUDSON 236, 254.

\(^{134}\) The most exhaustive account of this aspect is Myers, Liquidation of League of Nations Functions, 42 AM. J. INT'L L. 320 (1948). A companion, but unpublished, piece by the same author on “Liquidation of League of Nations Assets” was kindly made available by Mr. Myers to the present writer. See also 2 WALTERS, A HISTORY OF THE
important aspect is the non-conventional succession between the two universal organizations which, according to some, 238 is a postulate or, according to others, "constitutes the most important example of succession in international organization."

Where it occurred, conventional succession by the United Nations was the fruit of the collaboration of its organs with those of the League of Nations. 237 At the outset, the Executive Committee of the Preparatory Commission of the United Nations envisaged the transfer of the functions, activities, and assets of the League of Nations as they stood, leaving the United Nations to continue, modify, or liquidate any part in the light of its own policies and conditions. 238 However, even that proposal was already heavily qualified in that no "political questions" were to be included in the transfer and no recommendations were made regarding refugees, mandates, or international bureaus. After the coming into force of the United Nations Charter on October 24, 1945, there followed the adoption of the "Common Plan" for the transfer of League of Nations assets to the United Nations 239 by way of concurrent resolutions of the United Nations General Assembly 240 and the Assembly of the League. 241


238 DAHM, Völkerrecht 120 (1961) Scheuner, supra note 10, at 46-48. See also in a pronouncedly defensive manner, the written statement submitted by the Union of South Africa as well as the oral statement submitted by its representative, Dr. Steyn in International Status of South-West Africa—Pleadings, Oral Arguments, and Documents 72, 273 (I.C.J. 1950).


237 For a concise account see Hoyt, op. cit. supra note 114, 72-75.

239 Report by the Executive Committee to the Preparatory Commission of the United Nations 168 (1945).


241 Res. of April 18, 1946, L.N. Ass. Off. Rec. (21st Ordinary Sess.) 281. The Resolution specified that the League of Nations should cease to exist as from April 19, 1946, "except for the sole purpose of liquidation" of its affairs. At the same time, the Council, Assembly, and the whole system of committees of the League were to disappear and instead a Board of Liquidation appointed by the Assembly, to which the Secretary-General was to be responsible, received full power to wind up the League in accordance
In order to prevent a blanket transfer of League of Nations functions, as distinguished from League of Nations assets, the United Nations General Assembly reserved “the right to decide . . . not to assume any particular function or power.” The first function assumed by the United Nations was the custody of the original texts of international agreements and of the registration of treaties. As to the substantive functions of the League of Nations under treaties, the General Assembly made a basic distinction between political and non-political tasks. The latter were by and large, though not entirely, taken over by the United Nations and its specialized agencies in pursuance of a series of specific acts of the General Assembly and the Economic and Social Council, as well as in conformity with a variety of agreements concluded for that purpose. The non-political tasks taken over included those relating to international control over narcotic drugs, traffic in women and children, child welfare, health, refugees, and economic reporting and communications.

One might consider the functions of the Permanent Court of International Justice (PCIJ) as non-political and their transfer to the International Court of Justice (ICJ) as part of the operation which ensured the continuity of certain League functions under the auspices of, or by, the United Nations. Yet, it should be noted that at the 1945 San Francisco Conference which drafted the Charter of the United Nations and the ancillary instruments thereto, the decision in favor of the creation of a new court was taken largely in view of the absence of a number of parties to the 1920 PCIJ Statute and “the negotiations of the parties not thus represented which would be required for effecting modifications in the 1920 Statute would encounter difficulties and might be very protracted.” The transfer of functions exercised by the Permanent Court of International Justice was thereupon provided for in Articles thirty-six and thirty-seven of the ICJ Statute. Under Article 36(5) of

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with the resolution and with the other decisions taken during the session. See also the Agreements at 1 U.N.T.S. 109, 119, 131, 155.


149 Id. at 33-34.


146 Myers, supra note 134, at 338.

145 This seems to be Professor Hoyt’s view, HOYT, op. cit. supra note 114, at 32.

144 14 U.N. CONFERENCE ON INTERNATIONAL ORGANIZATION 383 (1945).
the ICJ Statute, declarations made under Article thirty-six of the PCIJ Statute which are still in force are to be deemed acceptances of the compulsory jurisdiction of the International Court of Justice for the period for which they run and in accordance with their terms as between parties to the ICJ Statute. Under Article thirty-seven of the ICJ Statute, whenever a treaty or convention in force provides for reference of a matter to a tribunal instituted by the League of Nations or to the Permanent Court of International Justice the matter is, as between parties to the ICJ Statute, to be referred to the International Court of Justice. All that remained to be done after the San Francisco Conference was the de facto termination of the Permanent Court of International Justice. This was brought about by collective resignation of its members on January 31, 1946, the dissolution of the League of Nations having excluded their replacement.

While there has, therefore, been succession in regard to certain activities and even a far-reaching “juridical-functional” continuity, there can hardly be any question that no universal succession took place. Insofar as no carry-over was conventionally agreed upon, either in treaties or equivalent international instruments, the postulate of an automatic succession was the major, though not the only, legal basis for claims alleging the right of the United Nations and its organs to exercise powers conferred on the League of Nations.

The refusal of the Union of South Africa to propose a trusteeship agreement for the Territory of South-West Africa ultimately resulted in a series of political and judicial contests which centered around the issue whether or not automatic succession as between two international organizations may be sufficient as a title to rights and powers with which a predecessor organization had been vested. After the Government of the Union of South Africa had declined to continue the submission of annual reports on the administration of the Territory of South-West Africa, the United Nations General Assembly asked the International

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149 ROSENNE, op. cit. supra note 144, at 31.
150 Which apparently was also contrary to the intentions of the draftsmen of the U.N. Charter as set out in the British Government commentary. Gt. Brit. Parliament, House of Commons, 26 Session Papers, cmd. 6666, ¶ 60, at 389 (Min. No. 9) (1945-46). For a history of the ensuing dispute see 4 REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS 195-98, ¶ 5-12 of comment on Article 80 (1955); 3 REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS, Supplement No. 1, Vol. 2, 222-26, ¶ 5-20 of comment on Article 80 (1958); and the pleadings, oral arguments and documents submitted to the International Court of Justice in the first South-West Africa case.
Court of Justice for an advisory opinion on the international status of that territory and some ancillary and related questions which altogether aimed at elucidating whether the dissolution of the League of Nations had put an end to the position of the territory as a mandate and whether the relevant provisions of the Charter of the United Nations would now apply.

The Court rejected South Africa's contention that the mandate had lapsed when the League had ceased to exist. It held that South Africa was obliged to submit to supervision by the General Assembly and to render annual reports to it. It is true that the Court based this view primarily on Article ten of the United Nations Charter, which authorizes the General Assembly to discuss any questions or any matters within the scope of the charter and to make recommendations on these questions and matters to the members of the United Nations. This competence, the Court felt, had in fact been exercised by a trio of resolutions since the end of the war. Yet around this ratio decidendi, the Court grouped a number of dicta which in effect came close to a recognition of an implied, or automatic, succession.

Starting from the premise that the "international rules regulating the Mandate constituted an international status" recognized by all members of the League of Nations, including the Union of South Africa, and proceeding on the view that it could not be justified to retain the rights derived from the mandate and to deny obligations thereunder, the Court confirmed that these obligations represented the very essence of the trust which the Union of South Africa had undertaken to safeguard and which had not depended on the existence of the League of Nations. The Court saw this opinion confirmed by one general and one specific element, namely Article 80(1) of the United Nations Charter on the one hand, which maintains the rights of states and peoples and the terms of existing international instruments until the territories in question are placed under the trusteeship system and, on the other hand, various declarations by duly authorized authorities.

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185 Id. at 133.
186 Id. at 134.
187 Id. at 133-34.
spokesmen for the Union of South Africa which had recognized the continuance of the obligations under the League of Nations Mandate. It concluded therefrom that the Union of South Africa continued to have the obligations set out in Article twenty-two of the League of Nations Covenant.

The opinions of the two dissenting judges, Judge Read and Judge Arnold McNair, are less significant for their deviation from the result reached by the majority than for the arguments they furnished in support of the opinion of the Court. Judge Read pointed out that "parity of reasoning" required the maintenance of the obligations as well as of the rights of the Union of South Africa. Judge Arnold McNair compared the mandate to a conveyance which created a "status ... in rem" distinguishable from personal rights less "resistant ... to the dislocating effects of international events" than real rights which had acquired an objective existence.

It is true that Judge Arnold McNair emphatically denied the inference that there had been automatic succession and, in fact, the Court also did nowhere state that it considered the status of South-West Africa as a result of a non-conventional succession. Yet, in the two advisory opinions which in 1955 and 1956 were devoted to the interpretation of the 1950 pronouncement of the Court, there occur passages which come close to Judge Lauterpacht's view that the supervision by the United Nations of the Mandate of South-West Africa constituted an example of automatic succession in the law of international organizations. If, in spite of these dicta in support of the new pattern, no unquestionable confirmation of automatic succession as among international institutions by the International Court of Justice is at hand, the

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168 Id. at 134-36.
169 Id. at 143.
170 Id. at 166.
171 Id. at 156-57.
172 The term is his own. Id. at 159.
173 Compare, however, Judge Read's view that an international organization has, in the absence of express provisions in its charter, "a legal power of liquidation ... by necessary implication." Id. at 167.
176 Id. at 27-30.
177 Id. at 72-77.
178 Id. at 23, 48.
predominant reason for such judicial restraint may be sought in the circumstance that, basically, the novel postulate rests on the transplantation of a recognized institute of private law which, as yet, can be separated from its original factual and normative environment only with great difficulty.

In private law, automatic succession is usually governed in all its details by a set of pre-existing provisions of statutory law or, where such statutory provisions are not available, rules of law developed by courts on the basis of principles recognized since time immemorial. Not only is this, or a similar normative setting, thus far foreign to the law of international organizations generally, but the lack of such a legal order has been for a long time considered both as a significant attribute of the law of nations and as a merit in itself. The subjacent idea was always that restrictions on the sovereignty of states cannot be presumed but must be expressly stipulated to be binding. Since automatic succession as between international organizations of necessity burdens states beyond the obligations imposed on them by express stipulations in treaties and other international acts, inasmuch as they are at least held not to frustrate the exercise of functions by an international institution assumed on the basis of automatic succession, that kind of succession as among international organizations runs counter to an accepted pattern.

Wide fields of international public law, notably in the domain of interstate relationships, continue to be under the reign of that precept. Yet, it is hardly questionable that in the law of international organizations the interpretation and application of rules of law come more and more under the influence of a distinctly different legal doctrine, that of the functional field. Where a norm cannot be rendered effective except through the assumption by a new intergovernmental body of specific functions—as distinguished from their entirety—exercised by a defunct international instance and not handed over to a successor, the new body may accordingly assume these functions notwithstanding the silence of conventional international law. The Court avoids the word “succession” for that process and thus takes into account the absence of the normative machinery which makes automatic succession work in private law. Instead it invokes the plea of necessity by explaining that the only means to make the mandate system work consists in the assumption of certain of the League’s functions by the United Nations.169


169 “The necessity for supervision continues to exist despite the disappearance of the supervisory organ under the Mandates System. It cannot be admitted that the obliga-
Indeed, that seems to be the proper approach in the case of a universal organization which lacks homogeneous composition and whose members are therefore devoid of common views on the instrumentalities and methods of inter-organizational succession when the constituent instrument is silent on the issue. The Court had to fall back on less complicated notions than succession and to draw from the first principle of the law of international organizations, namely that they are established to work, and to work effectively. It goes without saying that this conclusion does not prejudice any solution which ultimately may be arrived at in regard to automatic succession as between regional organizations whose members have a common historical and legal heritage. Though in such cases the method chosen will usually be one which ensures continuity by providing that the old and the new instances are legally the same, it is conceivable that within the narrower and closer communities of regional organizations, the concept of automatic succession will be applied. Until the present, however, the best

tion to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical, supervisory functions." International Status of South-West Africa, [1950] I.C.J. Rep. at 136.

As has been pointed out, e.g., by 3 DAHM, VÖLKERRECHT 119-20 (1961) (and authors cited therein); LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT 180-82 & 182-83 n.18 (1958); Scheuner, supra note 10, at 48 & nn.132-34, the result reached by the Court in the first South-West Africa case was also an affirmation of the precept that specific international situations may attain the character of an objective status and remain unaffected by territorial or other changes ("The international rules regulating the Mandate constituted an international status for the Territory recognized by all the Members of the League of Nations, including the Union of South Africa." [1950] I.C.J. Rep. at 152) and thus continued the line of reasoning espoused, inter alia, by the Committee of Jurists appointed by the Council of the League of Nations in its Report on the status of the Aaland Islands. That body, referred to by Judge McNair in his dissenting opinion ([1950] I.C.J. Rep. at 153-54), took the view that the 1856 convention between France, Great Britain and Russia embodied "a settlement regulating European interests, . . . constituted a special international status for the Aalands Islands" and that "until these provisions are duly replaced by others, every State interested has the right to insist on compliance with them." LEAGUE OF NATIONS OFFICIAL JOURNAL SPECIAL SUPP. No. 3 17-19 (Oct. 1920).

Yet it is the considered view of this writer that the plea of necessity as transposed into, and transformed by, the law of international organization has equally influenced the decision and served as one of its bases, as is shown by the language at the beginning of this note. It stands to reason, therefore, that, in respect of the law of international institutions, the locus classicus on the plea of necessity may require re-appraisal, since there it is said that "necessity may excuse the non-observation of international obligations . . ." and that "the plea of necessity . . . by definition implies the impossibility of proceeding by any other method than the one contrary to law." Oscar Chinn, P.C.I.J., ser. A/B No. 63 at 114 (1934) (separate opinion of Anzilotti, J.).
international practice has to offer in the absence of treaty stipulations or their equivalent is an assumption of certain functions of a defunct international body by a new organization on the basis that such assumption is necessary for the effective exercise of the other functions of the new body.\footnote{170}

The negative ruling of the Vice-President of the Court in the matter of the application of the Anglo-Iranian Oil Company for the appointment of an arbitrator in its dispute with Persia\footnote{171} may be "questionable"\footnote{172} inasmuch as some might have felt that the acceptance by the Permanent Court of International Justice in 1933 of the appointment function at the instance of the British and Iranian Governments was binding on the Court. In support of this view it could be argued that the enumeration of functions transferred to the Court in articles 36(5) and thirty-seven of its statute was not limitative.\footnote{173} Yet, the argument developed by the Court in the first South-West African case could be used to defend the actual ruling. "[W]hen the organ which was formerly competent has been abolished, its powers cannot be regarded as automatically transferred to the new organ which replaces it."\footnote{174} Under this reasoning, the new organ would seem to assume only such specific functions of the defunct body as are indispensable for the effective exercise of its other tasks.\footnote{176}

\footnote{170} To this extent, the concept of Funktionsnachfolge—a device used in German postwar judicial practice to meet specific problems arising from the need for the federal government to assume certain functions formerly carried out by the constituent units (Länder) and the need for the Länder to assume other functions formerly carried out by the Reich—finds expression in the law of international organizations also. See Reinhart, 5 Neue Juristische Wochenschrift 441 (1952); Däubler, 7 Neue Juristische Wochenschrift 5 (1954); Steinbömer, Die Funktionsnachfolge passim (1957). On the use of this notion in international public law see 2 Dahm, Völkerrecht 120-21 (1961) and, for a monographic assessment, the trailblazing assessment by Scheuner, supra note 10, at 9, 14-19, 46-48.


\footnote{172} Ibid.


\footnote{174} The Belgrade Danube Convention of August 18, 1948, 33 U.N.T.S. 181, purports to dissolve the European Commission of the Danube and provides for the transfer of its property to a body established under article 20 of that convention. The Supplementary Protocol to the 1948 Convention, id. at 223, cancels certain financial obligations of the Commission. The functions, powers and status of that Commission were governed by numerous diplomatic instruments which are enumerated in Editor's Notes at 8 Hudson 82, 95. The Western Powers maintain that the Danube Convention of 1921 (1 Hudson 681) is still in force. The latter view is also taken in UN Siècle de Coopération Internationale sur le Danube 1856-1956 passim (1956) (collection of essays and reports on the Commission's achievements published by the Commis-
III. CONSTITUTIONAL ADAPTATION

A. The significant feature of the instances which fall under this heading is the avoidance of the problems habitually arising in cases of succession by the preservation of the legal identity of the organization concerned. The legal identity of the body in question remains the same, because while the functions and powers of the international institution has been modified, sometimes radically, its legal personality has been left untouched. The underlying reasons for such structural stability of international organizations are manifold and range from the recognized competence of an international secretariat which one wants to use for purposes other than those hitherto served by it, to the political desirability of maintaining a treaty in a modified form in lieu of replacing it by another and entirely new one. The gravity of the substantive changes is therefore not at all decisive in the choice of one or the other means for ensuring continuity. In fact, minor adaptations in purpose, functions and institutional structure may lead, in a given context, to the abolition of one organization and the establishment of another which assumes some or all of the predecessor's functions, thus bringing about a succession, whereas incisive reforms of an organization need not involve the use of that device because the existing texts are adapted to the exigencies of a specific political or factual setting by means of changes in the basic law.

(translation at the occasion of its centenary). The present writer maintains his opinion that the European Commission of the Danube is "functionally, if not legally extinct." Hahn, International and Supranational Public Authorities, 26 LAW & CONTEMP. PROB. 638, 642 (1961). See also Dr. W., Die rechtlichen Grundlagen des Donauverkehrs, 12 DER VERKEHR 1601, 1639 (1956). An account of the opposing views is given in No. 37 der Beilagen zu den stenographischen Protokollen des Nationalrates IX GP (Austria) of September 9, 1959, at 21-22. When Austria acceded to the 1948 Convention, the transfer of property provided for in the Supplementary Protocol had already been carried out. Nevertheless, the European Commission of the Danube and the International Commission of the Danube, as established in Rome by the Western Powers, continue the "liquidation" begun after the 1948 Belgrade Conference, notably in respect of pension claims. See, e.g., the public convocation on behalf of the European Commission of the Danube, Gazzetta Ufficiale del la Repubblica Italiana No. 43 of February 22, 1954, p.557, items 871 & 872. For the purposes of the present study the whole case may be considered as an instance of discontinuity ratione personae and ratione materiae. However, it should be noted that, as Seidl-Hohenveldern, 7 ARCHIV DES VÖLKERRECHTS 258 (1958), has pointed out, there is a certain functional resemblance between the Danube Commission established under the 1948 Convention and the International Commission of the Danube as provided for in the 1921 Convention.
ILO

After the Second World War, the International Labor Organization (ILO) was reformed by a revision of its constitution, though it cannot be said that the resulting changes in its functions and powers were more important than in cases where the same effect was achieved by way of succession.

The revision of the ILO Constitution was brought about in three main stages, the first of which was the adoption, by the International Labor Conference (ILC), of the Declaration of Philadelphia in May, 1944, which was designed to redefine the aims and purposes of the ILO. The second stage in the process of revision was the adoption of the Constitution of the ILO Instrument of Amendment of 1945, which would adapt the ILO Constitution to the exigencies resulting from the impending liquidation of the League of Nations, notably the separation of ILO membership from that of the United Nations and financial autonomy vis-à-vis the United Nations. The second stage of the revision also was to provide a procedure for the entry into force of further amendments to the ILO Constitution. The 1946 Instrument of Amendment set forth a number of far-reaching changes consequential upon the dissolution of the League of Nations which were complementary to the preceding amendments and constituted the third stage of the revision. Simultaneously with these constitutional amendments the relations between the ILO and other international bodies were revised by a series of agreements with the United Nations, the specialized agencies of the United Nations, and other international organizations.

WEO

The second case in point is the revision and extension of the Treaty of Brussels of March 17, 1948, and the transformation of the insti-

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277 Id. Appendix II at 46.

278 Hudson 743.

279 Id. at 749.

280 The present recital follows the account of the ILO reform by Jenks, 23 Brit. Yb., Int'l L. 303 (1946).

tutional arrangement provided for in that treaty into the Western European Union (WEU), following the rejection of the European Defense Community Treaty by the French Parliament in April, 1954.282

The 1948 Brussels Treaty had been, inter alia, an agreement for the "collective self-defence" of France, the United Kingdom, and the Benelux countries, notably for the purpose of taking such steps as might be deemed necessary in the event of a renewal by Germany of its policy of aggression.283 By 1954, the Federal Republic of Germany was regarded as a desirable ally rather than as a potential aggressor and Italy had become an ally through its participation in NATO. These changes were acknowledged by the amendments provided for in Protocol I to the Brussels Treaty modifying and completing that agreement.284 The reference to the potential danger arising from a renewal of the German policy of aggression was replaced by the object of "promoting the unity and encouraging the progressive integration of Europe."285 In addition to the accession of Germany and Italy to the revised Brussels Treaty, the protocol provided for some institutional amendments, in particular for the creation of the Council of WEU. The picture would be incomplete were it not mentioned that the revision of the Brussels Treaty was one facet of the operation which put an end to the occupation regime in the Federal Republic of Germany and opened to that state the way to membership in NATO.286

B. A different type of adaptation by an international organization to the changing demands of politics and policy is represented by the transformation of the Union of American Republics into the Organization...
of American States (OAS) in 1948.\textsuperscript{187} The concept and the reality of an inter-American organization had grown since 1826, when delegates from Central and South American states assembled at Panama City to sign a Treaty of Perpetual Union, League, and Confederation.\textsuperscript{188} The idea persisted throughout the nineteenth century, but none of the Latin American congresses took any organizational measures until the Washington Conference in 1890 set up the Commercial Bureau of the American Republics, which was the predecessor of the Pan-American Union.\textsuperscript{189} Resolutions of inter-American conferences provided for the inception of the structural framework of the states until, in 1910, the names of the secretarial services and of the association of these states were changed to Pan-American Union and Union of American Republics. A convention signed in Havana in 1928\textsuperscript{190} created a Union of American States with (1) International Conferences of American States, (2) the Pan-American Union (Secretariat) and (3) other organs to be established by convention between the American states.

That treaty having failed to enter into force because it did not attain the necessary number of ratifications,\textsuperscript{191} the Mexico City Conference of 1945 proposed to strengthen, reorganize, and consolidate the inter-American system as it had developed thus far, but left it to a following meeting of American governments to give a permanent form to the organizational structure. This consolidation was brought about by the Bogotá Charter of April 30, 1948.\textsuperscript{192} The organs set forth in the 1948 treaty have not only retained the functions assigned to those which existed until then, but, moreover, their names resemble or are identical...

\textsuperscript{187} See Pan American Union v. American Security & Trust Co., [1951] Int'l L. Rep. 441 (D.D.C. 1951). For the reasons suggested in the text it is believed that this transition did not involve a succession, as the court thought, but that the decision could have been based more appropriately, in the present writer's view, on the concept of identity. It seems that the leading article on the Bogota Charter, Kunz, The Bogota Charter of the Organization of American States, 42 AM. J. INT'L L. 568 (1948), also considers the instance as a reform or reorganization rather than as a succession. For related reasons it is believed that the European Commission of the Danube as it operated under the Convention instituting the Definitive Statute of the Danube, signed July 23, 1921, 1 HUDSON 681, was identical with the institution of the same name which administered large parts of the Danube before 1914 under a series of international acts conveniently listed in the Editor's Note, \textit{ibid.}

\textsuperscript{188} 2 PEASLEE, INTERNATIONAL GOVERNMENTAL ORGANIZATIONS 540 (1956).

\textsuperscript{189} \textit{Ibid.}

\textsuperscript{190} Convention on the Pan American Union, Feb. 20, 1928, 4 HUDSON 2420.

\textsuperscript{191} 2 PEASLEE, \textit{op. cit. supra} note 188, at 541.

\textsuperscript{192} \textit{Ibid.} at 545, in force since December 13, 1951, on deposit of fourteen instruments of ratification.
to the designations which had been coined for them in the long evolutionary process between 1826 and 1948. Thus, the Inter-American Conference, the "supreme organ" of the OAS is composed of representatives of all member states and continues the series of international conferences commenced in 1890. The "organ of consultation," assembling the Ministers of Foreign Affairs, carries on the work of the comparable body created by decisions taken at the 1938 Inter-American Conference at Buenos Aires.\(^\text{198}\)

The Pan-American Union retained not only its title but also its tasks as the cultural and permanent organ of the OAS. There are innovations: the Council, which is an assembly of governmental representatives with subsidiary bodies for economic, legal and cultural matters; a Security Council; and specialized conferences which were, however, for the most part already existing inter-governmental and private bodies pursuing specific objectives within the wider context of the OAS. Finally, the 1948 reform brought the OAS into relationship with the United Nations and made it a regional system in conformity with the provisions of the United Nations Charter.\(^\text{194}\)

In spite of these unprecedented features, OAS has preserved "its identity and relative independence" as the association of the American states.\(^\text{195}\)

Notwithstanding the fact that the 1948 reform involved a reorganization and produced some institutional and functional innovations, the root of the matter may be described as the replacement of one constitution, which consisted of a series of law-making acts of inter-governmental institutions adopted by various organs of the inter-American regional community, by a treaty. In short, this was a stabilization of existing constitutional structures by the consolidation of their basic instruments in one international agreement. A change in substance occurred only insofar as some new organs, powers, and functions were added to the existing ones\(^\text{196}\) by means of changes in the basic law.

C. Another instance of constitutional adaptation was provided for in the convention relating to certain institutions common to the European Communities signed, together with the Common Market and EURATOM Treaties, on March 25, 1957, at Rome.\(^\text{197}\)

The signa-

\(^{189}\text{Id. at 542.}\)

\(^{190}\text{U.N. Charter arts. 33, 37, 51-54; OAS Charter arts. 1, 4, 61, 102, 110.}\)

\(^{191}\text{Kunz, supra note 187, at 587-88.}\)

\(^{192}\text{See Fenwick, The Ninth International Conference of American States, 42 Am. J. Int'l L. 553, 555-56 (1948).}\)

\(^{193}\text{298 U.N.T.S. 171 (1958). The English text is a brochure published by the Secretariat of the Interim Committee for the Common Market and EURATOM, at 351 (Brussels 1957), and in \textit{I Peaslee, International Governmental Organizations} 614 (2d ed. 1961).}\)
ories of this convention were identical with those of the two former treaties and were representing the same governments whose representatives had signed the treaty instituting the European Coal and Steel Community in April, 1952.198

The protocol provided for the replacement of the Court of Justice and the Common Assembly established by the ECSC Treaty by one judicial and one parliamentary institution to serve all three communities, and amended the ECSC Treaty accordingly. On purely verbal considerations, the words "replace" in articles two and four of the convention might admit doubts as to whether the new organs are meant to be the successors to or identical with already existing institutions. But that would be contrary to the legislative intent underlying the modification of the ECSC Treaty. The real legal nature of the change is that the court established by the Treaty of April 18, 1952, remains one and the same; it simply receives new functions while continuing to carry on its old ones. The same holds true for the Assembly of the ECSC. Only if the bodies created in 1952 had been abolished in lieu of being reconstituted with supplementary functions would it have been appropriate to qualify the change as succession.200

D. There are the instances where international institutions have been kept alive in spite of changes in their law which were as grave as those which in other cases were conducive to the dissolution of one body and the creation of another one to succeed it. If any general observation

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198 European Y"r. 359 (1955).
199 The French and German versions employ respectively "remplace" and "tritt an die Stelle." BUNDESGESETZBLATT Teil II 1158-62 (1957).
200 See to this effect Maurice Lagrange, Advocate General of the Court since 1952: "[T]here exists no discontinuity between the Court of Justice of the E.C.S.C. and the single Court of Justice that has been substituted effective October 7, 1958. . . proceedings that had already been instituted under the old Court have been processed without interruption under transitional rules. Continuity has been the more easily ensured as four of the seven judges, as well as the two advocates general and the registrar, have been transferred from the old Court to the new." Lagrange, The Role of the Court of Justice of the European Communities as Seen Through Its Case Law, 26 LAW & CONTEMP. PROB. 400, 401 (1961). This view is confirmed by the following passages in Bundestags Drucksache 3440 of May 4, 1957, Anlage C, which contained the German Federal Government's comments on the EURATOM and Common Market Treaties as submitted to the German Federal Parliament in 1957: "Die Erweiterung der Zuständigkeit der Versammlung auf die Europäische Gemeinschaft für Kohle und Stahl machte eine Anpassung des Art. 21 des Vertrages über die Gründung der Europäischen Gemeinschaft für Kohle und Stahl notwendig. . . Die Erweiterung der Zuständigkeit des Gemeinsamen Gerichtshofes auch für die Europäische Gemeinschaft für Kohle und Stahl bedingt eine Anpassung des Art. 32 des Montanvertrages. . . ." Id. at 198-99.
may be fitting here, it is that in the law of international organizations, as
in other domains of the law, as a rule, legal principles govern only the
application of statutory or conventional rules, and they are rarely, if
ever, responsible for the enactment and repeal of such rules.

IV.

Administrative Adaptation

The same general observation above made is also true with regard
to the adaptation of international organizations to new exigencies with-
out recourse to dissolution or constitutional changes. The case foremost
in point is the transformation of the Universal Postal Union (UPU)
into a specialized agency of the United Nations. The legal mechanism
employed to bring about that change was quite different from constitu-
tional adaptation.

It is not contended that in fact the UPU’s activity has been modified
on its becoming a specialized agency of the United Nations within the
meaning of Article fifty-seven of the United Nations Charter, nor that
the Relationship Agreement of July 4, 1947, as amended by the Sup-
plementary Agreement of July, 1949, was particularly suited to bring
about such a change. Yet the juridical potentialities which that
agreement and Article sixty-three of the United Nations Charter im-
ply are such that one might consider them susceptible of influencing
the general direction of the UPU and its organs. Though brought
about by much less than the adaptation of constituent texts, the relation-
ship agreement with the United Nations in a way ensured the con-
tinuity of the functions hitherto exercised by the UPU on the taking
effect of the United Nations Charter by placing it within the framework
of this world-wide political community.

Adaptation by such a treaty is not the only method of extra-
constitutional change, however. There is another approach which en-

201 See Peaslee, op. cit. supra note 188, at 785.
202 See Carroz et Probst, Personnalité Juridique Internationale et Capacité
de Conclure des Traités de l’O.N.U. et des Institutions Spécialisées 27 (1953); Kasme, La Capacité de l’Organisation des Nations Unies de Conclure des Trai-
tés 108 (1960); Labeyrie-Menalhem, Des Institutions Spécialisées 34 (1953).
203 For a survey of United Nations practice under that provision, see 3 Repertory
agreements between the United Nations and the specialized agencies and the International
sures the continuity of internationalized functions under changing conditions by the foundation of new institutions, affiliates, or subsidiaries,\textsuperscript{204} which may or may not have organs in common with the parent institution, yet, in any event, retain some link with it, thereby proving their inter-dependence.\textsuperscript{205} The reason for this technique is usually that while constitutional revision, a simple law-making act of, or a treaty concluded by, the parent body might enlarge its functions to take care of new, increased responsibilities, overriding political, financial, or other\textsuperscript{206} reasons suggest the limitation of its substantive and procedural liabilities and the financial engagements likely to result therefrom.

V.

An Interim Assessment

The purpose of this article has not been to prove the existence of a closely-knit system whereby continuity is ensured in the law of international organizations, but rather to look at instances in which successful attempts at achieving continuity have been made and at others where that objective has not been reached because the means used were insufficient. This explains the restriction of this array to instances where a transition actually occurred and the leaving aside of provisions in constitutional treaties which permit transitions but which have never been applied in practice.

The devotion to actual cases has the doctrinal advantage of showing the principles governing the application and interpretation of legal rules on the continuity of internationalized functions. Of these principles there is one which is basic, namely that of effectiveness. It means in the law of international organizations generally that international institutions are created to work and to carry out the functions entrusted to

\textsuperscript{204} E.g., Articles of Agreement of the International Finance Corporation (1955) in 2 Peaslee, International Governmental Organizations 1174 (2d ed. 1961); Articles of Agreement of the International Development Association (1960), \textit{id.} at 1139. Both of these institutions have been founded by the IBRD to meet novel requirements in the field of international financing.

\textsuperscript{205} For details see Art. VI of the IDA Articles of Agreement and Art. IV of the IFC Articles of Agreement which, while specifying that the two bodies are separate entities and distinct from the IBRD, nevertheless provides that the same persons are Governors and Executive Directors—Directors—of the two new institutions and the IBRD.

\textsuperscript{206} Thus certain operational tasks have been entrusted by EURATOM and Common Market Treaties to entities with a legal personality of their own distinct from those of the Communities. See EURATOM Treaty, Arts. 45-51 (joint enterprises) 298 U.N.T.S. 171 (1958); Protocol on the Statute of the European Investment Bank, 298 U.N.T.S. 120 (1958).
them; and that when a higher norm does not provide anything to the contrary, then an international act has to be applied in such a way as to ensure a meaningful activity of the international body concerned. This is also the pattern of legal thought which should be observed whenever the continuous display of internationalized functions is at stake.

On the basis of that insight, the question why in one case the principle of effectiveness may require the rapid death and in the other the prolongation of the life of an international body, why in one case succession must be denied and in the other, even in absence of express conventional or equivalent texts to that effect, affirmed, can be answered. The purpose of continuity in the law of international organizations is not the continuity of those organizations, but the continuous display of specific activities by a multi-national body, once its member states have decided that the internationalization of a functional task is desirable and as long as these states maintain their decision, it being understood that continuity may be achieved by succession among international institutions as well as by the maintenance of a given corporate entity.

It is important, however, whether the end is attained through succession between international bodies or through the preservation of their legal identity, if for no other reason than, as a rule, the staff\footnote{While one might be inclined to assume that the personnel of an institution undergoing constitutional reform remains unaffected thereby, that view would not always be—it is submitted—an appropriate statement of fact and of law.} and financial status of the organization, its assets, and liabilities remain unaffected when the latter solution is chosen. But the overriding purpose of continuity in the law of international organizations may be achieved by either method, that purpose being in each concrete case the maintenance of a functional service for a community of states, established precisely with that objective in view. To the extent that such continuity ensures compliance with rules of law, in the measure that it withdraws a functional substantive domain from the reign of rough-hewn precepts of the law of nations by retaining that area within the scope of the law of international institutions and thus contributes to the introduction of predictability and order in international relations, continuity is in itself an element of legal justice.