Editorial

International Organizations and Dispute Settlement

A New Topic for the International Law Commission?

August Reinisch
University of Vienna
august.reinisch@univie.ac.at

The topic ‘The settlement of international disputes to which international organizations are parties’, recently suggested by Sir Michael Wood, the International Law Commission’s (‘ILC’) Special Rapporteur on the identification of customary international law,1 and put on the long-term programme of work of the Commission in 20162 may form an important contribution to a better understanding of the nature and role of international organizations. Addressing this topic in detail would be a welcome addition to the Commission’s previous work in the area of the law of international organizations.

In the past, the work of the ILC may have contributed to the perception of treating international organizations in a kind of secondary fashion, almost as an afterthought to addressing core questions relating to states. That impression may have resulted from the fact that after dealing with the law of treaties,3 being confined to inter-state treaties, a corresponding set of rules concerning

treaties to which international organizations were parties was elaborated\(^4\) and that in the field of international responsibility the Commission’s work on the responsibility of international organizations\(^5\) followed the path of its 2001 *Articles on State Responsibility*.\(^6\) The ILC is currently struggling with the role of international organizations in relation to customary international law.\(^7\) Whether the change of the topic’s name from ‘formation and evidence’ to ‘identification’ of custom may help in avoiding the controversial question to what extent the practice of an international organization itself contributes to the creation of custom or not remains to be seen and may form part of the Commission’s upcoming discussion in 2018 of the sixteen ‘draft conclusions on identification of customary international law’ provisionally adopted in 2016.\(^8\)

The topic ‘The settlement of international disputes to which international organizations are parties’ provides a genuine window of opportunity to address problems that deal with issues that are peculiar to international organizations and not ‘derivative’ and ‘parallel’ to problems involving states. While states are clearly subject to the general duty of peaceful settlement of disputes to be achieved through any of the methods listed in article 33 of the *UN Charter*, ranging from negotiations to binding third-party dispute settlement in the form of arbitration or adjudication, and are usually subject to a host of dispute settlement systems of the latter types, international organizations are rarely subject to such binding dispute settlement mechanisms and often not even capable of acceding to them even if they wished. The limitation of the International Court of Justice’s (‘ICJ’) contentious jurisdiction *ratione personae* to states\(^9\) is only the most prominent example in this field, but the lack of


\(^{9}\) Cf Statute of the International Court of Justice art 34(1).