Separate but Connected: Inter-Governmental Organizations and International Law

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In straightforward terms, the approach adopted in the Law of International Organizations is no more than trying to put law into its wider political, philosophical and ideological contexts.\(^1\) It is a truism that international law is very much a product of politics. Though international lawyers imbue custom with that mystical element of *opinio juris*, informal and formal agreements are often arrived at in the fora of international organizations.\(^2\) That states accept them as normative is evidenced in their practice. Of course it is also true that national laws are often a product of legislation made within political organs and are therefore no less a product of politics than international laws. However, the lack of effective legislative machinery in international relations signifies an absence of legal structures for changing and adapting the law within confined political arenas. The weakness of what Hart would call secondary “rules of change” within the international legal order,\(^3\) means that each primary rule is under constant but diffuse political pressure from

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governments wishing to change it and from those wanting to keep it. The constant debates about the continuing validity even of those norms that are said to be fundamental, such as those prohibiting the use of force, illustrate this point. Each time a state claims to be acting within the rules by claiming self-defense or under Security Council authority, its actions are scrutinized to see if they fit the existing rule or whether they represent an attempt to change the rule. The reaction of other states is also a component of the continuing political pressure upon each rule of the system, something that does not take place within developed domestic legal systems, with their separate rules of change, adjudication and enforcement.

International organizations, in some ways, represent attempts to introduce both mechanisms of adjudication and means of change, principally by producing forms of non-binding soft law, or, more traditionally, as a source of *opinio juris*, essential for the development of hard customary rules. Because of the potential of organizations for influencing international law and perhaps even regulating state behavior, the pervasive political pressure of the international legal order is also applied to them. Politicians talk a great deal about the competence of international organizations. Soviet President Leonid Brezhnev’s statement in the 1960s on the UN is a good example:

> The United Nations is not some sort of self-sufficient power nor some kind of universal super-government. Its actions and the positions it takes up merely reflect the existing balance of forces between the States of the world, which is the prevailing trend in international life.\(^4\)

This represents what can be labeled a classical Marxist vision of international institutions as fora for the achievement of stabilization or “peaceful co-existence” between capitalist and communist camps pending the victory of communism (largely) by economic competition.\(^5\)

Developing countries and post-Marxist left-wing ideology view institutions as simply reflecting forms of politics, potentially of political
