

# Table of Contents

<i>Table of Cases</i>	xi
<i>List of Abbreviations</i>	xvii
1. Introduction	1
1.1 Conceptualizing versus Defining	5
1.2 Four Concepts of an International Organization	7
1.3 Terminology	9
1.4 Why it Matters	10
1.5 The Structure of the Book	13
PART I. THE FOUR CONCEPTS OF AN INTERNATIONAL ORGANIZATION	
2. Functionalism	17
2.1 The Rules of International Organizations as International Law	17
2.2 The Limits of Functionalism	26
2.2.1 The breach of institutional rules under functionalism	26
2.2.2 Countermeasures and sanctions under functionalism	28
2.3 Concluding Remarks	32
3. Constitutionalism	33
3.1 The Rules of International Organizations as Internal Law	34
3.2 The Limits of Constitutionalism	40
3.2.1 <i>Lex specialis derogat legi generali</i>	41
3.2.2 The attribution of conduct	44
3.3 Concluding Remarks	47
4. Informalism	49
4.1 The Rules of International Organizations as Informal Law	50
4.2 The Limits of Informalism	55
4.2.1 Employment relationships	56
4.2.2 Global administrative law	59
4.3 Concluding Remarks	63
5. Exceptionalism	64
5.1 The Rules of International Organizations as 'Exceptions'	64
5.2 The Limits of Exceptionalism	68
5.2.1 The exceptionalism of the EU	69
5.2.2 The exceptionalism of the OSCE	74
5.3 Concluding Remarks	79

6. Interim Conclusions	80
6.1 <i>Al-Dulimi</i> and the Competing Concepts of an International Organization	81
6.1.1 Admissibility <i>ratione personae</i> : attribution of conduct	82
6.1.2 Merits: coexistence or conflict of obligations?	83
6.1.2.1 The Chamber: equivalent protection and constitutionalism	84
6.1.2.2 The Grand Chamber: harmonic interpretation and functionalism	86
6.2 In the Following Pages	88

## PART II. INTERNATIONAL ORGANIZATIONS AS DUAL ENTITIES

7. A Venture into Legal Theory	93
7.1 The Concept of Legal System Applied to International Organizations	95
7.2 The Point of View and Hart's Rule of Recognition	98
7.3 Santi Romano's Institutionalism	100
7.4 The Dual Legal Character of International Organizations	103
7.5 The Definition of an International Organization in International Law	106
7.6 Concluding Remarks	107
8. The Dual Legal Nature in Practice	108
8.1 Constitutive Instruments	108
8.2 General Principles	110
8.3 Customary Law	113
8.4 Institutional Practice	115
8.5 Secondary Norms	118
8.5.1 The Mandate	119
8.5.2 UN international territorial administration	121
8.5.3 UN Security Council anti-terrorism resolutions	124
8.5.4 EU secondary norms	127
8.5.5 ICAO regulations	130
8.6 Judicial Decisions	135
8.7 Treaties with Members and Non-members	136
8.8 Concluding Remarks	140
9. The Law of Treaties	141
9.1 International Organizations in the Law of Treaties	142
9.1.1 The 1969 Vienna Convention	142
9.1.2 The 1986 Vienna Convention	146
9.1.3 L'Institut de Droit International	148
9.2 The Capacity to Conclude Treaties on the Basis of International and Institutional Law	149

9.3 Member States are neither Parties nor Third Parties in the Treaty Concluded by the Organization	152
9.3.1 Effects of the dual legal nature in practice: IUU fishing and obligations binding EU member states	157
9.4 Concluding Remarks	158
10. Validity and <i>Ultra Vires</i> Acts	159
10.1 The Either/Or Paradigm Applied by the PCIJ and the ICJ	160
10.1.1 Decisions adopting a functionalist perspective	161
10.1.2 Decisions adopting a constitutional perspective	162
10.2 The Dual Legal Character of <i>Ultra Vires</i> Acts	164
10.3 The Rules of the Organization as a Limit of Validity	166
10.3.1 Invalidation of the treaty caused by the violation of a rule of the organization	167
10.4 Customary International Law as a Limit of Validity	170
10.4.1 The validity of UN Security Council resolutions encroaching on human rights	171
10.5 Concluding Remarks	174
11. International Responsibility	176
11.1 International Organizations in the Law of International Responsibility	178
11.1.1 L'Institut de Droit International	178
11.1.2 The International Law Commission	179
11.1.3 The International Law Association	184
11.2 Dual Attribution of Conduct and Shared Responsibility	185
11.2.1 The legal basis of dual attribution in the law of states' responsibility	187
11.2.2 Applicability to international organizations and member states	192
11.2.2.1 Dual attribution via institutional links: article 4 ARSIWA and article 6 ARIO	197
11.2.2.2 Dual attribution via factual links: effective control (article 7 ARIO)	200
11.2.2.3 Exclusion of dual attribution because the organ is 'place at the disposal' (article 6 ARSIWA) or 'fully seconded' (commentary article 7 ARIO)	202
11.3 The Effects of Dual Attribution	203
11.4 Concluding Remarks	207
12. Conclusion	208
<i>Bibliography</i>	211
<i>Index</i>	231