



PRESENTAZIONE DEL VOLUME

(a cura dell'autore o del curatore)

Informazioni generali

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Informazioni sul volume

Despite their exponential growth in number and activities, international law lacks a comprehensive legal concept of an international organization. They are indiscriminately perceived as agents of member states when criticism is against state sovereignty and its limits in globalization; autonomous powerful entities when criticism is against the lack of democratic legitimacy; administrative entities when criticism is against the lack of transparency; 'supranational' or 'soft law' institutions when criticism is either against or in favour of integration. The book tackles this topic from the perspective of the legal nature of legal systems developed by international organizations. It is the first comprehensive study of the different concepts under which international organizations' legal systems are commonly understood: functionalism, constitutionalism, exceptionalism, informalism. It has a threefold purpose: to trace the historical origins of the different concepts of an international organization, to describe four families under which these different notions are subsumed, and to propose a theory which

defines international organizations as 'dual entities'. The concept of an international organization is defined by looking at the nature of the legal systems they develop. The notion of 'dual legal nature' describes how organizations create particular legal systems that derive from international law. This peculiar condition affects the law they produce, which is international and internal at the same time. The effects of the dual legal nature are discussed by analysing international responsibility, the law of treaties, and the validity of organizations' acts.

The research led to a series of concluding principles:

The peculiar nature of the legal systems developed by international organizations is the reason behind the difficulties encountered by legal scholarship to provide valid conceptualizations. In particular, internal or external points of view leads to diverging hypothesis on the nature of the law they produce, which have outstanding consequences on the applicable legal regime.

International organizations are defined as dual entities: 'international organization means an institution established by a treaty or other instrument governed by international law and capable of creating a legal system which derives from international law and that produces law which is at the same time internal and international.'

This conceptualization allows the development of a common legal framework applicable to all international organizations, despite their differences in terms of powers, membership, size, and other descriptive features. In particular, the most valuable consequence of this conceptualization is to rebut a frequent argumentative motif, under which organizations are either perceived as vehicles for member states' interests or as autonomous entities.

In the context of the law of treaties, the dual legal nature explains fundamental principles, such as the capacity to conclude a treaty based on a norm of general international law which gives relevance to the attribution of functions and the position of member states in the treaty concluded by the organization.

In the context of invalidity of ultra vires acts, the dual legal nature explains how the law produced by international organizations is subject to both institutional and international criteria of validity. In particular, it is able to explain how international organizations are bound by customary international law without reverting to the fictional distinction between international and internal acts.

In the context of international responsibility, the dual legality explains how the conduct of member states is intertwined with the conduct of the organization, providing a simpler and more effective way to attribute their conduct. It rebuts all those approaches which either look at the member state or at the organization in isolation and support a comprehensive point of view.

Dual attribution is the most common outcome and only in limited circumstances is the conduct attributed either to the organization or to its member states.