

# ARTICLE 22 OF THE UNITED NATIONS CHARTER

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## Introduction

All communal principal organs of the United Nations are entitled to establish subsidiary organs under Art. 7 (2) UN Charter. Arts 22, 29 and 68 repeat the general principle in particular relation to the General Assembly, the Security Council and ECOSOC<sup>1</sup>. Art. 7 (2) UN Charter is built after the pattern of Art. 5 (2) Covenant of the League of Nations. Although Art. 5 (2) League covenant was a general provision on procedural matters, allowing for 'the appointment of Committees to investigate particular matters', it was the legal basis for the Assembly' establishing sessional committees. The working methods of these committees, eg holding meetings in public, and the types of subsidiary bodies set up by the Assembly were a rich body of experience from which the UN general Assembly could draw<sup>2</sup>.

The main factor for the establishment of subsidiary bodies is the multitude of tasks entrusted to the principal organs of the United Nations. Especially for the UN General Assembly, which is a body that does not meet continuously, an important factor is the limited time that is available for its sessions. Therefore already at the drafting stage of the UN Charter it was foreseen, that a need will arise to create auxiliary bodies. However, the system of subsidiary bodies that work under the auspices of the General Assembly has gotten increasingly complex and intransparent.

This paper analyses the legal framework under which the General Assembly sets up its subsidiary organs and scrutinizes whether ... Part I deals with the UN General Assembly's powers to establish subsidiary organs, while Part II deals with the procedure of setting up a subsidiary organ. Parts 3 and 4 deal with the different kinds of subsidiary organs set up by the General Assembly and the role that they play in the grander scheme of the United Nations regime. Part V argues that the system should probably be streamlined and would be more effective if the system was more transparent.

### **1. Source, Extent and Limits of the General Assembly's Power to Establish Subsidiary Organs**

#### **a. Source of Power and Relation between Art. 7(2) UNC and Art. 22 UNC**

The United Nations Charter ('UNC') specifically confers the right to create subsidiary organs upon the General Assembly ('GA') in Art. 22 UNC. A more general authority to establish subsidiary organs is delegated to the principal organs of the United Nations in Art. 7 para. 2 UNC. Art. 22 UNC provides authorization to the GA in a more specific way, whereas Art. 7 para. 2 UNC per se enables principal organs of the UN to establish subsidiary organs. There is, however, an important distinction between the modes of

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<sup>1</sup> Art. 68 provides for the formation of commissions by ECOSOC.

<sup>2</sup> Beate Rudolf, *United Nations Committees and Subsidiary Bodies, System of*, MPEPIL, para. 1.

authorization in Art. 7 para. 2 UNC and in Art. 22 UNC<sup>3</sup>: Under the more specific authorization of Art. 22 UNC, the GA can only establish a subsidiary organ to perform “its functions”, meaning the GA’s functions. In Art. 7 para. 2 UNC there is no such functional limitation. Under Art. 7 para. 2 UNC the GA may also establish a subsidiary organ to perform functions that it cannot perform itself. Thus, the general authorization in Art. 7 para. 2 UNC is broader than the specific authorization under Art. 22 UNC, which only authorizes the establishing of subsidiary organs for carrying out the functions of the GA. However, the GA must possess an explicit or implied power to delegate the functions which it deems to confer upon the subsidiary organ by establishing it under Art. 7 para. 2 UNC. Therefore the GA is not precluded from establishing a subsidiary organ, which shall exercise functions that the GA does not itself possess. In such case the power to establish the subsidiary organ may be derived from the general competence to perform certain functions.<sup>4</sup> The International Court of Justice (‘ICJ’) in its “Effect of Awards of Compensation made by the United Nations Administrative Tribunal” advisory opinion of 1954<sup>5</sup> concluded that the GA had the competence to establish a judicial body - the Administrative Tribunal (‘UNAT’). The ICJ found that the GA did not possess under the Charter the judicial function, which the tribunal was exercising, but “by establishing the Administrative Tribunal the GA was not delegating the performance of its own functions; it was exercising a power which it had under the Charter to regulate staff relations”.<sup>6</sup> Therefore the ICJ came to the conclusion that the power to establish such a subsidiary organ, was the general authority derived from Art. 7 para. 2 UNC and that “the power to establish a tribunal... may be exercised by the GA”.<sup>7</sup>

## **b. Limits and Extent of the General Assembly’s Power to Establish Subsidiary Organs**

Art. 22 UNC authorizes the GA to establish subsidiary organs. But the UN Charter neither defines the term “subsidiary organ” nor the term “as it deems necessary”. A subsidiary organ generally is defined as an organ that is established by the respective principal organ. Therefore Art. 22 UNC gives wide discretion to the GA to create or abolish a vast array of committees, commissions or similar bodies. But at the time of its installation, the United Nations Charter could neither foresee the functioning of the United Nations system in its entirety, nor could it foresee the structural needs –which as a result of the activities of the UN – would arise in the future. Thus, the UN Charter contains a provision, Art. 22, allowing the GA to set up subsidiary organs for the performance of its functions “as it deems necessary”. As a result the GA has the power to decide on the terms of reference of the respective subsidiary organ once it decides to set it up.

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<sup>3</sup> See also Saaroshi, Legal Framework, p 425 et seq.

<sup>4</sup> Saaroshi, Legal Framework, p 427.

<sup>5</sup> Effect of Awards (Advisory Opinion), ICJ Reports 1954, p. 61.

<sup>6</sup> Effect of Awards (Advisory Opinion), ICJ Reports 1954, p. 61.

<sup>7</sup> Effect of Awards (Advisory Opinion), ICJ Reports 1954, p. 58.

However, as has already been mentioned<sup>8</sup>, the GA must possess an express or implied power in the field, where it deems it necessary to establish the subsidiary organ. The power to establish a subsidiary organ includes that the GA is free to change the composition, size, structure and tasks of these bodies. However, it has to be emphasized that the GA, in general, prefers stability within the structure of these organs, and that they rather tend to develop a life of their own.<sup>9</sup>

The operational sphere of the GA is broadly introduced in Art. 10 UNC and depicted in more detail in Arts 11- 16 UNC. The GA's most important function certainly is the discussion of any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter.<sup>10</sup> This entails, that, whenever it deems necessary, the GA may transfer certain works or activities to a subsidiary organ. However, the rule applies, that the GA cannot transfer more powers to a subsidiary organ, than it possesses itself under the Charter.<sup>11</sup> In the "Effect of Awards" advisory opinion the ICJ came to the conclusion that the authorization under Art. 22 UNC is not sufficient to transfer judicial powers to a subsidiary organ. However, the ICJ decided that the GA possesses implied powers, which granted the establishment of the tribunal. These implied powers are not based on Art. 22 UNC alone, but rather on Arts 7(2), 22 and 101 UNC combined.<sup>12</sup>

Furthermore, there are certain preconditions which have to be met, in order to be able to definitely allocate a subsidiary organ to the GA. Some crucial features are: (a) the subsidiary organ must be created by, or under the authority of, the General Assembly; (b) the membership, structure and terms of the subsidiary organ are determined and modified by, or under the authority of, the GA; (c) the subsidiary organ may only be terminated by, or under the authority of, the GA; (d) the subsidiary organ must possess a certain degree of independence from the GA (otherwise the entity in question would be simply part of the GA itself; in conclusion some purely sessional committees/working groups are excluded from the scope of Art. 22 UNC).<sup>13</sup>

## **2. Procedure of Establishing Subsidiary Organs**

Usually the initiative for establishing a subsidiary organ will come from the GA, but subsidiary organs may also be established on recommendations of international conferences<sup>14</sup> or other main organs of the UN. In rare cases subsidiary organs are jointly set up by two principal organs. In this case there must be parallel

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<sup>8</sup> See 1.a. above.

<sup>9</sup> Peterson, General Assembly, p.108.

<sup>10</sup> See Art. 10 UNC.

<sup>11</sup> Hilf/Khan, in: Simma, Commentary UN Charter, Art. 22, mn. 22.

<sup>12</sup> Effect of Awards (Advisory Opinion), ICJ Reports 1954, pp. 47, 56.

<sup>13</sup> Hilf /Khan, in: Simma, Commentary UN Charter, Art. 22, mn. 3.

<sup>14</sup> UNEP has been founded by the GA (GA Res 2997 (XXVII) 1972) on a recommendation by the Conference on the Human Environment, which was itself convened on the recommendation of ECOSOC. Similarly the creation of the World Food Council (GA Res 3348 (XXIX) 1974) was initialized by a recommendation of the World Food Conference.

resolutions of the GA and the respective other principal organ (Security Council or ECOSOC).<sup>15</sup> The GA, in rare instances, also has established committees together with specialized agencies.<sup>16</sup>

The only limitation under Art. 22 UNC to create subsidiary organs is that the General Assembly must deem them necessary for the performance of its functions. There is, however, no obligation to ensure proper funding first, before setting up a subsidiary organ.<sup>17</sup>

When setting up the respective subsidiary organ, the GA may limit itself to defining the functions of the subsidiary organ and leave the question of number of members and the composition of the subsidiary organ open. In that case, the GA may authorize its President or the Secretary General ('SG') to deal with these questions. The executive heads of the more complex subsidiary organs are usually appointed by some device requiring the SG to secure the approval or consent of the GA: for example the UNHCR is "elected by the GA on the nomination of the SG"<sup>18</sup>; the Secretary General of UNCTAD "shall be appointed by the SG of the UN and confirmed by the GA"<sup>19</sup>. The staff of these complex subsidiary organs is then usually appointed by the director or head of the organ, sometimes with the explicit delegation of the SG or the GA. However, the exercise of these powers stays under the control of the GA. In the absence of such an authorization, the GA alone may determine or change the number of members or other crucial features.

The GA may invite any interested State to join a subsidiary organ. Even non-member States may be allowed to become members of subsidiary organs.<sup>20</sup> Generally the GA adheres to the principle that subsidiary organs should be composed in a geographically balanced way, when they are dealing with questions of universal significance. Usually also the proportion of financial contributions of a State or special interests will be taken into account. As far as the composition is concerned, the subsidiary organ may be composed of representatives of the Member States as well as of individuals elected or appointed in their personal capacity. Subsidiary organs composed of persons appointed in their private capacity may even consist of only a single person.<sup>21</sup>

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<sup>15</sup> The Committee for Programme and Co-ordination was set up as "the main subsidiary organ of ECOSOC and the GA" by two concurring resolutions (ECOSOC Res. 2008 LX (14 November 1976; GA Res. 31/93 (14 December 1976). More recently the United Nations Peacebuilding Commission was set up by concurring resolutions of the Security Council (SC Res. 1645, 20 December 2005) and the General Assembly (GA Res. 60/180, 20 December 2005).

<sup>16</sup> See the Agreement between the GA and IDA (GA Res 1594 (XV) 27 March 1961. But it must be noted that the establishment of such joint bodies goes beyond the scope of Art. 22, because Art. 22, if strictly interpreted, covers only UN-related functions. The establishment of the joint body also requires the prior agreement of the respective international organization and the GA then is no longer free to change the composition or terms of reference of the subsidiary body without the concurrence of the international organization (see Jaenicke, *Commentary UN Charter*, Art. 7, mn.36).

<sup>17</sup> In a 1974 Resolution the GA decided on one occasion that subsidiary organs are not allowed to set up their own subsidiary bodies without the prior consent of the GA, if there are any financial implications (GA Res. 3351 (XXIX), 1974, para. 1.5).

<sup>18</sup> A/Res/428 (V) (1950), Annex, para. 13.

<sup>19</sup> A/Res/1995 (XIX) (1964), Part 2, para. 27.

<sup>20</sup> Switzerland is not only a member of UNHCR, UNEP and UNCTAD, but also of such classic subsidiary organs such as the conference of disarmament.

<sup>21</sup> See, for example, the UN Mediator on Palestine (GA Res. 186 (May 14 1948)).

It has often been suggested that the number and size of GA subsidiary organs should be reduced in order to allow for a more transparent system within the organizational structure. So far these suggestions were not successful. The main reasons being that every subsidiary organ is regarded as important by some delegations or members, which will refuse its abolition. The same problem holds true in regard to reducing the size of subsidiary organs. The insistence on the rule that the regional composition of the GA should be reflected in the subsidiary organs makes it hard to keep them always at a reasonable size. Few of the major subsidiary bodies consist of less than 25 members. The increase in size makes them of course more “representative”. On the other hand the standing expert committees have remained smaller. That is because they typically perform specialized functions and the members are chosen for their expert knowledge on the particular issues. Therefore delegations are more willing to turn over these tasks to a smaller body, as long as the mandate is limited and clear.

### **3. Role and Legal Status of Subsidiary Organs**

The distinction between “principal organs” and “subsidiary organs” is an accepted feature within the typology of organs in the theory of international organizations. It is not unique to the United Nations system, but being applied to international organizations in general. The distinction between principal organs and subsidiary organs cannot be based on the perceived importance of an organ, in the sense that subsidiary organs deal with minor tasks only. A good example in this context is the Trusteeship Council, which, although established as a principal organ of the UN, today lacks a function.<sup>22</sup> Conceived in general terms, a subsidiary organ is an organ established by the decision or a act of the principal organ<sup>23</sup> – and, in the case of Art. 22 UNC that would be the GA. Judge Hackworth identified the role assigned to GA subsidiary organs in the Effect of Awards Advisory Opinion: “The term ‘subsidiary organ’ has a special and well-recognized meaning. It means an auxiliary or inferior organ; an organ to furnish aid and assistance in a subordinate or secondary capacity.”<sup>24</sup>

Nevertheless, the establishment of subsidiary organs has a heavy impact on the work of the GA. Most obviously it permits the GA to do more work, as the tasks at hand are divided up between the more specialized subsidiary organs.

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<sup>22</sup> Also it suspended its operation on 1 November 1994, the formal elimination of the Trusteeship Council would require a change of the UN Charter. It might be argued that the tasks in which the Trusteeship Council was involved, were anyway of less importance than these performed by the “Special Committee on the Situation with regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples” – a subsidiary organ established by the GA (GA Res. 1654 (XVI)).

<sup>23</sup> Notice that this definition may not be valid in all instances, as there are also subsidiary organs which are established in constituent instruments of international organizations (See Toores-Bernardez at 123-4).

<sup>24</sup> Effect of Awards (Advisory Opinion), ICJ Reports 1954, Diss. Opinion Judge Hackworth, p. 79.

Once they are established according to Art. 22 UNC, subsidiary organs are subordinated to the GA. It remains in the discretion of the GA to determine the scope of the respective subsidiary organ's powers and limit them accordingly. The GA at all times retains the organizational supervision and controls the structure and activities of the subsidiary organ. The respective subsidiary organ would act outside the scope of its mandate, if it did not abide by the stated directives. Ongoing and close control over a subsidiary organ can be achieved by means of reporting obligations. The duty to report and the following discussion of the report in the GA may lead to further action. Reports of advisory bodies usually will include recommendations or proposals, which the GA may choose to follow or bring to the attention of the UN Member States.

In regard to the status of the six main committees, Rule 66 of the General Assembly's Rules of Procedure ('RP') provides for, that a question, on which a main committee has submitted a report to the GA, may not be discussed again in the plenary unless at least one-third of the members present and voting consider such a new discussion necessary. According to Rule 102 RP the committees may set up sub-committees, which elect their own officers. Nevertheless the GA has not forfeited its right in regard to establish and control the subsidiary organs under Art. 22 UNC and the GA may depart from this rule. In fact the GA has done so, eg when it made the establishment of sub-committees (which would require additional financing) conditional upon its approval.<sup>25</sup> The Rules of Procedure regulate the six main committees (Chapter VIII RP) and the other subsidiary organs of the GA (Chapter XVII RP) in different chapters. Art. 161 RP states that the rules applying to the committees of the GA shall also apply to the subsidiary organs. Rule 161, however, leaves it open to both, the GA and the respective subsidiary organ, to establish different rules of procedure. Therefore a residual power exists for subsidiary organs in regard to their own procedural rules.<sup>26</sup>

In respect to the powers of a subsidiary organ to bind the GA, the Effect of Awards advisory opinion is highly illustrative. The ICJ ruled that the status of the UNAT as a subsidiary organ to the GA was immaterial in regard to the UNAT being able to render judgments which are binding on the United Nations. The ICJ furthermore decided that it was within the powers of the GA to establish a tribunal to do justice between the organization and the staff members.<sup>27</sup> Once the GA had transferred the respective powers to the UNAT, it had not the right, on any grounds, to refuse to give effect to an award of compensation made by the Administrative Tribunal.<sup>28</sup> Therefore the respective rulings are binding on the United Nations.

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<sup>25</sup> See GA Res. 3351 (XXIX), 1974, para. I.5.

<sup>26</sup> This has also been confirmed by the GA (GA Res. 3081 (XXVIII), 1973) in the context of the foundation of the UNU (see Art. 4 (5) UNU Charter).

<sup>27</sup> Effect of Awards (Advisory Opinion), ICJ reports 1954, p. 58.

<sup>28</sup> Effect of Awards (Advisory Opinion), ICJ reports 1954, p. 62.

#### **4. Different Types of Subsidiary Organs**

The system of the United Nation's subsidiary organs - and those of the General Assembly in particular - is characterized by a lack of coherence. The quality of the GA's subsidiary organs ranges in complexity and status from temporary committees to (semi-) autonomous bodies that maintain their own secretariats or administrative departments that set up their own subsidiary units. Therefore subsidiary organs which have been established by the GA cannot be put in a "straightjacket of doctrinal typology".<sup>29</sup> Nevertheless the GA subsidiary organs can be divided into subcategories of committees, commissions, boards, councils, panels and working groups. A more specific classification is – due to significant differences in structure, task and powers of the subsidiary organs - not helpful or even possible. However, it is possible to discern some basic features, which can be used for differentiation:

- a) In respect to the composition of subsidiary organs, it can be distinguished between organs consisting of all Member States – committees of the whole – and bodies with a limited membership.
- b) Then there are subsidiary organs that are composed of States (which are represented by government delegates) and those which are composed of experts being selected on the basis of their personal capacity or expertise and who are not subject to instructions from their governments.
- c) In respect to the periodicity of the meetings it can be distinguished between standing bodies (which meet irrespective, whether the parent organ is in session) and sessional bodies (active only during the sessions of the GA, thus permitting simultaneous debates on different levels).
- d) Furthermore, it can be differentiated on the time-period for which the subsidiary organ is created. There are permanent bodies as well as non-permanent bodies (created for a special purpose, but whose mandate can be renewed by the GA).
- e) Finally, a distinction between advisory organs and decision-making bodies can be drawn. The decision making power of some subsidiary organs may then even entail judicial decisions.

##### **a. Committees under the General Assembly's Rules of Procedure**

###### **aa. Main Committees**

The General Assembly, at its first session, established six main committees. In 1947 the Ad Hoc committee on the Palestinian Question was set up, and it became the seventh Main Committee in 1952. It was renamed Special Political Committee four years later and was merged with the Fourth Committee in 1993. Therefore Rule 98 of the GA's Rules of Procedure, as of today, provide for the establishment of six main

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<sup>29</sup> Hilf,/Kahn, in: Simma, Commentary UN Charter, Art. 22, mn 1.

committees. According to Rule 98 these committees are: Disarmament and International Security Committee (*First Committee*); Economic and Financial Committee (*Second Committee*); Social, Humanitarian and Cultural (*Committee (Third Committee)*); Special Political and Decolonization Committee (*Fourth Committee*); Administrative and Budgetary Committee (*Fifth Committee*) and Legal Committee (*Sixth Committee*). The roles of some of the main committees have changed over time. For example, as has been stated, the Fourth Committee formerly handled Trusteeship and Decolonization matters. But with the decreasing number of such matters to be addressed, the functions of the Special Political Committee were merged into the Fourth Committee.<sup>30</sup>

The First Committee deals with disarmament and related security issues, eg non-proliferation. The Second Committee deals with economic and financial matters, such as the relationship between development and the international financial system. But it also is concerned with issues relating to migration or sustainable development. The Third Committee's work is mainly focused on social, humanitarian and cultural questions, including non-discrimination, criminal justice and others. Therefore it also examines the reports of the human rights treaty bodies and the special rapporteurs in that context. The Fourth Committee has expertise on political questions and decolonization. It therefore covers issues on peacekeeping missions, non-self governing and occupied territories, etc. The Fifth Committee covers administrative and budgetary questions and is supported by the two committees provided for in Rules 155 and 158 RP. The Sixth Committee, the legal committee, performs a very important function in the development of public international law. The agenda of the Sixth Committee encompasses the discussion and review of drafts and other relevant legal materials prepared by special subsidiary organs such as the International Law Commission ('ILC'), UNCITRAL or others. Additionally it is also dealing with matters related to the administration of justice, eg questions in regard to the International Court of Justice.

The committees are established at the beginning of each session of the general Assembly and they consist of representatives of all the Member States, ie they are committees of the whole. Each committee elects a chairman, three vice chairmen, and a rapporteur at the outset of the General Assembly session. The meetings, debates and votes shall be public (Rule 60 RP). Decisions are taken by a majority of the members present and voting. Each Member State has one vote. But despite that, there is a strong incentive to ensure a 2/3 majority already within the respective main committee, and that not only in cases where a 2/3 majority of votes is also required in the plenary of the GA.

As has already been indicated, the committees cover the vast majority of the GA's functions. Their task is to discuss the issues before them and they are responsible for the consideration of the agenda items. The committees prepare recommendations for decisions and resolutions and submit them to the plenary of the

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<sup>30</sup> A/520/Rev.15/Amend.2 (8 October 1993).

GA. Rule 65 RP explicitly states that the final decision of the GA will usually be based – until it decides otherwise - on a report prepared by the appropriate main committee. This provision clearly points out the importance of the work of the six main committees in the workflow of the GA.

## **bb. Procedural and Standing Committees**

The Rules of Procedure furthermore provide for the establishment of two committees on procedure (Rules 28 and 38 RP) and two standing committees (Rules 155-160 RP).

The General Committee is composed of the President and the Vice-Presidents of the GA and the chairpersons of the six main committees. Its task is to make recommendations concerning the General Assembly's agenda (eg allocation of time and priorities).

The Credentials Committee examines the credentials of the representatives of a Member State and reports to the GA.<sup>31</sup>

Rules 155 and 157 RP provide for the establishment of an additional two committees: an Advisory Committee on Administrative and Budgetary Questions ('ACABQ'; Rule 155 et seq RP), consisting of 16 members, which shall be responsible for expert examination of the program budget of the UN and assist the Fifth Committee; and an Expert Committee on Contributions, consisting of 18 members. It shall advise the GA on apportionment of the expenses of the organization among members (Rule 159 RP). Both of these standing committees are not made up of representatives of the member states, but are limited expert bodies.

## **b. Other commission, committees and subsidiary organs**

Apart from the committees provided for in the RP, the GA has created many more subsidiary organs over time. The GA has assembled a broad array of subsidiary organs in various fields it deemed necessary. The various subsidiary organs include, eg, boards<sup>32</sup>, commissions<sup>33</sup>, committees<sup>34</sup>, councils<sup>35</sup> and panels<sup>36</sup> and

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<sup>31</sup> Problems have arisen in cases of rivaling governments (eg PRC and Taiwan); representatives of not yet recognized States and when the legitimacy of a government was questioned (eg South Africa in the 1970s).

<sup>32</sup> Eg the Board of Auditors (GA Resolution 74 (I)); Trade and Development Board (GA Resolution 1995 (XIX) or the United Nations Joint Staff Pension Board (GA Resolution 248 (III)).

<sup>33</sup> Among them, eg, the Disarmament Commission (GA Resolution 502 (VI) and S-10/2)); International Law Commission (GA Resolution 174 (II)); United Nations Commission on International Trade Law (UNCITRAL) (GA Resolution 2205 (XXI)); United Nations Conciliation Commission for Palestine (GA Resolution 194 (III)).

<sup>34</sup> Inter alia, Committee on the Elimination of Racial Discrimination [established by GA Resolution 2106 A (XX)]; Committee on the Exercise of the Inalienable Rights of the Palestinian People [established by GA Resolution 3376 (XXX)]; Committee on the Peaceful Uses of Outer Space (COPUOS) [established by GA Resolution 1472 A (XIV)]; Committee on the Rights of the Child [established by GA Resolution 44/25, 47/112 and 49/211]

<sup>35</sup> Inter alia: Human Rights Council [established by GA Resolution 60/251]; Council of the United Nations University [established by GA Resolution 3081 (XXVIII)]; Governing Council of the United Nations Environment Programme [established by GA Resolution 2997 (XXVII)].

<sup>36</sup> Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency [established by GA Resolution 347 (IV) and 1438 (XIV)].

working-groups<sup>37</sup>. Apart from these, there are other bodies, such as the Joint Inspection Unit<sup>38</sup>, the United Nations Administrative Tribunal<sup>39</sup> and the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea<sup>40</sup>.

The subsidiary bodies have been set up by the General Assembly through the means of a resolution. Their work covers the broad field of GA activities, and they were set up to study specific subjects of interest to the GA, eg the peaceful use of outer space, apartheid, or independence for colonial territories. Certain committees were created by a majority of the GA members to work towards special goals and express particular positions. Because of their nature and overall credibility, they tend to function well, even if the targets of their criticism refuse to co-operate or take part in the debate.<sup>41</sup>

The GA created permanent subsidiary organs eg for organizational issues, substantive questions or technical purposes.<sup>42</sup> In regard to committees, there are Ad-hoc committees and special committees (eg on decolonization) - unlike the six main committees, the other standing committees can meet while the GA is not in session and thereby extend its work season.<sup>43</sup> One of the main tasks of these committees is to prepare reports and draft resolutions. The respective committees usually meet several times a year and report on their deliberations at the General Assembly's regular sessions. Their work will ultimately help to channel debate in the GA and save precious time. But, all in all, there is no consistent pattern of meeting or composition in regard to these committees.

Commissions are usually bodies with a rather large degree of independence and a restricted membership. The ILC or UNCITRAL, for example, draft legal rules.

The subsidiary bodies continue to exist as long as is considered necessary. Some of the subsidiary organs had only temporarily assignments and have therefore been dissolved. But most committees are not limited concerning the duration of their existence and even when their mandate seems completed, they are not necessarily formally disbanded but may be adjourned indefinitely and reactivated when the need arises.

### **c. Conferences and global summits**

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<sup>37</sup> Working Groups include, inter alia: High-level Open-ended Working Group on the Financial Situation of the United Nations [established by GA Resolution 49/143]; Working Group on the Future Operations of the International Research and Training Institute for the Advancement of Women [established by GA Resolution 56/125]; Working Group on the Finance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) [established by GA Resolution 2656 (XXV)].

<sup>38</sup> GA Resolution 2150 (XXI).

<sup>39</sup> GA Resolution 351 (IV).

<sup>40</sup> GA Resolution 54/33 and 57/141.

<sup>41</sup> It happened only a few times that governments, which were unhappy with the establishment of a subsidiary organ, were able to frustrate its work. It so happened in 1973, when all five nuclear powers refused to participate in the Ad Hoc Committee on the Disarmament Conference.

<sup>42</sup> See Jaenicke, in: Simma, Commentary UN Charter, Art. 7, mn. 11 et seq.

<sup>43</sup> Peterson, General Assembly, p. 108.

There is a long tradition of the General Assembly to organize conferences. Their task usually focuses on elaborating on international rules, developing guidelines or working on other particular issues which should be codified in the international codex. It must be understood that the culminating meeting is usually preceded by intensive preparatory work, in which many different entities of the UN system might already have been involved. A preparatory commission may have been set up in advance, which itself may be an ad-hoc subsidiary organ, or a standing organ may have temporarily been assigned to organize the conference. Both the conference and the respective preparatory organ are complex bodies. Regularly, the conference will report its work and the achievements back to the GA. Through initiating the process and establishing reporting duties, the GA remains in control of the proceedings while the conference does its work. On major issues the GA may comment from time to time and even endorse proposals along the way.<sup>44</sup>

In recent decades, global conferences on such important topics such as Environment, Health, or Human Rights have to some extent developed a life of their own.

The reason for this is, that global conferences attract vast attention in the media and from the respective non-governmental organizations ('NGOs'). The role of NGOs increases as they stage their own events and discussion forums and make suggestions to the intergovernmental conference. And even though the GA will typically adopt a resolution which endorses the declarations and findings of the respective global conference, the declaration will sometimes remain identified with the respective conference in which they were discussed and created.<sup>45</sup> The original function attributed to subsidiary organs – namely the function of assistance only - as stated by Judge Alvarez in the Dissenting Opinion in the Effect of Awards Advisory Opinion: "The only purpose of the subsidiary organ is to assist the principal organs to discharge their duties"<sup>46</sup>- seems to vanish in that case.

#### **d. Complex Subsidiary Organs and semi-autonomous Bodies**

Over time, more and more complex subsidiary organs have been established. This could not have been entirely foreseen by the drafters of the UN Charter and many of the resulting semi- or quasi- autonomous bodies are kind of mini-intergovernmental organizations.<sup>47</sup> This is one of the main reasons, why a strict classification of these semi-autonomous bodies is rather impossible.

Semi-autonomous bodies are expected to fulfill their functions largely without interference by the GA, although they remain formally under its control. Especially programs and funds have been created by the

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<sup>44</sup> This was, inter alia, the case with the Conferences on the Law of the Sea.

<sup>45</sup> See Peterson, General Assembly, p. 111.

<sup>46</sup> Effect of Awards (Advisory Opinion), Dissenting Opinion Judge Alvarez, ICJ Reports 1954, p.70.

<sup>47</sup> The term "quasi autonomous bodies" is introduced by Sasz, Complexification of the UN System, p. 5: accordingly to Sasz these entities might better be described as "bodies" rather than "organs", as they most of the time will have their own organs.

GA to undertake particular operational functions.<sup>48</sup> They exist chiefly in areas of humanitarian relief and development cooperation and the practice of the GA includes the setting up of organs to perform functions such as the development and reflection on rules, principles and programs (UNEP, UNCTAD), caring for refugees (UNHCR, UNRWA) or direction of technical assistance and nurturing children (UNICEF). Some of these subsidiary organs report to the GA through ECOSOC.

Their classification is difficult, as the GA has only granted an autonomous status within the UN system a few times.<sup>49</sup> Nevertheless, some of these entities are largely independent, because of the widely autonomous execution of their functions, the nature of their financing or their complex organizational structure. The powers given to these semi-autonomous bodies are in some respects almost equivalent to those of specialized agencies.<sup>50</sup> In some cases it includes the power to acquire property or conclude the contracts necessary to fulfill their functions. The restricted legal personality, based on the authorization to act in the name of the UN, does, however, not respond to the legal personality enjoyed by specialized agencies.<sup>51</sup> They lack an independent legal personality, but partake of that of the United Nations.<sup>52</sup> Furthermore in contrast to specialized agencies, the semi-autonomous bodies were not established by an international treaty. Therefore, even while operating independently to some extent, a strong institutional link with the GA exists. The GA has created the respective program or fund and possesses the power to pass decisions which bind the organ.<sup>53</sup>

Most semi-autonomous bodies are financed through voluntarily contributions or through arrangements with States under which they are compensated for certain services they provide. Only few receive funds from the UN regular budget. The budgets of the semi-autonomous bodies are regularly drawn up by their executive heads and submitted to the GA for approval. Obviously, complications with the budget arise from time to time and the GA is not always in a position to fulfill its obligations foreseen by the UN Charter in Art. 17 para. 1. In this context it must be recalled that the budgets of some of the semi-autonomous bodies are rather huge compared to that of other subsidiary organs and that their throughput collectively dwarfs the regular budget of the UN.<sup>54</sup> It can be concluded that, although the GA nominally reigns over all these subsidiary organs and the bodies they compose, the factual power and the actual authority of the GA is somewhat diluted, especially in respect of those operations, funds and programs that involve the greatest costs.<sup>55</sup> But, even taking this into account, the semi-autonomous organs cannot be considered

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<sup>48</sup>See eg UNICEF (A/Res, UNHCR (Res 319 (V)(1949), UNCTAD (res. 1995(XIX)(1964)

<sup>49</sup> This has for example been the case with the United Nations University (UNU) (Ga res. 2951 (XXVII) (1972) and for UNCDF (GA Res. 2186 (XXI) (1966).

<sup>50</sup> Hilf/Kahn, in: Simma, Commentary UN Charter, Art. 22, mn. 45.

<sup>51</sup> Hilf/Kahn, in: Simma, Commentary UN Charter, Art. 22, mn. 45.

<sup>52</sup> Sasz, Complexification of the UN System, p. 6.

<sup>53</sup> See Hilf/Kahn, in: Simma, Commentary UN Charter, Art. 22, mn. 18.

<sup>54</sup> See also Sasz, Complexification of the UN System, p. 13-4.

<sup>55</sup> Sasz, Complexification of the UN System, p. 16.

being independent, as they are not established by an international treaty, but by a resolution of the GA and therefore remain under its control.

Thus, the legal status of semi-autonomous bodies thus must be clearly distinguished from that of so called “treaty bodies”, which have been established by an international treaty and then assigned to the GA. Treaty bodies do not fall within the category of subsidiary organs under Art. 22 UNC.<sup>56</sup> This is so simply because the act of their creation does not stem from the GA and therefore their existence is not conditional to the power of the GA. Their status as treaty bodies – and not subsidiary organs – is not even altered by the fact that some of them are closely linked to the GA through reporting obligations.

#### Part V: Evaluation of the existing system

As has been demonstrated above, the system of subsidiary bodies established by the UJN General Assembly does not reveal a consistent pattern, which is due to the fact that it has grown organically. The system established under Art / and 22 UN Charter allows for flexibility in reacting to challenges that the UN General Assembly is confronted with. The General Assembly can at any stage easily set up a subsidiary body to deal with matters that are of particular importance for whichever reason.

However, there are also some disadvantages to the system: obviously the General Assembly is quicker in establishing new subsidiary organs than in abolishing them.

Another disadvantage is the overlap in work between the general Assembly and ECOSOC. Keeping in mind that

Overall, it can be concluded, that while it is generally welcome that the UN General Assembly reacts to new challenges with the establishment of a special subsidiary body, it must be borne in mind that the UN budget is limited and that each new subsidiary body reduces the resources available for the existing bodies and their ability to work. Therefore a careful balance must be stricken between supporting existing subsidiary bodies, creating new subsidiary bodies, and also abolishing subsidiary bodies which are of no use anymore. To make the whole system more transparent various ideas might be workable, one thing is to clarify the scope of competencies of the existing subsidiary bodies, an other thing might be to pool the competencies of existing subsidiary bodies.

#### **Select Bibliography:**

Blokker, Niels / Schermers, Henry: International Institutional Law, The Hague, 1995

Finley, B.: The structure of the United Nations, general Assembly, 2<sup>nd</sup> ed., New York, 1990.

Hilf, Meinhard / Khan: Article 22, in: Simma, Bruno (ed.): The Charter of the United Nations, Oxford, 1994.

Jaenicke, Article 7, in: Simma, Bruno (ed.): The Charter of the United Nations, Oxford, 1994.

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<sup>56</sup> Jaenicke, in: Simma, Commentary UN Charter, Art. 7, Mn. 41.

Lindemann, B. / Hesse-Kreindler, Dagmar: System of Committees, in: Wolfrum, Rüdiger (ed.): United Nations, München, 1995.

Peterson, M.J.: The UN General Assembly, London, 2006.

Ramcharan, Bertrand G.: Lacunae in the Law of International Organizations: The Relations between subsidiary and Parent Organs with particular reference to the Commission and Sub-Commission on Human Rights, in: Festschrift für Felix Ermacora, Nowak, Manfred, et. al. (ed.), Kehl, 1988.

Saaroshi, Danesh: The Legal Framework Governing United Nations Subsidiary Organs, BYIL, 1996.

Sasz, Paul C.: The Complexification of the United Nations System, in: Max-Planck UN Yearbook 1999, pp. 1 – 56.

Torres Bernardez, Santiago: Subsidiary Organs, in: Dupuy, Handbook on International Organizations, 2<sup>nd</sup> ed, Dordrecht, 1998.