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International Organizations or Institutions, History of

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A. Definition and General Issues

1 Sir Gerald G Fitzmaurice, as Rapporteur of the → *International Law Commission (ILC)*, in 1956, defined an international organization ('IO') as 'a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from that of its member-States, and being a subject of international law with treaty-making capacity' ('Report on the Law of Treaties' [1956] vol II UNYBILC 108). These four constitutive elements of an IO are today generally accepted: (i) the formal basis of the organization is a treaty; (ii) its members are States (and possibly also other subjects, like other IOs); (iii) it has its own organs and hence an institutional structure distinct from that of its Member States; (iv) it possesses a degree of international legal personality. The last element has been accepted only progressively. For years it was not considered that the legal capacity of such an international body was inherently implicit in its concept. Among these four elements, the two key ones are that the organization groups together States (intergovernmental organization) and that it has an institutional structure of its own. All law and life of such international bodies is then permeated by the eternal tension between these two poles, its Member States trying to maintain as much control as possible over the organism they created, and the organization itself trying to emancipate itself to some extent from this control in order to perform as rationally and effectively as possible the common aims for which it has been crafted. Functionally an IO is based on an institutionalized and freely chosen form of cooperation among States for certain aims: it is 'toute association [entre États] créée

pour remplir dans la société internationale une fonction spécifique' (Dehousse 31). An IO is thus a form of international government, but in which the States retain most of their → *sovereignty*.

2 In modern international law, an IO can therefore quite neatly be distinguished from four other related phenomena. It is not a simple conference of States, since the conference is not institutionalized: it meets and dissolves without any permanent organs bridging the times in which it is not convened (see also → *Conferences and Congresses, International*). It is not an international organ, like the → *International Court of Justice (ICJ)*, since it is composed of a membership of States, represented in a plenary organ (assembly). It is not an alliance of States based on a treaty, since such an alliance rests exclusively on a set of normative duties and on direct consultation between the parties to it (→ *Alliances*). It remains deprived of an international institutional structure. Finally, it is not a federation of States, or, better, it is a specific form of a federation of States. The distinction is here more difficult to draw. The main point is that a federation is itself a State-body, with an autonomous constitution and with the pretence of regulating matters of legislation and execution of laws on a wide array of matters in coordination with the States grouped together. An IO, as understood today, remains studiously aloof from any suggestion of Statehood (it is not a 'super-State') and does not interact as directly with questions of domestic legislation. On the other hand, any IO is indeed a sort of confederation of States, in which each one of the members retains its sovereignty, but subordinates it to some extent to the performance of some common aims (→ *Confederations of States*). Thus, for centuries, the phenomenon of IOs was not distinguished from that of (con)federations of States. The difference of functions explains why the term confederation has finally been dropped for modern IOs. By using the quite recent term of 'IO', stress is laid on the international functions of such bodies, performing tasks geared towards the cooperation among States and at the commonweal of the → *international community*; conversely, old-fashioned confederations of States pursue mainly State-related functions, mainly security and defence. Through this functional aspect, the ideal element of organizing the international community and of providing means of cooperation among States is thus to some extent inseparable from the very concept of IO.

3 These distinctions have here been canvassed in some detail since historically, ie for centuries, IOs do not distinguish themselves clearly from the mentioned and related phenomena. The forerunners of modern IOs must indeed have been sought in conferences, international organs, and forms of State federations. The main difference between these foreshadowing entities and modern IOs lies in the lack of institutionalization of the older bodies (Ago 11). It took millennia before public collectivities of people were accepted as strengthening international cooperation to the extent of creating autonomous international institutions, with their own powers and the capacity to crystallize their own institutional will.

4 The term 'international organization' emerged only late in the 19th century and was first used in a much larger sense than today. It connoted the ideal quest for a more rational organization of the world in some form of federation, able to terminate international anarchy, to sanction international law, and to ensure international peace and justice. Schemes for organizing the world politically were hence causal at the dawn of coining the term 'IO'. The word was probably first used by J Lorimer (*The Institutes of the Law of Nations* vol 2 [Blackwell Edinburgh 1884] 186 and 216 et seq; he seems to have used the word already in a publication of 1871, see H Wehberg 'Die Diskreditierung der Idee der internationalen Organisation' [1948] 48 FW 105–10 at 106). Lorimer, influenced by the concept of law of the school of Pufendorf, Thomasius, and Burlamaqui, considered that law without sanction cannot be positive, but is bound to remain natural (or moral); hence, international law, deprived of institutional sanction by a higher authority, was not positive law; and hence international anarchy prevailed. In order to modify this sad state of affairs, international law had to become positive law. In order to take that great leap and to become such positive law, it had to be guaranteed and sanctioned by some authority above the single States, ie by some federal organization in the world, which meant an international organization. This idea of 'organization' of the world is to be found in many authors of the time, even when they did not explicitly use the term IO: such is, eg, the case of F de Martens (*Traité de droit international* vol 1 [Marescq Paris 1883] 269 et seq and 287 et seq). He discussed the existing international unions and foreshadowed future evolutions for 'organizing

the world' under the titles '*Développement de l'idée de la communauté internationale*' and '*Organisation de la communauté internationale*'. In the wake of the Hague Conferences, and under the great impression which these gatherings made on progressive international lawyers, the term IO was used again: Walther Schücking's article 'L'organisation internationale' ([1908] 15 RGDIP 5–23) is a translation from the German title '*Die Organisation der Welt*'. The breakthrough of the term IO in the contemporary sense came with the end of World War I and the creation of the → *League of Nations* and its related agencies (Potter [1945]). The concept now ceased to connote simply the general aspiration towards an organization of the world in order to end international anarchy. It consolidated itself with the institutional structures newly created, mainly the pivotal figure of the League of Nations. However, even in 1938 a leading author on the subject matter could treat the question of IO under the perspective of international conferences, the movement for international law and arbitration, and 'international federation' (Potter [1938]). He thus evidenced a large and old-fashioned approach to the subject. With the advent of the → *United Nations (UN)* system, the modern concept of institutional IOs definitively imposed itself, and the older and larger sense was erased from public perception.

5 Some sociological or material conditions must be fulfilled before IOs can flourish: (i) a plurality of States relatively independent one from the other (rather than a hegemony or empire); and (ii) a minimum of homogeneity of these States, manifested mainly in subjective aspects such as awareness of problems arising out of their coexistence, a sense of common interest, and a will to cooperate. These conditions have not been met in all periods of human history. In primitive or ancient societies, there has been progressively room for forms of federations of States. These associations of States were due to concerns of common security or to perspectives of common war and booty enterprises (see eg Greek Leagues or the Triple Alliance of 1433 in pre-Colombian Mexico). Interdependence and the sense of commonness had not developed to the point that international relations could be pushed as far as the institutionalization of international cooperation. During the Roman Empire, an international organization was rendered impossible in the Mediterranean world by the predominance and hegemonic thought

of Rome. In the European Middle Ages, some federations of States did exist, but the fragmented mosaic of small and smallest autonomous collectivities on the one hand and the existence of universal powers (the Emperor and the Pope) on the other precluded any possibility, or indeed pressing need, to set up IOs. Following the Renaissance, the splitting up of common faith through reform and religious wars, and the emergence of the jealously sovereign modern State, once again hampered any effective progress towards international organization. In the Westphalian setting of the time, Europe was politically organized under the unstable sway of the principle of 'equilibrium of powers'. When this system proved to be increasingly unsatisfactory, the way for IO had been slowly prepared. Full-fledged IOs in the modern sense are thus a very recent phenomenon. The first international structures realizing or approximating IOs are to be found in the 19th century; but it is the 20th which has been truly the century of IOs.

6 From a bird's eye perspective, it can be said that the historical evolution of IOs from the forerunners to the realizations of the 20th century has undergone three phases: (i) that of international (con)federations of States and of international conferences; (ii) the emergence of technical international unions and commissions in the 19th century under the pressure of natural (ie technical, non-political) solidarity and interdependence; (iii) the creation of universal political international organizations such as the League of Nations system and later the UN system, under the pressure of political catastrophes such as World War I, prompting the need for radical renewal and action. The aim of providing platforms for international contacts and some form of channeled international cooperation is common to all these schemes.

7 Parallel to these factual developments, there has been a continuous flow of projects or drafts presented by lawyers, philosophers, political scientists, or other interested persons, aimed at a better organization of the world polity. These plans and projects have at the end of the day displayed little impact on the creation of the modern international institutions. As blueprints for a more rationally organized world, they can not, however, be altogether ignored. It would also be wrong to say that they played no role at all in the creation of the great modern international institutions, especially in the League of Nations and the UN.

B. Forerunners *in re*: Federations and Conferences

8 In all parts of the world, on all continents, and at all times, there have existed groups of States linked together in a closer or looser knit form of an international 'federation'. These structures to some extent approximated modern IOs, even if at best as forerunners. Those of the European world are more or less known. First, there were the Greek Amphictyonies, such as the Delian Amphictyony or the Lacedaemonian Amphictyony. These were associations of Greek city-states. Their aim had initially been to deliberate together on religious matters of common concern. However, these associations then quickly offered welcome forums for the discussion of common political concerns and for the settlement of disputes. Each Amphictyony was composed of an assembly to which the States sent their delegates. These associations were based on equality or on relative inequality (→ *hegemony* of the leading power, as eg Sparta). Some of them possessed federal armies. Second, there have been political federations among Greek States in order to pool together forces against a common enemy (such as Macedonia or Persia). One may here mention the Achaean Federation or the Aetolian League. The central power was in the hands of a federal assembly composed of delegates of the States. The power thus displayed was at once legislative, executive, and judiciary. The assembly was provided with its own federal agents and secretariat; there was also the *Stratège*, ie the president of the federation. Third, one may recall the Etruscan federations of towns. They faded away with the strengthening of Rome. These entities (so-called *Lucomies*) were again inter-city federations created under the pressing need to pool together forces for the defence against common outside enemies. They had at their apex a king and later a federal secretary general (*Lars*). He was an elected international agent, whose duty was to head and to administer the federation, as well as to command the federal army in times of war. One may also recall the Latin League, which grouped together 30 city-states in the Latium. It definitively disappeared in 334 BCE. Fourth, there have been short-lived federations among Italian city-states in the Middle Ages. Their aim was again to pool together forces for the defence of common interests (eg the League of Lodi, 1454, or the League of Venice, 1495). The changing patterns of interests of the participants in a quickly shifting world did not permit these entities to survive for longer than

short periods of time. Fifth, there were such entities as the → *Holy Roman Empire* of the German Nation (*Heiliges Römisches Reich Deutscher Nation*). For some centuries it grouped together a series of kingdoms, cities, and other autonomous collectivities. Sixth, there was the German Hanse (since 1120, with its apogee at the 14th century). This was initially a federation of cities in order to further commercial interests, a sort of *Handelstaat* (Commercial State). As is inevitable, this commercial federation also performed political functions. It was composed of a federal assembly with the delegates of each city. The federal capital was seated in the most important city of the Hanse, Lübeck. The mayor of this town presided over the federation. The Hanse possessed its own army and navy. Moreover, in order to allow the proper development of commerce, the cities had sworn in the federal covenant to uphold order and security within their own jurisdiction.

9 Outside of the European world, one may mention the great Triple Alliance (which was indeed a confederation) of 1433–1521 in pre-Columbian Mexico. The Aztecs (Mexica), the Alcohua of Tezcoco, and the Tepaneks of Tlacopan, three differently powerful local collectivities, entered into a confederation with the aim of defending themselves in a common front and to engage in the common enterprise of wars of booty and tributary conquest (on the structure of this federation, see MC Meyer and WL Sherman *The Course of Mexican History* [4th edn OUP Oxford 1991] 59 et seq and especially P Carrasco *Estructura político-territorial del Imperio tenocha: La triple Alianza de Tenochtitlan, Tetzococo y Tlacopan* [Colegio de México Mexico 1996]). This Triple Alliance dominated the Mexican highlands up to the moment of European conquest. Some Iroquois nations in the northern part of the American continent between 1450 and 1777 also constituted a confederation of tribes, with the aim of maintaining peace among themselves (in which it was apparently remarkably successful) and to solve disputes by multilateral negotiation. The confederation was mainly composed of a great council, representative of all its members. Third collectivities interested in the subject-matter of particular items of debates were invited to assist on a consultative basis. Treaties among the members were negotiated here. The League created a sort of civil state of affairs within its bounds, whereas the state of nature of endemic warfare still persisted outside its realm. In its ideological footprint, it remarkably foreshadows the

Geneva League of Nations of 1919 (on this Iroquois federation, see NC Crawford 'The Long Peace Among Iroquois Nations' in K Raaflaub [ed] *War and Peace in the Ancient World* [Blackwell Oxford 2007] 348–68).

10 By the same token, in past times, multilateral international conferences grouping together all-important powers of a region in order to coordinate public policies and to seek political or technical cooperation can also be observed in all parts of the world. Hence, for example, political conferences bringing together the main Chinese States in the period before the Empire was finally unified (221 BCE) were at once frequent and dealt with the most varying and important questions of common concern. The meetings consisted of discussion of common concerns, in an attempt at solution of disputes and in the crafting of forms of federation among States. The most famous of these great gatherings was the Conference of 546 BCE. Its object was to try to bring about → *disarmament* and the establishment of a federation among the Chinese States in order to maintain the peace. The great distrust among the Chinese States of this period explains its almost complete failure. Parallels with the → *Hague Peace Conferences* (1899 and 1907) and with the League of Nations may, however, be noticed (see T Wang 'International Law in China: Historical and Contemporary Perspectives' [1990] 221 RdC 195–369 at 211–12). In Europe, one may recall the meetings of the → *Concert of Europe* in the 19th century, where the Great Powers exercised a sort of de facto government in Europe in order to solve disputes, adjust their respective claims and interests, and maintain the peace. At the end of the century, with the entry into the international community of a series of non-European States, and with the strengthening of the United States, international conferences became truly multilateral. They were thenceforward based on equality and often vested with a law-making function. The Hague Conferences of 1899 and 1907, grouping all States of the world of its time, are emblematic of this evolution. These conferences—and the Concert of Europe—have been important landmarks on the path towards IOs. The practice of sitting together in a quasi-institutional (if not quasi-parliamentary) setting and of taking common decisions could here be slowly learnt and progressively internalized. It may be added that some progressive lawyers like W Schücking had considered the Hague Conference as the first step of a new world

federation of States (W Schücking *Der Staatenverband der Haager Konferenzen* [Duncker&Humblot Munich 1912]).

C. Forerunners *in spe*: Projects for International Organizations

11 Since most ancient times and in all continents there have been thinkers who elevated their thought to the question of a proper organization of the world, in order to secure peace and justice. Many of these projects saw light in Europe and later in America; but such projects or thoughts have indeed been expressed in all somewhat advanced cultures. For the extra-European world, it may just be sufficient to mention on the one hand Confucius for ancient China and his postulates of universal peace based on righteousness and conciliation; and on the other hand Al-Kawakibi for the Arab world (see B Boutros-Ghali 'Un précurseur de l'Organisation internationale: Al Kawakibi' [1960] 16 *Revue Égyptienne de Droit International* 15–22). In Europe and later in America, plans or less matured ideas for universal peace and organization of the world have been expressed since the Middle Ages up to modern times. In antiquity such plans were not formulated since the political ideals of the times were centred upon the constitution of empires. It is only since the Middle Ages that Europe was befallen by a multiplicity of 'sovereigns' so that the necessity of rationally organizing them could arise. Such projects or ideas were formulated by persons, among others, as different as: P Dubois, King George of Podiebrad, Erasmus, Pope Leo X, François de la Noue, E Crucé, H Grotius, Sully, W Penn, J Bellers, Abbé de St-Pierre, Cardinal Alberoni, JM von Loens, JF von Palthen, JF de la Harpe, JH von Lilienfeld, KG Günther, J Bentham, JG Schindler, P de St-Germain, JA Schlettwein, I Kant, JJ Rousseau, Condorcet, JB Cloots, PA Gargaz, JS Veridicus, EF Gregorii, Delisle de Sales, KC Krause, A Taparelli, Saint-Simon, Proudhon, JF Sineriz, JB Sartorius, P Bazan, C Pecqueur, PR Marchand, JA Bolles, Hamilton (pseudonym), TC Upham, W Ladd, LA Bara, F Bouvet, M Adler, A Malardier, D Urquhart, AP Sprague, P Lacombe, A Turcotti, JC Bluntschli, L Levi, JBA Godin, G Pays, J Lorimer, P Fiore, etc (see generally Ter Meulen). Certain of these projects concerned exclusively the federation of Europe (eg Dubois, Sully, Krause, Saint-Simon, Proudhon, etc), while other projects were universal (eg Crucé, Kant). The most important and influential of

these projects were those of Dubois, Podiebrad (King of Bohemia, project inspired by Marini), Crucé, Sully, Penn, Abbé de St-Pierre, Bentham, and above all Kant (see Ledermann [1945]).

12 Albeit all these most influential projects differ in motivation and structure, most of them share some common fundamental features. Almost all of them are based, first of all, on a condemnation of war, be it on moral grounds or on policy considerations; all are convinced of the idea that to ensure international peace and justice it is necessary to 'organize' the world, since in the 'state of nature' in which nations are caught up, peace and justice will not be finally secured; all are based on the idea of some federation of States in which an assembly (often containing legislative, executive, and judicial powers) and some international executive organs (eg an army) impose some rules, provide for military security, and arbitrate disputes, as the case may be; some of these projects further underline that the federation could not be maintained if the municipal societies of States Parties are not governed on the basis of some common principles and legal rules (eg peace on the outside depends on the type of government on the inside: see especially Immanuel Kant, with his admonition for 'republican' government). The gist of these projects is thus that only → *civil society* can ensure peace and justice for humanity. Hence the world must be politically organized in a federation based on common legal and political commitments in order to terminate the 'state of nature' in which nations have previously found themselves, with the inevitable scourges of disorder, injustice, and war. The idea of a world federation for law and peace has thus taken the place of the ancient idea of empire or world monarchy, to the same extent that plurality had taken the place of unity in international society. Ultimately, these proposals postulated a substitute to the 'world State' and were predicated upon the idea that to end anarchy in international relations the same must be done which ended anarchy in municipal relations: establishing a higher public authority.

13 Such projects of an international organization of the world have thus been at once manifold and deprived of significant influence on the unfolding of political events. When IOs were first realized, in the 19th century, this achievement was due first of all to material contingencies and not on the flow of ideas of some morally advanced spirits. It would, however, be unjust to exclude any influence whatsoever of these

ideas. Quite to the contrary, they certainly contributed—even if modestly—to finally pave the way for the universal political organization of the League of Nations, if only by quietly accustoming a certain public to its possibility and desirability.

D. First Organizations in the 19th Century

14 In the 19th century the first IOs were eventually created on the universal and on the regional level. Most of these organizations were of a non-political nature, ie performed technical functions. The 19th century presented indeed for the first time an almost ideal environment and underlying conditions for the creation of international unions and organizations. There was a world divided into many States, but at the same time permeated with rapidly growing interdependencies, necessitating some common action. There was also the perception or awareness of that interdependence and solidarity, and of the necessity of cooperating. These interdependencies of material or factual nature stemmed from modern industrialization and technological advance. These social evolutions were linked with a great increase in population figures; with the massive development of means of transportation; and with a rapidly increasing need for raw materials. These developments led to a great expansion of commerce, producing in turn a new degree of economic and financial interdependence. Thence the need to make uniform weights and measures, and communication channels, to fight spreading diseases more rapidly, etc. These pressing needs of coordination and common policies built up a widespread awareness of the insufficiency of the old-fashioned conferences, devoid of institutional structures, which could not administer the common concerns with the day-to-day continuity indispensable for securing efficiency. These technical solidarities hence quickly spawned the creation of technical international organizations of two types: fluvial commissions and administrative unions.

15 First, there were fluvial commissions. The most important ones, in Europe, were those regarding the → *Rhine River* (Rhine Commission, 1815) and the → *Danube River* (European Commission for the Danube 1856). There existed also organizations for the → *Elbe River* (1821), the Douro (1835), the Po (1849), and the Pruth (1866). In Africa, a treaty regime existed providing for the Commission of the → *Congo River* (1885),

but it has never been implemented. In the Americas, since 1909 a River Commission for the → *St Lawrence Seaway* and Great Lakes basin was established (→ *Great Lakes, North America*). The rivers and watercourses—especially those crossing many countries—were essential means of commercial transportation in a century where the railway was still under construction and aviation did not exist (→ *International Watercourses*).

16 Second, many → *international administrative unions* were created in order to standardize weights and measures, and to administer common means of transportation or of communication, or indeed goods where there existed common concerns. Thus, for example, the International Telegraphic Union (1865), the → *Universal Postal Union (UPU)* (1874), the International Copyright Union (1886), the International Union of Railway Freight Transportation (1890), the International Sugar Union (1902), etc were established. As can be seen, technical matters were here the object of regulation. Public and private interests were closely interwoven or intermingled. There were also regional administrative unions. Thus, in Latin America, at the Conference of American States of 1889–90, the International Union of American Republics was created, with its 'Commercial Bureau' as secretariat. This Organization in due course became known as the Pan-American Union. It regularly convoked Pan-American conferences in which the States Members could meet, discuss common concerns, adopt resolutions, and conclude conventions. Initially, the Union was meant to gather and disseminate commercial information; later it became a forum for cooperation for all 'non-political' concerns (communications, fight against diseases and other social scourges, cultural matters, etc); finally, especially since 1933, it was opened to political concerns, namely → *collective security* matters. Pan-Americanism thus led directly to the → *Organization of American States (OAS)* under the Charter of the Organization of American States ([signed 30 April 1948, entered into force 13 December 1951] 119 UNTS 3).

17 These river commissions and administrative unions had quite differing institutional structures, which cannot be examined in detail here. They were ordinarily composed of an assembly grouping together the States Members, and of a bureau for permanent administration. Some of these commissions and unions, due to the technical field of their action, were provided with considerable legal powers of action, limiting not

insignificantly the sovereignty of their Member States. Thus, for example, the Rhine Commission was vested with considerable powers of standard setting and also with judicial functions. It functioned as a court of appeal from the local courts in each riparian State, with the objective of implementing the Rhine Convention and the numerous rules adopted for a proper administration of that river. Each riparian State had one vote within the Commission; but in certain administrative matters voting rights were weighed according to the length of the river bank of the Member States. The European Commission of the Danube had been vested with similar administrative and legislative powers. It enjoyed a right to adopt rules (*Règlements*) directly applicable in the Member States. It possessed its own executive organs in order to implement its decisions, thus not being dependent upon the executive organs of the Member States. Moreover, it could directly levy tolls and taxes from river traffic and impose pecuniary penalties against individuals. It frequently resorted to majority vote. Its agents enjoyed diplomatic immunities. As can be seen, these particularly extensive powers move the European Commission of the Danube into a forerunner of supranational communities.

18 The administrative unions had generally less stringent powers at their disposal than the fluvial commissions. Their institutional structure was essentially bipartite, with an assembly of the (State) delegates, whose function was essentially that of standard setting, and a small secretariat (*Bureaux*), ensuring the permanence of the origination and having the main functions of preparing meetings, gathering information, and implementing the decisions.

E. The Century of International Organizations (20th Century)

19 Technical cooperation could not completely overshadow the lack of, and the need for, political cooperation. Quite the contrary: to the extent the technical interdependencies rose, the lack of political institutions became increasingly evident, unacceptable, and paralyzing. The stakes of some form of universal political unity were so high, however, that they could not be met by simple evolution, in a score aloof from any drama; only a catastrophic event could stir the consciousness of that necessity and allow such a great leap to be taken notwithstanding all great obstacles. Thus, World War I

was the mother of the first universal organization of the world, the League of Nations of 1919. The nature of war had completely changed in the previous 100 years. From a usually limited armed contest between professional armies, it had become a scourge and cataclysm, leaving behind it only devastation and impoverishment, for winners and vanquished alike. The reasons for these changes towards increasingly brutal wars were manifold: first, technological advance in weaponry; second, rise of nationalism, with popular armies of increasing sizes, poorly trained soldiers, and indoctrination of the fighters; third, increasing interdependence among nations, where the war imposed as a side-effect heavy tolls on neutral countries, almost as much as on belligerents; fourth, industrialization, with the concomitant war necessity of each belligerent to target all industrial production useful for the adverse war effort, this in turn implying attacks on civilian objects and persons. World War I had glaringly brought to fore all these developments. The time was now ripe for the attempt to create and to run an international organization of universal outlook in order to try to settle disputes peacefully, to provide a forum for cooperation and legislation, and to maintain the peace. War had had its time; under modern conditions, the organization of peace became paramount. Therefore, the old peace projects of the various philanthropists and thinkers here found some degree of late vindication (see also → *Peace, Proposals for the Preservation of*). In 1946, the League of Nations then passed its testimony to the UN. The UN took up the flame of previous experience attempting to bring it to a higher degree of perfection. In particular, through the UN specialized agencies, the contemporary world organization tried to further international justice and maintenance of peace in a wider array of spectra than just collective security and → *peaceful settlement of international disputes*. It tried to address the root causes of international discord in the various economic and social areas of human life.

20 Overall, in the 20th century, the model of modern IOs was settled. These bodies are now modelled on an assembly, where all State members are represented; on a council, ie a restricted executive organ, where some States have a seat, be it on the basis of importance (permanent members) and/or by rotation (the others); on a secretariat, representing the permanent administration of the body; and sometimes on a judicial branch, for staff member disputes, or, as in the UN main body, the

ICJ as principal legal organ of the Organization, and indeed as principal legal court for inter-State disputes in the world. Modern IOs are based on the sovereignty of the Member States (see eg Art 2 (1) UN Charter). They have thus normally (apart from regional organizations, such as the European Union) no direct legislative power, nor any supranational standing. Their number spread considerably in the course of the 20th century, from 37 before World War I (1909) to more than 350 today.

21 This rise of IOs has had profound effects on the complexion of public international law. First, the old doctrine that only States were → *subjects of international law* (ie possessed legal personality, meaning legal rights and duties) has been progressively given up in the wake of the creation of such subjects as IOs. These organizations indeed possessed attributions under international law (treaty-making power, diplomatic immunities, responsibility for wrongful acts, etc). The 1949 → *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* of the ICJ is emblematic in this regard. Second, while classical international law had been predicated upon mere passive coexistence among States, and also upon some predatory pattern (*ius ad bellum* and recognition of → *annexation*), the progressive creation of IOs as poles of collaboration among States in the pursuit of common interests has ushered in an 'international law of cooperation' (→ *Cooperation, International Law of*). This new branch of the law thus added itself to the old law of coexistence and largely evicted that of 'predation' (see W Friedmann *The Changing Structure of International Law* [Stevens London 1964] 60 et seq). Third, it has been noticed that IOs, with their numerous legal dealings, did not remain segregated into a narrow category of 'particular international law', ie in a law of particular treaty regimes, staying aloof from the common law (general international law) of the international community. On the contrary, the UN Charter, but also many other legal relationships of IOs, became engrafted in general international law, which thus was considerably enriched as to its content (see M Virally 'Panorama du droit international contemporain' [1983] 183 RdC 9–382 at 247 et seq). The law of IOs and general international law thus became tightly interwoven. Fourth, these organizations often lent support to international law, on the one hand in their law making (eg the ILC of the UN), but on the other also in the sanction of the law, secured or at least improved through their institutional arms.

F. Conclusions

22 There is today a certain disaffection of the general public, and also of some States, towards the phenomenon of IOs. It is due, among other factors, to a perception of lack of efficacy—and perhaps thereby perceived lack of necessity—of these bodies. Insufficient account is taken here of the true financial and other material means of the organizations, which are often derisory, and of the fact that these bodies are normally not entrusted with any decisional power, the States Members remaining the sole decision-privileged sovereigns. In one word, there is often a pattern of unrealistic expectations towards these organizations, which then easily shifts into cynicism. Another great problem in the same context is the lack of proper information of the general public, who are at best ignorant of the real conditions, or at worst misled by myths. In the developing world there is also some creeping disappointment, since the organizations have not proven to be the hoped-for means of obtaining a greater share or influence in real international affairs through the hailed voting strength in organizational assemblies. To be sure, this somewhat turbulent state of affairs is but passing, as all other social feelings in human history. The gist of the matter lies elsewhere: it is the inescapable necessity of IOs as forums for international meeting and cooperation in our complex post-industrial world scattered in 194 States. All IOs are but a provisional and shifting attempt to approximate an optimal level of distribution of powers between the concerns of the international community on the one hand and the concerns of the particular sovereigns on the other. Both must be properly accommodated and adjusted, since an individual entity without a cushion commonwealth on which to rest cannot prosper, and a society without an appropriate health of its constituent entities is but plagued by disease. As has been lucidly said for the League of Nations:

[The League of Nations] was the first effective move towards the organization of a world-wide political and social order, in which the common interests of humanity could be seen and served across the barriers of national tradition, racial difference, or geographical separation. . . . It was always, in success and failure alike, the embodiment in constitutional form of mankind's aspirations towards peace and towards

a rationally organized world (FP Walters *A History of the League of Nations* [Oxford University Press Oxford 1960] I and 3).

These profound words remain analogously true for any IO.

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international plane (→ *International Organizations or Institutions, Privileges and Immunities*). By contrast with the law on → *State immunity*, the law relating to the immunities of international organizations has developed primarily in treaty practice rather than in customary international law. The relevant treaties are therefore negotiated to ensure that each organization is granted an appropriate level of immunity to enable it to fulfil its functions while retaining its international character. Whilst the extent of the immunities enjoyed by different organizations therefore often differ according to the nature of the functions of each particular organization, the national court when seized of an issue relating to immunities will usually have a written treaty text to guide it. It will be only in relatively rare cases that a national court will be called upon to apply immunity in the absence of a treaty provision.

International Organizations or Institutions, Immunities before National Courts

CHANAKA WICKREMASINGHE

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A. Introduction

1 The immunities of international organizations are essentially granted to ensure that an international organization can fulfil its functions as an actor on the

2 Thus, international organizations with broad political functions such as the → *United Nations (UN)* and, at a regional level, the → *Council of Europe (COE)*, the → *Organization of American States (OAS)*, and the → *African Union (AU)* enjoy wide immunities from 'every form of legal process' (see Art. II (1) General Convention on the Privileges and Immunities of the Organization of African Unity [signed and entered into force 25 October 1965] 1000 UNTS 393). Similarly the international headquarters agreements of military organizations such as the → *North Atlantic Treaty Organization (NATO)* and the → *Western European Union (WEU)* also provide for similarly wide immunity from jurisdiction. Likewise, international courts which, by the nature of their work require independence from all forms of national control, also enjoy unlimited jurisdictional immunity. Whereas other organizations whose primary functions involve them in transactions with private parties, for example the World Bank (→ *International Bank for Reconstruction and Development [IBRD]*) and the regional development banks, enjoy more limited immunities particularly as regards their commercial activities. Similarly technical—sometimes referred to as 'functional'—organizations, such as the → *European Space Agency (ESA)* or the European Molecular Biology Laboratory, often enjoy more limited forms of immunity.

3 In this respect the European Union ('EU') is of particular interest, since it does not enjoy immunity from jurisdiction per se, though its property and assets do enjoy immunity from execution unless it is waived by

the European Court of Justice (→ *European Communities, Court of Justice [ECJ] and Court of First Instance [CFI]*). Nevertheless the fact that much of the work of the EU is governed by its own highly developed legal order and judicial system means that it is rare for the EU to be subject to national jurisdiction.

4 This leads to another general observation: the immunities of international organizations required under relevant treaty provisions usually operate as a simple bar to the jurisdiction of the national courts, which may in other respects be competent to hear the complaint. However, it should also be borne in mind that international organizations are established and governed by international law, and enjoy international legal personality which enables them to carry out transactions on the international plane (→ *Subjects of International Law*). When disputes arise relating to the activities of the organization on the international plane, including disputes relating to their internal structures and governance, national courts will, in principle, not have the competence to settle them, since such disputes are likely to raise matters of international law that are not justiciable at the national level (see also → *Act of State Doctrine*). The issue of non-justiciability may therefore arise independently of treaty provisions on immunity. Conceptually, therefore, the operation of immunities should be distinguished from situations in which the lack of competence of a national court is based on the non-justiciability of the subject-matter of the dispute, albeit that in practice both issues may arise in the same case.

5 Whilst at the international level the functional standard of immunity is flexible—in that it permits the grant of immunities of differing extent to different organizations according to their functional requirements—the fact that immunities are granted pursuant to treaty provisions will generally ensure that each organization is treated in a uniform way in the courts of each of its Member States. Nevertheless the implementation of treaty provisions on the immunities of international organizations in national law will differ according to the relationship between a given national legal system and international law (→ *International Law and Domestic [Municipal] Law*). In so-called ‘monist’ systems the treaty text will itself become part of the national legal system following ratification by the forum State. In certain ‘dualist’ States it is also usual to reproduce the treaty text itself in the national implementing legislation, see

for example the practice in a number of Scandinavian jurisdictions.

6 On the other hand in a number of common law systems the approach has been to pass a general statute empowering the executive to designate, by way of delegated legislation, a level of immunities appropriate to each organization. In such cases the express words of the treaty obligations are often re-formulated into a form more familiar to the relevant national legal system, albeit that the treaty itself may be referred to by courts and others when interpreting the national legislation. The International Organisations Act in the United Kingdom (‘UK’; International Organisations Act of 1968 [UK] 6 and 7 Eliz 2 chapter 48) and the International Organizations Immunities Act in the United States ([done 29 December 1945] 22 USC 288) are both examples of this approach.

B. Modalities of Application of Immunities by National Courts

7 When faced with the immunity of an international organization, in most cases the primary tasks of a national court will concern the application and/or interpretation of the relevant treaty provisions. In principle the national court should apply and interpret treaty provisions in accordance with the rules of the international law on treaties. Where the treaty provision or national implementing legislation requires immunity to be granted, then the national court should in principle give it effect, by stopping the proceedings in *limine litis* (*Cumaraswamy Case* [1999] ICJ Rep 62, 87). Where the relevant treaty provision requires that absolute immunity be granted to an international organization, the task of the national court should be relatively straightforward. However if the text contains any form of limitation on → *immunities*, more difficult questions of interpretation of the text and perhaps characterization of the dispute may arise, requiring a deeper inquiry into the factual circumstances of the case, albeit still at a preliminary phase.

8 The national court should take judicial notice of immunities *proprio motu* whether or not the international organization in question appears to plead it. Where an international organization files a response to suit, or makes an appearance solely for the purposes of asserting its immunity, it will not be deemed to have submitted to the jurisdiction. Alternatively

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