1 Introduction

**History of international organizations**

Bilateral and even multilateral relations between States have a long history, but the establishment of public international organizations functioning as institutions is essentially a development of the late nineteenth century.\(^1\) Consular relations designed to protect interests in commerce, and diplomatic relations concerned with representation of States, go far back in history: the former to the times of the ancient Greeks and Romans; the latter to a somewhat later period, taking its modern shape in the fifteenth century. It is in these institutions that the origins of the more complex institutions which started evolving in the early nineteenth century can be found. When bilateral relationships based on the existence of diplomatic embassies or missions were found to be inadequate to meet more complex

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situations arising from problems concerning not just two but many States, a means had to be found for representation in the same forum of the interests of all the States concerned. This was the international conference. It was the ad hoc temporary conference convened for a specific purpose and terminating once agreement was reached on the subject matter and a treaty was adopted that evolved ultimately into permanent international organizations with organs that function on a permanent basis and meet periodically.

The Peace of Westphalia of 1648 was the result of such a conference as was the settlement in 1815 through the Congress of Vienna and the Treaty of Versailles in 1919. There were other conferences such as the Congress of Berlin of 1871 and the Hague Conferences of 1899 and 1907 which concerned other matters than peace. Conferences were convened to solve problems on a multilateral basis. The result of the conference would generally be a formal treaty or convention or, where such an agreement was not desirable or obtainable, a memorandum or minutes of the conference.

There were several drawbacks in this system of ad hoc conferences. As has been stated:

First, . . . for each new problem which arose a new conference had to be convened, generally upon the initiative of one of the States concerned. The necessity of convening each conference anew complicated and delayed international cooperation in dealing with the problem. Second, the conferences were not debating forums in the same way as the later assemblies of the League and the United Nations; delegations attended very much for the purposes of delivering statements of State policy and, though concessions were often made, the conferences had a rigidity which disappeared in the later ‘permanent’ assemblies of the League and the United Nations. Third, the conferences were held by invitation of the sponsoring or host State; there was no principle of membership which conferred an automatic right to representation. Fourth, the conferences adhered to the strict rule of State equality, with the consequence that all States had an equal vote and all decisions required unanimity . . . The unanimity rule represented a serious restriction on the powers of the ad hoc conference . . . It might also be said to be a disadvantage of the conference system that, as a political body, the conference was not ideally suited to the determination of legal questions.2

These conferences proved inadequate for the solution of political problems. They were even more inadequate for the regulation of

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2 Bowett, International Institutions p. 3.
relations between the peoples of the different countries which were the result of their common interests. Thus, in the nineteenth century, there developed associations, international in character, among groups other than governments. There followed similar developments among governments which were, however, at that time rather in the administrative than in the political field.

In the western hemisphere, there were somewhat different but significant developments. The pan-American system resorted to conferences at a regional level, beginning in 1826, though they did not yield tangible results till the Washington Conference of 1885. These conferences had a periodic character after that and culminated in the formation of the OAS. They contributed to the techniques of international organizations in several ways: (i) the conferences were not convened at the initiative of any one State, but the time and place of each were decided by the previous one; (ii) the agenda of each conference was prepared by the governing body of the standing administrative organ, the Pan-American Union (established in 1912); (iii) a greater possibility existed to undertake preparatory work before each conference than in the case of ad hoc conferences; and (iv) the periodic character of the conferences made possible the development of more elaborate and formal procedural arrangements.

By contrast the non-governmental unions or associations sprang from the realization by non-governmental bodies, consisting of both private individuals and corporate associations, that their interests had an international character which required that those interests be promoted in co-operation with similar bodies in other countries through permanent international associations. Perhaps the first conference of a private nature which led to the establishment of an association was the one which formulated the World Anti-Slavery Convention of 1840. Since then there have been a plethora of private associations or unions established, including the International Committee of the Red Cross (1863), the International Law Association (1873), the Inter-Parliamentary Union (1889) and the International Chamber of Commerce (1919), to mention only a few. Because of the proliferation of these private unions, in 1910 the Union of International Associations was formed to co-ordinate their activities, among other things. These private unions (which will not be the

subject of this study, as will be seen) anticipated and antedated the development of the public unions. Their appearance suggests that the growth of the international organization was the result of a universal human need.

The public international union which appeared also in the nineteenth century, especially in its second half, is more important for the development of the modern international organization. The public unions which sprang up at that time were international administrative unions – agencies which had a certain permanency and dealt with non-political technical activities. These were also associations of governments or administrations as contrasted with private bodies. The Congress of Vienna had proclaimed the principle of freedom of navigation which led to the appearance of many river commissions. A good example of these was the Rhine Commission which was invested with considerable powers, including both legislative and political powers. There were commissions for other rivers, such as the Danube, Elbe and Po. Numerous other administrative unions in many fields appeared pursuant to needs as they arose. The Universal Telegraphic Union was established in 1865 with an administration as its central organ. The Universal Postal Union was established in 1874. There were other unions which sprang up such as the International Union of Railway Freight Transportation (1890), the International Bureau of Industrial Property (1883), the International Bureau of Literary Property (1886) and the International Office of Public Health (1907).

Such unions generally had periodical conferences or meetings of the representatives of member States, decisions being taken usually by unanimous vote, and a permanent secretariat (bureau) which performed the administrative tasks. One of the principal contributions of the unions to the concept of the international organization was the institutional element which was secured through a standing organ, the bureau, and provided the stepping stone from the technique of the conference to that of the organization. In some cases, there were permanent deliberative or legislative organs as well (e.g., the UPU and the International Telegraphic Union). The trend towards the permanence of association was very marked. There were other features which were important, as has been observed:

4 See Chamberlain, The Regime of International Rivers, Danube and Rhine (1923).
The departures from the unanimity rule are equally striking, particularly when coupled with the grant of legislative powers in the Rhine Commission. Useful, also, was the tendency to distinguish the Convention, embodying general rules, from the Règlement, which contained the detailed implementation of those rules and permitted amendment by a much simpler process. The representation of interests other than those of States, whether they be dependent territories, private companies or associations, and with or without the right to vote, injected a realism and degree of practicality which was of the utmost significance for future development. The techniques of weighted voting and of proportionate budgetary contributions pointed the way to the solution of extremely difficult problems to which the principle of the equality of States provided no effective answer.5

Finally, they promoted in States the awareness of the potentials of international organizations as a means of furthering an interest common to numerous States without detriment to that of any concerned.6

It was in 1919 after the Treaty of Versailles, when the League of Nations was created, that an attempt was made to create a political organization of an open and universal character. Since then the public inter-governmental or inter-State organization has become firmly established in international relations, a development which culminated in the establishment of the United Nations and its specialized agencies.

The nineteenth century has been described as ‘the era of preparation for international organization’, this chronological period being between 1815 and 1914, while the years which have passed since the momentous events of 1914 must in a sense be regarded as ‘the era of establishment of international organization, which, in these terms comes to be regarded as a phenomenon of the twentieth century’.7 The institutionalization today of inter-State relations has led to international organizations influencing far more than in the past the shaping of international relations and the development of the international law intended for their

5 Bowett, International Institutions p. 9.
7 Claude, Swords into Ploughshares – The Problems and Progress of International Organization (1971) p. 41. See also Kennedy, ‘Institutions’ at pp. 844ff. and 987ff., who portrays the ‘institutionalization’ of international life, specifically after 1918, as a progressive movement away from war and to preclude war.
regulation. In an important sense great power diplomacy conducted at summit meetings has now given way increasingly to a new form of multilateralism achieved through international organizations like the UN as negotiating arenas available to all States.

**Pervasiveness of international organizations**

Public international organizations have grown exceedingly numerous, especially since the Second World War. They are of diverse nature and of different sizes in terms of membership. They range from those that deal on a global basis with matters of general concern, such as peace (the UN) and development (the IBRD, the IFC and the IDA), to those that are concerned with the regimes of particular rivers (the river commissions) or control of whaling, on a much more limited scale. They have clearly had a significant impact on the lives of people in individual countries, while positively influencing relations

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10 Some figures would give substance to this statement, shedding light on how common international organizations are in today’s world. The Yearbook of International Organizations 1994/95 (vol. 1, p. 1624, appendix 4, table 1) lists a total of 36,486 ‘international organizations’. Of these 31,085 are definitely not public or inter-governmental but may be private international organizations (non-governmental organizations), leaving 5,401. It is not absolutely clear how many of these would fit the definition of public international organizations given later in this chapter. It would seem that some of them may not. A figure of 263 is given for what are termed ‘conventional’ bodies. These, it is assumed, must certainly be public international organizations. Of these, 35 are ‘universal’ (open) and 228 regional or intercontinental. A further 986 were found to be inactive, apparently inactive or dissolved. This leaves a total of 4,152 organizations which may or may not be public international organizations, as such. It seems unlikely that there are as many as 4,415 extant public international organizations, as defined here, and which are the subject of this work. On the other hand, there are probably more than 263 of them. It is difficult, it would seem, to give an exact or even approximate figure, in the circumstances, because there is no authentic record available. It may be possible, however, to conjecture that the figure for public international organizations as such is certainly over 500 and probably under 700. Given that there are approximately 191 States or entities proximate to States, this means that the proportion of organizations to States is over three to one.
between nations and creating an effective and friendly modality for the conduct of international intercourse. The lives of people all over the world have come to be touched by the work of international organizations, as is evidenced by the interest taken by them in the protection of human rights or development, for instance; and States, especially the less developed ones but not only they, have become accustomed to look to these organizations for assistance in the solution of problems. At the same time, it is clear that international organizations have come to be so common a feature of international life and accepted, as a response to the needs of international intercourse rather than as a fulfilment of a philosophical or ideological desire to achieve world government. What has evolved is a large number of international organizations, basically unconnected with each other, though such connections, especially in the UN system, may subsequently be established, and each endeavouring to operate and achieve objectives involving some order in a particular field within its membership which may be a large or small group of States.

Despite the fears and concerns of some governments that international organizations are increasing too fast and that they are a burden on their exchequers, they are still proliferating at a considerable rate. Generally, it is unusual for a new problem in international relations to be considered without at the same time some international organization being developed to deal with it. For instance, concern with the instability of commodities markets led to the establishment in the 1980s of the Common Fund for Commodities and the competition for the newly discovered wealth of the international seabed area resulted in the creation of the ISA under the Law of the Sea Convention of 1982, based on the concept of ‘the common heritage of mankind’. More recently in the 1990s the problems of international trade, which was growing increasingly complex, led to the development of the WTO. International society has, in spite of the diversity of culture and political systems, been progressively drawn closer together and become more unified. People and their governments now look far beyond national frontiers and feel a common responsibility for the major problems of the world and for lesser problems that may subsist within smaller groups of States. Many of those problems have overflowed national boundaries, or called for attention beyond national limits, become international and demanded regulation and treatment in a wide sphere, with the con-
sequence that governments have sought increasingly to deal with them through international organizations.\textsuperscript{11}

International organizations, especially the global ones, have contributed much through their programmes. The contribution of the UN to the maintenance of international peace, particularly after the end of the Cold War, cannot be overestimated, while organizations like the FAO and the IBRD have done a great deal in the area of development and the promotion of better living conditions for the poor developing countries. As has been perceptively observed:

It cannot be denied that the establishment of international organizations introduced a stability into the international arena which was previously unknown . . . Today they implement goals and values vital to all member States and to humanity as a whole . . . These organizations are so deeply involved in the orderly operations of beneficiary States that it is highly unlikely that those States would be willing to abandon international cooperation in order to regain some freedom of action . . . We live in an age of growing interdependence and interpenetration.\textsuperscript{12}

Classifications

The interest here is in the public international organization and not in the private international organization commonly known as the non-governmental organization (NGO). The public international organization is normally created by a treaty or convention to which States are parties and the members of the organization so created are generally States, though sometimes but rarely governments may constitute the membership.

International organizations may be classified in numerous ways, depending on the purpose for which the classification is being made. One author\textsuperscript{13} has made four primary distinctions which he considers to be relevant to the structure and functioning of international organizations: (i) the distinction between public, governmental (or inter-State) organizations and private organizations; (ii) the distinction between universal (open) and closed organizations; (iii) the

\textsuperscript{11} For a doctrinal explanation of the growth of organization see Schiffer, The Legal Community of Mankind (1954) passim.


distinction between supra-national organizations and those that are not supra-national; (iv) the distinction between general organizations and functional or technical organizations. These are clearly useful distinctions. There are other distinctions that have been made such as that between temporary and permanent organizations or that between judicial and non-judicial organizations, but these are not particularly helpful for the present purposes.

International organizations range from the inter-State body created by multilateral treaty or convention with potential and openings for universal membership and a very broad range of interests, such as the United Nations, to the specialized agencies of the UN with potential and openings for universal membership but with a narrow focus (e.g., (the FAO, the IBRD and the UNESCO), to organizations with select or closed membership but relatively wide interests (e.g., the Council of Europe, the OAS and the OAU), to agencies which are restricted both as to membership and as to subject matter (e.g., the international river commissions), to organizations which are composed entirely of non-governmental entities (NGOs).15

The first distinction of relevance for the present purpose is that between public international organizations and private international organizations. A variety of definitions or identifications of the public international organization has been given.16 A formal definition is not necessary for the present purpose. Suffice it to identify the basic characteristics which distinguish the public international organization from other organizations, particularly private international organizations. These are: (i) establishment by some kind of international agreement among States; (ii) possession of what may be called a constitution; (iii) possession of organs separate from its members; (iv) establishment under international law; and (v) generally but not always an exclusive membership of States or governments, but at any rate predominant membership of States or governments. Private international organizations do not have all these characteristics. Usually what is lacking is creation by inter-

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national agreement, establishment under international law and an exclusive or predominant membership of States or governments. Sometimes one or the other of these may be lacking. For example, what is of significance that deprives the Bank of International Settlements of the quality of a public international organization is principally that, having been established under Swiss law, it lacks the needed characteristic of being established under international law. Clearly NGOs are also not established under international law, nor have exclusive or predominant State or governmental membership and are not public international organizations.

Two further elements are sometimes mentioned in connection with public international organizations. These are: international personality (distinct from that of their member States) and treaty-making capacity. Though these characteristics are generally shared by all public international organizations, it is doubtful whether they are intrinsic to the definition of a public international organization. Rather they are to be regarded as consequences of being a public international organization. This is not a problem for the present purpose, since, as will be seen, public international organizations generally have these characteristics, which private international organizations do not share. The basic characteristics referred to above are sufficient to distinguish public international organizations from private international organizations.

The distinction between ‘open’ or ‘universal’ public international organizations and ‘closed’ organizations has also been made. In

17 The BIS, however, operates for all intents and purposes as an international organization, performing functions which are international in character. It is unique in the sense in that it would have been a public international organization, had it been established under international law. It was established in 1930 by the Hague Agreements which were inter-governmental conventions.

18 Most of these are established by individuals or associations of individuals, e.g., the International Student Service, the International Table Tennis Federation, the Institute of International Law, the International Chamber of Commerce, and the International Planned Parenthood Federation. Membership may include governments and is not confined to non-governmental entities. NGOs are recognized by the ECOSOC of the UN: see UN ECOSOC Res. 288 (X) at 1296 (XLV), for the relationship with ECOSOC under Article 71 of the UN Charter. On NGOs generally see, e.g., Lador-Lederer, International Non-Governmental Organizations (1963); White, International Non-Governmental Organizations: Their Purposes, Methods and Accomplishments (1968).


20 For a discussion of private international organizations see Schermers and Blokker, International Institutional Law, pp. 32ff.