



## INTERNATIONAL ORGANIZATIONS: EMERGENCE AND DEVELOPMENT AS AN ACTOR OF INTERNATIONAL LAW

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### ABSTRACT

*The article illustrates the fundamental aspects of international organizations (IOs), analyzes historical outset of the emergence of the IOs as a subject of international law by discussing different opinions of scholars and international legal norms. The role of the 1648 Peace of Westphalia marking the start of modern international organizations is discussed and the relevant conclusions are elaborated.*

*The work widely addresses to definitions and classifications of international organizations, discusses distinctions between IOs and NGOs in the light of current international relations.*

### INTRODUCTION

Each country, proceeding from the interests of the state and the people, enters into international relations.

Since the 50s of previous century, the new aspects of international law have appeared in wide range. This is, basically, connected with foundation and development of international organizations such as the UN, the EU, and even regional organizations such as the SCO; and appearance of new independent states – decolonization process. Until that, the role of international organizations had been nominal and had not played that important role in formation of international law. However, passing the time

international organizations have expanded over all spheres of life, playing an important role in the modern international law.

Since Uzbekistan gained independence in 1991, substantial reforms in the foreign policy sphere have been carried out to this day. The reason for this process is the transition to active foreign policy relations with not only States, but also with other actors of international law such as international organizations.

On the statement of the President of the Republic of Uzbekistan on September 19, 2017 at the 72nd session of the General Assembly of the United Nations, Shavkat Mirziyoyev stated the role



of international organizations, particularly that of the UN, in the formation of new image of foreign policy of the Republic. He emphasized roles of international organizations such as the UN and its Specialized Agencies in the progressive development and unification of international law.<sup>1</sup>

## THE MAIN PART

The historical outset of the emergence of the international organizations as a subject of international law

Different scholars have quite similar opinions of the date of the origins and historical outset of international organizations. The origin of international organizations dates back to the second half of the nineteenth century.<sup>2</sup> Another scholar pointed out that the origins of international organizations are to be found in the forms of international conferences and congresses during the nineteenth century.<sup>3</sup>

Although embryonic forms of international organizations have been present throughout recorded history of the ancient councils of ancient Greece, the late-medieval Hanseatic League or such

precursors as the Swiss Confederation and the Uni, for instance, in the form of the so called ted Provinces of the Netherlands, it was not until the nineteenth century that the concept of international organization emerged.<sup>4</sup>

Traditionally, States were concerned as the main actors in international law and, under that system, States acted largely as individual entities, with international law (or the 'law of nations', as it was then called) governing their relations with one another. In addition, in the nineteenth century States were the only legal persons in international law.<sup>5</sup>

L. Oppenheim found that "Since the law of nations is based on the common consent of individual States, and not of individual human being or organizations, States solely and exclusively are the subjects of international law."<sup>6</sup> However, States still remain as the main actors in the international plane, the process started to alter in the second half of the 19<sup>th</sup> century as an emergence of international personality. A question might arise in a sense that why international organizations did not spring up in 17<sup>th</sup> or 18<sup>th</sup> centuries.

<sup>1</sup> Speech by the President of the Republic of Uzbekistan, Shavkat Mirziyoyev at the 72nd session of the United Nations General Assembly in 2017. <http://uza.uz/ru/politics/prezident-uzbekistana-shavkat-mirziyeev-vystupil-na-72-y-ses-20-09-2017>

<sup>2</sup> Ademola Abass, *Complete International Law: Text, Cases, and Materials*, 2<sup>nd</sup> edn, the United States of America by Oxford University Press, 2014. ISBN 978-0-19-967907-2. P 231

<sup>3</sup> Bowett, Derek W. *Bowett's Law of International Institutions*. 5<sup>th</sup> edition by Philippe Sands and Pierre Klein. London: Sweet & Maxwell, 2001. ISBN 042153690X. P.P. 1-13.

<sup>4</sup> Mizanie Abate and Alemayehu Tilahun, *Journal, The Historical Development of International Organisations*. Available at <https://www.abysinnialaw.com/online-resources/study-on-line/item/475-the-historical-development-of-international-organizations>

<sup>5</sup> Peter Malanczuk. *Akehurst's Modern Introduction to International Law*. The Taylor&Francis e-Library, 2002. P.

<sup>6</sup> L.Oppenheim, *International Law. A Treatise*, 2<sup>nd</sup> edn 1912, Vol. I (Peace), 19



As Inis Claude stated that while the emergence of States as sovereign entities in the seventeenth and eighteenth centuries was crucial, the preconditions for the creation of international organizations were not met during those centuries.<sup>7</sup> For example, States contacted with one another on a small scale, especially under the specific circumstances. Consequently, there was no need to such international mechanisms to solve problems or manage international relations among them. Concisely, the prevailing international legal order in those centuries can be regarded as a basis for 'a decentralized control by sovereign States'<sup>8</sup> which did not need the subsequent development of international organizations.

As we have mentioned above international organizations firstly emerged in forms of conferences or congresses. For instance, after the watershed Westphalian peace of 1648, international so-called congresses had become a regular mode of diplomacy: whenever a problem arose, a conference was convened to discuss it and, if possible at all takes steps towards a solution. After the defeat of Napoleon, a new development took place.<sup>9</sup>

The Congress of Vienna established a system of international organizations, as

they are known today. The Final Act of the Congress, for instance, made no provisions for any regular meeting of the Congress (a significant feature of the procedure of international organizations).<sup>10</sup>

The Vienna Congress created a more systematic and institutionalized approach to managing issues of war and peace in the international system. The principal innovation at Vienna was that representatives of states should meet at regular intervals—not just in the wake of war—to discuss diplomatic issues.

Accordingly, four major peacetime conferences were held between 1815 and 1822.<sup>11</sup> Yet, there were not regular or permanent meetings except the above-mentioned peacetime conferences under the Final Act of the Congress.

However, the creation of the congress established the fundamental aspects of further development of international organizations. For example, there were at this point two main groups of international organizations. The first was the establishment of the Central Commission for the Navigation of the Rhine by the littoral States of the Rhine. It was set up to administer the navigation of rivers, following the proclamation of the principle

<sup>7</sup> Inis Claude, *Swords into Plowshares*, 3rd edn, London: University of London Press, 1964)

<sup>8</sup> The interplay of Westphalia and Charter conceptions of international legal order' in Cyril E. Black and Richard A. Falk (eds), *The Future of the International Legal Order*, Vol. I: Trends and Patterns, Princeton, NJ: Princeton University Press, 1969. P.69.

<sup>9</sup> Mizanie Abate and Alemayehu Tilahun, *Journal, The Historical Development of International Organisations*. Available at <https://www.abysinnialaw.com/online->

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<sup>10</sup> Ademola Abass, *Complete International Law: Text, Cases, and Materials*, 2nd edn, the United States of America by Oxford University Press, 2014. ISBN 978-0-19-967907-2. P 231

<sup>11</sup> International organization' in B. Bouckaert and G. De Geest (eds), *Encyclopedia of Law and Economics*, Vol. I: The History and Methodology of Law and Economics (Cheltenham: Edward Elgar, 2000), P. 692, Alexander Thompson and Duncan Snidal note (at p. 694)



of free navigation at the Congress of Vienna in 1815.

The other groups were the Universal Telegraphic Union and The Universal Postal Union, which were established in 1865 and 1874, respectively. According to Abdullah El-Erian, the decisive step forward in international organizations in the nineteenth century was undoubtedly the creation of the Telegraph and Postal Unions in 1865 and 1874 accordingly.

The International Telegraph Union was created by the Paris Telegraph Convention of 1865, and with the establishment in 1868 of the International Bureau of Telegraph Administrations, the Telegraph Union became the first truly international organization of states with a permanent secretariat.<sup>12</sup> Indeed, the union established in the 19<sup>th</sup> century effectively influenced on the development of the truly international organizations. In this regard, C. C. Hyde states that the unions had a more general influence the growth of international law, especially by increasing the awareness of potentialities of international organizations as a means of furthering an interest common to numerous states without detriment to that of any concerned.<sup>13</sup>

All of the above-mentioned processes gave rise to the creation the first truly political organization, the League of Nations, in 1919 with a permanent structure with an

Assembly, an Executive Council, and a Secretariat.<sup>14</sup> The establishment of the League of Nations and its affiliate at the end of World War I represented the first attempt to combine into one general organization the disparate elements of organizational development which had emerged during the previous century.

The League was the first general international organization in several senses:

- (a) it pulled together the threads of the great-power council, the general conference of statesmen, and the technically oriented international bureau;
  - (b) it was a multipurpose organization, although its primary focus was on the political and security problems of war and peace; and
  - (c) it was, in principle, a world-wide institution, even though it retained much of the nineteenth-century emphasis upon the centrality of Europe in international affairs.
- The classification of international organizations

The term international organization contains a variety of entities and they perform various task, making an exact definition for them difficult, even impossible. Scholars express different definitions for international organizations, which are similar but at the time far from a single exact definition.

For example, L. Claude stated that International organization is the process by which states establish and develop formal, continuing institutional structures for the

<sup>12</sup> The historical development of international institutions' in Max Sørensen (ed.), *Manual of Public International Law* (London: Macmillan, 1968), at p. 59

<sup>13</sup> In *International Law: Chiefly as Interpreted and Applied by the United States*, 2nd edn, Boston, MA: Little, Brown and Co., 1947, vol I,

<sup>14</sup>The Covenant of the League of Nations, 1919. Article 2. [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp)



conduct of certain aspects of their relationships with each other<sup>15</sup>. Gerald Fitzmaurice defines 'international organizations' 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.<sup>16</sup> Or P. Reuter and J. Combacau define an 'international organization' as: An entity which has been set up by a means of a treaty concluded by States to engage in co-operation in a particular field and which has its own organs that are responsible for engaging in independent activities.<sup>17</sup>

Therefore, it can be defined as: International organizations are accepted as cooperation between three or more States, established with a formal agreement. The concept of international organizations is also given in different international documents such as conventions or draft articles. According to the Vienna Convention on the Law of Treaties article 2, paragraph one "international organization' means an organization established by a treaty or other instrument governed by

international law and possessing its own international legal personality<sup>18</sup>.

Moreover, under the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,<sup>19</sup> an international organization is defined as "an inter-governmental organization".<sup>20</sup>This definition clearly excludes non-governmental organizations.<sup>21</sup>

International organizations are usually described with the terms as International Governmental Organizations (IGOs) and International Non-governmental Organizations, but H.G.Schermers claims that International organizations differ from 'non-governmental organizations' which is set up by individuals or groups of individuals (such as Amnesty International or Greenpeace), although some non-governmental organizations are entrusted with certain functions by states. Karen A.Mingst mentioned in his article dedicated to International organizations that the Union of International Associations, a coordinating body, differentiates between the more than 250 international governmental organizations (IGOs), which

<sup>15</sup> L.Claude. *Swords Into Plowshares*. 3rd ed. New York: Random House, 1964. <https://www.encyclopedia.com/social-sciences-and-law/political-science-and-government/international-organizations/international-organization#A>

<sup>16</sup>Gerald Fitzmaurice, 'Report on the law of treaties' (1956) 2 ILCYB 108

<sup>17</sup>P. Reuter and J. Combacau, *Institutions et Relations Internationales* (3rd edn, Paris: PUF, 1985), P. 278 (also quoted in (1985) 2 ILCYB 106).

<sup>18</sup> Vienna Convention on the law of treaties. Concluded at Vienna on 23 May 1969. Registered ex officio on 27 January 1980.

<sup>19</sup> Hereafter referred to as „VCLTSIO“, Art.2(1)(i).

<sup>20</sup> Inter-governmental Organizations are international organizations created by States for States. It is basically an association of governments. Example is the UN. Under Chapter 2 of the UN Charter, membership of the UN is open to only States. See Art.4

<sup>21</sup> Non-governmental Organizations are organizations established by individuals or groups and usually governed by the law of the State where it is incorporated. States are usually excluded from membership of such organizations although they are mostly funded by States. An example is Greenpeace International. Although they are excluded from the definition of international organizations, some non-governmental organizations such as the International Committee of the Red Cross, possess some form of international legal personality.



have been established by intergovernmental agreements and whose members are states, and the approximately 6,000 nongovernmental organizations (NGOs), whose members are associations or individuals<sup>22</sup>.

An international organization can also be defined as “an association of States established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfil particular functions within the organization”.<sup>23</sup>

Yet there are several restrictions of these definitions. For example, according to the above-mentioned definitions, international organizations are always established by States and governed by a treaty. However, it is not always a case, since there are plenty of international organizations, which have been established by non-State actors and regulated by declarations or other instruments.

Nevertheless, International Law Commission gave the close definition to an exact and single one. The term ‘international organization’ refers to an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.<sup>24</sup> Indeed, it is an important clarification, because there

are many entities called international, but do not fall under criteria of international organizations under the scope of international law.

As it is mentioned in the definition, International organizations are constituted by States, but according to the data given in Peace Palace Library, International organizations generally have States as members, but often other entities can also apply for membership.

They both make international law and are governed by it. Yet, the decision-making process of international organizations is often 'less a question of law than one of political judgment. Summing up, to define an international organization at the present stage would be premature and impossible. International Organizations are institutes unifying several states for membership in order to solve posed problems and aims established in their programs.

Nowadays, there are more than 175 international organizations<sup>25</sup>, according to other sources, there are 500 IOs in existence<sup>26</sup> holding “international” title. Respectively their classifications vary from political to structural perspectives. These can be divided into at least four classifications by distinguishing the scope of their functions:

- (1) public or private;
- (2) administrative or political;
- (3) global or regional;
- and (4)

defined it as “an association of States established by a treaty, possessing a constitution and common organs and having a legal personality distinct from that of the member States”.

<sup>24</sup>Article 2 of Draft Articles on the Responsibility of International Organizations (DARIO); ILC. 2011

<sup>25</sup>William R. Slomanson, *Fundamental Perspectives on International Law*, West Publishing Company p.72

<sup>26</sup> Carter, Weiner, & Hollis, *International Law*. Wolters Kluwer in New York 7th ed. 2018. P. 509.

<sup>22</sup> Karen A.Mingst. Professor Emeritus of Political Science, University of Kentucky, Lexington. Author of *Essentials of International Relations*. Coauthor of *The United Nations in the Post-Cold War Era*. <https://www.britannica.com/topic/international-organization>

<sup>23</sup>Bindschedler, R.L., „International Organizations, General Aspects”, in Bernhardt, R., ed., *Encyclopedia of Public International Law*, vol. 5: International Organizations in General, Universal International Organizations and Cooperation. North Holland Publishing Company (1983), p.120. Menon at p.93



those with supranational power or those without it.<sup>27</sup>

Alternatively, another point: whenever we say 'international organization', we may mean broadly one of three things:

- public intergovernmental organizations which, as the name suggests, are composed of States (represented by governments);
- private international organizations (also known as NGOs); or
- international public corporations (IPCs).<sup>28</sup>

Regardless of the above-mentioned classifications, most scholars classify international organizations into three main categories: universal, regional and supranational.

Universal Organizations are also called as „open“ organizations which do not restrict any State or region if they satisfy membership requirements. (United Nations, World Bank, International Monetary Fund, World Trade Organization).

As stated in the article in Union of International Associations, this type includes all non-profit international organizations, whether governmental or non-governmental, that have a widespread, geographically-balanced membership, management and policy-control. Although this concept of a "universal" membership organization is much discussed, no generally accepted rule for distinguishing such bodies has been formulated. The rule applied here is that there should be members in at least 60 countries, or else in

more than 30 countries provided that the distribution between continents is "well-balanced".<sup>29</sup> Membership of such an organization is not restricted to any region but is open to all States satisfying its membership requirements. A bright example is the UN. Yet many scholars have hesitation whether the UN is a universal organization.

Regional Organizations are "organizations created by States that share a common geographic or policy bond".<sup>30</sup>The UN Charter recognizes the utility of independent regional organizations.<sup>31</sup> These organizations have special requirements and membership to these organizations are restricted to a special region, such as the CIS.

Supranational Organizations are hybrid organizations composed of States. They are structured in a way similar to federal States. And they enact laws which are binding on member States and their national. The bright example is the EU. One more definition is given that "Supranational Organization" means any entity or organization established by treaty or other arrangement between two or more Sovereigns or the Sovereign Agencies of two or more Sovereigns and includes, without limiting the foregoing. P. Malanczuk gives the most acceptable criteria for supranational organizations in following structure:

<sup>27</sup>William R. Slomanson, *Fundamental Perspectives on International Law*, West Publishing Company p.72

<sup>28</sup>Ademola Abass, *Complete International Law: Text, Cases, and Materials*, 2<sup>nd</sup>edn, the United States of America by Oxford University Press, 2014. ISBN 978-0-19-967907-2. P.234

<sup>29</sup>Giorgio Gaja .*Union des Associations Internationales*. <https://uia.org/archive/types-organization/toy>.

<sup>30</sup>James E. Hickey, "The Source of International Legal Personality in the 21st Century", 2 HLPS (1997) p.1 at p.8

<sup>31</sup>Article 52(l) the UN Charter (adopted in 1945, San-Fransisko)



- 1) the organs of the organizations are composed of persons who are not government representatives;
- 2) the organs can take decisions by majority vote;
- 3) they have the authority to adopt binding acts;
- 4) some of which have direct legal effect on individuals and companies;
- 5) the constituent treaty of the organizations and measures adopted by its organs form a new legal order;
- 6) compliance of member states with their obligations and the validity of acts adopted by the organs of the organizations are subject to judicial review an independent court of justice.<sup>32</sup>

## CONCLUSION

To sum up, the rise of IOS has influenced international law in myriad ways<sup>33</sup>. IOs have emerged and developed as an actor of international law since the 1648 Peace of Westphalia.

The role of international organizations as subjects of international law is increasing in current international relations. International organizations are actively involved in the creation of international law and the conclusion of international agreements within their competence. Indeed, IOs have come to play a significant role as a source of international law making<sup>34</sup>.

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