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26/9/2022
International institutional law is part of public international law - international law is played by states, but the rules of the game are also made by international organisations and institutions that can have separate and autonomous legal personality from those of their MSs.
The Vienna Convention of the Law of Treaties is one of the main sources of law regulating the establishment of international organisations, and their relationship with sovereign states.

The origins of IOs and of International Institutional Law
IOs are entities established by states - moving in the framework of international law and of the international community - one of the most relevant is the UN with 193 MSs.
The international community has a limited number of members (states) - other communities are composed by different kinds of members (e.g. citizens).

The rise of the modern international community -> began with the Treaty of Westphalia after the 30-years-war - in 1648 states recognised themselves as sovereign - establishing an equal footing among them in a modern approach, entering into mutual relationships on which international law is based -> states are independent entities entering into complex relationships with the international community through international agreements.

The origins of bilateral relations
Plenipotentiary -> an individual to whom those powers were conferred upon in order to let him participate in the ceremonies before another state representing the his sovereign.
Bilateral relations were at first occasional (coronation, marriage, signing of commercial agreement) and at the end of the mission the plenipotentiary came back.
The next step -> establishment of an individual permanently represent a sovereign residing in the capital of the other state (delegations embassies).
Full power of the plenipotentiary -> his powers were first limited to the single occasion, then became plenary.

The rise of multilateral relations
1618-1648 - the rising of multilateral conferences in which each state appointed a plenipotentiary to negotiate peace - at first this appointment was still occasional.
At the beginnings of the XIX century - states started to appoint permanent plenipotentiaries:
1814 Treaty of Chaumont - states were serving to themselves to sit together to guarantee the peace in Europe.
1818 Congress of Aix-la-Chapelle - codified the practice of convening regularly for reasons of common interest and logistic.
A clear example was the Concert of Europe - there was a general consensus among the Great Powers of 19th-century Europe to maintain the European balance of power, political boundaries, and spheres of influence.
Claude Albert Colliard published the “Institutions Internationales”

International law is the law of cooperation -> a plurality of states generates a plurality of interests, and therefore conflicts of interest - international law is a way to solve disputes and to find a solution - being the law of coexistence and cooperation.
E.g. the pandemic - could each state effectively individually fight the pandemic? Need of cooperation.

27/9/2022
A possible definition of IO -> IOs exist in relation to a huge variety of norms reflecting different scenarios - international institutional law or the laws of international institutions since there is not one single law of international organisations.
IOs - have their roots in the will of states to exercise their powers - such a will is manifested in a variety of possible ways - moreover each state has its own legal traditions and system.
Looking into our domestic legal system we can identify a similar phenomenon - the achievement of common goals through the creation of associations, clubs, companies (legal persons).

What is an international organisation? Some of its basic features are:
- Membership - it must be formed by state or other IOs

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- Established by treaty or other instrument governed by international law (e.g. a resolution adopted by an IO).
- Autonomous will - manifestly distinct from the one of its members.
- Specific structure made of institutions, organs, bodies which have the mission to pursue the goals of the organisation.

NGOs are excluded from this structure and from the definition since they are established within one domestic legal system and not at international level - they do not refer to an international legal tool but rather to a domestic legal system.

Which is the nature of international institutional law?
1981 the Word Bank Administrative Tribunal adopted a landmark decision -> the tribunal could not overlook the facts that each international organisation, since each one has its own constitute the instruments, memberships, internal structure, functions, measure of legal personality and personnel policy —> for these reasons the notion of a common law of international organisations to which IOs must be subject is difficult to achieve - the fact that these differences exist does not exclude that similar conditions may affect the solution of comparable situations.
These are models that are not compulsory - but most of the states follow when establishing IOs.

How to identify and to classify IOs?
Functions:
- Administrative or technical character (e.g. World Meteorological Organisation)
- Political Organisations - aim to maintain international peace
- Economics
- Social or Cultural aims
- Humanitarian assistance
- Military purpose

They reflect the need of states by identifying a common objective and a common need

Membership:
- Universal organisations - must include all the states of the international community
- Global organisations - e.g. the UN (aiming at universality)
- Regional organisations - belonging to a specific region/area - some of those take into consideration the geopolitical factor, not simply the geographical one (e.g. NATO, Council of Europe with Turkey and Georgia).

Goals -> establish common goals through cooperation (e.g. health)

States remain sovereign in a proper sense, although delegating some of their power to IOs -> e.g. Art. 11 Italian Constitution accept the limitation of state sovereignty in favour of international organisations.
A new feature that IOs are experiencing is integration: a sort of marriage between IO and state - for example in the framework of the EU, the Treaty of Paris gave no way out option, then introduced by the Lisbon Treaty.
At the core of every IO there is always a legal instrument adopted at international level - it is usually a multilateral treaty according to the Vienna Convention of the Law of Treaties.

The characteristic of the constitutive act/founding instrument:
it has a double nature, on the one hand it is a treaty signed and ratified under international law, at the dame time it is the statute of the organisation enshrining all the provisions governing the organisation.
Are these provisions peculiar to IOs? No, there are founding agreements in companies and associations at national level (bylaws, constitutive statutes).
States identity their objectives and goals and then create an organisation - seeking ruled and principles of general theories - those are not compulsory to adopt, but frequently used as models.

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3/10/2022 - ask for notes
The law of international institutions - the vote has been brought to the Security Council but Russia opposed to it exercising its concurring vote (veto).
IOs operate in a framework of multilateralism -> defined as the collaboration/cooperation between countries to pursue a common goal, in contrast to unilateralism or bilateralism.
As multilateral organisations - IOs were born to gave the growing difficulties of states - most of them were established after 1945.
They are now living a period of crisis because of increasing nationalist governments (e.g. Trump's bilateralism).

The Vienna Convention on the Law of the Treaties (1969)
All the Treaties are put under the umbrella of the Vienna Convention of 1969 - which entered into force in 1980.
Preamble -> asserts the fundamental roles of the treaties in history - the codification and the progressive development of the law of treaties promotes international peace and the development of friendly relations.
At the time the Convention was adopted, the stipulation of an agreement was exclusive competence of the sovereign (head of state) - the negotiations were carried out by appointed plenipotentiaries - they signed the treaties, then ratified by the sovereign and notified it to the counterparts.

The adoption of a treaty:
1) Negotiations - carried out by plenipotentiaries on behalf of the state - the scope is to find a solution which satisfies both parties.
2) Signing - plenipotentiaries end the negotiations and sign the treaty - still not binding.
3) Ratification - confirms the will of the state to commit to the obligations set in the treaty - the competence to ratify is usually decided at national level (in Italy Head of State + approval by Parliament when necessary).
4) Concerning multilateral treaties - ratifications are then deposited - then it enters into force
5) Registration - e.g. in the case of the UN, all treaties must be registered at the Secretariat which then publishes them - transparency and to avoid secret agreements. In case of absent registration, the treaty is still valid but MSs cannot avail themselves of it before organs of the UN.

Art. 2 of the Vienna Convention -> "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Legal personality -> the subjects of international law are those to whom the international legal system gives capacity to hold rights and obligations and to exert powers (legal personality) - not all the subjects of international law hold the same rights and obligations. Not all the subjects of international law hold the same rights and obligations - having international legal personality means having rights and obligations under the international legal order.

4/10/2022
The issue of membership in IOs - original v admitted members
Most IOs are qualified as open - their founding treaties usually provide for access to membership. Admission is usually conditional to satisfaction of certain requirements - in intergovernmental organisation membership is open to states (statehood criteria).
How to define a state? An entity having a government on a population and on a territory - three elements required: government, territory, population.
The traditional elements for this legal conditional subject -> effectiveness and independent (sovereignty meaning independence from external influence).
What if there are some doubts about the satisfaction of these criteria? Recognition by the international community - a political act from other states - sometimes states recognise some entities that are not really independent.
E.g. at the 1945 San Francisco Conference for the adoption of the UN Charter, Stalin requested two more seats in the General Assembly for Ukraine and Belarus even if their were republics of the Soviet Union and not de facto independent.

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E.g. the World Meteorological Organisation - territories or groups of territories maintaining autonomous meteorological systems can be members (not strict).

Membership in the UN
Membership in specialised agencies of the UN is usually subject to membership to the UN itself.
Chapter 2 of the Charter - art. 3, 4, 5, 6 explain how states can become members of the UN.
- Art. 3 -> The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.
- Art. 4 -> Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. (Willingness is a political evaluation).

The admission of any state to membership of the UN is subject to a decision by the General Assembly upon the recommendation of the Security Council.
A reference to peace -> after Pearl Harbour, the idea to built a world far from the war arise.
“Open to any other state” -> the idea that states could joint the UN later in time - “peace-loving states” is an important reference to international peace + states are admitted after a judgment given by the organisation (subjective and political character).
The application is sent to the Security Council and then passed to the General Assembly that has the final vote over the admission process.
Neutral countries - provide the organisation with armed forces, but states in a condition of permanent neutrality cannot joint a conflict - neutral states can.
E.g. Peru and Argentina are neutral with respect to the Ukrainian war, but they are not in a condition of permanent neutrality (as Switzerland, Austria and Sweden were).
Austria became a MS in 1989 - Switzerland had to share the objectives of the UN, at first it was not a member but hosted the offices - so to conclude in reality, a state in a condition of permanent neutrality can joint the UN.
What’s the difference between these and the others? They are full members without limitations, the difference is that they are not asked to participate in operations which imply the use of military force.

The UN was originally associated to the allied powers against Italy, Japan and Germany
26 June 1945 - the founding members signed the Charter to joint the UN - then ratified it.
Art. 110:
1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes. states decided to stress this point even if it was not really necessary to highlight the importance of such commitment
2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

The Constitution of UNESCO - 16 November 1945
Preamble - presents the reasons and the historical, political, moral background justifying its creation.
The Governments of the State Parties to this Constitution of behalf of their peoples declare:
That since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed - it is a moral position: educate to peace (minds of men are very important - this is the main pillar)
Art. 1 -> purposes and functions
Art. 2 - membership
1. Membership of the United Nations Organization shall carry with it the right to membership of the United Nations Educational, Scientific and Cultural Organization -> the two organisations are linked automatically, it is linked to the idea that war begins in the minds of men.

The preamble of the UN - “we the peoples” means states in this case, but the formula reflects the echo of the US Constitution: “we the peoples of the UN determined to save succeeding

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generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind".

EU membership
Art. 49 TEU -> Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.
The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.
6 original members + a number of enlargements up to 28 (now 27).
Application must be brought to the Council (ministers) - then approved by the Parliament upon consultation with the Commission which has to carry out the negotiation and agreement phase + ratification by all the other MSs in accordance with their respective constitutional requirements.

Art. 2 TEU -> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Statute of the Council of Europe
The pillar is art. 3 -> Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I (the obligation is to collaborate sincerely).
Special provision -> in 1954 acceptance of a block of states due to a radical change int he conditions of a state.
Dissolution of the Soviet Union -> Russia was maintained as MS due to a political choice - the same thing did not happen with the former Republic of Yugoslavia - the newly formed states had to send their application to acquire membership.

Two exceptions to the rule of membership -> the WTO and the WFO accepted the membership of the EU - because of the Common Agricultural Policy and the Common Commercial Policy of the EU according to which MSs have ceded most of their sovereignty in these fields to the EU.

10/10/2022
A state can lose the status of member - there are rules governing the suspension - used as a means of compliance to the rules for MSs - can produce the effect of temporary loosing the right to vote, the access to services provided by the organisation, the access to meetings.
E.g. **IMF** - if a MS is suspended, it cannot access to financial assistance.
The **Council of Europe** - provides in art. 8 that any member that has seriously and repeatedly violated art. 3 (acceptance of the rule of law, human rights and fundamental freedoms) may be suspended from its right of representation and even requested to to withdraw.
1967 -> Colonel Regime in Greece
2022 -> Russian invasion of Ukraine

UNESCO -> art. 2.4: a MS of the UN suspended from membership and voting rights, upon request of the UN, is also suspended from the rights a privileges deriving from membership of UNESCO.

EU -> serious and persistent breach of principles listed in art. 6 TEU (democracy, respect of fundamental rights and freedoms…)

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The EU can adopt also infringement procedures - initiated against Poland and Hungary for non compliance with some EU rules, in particular with those enshrined in art. 6.
Art. 6 TEU and art. 3 CoE are very similar.

UN
- Art. 4 -> admission to the GA upon recommendation of the SC
- Art. 5 -> A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council. Suspension is temporary and a way to sanction a MS - a political choice that produces concrete effects - the extinction of an IO is the natural end of membership, while withdrawal is the voluntary act of a state to step out, usually provided by the statute.

In the case of the UN there is no possibility to withdraw when referring to the obligation to maintain international peace and security, clashing with the will of state (contradiction).
General rules of the law of treaties to solve this conflict - rebus sic stantibus close - a customary rule ratified by the Vienna Convention: if there is a radical chance in the situation that existed at the time when the Treaty was concluded, as a result of this radical change, the state can step out - nonetheless, there is no close mentioning to the possibility to withdraw from the UN, but according to this general rule, a state should be able to step out.

- Art. 6 -> A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

The expulsion is a measure taken by the IO against the MS - the most radical possible solution (art. 2 UNESCO, art. 6 UN) - the General Assembly upon recommendation of the Security Council (never applied - better to keep them in rather than keep violating international law)
Moreover for both expulsion and suspension MS of UN Security Council can exercise their veto power (e.g. Russia).

EU -> art. 7 TEU requires approval of 1/3 MSs, EU Parliament/Commission - 4/5 Council members - art. 7 clear risk of breach of values of art. 2 TEU - the Council shall hear the MS.
The Council acting by qualified majority may suspend part of the rights of that MS in the Council - it has been started at the level of Parliament against Hungary and Poland.

Both the EU and the CoE were built on the idea of shared values (50 million of victims in WWII) - states decided to limit their sovereignty in favour of cooperation and peace - multilateralism as a method and a political choice.

11/10/2022
How to define an IO -> reference to its structure
Cooperation through permanent living cooperation by the use of organs - a fundamental pillar is the will of states, in principle absolute.
Limitations to state sovereignty are voluntary and established through agreements.

The three typical bodies adopted by IOs: the plenary organ, an organ of limited composition, an administrative and bureaucratic organ.
More complex institutions may have more bodies - e.g. the EU adopted a parliamentary body and a judicial organ.
The world of IOs is flexible by definition since there is no superior constitutional text + based on the will of states.

The plenary organ -> it is present in every IO, composed of the states baking part of it (e.g. UN General Assembly codified in art. 2(1): the organisation is based on sovereignty equality.
The organisation is created by states - recognised as equal and sitting together on equal basis.
The Council is the plenary organ of the EU.

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The decision-making process -> closely aligned to the level of cooperation that has been adopted when states decided to establish for the organisation: some have very limited scope, others to the point of integration (EU) - the decision-making process clearly reflects the level of cooperation that states want to implement.

Limits to state sovereignty
Unanimity -> the model better safeguarding sovereignty since none would be left aside
Majority rules -> simple or absolute, there are different kinds of qualified majority (typically 2/3): by choosing majority states accept a significant grade of decision-making transfer of state sovereignty - a MS can be bound to a decision which in principle does not accept.

The Council
Weighted vote -> state express a vote that reflects demography (number of citizens)
IMF - voting in the board of governors based on their quotas

Plenary organs in the UN -> the General Assembly (Chapter 4)
Art. 9 -> the GA shall consist in all member of the UN, both original and admitted
Para. 4 - each member shall have no more than five representatives in the GA - but one single vote according to art. 18(1) (principle of democracy).
5 representatives for different issues - e.g. military matters (officer), economic cooperation (economist).

Art. 10 and following (functions and powers) -> the GA can discuss any matter within the scope of the Charter and may make recommendations to the members of the UN or the SC - not binding.
Art. 18(1) - one state one vote
Art. 18(2) - decisions on important issues shall be taken on 2/3 majority on members present and voting: this shall include recommendations concerning international peace and security, election of the SC, admission of new members, suspension of rights and membership, expulsion and budgetary questions (qualified majority).
Decisions of less importance -> simple majority.
Art. 18 -> “Majority of the members present and voting”
While art. 108 (amendments to the Charter) - adverted by the 2/3 of the members
Difference between the two articles -> for political reasons states may decide not to join the meeting (lavatory vote: leave the meeting or avoiding to express their position) - in this case the 2/3 will be easier to reach because of the missing votes with the formula “present and voting”.

Consensus -> the Chair of the GA reads the text of a possible resolution and if there are no formal objections, the text is adopted.
The difference between consensus and unanimity -> unanimity requests a formal voting, while consensus does not request voting - the main advantage is that states does not have to expressively take a position, but on the other hand it is not a strong commitment, lack of enthusiasm - used for political texts having no particular consequences in terms of putting obligations on states -> weaker commitment than being in favour of a resolution.

The GA only has the power to adopt recommendations, admission or exclusion/suspension of members, budgetary questions… while military cooperation, fiscal and tax matters require unanimity.

14 points of Wilson - a way to acclaim the principle of democracy to IOs - in the plenary organ through the formula “one state one vote” (fictio iuris).

The bodies of IOs
Plenary organs -> are those entitled to adopt rules and norms -> an issue of commence arises since such power is usually devoted to states (art. 11 Italian Constitution).
Powers and competences -> stated also in the part devoted to plenary organs of the treaties, statutes and constitutions of IOs - a different quorum is requested depending in the decision.

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Council, Committee, Board -> of limited composition, usually established following an election in the plenary organ - can meet on a more frequent basis since usually the plenary organ meets once a year (Un Plenary Session) - having a sort of executive organ gives the possibility to run the organisation and allows the possibility each month or couple of months (ILO, WHO, FAO).
UN -> Security Council - EcoSoc
Composition -> 5 permanent members + 10 elected

Administrative and bureaucratic organs -> the secretariat, Secretary General, secretary director, director general is the head of the administration of an IOs - elected or appointed by the political organ with exclusive and administrative functions.
Responsibility to run the ordinary businesses of the IO: ensure that political organs can regularly meet, conferences…
Someone qualified as CEO - in charge of prepare reports on welfare of the IO and its organs + legal representation of the organisation for negotiation and conclusion of agreements.
Part of the UN Charter is devoted to this organ -> Chapter 15 (the Secretariat): Secretary General + staff - this structure has become a model for all the other specialised agencies.
It is appointed by the political organ (General Assembly) upon the recommendation of the Security Council - working for the organisation and not for the nation he is citizen of.

Art. 98 -> the SG acts in capacity of CEO in all meetings and acts upon the functions entrusted to him by the political organ + yearly report on the wealth of the organisation.
Art. 99 -> the SG when facing a threat to international peace and stability has the power to convene the SC (it can also meet at request by MSs).
Art. 101 -> the staff is appointed by the SG under regulations given by the GA - the staff shall aim at the highest standard possible and reflect the membership of the UN (geographical structure).
Art. 100 -> the performance of the duty of the SG and its staff shall not be instructed from governments nor external influences - refrain from any action to reflect their position except from the one required by their role as officials.

Independence -> the SG shall not be subject from pressures from state and shall not seek nor receive influence.
Selection -> most of SG have tried not to displease the super powers - elected for a 5-years mandate and can be reelected (living a permanent political campaign).
The recommendation of the SC is very important - strong personalities are usually not reelected.

Art. 100 was used by the European Communities for their structure - in 1957 the High Authority became the Commission.
The Permanent Court of Justice - League of Nations - judges must be independent.

Quotas assigned to staff members -> membership, population and contribution to the subject.
They are normally qualified as international officials - being officials of an international organisation - while diplomats are national official (state officials).
There is no single category of international officials -> we must look at each organisation.
Which kind of law applies to them? - distinction between permanent and temporary appointment.
- Permanent -> selected for a career int he organisation; tenure until retirement.
- Temporary appointment -> fixed-term or often identified to comply with a specific task, or for short-term appointment (e.g. 6 months) qualified as civil servant.
- Distinction on functions -> referred to the enjoyment of privileges and immunities: some have participated to mission giving technical support and other activities like peacekeeping -> while agents are not official of the UN and are appointed to comply with a specific task - some agents can be international officials.
- Many times civil servants do oath - but the states shall refrain to influence the staff of IOs.

At EU level the role of the Secretariat is performed by the Commission - giving proposal of secondary legislation, international relations, guardian of the treaties, administrative functions.
The Secretary General is appointed by the Committee of Ministers - the plenary organ of the Commission
The Deputy Secretary General is usually a top official coming from the staff (one) with vicarious position.

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In the UN there is a Deputy Secretary General and a large number (10/15) of Under-Secretary General - directors of an office of the UN (UNHCR) - with some tenths of assistants (Assistant Secretary General).
UNICRI - based in Turin and under the control of New York, but with a local Under-Secretary General

Organs of the UN
Principal organs -> General Assembly, Security Council, Economic and Social Council (EcoSoc), Trusteeship Council, some limited composition organs, the ICJ, the Secretariat.
The UN is an organisation of general subjects - for this reason the huge number of different issues are addressed by different competent organs.
Art. 7(2) -> regulates the possibility to establish new subsidiary organs in accordance with the Charter.
Moreover, very issue falls within the competences of the GA - which delegates some of its prerogatives to other subsidiary organs (UNIDO, UNHCFR), UNICEF) - all “UN Commissions” are subsidiary organs.
Three plenary organs - administrative, legislative, judicial.

The judicial body
The most sophisticated organisations provide for a judicial or quasi-judicial organ -> the original function was to solve international disputes and to comply with the rules set by the organisation.
The Hague Convention 1899 -> the League of Nations established the Permanent Court of Arbitration to ensure the pacific settlement of international disputes.

After WWII, the Permanent Court of International Justice was established as an organ of the UN - then becoming the International Court of Justice (ICJ).
The paramount importance of international law is to offer instruments to solve disputes and to avoid conflicts and violent drifts.

The Permanent Court of Arbitration - neither a court, nor permanent: is a list of names of judges that can be selected for arbitration between two states - each country provides 5 names(?)

The ECtHR is competent over disputes concerning:
- State and non-state actors (e.g. individuals) -> a tribunal which have recourse by an individual who affirms to be victim of a violation of HR or FF of the ECHR by a MSs.
- Dispute between the organisation and its MSs -> challenging the validity of EU secondary legislation for example before the ECJ.
- Settlement dispute between the Organisation and individuals who claim direct concern by acts of the Organisation.

UN - Two ad hoc tribunals -> International Criminal Tribunals - ICT for Former Yugoslavia and ICT for Rwanda were created by the Security Council and not by the ICJ - but were said to be subsidiary organs of the ICJ.
They were temporary tribunals to address specific tasks: prosecute and judge individuals for having committed serious violations of international humanitarian law.
The main issue is that the Security Council cannot delegated functions that it dos not have - as a general rule, a principal organ can establish a subsidiary one delegating some of its prerogatives and functions, not out of its scope.
Ad hoc tribunal for Ukraine? -> cannot be established because of the veto of Russia in the SC.

24/10/2022
The ICJ is the main judicial organ of the UN - others have been included in the structure of IOs to settle disputes such as the ECJ dealing also with the relationship between individuals.
Many courts of regional organisation -> ECJ, ECtHR, IACHR, ACHR…

Along with IOs, some administrative tribunal have been established (UN, IMF, WB) for disputes concerning the service relations between the IO and its civil servants - beaches of immunity if IOS before national courts. E.g. the dispute settlement body of the WTO has also an organ of appeal.

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IOs have played this role by the use of non-judicial means - consultation, mediation,. Negotiation, conciliation, inquiries, good offices.
- Mediation, good offices and conciliation - require a third party. In case of conciliation the third party has to draft a formal solution after investigations (not binding) - widely used in political organs in the UN and agencies, NATO, Arab League, Organisation of American States.
- Arbitration plays the prevailing role - the main difference between arbitration and judicial adjudication is the nature of the judicial body, defined as the the procedure for the settlement of disputes between states by the binding award on the basis of law and the result of an undertaking voluntarily accepted".

In it are national law arbitration is the rule, judicial settlement the exception - opposite to national level.
The Permanent Court of Arbitration - established by The Hague Convention of 1899 and 1907 - a panel of arbitrators appointed by states from this list in order to solve disputes.

International Criminal Court (ICC) -> established by the Rome Statute 11/7/1998: based in The Hague replacing the Permanent Court of International Justice -> it has jurisdiction over individuals having committed serious crimes listed in art. 5 of the Statute: genocide (art. 6), crimes against humanity (art. 7), war crimes (art. 8) + a further category of crime of aggression.
After WII most of the international tribunals were ad hoc - ICT for Rwanda and Yugoslavia, Nuremberg and Tokyo tribunals (military tribunals).
The Charter of London (London Agreement) was the legal source for the Nuremberg Tribunal.
Because of the terrible crimes committed during WWII - there was consensus in punishing violations under international law, since national tribunals most of the time turned a blind eye on it - for this reason international courts and international individual criminal responsibility were established (international humanitarian law implies individual responsibility under international law)
The ICC requested 60 ratifications to the Rome Statute (now 123) - all the EU members, but not ratified by US; Russia, China, India, Pakistan, Ira, Israel.

Some IOs introduced **parliamentary organs** after WWII - the "will of state" formula meant the will of governments in charge - not always reflecting the will of the people.
The European Steal and Coal Community and the ECC established some "assemblies" - but a real parliamentary assembly was established by the EU (Treaty of Rome and then Lisbon).
The Council of Europe -> 46 MSs with a parliamentary organ as well elected by national parliaments (second level representation).
On the other hand, the EP has been the first directly elected by EU citizens - higher legitimacy for the organs expected to represent the citizens of the EU.

Organs of states and organs of individuals
The Council - is an organ of states composed by heads of state/government
The Commission, ECJ, EP - organs of individuals elected by the EP - EP elected by citizens of each MS according to its own electoral system - members sit within groups of political orientation rather than by nationality.
UN - does not have a parliament body - the GA reflects the national governments' will.

25/10/2022
Diplomatic law -> governs the relations between states - it used to develop on a bilateral basis to entertain relations based on trade, currency, friendship and navigation.
Diplomatic relations to the point of becoming per entry with modern missions (plenipotentiaries) - these relations were promoted through the law and mission without impediments (ne impediator pedatio) - art. 3 Vienna Convention -> privileges and immunities were developed closely linked to the person of the sovereign, considered a sacred entity - now they represent the head of state and the government.
Diplomats -> enjoy personal and functional immunity: they cannot be arrested nor brought before a judge.
Diplomatic law is made of customary law rules codified in the 1961 Vienna Convention + other treaties signed between states.

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Privileges and immunities of IOs and diplomats
IOs - enjoy more or less the same of states, are considered subjected of international law and their properties are protected as embassies - they do not pay local taxes.
The Convention on Privileges and Immunities of Specialised Agencies of the UN was adopted after WWII - each organisation signs an agreement with the state in which it is located - treaty + agreement.

Civil servants and personnel of IOs usually enjoy only functional immunities - personal immunity is granted only to diplomats (general rule) or to top officials and governance of IOs (e.g. Secretary General, EU representatives) and not to the whole staff.
What's immunity?
- Immunity from jurisdiction
- Immunity from executions
- Inviolability of archives and premises
- Fiscal privileges (taxes)
- Freedom of communication (internet and correspondence)

Case-law in Belgium and Italy distinguished between two different kinds of acts:
- Acta iure imperii -> the exercise of the sovereign power by the state
- Acta iure privatorum -> the state acting as a private entity (e.g. someone renting a building on behalf of the state - can go before a national court) or individuals working for foreign states such as cooks, drivers are denied immunity.

Budget of IOs
Operational expenses -> unlike state, IOs cannot raise finical resources through taxation, they are functional subjects and not sovereign entities. The budget is usually prepared by the administrative organ (e.g. Commission in the EU) and usually approved by the plenary organ - art. 17 UN Charter.
How is the budget approved -> usually based on a system of equal voting (one state, one vote), some exceptions are the WB and the IMF in which voting power of MSs is weighted according to the quotas hold by each MSs (contributions).
In case a state fails to pay, there are remedies: such as suspension or withholding/delay of payments - leading to negations.

Sources of revenue for IOs -> IOs usually require compulsory contribution by MSs or other kinds of voluntary contribution - donations by private actors or philanthropic actions - revenues form, lending activities (e.g. WB and IMF).

BREXIT

28/11/2022
History of the UN
1941 - Atlantic Charter
1942 - UN Declaration
1945 - San Francisco Charter
24 October 1945 - birth of the UN when Assembly firstly met

Security Council - 5 permanent members + 10 elected for 2 years non-renewable tenure - selected on geographical criteria + contribution to the aims of the organisation.

The principle of self-determination - very different from the one codified in 1945 (France, UK had colonial empires) - it referred more to self-government
E.g. Congo was the private property of the king, not even a colony.

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The right to veto - more properly called “concurring vote”
For procedural matters the majority (9/10) is required irrespective of the status of the MS - but for substantial matters, additional to the majority (9/10), the concurring vote of all the 5 members permanent is required.

The issues of reform of the UN
The main proposals concern the reform of the Security Council - after the entry in force of the UN Charter - accordingly to art. 4 (admission upon proposal of the SC and vote by the GA) a growing number of counties has been admitted (the founding members were 51).
As a consequence of decolonisation - the debate was on adapting to this new reality and to enlarge the representation - the only reform that took place was increasing the member of the SC from 6 to 10 (still now).
The 5 permanent members - the USA, France, UK, China, Russia - no African countries, no South America, no Middle East, no Asia except for China - does not reflect the membership of the UN.
Several proposals:
- The quick fix - proposed by the US - admitting Germany and japan to the 5 permanent (1990s)
- The G4 - Germany, japan, Brazil and India + two African nations (power of veto limited for 15y) - 90s-til now (last document in 2015)
- African Union proposal - draft resolution 15 years ago
- CariCom proposal - 14 members of the Caribbean Community
- EL69 - India, Jamaica and others
- UFC (Uniting for Consensus) or the Coffee Club - led by Italy since the 1990s when it was organised by the then Italian ambassador Francesco Paolo Fulci formed by Italy, Egypt, Mexico and Pakistan.
- Small five
- High Level Panel - threat to peace and reform - supported by Kofi Anan

29/11/2022
Chapter 9 of the UN Charter - economic and social cooperation (EcoSoc Council)
Art. 57 - The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

The UN is an organisation of general competence - 20 specialised agencies were set up by intergovernmental cooperation and agreements.
Each of this institutions is an international organisation and is autonomous - they are organised y agreement + statute + defined structure + possibility to issue biding or non-binding acts -> they also have the possibility to negotiate and ratify treaties according to the Vienna Convention.
This handful of organisation is placed within the UN system - autonomous but linked to the UN.

Regional organisations
They have developed around regions of the world - the criteria has been both geographical, but most importantly geopolitical.
The Council of Europe - 46 MSs - is a pan-European and political organisation: all European States + Turkey and Georgia - the most important achievement has been the adoption of ECHR.
The main aim is to achieve greater unity between its members for the purpose of safeguarding the ideas and principles which are common heritage and to facilitate economic and social progress.
Art. 3 -> every MS must accept the principle of Rule of Law, protect the enjoyment of human rights and fundamental freedoms of all persons within its jurisdiction.
I Section - Rights and Freedoms
II Sections - the European Court of Human Rights - art. 19: the Court is established on a permanent basis + it exercise control over the hight contracting parties’ compliance with the Convention + cases may be brought by MS (MS v MS) + but art. 34 allows for individual

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application: any person, NGO, or group alleging violations of the Convention by hight contracting parties to their detriment can brought a case before the Court.

Others
The Inter-American Convention on Human Rights and the African Convention on Human Rights are base don the model of the Council of Europe and of the ECHR.

The Organisation for Economic Cooperation and Development - US, Canada, Australia, New Zealand, Japan: is regional in a geopolitical meaning and not strictly geographical (western world)

The Organisation for Security and Cooperation in Europe (OSCE) - all European States + US and Canada + more.

NATO - for the security in Western Europe: it was born as a military alliance against the Soviet block with the support of the USA.
- art. 5 of NATO Treaty - triggering causes for intervention are present and evident threats to the territorial integrity, political independence and security of a MS
- An armed attack against a MS is an attack against all members - and if it occurs, each of them according to art. 5.1 shall assist the attacked party as they think it is necessary and appropriate.
- Art. 4 - the MS triggering art. 5 has the obligation to consult first with all the others
- The previous version of art. 5 was much more demanding -> it has been adopted at EU level.

The legal personality of IOs
How to establish whether an IO has separate legal personality? -> the principle of effectiveness must be taken into consideration: if the organisation is capable of expressing a will which is distinct form the one of its MSs, then it has separate legal personality.
E.g. NATO expresses simply the will of its MSs and everything requires unanimity - hence, it does not posses separate legal personality.

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