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Constituent Instruments of the Contemporary Intergovernmental Organizations

Instrumenty prawne ustanawiające współczesne rządowe organizacje międzynarodowe

ABSTRACT

The research on the law of intergovernmental organizations is closely related to the research on the fundamental institutions of contemporary international law. The subject matter of this article, i.e. the legal bases for establishing and functioning of intergovernmental organizations, is a good example of the type of research being conducted in this area and is closely connected with the concept of subjectivity in international law and the law of treaties. There is no doubt that international agreements are the predominant constituent instruments of contemporary international organizations. However, this classic approach undergoes changes in legal practice. Constituent instruments other than treaties have been used more frequently, and they elevate the newly created international organization to the status of a new subject of international law. The article discusses this legal practice, which marks the beginning of a new stage in the evolution of international organizations and the law of international organizations.

Keywords: intergovernmental organization; international subjectivity; constituent instrument; international agreement

INTRODUCTION

Intergovernmental organizations (IGOs) are currently the most important members of the international community, on a par with states. It is also indisputably true that they need to be considered as subjects of international law. The dynamic

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Data: 21/11/2026 12:41:20

development of IGOs, particularly from the second half of the 20th century onwards, was the most important stage in the evolution of modern international law. Despite the widespread interest in the topic of international organizations, there is no universally accepted definition of IGOs put forward in legal doctrine.

In fact, the lack of a universal definition of an international organization should come as no surprise, as it is difficult, and sometimes even of little use, for the law to frame pertinent and evolving notions and phenomena into a single definition. Each international organization has its own characteristics and functions, and there are no two identical international organizations as each has its own specialised competences. Their roles vary depending on the political circumstances surrounding their creation. Established in most cases by states, they serve as fora for international co-operation, and their aim is to respond to the most pressing issues of their times. It is therefore difficult to agree on a unique definition of an international organization, and one may agree with N. White when he claims that such definitions "fail to provide either a systemic or contextual understanding of international organizations".[1]

There is, however, something of a general consensus on what elements should be embodied in such a definition.[2] The common frontline element in all of the most frequently quoted definitions is the international legal basis for creating such organizations. In fact, their constituent instruments are governed by international law. Intergovernmental organizations are predominantly established by means of international agreements. Such an agreement needs to express the unanimous will of its founders. It must also be normative in nature, i.e. create legal norms. There are no prescribed formal requirements regarding the form which the agreement needs to take. However, by default, such international agreements are concluded in the form of international treaties. An international agreement will have international legal effects only if it is governed by international law.

In practice, the definition of an international agreement is very broad and encompasses all possible instruments used by subjects of international law to enter into agreements between each other. It needs to be borne in mind, though, that such instruments need to be used in compliance with international law because international organizations thus created become part of the international legal order. It follows from this that those international legal norms in particular regulate how international organizations operate in practice. Undoubtedly, international agreement reflects the substantive aspect of establishing an international organization.

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[1] N. White, *The Law of International Organizations*, Manchester 2005, p. 2.

[2] See M. Virally, *Definition and Classification of International Organizations: A Legal Approach*, [in:] *The Concept of International Organization*, ed. G. Abi-Saab, Paris 1981, p. 51; J. Klabbers, *An Introduction to International Organizations Law*, Cambridge 2015, p. 6; C. Brölmann, *The Institutional Veil in Public International Law: International Organizations and the Law of Treaties*, Oxford 2007, p. 13; H.G. Schermers, N.M. Blokker, *International Institutional Law*, Leiden 2011, p. 36.

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Data: 21/11/2026 12:41:20

The core elements of international agreement are, therefore, the will of its founders and the normative nature of the agreement, related to its content.[3]

Therefore, most definitions of international organizations mention a treaty or any other instrument governed by international law.[4] In the process of codifying the law related to the accountability of IGOs, the predominant stance presented by legal commentators was that legal custom does not require an international organization to be established in the form of a treaty.[5] Defining the constituent instrument of international organizations so broadly allows for including in it also other significant international law instruments, other than treaties, which play a part in creating IGOs. These include, for instance, resolutions adopted by bodies of international organizations or acts adopted at international conferences.[6] Therefore, it can be claimed that a mandatory feature of a constituent instrument for an international organization is reaching an explicit (and sometimes also implicit) agreement by its founders. In this way, the founders establish a new subject of international cooperation with its own international legal personality that is separate from the legal personality of its members.[7] Thus, one can formulate a hypothesis that in practice there are a few other legal constituent instruments of international organizations. The purpose of this text is to present various – treaty and non-treaty – constituent instruments of contemporary international organizations. The research refers to the most representative literature of international institutional law.

RESEARCH AND RESULTS

1. Research methods

An appropriate methodology must be used to examine the research issues in a way that achieves the purpose and answers the questions of this study. The most common approach in legal methodology is the legal dogmatic method, without

[3] A. Czaplińska, *Odpowiedzialność organizacji międzynarodowych jako element uniwersalnego systemu odpowiedzialności międzynarodowoprawnej*, Łódź 2014, p. 71.

[4] T. Gadkowski, *Podmiotowość prawnomiędzynarodowa organizacji międzynarodowych a ich zdolność traktatowa*, Poznań 2019, p. 81.

[5] During the codification work and discussions at the forum of the International Law Commission, it was also proposed to replace the term "instrument governed by international law" with softer terms, e.g. "forms of expression of consent", "act of international law", or far more rigid terms, as "agreement". See J. Menkes, A. Wasilkowski, *Organizacje międzynarodowe. Prawo instytucjonalne*, Warszawa 2010, p. 87.

[6] J. Klabbers, *An Introduction…*, p. 11.

[7] H.G. Schermers, N.M. Blokker, *op. cit.*, p. 27.

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Data: 21/11/2026 12:41:20

which proper analysis of the sources of international law would not be possible. However, this research method must take into account the specific nature of international law and especially of its sources. In order to analyze the sources of international law, we must first establish their content, which is a much more complicated task than is the case with national law. The task is challenging not only in respect of the rules found in international agreements, but most of all in respect of the rules of customary law and the general principles of international law. For the latter, it is necessary to reconstruct their content based on other legal norms as well as the practice of states and other subjects with international personality of their own. When referring to the legal dogmatic method, the case law of international courts has to be taken into account. In order to achieve the purpose of this study, therefore, it was necessary to draw heavily on the comparative research method. The historical method, on the other hand, was used on a significantly smaller scale as the analysis of the historical development of the institutions under discussion is of lesser importance for accomplishing the objectives of this research.

2. International agreements as constituent instruments of international organizations

An analysis of the doctrine of international law and practice may lead one to conclude that there exists a *communis opinio* that the legal basis for the creation and subsequent functioning of an intergovernmental organization is an international agreement.[8] An international agreement is broadly understood and defined as all possible activities through which subjects of international law reach an agreement. It thus includes treaties first and foremost, then other informal agreements (resolutions of different organs and bodies of international organizations). Among the most frequently expressed views regarding an international agreement is that of Judge John Read in his separate opinion to the International Status of South-West Africa Advisory Opinion, in which he clearly distinguished two elements of such an agreement, namely the "meeting of the minds" and the "intention to constitute a legal obligation".[9]

A prevailing situation arises when the legal basis upon which an international organization is created takes the form of a treaty. Just as a treaty may have different names, the name of a constituent instrument is of no real importance.[10] After all,

[8] A. Gadkowski, *Treaty-Making Powers of International Organizations*, Poznań 2018, p. 22.

[9] Advisory Opinion of the International Court of Justice, International Status of the South-West Africa, ICJ Reports 1950, p. 170. See also A. Gadkowski, T. Gadkowski, *Traktatowe i pozatraktatowe instrumenty ustanawiania organizacji międzynarodowych*, [in:] *Prawo międzynarodowe – idee a rzeczywistość*, ed. E. Cała-Wacinkiewicz, Warszawa 2018, p. 274.

[10] Article 57 of the UN Charter includes the term "basic instrument", which refers to UN specialised agencies. See also *Constitutional Questions Relating to Agencies within the Framework of*

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Data: 21/11/2026 12:41:20

as the Roman maxim has it, *rubrica legis non est lex*. Thus, it is not the name but the content of an act that determines its legal qualification.

According to H.G. Schermers and N.M. Blokker, the creation of an international organization on the basis of a treaty naturally implies the international character of such an organization. If an organization was not created on the basis of a treaty, it will be necessary, in order to establish its international character, to provide evidence of the existence of some other international agreement, and this may not always be easy.[11]

An international agreement that acts as a constituent instrument plays a double role. On the one hand, it is a traditional agreement to which rules governing the law of treaties apply.[12] On the other hand, it acts as a statute, that is, a constitution, as it were, of an international organization that establishes a new subject of international law. The International Court of Justice (ICJ) noted the special character of the United Nations Charter as an international agreement in its 1962 Certain Expenses Advisory Opinion and defined the Charter as "a treaty having certain special characteristic".[13] This special feature of the UN Charter as an international agreement is provided for in Article 103 of the Charter, being a derogation from the principle of the equal status of international treaties, according to which "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".[14]

Examining the legal status of constituent instruments as international agreements in light of the 1969 Vienna Convention on the Law of Treaties, we note that the Convention identifies no such instruments as a separate category of international agreements. It does, however, acknowledge their specificity. Regarding the scope of application of the 1969 Vienna Convention provisions, Article 5 thus states that the Convention applies to any treaty which is the constituent instrument of an international organization.[15] This specificity or special characteristic is also provided for in other provisions of the Convention. An agreement constituting a constituent instrument of a given international organization is subject to slightly different rules of interpretation than the rules adopted and applied to international agreements in

the United Nations, 9 UN General Assembly Official Records, Annexes, Agenda Item No. 67, Doc. A/C.1/758, 1954, p. 13–19. For the analysis of this document, see K. Kocot, *Organizacje międzynarodowe. Systematyczny zarys zagadnień prawa międzynarodowego*, Wrocław 1971, p. 86.

[11] H.G. Schermers, N.M. Blokker, *op. cit*., p. 40, para. 37.

[12] Article 5 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986), UN Doc. A/Conf.129/15.

[13] Advisory Opinion of the International Court of Justice, Certain Expenses of the United Nations (Article 17 para. 2 of the Charter), ICJ Reports 1962, p. 157.

[14] Text of the UN Charter: 1 UNTS XVI.

[15] Text of the 1969 Vienna Convention: 1155 UNTS 331.

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Data: 21/11/2026 12:41:20

general. This approach is determined by the specific character of such an instrument as a constitution of an international organization,[16] a fact pointed out by the ICJ in the Legality of the Use by a State of Nuclear Weapons in Armed Conflict Advisory Opinion, in which the Court stated that "such treaties can raise specific problems of interpretation owing, i.a., to their character which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by the founders, the imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties".[17]

Consequently, the interpretation of constituent instruments should be more flexible and account broadly for international practice in that matter.[18] This kind of flexibility in the interpretation of constituent instruments is afforded by the teleological approach. This is of particular importance for the implication of powers of international organizations. The Vienna Convention also determines the special manner of formulating reservations to the agreement when such an agreement is the constituent instrument of an international organization. Such a reservation requires the acceptance of a competent organ of that organization.[19]

It may be argued that states entering into such agreements also play a dual role.[20] On the one hand, they are parties to an international agreement governed by the law of treaties, which means they are subject to certain definite rights and attendant duties. On the other hand, they become members of an international organization and as such they acquire rights and are vested with duties arising from the membership of those organizations. In such situations, and according to the rules on the law of treaties, an international organization comes into existence the moment a treaty founding that organization comes into force.[21]

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[16] C.F. Amerasinghe, *Interpretation of Texts in Open International Organizations*, "British Yearbook of International Law" 1994, vol. 65(1), p. 175; S. Rosenne, *Is the Constitution of an International Organization an International Treaty?*, "Communicazioni e Studi" 1966, vol. 12, p. 21.

[17] Advisory Opinion of the International Court of Justice, Legality of the Use by a State of Nuclear Weapons in Armed Conflict, ICJ Reports 1996, p. 75, para. 19.

[18] M.N. Shaw, *International Law*, Cambridge 2008, p. 678.

[19] Article 20 (3) of the 1986 Vienna Convention.

[20] For more on the essence of the constituent instrument of international organizations, see A. Pellet, *Le droit international à l'aube du XXIème siècle. La société internationale contemporaine – permanence et tendances nouvelles*, "Cours euro-méditerranéens Bancaja de droit international" 1998, vol. 1, p. 72.

[21] In practice, however, it may be in the interest of the state party to such an agreement that the organization they created begins to operate before its charter comes into force. In such a situation, states may enter into a provisional intergovernmental agreement on which basis a provisional committee is created to undertake the tasks and functions of an international organization. This was the case, e.g., with the European Space Agency, which functioned pursuant to a provisional agreement between the years 1975 and 1980 (Convention for the establishment of the European Space Agency, CSE/CS(73)19, rev. 7, signed on 30 May 1975, came into force on 30 October 1980). In this context

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 12:41:20

A constituent treaty frames the participants' commitments and constitutes a framework for co-operation in a specific field in general and for an indefinite period.[22] Such a treaty has particular characteristics: it identifies the establishment of a new subject of international law and determines its area of competence. This was emphasised by the ICJ in the aforementioned 1996 Advisory Opinion, which stated that the constituent instruments of international organizations are also treaties of a particular type. Their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals.[23]

Normally, the constituent instrument of an international organization takes the form of an international agreement that may later be modified or amended. In the context of international law, there are also cases where two or more international agreements form the constituent instruments of an international organization. Perhaps the best example here is the European Union (EU): an international organization that operates pursuant to the successively amended treaties on the EU (the Maastricht Treaty, the Amsterdam Treaty, the Nice Treaty and the Lisbon Treaty), as well as the Treaty on the Functioning of the European Union that replaced the Treaty on the European Community.

An international agreement as a constituent instrument of an international organization is usually multilateral in character. Within the doctrine, the minimum number of states required to create an international organization was discussed, principally whether two states were a sufficient number or a minimum of three were needed to found such an organization.[24] As can be seen in practice, two founding states may suffice, as was the case with the Administrative Commission of the River Uruguay

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it should be noted that the Paris Treaty establishing the European Coal and Steel Community (ECSC) was also adopted on a provisional basis. Section 1 of the Convention on the Transitional Provisions, as a part of a treaty, provides for two kinds of transitional periods: a preparatory period lasting from the date the Treaty comes into effect until the date the common market is created, and a transition period ending 5 years after the creation of the common market for coal (Treaty establishing the European Coal and Steel Community signed on 18 April 1951, for the text of the ECSC Treaty, see 261 UNTS 140). The purpose of the transitional period was to allow time for the creation of Community organs and negotiations between member and non-member states regarding the consequences of the Community as created. Similar transitional provisions may be found in Article 8 of the Rome Treaty establishing the European Economic Community (EEC). For more on the subject, see W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne*, Warszawa 2014, p. 454.

[22] Some organizations are nevertheless established for a fixed period of time. A good example of such an organization was the ECSC, established in 1951 by the Treaty of Paris for a period of 50 years. The Treaty of Paris expired in 2002, and the activities of the ECSC were absorbed by the European Community.

[23] Advisory Opinion of the International Court of Justice, Legality of the Use by a State of Nuclear Weapons in Armed Conflict, ICJ Reports 1996, p. 75, para. 19.

[24] Regarding that discussion, see A. Reinisch, *International Organizations Before National Courts*, Cambridge 2004, p. 6.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 12:41:20

established in 1975 by Argentina and Uruguay,[25] or the International Fund for Ireland established in 1986 by the British and Irish Governments[26]. An interesting opinion was offered by Roberto Ago, who, taking as an example the Belgium–Luxembourg Economic Union, stated that in such a case one is dealing with an institution as an agency established on the basis of a stable and permanent arrangement.[27]

There are also international organizations based on constituent instruments that are international agreements to which other international organizations are party. Examples include the European Bank for Reconstruction and Development (EBRD), which was established by 40 states, the European Investment Bank,[28] and the European Economic Community (now the EU).[29] Another case is the establishment in 1962 of the Middle Eastern Regional Radioisotope Centre for the Arab Countries by the International Atomic Energy Agency and a number of Arab States.[30]

Although the above deliberations relate to intergovernmental organizations, it is noteworthy that their members may, and do, include other organizations. There are, for instance, a growing number of IGOs founded pursuant to an international agreement, whose members include other IGOs. The European Union (formerly the European Community), which became a member of several international organizations, e.g. the World Trade Organization (WTO),[31] the International Seabed Authority, and of one of the UN's specialized agencies, the Food and Agricultural Organization (FAO), is a good example. Accession to the FAO is interesting for at least two reasons. First of all, the membership of the then existing European Community in the FAO required changes to the FAO's constitution.[32] New paragraphs were added to Article II of the Constitution explicitly providing that "the Conference

[25] Statute of the River Uruguay signed at Salto on 26 February 1975, 1515 UNTS 340. See also judgment of the International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Reports 2010, p. 53, para. 89.

[26] Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland concerning the International Fund for Ireland, London and Dublin, 18 September 1986, 58 Republic of Ireland Treaty Series No. (1987) 266.

[27] "Yearbook of the International Law Commission" 1964, vol. 1, p. 59, para. 69.

[28] See Agreement establishing the European Bank for Reconstruction and Development signed at Paris on 29 May 1990, 1646 UNTS 97.

[29] See Treaty establishing the European Economic Community (1957), 298 UNTS 11.

[30] Article II (3) of the Agreement for the Establishment in Cairo of a Middle Eastern Regional Radioisotope Centre for Arab Countries states as follows: "Participation in this Agreement shall be open to the Arab States and the Agency". See International Atomic Energy Agency, INFCIRC/38, 18 October 1962.

[31] As provided in Article XI of the Agreement establishing the World Trade Organization, the European Community has become, next to the contracting parties to the 1947 General Agreement on Tariffs and Trade, a founding member of the WTO. Text of the WTO Agreement, see 1867 UNTS 410.

[32] FAO Conference Resolution: Amendments to the Constitution and the General Rules of the Organization allow for the membership of the FAO by regional international organization (1991), FAO Res. 7/91.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 12:41:20

may by a two-thirds majority of the votes cast (…) decide to admit as a Member of the Organization any regional economic integration organization meeting the criteria set out in para. 4 of this Article".[33] Para. 4 provided for more detailed criteria that a regional economic integration organization must meet in order to become an FAO member: "It must be constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within purview of the Organization, including the authority to make decisions binding on its Members States in respect of those matters". As a result, the members of the FAO now include some international organizations which have as their aim regional economic integration and have a precise division of competences between the organization and its member states. The new provisions on the transfer of competence are particularly interesting, as they refer, i.a., to the authority to make decisions binding on its members, namely treaty-making powers. Detailed provisions on the distribution of competences between member organizations and their member states are addressed in subsequent paragraphs of the amended articles. Consequently, the concept of the alternative exercise of Membership rights was introduced to co-ordinate the activity of the EU and its Member States within the forum of the FAO.[34]

3. Other constituent instruments of the international organizations

International organizations today are not only members of other international organizations but with increasing frequency are the initiators of other international organizations. In this they act pursuant to legal acts of other, usually initial, international organizations or on the basis of so-called inter-institutional agreements. A case in point is the United Nations Industrial Development Organization (UNIDO), established in 1966 and based on resolution 2152 (XXI) of the UN General Assembly as an organ of the General Assembly, and shall function as an autonomous organization within the United Nations. A subsequent resolution of the General Assembly 3496 (XXXIV) contained a recommendation that UNIDO should be converted into a specialised agency. The transition resulted from the will of states and took place on the basis of a treaty. The constitutional instrument was signed in April 1979.[35] The evolution of UNIDO was a unique process because

[33] *Ibidem*, para. 3.

[34] The question of the division of competences between international organizations and member states is a subject of analysis in the next part of this paper. In the case of the FAO membership rights, an arrangement between the EU Council of Ministers and the Commission was made in 1991, setting out the general division of competences in areas under the FAO's mandate in order to make effective the alternative exercise of rights and competences.

[35] See 1401 UNTS 3. On the evolution of UNIDO, see P. Bretton, *La transformation de l'O.N.U.D.I. en Institution spécialisée*, "Annuaire Français de Droit International" 1979, vol. 25,

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Data: 21/11/2026 12:41:20

other entities created on the basis of the General Assembly resolution as General Assembly organs had not been transformed entirely into an international organization: one example here would be the United Nations Conference on Trade and Development (UNCTAD), founded on the basis of resolution 1995 (XIX) of 30 December 1946. This resolution determined the status of UNCTAD "as an organ of the General Assembly", but unlike the case of UNIDO, it made no mention of its autonomy within the United Nations. In practice, however, UNCTAD was granted the status of an autonomous body within the UN, with regard to, e.g., organizational and budgetary matters.[36] The Global Environment Facility, established in 1991 as an organ of the World Bank pursuant to resolution 91/5 of the Executive Board of the World Bank provides another example.

It is not always easy in practice to distinguish between an international organization and an organ of an international organization. The latter might, moreover, transform into an independent international organization.[37] A case worth mentioning here is the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), founded on the basis of the UN General Assembly resolution 302 (IV) of 8 December 1949. In scholarly literature, it is defined as either an international organization or a UN subsidiary organ.[38] According to the definition adopted here, it cannot be defined as an international organization.

The Joint Vienna Institute is an example of an organization established on the basis of a 1995 inter-institutional agreement, the parties to which were originally the Organization for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the European Bank for Reconstruction and Development (EBRD), and the Bank for International Settlements (BIS).[39]

An alternative non-treaty basis for establishing an international organization may be an informal agreement adopted at an international conference. At such a conference, government representatives may decide upon the form of resolution to establish an international organization without entering into a treaty, which might be signed and come into force at a much later date. The Council for Mutual Economic Assistance (CMEA) is a frequently cited case in point. The political de-

p. 567; J. Klabbers, *Unity, Diversity, Accountability: The Ambivalent Concept of International Organization*, "Melbourne Journal of International Law" 2013, vol. 14, p. 154.

[36] The status of UNCTAD has been described in this way by H.G. Schermers and N.M. Blokker (*op. cit*., p. 41, para. 48).

[37] Such a situation was considered and described by P. Bretton (*op. cit*., p. 567 ff.) on the example of UNIDO.

[38] W. Dale, *UNRWA – A Subsidiary Organ of the United Nations*, "International and Comparative Law Quarterly" 1974, vol. 23(3), p. 576; H.G. Schermers, N.M. Blokker, *op cit.*, p. 994, para. 1571.

[39] A.S. Muller, *International Organizations and Their Host States: Aspects of Their Legal Relationship*, The Hague 1995, p. 5. Austria joined in May 2003.

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Data: 21/11/2026 12:41:20

cision to create the organization was taken at a conference in Moscow held between 5 and 8 January 1949, with the participation of six Soviet bloc states.[40] It is also interesting that the official information that the CMEA had been established took the form of a *communiqué de presse* released by the Soviet Press Agency (TASS) only on 25 January 1949. As this press release indicates, the Moscow Conference only roughly outlined co-operation under the CMEA and omitted to specify details, such as the organizational structure of the Council, the powers of its bodies, or the legal status of the Council in the legal systems of its member states. For this reason, the co-operation of states under the CMEA was carried out at annual sessions, 11 of which took place between the years 1949 and 1959. The Council sessions of the late 1950s, however, saw the appointment of permanent commissions, which may be described as the first elements of the institutional structure of the CMEA as an international organization. The CMEA commenced operations and continued them for 10 years with no formal constitutional instrument, when finally, on Poland's initiative, a Charter of the Council was drafted and subsequently signed on 14 December 1959 by representatives of eight member states.[41] The Charter came into force on 13 April 1960.[42] It is worth noting that the CMEA Charter was adopted as an international agreement at the 12th session of the Council rather than at a dedicated diplomatic conference.[43] The Convention on the legal capacity, and privileges and immunities of the CMEA was also adopted at this session and in the same way.[44] The Organization of Petroleum Exporting Countries (OPEC), established at a conference in Baghdad in September 1960, in which five states participated, provides a similar example. Its statutes were adopted only at the second OPEC conference in January 1961.[45]

It is also possible to create an international organization pursuant to an international arrangement, but without an express decision of government representa-

[40] Bulgaria, Czechoslovakia, Hungary, Poland, Romania and the USSR.

[41] Albania and the German Democratic Republic (GDR) also joined the founding states.

[42] As described in detail by J. Sandorski in *Rada Wzajemnej Współpracy Gospodarczej. Forma prawna integracji gospodarczej państw socjalistycznych*, Poznań 1977, p. 7 ff. Sandorski also gives another example of an international organization which operated for a protracted period of time without a formal charter, the Organization of American States (OAS) that gained a regular charter only 58 years after it came into being (the 1948 Bogota Charter). The case of the OAS was broadly discussed by C.G. Fenwick in *The Organization of American States: The Transition from an Unwritten to a Written Constitution*, "American Journal of International Law" 1965, vol. 59(2), p. 315.

[43] For the text of the Charter in Polish, see Journal of Laws 1960, no. 35, item 197.

[44] For the text of the Convention in Polish, see Journal of Laws 1960, no. 35, item 199.

[45] The same example was analysed by H.G. Schermers and N.M. Blokker (*op. cit*., p. 38, para. 34). The authors also analysed other international organizations formed in a similar manner, including the InterAmerican Defense Board, the Asian Legal Consultative Committee, currently the Asian–African Legal Consultative Organization, the Preparatory Commission for the Comprehensive Nuclear-Test Ban Treaty Organization and others.

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Data: 21/11/2026 12:41:20

tives. The Nordic Council, originally established in 1952 by parallel decisions of the parliaments of four states (Denmark, Iceland, Norway, Sweden) with neither a common document nor approval in all countries by the organs competent to conclude international agreements, would be an instance of an international organization created in this way.[46] The legal status of the Nordic Council was specified in the Helsinki Treaty of 23 March 1962, to which all member states are party.[47] However, the status of another inter-parliamentary organization, the Inter-Parliamentary Union (IPU), raises a good deal of controversy. It was formally classified as a non-governmental organization and has been recognised as such by the United Nations.[48] The IPU has observer status with the UN General Assembly, alongside such entities as the International Committee of the Red Cross and the International Olympic Committee. Some believe, however, that the IPU "possesses international legal personality and is an international organization sui generis, that is, it is an international parliamentary, political and representative organization".[49] To establish this, they also argue that the IPU has the capacity to make agreements, i.a., with Parliaments as representative organs of states, with the United Nations and its specialised agencies, as well as with other international organizations.[50]

The statutes of international organizations may also be adopted in simplified forms. A case in point would be that of the practice adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). Its bodies, such as the General Conference and the Executive Board, develop constituent documents, and Member States subsequently decide whether to adopt and endorse them. This was, i.a., the manner in which the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) was created.[51]

CONCLUSIONS

The evolution of modern international law was driven by various factors and the dynamic development of international organizations played a key role in this process. Intergovernmental organizations started to be regarded as vital members

[46] See F. Wendt, *The Nordic Council and Co-operation in Scandinavia*, Copenhagen 1959.

[47] Text of the Helsinki Treaty: 1721 UNTS 182. See A. Czaplińska, *op. cit*., pp. 46–47; M. Sørensen, *Le Conseil Nordique*, "Revue Générale de Droit International Public" 1955, vol. 58, p. 63.

[48] The advocates of this opinion include H.G. Schermers and N.M. Blokker (*op. cit*., p. 39, para. 35).

[49] I. Brownlie, G.S. Goodwin-Gill, The Inter-Parliamentary Union – Joint Opinion, prepared on the Instruction of Mr. Anders B. Johnson, Secretary General of the Inter-Parliamentary Union, 31 May 1999, Geneva, statement – point no. 1, http://archive.ipu.org/finance-e/opinion.pdf (access: 21.8.2025).

[50] *Ibidem*, p. 22, para. 77.

[51] See UN Doc. A/CN.4/568/Ad d.1, p. 129. ICCROM is an intergovernmental organization dedicated to the conservation of cultural heritage. Currently, it is composed of 137 states.

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Data: 21/11/2026 12:41:20

of the international community with their own international legal personality. They also had a significant impact on the current definition of international legal personality per se. They are equipped with competences allowing them to have a real impact on shaping international law and they use them in practice. However, it is only natural that they evolve, and their evolution is intricately intertwined with the evolution of international community and international law in general. The evolution of international organizations, being the most important forms of institutionalised international cooperation between states, concerns the legal nature of their constituent instruments as well. The dynamic development of international cooperation calls for new, flexible solutions in this respect. These solutions mark a point of departure from the standard view on the matter, according to which the only way of establishing an international organization was through an international agreement concluded between states. International legal practice delivers a multitude of examples demonstrating that IGOs can be established on various legal bases. Regardless of the exact specific type of such a legal basis, it is important to note that in each case, it needs to be an instrument governed by international law. Such an instrument has the power to create an IGO as a new legal entity with its own international legal personality which is distinct from that of its members. The newly created organization thus becomes part of the entire international legal order and may influence its current and future shape.

Such instruments reflect the will of their founders, i.e. predominantly states, but sometimes also other international organizations or their bodies. Obviously, the constituent instrument of an international organization will be a treaty in situations where the founding constituting agreement is highly formalised. However, in practice, instruments other than treaties have been used more widely, particularly resolutions adopted by bodies of existing IGOs. This implies that the use of these instruments actively contributes to the creation of new institutions and to the development of new mechanisms of international cooperation. The use of such instruments other than treaties for the creation of international organizations may be analysed and evaluated in view of the ongoing evolution of the international legal order.

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ABSTRAKT

Badania nad problematyką prawa rządowych organizacji międzynarodowych pozostają w ścisłym związku z badaniami, które dotyczą podstawowych instytucji współczesnego prawa międzynarodowego. Dobrym przykładem takich badań jest zaprezentowana w niniejszym artykule problematyka podstaw prawnych ustanawiania i funkcjonowania międzynarodowych organizacji rządowych. Jest ona bardzo wyraźnie powiązana zarówno z problematyką podmiotowości prawa międzynarodowego, jak i z problematyką prawa traktatów. Nie ulega wątpliwości, że instrumentami konstytutywnymi współczesnych organizacji międzynarodowych pozostają przede wszystkim umowy międzynarodowe. Coraz częściej jednak praktyka modyfikuje to klasyczne rozwiązanie. Wykorzystywane są bowiem pozatraktatowe instrumenty konstytutywne, które ustanawiają organizację międzynarodową jako nowy podmiot prawa międzynarodowego. Autor analizuje tę praktykę, oznaczającą nowy etap w procesie ewolucji organizacji międzynarodowych i prawa organizacji międzynarodowych.

Słowa kluczowe: rządowa organizacja międzynarodowa; podmiotowość międzynarodowa; instrument konstytutywny; umowa międzynarodowa