



FACULDADE DE DIREITO  
Universidade de Lisboa

**MESTRADO EM DIREITO E PRÁTICA JURÍDICA**  
**DIREITO INTERNACIONAL E RELAÇÕES INTERNACIONAIS**

**(2º Ciclo)**

**ANO LETIVO 2020/2021**

**2º Semestre**

**Organizações Internacionais**

**Prova Escrita de 1.ª Época**

**Turma TBN**

20 de junho de 2021, às 19h00m

**TÓPICOS DE CORREÇÃO**

**II**

1) International Organizations, in a restricted subjective sense, can be defined as entities created, under the aegis of International Law, by agreement of wills of different international legal subjects, for the purpose of proceeding within the scope of the International Community, autonomously and continuously, specific non-profit purposes of common public interest, through its bodies with its own competence.

In terms of generic characterization, International Organizations immediately present themselves as legal persons, constituting autonomous centers of interests that are served by their own collective will and benefiting from an ability to be subject to legal relations. They pursue collective interests that, in their supra-individual dimension, are not to be confused with the individual interests of the entities that determined their creation. With their own and permanent organs, they are organized so that they can form and reveal a will that is functionally directed towards the realization of those collective interests and susceptible of being attributed to them. At the plan in which, at different levels, they enter into a relationship with other subjects of law, they appear invested in rights attributed to them and in obligations imposed on them by the legal orders in which they intervene.

Going a step further, we must add that these are public legal persons, being characterized in this way (a) because their genesis is determined by the will of entities that enjoy public authority, (b) for pursuing public interests, (c) for having powers that they exercise through their bodies in their own name and which, due to the interests they carry out, are special and different from those that most individuals enjoy, (d) because they are subject to a regime of public law and, in this context, (e) for benefiting from a statute that places them in all legal orders in which they operate in a privileged position.

It should also be noted that, in terms of the definition formulated above, we are dealing with non-profit entities, which do not aim, predominantly, with the activity they develop, obtaining gains or profits economics to be distributed, ultimately, by its Members, but rather they are intended to satisfy needs of character and expression primarily moral or ideal.

Finally, it is necessary to draw attention to the international element that is essential to the characterization of these organizations. Their international character comes from the fact that they are created by agreement of wills of different subjects of International Law, having in its genesis an internationally relevant legal act or fact. In the vast majority of cases, International Organizations are created by determination of several Sovereign States, with the recourse to the conclusion of an international treaty usually being made for the purpose of their constitution. Let us underline, however and right now, that the will of other subjects of international law, in addition to the sovereign states, may be, and is in several concrete cases, at the origin of International Organizations. These may, in these terms, constitute a voluntary association of several States, be they sovereign or non-sovereign, and yet, for example, of territorial collectivities of public law, which enjoy an ad hoc international personality (Gonçalves Pereira), and other International Organizations<sup>1</sup>. On the other hand, we must consider that the constitution of International Organizations, although it results more frequently from the conclusion of international treaties, sometimes also derives from a tacit agreement between different international subjects or from a resolution adopted by an international conference or by an organ of a pre-existing International Organization, and the emergence of International Organizations by customary means or through a historical process of progressive institutionalization of simple channels of international cooperation is also admitted.

It should be clarified, however, that the international character of International Organizations does not result only from considerations about their genesis or about the quality of the entities that participate in them as their Members. In this regard, it will also be necessary to give due attention to entities that are created to act within the International Community, with the aim of realizing interests considered fundamental for the existence, conservation or development of various pre-existing subjects of international law. and, after all, to promote cooperation or integration at the international level.

In summary, we can therefore say that International Organizations are non-profit international public bodies. However, not all legal persons that can thus be characterized are International Organizations. It is therefore necessary to pay attention to what constitutes the specific difference of the latter.

In our view, this difference is shown in the following notes that characterize International Organizations:

(a) they are public legal persons of an associative nature; (b) act in their own name, but in the interest of other subjects of international law who are their Members; (c) they are created by means of "devolution of power", that is, by means of an act (maximum: an international treaty) that gives them back powers, which in principle would belong to the subjects of International Law who intervene in their formation,

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<sup>1</sup> Examples of International Organizations that include territorial collectivities of public law as their members are the World Meteorological Organization, the International Telecommunications Union or the Universal Postal Union.

An example of an International Organization integrated by other International Organizations is the World Trade Organization (WTO), of which the European Union (formerly the European Communities) has been a member since 1 January 1995.

to pass on to be exercised by them through their own Organs, subjecting them only to controls that are exercised, namely, through the participation in them of representatives of the Members of the Organization; (d) pursue specific public interest purposes strictly delimited in their respective instituting acts.

2) Members of an International Organization are the international legal subjects who participate in the life of an International Organization by voluntarily assuming a legal bond of association by virtue of which they benefit from rights and are subject to duties whose exercise or fulfillment implies constitutive participation in the Organization's life.

The concept of Member of an International Organization, in the terms indicated, is analyzed in the following fundamental elements:

- a) Members are international legal subjects;
- b) Members are active legal subjects within the framework of the respective International Organization;
- c) Members, on a voluntary basis, are subject to a legal bond of association that is the basis for the creation of the International Organization concerned;
- d) Members, for the simple reason that they are, have their legal sphere extended to a set of rights and duties that are exclusive and specific to the legal system of the International Organization concerned, to the point of understanding that no other entity - if not the Members - enjoy those rights or are in charge of such duties - they are unrepeatable rights and duties in the legal sphere of non-Members;
- e) by virtue of their specific rights and duties as Members, their will is a determining factor in the organization and functioning of the International Organizations in which they belong. In this sense, Members participate constitutively in the life of the International Organizations to which they belong.

The concept of Member of an International Organization is not to be confused with concepts related to other categories of entities that also participate in the life of International Organizations and that also enjoy a special status within the framework of the legal system of the respective International Organization.

In this order of considerations and in an elementary way the category of Member of an International Organization is not to be confused with the legal figure relating to that of the members of the organs of the International Organization, nor that of the employees or agents of the Organization. These are not international legal subjects, they are not themselves involved in the legal association that determines the existence of the Organization and their legal status does not include personal rights and duties on which the organization and functioning of the institution ultimately they serve depends. In this last aspect, the rights and duties that such entities enjoy in relation to the organization and functioning of the institution are functional and not personal: the personal rights and duties that they can exercise within the framework of the International Organization in question, are only those that come under the service relationship in which they are involved.

On the other hand, the concept of Member is not to be confused with that of the observer, nor with that of a consultative entity. Observers represent entities (in a large number of cases: international legal subjects) who are invited by an Organization to attend, in a privileged and permanent manner, the sessions of one of its bodies, but outside all organized participation in its activity and without this implying any association bond for them. The consulting entities, in turn, are those that benefit from the unilateral attribution by an International Organization of a statute that allows them to be heard regarding debates to be held within the organs

of the Organization or to be consulted regarding measures to be implemented through deliberation and action by the organs of the Organization.

Neither one of these categories of entities can be confused with the legal figure of the Members of an International Organization because none of them is characterized by assuming the legal bond of association on which the reality of the Organization in question is based. In addition, the benefit of this quality is precarious, remaining only as long as the Organization considers it useful or, often in the case of observers, until they become its Members. Finally, it should be stressed that none of these categories of entities constitutively participates in the life of the International Organization concerned.

3) From a point of view that meets the most relevant and most interesting aspects, which can be considered, in terms of general theory, as common to most International Organizations, it is possible to state that they have adopted a structure based on tripartition of fundamental organs and that has some uniform characteristics.

Thus, this structure tends to cover three main organs:

a) a deliberative or directive body, collegial, plenary, made up of representatives of all Member States that meets periodically, presenting itself as a supreme governing body, having decision-making powers, general or limited, in the sense that it is incumbent upon it to establish the general direction of the Organization's activity;

b) an executive body, collegial but more restricted than the first, composed of a more limited number of States, chosen according to several factors, which meets more frequently than the deliberative body or even permanently, exercising "stricto sensu" government functions and executive, own or delegated, complying with the decisions emanating from the assembly within the limits of its powers provided for in the founding Treaty, and even having the power to issue acts of mandatory effectiveness for the Members of the Organization within its sphere of activity or for some specific cases;

c) an administrative body, whose members are elected by the deliberative or supreme body of the Organization, either on their own or on a proposal from the executive body, for a specified period of time, being a permanent functioning body, which exercises administrative and representation functions of the Organization and develops functions to prepare meetings of other bodies and in general all bureaucratic functions, normally having a staff of employees.

In the organic structure presented, moreover exposed as tripartite, there is no reference to another body, the judicial body, inasmuch as this is not provided for as commonly as the others. When it exists, such a court serves to resolve conflicts between the International Organization and its Members, between the International Organization and its officials, or to exercise arbitration functions. In short, this body has the jurisdictional function.

## **II**

Answer freely by explaining an opinion on the position that the OI which was presented in the class should/could express in regard of the war in Europe.