

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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## CONSTITUENT INSTRUMENTS AS THE INTERNATIONAL LEGAL BASIS FOR THE SETTLEMENT OF DISPUTES TO WHICH INTERNATIONAL ORGANIZATIONS ARE PARTIES

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### Abstract

The article examines the constituent instruments of international organizations as the international legal basis for the settlement of disputes to which international organizations are parties. It analyzes the concept, forms, and distinctive characteristics of constituent instruments, as well as contemporary doctrinal and judicial approaches to their interpretation within international law. The study demonstrates that the constituent instruments of international organizations possess a hybrid contractual and constitutional character, insofar as they simultaneously operate both as international treaties concluded between founding States and as the constitutional foundation of the internal legal order of an international organization. Particular attention is devoted to the constitutional and institutional dimensions of constituent instruments as the source of the international legal personality of international organizations, their functional autonomy, and their capacity to participate in both international and private-law disputes. The study argues that the capacity of an international organization to be a party to a dispute constitutes one of the practical manifestations of its international legal personality and flows directly from the provisions of its constituent instrument. The article further elucidates the significance of the principle of speciality and the functional character of the legal personality of international organizations for determining the limits of their competence, procedural autonomy, and participation in contentious legal relationships.

The article further examines the principal peaceful means of dispute settlement available to international organizations, including negotiations, consultations, mediation, arbitration, and judicial and quasi-judicial procedures. It identifies the role of constituent instruments in shaping systems of dispute settlement to which international organizations are parties, including the establishment of mandatory procedures, arbitration clauses, intra-organizational mechanisms, and conditions governing access to international courts and tribunals. Special consideration is likewise given to the significance of the advisory jurisdiction of the International Court of Justice within the framework of dispute settlement involving international organizations, as well as to the specific features of the use of advisory opinions as an instrument for the legal resolution of contentious situations.

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The article concludes that the constituent instrument of an international organization performs not merely contractual and constitutional functions, but also a procedural one, insofar as it establishes the primary normative architecture governing the settlement of disputes to which international organizations are parties and delineates the limits of their legal personality, competence, and the mechanisms of legal protection and dispute settlement available to them.

**Keywords:** constituent instruments of international organizations, international organizations, international legal personality, settlement of international disputes, peaceful means of dispute settlement, international arbitration, advisory jurisdiction of the International Court of Justice, immunities of international organizations, internal legal order of international organizations, law of international organizations.

## Introduction

In contemporary international law, international organizations increasingly act as autonomous participants in contentious legal relationships. They may become parties to disputes involving member States, third States, other international organizations, as well as private parties in connection with their ordinary operational activities – including contractual, proprietary, employment, and related matters – or their norm-setting functions. Such practice brings renewed attention to the international legal foundations governing the participation of international organizations in dispute settlement and to the limits of their procedural autonomy. In this context, the constituent instrument of an international organization assumes particular significance, since it is precisely this instrument that establishes the organization as an institutionally distinct subject of international law and defines its purposes, institutional structure, competence, legal personality, and the fundamental principles governing its operation.

The problem lies in the fact that, within the doctrine of international law, constituent instruments of international organizations are examined predominantly as the source of their legal personality and competence, whereas their significance as the international legal basis for the settlement of disputes involving international organizations has not always received sufficient scholarly attention. Yet it is precisely the constituent instrument that determines whether an organization may become a party to a dispute, what categories of disputes may arise in connection with its activities, which organs are competent to participate in their settlement, and which peaceful, judicial, arbitral, or quasi-judicial mechanisms may be employed. Accordingly, the study of constituent instruments of international organizations from the perspective of their role in the settlement of disputes is of both theoretical and practical importance for the contemporary law of international organizations.

The purpose of the present article is to elucidate the role of constituent instruments of international organizations as the international legal basis for the settlement of disputes to which international organizations are parties, as well as to determine the manner in which the constituent instrument influences the organization's legal personality, the limits of its competence, and the dispute settlement mechanisms available to it.

In order to achieve this objective, the article pursues the following tasks: to clarify the concept, forms, and legal nature of constituent instruments of international organizations; to characterize their relationship with the international legal personality of the organization; to determine the significance of the constituent instrument for the participation of an international organization in contentious legal relationships; to analyze the principal models for the settlement of disputes concerning the interpretation and application of constituent instruments; and to examine the relationship between the constituent instrument, mechanisms for the settlement of private-law disputes, and the advisory jurisdiction of the International Court of Justice.

The novelty of the article lies in approaching constituent instruments not only as sources of legal personality and competence of international organizations, but also as primary procedural instruments that determine the legal architecture of dispute settlement involving such organizations.

## Methodology

The article is based on doctrinal legal research and employs a combination of general scientific and special legal methods. The doctrinal method is used to examine scholarly approaches to the legal nature of constituent instruments of international organizations, their hybrid treaty and constitutional character, and their relationship with the international legal personality of international organizations. The formal legal

method is applied to analyse the provisions of constituent instruments, treaties, statutes, headquarters agreements, rules of procedure, and other legal instruments governing the participation of international organizations in dispute settlement.

The comparative legal method is used to identify different models of dispute settlement established in the constituent instruments of international organizations, including external jurisdictional mechanisms, internal institutional procedures, mixed models, arbitration clauses, and advisory procedures. The systemic method allows constituent instruments to be considered within the broader normative framework of the law of international organizations, general international law, the law of treaties, international responsibility, privileges and immunities, and access to justice. The functional method is applied to assess the relationship between the purposes, functions, competences, and legal personality of international organizations and their capacity to participate in contentious legal relationships.

The research is based on the analysis of international treaties, constituent instruments of international organizations, advisory opinions and judgments of international courts and tribunals, documents of the United Nations International Law Commission, and contemporary English-, French-, and Ukrainian-language scholarship on the law of international organizations and international dispute settlement. Since the article is theoretical in nature, it does not involve empirical sampling or statistical data processing.

## Results and Discussion

### The Concept and Forms of Constituent Instruments of International Organizations

Both in the doctrine of international law and in international legal practice, the instruments establishing international organizations and defining the foundations of their legal personality, competence, and functioning are commonly referred to as *constituent instruments* of international organizations (Syroid, 2025, p. 257). In Francophone international legal terminology, a corresponding meaning is conveyed by the expression *actes constitutifs*. Both terms are widely employed in the work of the United Nations International Law Commission (UN ILC Report, 2018; UN ILC Report, 2009).

Constituent instruments may bear a specific designation, such as “Constitution” (UNESCO, WHO, FAO, ILO, UPU), “Charter” (United Nations, Council of Europe, IAEA), “Covenant” (League of Nations), or “Constitutive Act” (African Union), thereby expressly reflecting the constituent function of the instrument. Alternatively, they may employ more general treaty terminology – such as “treaty”, “convention”, or “protocol” – particularly where provisions of a constitutional character are incorporated into an international agreement of broader substantive scope (Peters, 2013, pp. 202-203).

For example, the 1982 United Nations Convention on the Law of the Sea constitutes the statutory framework for both the International Seabed Authority (UNCLOS, 1982, Part XI, Section 4, arts. 156-185) and the International Tribunal for the Law of the Sea (UNCLOS, 1982, art. 287, Annex VI). Similarly, the 1944 Chicago Convention on International Civil Aviation incorporates the constitutional framework of ICAO (Convention on International Civil Aviation, 1944, arts. 43-66), while the International Energy Agency was established pursuant to the 1974 Agreement on an International Energy Program (Agreement on an International Energy Program, 1974, Part IX, arts. 49-66). This demonstrates that the legal character of a constituent instrument is determined not by the formal designation of the document, but rather by its function in establishing and constituting the organization.

Most commonly, constituent instruments take the form of multilateral inter-State treaties (Brölmann, 2007, p. 113), although instances also exist in which international organizations have been established through bilateral agreements between States – such as the Administrative Commission of the River Uruguay, the Belgium-Luxembourg Economic Union, and the Dutch Language Union (Schermers & Blokker, 2025, p. 50) – or through international agreements concluded with the participation of international organizations. Thus, the parties to the Agreement Establishing the Joint Vienna Institute include the IMF, the EBRD, the EIB, the OECD, the WTO, and the World Bank (Schermers & Blokker, 2025, p. 90).

Constituent instruments of international organizations may likewise take the form of decisions adopted by international conferences, as illustrated by the establishment of the Asian-African Legal Consultative Committee, the Inter-American Defense Board, the International Wool Study Group, the Global Environment Facility, and the Organization of the Petroleum Exporting Countries (OPEC) (Peters, 2013, p. 202; Schermers & Blokker, 2025, pp. 48-49; Dormoy, 2020, p. 29; Sarooshi, 2014, p. 7). They may also consist of resolutions or decisions adopted by other international organizations or their organs. Thus, organizations such as UNIDO, UNCTAD, the United Nations Children’s Fund, the United Nations Capital Development Fund, and the United Nations Relief and Works Agency for Palestine Refugees in the Near

East were established by resolutions of the United Nations General Assembly (Klabbers, 2009, pp. 9-10; Schmalenbach, 2020, para. 5). In certain instances, constituent instruments may further take the form of parallel unilateral acts of States giving rise to reciprocal legal obligations. The Nordic Council, for example, was established through parallel decisions adopted by the parliaments of Denmark, Finland, Iceland, Norway, and Sweden, which were subsequently confirmed at the governmental level (Schermers & Blokker, 2025, p. 50; Klabbers, 2009, p. 10).

In the case of the International Criminal Police Organization (INTERPOL), it may be argued that its constitution became the subject of a tacit agreement among the States concerned. According to the French scholar Anne Pézard, this constitutes an entirely exceptional method of legally formalizing the establishment of an international organization; nevertheless, international law does not preclude such a mode of creation (Pezard, 1983, p. 566).

In this connection, Professor Dan Sarooshi of the University of Oxford observes that international law generally remains neutral with regard to the manner in which an organization is established and does not associate its creation with any single mandatory legal form. Nor does international law require what he describes as a “big bang approach”, thereby permitting an institutional entity gradually to evolve into an international organization over time (Sarooshi, 2014, p. 7).

Such an evolution may be observed, in particular, in the case of the 1947 General Agreement on Tariffs and Trade (GATT), which had originally been intended to form part of the Havana Charter for the International Trade Organization. Since the Charter never entered into force, GATT began operating on the basis of a provisional protocol and was ultimately transformed, in 1994, into the World Trade Organization (WTO) (Benedek, 2015, para. 1). As Daniel Dormoy has observed, forty-seven years elapsed before this simplified agreement (*accord en forme simplifiée*) was replaced by a fully fledged constituent treaty (*accord en forme solennelle*) – namely, the 1994 Marrakesh Agreement, which today, together with its integral annexes, performs the function of the constituent instrument of the WTO (Dormoy, 2020, p. 29). At the same time, Wolfgang Benedek considers that GATT acquired the status of an international organization as early as 1960, when the Council of Representatives was established, comprising all contracting parties willing to assume the obligations associated with membership therein (Benedek, 2015, para. 11).

Matthias Herdegen likewise observes that forms of institutional cooperation between States may gradually consolidate to the level of an international organization and, to a certain extent, progressively “evolve” into international legal personality (Herdegen, 2011, pp. 119-120).

Illustrative examples of such evolution include the gradual transformation of ASEAN from an inter-State association of a coordinative character, established by the 1967 Bangkok Declaration – an instrument of a politico-legal nature – into a fully-fledged regional intergovernmental organization endowed with a statutory foundation and international legal personality under the 2007 ASEAN Charter, an international treaty containing legally binding provisions (Deineko, 2022a, pp. 28-29; Deineko, 2022b, p. 126-127). Similar institutional evolution may be observed in the transformation of the International Union of Official Travel Organizations (IUOTO), a non-governmental organization established in 1946 under Swiss law (Castañeda, 1970, p. 625), into the World Tourism Organization (WTO), which since 1975 has operated on the basis of its own Statute (Sarooshi, 2014, pp. 13-14) and which, from 2003 onwards, acquired the status of a specialized agency of the United Nations (UNWTO) (UN ILC Report, 2023, p. 23).

Comparable developments may further be identified in the case of the Organization of the Black Sea Economic Cooperation (BSEC), initially launched in 1992 as a subregional initiative for economic cooperation and a consultative forum for the States of the Black Sea region, before subsequently becoming a regional international economic organization formally constituted under the 1998 BSEC Charter, which entered into force on 1 May 1999 (Lipkan, 2008, pp. 3, 10). A similar trajectory may also be observed in the Shanghai Cooperation Organisation, which emerged from a series of regular conferences among Central Asian States and acquired a formal institutional character in 2001 (Al-Qahtani, 2006, pp. 130-134).

Drawing upon international practice, Dan Sarooshi argues that international organizations may be established through a wide variety of legal arrangements and may undergo a lengthy process of institutional evolution. What remains common to all such cases, however, is the existence of “some form of international agreement” or instrument between States governed by international law. Indeed, the existence of such an agreement has long been regarded as the principal criterion distinguishing international organizations from non-governmental organizations (Sarooshi, 2014, p. 6).

This position is likewise shared by the International Law Commission's Special Rapporteur, the Austrian scholar August Reinisch, who maintains that the established basic understanding of an international organization presupposes that it has been created on the basis of any form of international agreement, that is, a treaty or another instrument governed by international law (Reinisch, 2024, p. 97). It is precisely this element that permits international organizations to be distinguished from international non-governmental organizations (NGOs), transnational corporations, and multinational enterprises.

In her study of constituent instruments of international organizations, Christiane Ahlborn concludes that the overwhelming majority of international organizations are established by treaty, which constitutes one of their common and defining characteristics. At the same time, even constituent instruments of a non-treaty character may reveal a certain "element of agreement" (Ahlborn, 2011, p. 410). In the course of analyzing more complex cases – such as the Commonwealth Agricultural Bureaux and the Nordic Council – the Dutch professors Henry G. Schermers and Niels M. Blokker likewise arrived at the conclusion that an agreement between States exists even in such instances, although, in the absence of an expressly formulated decision by governmental representatives, its existence may at times prove difficult to ascertain (Schermers & Blokker, 2025, pp. 49-50).

The Ukrainian scholar Yurii Shchokin approaches the issue from a similar perspective. Observing that international practice has witnessed the increasing establishment of international organizations through resolutions adopted by the principal organs of other international organizations, he substantiates the proposition that international intergovernmental organizations are created not merely on a treaty basis, but rather on a consensual basis, since resolutions of international organizations likewise constitute one of the forms through which the interests of participants in international relations are reconciled (Shchokin, 2006, p. 171).

### **The Hybrid Legal Nature of Constituent Instruments**

Irrespective of their designation or legal form, constituent instruments of international organizations possess a distinctive hybrid – or mixed – legal nature. On the one hand, a constituent instrument constitutes an international treaty, agreement, or arrangement concluded between subjects of international law – namely, the founders of the organization – through which their common intention to establish the relevant institution and to define their reciprocal rights and obligations is formally expressed. On the other hand, the constituent instrument possesses a constitutional character, insofar as it not only establishes a new subject of international law, but also defines the system of its organs, allocates competences, establishes decision-making procedures, and lays the foundations of the organization's internal legal order.

In this connection, Anne Peters rightly emphasizes that a constituent instrument is neither purely a treaty nor purely a constitution but rather constitutes a single legal text possessing two distinct "facets", one of which may prevail over the other depending upon the particular normative context. In her view, the "treaty" facet of such an instrument reflects an instrument of "horizontal" law whose effects remain strictly limited *inter partes* and dependent upon the will of those who established it. By contrast, its constitutional "facet" represents an instrument of "vertical" law producing effects *erga omnes* and capable – at least to a certain extent – of developing autonomously, independently of the will of its original creators (Peters, 2013, p. 206).

A similar line of reasoning may be found in the works of Schermers and Blokker, who figuratively describe constituent instruments of international organizations as "Janus-faced", possessing both a treaty and a constitutional dimension (Schermers & Blokker, 2025, p. 808). On the one hand, such instruments remain treaties concluded between sovereign States and, like any international treaty, establish a framework of reciprocal rights and obligations binding upon their parties. On the other hand, they differ fundamentally from ordinary treaties and, to a certain extent, transcend the general framework of treaty law by creating a living and evolving legal order. The constitutional distinctiveness of constituent instruments manifests itself, *inter alia*, in the fact that they not only regulate the legal status and mutual relations of the parties but also confer powers upon the organs of the organization itself. In exercising these powers, such organs impart a particular dynamism to the organization's internal legal order – a dynamism not ordinarily characteristic of conventional international treaties (Schermers & Blokker, 2025, p. 924).

Describing the distinctive legal nature of constituent instruments, the Italian scholar Roberto Monaco observes that the constituent instrument possesses the form of a pact, yet the substance of a constitution: originating in agreement, it gradually transcends the limits of its original formal source and acquires the characteristics of a constitution of indeterminate duration, the development of which extends beyond

the normative design within which it was initially conceived (Monaco, 1974, p. 154). A similar position is advanced by Ahlborn, who notes that, at the moment of the establishment of an international organization, its constituent instrument possesses a treaty dimension, whereas, in the course of the organization's subsequent functioning, it begins to operate as the constitution of the organization's own legal order, distinct from general international law (Ahlborn, 2011, pp. 412-413).

The Japanese scholar Tetsuo Sato emphasizes that constituent instruments of international organizations combine a treaty form with a constitutional substance: while formally remaining international treaties, they simultaneously contain norms establishing the legal foundations and institutional framework governing the structure and functioning of the organization. It is precisely in this respect that the core of their constitutional nature resides. Constituent instruments are intended to provide the legal foundations and institutional framework necessary to ensure that an organization may continue to function effectively and properly discharge its purposes and functions notwithstanding changes in international relations.

From this follows their evolutionary and teleological orientation, since such instruments must inevitably adapt to changing circumstances. The function of their interpretation therefore consists not merely in ascertaining the original intention of the founders, but also in facilitating the institutional development inherent in the very logic of the organization itself. Accordingly, the constitutional character of constituent instruments of international organizations manifests itself not only in their constitutive significance, but also in their capacity to serve as the legal basis for the long-term, dynamic, and autonomous development of the institutional order which they establish (Sato, 1996, pp. 229-231).

Ukrainian scholarship in international law adheres to similar views. Thus, Oleksandr Merezhko observes that the statutes of international organizations possess certain legal particularities arising from the specific nature of their subject matter of regulation, which make it possible to classify them as *sui generis* international treaties. The distinctive feature of such treaties lies in the fact that they not only constitute a source of rights and obligations for the States parties, but also establish a new subject of international law, for which the statute is not merely an ordinary treaty, but rather possesses a fundamental constitutive significance (Merezhko, 2002, pp. 96-97). At the same time, the statute does not constitute a static phenomenon, since it develops through the activities of the organs of the organization established on its basis (Merezhko, 2002, p. 98).

Viktor Muraviov likewise argues that it would be incorrect to equate ordinary international agreements entirely with constituent agreements establishing international organizations. In his view, the latter possess distinctive characteristics insofar as they simultaneously serve both as the foundation and as the legal framework governing the functioning of a living political organism (Muraviov, 2002, p. 116). Olha Shpakovych and Svitlana Vladyka describe the constituent instrument (statute) of an international organization as the legal foundation of its establishment and functioning. They likewise maintain that, by its legal nature, the constituent instrument of an international organization constitutes a *sui generis* international treaty. Its principal distinguishing feature lies in the fact that, while establishing rights and obligations for the States parties – as does any international treaty – it simultaneously establishes the international organization itself as an autonomous institutional entity (Shpakovych & Vladyka, 2019, p. 242).

It is of particular importance that the distinctive “*hybrid*” character of constituent instruments is likewise recognized in international judicial practice. Thus, in its 1962 Advisory Opinion in *Certain Expenses of the United Nations*, the International Court of Justice explained that the Charter of the United Nations constitutes a multilateral treaty endowed with certain special characteristics (Certain Expenses, 1962, p. 157). Elaborating upon this formulation in its 1996 Advisory Opinion rendered at the request of the World Health Organization in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, the Court observed 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. Such treaties can raise specific problems of interpretation owing, *inter alia*, to their character which is conventional and at the same time institutional” (Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1996, paras. 19, pp. 74-75).

In its Opinion 1/91 of 14 December 1991 concerning the draft agreement on the creation of the European Economic Area, the Court of Justice of the European Union likewise held that “the EEC Treaty, albeit concluded in the form of an international agreement, none the less constitutes the constitutional charter of a Community based on the rule of law”. According to the Court’s reasoning, first articulated in *Van Gend en Loos*, the Community treaties established a new legal order for the benefit of which the States limited their sovereign rights in ever broader fields, and the subjects of which comprise not only the Member

States themselves, but also their nationals. Among the fundamental characteristics of the Community legal order thus established, the Court identified, *inter alia*, the primacy of Community law over the law of the Member States, as well as the direct effect of a substantial number of treaty provisions applicable both to Member States and to their citizens (Opinion 1/91, 1991, para. 21).

### **Constituent Instruments as the Foundation of the Internal Legal Order of International Organizations and the Source of Their International Legal Personality**

The constitutional – or, to employ the terminology of the International Court of Justice, institutional – dimension of constituent instruments consists in the fact that they create an international organization as a distinct subject of international law, legally formalizing its establishment by other subjects of international law. They guarantee its autonomous functioning by endowing the organization with a will distinct from that of its founders and by laying the foundations of its internal legal order.

In this connection, Ahlborn observes that the contractual element inherent in constituent instruments at the moment of the establishment of an international organization is accompanied by a constitutional momentum that results in the creation of a new legal person (Ahlborn, 2011, p. 413). By establishing such an organization, the subjects of international law confer upon it certain powers and competences of their own and thereby employ the freedom of contract in order collectively to achieve objectives that none of them could attain individually. It is precisely this collective conferral of powers and the corresponding creation of an autonomous legal order that fundamentally distinguish constituent instruments of international organizations from other international treaties. By conferring competences upon the organization, the individual wills of the parties to the constituent treaty are transformed into a single corporate will of the organization itself – autonomous and distinct from the will of its founders (Ahlborn, 2011, p. 414). The internal autonomy of an international organization manifests itself externally through the relative impermeability and separateness of its own legal order, a phenomenon commonly described through the concept of international legal personality (Ahlborn, 2011, p. 415).

It should be emphasized that the internal legal order and the international legal personality of an international organization are closely and organically interconnected: whereas the internal legal order constitutes the normative and institutional basis for the formation and expression of the organization's will, international legal personality represents its external legal projection. In other words, it is precisely by virtue of the internal legal order established by the constituent instrument and further specified through the organization's practice that the effective exercise of its legal personality becomes possible, while legal personality itself confers international legal significance upon that internal legal order.

In the doctrine of international law, it is generally accepted that the international legal personality of an international organization (*personnalité juridique*) encompasses its capacity to act as an independent bearer of international rights and obligations, to perform international legal acts in its own name, to conclude international treaties (*ius tractatum*), to establish permanent representations and dispatch temporary diplomatic missions (*ius legationis activum / passivum*), to enjoy privileges and immunities applicable both to the organization itself and to its staff, to adopt decisions within the limits of its competence, and to incur responsibility for its acts or omissions (Schmalenbach, 2020, paras. 20-35; Bilotskyi, 2018, pp. 186-187; Antonovych, 2023, p. 428; d'Argent, 2013, pp. 455-459; Daillier et al., 2022, pp. 828-831; Abass, 2014, pp. 174-175).

In addition, certain authors distinguish further capacities, including the ability to extend active or passive recognition to other subjects of international law, convene and conduct international conferences, act as depositary of international treaties and register them, issue travel documents, possess its own seal, emblem and flag (Schermers & Blokker, 2025, pp. 1305-1330), register vehicles, ships and aircrafts (David, 2016, pp. 585-587), secure the personnel, material and financial resources necessary for its functioning (Berjaoui, 2023, p. 192), own property, and enjoy the legal capacity required for the performance of its functions within domestic legal systems (Crawford, 2019, p. 182).

A separate component of the international legal personality of international organizations is their capacity to participate in international disputes not merely as arbitral or institutional frameworks, but also as autonomous parties capable of protecting their own rights and interests before international courts and tribunals. In this regard, former Judge of the International Court of Justice James Crawford distinguishes two closely interconnected dimensions of such capacity: first, the ability of an international organization to bring international claims for the protection of its rights and interests; and secondly, its procedural standing (*locus standi*) before international judicial and arbitral bodies (Crawford, 2019, pp. 180-181). Dapo Akande likewise

observes that the possession of international legal personality necessarily entails the capacity of an international organization to maintain its own rights through international dispute-settlement mechanisms, including by bringing international claims where the organization considers its rights to have been violated (Akanke, 2024, p. 253).

The Ukrainian scholar Andrii Voitsikhovskiy likewise emphasizes that international intergovernmental organizations, as subjects of international law, possess the capacity to advance claims concerning international responsibility against other subjects of international law in connection with injury caused to the organization, as well as to appear before judicial bodies as claimants or respondents (Voitsikhovskiy, 2020, pp. 226-227). In a similar vein, Kirsten Schmalenbach notes that international organizations may themselves become parties to international disputes and, consequently, fall within the scope of particular dispute-settlement mechanisms, including judicial and arbitral procedures (Schmalenbach, 2011, p. 251).

In this context, French-language doctrine occasionally employs the term *la capacité contentieuse*, which may acquire different shades of meaning depending on the circumstances. The most neutral and, at the same time, precise equivalent in English-language academic writing appears to be the expression *capacity to be a party to a dispute*. In the writings of the Swiss scholar Christian Dominicé, this characteristic is viewed as the capacity of international organizations to participate in mechanisms and procedures of international responsibility, including the presentation of international claims and demands. According to Dominicé, such capacity constitutes an inherent attribute of international legal personality (Dominicé, 2014, pp. 176-177).

Practice provides examples of express treaty-based recognition of the legal personality of international organizations, thereby confirming these doctrinal conclusions. Thus, the International Organisation of the Francophonie currently operates on the basis of the Charter adopted in Hanoi in 1997 and revised in 2005 during the Ministerial Conference in Antananarivo. In addition to affirming that the Organization is a legal person under international public law and possesses legal personality, Article 9 of the Charter expressly provides that it “may conclude agreements, acquire and dispose of movable and immovable property, institute legal proceedings, and receive gifts, bequests and subsidies from governments, public or private institutions, or individuals” (Charte de la Francophonie, 2005, art. 9).

Article 39 of the Constitution of the International Labour Organization confers upon the Organization “full juridical personality”, which entails, *inter alia*, the capacity to institute legal proceedings (Constitution of the ILO, 2021, art. 39). Likewise, pursuant to Article I of the Agreement of 25 October 1993, the Science and Technology Center in Ukraine constitutes an international organization which, for the purpose of achieving its objectives, may “may sue and be sued” (Uhoda pro stvorennia UNTT, 1993, art. I).

The dispute capacity of international organizations likewise entails their ability to resort to various means of the peaceful settlement of international disputes. Although contemporary scholarship has not reached a uniform position as to whether the principle of the peaceful settlement of disputes applies to international organizations and, if so, to what extent such organizations are bound by the corresponding obligation (Kononenko, 2026c, pp. 866-868), it is generally accepted that, as subjects of international law, international organizations may avail themselves of the full range of peaceful means envisaged in Article 33 of the Charter of the United Nations, including “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means” (UN Charter, 1945, art. 33), insofar as such means are considered appropriate and necessary for the settlement of a particular dispute (UN ILC Report, 2023, p. 41).

The International Court of Justice treated the availability to international organizations of the means of peaceful dispute settlement enumerated in Article 33 of the Charter of the United Nations as largely self-evident in its 1949 *Reparation for Injuries Suffered in the Service of the United Nations* Advisory Opinion. In that Opinion, the Court not only affirmed the international legal personality of the United Nations and its capacity to operate on the international plane, but also expressly stated that “[c]ompetence to bring an international claim” necessarily entails “the capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims”, including protest, requests for enquiry, negotiation, and recourse to arbitral or judicial settlement where authorized by the relevant legal instruments (*Reparation for Injuries*, 1949, p. 177). Accordingly, the Court effectively recognized that the capacity of an international organization to advance international claims is inseparable from its ability to avail itself of the traditional mechanisms of peaceful dispute settlement established under general international law.

In this respect, Reinisch, having analysed treaty practice, judicial practice, as well as the practice of international organizations and States, concluded that international organizations rely upon and employ the full spectrum of peaceful means for the settlement of disputes to which they are parties. At the same time, the practice examined by the Special Rapporteur demonstrates significant variations in the intensity and frequency with which such mechanisms are used. In particular, non-adjudicatory means of dispute settlement appear to be employed considerably more frequently than arbitration, whereas recourse to international courts and tribunals remains comparatively rare (UN ILC Report, 2024, pp. 10-11). Reinisch further emphasizes that this practice, although not exhaustive, nevertheless provides a sufficiently representative picture of the dispute-settlement mechanisms legally available to international organizations and effectively utilized by them in practice. In a broader sense, contemporary international dispute-settlement practice demonstrates the gradual transformation of international organizations from predominantly functional institutional frameworks into autonomous litigating actors of the international legal order.

### **Constituent Instruments as the Primary International Legal Basis for the Settlement of Disputes to Which International Organizations are Parties**

The capacity of an international organization to be a party to a dispute constitutes one of the principal practical manifestations of its international legal personality. Once an organization is recognized as an autonomous subject of international law, endowed with rights and obligations under the international legal order and capable of acting in its own name, concluding treaties, enjoying privileges and immunities, incurring international responsibility, and presenting international claims, it inevitably acquires the capacity to enter into contentious legal relationships with other subjects of international law and, in certain circumstances, with private parties as well (Kononenko, 2026b, p. 232). In this respect, the participation of an international organization in international disputes should not be regarded as an incidental or merely optional dimension of its activity; rather, it constitutes a logical consequence of its autonomous legal existence within the international legal order (d'Argent, 2013, pp. 459-461).

Nevertheless, such participation possesses a distinct specificity. Unlike States, international organizations do not enjoy general, universal, and original international legal personality (Daillier et al., 2022, p. 830; Gazzini, 2011, p. 43). Their legal personality is of a special and functionally determined nature, being defined by the purposes, functions, competences, and powers enshrined in their constituent instruments (constitutions) (Butkevych, 2002, pp. 317-318; Bekker, 2025, p. 59).

Elaborating upon the principle of speciality and the functional character of the legal personality of international organizations, former French Judge of the International Court of Justice André Gros, in his separate opinion appended to the Advisory Opinion in *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, observed that, in the absence of a "super-State", every international organization possesses only such competence as has been conferred upon it by the States which created it, whilst its powers remain strictly limited to what is necessary for the exercise of the functions assigned to it by its constituent charter (Opinion individuelle de M. Gros, 1980, p. 103). In this connection, Professor of V. N. Karazin Kharkiv National University Tetiana Syroid rightly notes that the functions, structure, and activities of international organizations are both determined and circumscribed by their constituent instruments. Consequently, an international organization may not act beyond the limits of the competence thereby conferred upon it (Syroid, 2025, p. 257).

At the same time, as the Belgian scholar Eric David cautions, the restrictive effect of the principle of speciality should not be overstated, since the doctrine of implied powers permits an international organization, to a certain extent, to exercise powers not expressly provided for in its constituent instrument (David, 2016, p. 551). The crucial element of this observation lies precisely in the qualification "to a certain extent". Both the doctrine of implied powers and the concept of inherent competence, developed in the writings of Finn Seyersted, Georges Weissberg, and Michael Schneider, proceed from the premise that powers not expressly stipulated in the constituent instrument may nevertheless be inferred from the purposes and functions of the organization (Bilotskyi, 2018, pp. 188-189). Yet these very purposes and functions are, as a rule, themselves enshrined in the constituent instrument, which signifies that it is precisely this instrument that likewise delineates, in general terms, the limits of implied or inherent competence.

Recognizing the relative nature of this dichotomy, Pierre d'Argent emphasizes that the principle of speciality is not incompatible with the doctrine of implied powers, which – even where not expressly provided for in the constituent instrument – are acknowledged insofar as they are necessary for the performance of the organization's functions. The functional purpose of an international organization,

as the rationale underlying its establishment, is concretized through a system of competences – both express and implied – implemented by means of corresponding powers (d'Argent, 2013, p. 453).

In light of the foregoing analysis, it appears justified to conclude that an international organization, operating within the limits established by its constituent instrument, may become involved in disputes not across the entirety of international relations, but solely within those functions and legal relationships connected with its purposes and activities. In this context, the principle of speciality does not negate the legal personality of the organization; on the contrary, it serves to specify and concretize it by delineating the limits of its legal capacity, competence, and procedural autonomy.

The notion of disputes to which international organizations are parties encompasses a heterogeneous range of legal relationships. First and foremost, it concerns international disputes between an organization and its member States, third States, or other international organizations. Such disputes may relate to the performance of international treaties, the limits of the organization's competence, responsibility for internationally wrongful acts, the enjoyment of privileges and immunities, financial obligations, participation in joint programmes, or the interpretation of constituent instruments (UN ILC Report, 2024, pp. 6-7).

Alongside these, disputes of an intra-organizational and private-law character are acquiring ever greater significance, arising from employment, administrative, contractual, proprietary, tortious, and other operational relationships involving international organizations. Although such disputes are not invariably international in the strict sense, they nonetheless frequently give rise to questions of an international legal character, particularly with respect to the organization's immunity, its legal personality within domestic legal orders, accountability, and the obligation to ensure adequate means of legal protection (UN ILC Report, 2025, pp. 10-11).

The heterogeneous nature of disputes to which international organizations are parties necessitates a broader understanding of their legal foundation. The settlement of such disputes cannot adequately be characterized solely as a sub-institution of the peaceful settlement of international disputes, nor merely as an element of the law of international organizations. Rather, it constitutes a multi-layered normative complex within which general principles of international law, the rules governing international organizations, the internal law of a particular organization, special treaty regimes (*lex specialis*), and, within the private-law dimension, applicable domestic or transnational private law interact with one another (Kononenko, 2026a, p. 21). Such normative stratification directly influences questions of jurisdiction, the determination of the applicable law, the admissibility of immunities, procedural arrangements for the settlement of disputes, and the enforcement of decisions.

Within this framework, the constituent instrument of an international organization occupies a distinctive position. Although it does not exhaust the entirety of the legal basis governing the settlement of disputes, it nevertheless constitutes its primary international legal foundation. On the one hand, it is precisely the constituent instrument that establishes the organization as an institutionally distinct subject of law, defining its purposes, functions, competences, institutional structure, and the limits of its autonomy. On the other hand, it lays down the primary procedural parameters governing the organization's participation in contentious legal relationships: it determines which organs are competent to formulate and express the will of the organization, who may represent its interests, and within what limits the organization is entitled to conclude agreements, present claims, defend itself against allegations, consent to arbitration, resort to judicial or quasi-judicial mechanisms, or employ non-jurisdictional means of dispute settlement.

In this sense, the constituent instrument performs not merely a contractual and constitutional function, but also a procedural one. Such a characterization does not imply that it invariably contains an exhaustive framework for the settlement of all conceivable disputes. On the contrary, most constituent instruments merely establish the primary normative architecture, which is subsequently elaborated through agreements on privileges and immunities, headquarters agreements, rules of procedure, financial regulations, staff rules, arbitration clauses, administrative tribunals, and other specialized mechanisms. Nevertheless, it is precisely the constituent instrument that constitutes the primary source from which these secondary instruments derive their institutional legitimacy.

Accordingly, the constituent instrument (constitution) of an international organization should be regarded as the primary international legal basis for the settlement of disputes involving that organization, not because it invariably prescribes a specific procedure for the resolution of every conceivable dispute, but because it is precisely this instrument that brings the organization into existence as an autonomous subject of law, defines the limits of its legal capacity, and establishes the institutional preconditions without which its participation in disputes would be legally inconceivable.

### **Peaceful Means of Dispute Settlement Available to International Organizations and the Role of Constituent Instruments in Their Determination**

The recognition of the international legal personality of international organizations and of their capacity to be parties to disputes necessitates an examination of the instruments through which such capacity is exercised in practice. As noted above, international organizations may resort to the universal means of dispute settlement developed within general international law, including negotiation, consultations, good offices, mediation, conciliation, fact-finding, arbitration, judicial settlement, and quasi-judicial procedures. At the same time, the use of such means is neither abstract nor discretionary in character but is exercised within the limits of the organization's competence as defined by its constituent instrument and implemented through the corresponding institutional mechanisms.

The question whether a particular method of dispute settlement is available to an international organization cannot be examined solely through the prism of general international law. It is inseparable from the organization's internal legal order, the procedures governing the formation of its will, the rules of representation, and the allocation of powers among its organs. As a consequence, even universal means of dispute settlement acquire, in each particular case, an institutionally determined character.

In practice, the most widespread means of dispute settlement are non-jurisdictional mechanisms, including negotiation, consultations, good offices, mediation, and other forms of diplomatic or political settlement. Their principal advantage lies in their flexibility, the absence of excessive formalization, and their capacity to accommodate the specific characteristics of the functioning of an international organization. In this connection, the French scholar Elodie Weil observes that, regardless of whether the dispute concerns relations between States or between an international organization and a State, recourse to political mechanisms of dispute settlement undoubtedly remains the most common approach, since such mechanisms are less costly and may prove both swifter and more confidential (Weil, 2021, p. 153). Such means are particularly suited to disputes between an organization and its member States, especially those relating to the implementation of programmes, financial contributions, or administrative arrangements, where the preservation of institutional cooperation is often of no less importance than the attainment of a strictly legal outcome.

For his part, the Belgian international lawyer Frédéric Dopagne observes that, among diplomatic (political) means of dispute settlement, negotiations occupy a predominant position. It is precisely negotiations that are most commonly provided for in international legal instruments applicable to international organizations and that are most frequently employed by international organizations themselves in resolving disputes with other subjects of international law. Dopagne further emphasizes that negotiations retain this predominant role even without taking into account the considerable number of disputes that remain unknown to the public, since they permit the settlement process to unfold with the highest degree of confidentiality. According to his observations, dispute settlement clauses involving international organizations frequently designate negotiations as a precondition for the use of other means of settlement, particularly recourse to arbitration (Dopagne, 2013, p. 1111).

Arbitral, judicial, and quasi-judicial methods or procedures – collectively referred to as international means of adjudication – are of a different nature. They involve the submission of a dispute to an independent body or arbitral tribunal whose decision may possess binding force or, at the very least, considerable authoritative value (Tropin, 2018, p. 246). Such procedures are employed primarily where a dispute possesses a distinctly legal character and concerns, *inter alia*, the interpretation of a constituent instrument or other treaties, questions of responsibility, or proprietary claims.

As Schmalenbach emphasizes, judicial settlement is based upon the interpretation and application of law to undisputed or duly established facts of the case. A dispute settlement procedure acquires a quasi-judicial character where it combines non-judicial and judicial elements, particularly where a judicial body is empowered to decide a dispute *ex aequo et bono*, or where non-judicial institutions apply legal rules in a manner functionally analogous to judicial proceedings (Schmalenbach, 2011, p. 252). One point remains evident: recourse to international means of adjudication requires a clear legal basis, which may derive from the constituent instrument itself, a special agreement, an arbitration clause, or a separate arrangement concluded between the parties.

In this respect, the constituent instrument plays a pivotal role, since it not only defines the general limits of the organization's competence, but also directly shapes the configuration of the dispute settlement mechanisms available to it. Its significance manifests itself both in the conferral of such powers and in the imposition of corresponding limitations. As is well established, the freedom of an international

organization to choose among peaceful means of dispute settlement is not absolute and may be substantially restricted by the provisions of its constituent instrument (Dopagne, 2013, pp. 1109-1110). Unlike States, for which the freedom to select means of dispute settlement constitutes a direct manifestation of sovereignty and is grounded in the principle of consent, the activities of international organizations in this sphere possess a derivative character and remain subject to their institutional logic and to the will of the founding States.

In international law, the obligation to settle disputes peacefully has traditionally been linked to the principle of consent, according to which no State may be compelled to submit a dispute to settlement by a particular method or before a particular body without its prior consent (Tomuschat, 2024, p. 1421; Combacau & Sur, 2019, p. 606). However, this rule does not apply in full to international organizations. Their consent to a particular method of dispute settlement is not required in every individual case, since such consent may effectively be “substituted” by the provisions of the constituent instrument itself. At the moment of adopting the statute, the subjects of international law establishing the organization may incorporate into it either an arbitration clause or a dispute settlement clause (Dopagne, 2013, pp. 1109-1110). In such circumstances, the organization is excluded from participation in determining the mechanism in question, since, at the time of the adoption of the relevant instrument, it does not yet exist as a subject of law. Consequently, even where the organization becomes the beneficiary of the relevant provision, its inclusion remains the result of the will of the founding States (Bellier, 2011, p. 151).

As Stéphanie Bellier aptly observes, the inclusion of arbitration clauses in constituent instruments possesses not merely procedural, but also profound institutional significance: such clauses serve both as safeguards against the organization acting beyond the limits of its powers and as instruments for preserving the “vertical” distinction between the sphere of international cooperation and the sphere of State competence. In this sense, a statutory arbitration clause appears less as an expression of collective will than as a mechanism for the protection of State sovereignty within the context of the institutionalization of cooperation (Bellier, 2009, p. 454).

Developing this line of reasoning, Weil emphasizes that the incorporation into a constituent instrument of provisions concerning dispute settlement – and, consequently, the absence of any need to obtain the separate consent of the international organization is – motivated by the desire of States to control compliance with the limits of the organization’s competence. In this way, States ensure the possibility of settling disputes relating to a potential excess of powers while simultaneously preserving the established allocation of functions between the organization and its member States (Weil, 2021, p. 38).

A similar assessment is advanced by the Professor of the Panthéon-Assas University (Paris II) Carlo Santulli, who observes that an international organization “occupies a subordinate position vis-à-vis the totality of its members”. Proceeding from this premise, he explains that, unlike States – for which consent constitutes a necessary condition for any method of dispute settlement – the consent of an international organization possesses a derivative character and is determined by the provisions of its constituent instrument. Accordingly, the organization remains bound to comply with the dispute settlement procedures prescribed by that instrument even in the absence of separate consent in each individual case (Santulli, 2015, p. 120).

This subordinate or derivative character manifests itself, *inter alia*, in the inclusion within constituent instruments of dispute settlement provisions that predetermine the permissible or mandatory methods for the settlement of disputes. According to the analyses advanced by Dopagne, Weil, and other scholars, such provisions may not merely provide for recourse to particular procedures but may in fact structure the entire system of dispute settlement involving the organization, thereby limiting its freedom to choose alternative mechanisms. In particular, a constituent instrument may:

- expressly prescribe a specific method of dispute settlement, such as arbitration or recourse to a designated body. Thus, the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) provides for arbitration as the mandatory method for the settlement of disputes between members and the Agency (Convention Establishing the MIGA, 1985, Annex II, art. 4). Likewise, the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT) establishes mandatory arbitration for all disputes arising “in connection with rights and obligations under this Agreement between Parties, or between ITSO and one or more Parties” (Agreement Relating to the INTELSAT, 1971, art. XVI). Similarly, the 1982 United Nations Convention on the Law of the Sea provides for the compulsory submission of certain categories of disputes to the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (UNCLOS, 1982, Part XI, Section 4, art. 187);

- exclude recourse to alternative means of settlement, particularly by assigning disputes concerning the interpretation of the constituent instrument exclusively to the internal organs of the organization. An example is furnished by the Articles of Agreement of the International Bank for Reconstruction and Development, which provide that any question concerning the interpretation of the Agreement arising between any member and the Bank, or between members of the Bank, shall be submitted to the Executive Directors for decision, subject to final appeal to the Board of Governors (International Bank for Reconstruction and Development, 2012, art. IX). A comparable mechanism is contained in the Agreement Establishing the European Bank for Reconstruction and Development (Agreement Establishing the European Bank for Reconstruction and Development, 1990, art. 57);

- establish the primacy of non-jurisdictional means of settlement, requiring the parties – including both member States and the organization itself – first to resort to direct negotiations or consultations. Such an approach may be observed, *inter alia*, in the International Convention relating to Cooperation for the Safety of Air Navigation (“EUROCONTROL”) (Convention internationale de coopération pour la sécurité de la navigation aérienne “EUROCONTROL,” 1960, art. 31) and in the Convention on the International Maritime Satellite Organization (INMARSAT) (Convention portant création de l’Organisation internationale de télécommunications maritimes par satellites, 1976, art. 31);

- limit in temporal terms the freedom to choose methods of dispute settlement, by obliging the parties, upon the expiry of specified time limits, to resort to a predetermined procedure. Typically, this concerns situations in which, following the unsuccessful use of diplomatic means – particularly negotiations – within a prescribed period, the dispute is automatically referred to arbitration or another jurisdictional body. Examples include the Convention Establishing the European Telecommunications Satellite Organization (EUTELSAT), which provides for mandatory arbitration where a dispute has not been settled within one year (Convention portant création de l’Organisation européenne de télécommunications par satellite “EUTELSAT,” 1982, art. XV), and the Convention Establishing the European Centre for Medium-Range Weather Forecasts, which prescribes arbitration unless “the parties agree within three months on another method of settlement” (Convention Establishing the European Centre for Medium-Range Weather Forecasts, 1973, art. 17);

- prevent the obstruction of arbitral proceedings by establishing special mechanisms for the constitution of the arbitral tribunal. Where one party fails to appoint an arbitrator or where agreement cannot be reached concerning the presiding arbitrator, the relevant powers are transferred to a third authority. Such mechanisms are envisaged, *inter alia*, in the constituent instruments of a number of international economic and financial organizations, including the Caribbean Development Bank (Agreement Establishing the Caribbean Development Bank, 1969, art. 60), the African Development Fund (Accord portant création du Fonds africain de développement, 1972, art. 53), the International Organization for the Development of Fisheries in Eastern and Central Europe (Agreement for the Establishment of the International Organisation for the Development of Fisheries in Eastern and Central Europe, 2000, art. 17), and the West Africa Rice Development Association (Acte constitutif de l’Association pour le développement de la riziculture en Afrique de l’Ouest, 1986, art. XV). Their purpose is to ensure that an international organization cannot evade its obligation to settle disputes through procedural inaction.

Finally, dispute settlement provisions may extend beyond the constituent instrument itself so as to encompass disputes arising in connection with annexes thereto, related protocols, or even separate agreements concluded within the framework of the organization’s activities (Weil, 2021, pp. 44-45). This approach is reflected, *inter alia*, in the constituent instrument of the European Centre for Medium-Range Weather Forecasts, which extends the arbitral procedure to disputes concerning the application of the Protocol on Privileges and Immunities (Convention Establishing the European Centre for Medium-Range Weather Forecasts, 1973, art. 17), as well as in the constituent convention of the Agency for Aerial Navigation Safety in Africa and Madagascar, which establishes procedures for the settlement of disputes between member States and the Agency concerning the interpretation or application not only of the Convention itself, but also of its annexes (Convention constitutive de l’Agence chargée de gérer les installations et services destinés à assurer la sécurité de la navigation aérienne en Afrique et à Madagascar, 1974, art. 21). A similar approach may likewise be observed in the constituent instruments of the satellite organizations INTELSAT, INMARSAT, and EUTELSAT, where the relevant provisions encompass a broader range of treaty relations connected with the activities of the organization.

According to the observations of Bellier, the use of statutory dispute settlement clauses as a preventive mechanism is particularly characteristic of operational international organizations whose activities involve

the exercise of their own functions, including activities carried out within the territories of member States and through the use of their own or entrusted resources (Bellier, 2009, p. 453). Within such organizations, the risk of the factual expansion of competence is especially pronounced, prompting founding States to institutionalize control over the limits of the organization's powers through jurisdictional mechanisms. Such clauses perform a dual function: on the one hand, they are intended to prevent the "empirical" expansion of the organization's powers by confining its activities within the limits of its defined competence; on the other hand, they preclude reliance upon jurisdictional immunity in relations with member States and with private actors connected to the organization. By contrast, in organizations whose activities are predominantly normative in character, such provisions are either absent or possess a considerably narrower scope of application, often being limited to disputes between member States. This reflects the comparatively lower risk of encroachment upon the sphere of State sovereignty (Weil, 2021, p. 39).

The restrictive function exercised by constituent instruments with regard to the freedom of international organizations to choose among peaceful means of dispute settlement should not, however, be absolutized. As Weil emphasizes, international organizations are not invariably deprived of the possibility of playing an active role in determining the appropriate method for the settlement of a dispute. A considerable number of constituent instruments either contain no dispute settlement provisions whatsoever or formulate such provisions in a manner that does not establish mandatory procedures for the organization itself, or else confines itself to recommendatory clauses. Even where a constituent instrument prescribes a particular dispute settlement mechanism, this does not necessarily imply the complete exclusion of the organization from participation in its concretization: although derivative in character, the organization's consent may nevertheless retain significance at the level of the practical implementation of the relevant procedures (Weil, 2021, p. 46).

This demonstrates that the institutional determination of the procedural conduct of an international organization is combined with a certain margin of discretion, the scope of which depends upon the content of the constituent instrument and the nature of the dispute concerned. Where the constituent instrument does not contain exhaustive regulation or permits alternative methods of settlement, the organization remains capable of influencing the choice of a particular mechanism, *inter alia* through its organs or by concluding special agreements. Accordingly, its procedural autonomy does not disappear entirely but instead acquires a functionally conditioned character.

Ultimately, the relationship between the freedom to choose means of dispute settlement and the limitations established by the constituent instrument should be understood as a dynamic equilibrium. On the one hand, the constituent instrument defines the permissible limits and procedural framework governing the activities of the organization; on the other hand, it leaves the organization a certain degree of latitude to adapt such mechanisms to the specific circumstances of a dispute. It is precisely this interaction that ensures a balance between the institutional accountability of the organization and its capacity to act as an autonomous subject of international law in the sphere of dispute settlement.

Consequently, the constituent instrument not only grants an international organization access to peaceful means of dispute settlement, but also determines their configuration, conditions, and limits of application. In this sense, the freedom to choose among such means appears not as an autonomous right of the organization, but rather as a derivative of its institutional nature and of the legal architecture embedded in its constituent instrument.

### **Disputes Concerning the Interpretation and Application of Constituent Instruments: Principal Models of Settlement**

Disputes concerning the interpretation and application of constituent instruments occupy a distinctive position among disputes involving international organizations (Akanke, 2024, p. 256). In this connection, Schermers and Blokker observe that questions of interpretation "are in fact disputes or potential disputes concerning the interpretation of the relevant provisions", with the result that it is exceedingly difficult to distinguish questions of interpretation from disputes properly so called. In general, the majority of disputes may ultimately be reduced to questions of interpretation (Schermers & Blokker, 2025, p. 928). For his part, Giorgio Malinverni, analysing provisions relating to the interpretation and application of constituent instruments of international organizations, argues that rules concerning interpretation are "formulated in sufficiently broad and general terms to encompass any question of interpretation" and may therefore "be used [...] for the settlement of disputes" (Malinverni, 1974, pp. 63-64).

Against this somewhat indeterminate background, it is necessary to recall that, according to the widely accepted definition formulated by the Permanent Court of International Justice in its judgment of 24 August

1924 in the *Mavrommatis Palestine Concessions* case (*Greece v. Great Britain*), a dispute in international law is understood as “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons” (*Mavrommatis Palestine Concessions*, 1924, p. 11). Under the “Mavrommatis formula”, subsequently developed in the jurisprudence of the International Court of Justice, such disagreement does not merely exist in the abstract; rather, it objectively arises and “opposes” one party to another, thereby producing a clash or confrontation of positions: the claim of one party must encounter opposition from the other (Kononenko, 2025, pp. 194-195).

It follows that, where a question concerning the interpretation or application of a constituent instrument gives rise to such opposition between an organization and one of its members (or a group of members), it acquires the character of an international dispute. In the absence of such an element, the matter is more properly characterized as a difficulty of interpretation rather than a dispute in the strict sense of the term.

Like constituent instruments themselves, disputes concerning their interpretation and application possess a dual nature. On the one hand, such disputes are contractual in character, since the constituent instrument ordinarily takes the form of an international treaty concluded between the founding States. On the other hand, they possess a constitutional and institutional dimension, insofar as they concern not merely the rights and obligations of the parties to the treaty, but also the functioning of the organization as an autonomous legal order (Schmalenbach, 2020, para. 62). Consequently, a dispute relating to a constituent instrument may affect the competence of the organization’s organs, the distribution of powers, membership, financial obligations, the limits of the organization’s activities, or the legal effects of its decisions (Akanke, 2024, p. 257).

Scholarship has proposed various approaches to the classification of such disputes, among which the concept advanced by Kirsten Schmalenbach appears particularly persuasive, insofar as it combines the subject matter of the dispute with the mechanisms available for its settlement. This approach makes it possible to distinguish three principal categories: (1) disputes concerning the status of the organization and its officials; (2) disputes connected with the exercise of its operational or technical functions; and (3) disputes over non-compliance (Schmalenbach, 2011, p. 258).

The first category encompasses disputes relating to the legal status of the organization, including, in particular, its privileges and immunities, as well as the legal position of its organs and personnel. Such disputes generally arise in relations with member States or with the host State and are typically settled through arbitration or by means of advisory procedures involving international judicial bodies. The second category comprises disputes connected with the performance by the organization of its operational or technical functions, particularly within the framework of assistance or financing programmes. These disputes are characterized by the extensive use of arbitration clauses, which ensure the possibility of initiating proceedings independently of the subsequent consent of the parties. The third category – disputes relating to non-compliance – is distinguished by the fact that their settlement is frequently carried out through internal compliance-control mechanisms combining preventive instruments with “soft” procedures aimed at securing conformity rather than establishing responsibility (Schmalenbach, 2011, p. 259).

The foregoing classification correlates directly with the models of dispute settlement embodied in the constituent instruments of international organizations. In the practice of such organizations, several principal models may be distinguished.

(1) *The model of external jurisdictional settlement.* This model presupposes that disputes concerning the interpretation or application of a constituent instrument are resolved through international means of adjudication, that is, by being submitted to international judicial, arbitral, or quasi-judicial bodies. Such an approach is characteristic, *inter alia*, of certain organizations within the United Nations system. Thus, pursuant to Article XIV of the Constitution of UNESCO, “any question or dispute concerning the interpretation of this Constitution shall be referred for determination to the International Court of Justice or to an arbitral tribunal, as the General Conference may determine under its rules of procedure” (Constitution of UNESCO, 1945, art. XIV).

Developing this provision further, the Rules of Procedure confer upon the Legal Committee of the General Conference the power, by a simple majority vote, to recommend that the General Conference refer any question concerning the interpretation of the Constitution to the International Court of Justice for an advisory opinion or, where the Organization itself is a party to the dispute, to recommend the submission of the matter for final settlement to an arbitral tribunal, the arrangements for the establishment of which are to be undertaken by the Executive Board (UNESCO, 2026, Rule 36).

The Constitution of the International Labour Organization, for its part, provides that any question or dispute concerning the interpretation of the Constitution or of any subsequent convention concluded by member States pursuant to the provisions of the Constitution shall be referred to the International Court of Justice for determination (Constitution of the ILO, 2021, art. 37). Accordingly, within the framework of the model of external jurisdictional settlement, the constituent instrument functions not merely as a source of legal norms, but also as the legal basis for external supervision over their application.

(2) *The model of internal institutional settlement.* This model is particularly widespread among international financial organizations. Within its framework, disputes concerning the interpretation of constituent instruments are resolved by the organs of the organization itself – boards of governors, executive boards, or other governing institutions. Such an approach is conditioned by the need for prompt responses to questions of a financial and institutional nature, as well as by the desire to preserve the autonomy of the organization's internal legal order. Under this model, the organization itself, acting through its organs, serves as the primary interpreter of its own constituent instrument.

A particularly illustrative example is provided by Article XXIX of the Articles of Agreement of the International Monetary Fund, which stipulates that any question concerning the interpretation of the provisions of the Agreement arising between any member and the Fund, or between members of the Fund, shall be submitted to the Executive Board for decision. Once the Executive Board has rendered its decision, any member may, within three months from the date thereof, require that the matter be referred to the Board of Governors, whose decision shall be final. In the event of disagreements arising between the Fund and a member that has withdrawn from the organization, or between the Fund and any member during the liquidation of the Fund, such disagreements are to be submitted to an *ad hoc* arbitral tribunal composed of three arbitrators (International Monetary Fund, 2016, art. XXIX).

A comparable mechanism is provided for in the Articles of Agreement of the International Bank for Reconstruction and Development (International Bank for Reconstruction and Development, 2012, art. IX), the International Development Association (International Development Association, 2012, art. X), and the International Finance Corporation (International Finance Corporation, 2020, art. VIII), as well as in the constituent instruments of the European Bank for Reconstruction and Development (Agreement Establishing the European Bank for Reconstruction and Development, 1990, art. 57), the African Development Bank (Agreement Establishing the African Development Bank, 1963, art. 61), and the Asian Development Bank (Agreement Establishing the Asian Development Bank, 1965, art. 60). In all these instances, questions of interpretation are submitted to the executive organs of the organization, subject to subsequent review by the board of governors, whose decision possesses final authority.

(3) *The mixed or special model.* This model combines internal institutional procedures with the possibility of external arbitral or other independent review. An example of such an approach is provided by the Constitution of the World Health Organization, which establishes a special mechanism for the settlement of disputes relating to the interpretation and application of its provisions. Its distinctive feature lies in its sequential character: at the initial stage, the parties concerned are required to seek settlement of the dispute through negotiation or by referral to the World Health Assembly. Should the dispute nevertheless remain unresolved despite such efforts, it is to be referred to the International Court of Justice in accordance with the Statute of the Court, unless the parties agree upon another method of settlement (Constitution of the WHO, 1946, art. 75).

A similar provision is contained in Article XVII of the Constitution of the Food and Agriculture Organization. It likewise establishes a sequential mechanism: first, any question or dispute concerning the interpretation of the Constitution is referred to the Conference of the Organization. Where such consideration proves unsuccessful, the question or dispute is, at the second stage, referred either to the International Court of Justice in accordance with the conditions laid down in its Statute or to any other body designated by the Conference (L'Acte constitutif de l'Organisation des Nations Unies pour l'alimentation et l'agriculture, 2017, art. XVII).

In the case of ICAO, Article 84 of the 1944 Chicago Convention on International Civil Aviation provides that any disagreement between two or more contracting States relating to the interpretation or application of the Convention and its Annexes which cannot be settled by negotiation shall, upon the application of any State concerned, be decided by the ICAO Council. Subject to the provisions of Article 85, the decision of the Council may be appealed by any contracting State to an *ad hoc* arbitral tribunal agreed upon by the parties to the dispute (Convention on International Civil Aviation, 1944, art. 84). Thus, within this framework, both external and internal institutional procedures are engaged sequentially, while arbitration

or another external procedure is not conceived as standing in opposition to the constituent instrument, but rather as integrated into it as an element of the institutional architecture.

A comparison of these models demonstrates that the constituent instruments of international organizations not only establish the organization and define its competence but simultaneously shape the mechanisms for resolving disputes concerning their own content. This is of fundamental importance for understanding their legal nature: the constituent instrument constitutes not merely a source of substantive norms, but also an instrument for the self-preservation of the institutional legal order. Through procedures of interpretation and dispute settlement, it ensures the stability of the organization's functioning, the predictability of its activities, and legal certainty in relations between the organization, its members, and other subjects of international law.

### **Constituent Instruments, Immunities, and the Settlement of Private-Law Disputes**

Separate consideration must be given to the relationship between constituent instruments, the immunities of international organizations, and the settlement of private-law disputes. In contemporary practice, international organizations actively enter into relationships that are not invariably public international in character. They conclude contracts with suppliers, lease premises, employ personnel, implement projects, carry out procurement activities, own property, administer funds, and engage in a wide range of legal relations with natural and legal persons (Ascensio, 2013, p. 1122). As a consequence, disputes may arise which, by their subject matter, are contractual, employment-related, proprietary, or tortious in nature (Henquet, 2023, p. 119; Schmitt, 2017, pp. 34-52).

The ability of an international organization to participate in such legal relations depends upon the existence of legal personality within the relevant domestic legal order (Schmalenbach, 2020, para. 28). At the same time, as the Italian scholar Tarcisio Gazzini aptly observes, domestic legal personality neither presupposes international legal personality nor constitutes its necessary consequence. On the one hand, States may confer legal personality upon an international organization within the framework of the national legal order irrespective of its status under international law. On the other hand, international organizations possessing international legal personality do not automatically enjoy legal personality within domestic jurisdictions, including those of the member States of the organization concerned (Gazzini, 2011, p. 44).

As a rule, the obligation to confer domestic legal personality upon an international organization is imposed upon member States by the constituent instrument of the organization itself. Such an obligation may likewise arise from other statutory instruments, including headquarters agreements or agreements on privileges and immunities concluded either by member States or by States that are not members of the organization. In the absence of a relevant provision in the applicable international legal instruments, the generally accepted view is that member States remain under an obligation, by virtue of customary international law, to grant international organizations legal personality within their domestic legal orders (Reuter, 2024, p. 232; Amerasinghe, 2005, p. 76).

The provisions of constituent instruments may directly provide for the capacity of international organizations to conclude contracts, acquire and dispose of property, be parties to legal proceedings, open bank accounts, employ personnel, and perform other acts necessary for the exercise of the organization's functions within the domestic legal orders of States. Thus, pursuant to Article 335 of the Treaty on the Functioning of the European Union (TFEU), "in each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings" (Tomášek et al., 2024, p. 1183).

However, such provisions may also be formulated in more general terms. A classic example of this "general approach" is Article 104 of the Charter of the United Nations, pursuant to which "[t]he Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes" (UN Charter, 1945, art. 104). Notwithstanding the brevity of this formulation, it is generally accepted in the doctrine of international law that this provision constitutes the legal basis for the domestic legal personality of the United Nations within the member States (Ziegler, 2024, pp. 2785-2803). A similar approach may be observed in the provisions of the Constitution of UNESCO (Constitution of UNESCO, 1945, art. XII), the Constitution of the World Health Organization (Constitution of the WHO, 1946, art. 66), and the constituent instruments of other international organizations. Accordingly, the domestic dimension of the legal personality of an international organization likewise possesses a predominantly functional character: the scope of such legal personality is determined by the extent to which it is necessary for the realization of the purposes and functions of the organization concerned.

The role of constituent instruments, however, extends beyond this function. In addition to establishing domestic legal personality, such instruments generally confer upon international organizations privileges and immunities intended to ensure the effective performance of their functions. Olha Shpakovych explains the necessity of such protection by the fact that international organizations possess no territory of their own, while their personnel operate within the territories of member States and, at times, of States that are not members of the organization. As a consequence, there arises a need to safeguard both the independence of the organizations themselves and that of their officials from interference by national authorities (Shpakovych, 2020, p. 61). The principal guarantees of such independence are jurisdictional immunity – immunity from every form of legal process, which, according to T. Imscher, constitutes the core of institutional immunities (Imscher, 2014, p. 446) – as well as immunity from enforcement measures.

At the same time, it should be noted that the provisions of constituent instruments generally confine themselves to acknowledging the fact that such privileges and immunities are granted (Charter of the United Nations, 1945, art. 105; Constitution of UNESCO, 1945, art. XII; Constitution of the WHO, 1946, art. 67), whereas their more detailed regulation is typically contained in protocols on privileges and immunities forming integral parts of the constituent instruments themselves (Protocol No. 7 on the Privileges and Immunities of the European Union, 2012), in separate supplementary conventions of a general character concluded between member States for that purpose (General Agreement on Privileges and Immunities of the Council of Europe, 1949), in headquarters agreements (Headquarters Agreement between the International Criminal Court and the Host State, 2008), or in bilateral agreements concluded between the international organization and member States or third States (Organisation for European Economic Co-operation).

The conferral of privileges and immunities upon international organizations, notwithstanding their important functional purpose, gives rise to a complex problem concerning access to justice. The principal difficulties arise in situations where private persons seek to bring claims against international organizations before domestic courts. Jurisdictional immunity and immunity from enforcement measures substantially restrict the possibility of adjudicating such disputes within national legal systems. As a rule, proceedings may be instituted only where the international organization has expressly waived its immunity – a circumstance that occurs only exceptionally in practice (UN ILC Report, 2025, p. 50).

Contemporary State practice nevertheless reveals a tendency in certain jurisdictions towards a gradual narrowing of the scope of such immunities. Thus, the courts of some States, notably the United States and Italy, have shown an inclination to confine immunity to the non-commercial activities of international organizations (UN ILC Report, 2025, pp. 54-57). Courts in other States – including Belgium, Germany, France, Switzerland, Argentina, and Mexico – have refused to uphold immunity where the claimant has been deprived of “reasonable alternative means” for the protection of his or her rights (UN ILC Report, 2025, pp. 61-65). Yet, the problem of ensuring effective access to justice remains unresolved.

This issue has repeatedly come before international judicial and quasi-judicial bodies. In its Advisory Opinion in the case concerning the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal* (1954), the International Court of Justice observed that it would scarcely be consistent with the purposes of the United Nations, as proclaimed in the Charter, to promote freedom and justice if the Organization failed to provide its staff members with judicial or arbitral remedies for the settlement of disputes arising between them and the Organization (Effect of Awards, 1954, p. 57).

A similar approach may be discerned in the jurisprudence of the European Court of Human Rights. In *Waite and Kennedy v. Germany* and *Beer and Regan v. Germany*, the Court held that the grant of jurisdictional immunity to international organizations may be compatible with the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, art. 6), provided that “reasonable alternative means” exist for the protection of the individual’s rights (*Waite and Kennedy v. Germany*, 1999, para. 68; *Beer and Regan v. Germany*, 1999, para. 58). A comparable position was adopted by the United Nations Human Rights Committee in *M.L.D. v. Philippines*, where it emphasized that international organizations are required to provide effective alternative mechanisms for the settlement of disputes, particularly in the context of employment relations with members of their staff (Human Rights Committee, 2024, para. 9.7). Accordingly, the immunity of an international organization should not, in and of itself, result in the complete denial of an individual’s access to justice; the application of such immunity must be compensated for by the existence of a genuine and effective mechanism for the resolution of the dispute.

The response to this problem at the level of constituent instruments has remained comparatively limited. Where an obligation to provide alternative means of dispute settlement is incorporated into the statutory framework of international organizations, it is generally contained not in the constituent instruments themselves, but rather in separate conventions on privileges and immunities (Convention on the Privileges and Immunities of the Specialized Agencies, 1947, art. IX, section 31), headquarters agreements (Agreement between the Netherlands and the OPCW concerning the headquarters of the OPCW, 1997, art. 26), or supplementary protocols (Protocol on the Privileges and Immunities of the International Seabed Authority, 1998, art. 14). Constituent instruments proper only exceptionally contain provisions aimed at mitigating the effects of jurisdictional immunity through its partial limitation.

A particularly illustrative example is furnished by the Articles of Agreement of the International Bank for Reconstruction and Development. Pursuant to Article VII of that instrument, actions may be brought against the Bank only before a court of competent jurisdiction within the territory of a member State in which the Bank maintains an office, has appointed an agent for the acceptance of service of process, or has issued or guaranteed securities (International Bank for Reconstruction and Development, 2012, art. VII, section 30). Accordingly, private persons may bring claims before domestic courts only where a defined territorial or functional connection exists between the Bank and the jurisdiction concerned. At the same time, this possibility does not extend to actions brought by member States or to jurisdictions in which such connecting factors are absent. Comparable provisions may also be found in the constituent instruments of other international financial organizations, including the European Bank for Reconstruction and Development (Agreement Establishing the European Bank for Reconstruction and Development, 1990, art. 46), the Caribbean Development Bank (Agreement Establishing the Caribbean Development Bank, 1969, art. 49), the Asian Development Bank (Agreement Establishing the Asian Development Bank, 1965, art. 50).

Organizations of regional economic integration (OREIs) display particular specificity in this context. The high degree of economic integration and legal harmonization characteristic of such organizations has led to the development of more sophisticated models for the settlement of disputes between the international organization and private persons. The most advanced example is provided by the legal order of the European Union.

On the one hand, Article 343 TFEU and Protocol No. 7 on the Privileges and Immunities of the European Union confer upon the Union classical jurisdictional immunity and immunity from enforcement measures (Tomášek et al., 2024, p. 1204). On the other hand, Article 274 TFEU provides that disputes to which the Union is a party shall not, on that ground alone, be excluded from the jurisdiction of domestic courts (Tomášek et al., 2024, pp. 991-992). That provision does not, however, extend to disputes falling within the jurisdiction of the Court of Justice of the European Union under the constituent Treaties. Given the extensive system of judicial remedies existing within the Union legal order, this limitation primarily concerns contractual disputes, save where the jurisdiction of the Court of Justice is expressly provided for by an arbitration clause pursuant to Article 272 TFEU (Tomášek et al., 2024, pp. 987-989).

The judicial bodies of OREIs may function not only as mechanisms of internal review over the legality of the organization's activities, but also as fora for the adjudication of private-law disputes. The scope of their jurisdiction is determined by the provisions of the constituent instrument of the organization concerned (Kononenko, 2026b, p. 234). In a number of OREIs, private persons are granted the possibility of challenging acts or omissions of the organization's organs through special procedures for the annulment of acts or for declarations of failure to act.

Moreover, the internal courts and tribunals of certain organizations – including the European Union, ECOWAS, COMESA, and the Andean Community – are empowered to hear contractual disputes between international organizations and private parties where an arbitration clause has been incorporated into the relevant agreement (UN ILC Report, 2025, p. 75). In such instances, the judicial organs of OREIs effectively combine the functions of an international judicial body with those of a specialized mechanism for the settlement of private-law disputes.

This is particularly evident within the legal order of the European Union, where the Court of Justice of the European Union, pursuant to Article 272 TFEU, is vested with jurisdiction over disputes relating to contracts concluded by or on behalf of the Union, provided that such contracts contain an arbitration clause (Tomášek et al., 2024, pp. 987-989). As a result, the internal judicial system of the Union performs not only the function of reviewing the legality of acts adopted by the EU institutions but also ensures the adjudication of certain categories of private-law disputes.

At the same time, even in cases where the constituent instruments of international organizations provide for certain exceptions to jurisdictional immunity, immunity from enforcement measures is generally preserved. Hervé Ascensio explains this by reference to the functional nature of institutional immunities: while jurisdictional immunity may admit of certain limitations, immunity from enforcement proceedings is regarded as one of the principal guarantees of the independence and uninterrupted functioning of an international organization (Ascensio, 2013, p. 1127). As a consequence, even where a private person succeeds in obtaining a favourable judicial decision, this does not necessarily entail the practical possibility of enforcing that decision against the property or assets of the organization. Such practice has led V. Grandaubert to argue that immunity from enforcement measures continues, to a considerable extent, to retain an essentially absolute character (Grandaubert, 2023, p. 394).

Where neither access to a court nor adequate alternative remedies are available, a situation arises in which the international organization is effectively placed beyond any meaningful control with respect to compliance with the rights of private persons. At the same time, as Edward Chukwuemeke Okeke aptly observes, even the existence of an alternative dispute settlement mechanism does not automatically guarantee an adequate level of protection, since the question remains whether such a mechanism satisfies the minimum standards of independence, impartiality, and fairness (Okeke, 2020, p. 26).

It is precisely for this reason that internal or specialized mechanisms for the settlement of private-law disputes have become increasingly widespread in the practice of international organizations. These include, *inter alia*, administrative tribunals for the adjudication of employment disputes, arbitral procedures, claims commissions, mediation mechanisms, and special procedures for the examination of claims brought by private persons (Fomin, 2021, pp. 44-66; Syroid, 2017, pp. 166-168; Syroid et al., 2022, pp. 417-426). The existence of such mechanisms frequently derives, either directly or indirectly, from the constituent instruments of international organizations, headquarters agreements, or instruments concerning privileges and immunities.

In this context, the constituent instrument of an international organization functions not merely as the foundation of its legal personality and institutional structure, but also as one of the key elements in the legal regulation of the organization's relations with private persons. It is through the provisions of constituent instruments and the international agreements associated therewith that the limits of the organization's immunities, the permissible forms of judicial review, and the principles governing the operation of alternative dispute settlement mechanisms are determined.

Thus, the contemporary development of international law demonstrates a gradual departure from the perception of the immunities of international organizations as an absolute barrier to the protection of the rights of private persons. Increasing importance is instead being attached to the concept of a functional balance between the need to ensure the independence of the international organization and the obligation to guarantee effective access to justice. Within this process, the constituent instruments of international organizations, together with the international agreements associated therewith, perform a dual function: on the one hand, they affirm the autonomy of the organization and the guarantees of its independent functioning; on the other hand, they establish the normative foundations of its legal responsibility and accountability in its relations with private persons.

### **The Advisory Jurisdiction of the International Court of Justice within the System of Dispute Settlement Involving International Organizations**

A distinctive place within the system of dispute settlement involving international organizations is occupied by the advisory jurisdiction of the International Court of Justice. Unlike States, international organizations do not possess general access to the contentious jurisdiction of the Court (*locus standi*), since only States may be parties in cases brought before the Court in contentious proceedings (UN ILC Report, 2024, p. 29). At the same time, certain international organizations – above all organs of the United Nations and specialized agencies – are entitled to request advisory opinions from the International Court of Justice within the scope of their competence and in accordance with the conditions laid down in the Charter of the United Nations and in their constituent instruments (Wolfrum, 2013, pp. 40-44).

An advisory opinion does not formally constitute a judgment in a dispute between parties in the classical sense. In the practice of international organizations, however, it may perform a quasi-judicial function, insofar as it enables the obtaining of an authoritative interpretation of a rule of international law, a constituent instrument, an agreement between an organization and a State, or the limits of the organization's competence. It is precisely for this reason that the advisory procedure may serve

as an instrument for the legal settlement of a contentious situation, even where it does not take the form of contentious proceedings.

The doctrine of international law has likewise emphasized that the advisory jurisdiction of the International Court of Justice effectively enables international organizations partially to compensate for their lack of access to the Court's contentious jurisdiction. As Dominicé observes, the practice of the International Court of Justice reveals at least three distinct ways in which advisory opinions have been employed for the settlement of disputes involving international organizations (Dominicé, 2002, pp. 91-92).

The first method consists in the use of so-called "*binding*" or "*decisive*" advisory opinions. This concerns situations in which an international treaty or another international legal instrument provides that, in the event of a dispute between an international organization and a State, the parties shall request an advisory opinion from the International Court of Justice, which they undertake in advance to accept as binding (Schmalenbach, 2011, pp. 255-256; UN ILC Report, 2024, pp. 33-36; Dominicé, 2002, pp. 92-95). A classic example is Section 30 of the Convention on the Privileges and Immunities of the United Nations of 1946 (Convention on the Privileges and Immunities of the United Nations, 1946, art. VIII, section 30), pursuant to which disputes between the United Nations and a member State concerning the interpretation or application of the Convention are referred to the International Court of Justice by way of the advisory procedure, while the opinion of the Court "shall be accepted by the parties as decisive". Comparable provisions are contained in the Convention on the Privileges and Immunities of the Specialized Agencies (Convention on the Privileges and Immunities of the Specialized Agencies, 1947, art. IX, section 32), the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986, art. 66), as well as in other sectoral conventions.

The second method is associated with the use of the advisory procedure for the review of decisions rendered by the administrative tribunals of international organizations. In this context, the advisory jurisdiction of the International Court of Justice was employed in internal employment disputes between international organizations and their officials. In particular, the statutes of the administrative tribunals of the ILO and the United Nations long provided for the possibility of requesting an advisory opinion from the Court concerning the validity of the tribunals' decisions. Although the procedure formally remained advisory in nature, the Court in practice performed the function of a quasi-appellate instance in relation to the administrative justice systems of international organizations. Nevertheless, this mechanism has been subjected to substantial criticism in legal doctrine on account of the asymmetrical nature of access to the procedure and the excessive politicization of the process for initiating advisory requests (UN ILC Report, 2024, pp. 44-47; Dominicé, 2002, pp. 95-98).

The third method consists in the use of "*ordinary*" advisory opinions in situations where a legal question arises in the context of a concrete dispute between an international organization and a State, even though the advisory opinion itself formally lacks binding force (Schmalenbach, 2011, pp. 256-257; UN ILC Report, 2024, pp. 36-44; Dominicé, 2002, pp. 98-100). In such cases, the advisory procedure serves as a means of authoritative interpretation of the law and as an instrument of politico-legal influence upon the development of the contentious situation. It is to this category that the case concerning the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* belongs, together with the advisory opinions in the cases concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement* and the *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*. In these cases, the Court effectively contributed to the settlement of the conflict between the international organization and the State, notwithstanding the fact that it was not formally exercising contentious jurisdiction.

Constituent instruments and the agreements associated therewith concluded with the United Nations establish different models governing the access of international organizations to the advisory jurisdiction of the International Court of Justice. Within the United Nations system, the right to request advisory opinions is expressly conferred upon the General Assembly and the Security Council by Article 96 of the Charter of the United Nations (UN Charter, 1945, art. 96). At the same time, specialized agencies display differing constructions concerning the delegation of such authority. Thus, the Constitutions of UNESCO, WHO, and UNIDO, as well as the Statute of the IAEA, contain their own provisions relating to the advisory procedure, while linking the exercise of that power to authorization by the United Nations General Assembly or to the relevant relationship agreement concluded with the United Nations (Constitution of UNESCO, 1945,

art. V; Constitution of the WHO, 1946, art. 76; Constitution of the UNIDO, 1979, art. 22 ; Statute of the IAEA, 1956, art. XVII). By contrast, in the case of the ILO, WIPO, IMF, IBRD, WMO, and ITU, decisive importance attaches precisely to the relationship agreements concluded with the United Nations, which provide the competent organs of those organizations with the right to request advisory opinions from the International Court of Justice. This demonstrates that the access of international organizations to the advisory jurisdiction of the Court is not uniform but depends directly upon the particularities of their institutional architecture and the provisions of their constituent instruments.

The significance of the constituent instrument for the initiation of the advisory procedure is therefore fundamental. It is the constituent instrument that determines the competence of the organization, the range of matters within which it may act, and the organs authorized to request an advisory opinion or to initiate the corresponding procedure. Moreover, the constituent instrument establishes the substantive framework within which the admissibility of a request is assessed: the question submitted to the Court must fall within the sphere of activity of the organization and relate to the exercise of its functions. Accordingly, even the advisory jurisdiction of the International Court of Justice – though formally grounded in the Charter of the United Nations – depends in practical terms to a considerable extent upon the constituent instrument of the organization concerned.

At the same time, the practice of employing the advisory jurisdiction for the settlement of disputes involving international organizations also reveals certain structural limitations inherent in this mechanism. As Dominicé aptly emphasizes, the advisory procedure only partially compensates for the absence of access by international organizations to the contentious jurisdiction of the International Court of Justice and does not ensure full procedural equality between the parties (Dominicé, 2002, p. 103). It is for this reason that legal doctrine has frequently maintained that, in disputes between international organizations and States, arbitration remains a more balanced and procedurally appropriate mechanism of settlement (Schmalenbach, 2011, p. 256).

Viewed in this light, the advisory procedure constitutes a distinctive means of legal settlement of disputes involving international organizations. It does not replace arbitration or judicial proceedings in the classical sense, yet it may perform an important function of authoritative interpretation and juridical ordering of contentious situations. Its use further confirms that the procedural autonomy of an international organization is derivative of its constituent instrument and that the means of dispute settlement available to it are determined not only by general international law, but also by the specific features of its institutional nature.

### Conclusions

The analysis undertaken in this article demonstrates that the legal significance of constituent instruments of international organizations cannot be reduced to their traditional role as founding acts or sources of institutional competence. While they undoubtedly establish the organization, define its purposes, structure, organs and powers, they also perform a distinct procedural function: they determine the legal conditions under which an international organization may participate in contentious legal relationships and avail itself of dispute-settlement mechanisms.

The article has shown that constituent instruments possess a hybrid legal nature. They remain international agreements between their founding subjects, yet at the same time operate as constitutional instruments of the organization's internal legal order. This duality explains why their interpretation cannot be confined to the ordinary logic of treaty law. It must also take into account the institutional autonomy, functional development and continuity of the organization created by the instrument.

A central conclusion of the study is that the capacity of an international organization to be a party to a dispute constitutes one of the practical manifestations of its international legal personality. Unlike States, international organizations do not possess general and universal legal personality. Their legal personality is special, derivative and functionally determined. Accordingly, their dispute-settlement capacity is shaped by the purposes, functions, competences and institutional design laid down in their constituent instruments.

The procedural function of constituent instruments does not necessarily mean that they contain exhaustive mechanisms for the settlement of all possible disputes. More often, they establish the primary normative architecture within which such mechanisms may operate. They define the organs competent to express the will of the organization, the limits of its authority, the scope of its legal personality, the basis for its privileges and immunities, and the conditions under which it may conclude agreements, submit claims, defend its interests, consent to arbitration, or participate in judicial and quasi-judicial proceedings.

The settlement of disputes involving international organizations is therefore a multi-layered legal phenomenon. It encompasses disputes between organizations and member States, third States or other international organizations; disputes concerning the interpretation and application of constituent instruments; intra-organizational disputes; and private-law disputes arising from contractual, employment, proprietary, tortious or operational relations. This plurality of disputes confirms that their settlement lies at the intersection of several legal regimes: general international law, the law of international organizations, the law of treaties, international responsibility, privileges and immunities, internal institutional law and, in certain cases, domestic or transnational private law.

The scientific value of this study lies in proposing an integrated understanding of the constituent instrument as the primary international legal basis for dispute settlement involving international organizations. This approach connects three dimensions that are often examined separately: the legal personality of international organizations, the limits of their functional competence, and the mechanisms available for the settlement of disputes to which they may become parties. It also allows international organizations to be understood not merely as institutional frameworks for inter-State cooperation, but as autonomous legal actors capable of participating in contentious legal relationships.

Further research should focus on a comparative analysis of dispute-settlement clauses contained in the constituent instruments of different categories of international organizations, including financial institutions, technical organizations, regional organizations and operational agencies. Particular attention should also be paid to the relationship between institutional immunity and access to justice, especially where private persons must be provided with reasonable alternative means of legal protection. Another promising direction concerns the role of advisory opinions of international courts as instruments for preventing or resolving disputes involving international organizations.

Ultimately, constituent instruments should be reconceptualized not merely as sources of institutional competence, but as autonomous procedural constitutions governing the dispute-settlement capacity of international organizations. This procedural dimension deserves recognition as an independent and increasingly important aspect of the contemporary law of international organizations.

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