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The international civil service: redefining its independence

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Citation

Tavadian, A. (2024, April 18). *The international civil service: redefining its independence*. Retrieved from <https://hdl.handle.net/1887/3736420>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

CHAPTER I – THE GENESIS OF INTERNATIONAL CIVIL SERVICE AND ITS INDEPENDENCE

SECTION 1 – PERIOD PRECEDING THE LEAGUE OF NATIONS

Until the seventeenth century, international interactions consisted of individual and independent actions of states. No aspect of international relations had any institutional character. The community of states lacked integrated machinery representing the collective action of nations. Each state made its own arrangements with other states separately and cooperated only with those it was interested in. The Peace of Westphalia ending the Thirty Years' War in the middle of the seventeenth century is considered the beginning of internationalism. During this period, Europe had enough independent states to coordinate interstate action through general gatherings of diplomatic envoys.¹ The Congress of Westphalia of 1648 "is believed to be the origin of diplomacy since it marked the beginning of the European nation-state system."² It became the first modern conference to serve as an instrument of world affairs, setting a precedent for hundreds of gatherings of representatives of sovereign states in the following years.³

1.1 – INTERNATIONAL CONFERENCES

The year 1815 "marked the beginning of a mechanism that was to result in IGOs, based on the combination of conferences and follow-up conferences, first in 'high' then also in 'low' politics."⁴ The Congress of Vienna helped to shape the core of international organisation by introducing new regulations for conducting multilateral conferences thereby facilitating the functioning of bilateral and multilateral diplomacy.⁵ During the same period, the concept of follow-up conferences appeared. The purpose of these follow-up conferences was to allow nations to monitor the implementation of their agreements or policies.⁶ These follow-up conferences were a significant development for the formation of international organisations because they engendered a form of continuity and identified a need for institutional memory.

¹ Norman L Hill, *The Public International Conference: Its Function, Organization and Procedure* (Stanford University: Stanford University Press, 1929) at 2.

² James P Muldoon Jr et al, *Multilateral Diplomacy and the United Nations Today*, 2d ed (New York: Routledge, 2005) at 4.

³ Hill, *supra* note 1 at 2. Although several states attended the same meeting, the technique of multilateral treaty-making had not yet been mastered. Therefore, states were signing several bilateral agreements instead of signing one multilateral agreement.

⁴ Bob Reinalda, *International Secretariats: Two Centuries of International Civil Servants and Secretariats* (London: Routledge, 2020) at 22.

⁵ *Ibid.*

⁶ *Ibid.* at 23.

Although international and follow-up conferences were becoming increasingly frequent, no permanent machinery was set up for such a purpose. The organisation of each conference or congress was ad hoc and depended greatly on the host state. The procedure of diplomatic assemblies varied widely, and their degree of complexity depended mainly on the number of participating states.⁷ Nevertheless, despite considerable diversity in the detailed arrangements accompanying specific international meetings, a few practices crystallised as customary norms.

For instance, concerning the executive leadership of congresses and conferences, it is important to recall that states met in international assemblies as equals. Therefore, no single state could claim superiority, and no national delegation could proclaim itself to be the leader of the conference without the express consent of other states. Naturally, the question that arose was who should chair international gatherings. Unlike national legislatures and parliaments, where the deliberations are led and directed by presidents or chairpersons, international assemblies lack a central authority or leadership. To fill this gap, a customary practice evolved; states tacitly agreed that the president of international conferences would be the principal delegate of the country where the international gathering is held.⁸ Put differently, the highest-ranking delegate of the nation hosting the conference was elected by all participating nations as the chair of the conference. The existence of this customary rule was confirmed by the French Prime Minister – Georges Clemenceau – when he was elected President of the Paris Peace Conference of 1919:

*It is necessary, gentlemen, to point out that my election is due necessarily to lofty international tradition, and to the time-honoured courtesy shown toward the country which has the honour to welcome the Peace Conference in its capital.*⁹

In most cases, one of the participating states had to propose that the principal delegate of the host state preside over the assembly.¹⁰ The two Hague Conferences of 1899 and 1907 were notable exceptions to the custom of choosing the principal delegate of the inviting state as president. The highest-ranking delegates of Russia

⁷ Hill, *supra* note 1 at 61.

⁸ Ernest Satow, *International Congresses* (London: H.M. Stationary Office, 1920) at 15.

⁹ General Sessions [Paris Peace Conference] (1919) 6 *Int'l Conciliation* 805, at 816.

¹⁰ Usually, the resolution for this election was moved by the principal delegate of the country which comes first in French alphabetical order. (Satow, *supra* note 8 at 15.) In many European conferences, Germany (Allemagne in French) or Austria (Autriche in French) were responsible for proposing the election of the host state's delegate as the president of the congress or conference.

During the International Telegraphic Conference of 1868 held in Vienna, Austria came first in French alphabetical order. Curiously, the Minister of Foreign Affairs of Austria proposed the election of the Austrian delegate as the President of the conference in his welcoming speech. (*Documents de la Conférence télégraphique internationale de Vienne* (1868) at 92).

were elected as presidents on account of Russia's influence in the convocation of the meetings.¹¹ Nevertheless, "in both instances [...] some homage was paid to the practice of the past by the designation of the Ministers of Foreign Affairs from Holland as honorary presidents".¹²

The role of the president was primarily ceremonial and procedural. The ceremonial tasks required the president to open the assembly with an address broadly outlining the task which lay before the assembly, to refer to the program forming the basis of discussion, and to make a speech winding up the proceedings at the end of the conference.¹³ The procedural functions of the president consisted of directing the sessions of the conference, bringing up for discussion in the correct order agenda items, giving the floor to the delegates in the order in which they asked it, deciding questions of order which arise in the discussions, and, when requested, calling for a vote and announcing to the conference the result of the vote. A president's ceremonial and procedural roles still exist during international conferences and permanent deliberative bodies of international organisations.¹⁴

Another customary practice accepted by states attending international conferences related to the secretariat. National delegates or plenipotentiaries of participating states needed to focus exclusively on intense negotiations and debates. They could not afford to be distracted by routine and procedural questions. Therefore, in addition to the national secretariats maintained by each participating state, conferences required secretarial support for all participating nations acting collectively. The secretariats of international gatherings typically received and disseminated communications from participating states, translated documents, reports, and resolutions, recorded the speeches delivered during the meetings, drafted and circulated the minutes of the sessions, and performed any other tasks that the conference assigned to them. In addition to 'protocolists' in charge of the official documentation,¹⁵ the secretariats of some international gatherings also employed

¹¹ Hill, *supra* note 1 at 65.

¹² *Ibid.*

¹³ Satow, *supra* note 8 at 15.

¹⁴ For instance, in the United Nations General Assembly, the president is elected by a simple majority vote of the General Assembly for a non-renewable one-year term. The President cannot be a national of one of the five permanent members of the Security Council as this would give the permanent five a disproportionately high concentration of power. The presidency normally rotates among the five regional groups, namely the Group of Asian States, the Group of Eastern European States, the Group of Latin American and Caribbean States, the Group of African States, the Western European and other States Group. (Rule 30 of the Rules of Procedure of the General Assembly, UN Doc. A/520/Rev.19 (2021)). In the United Nations Security Council, each member of the Security Council holds the presidency for a period of one calendar month in the English alphabetical order of their names. (Rule 18 of the Provisional Rules of Procedure of the Security Council, UN Doc. S/96/Rev.7 (21 December 1982)).

¹⁵ For the use of this term, see Satow, *supra* note 8 at 16.

finance officers to handle the expenses of the conference, press reporters to deal with the public, and interpreters to interpret speeches and debates.¹⁶ Similarly, since until the early 1900s, French was still the language of diplomacy, it was customary to appoint at least one French official whose primary responsibility was to ensure that the written records of the conference were accurate and grammatically correct.¹⁷

In most cases, the members of the secretariat were nationals of the inviting state. For instance, during the Paris Conference of 1865, technical services were provided entirely by the French, and during the London Conferences in 1867 and 1871, by British diplomats.¹⁸ The members of the secretariat were placed under the control of the inviting state, and the president was the official exercising this control on behalf of the host state. Exceptionally, the Hague Conferences of 1899 and 1907 had a Secretariat composed of diplomats of the participating countries.¹⁹ In either scenario, all members of the secretariat were appointed only after informal consultations with the heads of delegations. The leading official of the secretariats was known as “principal secretary”²⁰ or “Secretary-General”,²¹ a job title that was subsequently retained to designate the chief administrative officer of the League of Nations and the United Nations. In most cases, the secretary-general of international conferences was “a person holding an official position in the government of the inviting state.”²² They were often members of the diplomatic or foreign service staff. The main drawback resulting from the practice of having the secretariat in the state that hosted the conference was the loss of knowledge, expertise, and ‘institutional memory’ when the conference moved to another state.

During the nineteenth century, international gatherings of states surged drastically. Between 1826 and 1907, sovereign nations held over three hundred conferences and congresses.²³ Organizing so many conferences and congresses on an ad hoc basis became too burdensome and impractical. In addition, as participating states also increased in number, uniform and concerted action was becoming impossible. The desire to centralise the activities of states was the driving force behind the creation of the first ‘multinational’ organisations. The minutes of some international conferences that led to the establishment of permanent institutions leave

¹⁶ Hill, *supra* note 1 at 77.

¹⁷ Satow, *supra* note 8 at 16; Hill, *supra* note 1 at 77.

¹⁸ Dobromir Mihajlov, “The Origin and the Early Development of International Civil Service” (2004) 1 *Miskolc Journal of International Law* 79 at 80.

¹⁹ *Ibid.*

²⁰ Satow, *supra* note 8 at 16.

²¹ Hill, *supra* note 1 at 76.

²² *Ibid.*

²³ Simeon E Baldwin, “International Congresses and Conferences of the Last Century as Forces Working Toward the Solidarity of the World” (1907) 1:3 *Am J Int’l L* 565 at 808.

no doubt that the need to achieve consistency through centralisation was the main motivation for creating multinational or international organisations.

Specifically, the plenipotentiary representing Prussia at the Congress of Vienna stated as early as 1815 that the regulation by various states of the navigation on the Rhine River required some centrality (*une centralité quelconque*). In his view, one way of attaining such centrality was to establish a central authority managed by a head (*chef*) chosen by all riparian states or by a panel composed of several members. He added that the autonomy of each riparian state would necessarily have to be subordinated to the collective will of all riparian states.²⁴

On 4 August 1862, the Postmaster General of the United States, dispatched a letter to all countries with which his government maintained diplomatic relations, pointing out that “many embarrassments to foreign correspondence exist” in all postal departments “that can be remedied only by international concert of action.” He attributed constant mistakes made by various postal offices to the great diversity of routes, arrangements, and rates prevailing between the same points. He then affirmed that this causes severe delays and unnecessary expenses to correspondents. These considerations led to the establishment of the Universal Postal Union.²⁵

Similarly, during the International Telegraphic Conference of Vienna in 1868, the Swiss delegate proposed to create permanent institutions after pointing out that European countries’ national administrations unintentionally applied different tax rates to their common correspondence. Some applied rates agreed on at one conference, while others used rates agreed on at another conference, and they did so in good faith. He then pointed out that these inconsistencies were bound to occur between national administrations far away from each other, which do not usually have direct communications between them and which both believe the circulars they received and understood. Even when some governments suspect that they do not apply the correct rates, they would not know from whom they should seek clarifications.²⁶

After exposing the difficulties faced by participating nations, the Swiss delegate proposed the establishment of a permanent body whose task would be to centralise the activities of all participating states. The central role of the permanent body would

²⁴ Congrès de Vienne: Recueil de pièces relatives à cette assemblée, des déclarations qu’elle a publiées, des protocoles de ses délibérations et des principaux mémoires qui lui ont été présentés, Tome III (Paris: Librairie Grecque Latine Allemande, 1816) at 280.

²⁵ John F Sly, “The Genesis of the Universal Postal Union: A Study in the Beginnings of International Organization Document No. 233” (1926) 11 *International Conciliation* 395.

²⁶ Documents de la Conférence télégraphique internationale de Vienne (1868) at 383-385.

consist in receiving the relevant information, processing it, and sending communications as often as required.²⁷

Like Prussia's intervention during the Vienna Congress in 1815, the Swiss proposal of 1868 to establish a permanent agency was also based on a need to centralise and standardise the activities of various nations in a specific non-political field.²⁸ The desire to centralise states' actions and standardise their practices seemed to be the main reason for the progressive institutionalisation of multilateral conferences, leading to the appearance of primitive forms of international organisations. The need to create permanent institutions so that they could play the role of independent or neutral intermediaries was not a consideration. Of course, the centralisation of activities was not the only reason for setting up permanent institutions. Other important reasons militated in favour of permanent structures. For instance, Georges Langrod attributes the appearance of first secretariats to the desire of states to avoid any gaps between two conferences, to ensure continuity in agreements reached during previous conferences, and to prevent prolonged interruptions between meetings from thwarting the benefits of cohesion achieved by contracting nations.²⁹ However, these considerations were incidental or secondary.

1.2 - RIVER COMMISSIONS

One of the first examples of states joining in international endeavours that required personnel and authority to some extent independent of the geographic and political sovereignty of the member states was the management of the Rhine and Danube rivers.³⁰ On 15 October 1804, the French Empire and the Holy Roman Empire signed a treaty known as the Octroi Convention relating to the use of the Rhine River. The purpose of the agreement was to guarantee the unobstructed navigation of vessels on the Rhine. Essentially, the treaty replaced a multitude of tolls in existence on the Rhine with consistent toll rates levied on ships using the river. To ensure compliance of both parties with the treaty, the two powers decided to put in place a bi-national administration headed by a jointly appointed Director General and equal number of inspectors and toll agents in bureaux along the river.³¹ This led to the creation of the Rhine River Commission, the first (and for a long time the only) transnational regime regulating free navigation on a river. Although in 1815, European states signed the Final Act of the Congress of Vienna and agreed in its articles 108-110 to guarantee free

²⁷ *Ibid.*

²⁸ Jean Siotis, *Essai sur le Secrétariat International* (Geneva: Librairie Droz, 1963) at 32.

²⁹ Georges Langrod, *La fonction publique internationale* (Leiden: Sythoff, 1963) at 31.

³⁰ Maxwell Cohen, "The United States and the United Nations Secretariat: A Preliminary Appraisal" (1953) 1:3 *McGill Law J* 169 at 170-171.

³¹ Reinalda, *supra* note 4 at 18.

navigation of international rivers and a standardised toll system for the collection of duties, they took no action to carry out this agreement until 1856.³² Hence, between 1804 and 1856, the Rhine was the only river with a legal framework and a multinational compliance monitoring mechanism. The European Commission of Danube, established by the Treaty of Paris of 1856 (which ended the Crimean War between Russia and the alliance of the Ottoman Empire, Great Britain, the Second French Empire, and the Kingdom of Sardinia), became the second river commission with a permanent administrative structure.

These two nascent international entities had a very basic structure and were established for a specific and limited purpose. They were composed of representatives of the treaty states³³, and the composition of their workforce accurately reflected the balance of power in Europe.³⁴ Most importantly, their staff were not “internationalised”, and “their work [was] international only in the sense that a crowd at the Gare du Nord may be international”.³⁵ Staff members of the Commission took instructions from their governments and owed a degree of allegiance to their countries of citizenship.³⁶ For these reasons, literature on international organisations tends to neglect river commissions and authors who mention them do so only in passing. However, a closer look at the European Commission of Danube reveals that river commissions may have played a more important role in shaping future international secretariats than initially believed. For instance, the Commission’s powers were significantly expanded between 1856 and 1883 to include policing and adjudication powers.³⁷ Some authors called it “supranational authority” or “a sovereign entity”.³⁸ As of 1878, member states of the European Danube Commission recognised the international character of its staff members and delegated the authority to appoint them to the commission itself. The commission also enjoyed the status of neutrality in times of war.³⁹ Another very important aspect of the Danube Commission was the status of its personnel. Since the commission enjoyed the status of extraterritoriality, its staff had limited privileges and immunities, which varied in time and depended on their rank and seniority.

³² Although administrations similar to that of the Rhine River were set up for the rivers Elbe in 1821, Douro in 1835, and Po in 1849.

³³ Paul S Reinsch, “International Unions and Their Administration” (1907) 1:3 *Am J Int’l L* 579 at 619.

³⁴ Siotis, *supra* note 28 at 38.

³⁵ C Delisle Burns, *supra* note 10 at 58.

³⁶ For a detailed description of their structure see Siotis, *supra* note 28 at 32–38.

³⁷ *Ibid* at 35.

³⁸ *Ibid*.

³⁹ *Ibid*.

1.3 – INTERNATIONAL PUBLIC UNIONS

During the second half of the 19th and early 20th century, the international community of states continued making significant progress by creating several bodies for international cooperation on technical issues and matters, namely transport, communication, weights and measures, and intellectual property.⁴⁰ They established a dozen of administrative and technical bureaux and unions, including the International Telegraph Union in 1865, the Universal Postal Union in 1874,⁴¹ the International Bureau of Weights and Measures in 1875, the International Union for the Protection of Industrial Property in 1883, the International Union for the Protection of Literary and Artistic Works in 1886, the International Union of Railway Freight Transportation in 1890, the International Institute of Agriculture in 1905, and the International Office of Public Health in 1907. These newly created institutions had an organisational structure reminiscent of contemporary intergovernmental organisations. Specifically, they had a legislative organ (governing body) and a distinct administrative organ (secretariat). States equipped these organisations with permanent administrative organs because they realised that secretariats, bureaux, and central offices would enable them to attain their goals more efficiently by facilitating cooperation through their technical expertise, through the specialised knowledge they would acquire over time, as well as through ordinary secretariat functions that they would perform. These administrative organs were responsible for ensuring that member states received uninterrupted secretarial services such as the production of documents, recording of decisions, translation services and other housekeeping tasks during their multilateral conferences.⁴² It is worth repeating that the primary consideration in setting up these embryonic secretariats was the desire to *centralise* the collective activities of member states.⁴³ Independence and neutrality had not yet become an important consideration since the mandate of these international entities was principally technical and, therefore, the functions of their secretariats were exclusively administrative and clerical.⁴⁴

Permanent secretariats that preceded the League of Nations fell into two loose categories. The first and earliest generation of permanent secretariats were placed directly under the supervision of a participating state's government. For instance, the

⁴⁰ Jan Klabbers, *An Introduction to International Institutional Law*, 4th ed (New York: Cambridge University Press, 2022) at 16.

⁴¹ Clyde Eagleton, *International Government* (New York: Ronald Press, 1948) at 157–168.

⁴² Leon Gordenker, *The UN Secretary-General and Secretariat*, 2nd ed (New York: Routledge, 2010) at 4.

⁴³ Centralisation of collective activities was attained through a stable organisational structure and a supportive administrative apparatus that increased the efficiency of collective action and enhanced the organisation's ability to affect the understandings, environment, and interests of states.

⁴⁴ See Henry G Schermers & Niels Blokker, *International Institutional Law*, 6th ed (Leiden: Nijhoff, 2018) at para 435.

organisation and management of the International Bureau of Telegraphic Administrations (*Bureau international des Administrations télégraphiques*) established in 1868 during the International Telegraphic Conference held in Vienna, was entrusted to the Telegraphic Administration of the Swiss Confederation.⁴⁵ The issue of independence was not even raised during the telegraphic conference. The French delegate suggested only in passing that the newly created Bureau be based in a neutral city.⁴⁶

Similarly, the Bureau of the Postal Union,⁴⁷ the International Bureaux for the Protection of Industrial Property and for the Protection of Literary and Artistic Works,⁴⁸ and the central bureau of the International Union for Railway Transportation⁴⁹ were also placed under the supervision of the Swiss government. The fact that contracting states often agreed to establish the permanent seat of International Bureaux in Switzerland could give the erroneous impression that Switzerland was chosen as the host nation due to its neutrality. However, it is unlikely that Swiss neutrality played a role in determining the location of permanent secretariats. For instance, the Bureau of the International Union for the Publication of Customs Tariffs was based in Brussels and the Bureau of the Metric Union was

⁴⁵ Article 61 of the Convention on the International Telegraph Union as amended in Vienna in 1868 provided as follows: Une Administration télégraphique, désignée par la Conférence, prendra les mesures propres à faciliter, dans un intérêt commun, l'exécution et l'application de la Convention. A cet effet elle organisera, sous le titre de 'Bureau international des Administrations télégraphiques', un service spécial qui fonctionnera sous sa direction, dont les frais seront supportés par toutes les Administrations des Etats contractants [...]. Article 34 of the Regulations annexed to the Convention stated that « L'Administration télégraphique de la Confédération Suisse est désignée pour organiser le bureau international dans les conditions déterminées par l'article 61 de la Convention.»

⁴⁶ Documents diplomatiques de la Convention de Vienne de 1868, page 389: « Quant au siège de l'Agence générale, M. le Colonel de Chauvin proposerait de le placer dans une ville neutre. »

⁴⁷ Initially, Article 15 of the 1874 Treaty constituting General Postal Union established "the International Office of the General Postal Union, a central office, which shall be conducted under the surveillance of a Postal Administration to be chosen by the Congress". In 1878, the participating states signed the Convention and Final Protocol of Paris in which they agreed to rename the International Office to "International Bureau of the Universal Postal Union, a central office, which is conducted under the superintendence of the Swiss Postal Administration, and the expenses of which are borne by all the Administrations of the Union." (Article 16).

⁴⁸ Paris Convention for the Protection of Industrial Property of 1883, Art. 13: « Un office international sera organisé sous le titre de Bureau international de l'Union pour la protection de la Propriété industrielle. Ce Bureau, dont les frais seront supportés par les Administrations de tous les États contractants, sera placé sous la haute autorité de l'Administration supérieure de la Confédération suisse, et fonctionnera sous sa surveillance. » Berne Convention for the Protection of Literary and Artistic Works of 1886, Art. 16: « Un office international sera organisé sous le titre de Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques. Ce Bureau, dont les frais seront supportés par les Administrations de tous les États contractants, sera placé sous la haute autorité de l'Administration supérieure de la Confédération suisse, et fonctionnera sous sa surveillance. »

⁴⁹ Convention internationale sur le transport de marchandises par chemins de fer of 1890, Art. 57 of and Règlement relative à l'institution d'un Office central of 1890, Art. 1. Reinsch, *supra* note 8 at 591.

established in Paris.⁵⁰ Therefore, it is more likely that Switzerland was often chosen because of its experience and expertise acquired over time in administering and managing international secretariats. In any event, as pointed out above, the independence or neutrality of international secretariats had not yet become a significant concern or an important consideration during this period.

As a general rule, the authority to appoint staff members of this first category (and more primitive form) of international secretariats was delegated to the host nation under whose control and supervision the *bureaux* were placed. For instance, the Ministry of Foreign Affairs of Belgium was given the power to appoint staff of the International Union for the Publication of Customs Tariffs and the Federal Council of Switzerland⁵¹ was empowered to organise the central bureau of the International Union for Railway Transportation.⁵²

Outside the European continent, the approach was similar. In March 1890, eighteen American States participated in the first International American Conference convened to deal with trade and arbitration. They approved the establishment of the International Union of American Republics headquartered in Washington, DC. An administrative body represented the Union called the Bureau of the American Republics,⁵³ which was placed under the supervision of the Secretary of State of the United States.⁵⁴ The Conference requested the Secretary of State to organise the Bureau but did not specify how the newly created entity would be staffed.⁵⁵

The second generation or category of international secretariats, which appeared in 1875, was slightly different in that they were no longer under the control and authority of a single participating nation. The International Bureau of Weights and Measures, established in 1875, may have been the first secretariat to be placed under the authority of an international committee. This international committee was the Bureau's governing body and represented member states between general assemblies.⁵⁶

⁵⁰ Schermers & Blokker, *supra* note 44 at paras 434, footnote 157.

⁵¹ Convention concerning the formation of an International Union for the Publication of Customs Tariffs of 1890, Art. 5.

⁵² Reinsch, *supra* note 33 at 591.

⁵³ Initially, the organ was called "Commercial Bureau of American Republics". However, it soon came to be known as "International Bureau of American States". It was designated by this title until the fourth International Conference of American States held in 1910 changed its name to Pan American Union.

⁵⁴ Samuel Guy Inman, "Pan-American Conferences and Their Results" (1923) 4:3 *The Southwestern Political and Social Science Quarterly* 238 at 244.

⁵⁵ International American Conference, Reports of Committees & Discussions Thereon. (Revised under the Direction of the Executive Committee by Order of the Conference, Adopted March 7, 1890). (Washington, DC.: Government Printing Office., 7) at 404.

⁵⁶ Siotis, *supra* note 28 at 39.

The minutes of the 1875 Metre Conference held in Paris reveal that independence and neutrality gradually became important considerations when setting up international secretariats. More specifically, the German delegate declared that Germany would be prepared to participate in a joint endeavour relating to weights and measures only if their technical aspects were entrusted to an international body appointed by all participating states. He specified that Germany would accept that the headquarters of the new body be based in Paris, provided the requirements of neutrality and independence were met.⁵⁷ Consequently, the 1875 Metre Convention stated that the International Bureau would operate exclusively under the supervision and oversight of an international committee, which would be under the authority of the general conference on weights and measures composed of delegates of all contracting governments.⁵⁸ Another important element is that the authority to recruit and appoint staff (except the deputies) was no longer delegated to the host nation but was instead given to the Director of the Bureau.⁵⁹ There was, however, one anomaly in the setup of the International Bureau of Weights and Measures; initially, the director of the Bureau was also a member of the governing body. This anomaly was subsequently corrected when directors were no longer allowed to be members of the international committee.⁶⁰

The International Bureau of Weights and Measures was a marked departure from the existing practice in two respects. First, the permanent secretariat was under the authority of an international governing body as opposed to the government of a specific participating state. Second, the appointment of staff was entrusted to the Director of the organisation as opposed to one or several participating states. This approach gave rise to a new practice that placed the permanent secretariat under an international governing body. As of the 1900s, the configuration of the international

⁵⁷ *Documents diplomatiques de la conférence de mètre*, (Paris : Imprimerie Nationale, 1875), p. 46: « M. Foersteb (Allemagne) déclare que ses instructions portent comme condition de la participation ultérieure de l'Allemagne à toute entreprise commune au sujet des poids et mesures, la fondation d'un Bureau scientifique international et neutre, chargé de la vérification, de la conservation et de l'usage ultérieur des prototypes métriques, et placé sous la direction d'une commission internationale nommée par les Gouvernements qui participeront à la fondation de ce bureau; le siège du Bureau international des poids et mesures sera à Paris, si le Gouvernement français l'accepte dans des conditions de parfaite neutralité et indépendance. »

⁵⁸ The Metre Convention of 1875, Art. 3: « Le Bureau international fonctionnera sous la direction et la surveillance exclusives d'un Comité international des poids et mesures, placé lui-même sous l'autorité d'une Conférence générale des poids et mesures, formée de délégués de tous les Gouvernements contractants. »

⁵⁹ Regulations annexed to the Metre Convention of 1875, Art. 17: « Un règlement, établi par le Comité, fixera l'effectif maximum pour chaque catégorie du personnel du Bureau. Le directeur et ses adjoints seront nommés au scrutin secret par le Comité international. Leur nomination sera notifiée aux Gouvernements des Hautes Parties contractantes. Le directeur nommera les autres membres du personnel, dans les limites établies par le règlement mentionné au premier alinéa ci-dessus. »

⁶⁰ Reinalda, *supra* note 4 at 28.

secretariat of Weights and Measures became the norm. Specifically, the permanent bureau of the International Sugar Union,⁶¹ the Central Office of the International Association of Seismology,⁶² the permanent committee of the International Institute of Agriculture,⁶³ and the International Office of Public Health⁶⁴ were all placed under the authority and supervision of an international committee consisting of representatives of all contracting states.

Even the International Union of American Republics began changing its institutional structure to give the Bureau of the American Republics more independence. In 1896, the Bureau was placed under the supervision of a board called the Executive Committee, consisting of five representatives, including the US Secretary of State. In 1902, the independence of the Bureau was further strengthened when its supervision was transferred from the Executive Committee to a Governing Board composed of the chiefs of the Latin American diplomatic missions in Washington, DC and chaired by the US secretary of state.⁶⁵

Hence, *centralisation* was no longer the only consideration for creating permanent international secretariats; the dimension of *independence* of international secretariats was now gaining ground, albeit with many practical difficulties. For instance, although staff members of the International Institute of Agriculture established in 1905 were not permitted to take instructions from their governments,⁶⁶ they were made up not of agricultural technicians but of the diplomatic representatives of the member nations accredited to the Italian government, which was effectively controlling the policies, administration, and personnel of the

⁶¹ N Politis, "L'organisation de l'Union internationale des sucres" (1904) 2 *Revue de science et de législation financières* 1 at 3. During the 1902 Conference concerning the sugar regime held in Brussels, signatory states agreed to create a permanent commission composed of delegates of the different contracting States and a permanent bureau. The Convention did not specify the composition of the permanent bureau. However, nations agreed that the bureau would consist of technical and administrative staff appointed by the permanent commission.

⁶² Convention relating to the Establishment of the International Association of Seismology of 1903, Art. 5 and 12.

⁶³ Convention establishing International Institute of Agriculture of 1905, Art. 2: "The institute shall be composed of a general assembly and a permanent committee, the composition and duties of which are defined in the subsequent articles." Art. 6: "The executive power of the institute is entrusted to the permanent committee, which, under the direction and control of the general assembly, shall carry out the latter's decisions and prepare propositions to submit to it." Art. 7: "The permanent committee shall be composed of members designated by the respective governments. Each adhering nation shall be represented in the permanent committee by one member."

⁶⁴ Arrangement relating to International Office of Public Health signed at Rome, Art. 1: "The High Contracting Parties engage to found and maintain an International Office of Public Hygiene with headquarters at Paris." Art. 2: "The Office will perform its functions under the authority and supervision of a committee composed of delegates of the contracting Governments."

⁶⁵ Reinalda, *supra* note 4 at 28.

⁶⁶ Schermers & Blokker, *supra* note 44 at para 435.

Institute.⁶⁷ Furthermore, out of the 53 members of the personnel, 42 were Italian nationals. As a result of the disproportionate political influence of the Italian government, the Institute had effectively lost its international character.⁶⁸

The table below traces the evolution of primitive forms of intergovernmental organizations and their secretariats that paved the way for the League of Nations. It shows how the independence of the international secretariats and civil servants was gradually strengthened.

TABLE 1: NOTABLE UNIONS AND BUREAUX CREATED BEFORE THE LEAGUE OF NATIONS				
#	Name of Entity	Year	Legal Instrument	Article(s) or text dealing with Secretariat or Staff
1.	International Telegraph Union	1868	1868 International Telegraphic Conference in Vienna	Art. 61: <i>Une Administration télégraphique, désignée par la Conférence, prendra les mesures propres à faciliter, dans un intérêt commun, l'exécution et l'application de la Convention. A cet effet elle organisera, sous le titre de «Bureau international des Administrations télégraphiques», un service spécial qui fonctionnera sous sa direction, dont les frais seront supportés par toutes les Administrations des Etats contractants [...]</i>
			Règlement de service international (destiné à compléter les dispositions de la Convention Télégraphique)	Art. 34: <i>L'Administration télégraphique de la Confédération Suisse est désignée pour organiser le bureau international dans les conditions déterminées par l'article 61 de la Convention.</i>
			<i>Documents diplomatiques, page 389:</i>	<i>Quant au siège de l'Agence générale, M. le Colonel de Chauvin proposerait de le placer dans une ville neutre.</i>
2.	General Postal Union	1874	Treaty constituting General Postal Union	Art. 15: <i>There shall be organized, under the name of the International Office of the General Postal Union, a central office, which shall be conducted under the surveillance of a Postal Administration to be chosen by the Congress, and the expenses of which shall be borne by all the Administrations of the contracting States.</i>

⁶⁷ See Asher Hobson, *The International Institute of Agriculture: An Historical and Critical Analysis of Its Organization, Activities and Policies of Administration* (Berkeley: University of California Press, 1931).

⁶⁸ *Ibid.*

		1878	Convention and final protocol signed at Paris June 1, 1878	<i>Art. 16: There is maintained, under the name of the International Bureau of the Universal Postal Union, a central office, which is conducted under the superintendence of the Swiss Postal Administration, and the expenses of which are borne by all the Administrations of the Union.</i>
3.	International Bureau of Weights and Measures	1875	The Metre Convention	<i>Article 3 : Le Bureau international fonctionnera sous la direction et la surveillance exclusives d'un Comité international des poids et mesures, placé lui-même sous l'autorité d'une Conférence générale des poids et mesures, formée de délégués de tous les Gouvernements contractants.</i>
			Regulations	<i>Article 17 : Un règlement, établi par le Comité, fixera l'effectif maximum pour chaque catégorie du personnel du Bureau. Le directeur et ses adjoints seront nommés au scrutin secret par le Comité international. Leur nomination sera notifiée aux Gouvernements des Hautes Parties contractantes. Le directeur nommera les autres membres du personnel, dans les limites établies par le règlement mentionné au premier alinéa ci-dessus.</i>
			<i>Documents diplomatiques de la conférence de mètre, (Paris : Imprimerie Nationale, 1875), p. 46 :</i>	<i>M. Foersteb (Allemagne) déclare que ses instructions portent comme condition de la participation ultérieure de l'Allemagne à toute entreprise commune au sujet des poids et mesures, la fondation d'un Bureau scientifique international et neutre, chargé de la vérification, de la conservation et de l'usage ultérieur des prototypes métriques, et placé sous la direction d'une commission internationale nommée par les Gouvernements qui participeront à la fondation de ce bureau; le siège du Bureau international des poids et mesures sera à Paris, si le Gouvernement français l'accepte dans des conditions de parfaite neutralité et indépendance.</i>
4.	International Union for the Protection of Industrial Property	1883	Paris Convention for the Protection of Industrial Property	<i>Article 13: Un office international sera organisé sous le titre de Bureau international de l'Union pour la protection de la Propriété industrielle. Ce Bureau, dont les frais seront supportés par les Administrations de tous les États</i>

				<i>contractants, sera placé sous la haute autorité de l'Administration supérieure de la Confédération suisse, et fonctionnera sous sa surveillance.</i>
5.	International Union for the Protection of Literary and Artistic Works	1886	Berne Convention for the Protection of Literary and Artistic Works	<i>Article 16: Un office international sera organisé sous le titre de Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques. Ce Bureau, dont les frais seront supportés par les Administrations de tous les États contractants, sera placé sous la haute autorité de l'Administration supérieure de la Confédération suisse, et fonctionnera sous sa surveillance.</i>
6.	International Union for the Publication of Custom Tariffs	1890	Convention concerning the formation of an International Union for the Publication of Custom Tariffs.	<i>The persons composing the International Bureau shall be appointed through the agency of the Ministry of Foreign Affairs of Belgium, which shall advance the necessary funds and see that the institution is properly managed.</i>
7.	International Bureau of the American Republics	1890	International American Conference	<i>Paragraphs 15 of a resolution adopted on 29 March 1890 by the first International Conference of American Republics: 15: The Secretary of State of the United States is requested to organize and establish the Commercial Bureau as soon as practicable, after a majority of the countries here represented have officially signified their consent to join the International Union.</i>
8.	International Sugar Union	1902	Convention concerning the sugar régime	<i>The high contracting parties agree to create a permanent commission, having charge of the surveillance of the execution of the provisions of the present convention. This commission shall be composed of delegates of the different contracting States, and to it will be attached a permanent bureau. The commission elects its president; it will sit at Brussels.</i>
9.	International Association of Seismology	1903	Convention relating to the Establishment of the International Association of Seismology	<i>Art. 5: The organs of the Association shall be : a) the General Assembly. b) the Permanent Commission. c) the Central Office.</i>

10.	International Institute of Agriculture	1905	1905 Convention establishing International Institute of Agriculture	<p><i>Article 2: The institute shall be composed of a general assembly and a permanent committee, the composition and duties of which are defined in the ensuing articles.</i></p> <p><i>Article 6: The executive power of the institute is intrusted to the permanent committee, which, under the direction and control of the general assembly, shall carry out the decisions of the latter and prepare propositions to submit to it.</i></p> <p><i>Article 7: The permanent committee shall be composed of members designated by the respective governments. Each adhering nation shall be represented in the permanent committee by one member.</i></p>
11.	International Office of Public Health	1907	Arrangement relating to International Office of Public Health signed at Rome	<p><i>Art. 1: The High Contracting Parties engage to found and maintain an International Office of Public Hygiene with headquarters at Paris.</i></p> <p><i>Art. 2: The Office will perform its functions under the authority and supervision of a Committee composed of delegates of the contracting Governments.</i></p>
			Organic By-Laws of the International Office of Public Hygiene (Annex to Arrangement)	<p><i>Article 2: [The Office] is independent of the authorities of the country in which it is placed.</i></p> <p><i>Article 6: The Office is placed under the authority and supervision of an International Committee consisting of technical representatives designated by the participating States in the proportion of one representative for each State.</i></p> <p><i>Article 8: The business of the office is conducted by a salaried staff including: a Director; - a Secretary-General, such force as may be necessary to perform the work of the Office. [...] The Director and Secretary-General shall be appointed by the Committee. The Director shall attend the meetings of the Committee in an advisory capacity. The appointment and dismissal of employees of all classes appertain to the Director and shall be reported by him to the Committee.</i></p>
12.	International Bureau of the Permanent Court of Arbitration	1907	The Hague Convention on Pacific Settlement of	<p><i>Article 49: The Permanent Administrative Council, composed of the diplomatic representatives of the Contracting Powers accredited to The Hague and of the</i></p>

		International Disputes	<i>Netherland Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.</i>
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SECTION 2 – PERIOD DURING THE LEAGUE OF NATIONS

Permanent secretariats underwent an important transformation with the establishment of the League of Nations. International administration emerged fully grown after the creation of the League of Nations with its vast machinery of international cooperation.⁶⁹ The League’s Secretariat was the first attempt to establish a truly international staff.

It is important to recall that the Secretary-General of the League was appointed by the Treaty of Versailles. The Treaty not only established the Secretary-General’s Office but expressly mentioned by name the individual who would be the holder of the post. The first occupant of the office became Sir Eric Drummond – an experienced civil servant of the British government. Drummond was recognised in the British Foreign Office for his diligence, precision, and effective communication.⁷⁰ Having served under Britain’s top Liberal and Conservative leaders, Drummond had acquired valuable experience which had prepared him for the role of Secretary-General.⁷¹ British Prime Minister Asquith, under whom Drummond worked as the Private Secretary, described him as “a most intelligent, observant, delightful man”.⁷²

When Drummond accepted the appointment as the League’s Secretary-General, he was asked to organise the Secretariat in the first days of an institution still in its infancy. The Treaty of Versailles had not yet been ratified when the Secretary-General was asked to recruit personnel. Founding members hoped the treaty would be ratified within a few weeks of being signed. However, to their great disappointment, the Treaty of Versailles was signed on 28 June 1919 but was not ratified until 10 January 1920. During this period, the newly appointed Secretary-General had to begin the selection of the nucleus of his staff. The recruitment of personnel was a matter of pressing necessity. In an interview given to Manchester Guardian in May 1919, Eric Drummond explained the importance of recruiting staff before the Treaty of Versailles came into force. Specifically, the League had no legal existence or recognised officials until the Treaty of Paris was signed and ratified. Curiously, the terms of the treaty required that the League complete certain duties and tasks as soon as it came into

⁶⁹ Egon F Ranshofen-Wertheimer, “The International Civil Service of the Future” (1946) 24 *Int Concl* 60 at 62.

⁷⁰ David Macfadyen et al., *Eric Drummond and his Legacies: The League of Nations and the Beginnings of Global Governance* (Cham: Palgrave Macmillan, 2019) at 8.

⁷¹ *Ibid.*

⁷² *Ibid.*

effect. For instance, fifteen days after the coming into force of the treaty, a commission of five members, three of whom are to be appointed by the League, must be set to trace the exact frontier line of the Sarre Valley.

*It is, therefore, clearly necessary to make general provisions for the immediate and effective action of the League. To this purpose, I am selecting the personnel of the secretariat. Any scheme of organisation must be approved by the commission appointed by the Plenary Conference, and all appointments ratified by the Council. We are working out plans for a truly international secretariat. Its members will have an international character of mind. They must divest themselves of national preconceptions. Its members are not to be appointed by or to be regarded as the representatives of their respective nations.*⁷³

To assist him in developing a policy for personnel administration, the Peace Conference – acting in plenary session – appointed a committee, composed of nine member states, to deal with the first stages of organisation. Although the committee gave authority to the Secretary-General to make the necessary arrangements to appoint staff and fixed the amount of the Secretary-General's remuneration, it continued working on the nature of the secretariat that the League should have.

2.1 – TWO CONFLICTING THEORIES AND PROPOSALS

From the beginning, there was a difference of opinion at the Peace Conference on the nature and composition of the Secretariat.⁷⁴ Two competing and mutually exclusive approaches were proposed. The first approach advocated for a Secretariat composed of national delegations of League member states. The proponents of this approach argued that each delegation would be paid for by the government of the country from which it came and be responsible to that government. This proposal was a continuation of the practice adopted at international conferences preceding the creation of the League. According to this theory, the role of the Secretary-General of the League would be limited to coordinating the services of the national delegations and to centralising administrative functions. Under this construct, the League's secretariat would be "nothing more and nothing else than a permanent conference of representatives of the powers members of the League".⁷⁵

⁷³ *Manchester Guardian*, 31 May 1919, p. 10, col. 3.

⁷⁴ Eric Drummond, "The Secretariat of the League of Nations" (1931) 9:2 *Public Administration* 228 at 228–229.

⁷⁵ *Ibid* at 228.

According to the second and more avant-garde theory, the secretariat of the League had to be independent of its member states. The proponents of this second approach argued in favour of an international civil service in which men and women of various nationalities would unite in preparing and presenting to the members of the League an impartial, objective, and common basis of discussion. According to this theory, the staff of the Secretariat would be responsible to the Secretary-General alone.⁷⁶

Eric Drummond vigorously advocated for the second approach. He maintained that the old system had not given satisfactory results altogether and urged the Committee set up by the Plenary Peace Conference to consider the matter of organisation that the second blueprint should be retained. Drummond recalled that, in the past, international conferences had often suffered from the lack of organised international preparatory work. Therefore, according to him, it would be of great value if an expert and impartial organisation existed which, before discussion by the national representatives took place, could draw up objective statements of the problems to be discussed and indicate those points on which it seemed that the governments were generally in agreement. He was adamant that the execution of decisions should be entrusted to people who, being the servants of all member states of the League, could be relied upon to carry them out with complete freedom from national bias.⁷⁷ The concept of an international secretariat independent from its multinational executive or legislative organs had grown in part out of the experience of inter-Allied commissions, committees and councils established during the war as coordination machinery for logistical support.⁷⁸ The structure devised for this purpose was a Council or Commission of Ministers of different nations with a permanent secretariat subordinated to this international body.⁷⁹ The fact that many individuals, including Monnet, transitioned from the network of 20 inter-allied committees to the League's Secretariat confirms that these committees inspired the League's institutional structure.⁸⁰

It is believed that the idea of an international and independent secretariat was first proposed to Eric Drummond by his close friend Philip Kerr, a member of an influential group of British public servants and politicians known as the 'Round Table' or 'Round Table Movement'.⁸¹ An article published by Kerr in March 1919 in the

⁷⁶ Charles Howard Ellis, *The Origin, Structure and Working of the League of Nations* (London: George Allen & Unwin, 1928) at 172-173.

⁷⁷ *Ibid* at 173.

⁷⁸ Burns, *supra* note 10 at 61.

⁷⁹ *Ibid*.

⁸⁰ David Macfadyen et al., *supra* note 70 at 72.

⁸¹ *Ibid* at 74.

Round Table Journal gives credence to this theory. Kerr argued in this article that the League should have an international secretariat composed not of national ambassadors but civil servants under the authority of a non-national Chancellor.⁸² Drummond's vision of the Secretariat was very similar, not to say identical, to that of Kerr.

In May 1920, the committee appointed by the Peace Conference to assist the League's Secretary-General in determining the nature of the Secretariat issued its report on the League's Secretariat. The Committee was presided by a British diplomat and former Foreign Secretary, Arthur James Balfour,⁸³ who was Drummond's boss in the British public service and often backed Drummond's proposals and plans. Not surprisingly, the Committee recommended the blueprint proposed by Eric Drummond to establish an independent secretariat composed of international public servants as opposed to national representatives. The relevant excerpt of Balfour's report reads as follows:

I shall propose that no member of the Secretariat, during his or her term of office, shall accept any honour or decoration except for services rendered prior to the appointment. The reasons for this proposal are fairly clear; they commend themselves, I know, to my colleagues, and I hope they will commend themselves to the public. The members of the staff carry out, as I have explained, not national but international duties. Nothing should be done to weaken the sense of their international allegiance; the acceptance of special marks of distinction or favour, either from their own or from any other country, militates in our view against the general spirit of the Covenant.⁸⁴

The League Council adopted the Balfour Report, which cemented the proposal that staff members of the Secretariat were not civil servants of the country of which they were citizens but became during their appointment the servants only of the League of Nations.⁸⁵ The Report also specified that the staff members should carry out not national but international duties.⁸⁶

The following year, the Assembly of the League adopted the Noblemaire Report, which implicitly reiterated the support of the nations for the Secretary-General's

⁸² Philip Kerr, "The Practical Organisation of Peace" (1919) 9:34 *The Round Table Journal* 217.

⁸³ Arthur James Balfour was a prominent British statesman who was the British Prime Minister from 1902 to 1905 and Foreign Secretary from 1916 to 1919.

⁸⁴ A J Balfour, "Procès-verbal of the Fifth Session of the Council of the League of Nations, Report relating to Staff of the Secretariat" (1920) 1:4 *League of Nations O J* 115 at 137.

⁸⁵ S M Schwebel, "The International Character of the Secretariat of the United Nations" (1953) 30 *Brit YB Int'l L* 71 at 72.

⁸⁶ Balfour, *supra* note 84 at 138-139.

concept of the international civil service.⁸⁷ The report recommended that staff members be recruited and promoted on the basis of competitive selection as opposed to national or political patronage. The report acknowledged that as a result of the exceptional circumstances which governed the creation of the League of Nations, the Secretary-General was compelled to exercise an absolute discretion in appointing a few individuals. However, it also recommended that this discretionary and autocratic system of recruitment be replaced by that of “competitive selection”, to be departed from only in very special cases where the necessity for such departure can be established.⁸⁸

The report also cautioned against recruiting personnel mainly from national public service. It explained that if the staff were drawn very largely from national administrations, it might suffer from a tendency on the part of the officials in question to be thinking always of the prospects of advancement in their own countries, and so being tempted to support in certain cases a specifically national, rather than the strictly international, point of view which characterises the League.⁸⁹

Another important recommendation made in the Noblemaire report related to the establishment of a salary scale based on wages granted by various States to their highest paid officials. This recommendation became known as the Noblemaire principle, which still governs the way the United Nations determines the appropriate level of emoluments of its internationally recruited staff members.⁹⁰ The report stated the emoluments of staff should be calculated on the basis of salaries granted to the highest paid officials in the various States Members of the League, “at the risk of seeing the Secretariat and the ILO deprived of the services of the aforesaid officials, which would have been out of the question.”⁹¹

Beyond these rather general observations, the founding fathers of the League left untended questions about the structure, form, and nature of the new international

⁸⁷ Schwebel, *supra* note 85 at 72.

⁸⁸ Report submitted by the Fourth Committee to the Assembly on the conclusions and proposals of the Commission of Experts appointed in accordance with the resolutions adopted by the Assembly of the League of Nations at its meeting of December 17th, 1920, (26 September 1921) at 6-7.

⁸⁹ *Ibid* at 8.

⁹⁰ See UNGAOR, 35th sess., Summary Record of the 39th meeting of the Fifth Committee held on 28 November 1980, UN Doc. A/C.5/35/SR.39 (8 December 1980). In its Judgement No. 825 – *In re Beattie and Sheeran* – the ILOAT summarised the Noblemaire principle as follows: “The Noblemaire principle, which dates back to the days of the League of Nations and which the United Nations took over, embodies two rules. One is that, to keep the international civil service as one, its employees shall get equal pay for work of equal value, whatever their nationality or the salaries earned in their own country. The other rule is that in recruiting staff from their full membership international organisations shall offer pay that will draw and keep citizens of countries where salaries are highest.”

⁹¹ Report submitted by the Fourth Committee to the Assembly on the conclusions and proposals of the Commission of Experts appointed in accordance with the resolutions adopted by the Assembly of the League of Nations at its meeting of December 17th, 1920, *supra* note 88 at 5.

secretariat because they had had enough difficulty getting the Covenant negotiated without raising relatively unimportant matters.⁹² Detailed rules regulating the rights and obligations of the League's personnel were promulgated through the Staff Regulations of the League in 1922. It is noteworthy that Article 1 of the Regulations reiterated that the "officials of the Secretariat of the League of Nations are international officials, responsible in the execution of their duties to the Secretary-General alone" and that they were not permitted to "seek or receive instructions from any other authority."

If the League's member states had opted for a Secretariat composed of national delegations, there can be no doubt that international organizations would have not only looked differently but also been less effective in fulfilling their mandate. The decision to follow Drummond's recommendation and establish an international civil service played a crucial role in the formation and development of independent secretariats.

2.2 – THE LEAGUE'S SECRETARIAT UNDER SIR ERIC DRUMMOND'S LEADERSHIP

It is somewhat remarkable that no analogy or precedent existed to guide the first Secretary-General of the League in setting up an entirely independent Secretariat.⁹³ As Reinalda points out, individual leadership matters in secretariat development from the outset, when the first executive head introduces national bureaucratic traditions like Eric Drummond introduced national and imperial traditions in the League of Nations Secretariat.⁹⁴ Hence, having introduced a model similar to the Westminster system of public administration, Drummond became the architect of the first international and independent secretariat.⁹⁵ The first Secretary-General of the UN – Trygve Lie – rightly observed in his memoirs that Eric Drummond's decision to create the first truly international Secretariat had such a profound significance that it was arguably "one of the most important and promising political developments of the twentieth century", securing him a place in history.⁹⁶

Public servants were, for the first time, completely independent from the political apparatus of their national governments. Staff members of the League had to ensure that their actions and decisions were not affected by political considerations. They received instructions from the League's Secretary-General and not from their national governments. In return, they had a career path that did not depend on

⁹² Norman A Graham & Robert S Jordan, *The International Civil Service: Changing Role and Concepts* (New York: Pergamon Press, 1980) at 6.

⁹³ Ranshofen-Wertheimer, *supra* note 69 at 70.

⁹⁴ Reinalda, *supra* note 4 at 4.

⁹⁵ Gordenker, *supra* note 42 at 5.

⁹⁶ Trygve Lie, *In the Cause of Peace: Seven Years at the United Nations* (New York: Macmillan, 1954) at 41.

political patronage but was based exclusively on merit. The delineation of the League's permanent secretariat from its deliberative bodies became the key feature of the institutional structure of contemporary international organisations.

To display the independence and neutrality of the League's Secretariat, Eric Drummond abstained from offering unsolicited advice to member states, advising them only if consulted.⁹⁷ He "had brought to his job all the traditions of faceless anonymity of the British Civil Service", making few personal initiatives.⁹⁸ He continuously emphasised to the staff of the Secretariat the strict necessity for impartiality.⁹⁹ Consequently, he always tried – and often succeeded – to shelter his staff from political pressures of member states. However, Drummond's approach did not please everyone. Some critics questioned the value of showing absolute neutrality when Eric Drummond failed to condemn Japan during the 1931 Manchurian crisis.¹⁰⁰ Many view this unassertiveness as a sign of weakness.

While this unobtrusiveness may appear as submissiveness, one must consider the relevant context. Initially, the post of the Secretary-General was called 'Chancellor'. Robert Cecil, the British representative at the Peace Conference, writes in his memoirs that the Chancellor was supposed to be much more than a permanent official. "He was to be the international representative of the League – its mouthpiece – its suggester, if not the director, of its policy. He would be at least as influential on the political side as Albert Thomas, the Director of ILO, was in industrial matters."¹⁰¹ The League's founders had initially offered the position to the "charismatic and Anglophile Greek Prime Minister Eleftherios Venizelos."¹⁰² However, Venizelos declined the offer. When no other suitable "statesman of European reputation" agreed to fill the newly created position, the title of the post was renamed and effectively downgraded to 'Secretary-General'.¹⁰³ This was the first signal from member states that the head of the Secretariat was primarily an administrative role.¹⁰⁴

This signal was further reinforced after the establishment of the League. In 1921, the Noblemaire Report unequivocally cautioned the secretariat of the League against showing any initiative, including making suggestions or interpreting decisions made by various organs. The influential committee of delegates expressed the view that "the

⁹⁷ Evan Luard, *A History of the United Nations* (London: Palgrave Macmillan UK, 1982) at 12.

⁹⁸ *Ibid.*

⁹⁹ Macfadyen et al., *supra* note 70 at 15–16.

¹⁰⁰ *Ibid* at 15.

¹⁰¹ Robert Cecil of Chelwood, *All the Way* (London: Hodder and Stoughton, 1949) at 150.

¹⁰² James Barros, "The Importance of Secretaries-General of the United Nations" in Robert S Jordan, ed, *Dag Hammarskjöld Revisited: United Nations Secretary-General as a Force in World Politics* (Durham: Carolina Academic Press, 1983) at 27–28.

¹⁰³ Cecil of Chelwood, *supra* note 101 at 150–151.

¹⁰⁴ Ellis, *supra* note 76 at 163 (footnote 2).

Secretariat should not extend the sphere of its activities [and] should confine itself to collating the relevant documents and the preparation of decisions without hazarding suggestions".¹⁰⁵ There was an expectation that once deliberative bodies made decisions, the Secretariat would confine itself to executing them in the letter and the spirit and should refrain even from interpreting them.¹⁰⁶

Thus, to understand Drummond's reluctance to condemn the aggressive actions of some nations, one must be mindful of the political context, which severely restricted his freedom of action and determined the scope of his responsibilities. As one author aptly explains, the homogeneity of the system of international relations that gave rise to the League of Nations, combined with the diplomatic and administrative tradition of the Concert of Europe, shaped the administrative nature of its secretariat.¹⁰⁷ Therefore, if Eric Drummond and his staff had taken sides or condemned the actions of a member state, their intervention would have been regarded as a gross excess of power. Nevertheless, one must acknowledge that the administrative nature of the secretariat had some hidden benefits. It is probable that due to the Secretariat's primarily administrative nature, member states initially saw no interest in exerting political pressure on its staff. This, in turn, may have allowed the Secretary-General to put in place a functionally independent structure and a robust secretariat without political interference from member states. The Swiss academic, former League official, and co-founder of the Graduate Institute of International Studies, William Rappard, attributes the lack of interest of member states in the League, especially during the first three or four years of its existence, to a widely held view that the new organisation was an insignificant instrument of international government. Consequently, member states were inclined to send to Geneva men of minor importance who changed from time to time and for whom their intermittent League duties were never their main tasks. Rappard notes, however, that while the government of the League was weak, its civil service was correspondingly strong. Its members were very discriminatingly chosen, from an extremely wide field, for their ability and devotion to the League's ideals. Rappard recollects that in all minor matters, and even in several important ones, the functions of the members of the Council and the Assembly consisted mainly in delivering speeches, reading reports, and voting resolutions which had been carefully drafted for them by the Secretariat.¹⁰⁸

¹⁰⁵ Report submitted by the Fourth Committee to the Assembly on the conclusions and proposals of the Commission of Experts appointed in accordance with the resolutions adopted by the Assembly of the League of Nations at its meeting of December 17th, 1920, *supra* note 88 at 3.

¹⁰⁶ *Ibid.*

¹⁰⁷ Siotis, *supra* note 28 at 50–51.

¹⁰⁸ William E Rappard, "The Evolution of the League of Nations" (1927) 21:4 *Am Polit Sci Rev* 792 at 811.

Despite Eric Drummond's remarkable efforts, the independence of the League's secretariat still had critical shortcomings. The Covenant of the League had only two provisions dedicated to its Secretariat – Articles 6 and 7 - neither of which guaranteed its independence from the League's member states.

Article 6

(1) The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

(2) The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

(3) The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

(4) The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

(5) The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.

Article 7

(1) The Seat of the League is established at Geneva.

(2) The Council may at any time decide that the Seat of the League shall be established elsewhere.

(3) All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

(4) Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

(5) The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

These two provisions were not just silent on the question of independence; they explicitly undermined it. Specifically, Article 6(3) of the Covenant required the appointment of staff members of the League's Secretariat to be subjected to the Council's approval. Essentially, any member of the Council could object to the appointment of a specific staff member, which could have potentially exposed some candidates for a vacant post to undesired political pressures of certain member states.

According to one author, “[t]he League had been vulnerable to national meddling – or even sabotage – because of its requirement that secretariat staff be approved by governments.”¹⁰⁹ Although there is no evidence that Council members abused their power by blocking the appointment of undesired candidates, the League’s Assembly attempted to curtail Drummond’s authority to appoint staff members without their oversight and endorsement. At the 1920 Assembly, South African representative, Sir Reginald Blankenberg, proposed to set up a joint committee consisting of the Secretary-General and two Council members to approve all new appointments.¹¹⁰ This proposal failed to gain traction. Nonetheless, there is ample evidence that in the late 1920s, governments of member states took a more active interest in the question of appointments and, in some cases, pressed the Secretary-General to appoint government officials, especially those belonging to their diplomatic services, whom they regarded as reliable. A League of Nations historian writes that “this pressure was not easy to withstand, the more so since Italy and Germany, who were particularly inclined to apply it, could claim with truth that they had fewer nationals in the Secretariat than France or Britain and ought therefore to be called onto fill such vacancies as might arise.”¹¹¹ When the old team lost some of its brightest minds, including Monnet, Rappard, Madariaga, Nitobe, and Attolico, the vacant posts were gradually filled by officials seconded from the diplomatic services of Italy, Germany, Japan, and Spain.¹¹² A similar change occurred in the middle ranks as well.

A significant milestone in strengthening the independence of international secretariats and international civil servants was reached under Eric Drummond’s leadership in 1926 when the provisional *modus vivendi* between Switzerland and the League of Nations was replaced with a formal agreement on the League’s and the ILO’s diplomatic presence in Geneva.¹¹³ The agreement recognised among other things the League’s legal personality, jurisdictional immunity, and fiscal and customs privileges in Switzerland. It also guaranteed the inviolability of the League’s premises, archives, couriers, and correspondence. The Swiss government also accorded to senior officials (known as ‘staff of the first category’) and internationally recruited officials (known as ‘extra-territorial staff’) of the League and ILO immunity from civil and

¹⁰⁹ John Mathiason, *Invisible Governance: International Secretariats in Global Politics* (Bloomfield, CT: Kumarian Press, 2007) at 28.

¹¹⁰ Karen Gram-Skjoldager, “From the League of Nations to the United Nations: Milestones for the International Civil Service” in *100 Years of International Civil Service* (Dag Hammarskjöld Foundation), No. 3, at 4.

¹¹¹ F P Walters, *A History of the League of Nations* (New York: Oxford University Press, 1952) at 419.

¹¹² *Ibid.*

¹¹³ “Details given to the ‘Modus Vivendi’ (1926) adopted by the Swiss Government and the organizations of the League of Nations with a view to the application of Article 7 of the Covenant” LoN Doc. No. C.555/1926(V).

criminal jurisdiction in Switzerland unless such immunity was waived by the Secretary-General of the League or Director General of the ILO. Lower-ranking officials (known as 'staff of the second category') were granted functional immunities.¹¹⁴

Another important milestone was reached in 1932, when merely seven months before Eric Drummond's departure, two separate provisions dealing with loyalty were inserted in the League's Staff Regulations. The first provision dealt with the loyalty of the Secretary-General of the League, which strongly suggests that Eric Drummond had doubts about his successor's allegiances. The second provision addressed the loyalty of staff. In accordance with the new Article 3 of the League's Staff Regulations required officials of the League's Secretariat to make and sign a declaration that read as follows:

*I solemnly undertake to exercise in all loyalty, discretion and conscience the functions that have been entrusted to me as an official of the Secretariat of the League of Nations, to discharge my functions and to regulate my conduct with the interests of the League alone in view and not to seek or receive instructions from any Government or other authority external to the Secretariat of the League of Nations.*¹¹⁵

The international civil service of the International Labour Organization was in many respects similar to that of the League. The difference between the two secretariats stemmed from the leadership and management styles of Eric Drummond and Albert Thomas. As a former British civil servant, Drummond encouraged a degree of delegation to lower management levels and a general openness, leading to a fairly devolved structure whereas Thomas followed the French system of centralized control where, for example, all major documents passed through a Cabinet before and after being actioned at lower levels.¹¹⁶

2.3 – THE LEAGUE'S SECRETARIAT UNDER JOSEPH AVENOL'S LEADERSHIP

After 13 years in office, Drummond announced that he would retire in 1933. He handed over his functions to his successor on 30 June 1933.¹¹⁷ Drummond was succeeded by his French deputy, Joseph Avenol – the one man Drummond had specifically tried to remove from consideration as his replacement.¹¹⁸ In a letter

¹¹⁴ Article VII of the Modus Vivendi.

¹¹⁵ "Amendment in the Staff Regulations", Office Circular Nos. 75 and 76 (12 November 1932).

¹¹⁶ Macfadyen et al, *supra* note 70 at 210.

¹¹⁷ "Assumption of Office by M. J. Avenol, Secretary-General of the League of Nations Note" (1933) 14:8 *League of Nations O J* 987.

¹¹⁸ James Barros, *Betrayal from Within - Joseph Avenol, Secretary-General of the League 1933-1940* (New Haven, Conn: Yale University Press, 1969) at 3; Macfadyen et al, *supra* note 70 at 49.

addressed to the British Foreign Secretary – Sir John Simon – Drummond observed that “it may seem odd that I do not recommend the present Deputy Secretary-General M. Avenol, to take my place, but I do not think from a personal point of view the appointment would be altogether justified...”.¹¹⁹ Eric Drummond’s went on to recommend “a well-known and much liked and respected in League circles” Dutch judge on the Permanent Court of International Justice at the Hague, Willem Jan Marie van Eysinga.¹²⁰ Drummond was probably unaware that an unwritten understanding had been reached in Paris in 1919 when the League’s Covenant was being drafted that upon his departure as Secretary-General he would be replaced by a Frenchman. Therefore, it is not surprising that Eysinga was not even considered as a contender for the post. An event that made it even more inevitable for a French national to replace an Englishman as the League’s Secretary-General was the death of Albert Thomas – the Director General of the International Labour Organisation (ILO) of French nationality – in May 1932. With France’s support, Thomas was replaced by his British deputy, Harrold Butler, thereby making it extremely difficult for Britain not to support the appointment of Joseph Avenol.¹²¹ Consequently, choosing Avenol to succeed a British citizen as Secretary-General of the League was “more a matter of satisfying national sensitivities than of choosing the best candidate”.¹²²

The second Secretary-General of the League was a financier, “who showed more interest in figures and statistics than political issues”.¹²³ Although he had been Deputy Secretary-General for over a decade, he lacked political awareness and was often more fascinated with form rather than substance.¹²⁴ Robert Cecil – a British politician who played a key role throughout the League’s history – described Avenol as “wholly unsuited to the job” and “evidently out of his element”.¹²⁵

Unfortunately, Avenol lived up to his reputation and proved to be a disappointing leader. He discredited his office by “allowing the League’s secretariat to become politicised as the geopolitical context deteriorated, to the extent that staff members of certain nationalities openly sided with their governments.”¹²⁶ He undermined the trust of member states in the Secretariat acting “as more a servant of

¹¹⁹ Barros, *supra* note 118 at 2.

¹²⁰ Macfadyen et al, *supra* note 70 at 50.

¹²¹ *Ibid*; Barros, *supra* note 118 at 4.

¹²² Dorothy V Jones, “Seeking Balance: The Secretary-General as Normative Negotiator” in *The UN Secretary-General and Moral Authority* (Washington D.C.: Georgetown University Press, 2007).

¹²³ Anique H M Van Ginneken, *Historical Dictionary of the League of Nations* (Lanham, Maryland: The Scarecrow Press, 2006) at 10.

¹²⁴ Barros, *supra* note 118 at 50.

¹²⁵ Cecil of Chelwood, *supra* note 101 at 151.

¹²⁶ James O C Jonah & Amy S Hill, “The Secretariat: Independence and Reform” in *The Oxford Handbook on the United Nations*, 2nd ed (New York: Oxford University Press, 2018) at 213; Barros, *supra* note 117 at 2.

his native France than of the League".¹²⁷ After the German occupation of Paris, he proposed to his colleagues from the leadership team of the League to "work hand in hand with Hitler in order to achieve the unity of Europe and expel England from Europe".¹²⁸ In June 1940, Avenol expelled all officials of British nationality from the League¹²⁹ and "went so far as to pledge privately his allegiance to Marshal Petain, expressing willingness to demonstrate that allegiance by resigning if the Marshal so wished."¹³⁰

He disgraced his office and the Secretariat not only through his poor leadership but also through his personal conduct when he invoked the privileges and immunities enjoyed by the League's Secretary-General in legal proceedings instituted by his former spouse for family support.¹³¹ As a consequence of his divorce proceedings, a French court ordered him to pay his ex-wife 12,500 francs per month¹³² He appealed against this order, asserting that as Secretary-General of the League he enjoyed diplomatic privileges and immunities under Article 7 of the Covenant of the League and enjoyed jurisdictional immunity before the courts of all member states of the League, including those of France. The French court rejected this argument for being a "flagrant contradiction to the sacred and profound sentiment of justice".¹³³

Under Avenol's leadership, the League's Secretariat had lost the confidence of the organisation's member states to the extent that one author partially attributed the failure of the League to Avenol.¹³⁴

SECTION 3 – THE PERIOD FOLLOWING THE LEAGUE OF NATIONS

The international community of states learned a great deal from the League's challenges. These lessons were instrumental when nations decided to create the United Nations. As an American diplomat observed:

[W]e should abandon the notion, sometimes held, that in 1945 the United Nations sprang into being from nowhere, like Minerva from the brow of Zeus. The analogy, rather, should be the Phoenix arising from its own ashes. For while many felt it wise in 1945 to avoid dwelling on antecedents, those who laboured to create the United Nations would

¹²⁷ Jones, *supra* note 122 at 53.

¹²⁸ Barros, *supra* note 118 at 219.

¹²⁹ *Ibid* at 227.

¹³⁰ Schwebel, *supra* note 85 at 73.

¹³¹ Niels Blokker, "International Organizations: The Untouchables" (2014) 10:2 *Int'l Org L Rev* 259 at 263.

¹³² *Ibid*.

¹³³ *Ibid*.

¹³⁴ See Barros, *supra* note 118.

*have had an extremely difficult time without the precedents of the League of Nations to guide them.*¹³⁵

3.1 – THE ESTABLISHMENT OF THE UNITED NATIONS SECRETARIAT

The founders of the United Nations knew from the League's experience that the Secretariat of an organisation with a principally political vocation would be constantly exposed to political pressures from various stakeholders. For this reason, they made impartiality and independence, referred to by Georges Langrod as "the Balfourian principles",¹³⁶ cornerstones of UN's Secretariat. The importance of guaranteeing the independence and impartiality of international public servants was formally acknowledged during the United Nations Conference on International Organization held in San Francisco. "In their consideration of provisions for the Secretariat of the Organization, the members of Committee I/2 quickly and unanimously agreed that because of its central importance to the work of the entire Organization, the Secretariat should be of the highest quality and should be organised on a truly international basis. There was no dissent from these principles, and such disagreement as did appear during the discussions was limited to the question of the extent to which specific detailed provision should be made in the Charter for the Secretariat."¹³⁷ Although some delegates argued that the Charter needed to set out the broad principles only and that more detailed provisions should be left for Staff Regulations, they did not take issue with the idea of a secretariat international in character and behaviour.

The Preparatory Commission of the United Nations – established to make practical arrangements for the transition from a proposal embodied in the Charter to a functioning organisation – pointed out that the "degree in which the objects of the Charter can be realised will be largely determined by the manner in which the Secretariat performs its task. The Secretariat cannot successfully perform its task unless it enjoys the confidence of all the Members of the United Nations."¹³⁸ Some delegations proposed that appointments of UN officials be subject to the consent of the government of the member state of which the candidate was a national. The delegate of the sponsoring state explained that the purpose of this prior approval was to ensure that the newly recruited staff was acceptable to and had the confidence of their governments. The majority of the states rejected this proposal, arguing that this would give governments the ability to exert political pressures on the Secretary-

¹³⁵ Francis O Wilcox, "The United Nations in the Mainstream of History" (1956) 50 Am Soc'y Int'l L Proc 187 at 187.

¹³⁶ Langrod, *supra* note 29 at 47.

¹³⁷ UNCIO, Vol. VII, Commission I, Committee 2, Report of Rapporteur (General) of Committee I/2 on Chapter X (Secretariat), Doc. 1155, Ref. no. I/2/74 (2), (22 June 1945), at 386.

¹³⁸ Report of the Preparatory Commission of the United Nations, UNCIO, 1945 at 81.

General and his personnel. Indeed, the experience of the League of Nations, as manifested in the behaviour of Germany's and Italy's fascist governments, "underlined the desirability of including in the Charter itself an explicit obligation on officials and the Governments alike to respect fully the independence and the exclusively international character of the responsibilities of the Secretariat".¹³⁹ In the end, the requirements of independence and loyalty were elevated from an internal policy to a constitutional requirement. Consequently, three key provisions regulating the independence and impartiality of staff members were included in the Charter. Article 100 of the Charter guarantees the international character of the UN Secretariat:

Article 100

*In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.*¹⁴⁰

Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 100 of the Charter was not part of the Dumbarton Oaks proposals. It was introduced by three Sponsoring countries – Canada, New Zealand and Uruguay – at San Francisco and was adopted unanimously.¹⁴¹ Two additional provisions of the Charter applicable to the Secretariat and staff are also relevant to their independence. Article 101 requires the Secretary-General to recruit staff on meeting the highest standards of efficiency, competence, and integrity and Article 105 grants the UN such privileges and immunities as are necessary for the fulfilment of its purposes. It also authorises the General Assembly to make recommendations with a view to propose conventions regulating the status, privileges, and immunities of the organisation and its staff. On the basis of these provisions, the General Assembly strengthened the independence of the Secretariat by adopting provisional Staff

¹³⁹ Dag Hammarskjöld, *The International Civil Servant in Law and in Fact: A Lecture Delivered to Congregation on 30 May 1961* (Uppsala: Dag Hammarskjöld Foundation, 2021) at 10.

¹⁴⁰ The inspiration for this provision was the Staff Regulations of the League of Nations adopted in 1922. See Genowefa Grabowska, "Independence of the International Civil Servants" (1988) 17 *Polish YB Int'l L* 61 at 62.

¹⁴¹ Schwebel, *supra* note 85 at 76.

Regulations¹⁴² and a Convention on the Privileges and Immunities of the United Nations.¹⁴³

As to the Secretary-General of the United Nations, the founding states entrusted to him the power to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.¹⁴⁴ While this power may seem to some like a tacit admission by governments that the Secretary-General is neither impartial nor neutral,¹⁴⁵ a more careful reading of Article 99 of the UN Charter reveals that member states never had the intention of giving the Secretary-General the authority to characterise the threat to the maintenance of peace and security as an aggression or violation of international law. It merely authorises the Secretary-General to expose the relevant facts without taking sides. Indeed, in the *travaux préparatoires* of the negotiations for the drafting of the UN Charter, the delegates pointed out that the Secretary-General power to bring to the attention of the Security Council any matter which in his opinion might threaten international peace and security manifests their deep trust in the Secretary-General to perform his tasks impartially and in the interests of the world at large.¹⁴⁶

3.2 - THE PROLIFERATION OF INTERGOVERNMENTAL ORGANISATIONS AND ERRATIC DEVELOPMENT OF INTERNATIONAL CIVIL SERVICE LAW

While setting up the United Nations, the international community of states was concomitantly negotiating the creation of other universal organisations. The Bretton Woods institutions (1944-1945) including the International Trade Organization which never saw the light of day, UNESCO (1945), FAO (1945), WHO (1946), WMO (1947), ICAO (1947), IMO (1948), the short-lived International Refugee Organization (1948), and the IOM (1952) were only a few universal institutions being envisaged. During the same period regional organisations and alliances were established. The League of Arab States (1945), the European Coal Organisation (1945), Pan American Health Organization (1947), Organisation for European Economic Cooperation (1948), NATO (1949), Council of Europe (1949), and the Nordic Council (1952) were among the first ones created. These international organisations were very diverse in nature, organic structure, vocation, membership, and geographic scope. Their secretariats were just as diverse in nature. In fact, for some of these organisations, such as NATO, the founding treaties did not even expressly provide for an international secretariat as a

¹⁴² *Organization of the Secretariat*, GA Res 13 (I), UN Doc A/RES/13(I), Annex II (13 February 1946).

¹⁴³ Convention on the Privileges and Immunities of the United Nations (3 February 1946), 1 UNTS 15 (entered into force 17 September 1946).

¹⁴⁴ Charter of the United Nations, Art. 99.

¹⁴⁵ Barros, *supra* note 102 at 27.

¹⁴⁶ UNCIO, Vol. VI, Commission I: General Provisions, Verbatim Minutes of Third Meeting of Commission I, Doc. 1167, Ref. No. I/10, (19 June 1945) at 116 and 208.

separate organ. Some small international organisations continue to rely exclusively on national civil servants for secretariat functions.¹⁴⁷

The proliferation of international organisations accelerated exponentially after the decolonization and reached its peak in 1990s.¹⁴⁸ The exact number of international organisations is unknown and depends on how they are defined. Most authors estimate the number of intergovernmental organisations to about 500 to 700.¹⁴⁹ By one estimate, there were approximately 300 traditional intergovernmental organisations in 2020.¹⁵⁰ Each organisation has a unique legal framework and institutional setup. Of course, a detailed description of all international secretariats is beyond the scope of this work. Nevertheless, there are five major systems of international civil service. They are the UN Common System, the World Bank Group, the EU civil service, the Coordinated Organisations, and other international organisations.¹⁵¹ Although the law governing international officials of different organisations has many similarities,¹⁵² major differences exist between international organisations even in relation to basic principles. For instance, the Noblemaire¹⁵³ and Flemming¹⁵⁴ principles used by the United Nations to determine the salary scales of its staff members are not used by the Coordinated Organisations such as NATO or Council of Europe. These organisations

¹⁴⁷ See for instance Article XXII of the Amazon Cooperation Treaty establishing the Amazon Cooperation Treaty Organization 1202 UNTS 51, which provides that “*the functions of the Secretariat shall be performed pro-tempore by the Contracting Party in whose territory the next regular meeting of the Amazonian Cooperation Council is scheduled to be held.*”

¹⁴⁸ Statistics published by the Union of International Associations in the Yearbook of International Organizations, Figure 6.1. Foundation dates of international organisations by type Edition 57, 2020/2021 (data collected in 2019).

¹⁴⁹ Gerhard Ullrich, *The Law of the International Civil Service: Institutional Law and Practice in International Organisations* (Berlin: Duncker & Humblot, 2018) at 37.

¹⁵⁰ Statistics published by the Union of International Associations (UIA) in the Yearbook of International Organizations, Number of IGOs by type. Although the YBIO statistical data lists more than 7,000 international organisations, it includes inactive and dissolved entities. In addition, UIA has many categories of organisations. The definition of an international organisation retained by UIA is too broad and encompasses subsidiary organs and international administrative tribunals as distinct international organisations. When the categories are narrowed down to traditional intergovernmental organisations, the number of active IGOs is approximately 300.

¹⁵¹ Ullrich identifies four categories and does not assign a separate category to the World Bank Group: Ullrich, *supra* note 148 at 43–46.

¹⁵² Schermers & Blokker, *supra* note 44 at para 540.

¹⁵³ Named after the French delegate, Georges Noblemaire, who chaired the committee established under the auspices of the League of Nations to set the salaries of the League’s staff, the principle relates to the establishment of a salary scale for staff members in the professional category based on wages granted by various States to their highest paid officials.

¹⁵⁴ While the emoluments of UN staff members in the professional and higher categories are determined in accordance with the Noblemaire principle, those of staff members in the General Services and related categories are determined in accordance with the Flemming principle. The Flemming principle requires that the salaries of locally recruited staff be established by the Secretary-General on the basis of the best prevailing conditions of employment in the locality where the specific United Nations office is situated. The best prevailing conditions of employment are determined by surveying the local labour market, namely, the best paying employers in the relevant city.

have different ways of establishing salary scales for their staff. Another important difference that exists between IGOs is their acceptance and tolerance of secondments. In the UN, secondments are generally discouraged and frowned upon whereas in NATO, OSCE and Interpol, they are very common. Similarly, some international organisations, including the OPCW, are non-career organisations with limited staff tenure whereas the majority of international organisations do not impose any limitation on the number of years a person can serve as a staff member.

CONCLUSION

Primitive forms of international organisations were initially created to centralise the actions of individual nations. To guarantee the trust of all participating states in these newly established institutions, states began granting intergovernmental organisations independence and demanded complete impartiality and neutrality of international civil servants. As intergovernmental institutions increased in number, mission, and diversity, so did their understanding, interpretation, and approach to issues common to all international organisations.

Since each international organisation is unique and is different in size, nature, mandate, and membership, it is only normal that it has rules adapted to its specific needs. It is not at all surprising that staff regulations of the United Nations are significantly different from those of NATO or of the EU. However, no differences should exist in relation to core principles that define international civil service, namely its independence and impartiality. These essential attributes of any international civil service are sacrosanct and cannot be waived in the interests of efficacy, efficiency, or cost. Yet, there is no consistency in the interpretation or implementation of the notions of 'independence' and 'impartiality'. An act that is seen as violating the independence of a staff member in one organisation may be common practice in another. The main difficulty resides in the fact that no authoritative definition and no common meaning exist for the terms 'independence' and 'impartiality'. Consequently, despite divergent – and often highly problematic – practices, each organisation may firmly believe that its secretariat and its staff members are entirely independent and impartial. Oddly, this firm belief is held in good faith.

The following chapter explores the meaning and essential characteristics of an independent international civil service by examining the purpose of intergovernmental institutions and the primary role of international functionaries.