2.1 What constitutes an IGO? The lower and the upper limit

The question of the legal concept of IGOs\(^1\) – or, more precisely, of identifying their lower and upper limits – is interlinked with the question of the organization’s status as a separate legal subject (legal personality) and of the existence of rights and obligations possessed by the organization under public international law (international legal personality). However, a definition of IGOs may easily become circular. It should also be borne in mind that the application of different aspects of the common law may deviate in relation to certain modest types of IGOs, e.g. those of the type dépendant.

The term “international organization” is defined in various instruments simply as meaning an “intergovernmental organization”, giving decisive importance to the membership consisting of States or State organs.\(^2\)

An IGO may thus be described as an organization of States (and/or State organs and/or organizations of States)\(^3\) which has its own organs. Pastor

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Ridruejo has listed six characteristic elements of an international organization: Interstate character, voluntary basis, permanent organs, autonomous will, its own competence, and co-operation between its members to meet common interests. “Voluntary basis” implies that the member States have joined voluntarily. Except for (or if one precludes) temporary organizations, these criteria are in fact met by IGOs. Brownlie defines the criteria in organization as follows: (1) a permanent association of States, with lawful objects, equipped with organs, (2) a distinction, in terms of legal powers and purposes, between the organization and its member States, and (3) the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more States. The International Law Commission, in its study on the responsibility of international organizations, has adopted the approach that for the purpose of responsibility under public international law, an international organization must possess a separate international legal personality. Consequently, an IGO does have a separate international legal personality in respect of its capacity to possess – even a single – obligation imposed on it under international law.

A functional approach implies that the organization must exercise at least one form of sovereign or governmental function in parallel to such legislative, executive or judicial functions as are normally exercised by other sovereign communities.

There is no requirement, as generally assumed in definitions of IGOs, that the organization is established by a convention. Thus, there can be little doubt that the Pan American Union prior to the treaty of Bogotá was an international legal person even though it was not established by an international treaty. Nor would there have been anything to prevent the Colombo Plan Organization from concluding and being, as an organization, party to an agreement with the host State (Sri Lanka) concerning privileges and immunities, despite the fact that the organization was not set up by a formal international convention. Pastor Ridruejo correctly lists also IGOs which were established by resolutions adopted

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4 “Elementos característicos” or “rasgos diferenciales”.
5 J.A. Pastor Ridruejo, Curso de derecho internacional publico y organizaciones internacionales, Madrid 1992, at pp. 687–90.
8 Id. note 7, p. 12. However, the notion of governmental functions should be understood as encompassing all similar functions normally exercised by other sovereign bodies, including e.g. market regulations, loans, grants, development assistance, research and scientific cooperation, monitoring of compliance with obligations under international law and dispute settlement. It would perhaps be reasonable to only include non-profit market operations as “governmental” functions, as commercial business activities are better performed by corporations, cf. above, chapter 1.4.