

A SOVEREIGN LEGACY OF THE LEAGUE OF NATIONS: A REFLUX OF MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS

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Introduction

At eleven o'clock in the morning of the eleventh day of the eleventh month of 1918, an Armistice Treaty ended armed hostilities between the belligerents of World War I (WWI).¹ The Armistice Treaty was followed by the Peace Treaty of Versailles in 1919, incorporating in Articles I-XXVI the Covenant of the League (Covenant), its constituent treaty.² In simplest terms, the League is a product of WWI. It is intrinsically linked to it. Before WWI, states were disinclined to establish an entity to whom they would transfer part of their sovereignty beyond technical international institutions (IOs). The League predecessors, the existing River Commissions,³ and the technical IOs⁴ were narrowly structured to serve a specific function. They were not political IOs.⁵ These forerunners were rudimentary pieces of intergovernmental cooperation and "not segments of governmental apparatus, drawing power from the circuits of

1. Armistice with Germany. *Paris Peace Conference*, (1918), in particular Articles I and XX on the cessation of hostilities by land, air and sea.

2. The Treaty of Versailles also included the establishment of the Permanent Court of International Justice (PCIJ) and the International Labour Organization (ILO). Scholars have pointed out that the link between the Peace Treaties and the League is unfortunate as at least for Germany, the League was seen as part of an overall unjust settlement. See Christian J. Tams, *League of Nations*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. 4 (2006).

3. Existing River Commissions included the Rhine Commission of 1815, the Elbe Commission of 1821, the Douro Commission of 1835, the Po Commission of 1849, and the Danube Commission of 1856.

4. IOs of 'technical' nature included among others the Universal Telegraphic Union of 1865, the Universal Postal Union of 1874, the Industrial Bureau of Industrial Property of 1883, the International Bureau of Literary Property of 1886, the International Union of Railway Freight Transportation of 1890, and the International Office of Public Health of 1900.

5. Pursuant to the Vienna Convention on the Law of Treaties (VCLT), Article 2(1)(i); the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, Article 1(1)(1); and Articles of Responsibility of International Organizations, Article 2(a), the notion 'international organization' in this paper refers to 'an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.'

a preestablished dynamo of sovereignty”⁶ They proved beneficial, but they were far from a suitable “bluebook or a model” for the first political IO, the League. However, WWI was unique and unprecedented in many ways, and consequently, “business as usual” was no longer a viable option for states.⁷ Therefore, the first meeting of the Assembly of the League represented the “birth of the new world.”⁸ It was a “new world” as the League was the foundational moment of the first political IO. The League did not have one from whom to learn. It was the first experiment, a “great experiment,”⁹ or in retrospect, as described by d’Aspremont, an “experiment narrative.”¹⁰

The League was a “great and noble effort much in advance of anything that had been done or even attempted before.”¹¹ As stated by Smuts, “[w]e planned for the world we knew, and as we saw it, and we planned in a justifiable spirit of optimism” but “thee were not great prophets and certainly not demigods.”¹² Oppenheim, a highly known publicist of the time, stated that the League (if established) would be “*sui generis*, one absolutely of its own kind; such as has never been seen before.”¹³ He realized that the League did not fit any existing categories and was something completely new.¹⁴ The League practically established a new world order based on collective security, replacing the old system of balance of powers.¹⁵ In addition, for the world as it existed, the initiative was unparalleled as states were accustomed to being the only

6. INIS L. CLAUDE JR., *SWORDS INTO PLOWSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION* 35 (4th ed. 1971).

7. The Great War (as referred to at the time) or WWI was unprecedented among others in the means and methods of warfare, geographical coverage, the number of casualties and the re-shaping of the international order with the dissolution of four major empires: Russian, Ottoman, Austro-Hungarian and of the German empire.

8. Statement by Leon Bourgeois, Chairman of the Council of the League of Nations at its opening. See WORLD PEACE FOUND., *THREE MONTHS OF THE LEAGUE OF NATIONS: LEAGUE OF NATIONS VOLUME III, ISSUES 1-2 OF WORLD PEACE FOUNDATION I* (1920).

9. Christian J. Tams, *Experiments Great and Small: Centenary Reflections on the League of Nations*, GER. Y.B. INT’L. L. JAHRB. FÜR INT. RECHT (2020).

10. According to d’Aspremont an ‘experiment narrative’ represents a past narrative about an institution or practice of the past constituting an experiment. See Jean d’Aspremont, *The League of Nations and the Power of “Experiment Narratives” in International Institutional Law*, 22 INT’L. CMTY. L. REV. 277 (2020).

11. U.N.C.I.O, 6th Plen. mtg. at 421, Doc.55, P/13 (May 2, 1945).

12. *Id.* at 423.

13. LASSA OPPENHEIM, *THE LEAGUE OF NATIONS AND ITS PROBLEMS; THREE LECTURES* 23 (1919).

14. Jan Klabbers, *The Days of Wine and Roses*, 31 EUR. J. INT. L. 737, 743 (2020).

15. Frank Schorkopf, *Versailles Peace Treaty 1919*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT’L. L. 1, 32 (2010).

actors possessing international legal personality.¹⁶ At the same time, although to a great extent descriptive and legalistic, the academic study of IOs began.¹⁷ The centenary of the League in 2020 was a powerful reminder that the first political IO is a (relatively) recent development in human history and the cause for renewed scholarship on the League.¹⁸ The legacies of the League are echoing over time, and scholars are still exploring its relevance for current and future developments of our global political order.¹⁹ The League marked the beginning of a new era of proliferation of IOs, and institutional multilateralism was emerging on the world stage.²⁰ In the meantime, the number of sovereign states has quadrupled in a century.²¹ States are still finding IOs to be a more efficient way to solve their problems.

State sovereignty, almost in absolute terms, is at the heart of membership policies of IOs.

Although present in different denominations since antiquity, the modern understanding of sovereignty is traced to the Treaty of Westphalia of 1648.²² The origins of IOs and their inherent limitation on

16. The matter of the legal personality of IOs was conclusively resolved around three decades later by the ICJ Advisory Opinion on the Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. at 179 (Apr. 11).

17. Brian Frederick & Paul F. Diehl, *Introduction*, in *THE POLITICS OF GLOBAL GOVERNANCE: INTERNATIONAL ORGANIZATIONS IN AN INTERDEPENDENT WORLD 2* (Brian Frederick & Paul F. Diehl, eds., 5th ed. 2015).

18. See Luis Bogliolo, et al., *Foreword: The League of Nations Decentred*, 21(2) MELB. J. INT. LAW i, (2020); d'Aspremont, *supra* note 10, at 275-90; Rossana Deplano, *Introducing the Special Issue 22.3: Rethinking the Legacy of the League of Nations*, 22 INT. CMTY. L. REV. 271, 271-74, (2020); Amritha V. Shenoy, *The Centenary of the League of Nations: Colonial India and the Making of International Law*, 24 ASIAN Y.B. INT. L. 3, 3-23 (2018); Robert Knox, *Haiti and the League of Nations: Racialisation, Accumulation and Representation*, 21 MELB. J. INT. LAW 245, 245-74(2020).

19. M. PATRICK COTTRELL, *THE LEAGUE OF NATIONS: ENDURING LEGACIES OF THE FIRST EXPERIMENT AT WORLD ORGANIZATION* (Routledge ed., 2018).

20. Crawford refers to around 250 IOs. See JAMES CRAWFORD, *BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 160 (9th ed. 2019). Others are more generous in their estimates. For example, the Yearbook of International Organizations notes that there were 37 IOs in 1909, 174 in 1964, and 1536 IOs by 2011. See Jeffrey L. Dunoff, *Is Sovereign Equality Obsolete? Understanding Twenty-First Century International Organizations*, 43 NETH. Y.B.I.L. 99, 107 (2013).

21. At the beginning of the 20th Century there were around 50 acknowledged states; around 75 states before World War II, and now at the beginning of the 21st Century, almost 200. See JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 4 (2nd ed. 2006).

22. It should be noted that this is an oversimplification of the historical evolution of sovereignty. See SAMANTHA BESSON, *SOVEREIGNTY*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. 11, 14 (2011).

state-centric concepts may be traced to the matrimony of statehood and sovereignty at Westphalia.²³ Sovereignty is inherently linked to statehood. There is a simple tautology in saying that “states are sovereign, and sovereign is the state,”²⁴ or “a State is sovereign because it is a State.”²⁵ For Oppenheim, sovereignty denotes “supreme authority” of the state independent of other authorities.²⁶ On the other hand, Claude describes sovereignty as “a principle of irresponsibility,” which in its original context denotes “authority without accountability.”²⁷ According to the International Court of Justice (ICJ), state sovereignty is the fundamental principle of international law, and “the whole of international law rests on sovereignty.”²⁸ Crawford denotes that sovereignty “represents the basic constitutional doctrine of the law of nations.”²⁹ And yet, the word sovereignty “has a lengthy and troubled history, and is susceptible to multiple meanings and justifications.”³⁰ Krasner on the other hand describes sovereignty through the following four denominations: International legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty.³¹ International legal sovereignty relates to mutual recognition, while Westphalian sovereignty focuses on the authority governing in exclusion of external structures.³² On the other hand, domestic sovereignty is about the public authorities of states and their exercise of effective control within.³³ Finally, interdependence sovereignty is about the ability to regulate the flow of information, people, goods, capital, etc., by public authorities across the border.³⁴ According to Krasner, Westphalian

23. GERD DROESSE, MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS: PARADIGMS OF MEMBERSHIP STRUCTURES: LEGAL IMPLICATIONS OF MEMBERSHIP AND THE CONCEPT OF INTERNATIONAL ORGANIZATION 11 (2020).

24. GERRY SIMPSON, SOMETHING TO DO WITH STATES IN THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 565 (Orford et al, eds., 2016).

25. JAMES CRAWFORD, CHANCE, ORDER, CHANGE: THE COURSE OF INTERNATIONAL LAW GENERAL COURSE ON PUBLIC INTERNATIONAL LAW 86 (Brill Nijhoff ed. 2014).

26. LASSA OPPENHEIM, INTERNATIONAL LAW. A TREATISE. VOLUME I (OF 2) PEACE. SECOND EDITION 209 (2012).

27. CLAUDE, *supra* note 6 at 22.

28. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Judgment, No. 70, 1986 I.C.J. Rep. 14, para. 263 (June 27).

29. CRAWFORD, *supra* note 20, at 431.

30. *Id.* at 432.

31. STEPHEN D. 1942- KRASNER, SOVEREIGNTY : ORGANIZED HYPOCRISY 9 (Princeton Univ. Press, 1999).

32. *Id.*

33. *Id.*

34. *Id.*

sovereignty and international legal sovereignty are best understood as “examples of organized hypocrisy.”³⁵

However, IOs (including the League) are not sovereign, as sovereignty is limited to states. Although overlapping, state sovereignty and sovereignty of states in IOs are separate legal notions. This dualism in dealing with sovereignty is based on a logical premise; the notion of sovereignty has different manifestations in general international law and the law of IOs.

As stated by the ICJ in the aftermath of WWII:

Whereas a State possesses the totality of international rights and duties recognized in international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.³⁶

From a traditional viewpoint on sovereignty, IOs, by default, limit the sovereignty of states. On the other hand and by the same traditionalist viewpoint, states, by default, cultivate their sovereignty. The doctrine of sovereignty is generally understood to have created serious challenges to the progress of IOs.³⁷ Such a position is not unwarranted, at least for realists who emphasize the importance of state sovereignty and national interest and are less likely to delegate powers to IOs.³⁸ As noted by Kelsen, with regard to the role of the United Nations (UN), the successor of the League and state sovereignty:

It can hardly be denied that it is an essential function of the international organization established by the Charter to restrict the “sovereignty” of the Members and, thus, to eliminate the idea of unrestricted sovereignty, in spite of the wording of Article 2, Section 1, which proclaims “sovereign equality” of the Members as a principle of the Organization.³⁹

These new dynamics between states and IOs raised doctrinal and practical questions about the notion of state sovereignty and its dynamics within IOs. While state sovereignty is original and primarily internal

35. *Id.* at 24.

36. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174, 180 (April 11).

37. BENGT BALTZAR BROMS, *THE DOCTRINE OF EQUALITY OF STATES AS APPLIED IN INTERNATIONAL ORGANIZATIONS* 76 (Vammala 1959).

38. KENETH ABBOT & DUNCAN SNIDAL, *WHY STATES ACT THROUGH FORMAL INTERNATIONAL ORGANIZATIONS*, in FREDERKING & DIEHL, *supra* note 17, at 48.

39. Hans Kelsen, *Withdrawal from the United Nations*, 1 W. POL. Q., Mar. 1948 at 29, 33.

(within the state), sovereignty in IOs is derivative and external; it is manifested outside of the state, in the IO. State sovereignty provides for the authority to delegate powers from states to IOs.⁴⁰ The conferral of sovereign powers to IOs primarily occurs by concluding treaties (constituent or *ad hoc* treaties) that provide for such conferrals in compliance with international law.⁴¹ Such conferrals are based on constitutional rules of States at the municipal level. They vary between states with a more positive or limited approach to limiting state sovereignty to enhance international cooperation.⁴²

With the increasing role of IOs in matters traditionally considered in the realm of exclusive sovereignty, sovereignty stretches within states and IOs. However, at times, IOs may be utilized to protect state sovereignty. This Janus type of a two-faced perspective of IOs which erode and at the same time safeguard sovereignty is best mirrored in the statement by the UK Foreign Secretary Hurd concerning the Treaty on the European Union (EU):

It is against our fundamental interests so to isolate ourselves from the continent of Europe that policies are organized there which deeply affect our security or our prosperity but in which we have no important say. If that were to happen, we could keep our sovereignty as a slogan but its substance would have gone.⁴³

Concerning the discourse of sovereignty in IOs, it is of great interest to see the application of sovereignty in the first political IO ever established, namely, the League. Due to its long-lasting effects, it seems relevant to understand its evolution, presence, and future. Although interrelated, this paper will not cover the application of equality of states as a corollary of sovereignty in the League and IOs.⁴⁴ The policies adopted by the League on sovereignty shaped in a great deal the subsequent development of membership and decision-making processes in international institutional law and are relevant in the re-emerging discussions on the role of sovereignty and power relations in IOs today. This does not come as a surprise, as a hundred years later, the

40. MARGARET P. KARNS & KAREN A. MINGST, INTERNATIONAL ORGANIZATIONS: THE POLITICS AND PROCESSES OF GLOBAL GOVERNANCE 3 (Lynne Rienner 3rd ed. 2015)..

41. DAN SAROOSHI, INTERNATIONAL ORGANIZATIONS AND THEIR EXERCISE OF SOVEREIGN POWERS 18 (2005).

42. MAGDALENA M. MARTIN MARTINEZ, NATIONAL SOVEREIGNTY AND INTERNATIONAL ORGANIZATIONS 11 (1996).

43. HENRY G. SCHERMERS & NIELS BLOKKER, INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY 2-3, (6th ed. 2018).

44. While related to sovereignty, equality has specific manifestations in IOs that are beyond the scope of this paper.

international law of the XXI century is still a state-centric order. As noted by Alvarez, although “not unfettered,” sovereignty is “not withering away,” and we still live in a Westphalian system of states.⁴⁵ Based on this background, this paper focuses on the following three manifestations of state sovereignty in the League. First, it examines the role of sovereignty in the (potential) membership of the United States (US) in the League through the taxonomy of its context, content, and consequences. The US was profoundly instrumental in the creation and, through the lens of sovereignty, in the demise of the League. Second, it reviews the membership policies of the League through the lens of its heterogeneous membership of (non) sovereign entities. Finally, this paper examines the unanimity rule as a deficient paradigm for the fundamental manifestation of sovereignty in the decision-making processes of the League.

Sovereignty in the Making of the League: The Role of the United States of America in its Creation and Demise

The unique role of the US in the making and the demise of the League is of exemplary relevance to the role sovereignty plays in the establishment and membership of IOs. The US was profoundly instrumental in the creation and, through the lens of sovereignty, in the demise of the League. Therefore, its role is examined in this section. The US is not the only power in the world; however, its unprecedented power and reach concerning the League has been more problematic than that of any other nation.⁴⁶

Believing that the US had a unique role in establishing world peace in the aftermath of WWI, US President Woodrow Wilson (Wilson) presented his famous Fourteen Points plan to the US Congress on 8 January 1918, calling for the creation of the League of Nations. In particular, the fourteenth point stated:

A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.⁴⁷

45. See José E. Alvarez, *State Sovereignty is Not Withering Away: A Few Lessons for the Future*, in REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW 26 (Antonio Cassese, ed., 2012).

46. EDWARD C. LUCK, MIXED MESSAGES: AMERICAN POLITICS AND INTERNATIONAL ORGANIZATION, 1919-1999 15-16 (1999).

47. Woodrow Wilson, Former U.S. President, Address to Congress, “*Fourteen Points*,” (Jan. 8, 1918), Point XIV, available at <https://millercenter.org/the-presidency/presidential-speeches/january-8-1918-wilsons-fourteen-points> (last visited Oct. 24, 2022).

Wilson's role in establishing the League was so fundamental that he was awarded the Nobel Peace Prize in 1919 as the "founder of the League of Nations."⁴⁸ He was indeed the "brave pioneer of the Covenant."⁴⁹ In an unprecedented episode of US Presidential history, Wilson was the first US President to travel overseas while in office. In addition, he was away for over six months.⁵⁰ As stated by Prime Minister Lloyd George, for Wilson, the League "was the only thing that he really cared much about" and was always the first thing to be discussed in the peace conference.⁵¹ Wilson of course was not alone in this endeavor. In total, thirty-two states, representing around three-quarters of the world population at the time, participated in the Versailles Treaty.⁵² However, the drafting of the treaty was dominated by the "Big Four" that included President Wilson of the US, David Lloyd George of Britain, Georges Clemenceau of France, and Vittorio Orlando of Italy. The defeated Central Powers, namely, Germany, Austria-Hungary, the Ottoman Empire, and Bulgaria, did not participate and were presented with *a fait accompli* and did not really have any say on the content of the treaty, including the Covenant.⁵³ Paradoxically, although initiated by Wilson,⁵⁴ the Covenant was defeated three times in the US Senate, and as a result, the US never acquired League membership.⁵⁵ Under US constitutional prerogatives, the Senate had the final say on whether the US would ratify the Peace Treaty, including the Covenant.⁵⁶ Senators led by Senator William Borah

48. See Woodrow Wilson, The Nobel Prize available at <https://www.nobelprize.org/prizes/peace/1919/wilson/facts/> (last visited Oct. 24, 2022) (Wilson 'appeared as the prophet of a new era' as he dominated the ideological scene); See also Claude, *supra* note 6, at 51.

49. Field Marshall Smuts, the Prime Minister of South Africa, *U.N. Conference on International Organizations, Verbatim Minutes of the 6th Plenary Session*, U.N. Doc. 55 P/13 (May 2, 1945), at 420.

50. See JOHN A. THOMPSON, *WOODROW WILSON* 188 (2002). No subsequent US President has been away for so long, prompting even discussions for the vice-president to assume his powers in the US.

51. *Id.* at 194, 222 (Wilson was convinced that a 'new order' was needed to exorcise the 'demon of war').

52. R.W. MANSBACH & K.L. TAYLOR, *INTRODUCTION TO GLOBAL POLITICS* 84 (2013).

53. L.L. BECKENBAUGH, *TREATY OF VERSAILLES: A PRIMARY DOCUMENT ANALYSIS* ix (2018).

54. JOHN MILTON JR. COOPER, *BREAKING THE HEART OF THE WORLD: WOODROW WILSON AND THE FIGHT FOR THE LEAGUE OF NATIONS* 348 (2001).

55. The League of Nations Covenant even offered for the first meetings of the Assembly and of the Council to be summoned by the US President. See *League of Nations Covenant* art. 5, para.3 (such a specific reference is unusual in constituent treaties of IOs).

56. The US Constitution empowers the President to make treaties conditioned by the approval of the two thirds of the Senate. See U.S. CONST. art. II, § 2.

(Borah) called the “irreconcilables” joined in their effort by several other Senators called the “reservationists” led by Senator Henry Cabot Lodge (Lodge) successfully campaigned against the ratification of the Covenant of the League.⁵⁷ The irreconcilables and the reservationists criticized the Covenant due to its effects on eroding US sovereignty. Although the League Covenant is silent and does not contain any direct references to the notion of sovereignty, it deals with matters directly related to state sovereignty opposed by Borah and Lodge.⁵⁸ While the irreconcilables opposed US participation in any form or shape, the reservationists were open to ratification only after substantial amendments to the Covenant. Borah opposed the Covenant in its entirety and considered that no reservation would suffice to support the treaty eroding US sovereignty. As stated by Borah, “all schemes, all plans, however ambitious and fascinating they seem in their proposal, but which would embarrass or entangle and impede or shackle her sovereign will, which would compromise her freedom of action, I unhesitatingly put behind me.”⁵⁹

On the other hand, the reservationists could only support the League if certain amendments were introduced. Therefore, they announced “fourteen reservations” to the Covenant of the League as a response to the Fourteen Points of Woodrow Wilson.⁶⁰ The goal of the proposed reservations was to:

“[S]afeguard the sovereignty of the United States in every particular;” and they must include an absolute right of withdrawal, total exemption of the Monroe Doctrine, elimination or drastic limitation of obligations under Article X, and unabridged control of tariffs, immigration, and “all other purely domestic questions.”⁶¹

57. See David Mervin, *Henry Cabot Lodge and the League of Nations*, 4 J. AM. STUD. 201 (1971). According to Mervin, Lodge may have also been an ‘irreconcilable’ in his position on opposing the treaty. However, being a political pragmatist, Lodge considered that it is more practical to propose reservations to the Covenant of the League than oppose the treaty in its entirety.

58. See League of Nations Covenant. The only exception is the verbatim reference in Article 22 concerning the Mandatory System stating that to the colonies and territories that have “ceased to be under the sovereignty of former States’ the principle of well-being and development among others shall be applied.

59. See ROBERT C. BYRD, U.S. SENATE HISTORICAL OFFICE, *THE SENATE, CLASSIC SPEECHES 1830-1993*, (Wendy Wolff eds., Bicentennial Edition 1994); see the speech by William E. Borah, *The League of Nations*, US Senate, November 19, 1919. U.S. Gov’t Printing Office, at 573.

60. STEPHEN W. STATHIS, *LANDMARK DEBATES IN CONGRESS 284* (2009).

61. Cooper, *supra* note 54, at 113.

The main objection or the "principal bone of contention"⁶² was Article X of the Covenant, stating that:

The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. In case of any such aggression, or in case of any threat or danger of aggression, the Council shall advise upon the means by which the obligation shall be fulfilled.⁶³

The opponents of the League feared that Article X would take away the power of the US Congress to declare war and that the US would be entangled in new European Wars without its consent.⁶⁴ However, Wilson considered Article X the kingpin of the whole structure. He stated that the rejection of Article X would result in the rejection of the entire treaty, as without Article X, "the Covenant would mean nothing."⁶⁵ Therefore, Wilson was adamant that no reservation to Article X was possible. This served as a good alibi for Lodge, who "mockingly thanked Wilson for having "justified the position that we on this side, all alike, have taken, that there must be no obligation imposed on the United States to carry out on the provisions of Article 10."⁶⁶

As a result, the US Senate rejected the League Covenant on 19 November 1919, and the US never joined the League. Article X of the Covenant is the crucial reason for such a rejection.⁶⁷ The US political discourse focusing on eroding US "sovereignty" played a crucial role in the US rejection. The empty chair reserved for the US would cast a shadow across the table, lengthening the "days that followed until the League died."⁶⁸ As stated by Smuts during the United Nations Conference on International Organization (UNCIO), even the veto power is not a too heavy price to pay if it would ensure US (and other great power) participation. According to Smuts:

[K]nowing what the abstention of the United States has meant for the failure of the League of Nations, and knowing what similar abstention or later disagreements among the great powers may mean in the future failure of the World Organization, I cannot say that the Yalta

62. James E. Hewes, *Henry Cabot Lodge and the League of Nations*, 114 PROC. AM. PHILOS. SOC. 245-55, 245 (1970).

63. League of Nations Covenant art. 10.

64. STATHIS, *supra* note 60 at 284.

65. Hewes, *supra* note 62, at 250.

66. IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 56 (1963).

67. Alfred Hopkinson, *America and the League of Nations*, 10 TRANS. GROTIUS SOC. 1-9, 1 (1924).

68. CLAUDE, *supra* note 6, at 87.

recommendation is too heavy a price to pay for the new attempt to eliminate international war⁶⁹

The US abstention is widely regarded as fatal to the League, as it could not prevent the events that led to WWII.⁷⁰ Therefore, paradoxically, the demise of the League began before it was even established as a political IO.

More than Meets the Eye: Sovereignty and Membership in the League of Nations

Membership in IOs is as old as IOs themselves. It is a dynamic notion that has evolved over time. The relationship between the IO and its member is central to the law of IOs. It gives rise to the theory of functionalism in IOs, as they exist to perform a specific function for their members.⁷¹ There is no blueprint on membership policies based on which IOs can develop. This is due to a simple fact: The evolution of membership in IOs is dictated by the needs and functions of every IO. However, each subsequent IO could draw from the experience of its predecessor(s). In this regard, it is of great interest to see the application of sovereignty in the membership of the League as the first political IO ever established. Especially since sovereignty exists not in the IO itself, but within its sovereign members and its member states. This, by default, excludes non-state entities; at least formally.

Although IOs belong to all members and to none, their membership can be quite diverse.⁷² The League was not an exception as it embraced the practices of the existing International Administrative Unions (IAUs) of the time and allowed non-state entities as members.⁷³ As a result, the

69. Statement by Field Marshall Smuts, the Prime Minister of South Africa, UNCIO, Verbatim Minutes of the 6th Plenary Session, Doc.55, P/13, May 2, 1945, at 423.

70. LUCK, *supra* note 46, at 23.

71. JAN KLABBERS, AN INTRODUCTION TO INTERNATIONAL ORGANIZATIONS LAW 3 (4th ed. 2022). Klabbers points to two additional dynamics in IOs, namely the internal dynamics within the IO between its organs and staff; and the third dynamic, between the IO and non-members.

72. Niels Blokker, *International Organizations and their Members*, 1 INT'L. ORG. LAW REV. 139, 139–161 (2004).

73. A practice, in great deal discontinued by the League's successor, the UN. The United Nations Charter, Article 4 provides that the UN is only open to states excludes non-state entities as potential UN members. However, it should be noted that at the time of its creation, the UN allowed non-state state entities to become members. For example, Ukraine and White Russia (present Belorussia) were admitted as original members as a concession to Stalin although they were federal units withing the USSR and not sovereign states. See Yalta Conference, President Roosevelt, Prime Minister Churchill, Generalissimo Stalin, Mar. 24, 1945. U.N. Protocol of Proc. Of Crimea Conf. Sec. I World Org., 2(b).

League was an “association of sovereign and almost sovereign or prospectively sovereign entities.”⁷⁴ This heterogeneous membership structure of the League did not come as a surprise. In his Fourteen Points plan for the League, Wilson spoke of “nations” and “states.”⁷⁵ However, the Covenant referred to “High Contracting Parties” and to “Signatories” and “States” while allowing the admission of “any fully self-governing State” and of any “dominion or colony” if agreed by two-thirds of the Assembly.⁷⁶ As a result, the British Empire had six votes as the United Kingdom, together with Australia, Canada, India, South Africa, and New Zealand, were all members of the League.⁷⁷ Although not independent sovereign states, India and the British Dominions were also signatories of the Versailles Agreement and original members of the League.⁷⁸ There was also a discovery that Wilson had promised that Canada would be eligible for non-permanent membership of the Council.⁷⁹ Additionally, Haiti was a founding member while being occupied by the US.⁸⁰ On the other hand, several (sovereign) states were not admitted for membership. This was the case with San Marino, Monaco, and Liechtenstein.⁸¹ In fact, Liechtenstein and San Marino were not admitted to the League in the 1920s due to their size and became UN Member States only in 1990.⁸²

The Covenant also introduced the category of “original members” in a political IO.⁸³ Article 1 of the Covenant of the League provides for neutral states named in the annex the possibility to join the League by a “mere unilateral declaration of adherence.”⁸⁴ Kelsen calls these States “privileged” ones.⁸⁵ All the parties to the peace treaty included in the list

74. CLAUDE, *supra* note 6, at 86.

75. Woodrow Wilson, U.S. President, Fourteen Points, Point XIV (Jan. 8, 1918).

76. League of Nations Covenant art. 1, para. 2.

77. R.L. OWEN, *THE COVENANT OF THE LEAGUE OF NATIONS: WHAT IT PROPOSES AND WHAT IT DOES NOT PROPOSE* 13 (1919).

78. SHENOY, *supra* note 18.

79. Hewes, *supra* note 62, at 252.

80. Knox, *supra* note 18.

81. BROWNLIE, *supra* note 66, at 56.

82. Geoffrey McNicoll, *Population Weights in THE INTERNATIONAL ORDER*, 25 *POPUL. DEV. REV.* 411–442, 421 (1999).

83. See League of Nations Covenant art. 1 and the Annex. The original members of the League were the signatories of the Versailles Peace Treaty specified in the Annex to the Covenant. Note that Germany, although a signatory, is not considered an original member.

84. Hans Kelsen, *The Old and the New League: The Covenant and the Dumbarton Oaks Proposals*, 39 *AM. J. INT. LAW* 45, 46–47 (1945).

85. *Id.*

were eligible for original membership, except for Germany.⁸⁶ In fact, Germany insisted to be admitted to the League as a state with equal rights.⁸⁷ However, the Allied and Associated Powers responded that Germany would be excluded from League membership until presenting proof of its intention to comply with the obligations of the treaty.⁸⁸ According to Lord Parmoor, a permanent exclusion of Central Powers was not the best course of action as it may lead to the creation of rival institutions and weaken the powers of the League.⁸⁹

In terms of overall membership, the League was a dynamic IO. In 1935 the League had fifty-nine members out of the sixty-five states (six states were non-members).⁹⁰ On the other hand, the Covenant allowed a League member to withdraw after two years of notice if it has fulfilled all its international obligations, including its obligations under the Covenant.⁹¹ These requirements were also interpreted by a number of US Senators as having the power to erode US sovereignty. Therefore, the first reservation submitted in the Senate was that the United States should be the sole judge to determine whether the conditions for withdrawal are met or not.⁹²

Even still, seventeen members withdrew during the existence of the League.⁹³ This prompted the drafters of the UN Charter to exclude a provision allowing for the withdrawal of UN members.⁹⁴ However, according to the First Commission report at San Francisco, “each state possesses” the right to withdraw. According to the Committee I/2 report

86. *Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919*, in XIII, TREATY OF VERSAILLES: ANNOTATIONS OF THE TEXT 69, 70 (Joseph V. Fuller eds., 1947).

87. *Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919, The President of the German Delegation (Brockdorff-Rantzau) to the President of the Peace Conference (Clemenceau), Versailles (May 29, 1919)*, in XIII, TREATY OF VERSAILLES: ANNOTATIONS OF THE TEXT 796, 797 (Joseph V. Fuller eds., 1947).

88. *Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919*, in XIII, TREATY OF VERSAILLES: ANNOTATIONS OF THE TEXT 69, 69 (Joseph V. Fuller eds., 1947); *The League of Nations*, at 940.

89. Lord Parmoor, *The League of Nations*, 4 TRANSACTIONS OF THE GROTIUS SOC'Y xvii, xxi (1918).

90. BROWNLIE, *supra* note 66, at 56.

91. League of Nations Covenant art. 1.

92. C. G. Fenwick, *The Fulfillment of Obligations as a Condition of Withdrawal from the League of Nations*, 27 AM. J. INT'L L. 516, 518 (1933).

93. Claude, *supra* note 6, at 86-7.; Tams, *supra* note 2, at 9.

94. Nigel D. White, *The Legacy of The League of Nations*, 71 Rev. Esp. Derecho Int. 277, 278 (2019); Hans Kelsen, *Withdrawal from the United Nations*, 1 WEST. POLIT. Q. 29, 29 (1948).

commentary on withdrawal submitted to the plenary conference of San Francisco:

[T]he Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. If, however, a Member because of exceptional circumstances feels constrained to withdraw, and leave the burden of maintaining international peace and security on the other Members, it is not the purpose of the Organization to compel that Member to continue its cooperation in the Organization.⁹⁵

The Rapporteur of Commission I expressly stated that the right to withdrawal is a right that each state possesses based on the sovereign equality of its members.⁹⁶

On the other hand, expulsion was provided by a unanimous decision of the Council, and the USSR was expelled in 1939.⁹⁷ By the end of WWII, the remaining forty-three members of the League agreed unanimously on 20 April 1946 that the League should cease to exist.

Decision-Making in the League of Nations: Sovereignty Reinvented

The most important activity of IOs is their decision-making process.⁹⁸ It includes decision-making processes that also considers representation and voting power. The decision-making processes in IOs have in fact borrowed in great extent the existing empirical practices from outside IOs as the “equalitarianism of traditional international law, the majoritarianism of democratic philosophy, and the elitism of European great power diplomacy have been transferred to the sphere of international organization to serve as competing elements in shaping the approach to international decision-making.”⁹⁹

95. Rep. of the Rapporteur of Comm. ½ on Chapter III, U.N. Conf. on Int'l Org., No.1178, at 6 (1945); Egon Schwelb, *Withdrawal from the United Nations: The Indonesian Intermezzo*, 61 AM. J. INT'L. L., 661, 661-672 (1967).

96. Volume VII-Verbatim Minutes - Meeting of the Fifth Committee (on Legal Questions), U.N. Conf. on Int'l Org., No. 1187, at 5 (Dec.15, 1945); Kelsen, *supra* note 39, at 32.

97. League of Nations Covenant art. 16, ¶ 4.

98. HENRY G. SCHERMERS & NIELS BLOKKER, INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY 705 (Brill I Nijhoff eds., Vol 5th rev. 2011).

99. Stephen Zamora, *Voting in International Economic Organizations*, 74 AM. J. INT'L. L. 566, 571 (1980) (quoting Claude, *supra* note 6, at 118).

In IOs, unanimity relates to equalitarianism, majority voting to majoritarianism, and weighted voting to elitism.¹⁰⁰ The decision-making processes of IO's today include unanimity¹⁰¹, consensus¹⁰², majority,¹⁰³ or a combination¹⁰⁴ thereof. The League was instrumental in decision-making processes as it adopted unanimity, and to a lesser, minor extent majority vote decision-making.

The approach of the League on sovereignty in decision-making was shaped by the recognition of the tradition of international conferences and one of novelty in the form of a "permanent" IO. It was one of recognition, as it adopted the existing practices of *ad hoc* international conferences, including unanimity decision-making, a plenary organ (the Assembly) and the principle of one-state, one-vote. However, at the same time, it was one of novelty, recognizing power politics and the weaknesses of the existing order challenged by the (in)ability to prevent another world war. This is seen as the institutional structure providing for the primacy of the Great Powers having a permanent seat in the Council of the League. As Brownlie notes, the League Council meetings "were analogous to the congresses and conferences at times of crisis characteristic of the Europe of the previous century. The Covenant therefore must be interpreted as a creature of its time . . ." ¹⁰⁵

The institutional structure of the League was based on Article 2 of the Covenant stipulating that "[t]he action of the League under this Covenant shall be effected through the instrumentality of an Assembly

100. *Id.*

101. Unanimity is found among others in: NATO, OECD, IMF, ILO, EU, EFTA, the Council of Europe, Benelux and OPEC. See ATHENA DEBBIE EFRAIM, SOVEREIGN (IN)EQUALITY IN INTERNATIONAL ORGANIZATIONS 116–117 (Martinus Nijhoff ed. 2000). In addition, the African Union, the EU and the Arab League also use unanimity decision-making. See Nigel D. White, *Decision-making in* RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS, 227 (Jan Klabbbers & Åsa Wallendahl, eds. 2011).

102. Consensual decision-making is found in the WTO, ICC, and ASEAN. See Jan Wouters & Philip De Mann, *International organizations as law-makers in* RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS, *supra* note 101, at 197.

103. Majority decision-making is used in the ILO, IMF, IBRD, OAS, WIPO. Jan Wouters & Philip De Mann, *International Organizations as Law-makers, in* RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS, 196 (Jan Klabbbers & Åsa Wallendahl eds., 2011); See also Nigel D. White, *Decision-making, in* RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS, 225 (Jan Klabbbers & Åsa Wallendahl eds., 2011).

104. A combination of decision-making procedures can be found in ASEAN, OSCE, IMF, NATO, OECD, UNDP, UNHCR etc. See Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 INT'L ORG. 339, 339–40 (2002).

105. BROWNLIE, *supra* note 66, at 56.

and of a Council, with a permanent Secretariat.”¹⁰⁶ The League Assembly was a plenary organ open to all League members based on the one-seat one-vote rule. However, the Council established a definite legal inequality with the permanent seats of the Great Powers.¹⁰⁷ In more practical terms, the League was partially an imitation of its predecessors as the Council was a revised edition of the Concert of Europe, while the Assembly represented the hopes of the Hague Conferences for a “general conference of the nations, meeting periodically”¹⁰⁸ The Council of the League was envisaged to have five permanent members: The United States, Great Britain, France, Japan, and Italy.¹⁰⁹ Without the membership of the United States, it was effectively limited to four.¹¹⁰ However, the composition of the Council over time was dynamic.¹¹¹ Germany acquired permanent seats in the Council, but in 1933 Japan resigned from the League and so did Italy in 1937. The U.S.S.R. acquired a permanent seat in 1934 but was expelled in 1939 after invading Finland. On the other hand, the number of non-permanent members, from the original four, increased over time to eleven by 1936.¹¹² British Dominions were entitled to represent themselves if a matter affected them and to be represented by Great Britain as a permanent member of the Council. This entitled Great Britain to a sort of a composite seat having the right to speak on behalf of all or part of its dominions.¹¹³

In terms of decision-making, in line with a traditionalist understanding of sovereignty, Article 5 of the League Covenant stipulated the following:

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.¹¹⁴

106. League of Nations Covenant art. 2.

107. P. J. Baker, *The Doctrine of Legal Equality of States*, 4 BRIT. Y. B. INT'L. L. 1, 16-17 (1923-1924).

108. CLAUDE, *supra* note 6, at 43.

109. OWEN, *supra* note 77 at 5.

110. MARIT FOSSE & JOHN FOX, *THE LEAGUE OF NATIONS: FROM COLLECTIVE SECURITY TO GLOBAL REARMAMENT* 7 (2012).

111. HERBERT FRANCIS WRIGHT, *DUMBARTON OAKS PROPOSALS AND THE LEAGUE OF NATIONS COVENANT* 8 (1945).

112. *Id.*

113. Denys P. Myers, *Representation in League of Nations Council*, 20 AM. J. INT. LAW 689, 706-707 (1926).

114. League of Nations Covenant, art. 5, para. 1, June 28th, 1919.

The unanimity requirement meant that each member had a *de jure* and *de facto* veto power to potentially block any decision of the League Assembly and of the Council. The unanimity requirement was adopted “as a reflection of the League’s belief in the sovereignty of its member states. . . .”¹¹⁵ In particular this was applicable to the Council. As stated by the Permanent Court of International Justice (PCIJ), unanimity is:

naturally and even necessarily indicated. Only if the decisions of the Council have the support of the unanimous consent of the Powers composing it, will they possess the degree of authority which they must have: [T]he very prestige of the League might be imperiled if it were admitted, in the absence of an express provision to that effect, that decisions on important questions could be taken by a majority.¹¹⁶

It should be noted, however, that unanimity was only required for substantive matters while procedural matters required “only” majority decision-making.¹¹⁷ The unanimity requirement of Article 5 was considered a victory for smaller states.¹¹⁸ This may have been one of the objections for the US not to join the League. There was a genuine understating that sovereignty requires unanimous decision-making as states should not be bound against their (sovereign) consent.¹¹⁹ The unanimity requirement, as noted by Kooijmans is the consequence of sovereignty.¹²⁰ Abstentions were not considered negative votes and conflicting parties under Article 15 could not vote and block a decision.¹²¹

However, unanimity may also hinder the efficiency of IOs as it requires the consent of all members. As stated by Rousseau, unanimity allows the minority to impose its will against the majority.¹²² In reality, it may not even require a minority but a single member to paralyze any decision-making.

115. See UN Geneva, *The League of Nations*, available at: <https://www.ungeneva.org/en/history/league-of-nations> (last visited Nov. 4, 2022).

116. Article 3, Paragraph 2, of the Treaty of Lausanne, Advisory Opinion, 1925 P.C.I.J. (ser. B) No. 12, at 29 (Nov. 21, 1925).

117. League of Nations Covenant art. 5, para. 2.

118. Herbert W. Briggs, *Power Politics and International Organization*, 39 Am. J. Int’l. L. 664, 669 (1945).

119. Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L. J. 207, 213 (1943-1944).

120. PIETER HENDRIK KOOIJMANS, THE DOCTRINE OF THE LEGAL EQUALITY OF STATES: AN INQUIRY INTO THE FOUNDATIONS OF INTERNATIONAL LAW, 238-39 (1964).

121. League of Nations Covenant art. 15; see also Tams, *supra* note 2, at 11.

122. Roberto Herrera, *Evolution of Equality of States in the Inter-American System*, 61 POLIT. SCI. QUART. 90, 98-99 (1946).

These policies shaped a great deal of the subsequent development of the UN and international institutional law and are relevant in the re-emerging discussions on the role of sovereignty and power relations in IOs. The structure of the UN organs discussed in Dumbarton Oaks was modelled on the League.¹²³ The lesson learned from the League resulted in a shift to majority and consensus decision-making in IOs established after WWII.¹²⁴

As examined above, while the League does not have direct references to sovereignty, unanimity decision-making was an underlying principle. Moreover, while the beginning of the XX century coincided with the establishment of the League, it was not an era of great normative development in the law of international organizations. It is a historical fact that the most important developments took place after WWII and the establishment of the UN. Based on this background, although not present in the text of the Covenant, sovereignty was the cornerstone of the League. The Charter of the UN addressed this deficiency by enshrining the principle of sovereign equality of all its members.¹²⁵ Moreover, the UN Charter protects UN members from outside interferences in their domestic affairs, i.e., their sovereignty.¹²⁶ Therefore, the Covenant and later the UN Charter were not clean breaks but additional layers of development of the existing international treaty and customary law.¹²⁷

Conclusion

There is little doubt that with the League, “the modern international institution was born.”¹²⁸ Despite its collapse, the League was a breaking point with the existing *ad hoc* practices, and as a result, international lawyers have primarily accomplished their “dream to institutionalize.”¹²⁹ Commonly regarded as a “failure,”¹³⁰ paradoxically, the League represents a beginning and not an end to the proliferation of IOs. In today’s world, international institutions, or IOs, influence the destiny of

123. See Bardo Fassbender, *Dumbarton Oaks Conference*, MAX PLANCK ENCYCLOPEDIA PUB. INT. L. 6 (2007).

124. Zamora, *supra* note 100, at 574.

125. U.N. Charter art. 2, para. 1.

126. U.N. Charter art. 2, para. 7.

127. White, *supra* note 94, at 282-83.

128. David W. Kennedy, *The Move to Institutions*, 8 CARDOZO L. REV. 842 (1987).

129. José E. Alvarez, *International Organizations: Then and Now*, 100 AM. J. INT’L L. 324-347, 324-325 (2006).

130. Tams, *supra* note 2, at 40.

millions of people. There is hardly any human activity that is, to some extent, not governed by an international organization.¹³¹

Sovereignty, using the analogy of the World Trade Organization (WTO) Appellate Body, when dealing with “like products” is an “accordion” that stretches and squeezes as applied in different places.¹³² The “width” of its application depends on the particular context and circumstances in any given case to which it applies.¹³³ In similar terms, the notion of sovereignty, and in particular sovereignty in IOs is an umbrella term that has a multitude of applications. In the League, the sovereignty of states and its transfer to IOs was of fundamental relevance to its establishment and to its demise. It was fundamental as States decided to transfer part of their sovereignty to a “political” IO for the first time in human history. It was also fundamental as the United States did not ratify the Covenant primarily due to concerns of “eroding” part of its sovereignty. Although *ad verbatim* silent on sovereignty, the Covenant of the League, being the first-ever adopted constituent treaty of a political IO, inevitably served as a starting reference for successor IOs. Especially in fundamental policies involving membership of (non) state entities, institutional structure of IOs, and decision-making processes. Since then, the discourse on the evolution of sovereignty in relation to IOs has been transcendental in time and space. It continues to be considered eroded by globalization and, at the same time, sustained by the international society.¹³⁴ In an emerging multi-polar world where globalization is under question, the notion of state sovereignty is gaining momentum again. As Simpson notes, the law on sovereignty is in “infinite transition.”¹³⁵ With power shifts around the world, different views on sovereignty (and fundamental values) are becoming more important.¹³⁶ As stated by Molotov, the USSR Commissar for Foreign Affairs during UNCIO, “if

131. JAN. KLABBERS, *INTRODUCTION TO INTERNATIONAL INSTITUTIONAL LAW* 21 (2d ed. 2009).

132. See generally Appellate Body Report, *Japan—Taxes on Alcoholic Beverages*, WTO Doc. WT/DS8/AB/R (adopted Nov. 1, 1996).

133. *Id.* For a discussion on its meaning in WTO law see PETER VAN DEN BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS* 335 (Cambridge eds., 4th ed. 2017).

134. See KRASNER, *supra* note 31, at 3.

135. Gerry Simpson, *Something to do with States*, in *THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW* 1, 565 (Anne Orford & Florian Hoffmann eds., 2016).

136. Benedict Kingsbury & Megan Donaldson, *Global Administrative Law*, *MAX PLANCK ENCYC. OF PUB. INT’L L.* ¶ 1, 56 (2011).

the sad lessons of the League of Nations have to be mentioned now, it is only order that the past errors may be avoided."¹³⁷

137. Molotov, the U.S.S.R. Commisar for Foreign Affairs, UNCIO, Statement at 1st Plenary Session, Doc.15, P/3, Apr. 27, 1945, at 133.