

# An alternative mode of international order: The international administrative union in the nineteenth century

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**Abstract.** A novel form of international order was developed in the nineteenth century by international administrative unions such as the International Telegraph Union and the Universal Postal Union. This administrative internationalism posed a striking alternative to the international society of great powers, sovereignty, and forms of imperial domination, for the members of administrative unions included not only sovereign states but also semi-sovereigns, vassals, and colonies. Members were equal and bound identically to the union treaty and its international administrative law. This article examines the structure of unions and their politics of membership in the nineteenth century, and engages theories of global governance to argue that early administrative unions present a mode of international order different from theories of both global networks and the international system of neorealism.

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## Introduction

In their recent and celebrated call to direct greater attention to the role of the nineteenth century in ‘the making of modern international relations’, Barry Buzan and George Lawson assert, ‘If IR is to gain a better grasp of its core areas of enquiry, the global transformation of the 19th century needs to become more central to its field of vision’<sup>1</sup>. In solidarity with that effort, this article provides a historical assessment of a novel institution in the nineteenth century, the international administrative union. Although these unions are with us still – now dissolved into the category of ‘international’ or ‘intergovernmental organisation’ – the international administrative

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<sup>1</sup> Barry Buzan and George Lawson, ‘The Global Transformation: The Nineteenth Century and the Making of Modern International Relations’, *International Studies Quarterly*, 57:3 (2013), pp. 620–34 (quote on p. 620).

union is fundamentally distinct from the international organisation of the twentieth century. Where the sovereign state became the preferred unit of international society in the course of the twentieth century, international administrative unions presented a different mode of international order in the nineteenth century.

Early unions such as the International Telegraph Union (ITU) and Universal Postal Union (UPU) were composed of members that were not the formal states of an international system or international society as it is usually presented in international relations scholarship. So-called semi-civilised states such as Turkey and China, and colonies both individual and collective, were admitted to membership in many of these public unions. To the degree that world political relationships constituted an international system in the nineteenth century, the commonplace distinctions between civilised and uncivilised nations, and sovereign and semi-sovereign states, were not the dominant considerations in international unions. Japan, Germany, the US, Italy, and arguably Turkey were all becoming nation-states in the last third of the century and they joined the UPU as equal members. Moreover, this equality in the UPU extended to a striking variety of political units – each of which was described in the UPU treaty as simply a ‘country’: British India, Brazil, Egypt, French colonies as a unit, Danish colonies as a unit, plus Persia, Hawaii, the Argentine Republic, and more. The international order suggested by international administrative unions differs from the other, more familiar order under development at the time, the world as a set of sovereign states. It imagined an international society quite different from that which evolved following the Hague Peace Conferences of 1899 and 1907.

This article examines persisting problems of international order and global governance. Contrary, for example, to the representations of a neorealist such as Kenneth Waltz, who famously asserted that states are the fundamental units of an international system and share, as a basis of their similarity as ‘unitary actors’, drives for self-preservation and universal domination, this article shows that international unions of the nineteenth century began to constitute an international order that, like networks of global governance today, reveals a profound plurality among the units of an international system.<sup>2</sup> As a mode of international order prior to the domination of sovereign states, it operated according to a principle of inclusion different from that of the twentieth century. Insofar as both Waltz and the UN assume that states are fundamentally the same, they are included in the international system. In a process like that by which the society of persons with legal rights and standing expanded from white, male, property-owners at the start to include those formerly excluded – on the basis of their shared humanity – so too the club of European sovereign states in the nineteenth century consolidated an international order as sovereignty was generalised and democratised. Today, under the arrangements of the UN, an order of sovereign states now covers the globe, although many are sovereign in name and legality only and the equality of states remains compromised by the great powers that dominate the Security Council. This history of international administrative unions looks upon a world prior to the dissemination of sovereignty, and a different model of global governance not based on the sameness of sovereign states.

<sup>2</sup> Kenneth N. Waltz, *Theory of International Politics*, reprinted in *Neorealism and its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986 [orig. pub. 1979]), pp. 87–92, 117.

Neorealists certainly acknowledge the existence of international unions, but dismiss the idea of their constituting any system. Hence this assessment of unions emphasises their alternative ‘mode of international order’. The collection of international unions did not arguably cohere into a system, although there were visionaries in the nineteenth century who imagined that unions would develop into an international legal order – a point we take up below. At the same time, neorealists and others dismiss the political standing of unions, because their purposes concerned not self-preservation or domination but the global organisation of technologies. Coordination of telegraph administrations into a single global system did not arguably constitute political action. But is the technical political? This article argues that, to some degree, it is.

The international order suggested by nineteenth-century administrative unions deserves renewed attention, not only because it has been obscured by the naturalisation of the sovereign state in the twentieth century and the idea of an international society of sovereign states. In addition, we seem to be developing such an alternative again. Research on global administrative law and global governance generally, which argues for a more nuanced networked order inclusive of many more agents than the sovereign state alone, suggests that we are creating a global order that recovers the inclusiveness of the nineteenth-century order which was displaced by the domination of sovereign states. Of course, present-day actors are quite different from those of the nineteenth century – we no longer have vassals or colonies or even mandates – although France’s recent activities in West Africa, for example, suggest that colonial relationships and responsibilities persist. The research of scholars such as Anne-Marie Slaughter or Benedict Kingsbury reveals the extent to which multinational corporations, NGOs, and a variety of private organisations not only work alongside sovereign states in a networked global order but begin to displace them.

Yet international unions in the nineteenth century differed from global networks, for private corporations were explicitly refused admission. Thus, the governance arrangement of international unions begs the question of how governance that was not primarily based on the sovereign state as an organising principle can and does look. This article suggests that the early administrative unions reflect a more accurate version of the international order than does the current regime today.

This article begins with the organisation and development of the first two important international unions, the ITU, and the UPU. We examine the background of unions and administrative law among nineteenth-century German states, and then the politics of membership in the ITU and UPU – particularly representation and voting. We look at the misconception that has obscured this history of international unions – the fact that the nineteenth-century unions continue to be described as unions of sovereign states – as well as a persisting explanation for their relative success in the nineteenth century – that their straightforward technical norms were easier to manage than the political norms of other international agreements. Ultimately, my point is this: the international administrative unions of the nineteenth century provide evidence of an alternative mode of international order, one prior to the dissemination of sovereignty in the twentieth century. If our current international order – particularly as it was reconstructed after World War II and in the midst of colonial independence – is postulated on the sameness of territorial states, the alternative mode of international unions represents a different vision of the units of an international system and a different approach to global governance.

### The treaty basis of international administrative unions

Although the commissions for the great European rivers – the Rhine and the Danube – were the earliest international associations of governments in the nineteenth century, these were not strictly ‘universal’ unions, because the members of these river commissions were largely limited to the states through which a river flowed and which, accordingly, had direct interests in river traffic. Likewise, an early union such as the Austria-German Telegraph Union restricted membership to German-speaking members. By contrast, the ITU was an international union with membership open to all nations – both state governments and telegraph administrations. Similarly, the UPU was a union open to all countries with independent postal administrations, including semi-sovereigns, dependencies, and colonies.<sup>3</sup>

Each of these unions was created by a treaty convention that bound all signatory members of the union to the common goals specified in the treaty. This aspect of the treaty and union – this commitment to the common interests of the members – distinguished the administrative union as a novelty in the nineteenth century. Legal scholars differentiated such a union treaty as a ‘law-making treaty’ from a peace treaty or other bilateral treaty of the time, called a ‘contract’. Where the contract treaty sought to reconcile different ends, the law-making treaty sought to unite common ends. Because the signatories of a law-making treaty judged themselves bound by the international principle of *pacta sunt servanda* – that one must honor one’s agreements – the ITU and UPU conventions arguably assumed the status of international law.<sup>4</sup>

In addition to the convention, however, another aspect of the novelty of administrative unions was the addition of a *règlement* or set of regulations that was separate from the convention. Members signed both the permanent convention and the *règlement*; the ITU convention included a third part as well, the comprehensive tariff. Because both the ITU and the UPU understood that the details of telegraphic and postal services respectively would need constant updating and renegotiating, the regulations were kept separate from the foundational convention, which registered the original commitment of a member to the mission of the ITU or UPU. To be sure, each convention could be revised periodically. In the case of the UPU, as new services such as parcel post and registered mail were developed, additional ‘Arrangements’ were appended to the convention. These Arrangements were optional, for not all members offered the new services or chose to participate. The first, for example,

<sup>3</sup> Prior to the development of international unions in the nineteenth century, there were significant numbers of *private* international organisations, today labelled ‘international non-governmental organizations’. Best known of these are the anti-slavery societies and peace organisations of the early nineteenth century, but they were arguably predated by religious and political organisations in the eighteenth century. See Bob Reinalda, *Routledge History of International Organizations: From 1815 to the Present Day* (London: Routledge, 2009), pp. 37–54; Clive Archer, *International Organizations* (3rd edn, London: Routledge, 2001), pp. 4f, 12f; and Steve Charnovitz, ‘Two Centuries of Participation: NGOs and International Governance’, *Michigan Journal of International Law*, 18:2 (1997), pp. 183–286, esp. 189–208.

<sup>4</sup> Heinrich Triepel, *Völkerrecht und Landesrecht* (Leipzig: Hirschfeld, 1899), pp. 49–74. See also M. P. Kasansky, ‘L’Union télégraphique internationale’, *Journal télégraphique*, 21:8 (8 August 1897), p. 180; Otto Kunz, *Die internationalen Telegraphen-Unionen* (Stuttgart: F. Enke, 1924), pp. 40–2, 125f.; Andréa Rapisardi-Mirabelli, ‘Théorie générale des unions internationales’, *Recueil des Cours*, 7 (1925, part II), pp. 347–52; Lorenz von Stein, ‘Einige Bemerkungen über das internationale Verwaltungsrecht’, [*Schmollers*] *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reich*, 6:2 (1882), pp. 420–30; and Miloš Vec, *Recht und Normierung in der industriellen Revolution* (Frankfurt am Main: Klostermann, 2006), pp. 112–23.

was an agreement regarding the exchange of declared-value letters in 1878, which was signed only by Egypt and the members in continental Europe. But the principle stayed: the ITU or UPU convention was an open and indefinite convention that members had negotiated, and they expected to modify the regulations at periodic conferences.<sup>5</sup>

### The German origins of administrative unions

Administrative unions developed among the German states, where administrative law developed in conjunction with constitutional law as a result of the French revolution. Both the defeat of Napoleon and the defeat of the revolutions of 1848 invited the search for alternatives to the development of liberal constitutionalism in the German states. Because the principle of monarchy remained a general political norm, the principle of state sovereignty and the practice of state administration were promoted by the intellectual class and the bourgeoisie as an effort to limit the power of the monarchy. Rather than pursue the liberal model of Britain and the US, which proposed self-government or self-administration, German legal theorists turned to the state administration of society as the path to progress. Robert von Mohl, credited with theorising independent administrative law as a central aspect of the *Rechtsstaat* – the ‘constitutional state’ or ‘state under the rule of law’ – argued that public administration, based on the general power of the state, should assist individual development by removing difficulties that stand in the way. He and fellow advocates encouraged the specialisation of administrative law into public health, poverty, education, real estate, insurance, agriculture, mining, trade and industry, transportation, currency and banks, and more.<sup>6</sup>

These advocates of administrative law in the German states argued that because Prussia failed to produce a constitution between 1815 and 1848 – in the absence of a politically motivated and united bourgeoisie – the Prussian state’s commitment to economic liberalism and administrative law was a viable alternative to a liberal constitution. In the wake of Prussia’s remarkable success in 1834 at organising the creation of the *Zollverein*, the customs union that encouraged a process of pan-German economic unity, Prussia produced an impressive series of administrative laws from the late 1830s to 1848. One prominent advocate of administrative law argued that administrative law provided ‘the sole rational basis for the arrangement of public law’.<sup>7</sup> Advocates did not intend the domination of society by the state; rather, administrative law was meant to support the private efforts of diverse social

<sup>5</sup> Henri Boisson, *La Société des Nations et les Bureaux Internationaux des Unions Universelles Postale et Télégraphique* (Paris: Pedone, 1932), pp. 4f, 16–20; Hans Bühler, *Der Weltpostverein: Eine völkerrechtsgeschichtliche und wirtschaftspolitische Untersuchung* (Berlin: Ferd. Dümmlers, 1930), pp. 54–65, 158f; and Henri Ranaivoson, *L’union postale universelle (UPU) et la constitution d’un territoire postal unique* (Berne: n.p., 1988), pp. 58–60.

<sup>6</sup> Robert von Mohl, *Polizeiwissenschaft* (1832–44), as cited in Michael Stolleis, *Public Law in Germany, 1800–1914* (New York: Berghahn, 2001), p. 230. See also Luc Heuschling, *Etat de droit, Rechtsstaat, Rule of Law* (Paris: Dalloz, 2002), pp. 6, 36–50, 69f; and David F. Lindenfeld, *The Practical Imagination: The German Sciences of State in the Nineteenth Century* (Chicago: University of Chicago Press, 1997), pp. 67–89, 115–7.

<sup>7</sup> Lorenz von Stein, *Verwaltungslehre* (1866) as cited in Stolleis, *Public Law in Germany, 1800–1914*, p. 232. See also Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (New York: Columbia University Press, 2004), pp. 65–9.

groups cooperating toward common goals within society – commerce, transportation, communications, hygiene, and education – and ultimately the common good.<sup>8</sup>

As with theories of global governance today, the development and coordination of improvements in many of these same areas are arguably the goal of regulatory and administrative activity. In the absence of a unified German state, authorities in one or another German polity proposed treaties to establish all-German unions after the example of the *Zollverein*. Pan-German agreements for a railroad authority, a telegraph union, a postal union, and more followed. These were in effect international treaties, although they were confined to German-speaking states and not yet the ‘universal’ treaties of later decades. Yet both were described as *allgemeines Verwaltungsrecht* – general or universal administrative law. Although some scholars described administrative law as a completely national set of measures, others recognised the development of an international administrative law in the supranational administrative law of the German-Austrian telegraph and postal unions. As a scholar such as Georg Meyer argued, a bi- or multi-lateral treaty is one of the sources of administrative law.<sup>9</sup> As research on global administrative law today emphasises, even as administrative law was being presented as a national or domestic enterprise in the nineteenth century, it was already beginning to assert its international position within the national sphere.<sup>10</sup>

In the 1880s, scholars of German legal science identified international administrative law as a specific field, and their language began to shift, from ‘general’ or ‘universal’ (*allgemeines*) to ‘international’ or ‘interstate’ (*internationales*) administrative law.<sup>11</sup> Building upon this scholarship, Russian lawyer Feodor Martens produced perhaps the most extraordinary work of the 1880s: his treatise on international law organised under the heading of ‘international administration’ everything from diplomatic rights and practices to agreements on intellectual property, economic relations, and communications and transportation, and included what Martens was ready to call international private law and international criminal law.<sup>12</sup> By comparison, the concept was only later introduced to French and English scholarship.<sup>13</sup>

<sup>8</sup> Lindenfeld, *The Practical Imagination*, pp. 126–8, 200f; Karl-Hermann Kästner, ‘From the Social Question to the Social State’, *Economy and Society*, 10:1 (1981), pp. 7–26; Eckart Pankoke, ‘Soziale Politik als Problem öffentlicher Verwaltung: Zu Lorenz von Steins gesellschaftswissenschaftlicher Programmierung des “arbeitenden Staates”’, in Roman Schnur (ed.), *Staat und Gesellschaft: Studien über Lorenz von Stein* (Berlin: Duncker & Humblot, 1978), pp. 405–17.

<sup>9</sup> Georg Meyer, *Lehrbuch des deutschen Verwaltungsrechtes* (2nd edn, Leipzig: Duncker & Humblot, 1893), vol. 1: p. 7, and vol. 2: pp. 568, 570.

<sup>10</sup> Sabino Cassese, ‘Global Standards for National Administrative Procedure’, *Law and Contemporary Problems*, 65:3–4 (2005), p. 112f; Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, ‘The Emergence of Global Administrative Law’, *Law and Contemporary Problems*, 68:3–4 (2005), pp. 16–18, 25f.

<sup>11</sup> Otto von Sarway, *Allgemeines Verwaltungsrecht* (Freiburg: Mohr, 1887); Stein, ‘Einige Bemerkungen über das internationale Verwaltungsrecht’, pp. 395–442; see also Alfred H. Fried, *Das internationale Leben der Gegenwart* (Leipzig: Teubner, 1908), pp. 21–4.

<sup>12</sup> The treatise immediately appeared in both French and German translations: Fedor Fedorovich Martens (F. de Martens), *Traité de droit international*, trans. Albert Leo (Paris: Librairie Marescq aîné, 1883–7); and *Völkerrecht: das internationale Recht der civilisirten Nationen: systematisch dargestellt*, trans. Carl Bergbohm (Berlin: Weidmann Buchhandlung, 1883–6).

<sup>13</sup> Pierre Kazansky, ‘Théorie de l’administration internationale’, *Revue générale de droit international public*, 9 (1902), pp. 355–7; Manley O. Hudson, ‘The Development of International Law since the War’, *American Journal of International Law*, 22:2 (1928), pp. 330–50, esp. 339–41. Lassa Oppenheim’s *International Law: A Treatise* (1905) introduced the term in English.

Consider the example of the German antecedents of the International Telegraph Union (ITU). The first telegraph treaty was the Prussian-Austrian Treaty of October 1849, which was quickly replaced by the Austria-German Telegraph Union of July 1850. Austria, Prussia, Bavaria, and Saxony were the initial signers among the German states, and several others as well as free cities soon signed onto the accord. This important union set the example of mandating the use of the Morse telegraph apparatus, connecting international lines at borders, establishing tariff zones, and guaranteeing that member states would establish uniform telegraph legislation. A subsequent revision of the accord, at an 1857 meeting in Stuttgart, created the two-part structure of administrative unions that was followed by many international unions later in the nineteenth century: a permanent convention as a formal diplomatic treaty; and a set of regulations that would be modified. This Austria-German Telegraph Union linked up with its counterpart, the West European Telegraphic Union in agreements of 1852 and 1855, and then the two merged in 1865 with the creation of the ITU. The framework for the organisation and its regulations had been established by the German states in their earlier negotiations with France, Belgium, and Switzerland; in the judgment of one scholar, the ITU Convention of Paris 1865 was equivalent to the 1858 Berne Agreement between the Austria-German and West European unions.<sup>14</sup>

Common to these early unions and the subsequent ITU was a commitment to the requirements of the telegraph as an international system, the operation of which took precedence over peculiarities within any given national system. Article 59 of the ITU Convention (1865), for example, gives clear priority to something like a public interest: the ‘general nature’ of the international system overrules whatever ‘particular arrangements’ any members may contract between themselves.<sup>15</sup> The willingness of the German states, principalities, and free cities to include all interested parties in an international system was a powerful precedent that informed the ITU, the UPU, and other international unions in the late nineteenth century. Technology was the basis of the union, and not the relative power or status of any given member. For the system to operate properly, each telegraph administration agreed to participate according to the general rules of the collective agreement.

### **The structure of the first international administrative unions: ITU and UPU**

Created in 1865, the ITU’s primary goal was to ensure international telegraph service under the control of governments or telegraph administrations. The ITU sought to guarantee both the security of transmissions and the regularity and reliability of transmissions – in return for which members paid a membership fee that supported

<sup>14</sup> George A. Coddling, Jr, *The International Telecommunication Union: An Experiment in International Cooperation* (Leiden: Brill, 1952), pp. 13–21. See also Ludwig Geßner, ‘Die beiden Weltvereine für den Post- und Telegraphenverkehr’, *Archiv für öffentliches Recht*, 2 (1887), pp. 220–6; Kunz, *Die internationalen Telegraphen-Unionen*, pp. 28–32; Francis Lyall, *International Communications: The International Telecommunication Union and the Universal Postal Union* (Farnham: Ashgate: 2011), pp. 18–23; Meyer, *Lehrbuch des deutschen Verwaltungsrechtes*, vol. 2, pp. 597–602; Louis Rolland, *De la correspondance postale et télégraphique dans les relations internationales* (Paris: Pedone, 1901), pp. 134–46; and Edgar Saveney, ‘La télégraphie internationale’ (part 1), *Revue des deux mondes*, vol. 101 (15 September 1872), pp. 363–8.

<sup>15</sup> *Convention télégraphique internationale conclue à Paris, le 17 mai 1865 . . .*, in Clive Parry (ed.), *The Consolidated Treaty Series*, 130 (Dobbs Ferry, NY: Oceana, 1969–81), p. 213. Hereafter cited *CTS*.

the work of the union. Because the material installations of telegraphs lay within governed or 'national' territories, governments were in a position to encourage private telegraph companies to adhere to ITU guidelines; and to facilitate that goal, private companies were welcomed to attend ITU conferences as non-voting participants from 1872. Because the telegraph required a great deal of capital for the initial installation of lines and only gradually recovered that investment and became profitable, the ITU hosted an ongoing debate over international rates, for users of the telegraph wanted them lowered but the installers of telegraph lines – particularly the expanding network of undersea cables – wanted rates higher. In the wisdom of the founders of the union, members were always free to enter into separate, special treaties between themselves in order to contract bilateral arrangements that differed from ITU guidelines.<sup>16</sup>

By comparison, the UPU was created in 1874 after a decade of discussions encouraged by the US, France, and the North German Confederation, in order to provide international regulation for traditional postal services.<sup>17</sup> It sought, first, to ensure the unimpeded transit of mail across national borders and freedom from transit charges across national borders, and second, to make postal rates uniform throughout the world by means of a common unit of weight, identical categories of mail items (letters, packages, and so on), and the non-sharing of costs for international mail. All fees were paid in advance, and membership dues helped to restore some equity to the system, by reimbursing the greater expenses contributed by some member administrations – especially France and Belgium, through whose territory much of the transatlantic post was sent. In time, the UPU added additional tasks to its repertoire: parcel post, money orders, letters and packages of registered value, and so on. But its guiding purpose was to regulate international mail with a common set of standard practices.<sup>18</sup>

The organisational structure created by the ITU and UPU conventions was likewise a novelty in the nineteenth century. The ITU was a simple organisation. Its periodic and independent collective conferences of members were the legal and legitimate substance of the ITU, and only these bodies could make decisions and create policy for the ITU. To assist the periodic conferences of the ITU in their work, the ITU created the International Bureau of the ITU, which was located in Berne, Switzerland. The International Bureau had no authority over member governments but had only administrative functions; its purposes were to gather statistics of use and other relevant data, to monitor member input between the periodic conferences, and to keep members informed of new developments in telegraphy. Occasionally, it

<sup>16</sup> Boisson, *La Société des Nations et les Bureaux Internationaux des Unions Universelles Postale et Télégraphique*, pp. 11–21; Coddington, *The International Telecommunication Union*, pp. 20–30; Kunz, *Die internationalen Telegraphen-Unionen*, pp. 55–73; Lyall, *International Communications*, pp. 25–37; and Rolland, *De la correspondance postale et télégraphique*, pp. 151–9, 166–74.

<sup>17</sup> The organisation created in 1874 was called the 'Union postale générale' ('General Postal Union'). In June 1878, it became the 'Union postale universelle' ('Universal Postal Union'), which is still the name today. In this article, I simply call the organisation the UPU. On the history of the UPU, see Albrecht Balmer, 'Foundation and Growth of the Universal Postal Union', *L'Union postale*, 57:1 (1932), pp. 1–12; Bühler, *Der Weltpostverein*, pp. 14–39; George A. Coddington, Jr, *The Universal Postal Union: Coordinator of the International Mails* (New York: New York University Press, 1964), pp. 20–47; and Ranaivoson, *L'union postale universelle (UPU) et la constitution d'un territoire postal unique*, pp. 44–66.

<sup>18</sup> Balmer, 'Foundation and Growth of the Universal Postal Union', pp. 5–8; Bühler, *Der Weltpostverein*, pp. 40–53; Gebner, 'Die beiden Weltvereine für den Post- und Telegraphenverkehr', pp. 235–41; Ranaivoson, *L'union postale universelle*, pp. 104–28, 190, 197.



might assist the conferences of the ITU in organising a special conference or commission to investigate some problem or to arbitrate a disagreement between members.<sup>19</sup>

By comparison, the UPU possessed three organs. Foremost was the UPU Congress, the legislative and all-powerful body of delegates who represented the members of the UPU. The Congress was obliged to hold periodic meetings in order to revisit the regulations, and it usually convened every five or six years. After the precedent of the ITU, the UPU Congress created a second organ, the International Bureau, whose function was to assist the Congress in maintaining the UPU between meetings of the Congress. The Bureau of the UPU was charged to oversee the financial matters of the UPU, to mediate among members and to arbitrate their disputes, to prepare the work and organisation of the Congresses, to circulate information about postal innovations and other news through its publications, and to compile statistics drawn from the members' reports of their work. It resided in Berne, and its director was under the authority of the Swiss Postmaster. The third organ within the UPU was the commission, a formal structure specified in the convention. Each commission was created on an *ad-hoc* basis to investigate some specific question that arose, such as a new service or procedure, and it reported back to the Congress in order to advise on the revision of regulations. The first, for example, was created in 1878 to craft Arrangements for letters of declared value and money orders.<sup>20</sup>

### The equality of members and voting rights

Apart from the organisational structure of unions such as the ITU and UPU, membership in each union and the representation of each union in its collective assembly bear significantly upon my argument that these unions propose an alternative model of international order in the nineteenth century. As mentioned at the start of this article, early unions such as the UPU and the ITU were composed of members that were not the formal states of an international system as neorealist International Relations theory would have it. So-called semi-civilised states, colonies both individual and collective, and vassals or other such dependents were admitted to membership. Delegates to the 1874 Postal Union Congress vacillated between *état* (state) and *pays* (country), but settled on *pays* to describe themselves, and the planners of the 1878 Congress explicitly recommended the continued use of *pays*.<sup>21</sup>

An international administrative union such as the UPU, in other words, identifies an international order different from that of international relations today, and one that cannot simply be dismissed, for an important reason: Membership in the UPU committed the member country – whether state or dependent or colony – to a set of

<sup>19</sup> Boisson, *La Société des Nations et les Bureaux Internationaux*, pp. 19–21; Keith Clark, *International Communications: The American Attitude* (New York: Columbia University Press, 1931), pp. 96–8, 105–8; Coddling, *The International Telecommunication Union*, pp. 48–52, 57–9; Kunz, *Die internationalen Telegraphen-Unionen*, pp. 74–82, 85–9, 107–15; and Gustave Moynier, *Les bureaux internationaux des unions universelles* (Genève: A. Cherbuliez, 1892), pp. 13–36.

<sup>20</sup> Boisson, *La Société des Nations et les Bureaux Internationaux*, pp. 5–12; Bühler, *Der Weltpostverein*, pp. 96–101, 135–46; Lyaill, *International Communications*, pp. 234–42; and Ranaivoson, *L'union postale universelle*, pp. 60–5.

<sup>21</sup> *Documents du Congrès Postal International réuni à Berne du 15 Septembre au 9 Octobre 1874* (Berne: Rieder & Simmen, 1875), pp. 33, 65f, 80f, 91, 106; Union Postale Universelle, *Documents du Congrès Postal de Paris, 1878* (Berne: Lang & Co., 1878), p. 75.

responsibilities, just as any comparable interstate treaty would. Although invitations to the initial conferences of each union were networked through diplomatic representation, thereby privileging states with diplomats, an alternative system quickly evolved: a party interested in becoming a member could directly contact the Bureau in Berne, thus bypassing the diplomatic controls that served the interests of sovereign states.<sup>22</sup> The UPU – and to a lesser degree the ITU – made a point of the equality of members, regardless of their status.

Consider the policies of the ITU and UPU. The ITU convention introduced a striking measure of ambiguity. Both states and telegraph administrations could become members, but the ITU convention referred to all members as ‘governments’, ‘contracting states’, and ‘high contracting parties’. So, for example, Britain did not immediately become a member since its telegraph system was in private hands, but British India was an early member of the Union. Because, like India, they constituted telegraph administrations, a number of semi-sovereigns, vassals, and colonies became members of the ITU: Egypt, Persia, Bulgaria, and Tunis were early members. Yet for practical purposes, they were simply referred to as ‘governments’, ‘states’, and ‘high contracting parties’.<sup>23</sup>

At the start of the ITU, all members – both states and administrations – possessed equal voting rights. But problems arose when colonial powers sought to assert control over their dependents and to accrue the voting rights of their dependent telegraph administrations. A primary cause of this situation was a discrepancy between the ITU Convention and its periodic Conferences. Although all members had signed the Convention, delegates to the periodic Conferences were increasingly telegraph officials and experts who negotiated and voted upon changes to the regulations. An early ITU policy was to insist that a government that represented more than one telegraph administration could have only one vote, unless a separate delegation representing one of these telegraph administrations specifically requested a separate vote. In the absence of Britain as a member of the ITU, Britain’s colonial administrations voted separately, but after Britain joined the ITU in 1876, the British empire gradually garnered thirteen votes – a situation which drew the ire of Russia, which had only one vote. Although an important colonial administration such as India could vote differently from Britain, the centralisation of British policy for telegraph administrations in London encouraged colonies to defer to managers at the General Post Office. The ITU never solved this problem and the great colonial powers reportedly came to dominate the organisation.<sup>24</sup>

<sup>22</sup> Madeleine Herren, *Hintertüren zur Macht: Internationalismus und modernisierungsorientierte Außenpolitik in Belgien, der Schweiz, und den USA, 1865–1914* (München: Oldenbourg, 2000), pp. 237–44; Madeleine Herren, ‘Governmental Internationalism and the Beginning of a New World Order in the Late Nineteenth Century’, in Martin H. Geyer and Johannes Paulmann (eds), *The Mechanics of Internationalism: Culture, Society, and Politics from the 1840s to the First World War* (London: German Historical Institute; Oxford: Oxford University Press, 2001), pp. 123, 133; Rolland, *De la correspondance postale et télégraphique*, p. 230.

<sup>23</sup> Clark, *International Communications*, p. 102f; Kunz, *Die internationalen Telegraphen-Unionen*, pp. 45–8; Rolland, *De la correspondance postale et télégraphique*, pp. 206–10.

<sup>24</sup> Coddling, *The International Telecommunication Union*, 39f; Kasansky, ‘L’Union télégraphique internationale’, pp. 181–3; and Kunz, *Die internationalen Telegraphen-Unionen*, pp. 93–9. For an example of policy centralisation in the General Post Office, see the 1879 correspondence between the Indo-European Telegraph Office and the GPO regarding code words for the telegraph: India Office Records (British Library), file IOR:L/PWD/7/172.

In this regard, the UPU improved upon the ITU. As with the ITU, states, individual colonies, and groups of colonies could be members of the UPU. In addition, semi-sovereign states became members – Egypt, Bulgaria, and Serbia, for example, were formally under the sovereignty of Turkey but had autonomy over their respective posts. Each of two dual monarchies had dual memberships: Austria and Hungary were each members of the UPU, before and after their formal unity was broken in 1918; and the dual kingdom of Sweden-Norway had separate memberships and representation to the UPU – the severing of the dual kingdom in 1905 changed nothing as regards the UPU. As in the ITU, a few smaller states were represented by larger neighbours: Liechtenstein by Austria (later Switzerland), Monaco by France, and Andorra by Spain. And other pairs of states were sometimes allied as one member for the UPU Congress: the Netherlands and Luxembourg in the 1890s, and Belgium and the Congo Free State until 1908. As some states began to contract the transport of national post to shipping and railway entrepreneurs, the question was raised as to whether or not private companies could become members of the UPU – this was a pointed issue at the parcel post convention in 1880. The UPU allowed member countries to make such private contractual arrangements, but it would not do so as an international organisation. Private companies could not become members, although they were eventually given observer status, after the precedent of the ITU.<sup>25</sup>

As in the ITU, members soon disagreed over the voting rights of delegates to the UPU Congress, and the main point of contention concerned colonies. A state such as France was a member of the UPU, as were French colonies as a unit. Since each member unit could send a delegate to the UPU Congress, France was in effect represented by two delegates. As Britain began to secure membership for individual British colonies, this arrangement of course provoked a dispute: if Britain imagined that it could expand its delegation to the UPU Congress, others feared it would secure an unfair advantage in the body – as Russia complained in 1878. Russia was a vast landmass, and yet it had only one delegate, compared to Britain's three – for Britain, India, and the other British colonies as a group.<sup>26</sup> A two-fold compromise was reached. The UPU settled on the principle that a delegation as a voting member represented either one country or one postal administration. Only a large colony with an independent postal system would become a voting member, so that only British India and eventually Canada were given that status, and smaller colonies such as Jamaica and Hong Kong were not. At the same time, members were ranked into classes and the membership fee of each class was calculated according to the quantity of mail it produced and transferred, as well as the distances across which it transferred mail. As of 1878, because Britain, India, and the other British colonies as a group were each ranked in the first class – as was Russia, for example – the British empire paid three times the fees that Russia did.<sup>27</sup> A measure of equity was established.

If members of the ITU and UPU were not necessarily states, and the identities of states and members were asymmetric, an even more significant aspect of this international order is the fact that both the ITU and the UPU followed the model of classical diplomatic relations: Delegates to ITU Conferences and UPU Congresses

<sup>25</sup> Bühler, *Der Weltpostverein*, pp. 73, 76–9, 83f, 88–90; Boisson, *La Société des Nations et les Bureaux Internationaux*, p. 17.

<sup>26</sup> *Documents du Congrès . . . 1878*, pp. 18f, 76f, 509.

<sup>27</sup> *Ibid.*, pp. 79f, 109–16, 142–6; and Art. XXVIII of the 1878 Règlement, in *CTS*, vol. 152: p. 258f.

were treated as diplomatic personnel. The UPU treaty identified delegates to UPU Congresses as ‘*délégués plénipotentiaires*’; each was a ‘representative authority’ as required of diplomatic personnel. Each delegate was expected to present his diplomatic credentials to the UPU, and each enjoyed the status of diplomat in the city where a congress was held. But the 1878 Congress in Paris was surprised by the quite different powers granted to the various delegates by their governments, and the fact that some delegates had arrived without official plenipotentiary status: the Portuguese delegate had only the powers to discuss and to vote, but no power to sign any agreement, while the Brazilian and Japanese delegates had been granted no powers whatsoever by their governments. No matter. The French hosts of the Congress judged that delegates had plenipotentiary status by definition of the treaty and were allowed to sign agreements, because any declaration of the UPU was in accord with the terms already agreed to by each respective foreign ministry. And in fact, each Congress of the UPU was allowed to make its own rules of conduct.<sup>28</sup>

In a similar arrangement, diplomatic *plénipotentiaires* had signed the original ITU Convention, Regulations, and Tariff, and attended the periodic Conferences. But as the ITU developed, technical experts dominated the ranks of representatives to the ITU Conferences. The ITU reasoned that, because such representatives were ‘under instruction’ by their governments, they were deemed to have the ‘full powers’ of diplomats and able to sign new versions of documents to which their governments were already committed. When this procedure was questioned at the 1885 Conference in Berlin, the ITU officially confirmed this arrangement, following the example of the UPU.<sup>29</sup>

### Disagreements and disputes

The practice of consensus in the UPU meant the autonomy of each member was preserved within the deliberations of the Congress.<sup>30</sup> Trusting in the cooperative wills of their fellows, members tended to practice self-restraint and compromise. In the event that one had a dispute with another, two paths of compromise were available. Members were required to submit to the mandatory arbitration of the director of the Bureau, or they could work out a bilateral agreement that either modified or supplemented UPU regulations for their own purposes. For example, just months after signing the 1878 UPU Convention, Austria-Hungary and Greece signed a separate

<sup>28</sup> Bühler, *Der Weltpostverein*, pp. 123–9; See Jean Claveirole, *L'internationalisme et l'organisation internationale administrative* (Saint-Étienne: A. Waton, 1910), p. 98; *Documents du Congrès ... 1878*, p. 596f.; and Léonard Laborie, *L'Europe mise en réseaux: La France et la coopération internationale dans les postes et les télécommunications (années 1850 – années 1950)* (Bruxelles: Peter Lang, 2010), p. 117f. Léon Chabert has called this ‘tacit ratification’; see *L'union postale universelle: son statut juridique, sa structure et son fonctionnement* (Berne: Herbert Lang & CIE, 1970), pp. 27–30. By contrast, the 1874 Congress was quite exacting about the ‘full powers’ of delegates; see *Documents du Congrès ... 1874*, p. 19f; Art. XVIII of the 1874 Treaty, in *CTS*, vol. 147: p. 142; and Art. XIX and ‘Final Protocol’ of the 1878 Convention, in *CTS*, vol. 152: pp. 242, 244f.

<sup>29</sup> Kunz, *Die internationalen Telegraphen-Unionen*, pp. 56f, 60, 102–7. On the growing role of experts in the ITU and UPU, see Laborie, *L'Europe mise en réseaux*, pp. 120–2, 400–6; and Lyall, *International Communications*, pp. 8–11.

<sup>30</sup> Bühler, *Der Weltpostverein*, pp. 116–22; Max Turmann, ‘Un type de convention et d'organisation internationales: l'Union postale universelle’, *Hommage de la Faculté de droit de l'Université de Fribourg à la Société suisse des juristes à l'occasion de sa 59<sup>me</sup> assemblée générale à Fribourg les 29 et 30 septembre 1924* (Fribourg: Librairie de l'université, 1924), p. 72f.

postal convention of December 1878, which specified the conditions applicable when boats brought mail from one state to the other; mail boats would be permitted to carry other merchandise and passengers, would be subject to quarantine rules if applicable, and so on. This was a matter not part of the UPU Convention.<sup>31</sup>

There is, remarkably, no history of longstanding disputes within the UPU or among its members.<sup>32</sup> The first two congresses saw only one tension – that between large and small countries. The latter wanted higher basic postal rates, because they felt that they were at a relative disadvantage of scale since they tended to spend more per unit of mail shipped from one point to another – Serbia, for example, because of its lack of railroads and Portugal, with its fewer seaports and smaller merchant marine. But because some of the larger members too wanted higher rates – the US in order to subsidise its cross-continental railroad and France in order to support its increasing costs of colonial infrastructure – the principle of charging by weight created a basis of compromise and satisfactory agreements were easily reached.<sup>33</sup> In 1878, Italy and France had proposed a surcharge for their maritime shipments to the Indies, and Japan, too, had requested an extraordinary surcharge for its new Japan-US shipping line; although both of these proposals received the endorsement of the planners of the 1878 Congress, delegates of the three countries then declined to raise the matters at the Congress.<sup>34</sup>

On the rare occasion that two members had a dispute that went to arbitration, the difference was readily resolved.<sup>35</sup> The first such case in 1877, which was arbitrated by the Postal Administrations of Germany and Belgium on behalf of the anonymous parties at dispute ('A' and 'B'), concerned the absence in the UPU treaty of a prohibition against the inclusion of valuable papers payable to the bearer in standard registered letters: Because the UPU treaty allowed members to contract special agreements regarding matters not addressed in the treaty, the arbitrators ruled that Post Office B was not justified in opening a registered letter containing a valuable paper and charging a supplementary fee on that inclusion.<sup>36</sup>

### **Misrepresenting the history of administrative unions**

Given this assessment of international administrative unions in the nineteenth century, it is surprising that most of the research on unions suffers from a consistent misrepresentation. Even current researchers – the New York University project on global governance, Anne-Marie Slaughter, and Bob Reinalda and Clive Archer on international organisations – describe early unions such as the ITU and UPU as associations of states. Archer has in fact admitted that 'the "sovereign state" model of international relations' has tended to reinforce a distortion of the facts.<sup>37</sup> Hence,

<sup>31</sup> See the 'Convention postale entre l'Autriche-Hongrie et la Grèce', in *CTS*, vol. 152: pp. 304–9.

<sup>32</sup> Gustave Moynier noted that the occasional absence of unanimity in the UPU was solved by diverting certain business matters to the Arrangements; see *Les bureaux internationaux des unions universelles*, p. 40.

<sup>33</sup> *Documents du Congrès Postal ... 1874*, pp. 48–50; *Documents du Congrès Postal ... 1878*, p. 482f.

<sup>34</sup> *Documents du Congrès Postal ... 1874*, pp. 32, 64, 89, 490f.

<sup>35</sup> Sebastian Kneisel, *Schiedsgerichtsbarkeit in internationalen Verwaltungsunionen (1874–1914)* (Baden-Baden: Nomos, 2009), pp. 17–20; and Rolland, *De la correspondance postale et télégraphique*, pp. 248–73.

<sup>36</sup> 'International Jurisprudence', *Union postale*, 2:10 (1 October 1877), pp. 214–7.

<sup>37</sup> Archer, *International Organizations*, p. 36f.

we must re-emphasise that these early administrative unions were not associations of states. The ITU was a union of governments with telegraph administrations – the US never became a member and Britain joined well after the union was established, because the telegraph lines of both countries were in private hands. Similarly, the UPU was an association of countries, so that any governing entity with a postal system could join – the union explicitly declined to describe itself as a union of states. Semi-sovereigns such as Egypt, vassals such as Bulgaria, and colonies such as India could join – as the equals of states such as France or Belgium. Moreover, this equality of member administrations took precedence over country status – the great powers would not receive preferred treatment.

The origin of this misrepresentation, I believe, lies in the work of Anglo-American scholars in the 1910s as they erroneously characterised the unions of the previous century and thereby suppressed this history. Remarkable evidence of this shift is clear in accounts of the UPU during the 1910s by Denys Myers, Leonard Woolf, and other leading writers, who were responding to the growing assertion of international society as a community of sovereign states and thus presented past unions as though they were unions of states that honored the hierarchy among states. In their view, the UPU acknowledged the status of the great powers by extending membership to their largest colonies. In an article of 1913, Myers rightly noted the deliberate substitution of *pays* for *état* (state) in the deliberations leading to the first UPU treaty, but in a revised analysis of 1914, he simply disregarded the specification of *pays* and treated the UPU as if it had always been a union of *états*. To the unsuspecting reader, this would be a plausible description of the UPU, were it not for the continuous presence of *pays* whose status changed, such as Egypt and Serbia, and others who came and went, such as Korea and the Orange Free State – all of whom were voting members equal to the great powers.<sup>38</sup> Yet this description persists today; Gerry Simpson, in his otherwise masterful *Great Powers and Outlaw States*, asserts that organisations such as the UPU were composed of states and describes their expansion as an inclusion of states at the periphery.<sup>39</sup> Léonard Laborie and Francis Lyall are rare among recent writers in noting that the UPU was in fact a union composed of a great variety of ‘countries’.<sup>40</sup>

Certainly the Hague Conferences in 1899 and 1907 encouraged a preference for sovereign states. The Conference’s infamous rejection of Korean delegates in 1907 reflected the new priorities of the international order of the twentieth century. But two other developments more strikingly invited a misrepresentation of the past. One was the 1912 London Conference of the International Radio-Telegraph Union (IRU). The IRU deliberately established sovereign statehood as the basis of membership and granted extra votes to the colonial powers, for either single colonies or clusters of colonies, confirming the superior standing of the great powers within the

<sup>38</sup> See Denys P. Myers, *Non-Sovereign Representation in Public International Organs* (Bruxelles: Congress mondiale des associations internationales, 1913), pp. 14f, 19; Denys P. Myers, ‘Representation in Public International Organs’, *American Journal of International Law*, 8:1 (1914), pp. 81–108; Claveirole, *L’internationalisme*, pp. 98–103; Madeleine Herren, *Internationale Organisationen seit 1865: Eine Globalgeschichte der internationalen Ordnung* (Darmstadt: WBG, 2009), p. 36; Francis Bowes Sayre, *Experiments in International Administration* (New York: Harper & Bros., 1919), p. 24; L. S. Woolf, *International Government: Two Reports* (New York: Brentano’s, 1916), p. 199.

<sup>39</sup> Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004), p. 258.

<sup>40</sup> Laborie, *L’Europe mise en réseaux*, p. 152; Lyall, *International Communications*, p. 236.

union and asserting a principle of 'colonial voting'. These rules came to govern the International Telecommunications Union, into which the ITU and IRU merged in 1932.<sup>41</sup> A second development was the planning of a third Hague Conference in 1915, which encouraged writers in the decade of the 1910s to represent the sovereign state as an international norm. Myers noted, for example, that the British government had created 'self-governing dominions' in Canada, Australia, and the Union of South Africa, so that they could represent themselves as sovereign units with independent votes at the next Hague Conference.<sup>42</sup> Although the third Hague Conference never materialised, these new dominions (and some self-governing colonies) subsequently acquired membership in the League of Nations. As international conferences and organisations began to demand sovereign statehood as a condition of inclusion and to accept the privileges of the great powers in the 1910s, union histories were rewritten with that change as an original feature.

### **The relative autonomy of union members under administrative law**

As a mode of international order, the administrative unions of the nineteenth century resonate more with recent discussions of global governance than with neorealist accounts of an international system of sovereign states in the twentieth century. In fact, recent scholarship on global governance treats international administrative unions as a first phase of modern global administration. From their perspective, the primary issues concern the standing of international administrative law: First, is administrative law grounded in national law or is there an international basis for administration? How autonomous are the union and its member units? Second, is an international treaty such as the ITU convention a formal source of international administrative law? Does such law have the potential to develop into an international system? Benedict Kingsbury and his colleagues in the New York University project on global administrative law assert that nineteenth-century international unions initiated the debate over these longstanding issues.<sup>43</sup>

Neorealists dismiss unions and administrative law as marginal to an international system. They would likewise dismiss those visionary scholars of the nineteenth century who embraced the advent of international unions as the creation of an international law that would allow Europe to manage itself as a greater whole. They imagined that, as the peoples of the world integrated themselves into a common culture, a truly international community motivated by cooperation would subordinate state sovereignty to the collective lives of the peoples. Such a vision for international administrative law, however, received little acceptance at the time.<sup>44</sup>

For the most part, legal scholars in the nineteenth century believed that the international union treaty provided simply an international understanding that domestic laws would be created in order to implement a union member's international obligations. Administrative unions were the creation of governments that chose not to grant a union any legal authority over its members. The 'laws' of the UPU did little

<sup>41</sup> Coddington, *The International Telecommunication Union*, 98–100; and Lyall, *International Communications*, pp. 59f, 74.

<sup>42</sup> Myers, *Non-Sovereign Representation in Public International Organs*, p. 2f.

<sup>43</sup> Kingsbury, Krisch, and Stewart, 'The Emergence of Global Administrative Law', pp. 16–26, 31–7.

<sup>44</sup> Vec, *Recht und Normierung in der industriellen Revolution*, pp. 152–5.

more than prescribe standard practices for the international transfer of mail. Each member country retained autonomy over its own post system, and the union did not require any partial delegation of sovereignty on the part of a member to the UPU, but merely an agreement to maintain common standards for the post in solidarity with fellow members. The union, in other words, acquired only the authority that the members granted it.<sup>45</sup> A union was not an all-powerful federation of states with a political will superior to the combined wills of its members; its Bureau was without power to take any initiative or to coerce members; and its Congress successfully negotiated a consensus on the *règlement*. Compulsion doesn't appear to have been necessary or possible. If anything, the fact that a union such as the ITU allowed its members to make a formal reservation to new regulations served to safeguard the authority that had agreed to the formation of the administrative union.<sup>46</sup> Hence, as some scholars argued, administrative law in a state such as Germany was an entirely German undertaking within the competence of the German government.<sup>47</sup>

Other scholars, however, insisted upon the superiority of international administrative law and challenged this interpretation. The ITU or UPU treaty was a collective treaty generating common norms among its members; each created regulations that determined the action of a member nation. When a member enacted national laws to fulfill its duties under the ITU or UPU convention, that law was evidence that a union member redesigned its legislation according to union rules, and hence granted a measure of sovereignty to the administrative union.<sup>48</sup> In fact, the effects of the union took place within the domain of international law. When members agreed to hold a fellow administration responsible for the loss of a registered letter, international legal relations were engaged. To describe this as international administrative law was to point out how the UPU treaty extended domestic administration to the international sphere of action. Structurally, an international union linked administration to international law through the requirement that members had to observe the *règlement* and the creation of a distinct organ to supervise that requirement on behalf of the union members – the Bureau.

Current scholarship on global governance argues that the balance has shifted significantly away from the sovereign state in favour of international administration. Kingsbury, Sabino Cassese, and their fellows writing on global administrative law, as well as Slaughter and scholars such as David Singh Grewal and Stephen McDowell who write on global networks point to the WTO as an example of the partial cession of state sovereignty to an international authority – proof to Slaughter and Grewal of the disaggregation of the state.<sup>49</sup> But to perceive the relation in this way is to

<sup>45</sup> Karl Neumeyer, 'Les unions internationales', *Revue de droit international de science diplomatiques, politiques, et sociales*, 2 (1924), pp. 21, 35, and 3 (1925), p. 105; Kazansky, 'Théorie de l'administration internationale', pp. 353–9.

<sup>46</sup> Vec, *Recht und Normierung in der industriellen Revolution*, p. 134f.; see also Rapisardi-Mirabelli, 'Théorie générale des unions internationales', pp. 358–61.

<sup>47</sup> Meyer, *Lehrbuch des deutschen Verwaltungsrechtes*, vol. 2: p. 570. See also Cassese, 'Global Standards for National Administrative Procedure', p. 112f.

<sup>48</sup> Geßner, 'Die beiden Weltvereine für den Post-und Telegraphenverkehr', pp. 222, 236f.

<sup>49</sup> Kingsbury, Krisch, and Stewart, 'The Emergence of Global Administrative Law', p. 25f.; Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004), pp. 12–15; David Singh Grewal, *Network Power: The Social Dynamics of Globalization* (New Haven: Yale University Press, 2008), pp. 50, 235, 264f.; Stephen D. McDowell, 'Understanding Shifts in the Form and Scope of Telecommunications', in James N. Rosenau and J. P. Singh (eds), *Information Technologies and Global Politics* (Albany: SUNY Press, 2002), pp. 211–37.



subscribe to the precedence of the sovereign state – and Slaughter’s emphasis upon ‘accountability’, for example, does encourage her to retain the sovereign state as a primary agent.<sup>50</sup> Rather, the issue here is not the status of the sovereign state *per se*, but the fact that a network takes precedence over the wishes of any given member who has agreed to the rules of the network.

### **The principle of voluntary inclusion**

As scholars of global administrative governance argue, the global administrative network under formation today exhibits extensive inter-penetrations of not only national and international, but also public, corporate, and private agents, authorities, and regulations. In her theory of a ‘networked world order’, Slaughter emphasises the novel ways in which states and political and bureaucratic elites are embedded within global arrangements for governance. In examining many of the same organisations as the scholars of global administrative law – the World Bank, the EU, and NATO – she emphasises how national decision-makers now cooperate with each other in interdependent arrangements for global governance. This interdependence has the effect of the ‘disaggregation’ of states, insofar as states are no longer the independent sovereign entities of the twentieth century but now exercise their sovereignty in interdependent or ‘networked’ ways. Her research thus problematises the capacity of states to participate in international organisations and institutions, the breadth and depth of a state’s memberships in such organisations that produce global networks, and accordingly, the exclusion and inclusion of states from participation in these new modes of governance.<sup>51</sup>

But such a tension between inclusion and exclusion has been present from the start. Craig Murphy, writing on the period of the 1920s, as well as Slaughter and Grewal writing on networks today, note the concern that all nations be included within international development, lest the less developed be left behind.<sup>52</sup> This long-standing argument, put forward obviously within the framework of industrial capitalism, insists that the inclusion of everyone within the system will allow everyone to prosper in a common path of development. Yet, historically, deliberate exclusions were always a possibility. Murphy relates how the liberal consensus of the 1920s felt compelled to exclude illiberal societies such as the Soviet Union. Similarly, the international unions of the nineteenth century excluded private corporations – only a country or government or administration could become a member of either the ITU or UPU. The broad inclusiveness of nineteenth-century administrative unions was based simply on the operation of a telegraph or postal network that justified its linkage to the international network.

<sup>50</sup> Slaughter, *A New World Order*, pp. 10, 18, 222–5, 231–5, 244; and Anne-Marie Slaughter, ‘The Accountability of Government Networks’, *Indiana Journal of Global Legal Studies*, 8:2 (2001), pp. 347–67.

<sup>51</sup> Slaughter, *A New World Order*, pp. 227–30, 245–7; and Anne-Marie Slaughter, ‘Sovereignty and Power in a Networked World Order’, *Stanford Journal of International Law*, 40 (2004), pp. 283–327.

<sup>52</sup> Craig N. Murphy, *International Organization and Industrial Change: Global Governance since 1850* (Cambridge: Polity, 1994), pp. 168–70; Slaughter, *A New World Order*, p. 246; and Grewal, *Network Power*, pp. 247–65.

Participation was, above all, voluntary. As we have seen with negotiations over the regulations of the ITU and UPU, a process akin to voluntary consensus characterised international unions in the nineteenth century. They signed the convention treaty expecting to continually revise the regulations. The current process is displayed in Murphy's recent book (with JoAnne Yates) on the International Organisation for Standardisation (ISO), an extraordinary case study that demonstrates the NYU project's and Slaughter's identification of global administration at work. The ISO sets standards through voluntary consensus and does so as a private organisation; its members include professional engineers, employees of government agencies, and representatives of companies concerned with the production and purchase of the products and services that are the object of standardisation.<sup>53</sup> Like the nineteenth-century unions, voluntary consensus through private organisations is arguably a means of bypassing the political negotiations, deadlocks, and lack of progress associated with the international treaty – evidence of global governance not centered on the state as an organising principle.

Clearly, the most significant shift since in recent decades is the inclusion of private companies. Denied admission to the ITU or UPU in the nineteenth century, the presence of international corporations within global administration today problematises private economic interests. To what degree, for example, are international corporations bound to the agreements signed by the states in which they are headquartered and the states which host their operations? And which takes precedent, state law or international regulation? Murphy and Grewal are quite critical of global governance insofar as neoliberalism has produced an economic order in which global administration serves the interests of capital to the detriment of workers and producers in the third world. Yet Murphy has argued that this tension existed with the inception of international unions, because members of unions such as the ITU and UPU were involved in not only coercive acts of regulation, through policies of colonisation, but also consensual acts, insofar as the unions served to mobilise support for international regulation.<sup>54</sup> While Murphy's analysis of these consequences of the creation of a union such as the ITU is not inaccurate, I would instead argue that he points to the private or national interests which technological integration was made to serve. As many scholars of technology have noted, technology does not so much impose an organisation on societies as it facilitates a structure that can be exploited. In the nineteenth century, private companies were excluded from the ITU for that reason; today, however, neoliberalism gives them place of honor.

### **The technical and the political**

Murphy's earlier work, however, was especially interested in locating the development of international administrative unions in the development of industrial capitalism.

<sup>53</sup> Craig N. Murphy and JoAnne Yates, *The International Organization for Standardization (ISO): Global Governance through Voluntary Consensus* (London: Routledge, 2009). See also Aseem Prakash and Matthew Potoski, 'The International Organization for Standardization as a Global Governor: A Club Theory Perspective', in Deborah D. Avant, Martha Finnemore, and Susan K. Sell (eds), *Who Governs the Globe?* (Cambridge: Cambridge University Press, 2010), pp. 71–101.

<sup>54</sup> Murphy, *International Organization and Industrial Change*, p. 42f.; see also his *Global Institutions, Marginalization, and Development* (London: Routledge, 2005), pp. 34–42.

Along with Archer, Reinalda, Madeleine Herren, and other analysts of international unions, Murphy views unions as especially concerned with matters of communications, transportation, and economic interests, working for the most part to coordinate the infrastructure for emerging European markets and economic policies.<sup>55</sup> This is not to say, however, that the inclusiveness of international unions in the nineteenth century was especially a function of great power interests in the economic domination of peripheries; a technology such as the telegraph was promoted in some nations for simultaneous projects of national sovereignty and international linkage.<sup>56</sup>

This article suggests that early administrative unions such as the ITU and UPU were significantly inclusive because of technology. Perhaps they could be so because the practices that they regulated – telegraph and postal communications – interconnected the world as it was, and because distances and control in the nineteenth century mattered for telegraph and postal communications in ways that they did not matter for other international practices such as migration or trade. Unlike the abstract activities of the great powers, for example, who could divide up Africa from a conference table in Berlin, the stakeholders in the ITU and UPU were actually working telegraph and post offices and their agents. But these speculations highlight a persistent debate: Was this different vision of international order possible because the mundane issues of telegraph or postal unions were confined to merely technical matters and did not rise to the level of political affairs?

Many scholars of international unions argue that, in the nineteenth century, unions were a successful development because they avoid political differences through their focus on technical differences. That is, their work concerns merely ‘technical’ or ‘non-political’ norms or functions.<sup>57</sup> Allegedly, union negotiations are relatively simple and readily amenable to agreement, unlike, for example, the Hague Conferences whose negotiations concerning the laws of war invited endless debate over the details of regulations and, perhaps as a result, ended in failure when no treaty was produced or states refused to ratify the product of negotiations. But can we so easily distinguish the technical from the political?

Legal historian Miloš Vec has argued that the UPU treaty was unusual in that it used treaty law to standardise technical norms and path-breaking insofar as it combined juridical and non-juridical norms. In his analysis, the UPU was exceptionally ‘non-political’ because members all agreed on the necessity of standards with the post and, unlike the unions for the protection of industrial or intellectual property, no profits were at stake with the post. Because of the close connection between a member’s domestic post and its international post, members practiced self-restraint and questions of sovereignty or relative power did not arise. Because of the objectivity of postal standards, the agreement upon regulations, and the procedures for conflict resolution

<sup>55</sup> Murphy, *International Organization and Industrial Change*, pp. 1–4, 84–6; Archer, *International Organizations*, pp. 10–4, 29; Herren, ‘Governmental Internationalism’, pp. 121–44; and Reinalda, *Routledge History of International Organizations*, pp. 30–3, 90–3.

<sup>56</sup> Douglas Howland, ‘Telegraph Technology and Administrative Internationalism in the 19th Century’, in Maximilian Mayer, Mariana Carpes, and Ruth Knoblich (eds), *International Relations and the Global Politics of Science and Technology* (Heidelberg: Springer-Verlag), forthcoming 2014.

<sup>57</sup> Coddington, Jr, *The Universal Postal Union*, p. 28; Lyall, *International Communications*, p. 233f; Evgeny Pashukanis, *The General Theory of Law and Marxism* (New Brunswick: Transaction, 2002), p. 81; Louis Renault, ‘Les unions internationales: leurs avantages et leurs inconvénients’, *Revue générale de droit international public*, 3 (1896), p. 15f; J. G. Ruggie, ‘Multilateralism: The Anatomy of an Institution’, *International Organization*, 46:3 (1992), pp. 561–98, esp. pp. 564f, 576f).

included within the convention, the UPU managed to do without the political diplomacy that intruded into treaties concerning war and peace. It was in this sense that the UPU was ‘non-political’ and Vec is clear that such a representation is not necessarily true of other international unions.<sup>58</sup>

In part, the counter-example of ‘political’ treaties such as the Hague Conventions supports Vec’s argument. But if the Hague Conventions were less successful, insofar as agreement on and ratification of some issues was not forthcoming, this was not so much because they were ‘political’ but because two new disadvantageous practices invited greater disagreement and frustration of purpose. Both are related to the elevation of the sovereign state at the end of the nineteenth century, as diplomatic practice shifted from the use of representatives invested with ‘full powers’ to a preference for ‘state will’. One was the differentiation of the acts of signing and ratifying: delegates were free to sign an agreement and thereby maintain the collegiality of the convention, but their states could then refuse to ratify. The other was a dramatic increase in the use of reservations – the allowance of ‘partial signing’ or ratifying through the deliberate modification or unilateral exclusion of one or another article of a treaty. Both of these developments detracted from the success of the Hague Conferences.<sup>59</sup>

However, other scholars would dissuade us from strongly differentiating the political and the technical. As Louis Renault noted in 1896, the UPU treaty represented an ‘acceptable minimum’ – the point at which political divisions could remain ‘administrative’.<sup>60</sup> Grewal makes the much stronger case that technical arrangements do have strong political effects. His analysis of network power makes very clear, for cases such as auto manufacturing or computer software, that every successful international or global standardisation represents both an elimination of choice in favour of the one standard that replaces a multiplicity of possibilities, and an elimination of local variation in favour of the international or global norm. Technical agreements always have political consequences.<sup>61</sup> In spite of, for example, the rhetoric of free enterprise and private management that characterised telegraph lines in the US in the nineteenth century, US companies observed developments in the ITU and modified their practices in light of ITU standards. Grewal’s position in fact supports that of Murphy and other scholars of international organisations who insist that nineteenth-century administrative unions played a part in the economic domination by world leaders of capitalist industry as it developed internationally. In that sense, the technical is certainly political.

<sup>58</sup> Vec, *Recht und Normierung in der industriellen Revolution*, pp. 83, 128; Miloš Vec, ‘Die Bindungswirkung von Standards aus rechtsgeschichtlicher Perspektive: Globale Normsetzung und Normimplementation am Beispiel des Weltpostvereins von 1878’, in Thomas M. J. Möllers (ed.), *Geltung und Faktizität von Standards* (Baden-Baden: Nomos, 2009), pp. 221–51, esp. 231, 243f.

<sup>59</sup> Chaubert, *L’union postale universelle*, pp. 31–6; Frank Horn, *Reservations and Interpretive Declarations to Multilateral Treaties* (Amsterdam: North-Holland, 1988), pp. 8–13; Rolf Kühner, *Vorbehalte zu multilateralen völkerrechtlichen Verträgen* (Berlin: Springer-Verlag, 1986), pp. 53–8; F.S.L. Lyons, *Internationalism in Europe, 1815–1914* (Leyden: Sythoff, 1963), pp. 22, 24–9; Arnold D. McNair, ‘International Legislation’, *Iowa Law Review*, 19:2 (1934), p. 178f; David Hunter Miller, *Reservations to Treaties: Their Effect and the Procedure in Regard Thereto* (n.p., 1919), pp. 90–5, 132–42.

<sup>60</sup> Renault, ‘Les unions internationales’, p. 23.

<sup>61</sup> Grewal, *Network Power*, pp. 4–7, 194–203. See also Laborie, *L’Europe mise en réseaux*, pp. 110f, 404.

## Pluralism and the demise of an alternative international order

The novel structure of the ITU and UPU agreements continues to be praised as an effective cooperative innovation. Countries could commit themselves to a set of principles in the treaty and then, through discussions over the practical matters of the *règlement*, work out the details of executing those principles. In the language of Hedley Bull and others within the English school, this international order produced by the nineteenth-century unions represents a phase of international integration called ‘pluralism’.<sup>62</sup> The treaty regime at the time – including but not of course limited to those establishing international unions – created a system of intra-regime accountability, or pluralist order, insofar as countries agreed to ship mail according to the rules of the UPU or pass telegrams per the ITU. Indeed, scholars of international unions argue that unions such as the UPU and ITU were at the forefront of the process of norm-establishment in the nineteenth century – continuous to the present.

Bull’s heuristic proposed a second phase of integration, ‘solidarism’, which indicates a higher level of shared norms or values – those more typical of the twentieth century such as peace, security, and human rights. To Kingsbury, writing on contemporary global governance, the shared values typical of solidarism mark the development of partial international communities. As the twentieth century came to favour state sovereignty and the territorial nation-state, it put an end to the inclusive nature of international administrative unions. But the ‘omnilateralism’ which Kingsbury identifies in global administrative law today as ‘many partial international communities capable of operating omnilaterally within their special domains of competence’, constitutes a return to something like the international order suggested by nineteenth-century unions.<sup>63</sup> As he and his colleagues argue, global governance in the twenty-first century retreats from the sovereign state back to a more inclusive and informal international order.

But what happened to the international order promoted by international administrative unions? We can suggest two reasons for its demise. First, discussed above, the Hague peace conferences instituted a preference for the sovereign state, which was expressed in the shift from diplomatic representative with ‘full powers’ toward the sovereign will of the state, which was free to impose reservations on a treaty or to refuse to ratify. This preference was explicitly encouraged in 1901 by a scholar such as Louis Rolland, who asserted that ‘the society of states is closed to those that are not sovereign states’ – sovereignty being the sole and competent authority informing the right to make laws for oneself.<sup>64</sup> Although he acknowledged that private telegraph companies, for example, had interests different from those of the states whose shores their cables linked, and that administrative unions such as the ITU and UPU had – for practical considerations – included members that were not

<sup>62</sup> Hedley Bull, ‘The Grotian Conception of International Society’, repr. in Kai Alderson and Andrew Hurrell (eds), *Hedley Bull on International Society* (Houndmills: Macmillan, 2000 [orig. pub. 1966]), pp. 95–118, esp. pp. 113–17; Andrew Hurrell, ‘International Law and the Making and Unmaking of Boundaries’, in Allen Buchanan and Margaret Moore (eds), *States, Nations, and Borders: The Ethics of Making Boundaries* (Cambridge: Cambridge University Press, 2003), pp. 275–97; Benedict Kingsbury, ‘The Administrative Law Frontier in Global Governance’, *Proceedings of the Annual Meeting of the American Society of International Law*, 99 (2005), pp. 143–53; and Benedict Kingsbury, ‘Omnilateralism and Partial International Communities’, *Kokusaihō gaikō zasshi*, 104:1 (2005), pp. 98–124.

<sup>63</sup> Kingsbury, ‘Omnilateralism and Partial International Communities’, p. 99.

<sup>64</sup> Rolland, *De la correspondance postale et télégraphique*, pp. 187–9.

sovereign states, he insisted that administrative unions had confused the right to be represented in such a union with the right to engage in international acts. Because the ITU and UPU conventions were treaties, only sovereign states should have signed them – the treaty was, after all, a fundamental representation of international society. By contrast, because the regulations concerned international activities of interest to concerned parties, both states and these other ‘analogous bodies’ were competent to sign those documents.<sup>65</sup> Rolland’s strict definition of international society required undoing the international order institutionalised in the ITU and UPU so as to restructure it in the interests of sovereign states. That is what happened in the twentieth century.

A second development that helps to account for the demise of the international order promoted by administrative unions was a strong reaction against democratic procedures at international conferences – a process led by the great powers. As many scholars argued, organisations that punctiliously respect the sovereignty of member states require unanimous decisions, so as to guarantee the independence of each state. The consent that binds a state’s will must be expressed through explicit agreement, and such practices reinforce the mutual recognition of the sovereign authority of each member. The ITU began on such terms, with unanimous decisions required for any change to the convention, the regulations, or the tariff. Because unanimity was hard to achieve, particularly over alterations to the tariff, the ITU introduced a right of ‘formal refusal’, which allowed a member to announce that it would not be bound by a new rule but continue to adhere to the previous standing rule. Future negotiations presumably would work out the disagreement. Although this right was not often used, it did pressure the ITU to turn to majority voting – a policy formally adopted in 1908.<sup>66</sup> The UPU was neither so strict nor so formal, and reached decisions by consensus, which is arguably a form of majority voting. But in the 1920s, the stage was set for a change. While some scholars argued that majority decision ought to be practiced in the international context, others insisted that majority decisions gave too much power to small states at the expense of the great powers.<sup>67</sup> Disagreements over state representation and equal voting – a direct result of democratic procedures – had undermined the success of the second Hague Peace Conference in 1907.<sup>68</sup> Hence the great powers demanded a privileged position in twentieth-century organisations such as the International Radio-Telegraph Union and eventually the League of Nations. Equality of membership and participation was overturned.

That success of the sovereign state in the twentieth century is being reversed today. The partial international communities of Kingsbury’s analysis, and the NYU

<sup>65</sup> *Ibid.*, pp. 182f, 197–9, 226.

<sup>66</sup> Codding, *The International Telecommunication Union*, p. 45f; Kasansky, ‘L’Union télégraphique internationale’, p. 183; and Kunz, *Die internationalen Telegraphen-Unionen*, pp. 99–102. See also Mangone, *A Short History of International Organization*, p. 4; at p. 76, Mangone argues that a major shift took place with an 1872 amendment that specified that if a contracting administration did not reply within four months to a technical question or regulation to which it had been referred, its agreement would be considered as accepted.

<sup>67</sup> Cromwell A. Riches, *Majority Rule in International Organization: A Study of the Trend from Unanimity to Majority Decision* (Baltimore: Johns Hopkins Press, 1940), pp. 59–76; Myers, ‘Representation in Public International Organs’, pp. 87–92; Inis L. Claude, Jr, *Swords into Plowshares: The Problems and Progress of International Organization* (4th edn, New York: Random House, 1971), pp. 118–22; McNair, ‘International Legislation’, p. 179f; Sayre, *Experiments in International Administration*, pp. 150–4.

<sup>68</sup> See, for example, Arnulf Becker Lorca, ‘Sovereignty Beyond the Law: The End of Classical International Law’, *Journal of the History of International Law*, 13:1 (2011), pp. 47–73; and Simpson, *Great Powers and Outlaw States*, pp. 132–54.

project's identification of a global administrative space with its plural standards of participation arguably represent a return to the alternative possibilities of the nineteenth century. The 'voluntary consensus' of global networks of governance today strongly suggests the passing of the international legal regimes of sovereign states and the revival of an inclusive order practiced in the nineteenth century. Buzan and Lawson's call to better understand 'the making of modern international relations' encourages us to more carefully rethink the transition from international administrative unions and their alternative mode of international order to the state system of the twentieth century.