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Legal Personality of Inter-Governmental International Organizations

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Abstract: Upon the incorporation of an inter-governmental international organization, the states assign to such entities some of their powers, based on which the organization will promote the collective interests of its members. Thus, the international organizations perform some public functions based on which they enter in contact with other entities of international order, such as different states or other organizations. Manifesting as such, they acquire their own legal personality, distinct from that of the states forming it, and which it is opposable *erga omnes*. The scope of such article is to examine the legal personality of inter-governmental international organizations providing one apprehends the limits of their juridical personality. In the achievement of such objective, I have developed both the internal juridical personality and the international juridical personality of international organizations, recording the manner of manifestation of such legal personality.

Keywords: International organizations; legal personality; internal personality; international personality; capacity to conclude treaties

1. Introduction

Although they are derivate subjects of public international law, since they are the creation of states, the inter-governmental international organizations have an increasing high role in the settlement of global issues faced by humanity, which may be solved only by an overall approach and only by viable and fast solutions. In the doctrine of international law, the international organization is considered to be an association of suzerain states intending to achieve an objective of common interest, by the bodies of organization. (Năstase, 2006) Another definition is provided by Gheorghe Moca, who defines the inter-governmental international organizations as permanent, institutionalized forms, of the collaboration of states in different fields. (Moca, 1970) Grigore Geamănu wrote that international organizations represent forms of coordination of international collaborations in different fields, since the states created a certain juridical-organizational (institutional) frame by adopting a by-law, mutually elaborated, stipulating the object and scopes of organization, their bodies and functions, necessary in achieving the objectives followed. (Geamănu, 1983) Hans-Albrecht Schraepler (German author and diplomat) stated that "*intergovernmental international organizations represent a special world, sometimes disorienting for the citizen, with no right of intervention or influence, besides the by-pass provided by its own government*".

One of the rapporteurs of the Commission of International Law of United Nations – G. Fitzmaurice proposed the following definition for the international organizations: "*an association of states,*

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constituted by treaty, with constitution and common bodies and with distinct legal personality from that of member states". (Miga-Beşteliu, 2000)

A definition closed to that provided by G. Fitzmaurice belongs to professor Bindschedler, who considers the international organisation "*an association of states, determined by and based on a treaty, following common scopes and with its own special bodies, accomplishing particular functions within the organization*".

As noticed, there are several definitions of international organizations, but none unanimously accepted, and the concept of intergovernmental international organization varies depending on the interests of great groups of states and the philosophic concepts of authors. However, in doctrine, it is generally outlined a constant background of specific elements, based on which one may characterize or even define such institution. A first characteristic of international organizations refers to the fact that their members are suzerain states. The intergovernmental international organizations rely on a treaty concluded between two or more states. It is an essential trait, emphasizing that international organizations include suzerain states with equal rights, agreeing freely to adhere to the activity of such organizations by own consent. Any international organization is, above all, a form of cooperation of states with permanent character, based on their association as suzerain entities, as subjects of international law with a view to achieve common goals.

The second element is that the incorporation of international organization is the result of the will expressed by the funding states within a by-law (charter, constitution, convention, pact, by-law etc). Opposite to other legal forms of association of states, as diplomatic treaties and conferences, the international organization has a permanent and institutional character – the third element –, determined by the existence of some structures, skills and permanent operations, set forth in a multilateral treaty having the nature of a by-law. Fourthly, the association of states in international organizations involves pursuing common objectives or scopes: maintenance of peace and international stability, economic development, financial cooperation, trade development, transfer of technology etc. The fifth element for the qualification of an association of states as intergovernmental international organisation is the condition that is has its own institutional structure. Practically, one has to hold several bodies, with periodical or permanent operation, through which the activity is carried out according to the by-law. Among the bodies specific to an organization, there must be at least a body formed of the representatives of all member states, and such body does not depend on a certain state.

Also, in order to qualify as international organization, the association between two or more states must be established and performed based on the norms of international law. Another element is that the international organizations and their operation enjoy on the territory of member states privileges and immunities. The cumulative effect of constitutive elements enumerated above provide to the intergovernmental international organization legal personality – of internal and international law – based on which it enjoys rights and undertake obligations on the territory of any member state or in relation with them or other subjects of international law. The delimitation of characteristic traits of an international organization does not allow us to draw up a definition, namely: *"The intergovernmental international organization represents an association of suzerain states, developed based on norms of international law and determined by a by-law, holding its own permanent bodies, exercising their activity for the accomplishment of common objectives and with distinct legal personality from that of member states"*.

2. Legal Personality of Intergovernmental International Organizations

As it is noticed in the definition, the international organizations are an association of states, acting as a distinct unit, independent from the states forming it, and opposable *erga omnes*. Practically, the intergovernmental international organizations are holding rights and obligations acquired based on the states' consent. The legal personality of governmental international organizations is the expression of functional autonomy and capacity of subject of public international law. It also provides to the organization an objective existence in relation to the other participants to the international relations.

The legal personality of intergovernmental international organizations has a double aspect, considering that the organization has:

a) an internal juridical personality, respective in the juridical order of the member states;
b) an international legal personality, which represents the most important issue of its legal personality. (Chivu, 2002)

Generally, the legal personality of intergovernmental international organizations has two traits. Firstly, it relies on the *principle of specialty*, which means that the international organization carries out the activity and exercises its skills within the limits of the disposals of its by-law. Secondly, the personality of such organization is *functional*, allowing the bodies of organization to achieve the functions invested by the same by-law.

2.1. Internal Legal Personality

The intergovernmental international organizations do not have their own territory. Therefore, they carry out the activity for the achievements of scopes for which they were incorporated on the territory of member states, to the extent that such states acknowledged in their juridical order the opportunity corresponding to a legal individual of internal law. Thus, they necessarily enter in juridical relations with natural or legal individuals of internal law, in such states. Therefore, they shall have the capacity of being holders of rights and obligations in relations of internal law on the territory of any of the member states and, if the case, on the territory of some non-member states. In practice, exercising the personality of internal law of international organizations concerns a special situation, resulting from the reports of the organizations with the state on the territory of which it has the seat and a general one, reflecting the treatment applied to international organizations, by all member states, on its own territory. In the first situation, the organization and the seat state conclude a special agreement, indicating the extent and content of the prerogatives of such organization, generated by its by-law, as well as the regime of legal reports concluded by the organization with natural or legal persons in the seat state in order to buy goods, lease spaces, render services etc. (Miga-Beşteliu, 2000) The legal ground based on which the international organizations enjoy on the territory of every member state the juridical capacity necessary to achieve the scope and exercise their functions, is represented by their by-law. Thus, in article 104 of the Charter of United Nations it is stipulated that: "*The organization will enjoy on the territory of every member the legal capacity necessary to achieve and perform its objectives*".

This is an example for most of the by-laws of intergovernmental international organizations with similar disposals (similar disposal encounter as well in the Treaty of Instituting the European Economic Community in 1957, in article 211 – "*In every member state, the community has the widest legal capacity acknowledged to the legal persons by internal legislations; The community may acquire, mainly, or alienate movable and immovable goods and may stand in court*"). The legal personality of internal law of international organizations, resulting from its by-law, is opposable to all

member states as parties of such multilateral treaty. Every state is able to acknowledge such personality as indicated in the by-law, and by extend or reject it as well, either based on an international agreement or a special internal law – offering internal legal personality to international organizations to which they are members and indicates the nature, extent and applicability of the immunities and privileges granted.

2.2. International Legal Personality

After the Second World War, due to the increasing number and functions of international organizations, the states had the obligation to accept international organizations as subjects of international law, acknowledging their international legal personality in the international jurisprudence.

The International Court of Justice, in the evaluation notice related to the remediation of the damages incurred by an individual serving the United Nations, since April 11th 1949, states that "*the organization is an international subject of law, since it has the capacity to hold international rights and obligations and the capacity to prevail such rights by international claim*". Also, the Court stated that the international organizations do not have the same international legal personality as the states, since the two entities present significant differences in the field of rights and obligations in international relations. (Chivu, 2002)

Continuing on the same idea, we may state that the extent of legal personality of international organizations varies from one organization to another, depending on their by-law. Since every international organization has been created to accomplish well determined functions, and if such functions, as the organizational scopes, are different, neither their rights nor their obligations may be the same. In conclusion, we may state that the international juridical personality of international organizations cannot be determined *a priori* and it is not identical, by its content, for all organizations, but it depends on the field of activity and extent of competence of every intergovernmental international organization.

Upon the acceptance of *international legal personality of United Nations* and the opposability to the member states, the International Court of Justice considered that it results from:

a) need of achieving the scopes for which the United Nations have been created;
b) the fact that it has bodies with special duties for the achievement of such scopes;
c) the members of the organization undertake, by Charter, to support it in the performance of its objectives, and in special cases, such as the resolutions of the Security Council in the application of the disposals of Chapter VII of Charter, undertake to accept and enforce them. (Miga-Beşteliu, 2000)

By analogy, this kind of reasoning may be supported as well in what concerns other intergovernmental international organizations, with an international legal personality wider or more restricted, depending on the obligations undertaken by the member states in the by-law, field where they operate and the nature of organization – universal, regional, sub-regional. Thus, in case of regional and sub-regional organizations, their legal personality is manifested in the relations with the states forming them. This does not affect however their capacity to act externally, in conformity to the norms of international law, opposite to states outside the organization or other organizations. (Miga-Beşteliu, 2000)

3. Manner of Manifestation of Legal Personality

The intergovernmental international organizations are derivate subjects of international law. They are created by states, based on their will, existing as long as the member states agree. They are also limited subjects, in terms of skills, by the disposals of their by-laws. The international juridical personality of intergovernmental international organizations is not an inherent trait thereof, but it depends on the will of the states that incorporated the organization, expressed in its by-law. The international juridical personality of organization depends on the accomplishment of the following conditions: to be a governmental organizations; to have a by-law in accordance with the imperative norms of public international law and meant to provide to the organization certain rights in the international relations and the possibility to hire international obligations; and, eventually, the functions of the bodies of organization to provide it a functional autonomy opposite to the member states in the international relations. (Chivu, 2002) The manifestation of legal personality of international organizations may be done by certain distinct acts, such as: concluding international agreements, representation besides other subjects of international law as well as determining the skills and international liability.

3.1. Capacity to Conclude Treaties (Agreements)

Usually, such capacity is stipulated in the by-laws of international organizations, the organizations being able to conclude agreements in different fields, depending on their objects and interests. In order to conclude military agreements in case of application of measures to maintain or restore peace and international security, the Charter of United Nations authorizes the Security Council. For the conclusion of agreements for specialized institutions, the Economic and Social Council is authorized.

Besides the capacity of international organizations to conclude agreements with states or other international organizations, many international organizations are competent, by their by-laws, to conclude agreements with non-member states of such organizations. The most illustrative example is provided by the by-law of European Economic Community, which stipulates the right of community to conclude trade agreements (Treaty Instituting the European Economic Community of 1957, article 111 paragraph 2 – "*The Commission presents recommendations related to Common Customs Rate for rate negotiations with third countries* ..."; article 113 paragraph 3 – "*If agreements need to be negotiated with third parties, the Commission presents recommendations to the Council, the latter authorizing it to begin the necessary negotiations* ...") or association agreements with non-member states (Treaty Institution the European Economic Community of 1957, article 238 – "*The Community may conclude with a third state, with a union of states or an international organization, agreements institution an association characterized by mutual rights and obligations, common actions and special procedures* ..."). There are however certain situations when international organizations conclude agreements which do not necessarily fall under the incidence of some express disposals in their by-laws, which entails the occurrence of two currents, one being that which acknowledges the capacity to conclude agreements only to the organizations with by-laws which stipulate as such and only within the such limits, and the other considering that such capacity does not depend exclusively on the terms of the by-laws, but it relies on the decisions and rules set forth by the bodies of international organizations and on the development of institutional international law as result of the activity of several international organizations. (Miga-Beşteliu, 2000)

The answer to such discussions is given to us by the Convention from Vienna of 1986 related to the right of treaties between states and international organizations or between international organizations,

in article 6: "*The capacity of an international organization to conclude treaties is governed by the rules of such organization*".

3.2. Representation besides Other Subjects of International Law

As the states, the international organizations are entitled to be represented besides other subjects of law and to receive, at their seat, their representatives. The legation right has a "passive" or "active" form.

The passive legation right consists in the possibility of organization to accept, if its by-law or other acts allow, receiving permanent missions of member states or missions of observers from other races, with such capacity, in the organization. The principle of the right of passive legation of international organizations is stipulated in article 5 of the Convention of Vienna from March 1975 related to the representation of states in the relation with international organizations [(par. 1) *The member states may, if the norms of organization allow this, to establish permanent missions for the accomplishment of the functions mentioned...*; (par. 2) *The non-member states may, if the norms of organization allow, to establish permanent missions of observation for the accomplishment of the functions mentioned...*]. The use of such institution by the member states was performed with the international evolutions in the operation of organizations and with the role assigned to some of these in certain fields of international collaboration.

The right of active legation consists in the possibility of organization to send its own missions to certain member or non-member states, or other international organizations. Theoretically, no international organization is expressly authorized, within its by-law, to send diplomatic missions in the member states. However, in practice, the number of the representatives of international organizations in different states, mainly in emergent countries, is permanently increasing, being determined by the intensification and diversity of the actions of international organizations within such states. The active legation right of international organizations is performed by the agreement of sending organization and receiving state, leaving from the principle that, as subjects of international law, they maintain basic diplomatic relations based on mutual agreements. Besides the member states, the international organizations may have permanent missions or may submit special missions. Usually, the permanent missions deal with the coordination of the programs of assistance or with the mission to inform the authorities in the member states on the activities carried out by such organizations. The functions of such missions are limited to the specialty field where the sending agency operates. The special missions of some international organizations in the member states are temporarily submitted, with a well determined scope: to conciliate a dispute, in order to draw up and assess a project of development, to support a demand of financial support for the organization etc. (Miga-Beşteliu, 2000)

3.3. Skills and International Liability of International Organizations

Usually, *the skills of international organizations* are set forth in the disposals of their by-laws and are restricted. Also, the skills of international organizations have a functional nature, being determined for the scopes for which they were created and limited to the disposals of their by-laws. The intergovernmental international organizations have different and multiple skills, which may be grouped in three great categories:

3.3.1. Normative Skill

Such skill consists in the possibility of organizations to create juridical norms addressed to certain addressees – member states, bodies of organizations or even other organizations – in agreement with

the norms of international law and the basic principles of organization. Another issue of such skill is also the fact that several intergovernmental international organizations form the frame of elaboration and adoption of certain international conventions, their norms constituting an international legislation in the field. The normative skill of governmental international organizations is also manifested by normative acts adopted by their bodies. Usually, within intergovernmental international organizations, only certain may body is competent to adopt normative acts applicable to the entire organization.

3.3.2. Operational Skill

Such skill consists in the powers of action of international organizations different from normative ones. Such powers consist in the actions of organizations to provide economic, financial, administrative support and, in some cases, military support to member states. Such power is accomplished only with the consent of the states involved. Such fact is concretized in the agreement concluded between the international organization providing assistance and the state targeted by it. The operational skill of international organizations differs from one organization to the other. It is ruled by the by-law of the organization and its internal deeds.

3.3.3. Skill of Control and Sanction

Such skills are closely related to the normative skill, indicated the extent to which the international organizations may control the manner how the member states accomplish the obligations incumbent upon them as member of the organization and may apply sanctions to the members not meeting them. The skill of control of international organization consists in its right to claim and receive periodical reports from the member states on the manner how such state accomplishes the statutory or conventional obligations. The skill of sanction of international organizations is determined in their by-law. The international organizations have the obligation to meet the international law and to carry out the activity in conformity to its norms.

The breach of the obligations incumbent upon the international organizations, by international legal personality, entails *their international liability*, generated either by their by-laws, or the international deeds in which they are contracting parties.

The international organizations are liable for contrary actions:

- the principles and norms unanimously acknowledged of international law;
- norms stipulated in the articles of incorporation;
- norms of internal law of organization;
- agreements concluded by organization with other subjects of international law;
- norms of national law of states.

Therefore, the international organization will be liable for actions included in the international crimes' category and represents a threat against international peace and security, for instance: acts of aggression, discrimination etc. The international organizations may hire a liability of international law as well as one of internal law, since they have both international legal personality and internal legal personality and their activities may be introduced not only in the international juridical order but also in the national order of a state.

As subject of internal law, the intergovernmental international organizations may be bound for any act or legal deed falling under the incidence of internal rules. As any subject of internal law, the international organizations have the obligation to meet the laws and rules of seat state or of the states where they carry out different activities. However, the international organizations may claim the jurisdiction immunity, not being possible to be called in court and sentenced. Although they enjoy

immunity from the jurisdiction of residence state, the international organizations have the obligation to observe the law, since the immunity of jurisdiction has only a procedural character. As for the liability of international law, the general rules of states' responsibility apply, in principle, and if it concerns the liability of intergovernmental international organizations. It is important not to forget that international organizations are functional juridical individuals and thus they hold their own characteristics reflected necessarily as well in the field of international responsibility. It has to be considered that, in all cases of internal and international liability; the criminal liability is not approached, being a liability concretized in the obligation of reparation. (Anghel & Anghel, 1998)

4. Conclusions

In conclusion, based on foregoing, it is clear that, whereas the state enjoys international personality based on their suzerainty, for intergovernmental international organizations their legal personality may be awarded by the member states through the by-law. The same by-laws of the organization stipulate as well the legal personality of internal law, necessary to the organizations in the relations with the states where it has the seat since the organization does not have an individual territory, as it does not have suzerainty either.

We may state thus that the legal personality of international organizations, despite that of states, is:

- derivate, provided by member states in the by-law;
- specialized, according to the activity deed;
- limited, according to the functions and objectives determined.

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