International Journal of Innovative Research and Advanced Studies (IJIRAS)
Volume 3 Issue 12, November 2016

ISSN: 2394-4404

Legal Character Of International Institutions- An Overview

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Abstract: ***Corroborating and alleging with the scholarly views of H. G. Schermers and N. M. Blocker, it is difficult to imagine life today without International Organizations. The growing significance of international organizational makes it necessary to analyze their law and practice. Each organization has its own unique law and practice, resigned for the realization of its objectives. A large number of studies have therefore already been devoted to specific organizations such as the United Nations, the World Trade Organization, the World Bank, the European Union, and the Organization of the Petroleum Exporting Countries. Nevertheless, International Organizations also have much in common and are confronted with a large number of similar day-to-day questions. For example, many international organizations exercise powers that have not been given to them by the members. This goes to show that international organizations despite their widely diverging objectives, powers, fields of activity and number of member states, share all kinds of similar problems. The rules for dealing with these problems are often similar. When a new organization is established, a number of its rules are copied mutatis mutandis from other organizations. Each organization has its own legal order, hence common rules and principles have developed. Institutional law does not differ dramatically from one organization to the next: each organization needs rules concerning for example, its internal structure, membership, decision-making, financing, relations with the host state and these rules often bear strong similarities. This paper sets out to delve into and review the legal character of international institutions.***

Keywords: ***International Institution, Legal Status, Legal Character, Legal Personality, Legal Powers.***

I. INTRODUCTION

International institutions are sometimes referred to as international organizations meaning that both terms are used inter-changeably. But in substance, it is easy to notice that most writers with background in international law like *D.W Bowett, J.C Starke* and *George Schrzenberger* talk of the United Nations Organization as an international institution while those with background in political science like *Leland Goodrich* and *Levi Werner* refers to the United Nations as international organization. *Prof J.C Starke* apparently recognized this problem when contended that "the structure and working of these institutions are primarily the concern of that department of political science known as international organization and administration and their activities none the less materially impinge upon the field of international law." Be that as it may, whether they are called international institutions or international organization, they refer to one and the same entity. International institution is usually described rather than defined as no one definition has been satisfactory.

Therefore International Institutions are described as legal entities crated by groups of states and functioning under international law to achieve purpose defined in their constitutions. This is regarded as not of general application and acceptability and no definition of general application is provided in international law.

LEGAL STATUS OF INTERNATIONAL INSTITUTIONS IN INTERNATIONAL LAW

International institutions along with states are persons of international law. That is, legal persons whose creation, activities and functions are directly governed by International law.

In this sense, international institutions are even more creatures of international law than are states, because they have no area of sovereignty nor any self defined existence or function, in fact, nothing except what is permitted them through the application of international law. Their structure, functions and power are these allowed to them by agreement of states expressed in a legal instrument governed by international law.

Each international institution however is the product of this own constitutive treaty. International law prescribes no legal form for institutions in the way company law makes provision for corporate entities within national legal system.

Secondly, international institutions though founded under international law and thus owing their existence to it also play increasingly important part in the law's development. This is because many of the treaties generate within the UN and its specialized agencies are sources of obligations most of which could now be regarded as constituting international law. International institutions therefore have something of a law-making function in a legal system that lacks any centralized legislature. They also have increasingly important role in acting as depositories for treaties.

Treaties for which the UN act as depositary are numerous and as the UN is also the institution with which member state are required to register all treaties the UN can be seen to have a special role in international law.

Thirdly, several of the tribunals which propound international law and decided case governed by it are part of or linked to an international Institution for example the ICJ is the principal judicial organ of the United Nations. The European court of human rights is linked with the Council of Europe and international Islamic courts of justice are projected as part of the organization of the Islamic conference. Other organizations exist to facilitate the settlement of disputes and provide mechanisms for establishing appropriate tribunals. Finally, most international institutions though entities regulated by international law, have the capacity (like states) to enter into transactions governed by domestic law. Hence their status, powers, capacities and immunities are matter which may confront lawyers who deal with everyday matters of contractual and other obligations.

LEGAL CHARACTER OF INTERNATIONAL INSTITUTIONS

Notwithstanding that there is no authoritative definition of international institutions using the description given above. Various characters are likely to be observed if it is an international institution.

The characters include the following:

- ✓ The entity is created by international agreement typically a treaty.
- ✓ Acts of an international institutions or its agent are attributable to the organization itself.
- ✓ An international institution has a prescribed field of activity defined in terms of functions rather than territory (this characteristic is therefore often described as functional competence)
- ✓ Public international directly regulates an international institution.

It is our contention that these characteristics require some qualification. The fact that a body is created by treaty is not in itself sufficient to establish that it is an international institution. For instance, France, Germany and Luxembourg decided to create an organization to carry out activities connected with the River Mosselle. They agreed in a treaty of 27th October, 1956 to create an appropriate body.

They chose to give the body a corporate form under German law equivalent to a limited liability company. Thus, they simply created a German corporation, not an international institution.

Similarly, even though part of the Constitution of a corporate body may be set out in a treaty, the corporation will not be an international institution in the sense described above, if the treaty specifies some domestic system of law as governing it. An example is EUROFINIA, an agency which finances railway stock in Europe the governing treaty specifies that the company is to be governed by the statute annexed to the treaty and by the laws of the state in which its headquarters are situated.

EUROFINIA is not however an international institution because it has no right derived from public international law. There may also be cases where the constitution of an enterprise is wholly contained in a treaty but its activities are entirely subjected to national systems of law. In such a case the entity lacks the power to act directly pursuant to international law and is not therefore organization or institution.

The significance of this review is that it shows the careful analysis which may be needed to distinguish between institutions which by acting only under or within national systems of law, identify themselves as not being international institutions and those which, although empowered to conduct business subject to national laws if this is necessary or appropriate in carrying out their proper functions can nevertheless operate on the international plane in matters regulated by public international law. Only the later are international institutions for present purposes.

II. LEGAL PERSONALITY OF INTERNATIONAL INSTITUTIONS

Legal personality is used in the context of international law principally to describe the legal existence of international organizations or institutions rather than the legal character or capacities of individual human beings. As created by states within legal framework governing the international community, an international institution is a legal structure which owes its existence to some decision (generally by states, though possibly by other international organization or institutions) to create it, to an agreement establishing the terms on which it is constituted and to the implementation of such decision and constitution.

In sum, the legal personality of international institutions has the following characteristics.

- ✓ Existence of an entity distinct from its creator.
- ✓ The entity has capacity and power to act under and be registered by international law.

- ✓ The organization rather than its member acts on matters within its area of competence.

It is pertinent to note however, that there are no international law definitions nor any set of rules, governing the personality of international institutions. There are however customary international law, the consensus of state in treaties and practice, decisions of international tribunals and to some extent analogies with domestic law all regarded as sources of extraction and elaboration of the relevant principles.

In some cases the constitution of an international institution or organization expressly provides for it to have personality in international law, but many, if not most constitutions do not have. However, the prevailing view is that even if there is no express provision, international personality is implicit.

Furthermore, most constitutions of international institutions provide either that the organization shall enjoy the legal capacity necessary to exercise its functions, or that it shall have legal personality and capacity to contract, to acquire and dispose of immovable and moveable property and to institute legal proceedings.

III. CASE LAW RECOGNITION OF INTERNATIONAL INSTITUTIONS

The authentic case law recognition of legal personality of international organization or institutions is that of International Court of Justice (ICJ) in its 1949 Advisory opinion in Reparation for injuries.

The background of the request for an advisory opinion was the time of creation of Israel. The issue called for as to whether the UN was a legal person which could bring claim under international law against a de facto government of territory in which employees of the organization had been killed and injured while performing their duties. The charter of the UN did not state that it has legal personality, though it does not provide for legal capacity and privileges and immunities within the territory of member states. The ICJ nevertheless stated that:

"*The court's opinion is that fifty states, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone together with capacity to bring international claims''*

Before reaching this view about the objective personality of intervention institution the court examined the constitution of the UN (i.e. the charter of the UN) and the role and activities of the UN. It noted various provisions defining the position of members in relation to the organization as indicative of a distinction between them as individual member and the UN as an entity separate from them.

The court attached importance to the power of the organization to enter into international agreements, in particular the convention on the privileges and Immunities of the United Nations 1946, stating it is difficult to see how such a convention could operate except upon the international plane and between parties possessing international personality.

The ICJ made further observations on the nature of international personality that it must be acknowledged that its members, by entrusting certain functions to it with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged. Accordingly the ICJ came to the conclusion that UN as international institution or organization is an international person. That is not to say that it is a state, which it is certainly not, or that its legal personality and right and duties are the same as those of a state.

However from the conclusion of ICJ opinion three points may be noted, namely:

- ✓ That international institution operates on the international plane.
- ✓ An international institution may maintain its right, by bringing international claims, to which the corollary must be that it may itself be subject to international claims.
- ✓ The rights and duties of international institutions, though it operates on the international plane, need not all be on that plane.

TRANSACTIONS OF INTERNATIONAL ORGANIZATIONS OR INSTITUTIONS

The governing law is that as creatures of international law and actors in the international arena, international institutions can enter into agreements creating right and obligations governed by international law. They also have capacity to submit their transactions to national systems of law, a capacity which enable them engage in their daily activities, such as buying, supplies, obtaining normal services for premises and others in a convenient way. It is important to be able to identify whether in any particular situation involving an international institution the governing law is international law or the law within the state.

The determining factors are the personality of the parties to the transaction, their indicated intentions and the form of the transaction. If all parties are subjects of international law (i.e. states and international institutions) the presumption is that international law is the law which governs their dealings, although they may specifically subject them to a selected national legal system. The intentions of such parties do not depend solely on whether a written record of their dealings contains an indication of their choice of law rather; it may be clear from the form of the document that it is a treaty rather than, for .e.g., a contract governed by domestic law, a treaty being ended not only by its description as such but also by the procedures used for its execution and by subsequent action such as registration with the United Nations.

IV. LEGAL POWERS OF INTERNATIONAL INSTITUTIONS

International institutions exercise legal powers similar to those normally associated with statehood. The enumeration of acts in law which institutions may perform is necessary to define their legal character. There are as follows:

A. THE TREATY-MAKING POWER

It has to be noted straight away that the existence of legal personality does not in itself support a power to make treaties, and everything depends on the terms of the constituent instrument of the institution. The constituent instrument does not normally confer a general treaty making power but this may be established by interpretation of the instrument as a whole and resort to doctrine of implied powers, such as the trusteeship agreements and relationship agreements with the specialized agencies. In practice, international organizations assume a treaty making power. The Vienna convention on the law of treaties between states and international organizations or between international organizations was adopted on 21st March 1986. Its content is very similar to the Vienna convention on the law of the law of treaties of 1969. Organizations participating in the conference which adopted the convention have the competence to sign the convention and execute the acts of formal confirmation equivalent to ratification have the competence to sign the convention is also open for accession by states. The convention is also open for accession by an institution which has the capacity to conclude treaties.

B. PRIVILEGES AND IMMUNITIES

International institutions in order to function effectively require a certain minimum of freedom and legal security for their assets, headquarters and other establishments and for their personnel and representatives of member states accredited to the organizations or institution. By analogy with the privileges and immunities accorded to diplomats, the requisite privileges and immunities in respect of the territorial jurisdiction of host states are recognized in the customary law. However, there is as yet no general agreement on the precise constant of the customary law concerning the immunities of international institutions. The immune principle appears to be that officials of international organizations/institutions are immune from legal process in respect of all acts performed in their official capacity. Experience with United Nations peace keeping forces shows the relationship with the specific involved and all the circumstances. The decisions of national courts do not as yet produce a coherent body of principles. Some decisions rely upon the analogy of diplomatic immunities while others take a more rigorously functional view.

C. CAPACITY TO ESPOUSE INTERNATIONAL CLAIMS

In the reparation case cited previously, the international court in its advisory opinion held unanimously that the United Nations was a legal person with capacity to bring claims both against member and non-member states for direct injuries to the organization. The power to espouse claims for direct injuries was regarded, it seems, as a concomitant of legal personality, since the court learned on the general ambiance of purposes and functions as it did when examine the preliminary issue of personality. The court however expressed its conclusion in terms of implied powers and effectiveness.

A similar reasoning may apply to other institutions. The capacity to espouse claims thus depends on:

- ✓ The existence of legal personality and
- ✓ On the interpretation of the constituent instrument in the light of the purpose and functions of the particular organization.

D. FUNCTIONAL PROTECTION OF AGENTS AND PERSONS ENTITLED THROUGH THEM

The court in the reparation case used similar reasoning to justify its opinion that the United Nations could espouse claims for injury to its agents on the basis of functional protection. This view provoked several dissenting opinions, and certainly this capacity cannot readily be invoked for other organizations or institutions, especially when their functions do not include peace keeping. In 1997, the fifth committee of the general Assembly decided that the costs resulting from an Israeli bombardment in 1996 of the headquarters of the UN interim force in Lebanon should be borne by Israel. A problem which remains to be solved is the determination of priorities between the states right of diplomatic protection and the organization's right of functional protection.

E. LOCUS STANDI BEFORE INTERNATIONAL TRIBUNALS

When an institution has legal personality, it ought in principle to have locus standi before international jurisdiction. Everything depends on the statute governing the tribunal or the compromises concerned. While certain institutions have access to the international court through its advisory jurisdiction the statute still confines locus standi to states.

F. RESPONSIBILITY

Institutions may have extensive functions involving the conclusion of treaties the administration of territory, the use of armed forces, and the provision of technical assistance. If an organization has a legal personality distinct from that of the member states and functions which in the hands of states may create responsibility, then it is in principle reasonable to impute responsibility to the institutions. Ina very general way, this follows from the reasoning of the court in the reparation but regard must always be had to each set of circumstances. For instance, in relation to the use of forces under the authority of the United Nations in peace-keeping operations, the general principle is that the issue of financial responsibility is determined by the relevant agreements between governments contributing forces and the United Nations, and between the later and the host state. There is no evidence of a presumption law that the United Nations bears either an exclusive or a primary responsibility for the tortuous acts of such forces, and the law remains undeveloped. In practice, the United Nations has accepted responsibility for the acts of its agents. However, in the case of more specialized institutions with small number of members, it may be necessary to fall back on the collective responsibility of the member states. There is a strong presumption against a delegation of responsibility by a state to an institution arising simply from

membership therein. Evidence must be sought of the intention of the states establishing the particular institution. In adopting draft articles on the responsibility of international law commission has accepted the view that member states cannot generally be regarded as responsible for the internationally wrongful acts of the organization or institutions. At the same time, it would be contrary to good sense if a state could avoid responsibility on international organization or institution.

G. RIGHT OF MISSION

The constituent instrument of an organization may expressly or by implication permit the sending of official representation or representatives to states and other institutions. Though there is a similarity to the sending of diplomatic mission in state relations, the analogy cannot be expressed very far.

V. CONCLUSION

From the foregoing review of the legal character of international institutions, it is glaring and not in doubt that legal institution has legal personality and are subjects of international law and are capable of possessing international rights and duties, and that they have the capacity to maintain their rights by bringing international claims.

It is a truism that international law lacks the coherence of national law. This is partly explained by the fact that law-making in the national legal order is centralized whereas international law-making is decentralized. Thus, the international community lacks the legislature that provides national legal orders with their coherence. The more horizontal nature of international law contrasts with the more vertical character of national legal order. This situation is hanging partly through the functioning of international organizations which to some extent compensates for the lack of coherence of international law.

VI. RECOMMENDATIONS

- ✓ International organizations and international institutions are synonymously used, but there is need to classify or categorize them. For clarity and easy reference between international institutions and international organizations.
- ✓ The legal personality of international institutions should be explicitly stated in the constitutive documents or treaties to remove doubt and heated arguments about their status.

International institutions should be accorded a move pre-eminent status than the position presently because they have something of a law-making function in a legal system that lacks any centralized legislature and play important role as depositories of treaties.

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