LEGAL PERSONALITY OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

Roxana-Mariana POPESCU[*]

Abstract

The legal personality of international intergovernmental organizations is relevant, at international level, from the point of view of the acquisition of rights and obligations. It is the sole way in which the will manifestation of the subjects of international law can be approached. The action of international intergovernmental organizations is limited to the will of founding states, which is regulated by different instruments of international law. Given the fact that the very existence and legality of subjects of public international law depends on the very existence of the legal personality, the study, respectively its analysis, is an equal priority for both theory and practice of the public international law.

Keywords: *international intergovernmental organizations; domestic legal personality; international legal personality; rights and obligations; International Court of Justice.*

1. General considerations regarding the quality of subject of international law of the international intergovernmental organizations

Given the fact that the very existence and legality of subjects of public international law depends on the very existence of the legal personality, the study, respectively its analysis, is an equal priority for both theory and practice of the public international law. There is an intrinsic link between legal personality and the status of subject of international law in the sense that, in general, "the subject of law is the holder of rights and obligations"[1]. The exercise of these rights and obligations concerns the domestic scope, as far as the subjects of domestic law are concerned, respectively the international scope, as far as the subjects of international law are concerned, as it is the case of states or international organizations, and many more. The international legal personality confers upon the subjects of international law, limitations within which the relations of which they may be part, can be organized and carried out. The regulation of such relations falls under the rules of "international law, acquiring the character of relations of international law analysed through the classical legal concepts of: subjects, legal content (rights and obligations) and object"[2].

Starting from the twentieth century, international intergovernmental organizations have been recognized as subjects of international law. Thus, after the Second World War, the scope of subjects of international law has expanded, meaning that, in addition to states, as main, primordial subjects, also the international organizations have appeared, not all, but just the intergovernmental ones, "the only organizations that can be studied in international law"[3]. Thus, we are taking into consideration the provisions of Art. 2 para. (1) letter i) of the Vienna Convention of 1969, according to which "the expression" international organization "means intergovernmental organization". Subsequently, we find a similar wording in the debates of the International Law Commission in 1989, when in the Fourth Report on Relations between States and International Organizations[4], Special Rapporteur Leonardo Díaz González noted that the "definition of the term "international organization" from para. (1) of Art. 2 of the Draft Articles on Treaties Concluded between States and International Organizations or between International Organizations[5], is identical to the one given in Art. 2 para. (1) letter i) of the Vienna Convention on Treaties of 1969". Therefore, the international organization is assimilated to an intergovernmental organization.

As it is already known, for an entity to be subject of international law, of state type, "the following conditions must be met: permanent population, determined territory, government and the capacity to establish relations with other states"[6]. Once these requirements are met, the state becomes "direct and immediate subject of international law, having full capacity of assuming all international rights and obligations"[7]. Likewise, it is necessary for the international organization to meet certain conditions in order for it to be qualified as subject of international law. *The Draft articles on the legal situation of state*

[*] Associate Professor, PhD, Faculty of Law, „Nicolae Titulescu" University of Bucharest, (e-mail: roxana.popescu@univnt.ro).

[1] Gheorghe Moca, *Drept internațional public*, Era Publishing House, Bucharest, 1999, p. 130.

[2] *Ibidem*, p. 131.

[3] Grigore Geamănu, *Drept internațional public*, vol. II, Didactic and Pedagogical Publishing House, Bucharest, 1983, p. 197.

[4] Presented at the 41st session of the International Law Commission, held in Geneva, Switzerland, from 2 May to 21 July 1989.

[5] Currently, the Convention on the Law of Treaties between States and International Organizations or between International Organizations, adopted in Vienna, 1986 (not in force).

[6] According to Art. 1 of the Montevideo Convention (1933).

[7] Adrian Năstase, Bogdan Aurescu, *Drept internațional public. Sinteze*, Edition 9, C.H. Beck Publishing House, Bucharest, 2018, p. 96.

representatives to international organizations[8] define the international organization as "an association of states, constituted by treaties, endowed with a constitution and common bodies and possessing a legal personality distinct from that of Member States"[9]. Thus, the international intergovernmental organization is a subject of international law if the following requirements are met: the members of the organization must be the states, i.e., the organization must be intergovernmental (interstate); the will agreement of states is necessary for the establishment of the organization; the organization must have its own institutional structure, which gives it "functional autonomy in international relations"[10] and must have legal personality.

Although the requirement of having legal personality is included in the constituent elements of the international organization, it should not be overlooked that it becomes subject of international law "in so far as States confer upon it this quality"[11] through the constitutive act.

Therefore, if we refer to international intergovernmental organizations, we find that their legal personality is an independent component, along with others, of course. "The endowment of legal personality [to international organizations] is the "key" element in determining the "distinction" between international organizations and forms or structures of international cooperation without legal personality in international law"[12].

2. Legal personality of international intergovernmental organizations

In order to be able to discuss about the legal personality of international intergovernmental organizations, we must keep in mind that, next to states, there are also other subjects of international law. Only then must we acknowledge that it is imperative to dissociate international legal personality from sovereignty[13].

As mentioned, legal personality can be conferred upon an international intergovernmental organization, either directly, through the legal instrument by which such an entity under international law[14] arises, or indirectly, resulting "implicitly" in so far as in order for the organization to exist and function, it is endowed with its own bodies, and for which "competences or tasks [which] could not be fulfilled in the absence of international legal personality"[15], are established.

Acquiring international legal personality through the constitutive act is also provided in the *Draft Articles on the Liability of International Organizations*[16], which, at Art. 2 letter a), states that the term "international organization" means any organization established by a treaty or other instrument governed by international law and endowed with its own international legal personality (...)".

Regarding the implicit conferment of legal personality upon international intergovernmental organizations, it is important to remember that the international case-law recognized this prerogative to those organizations for which the members had not provided, through the constitutive act. This is the well-known Advisory Opinion of the International Court of Justice[17] of 11 April 1949. In the present case, one of the questions addressed to the Court concerned the legal capacity requested to an organization (UN), which had not been endowed with legal personality through the constitutive act, to bring international claims. In other words, does the organization have international legal personality, given the fact that the constitutive act provides differently? The Court acknowledges that "this legal capacity is obviously inherent to the State; one state may bring an international claim against another state"[18]. The Court's answer is clear, in the sense that "the organization is subject to international law (...) being able to hold international rights and obligations and has the capacity of keeping these rights intact by bringing international claims"[19]. And this is possible because "the organization has been created to exercise and hold, which actually does, functions and rights that can only be explained by the fact that it has, to a large extent, personality and capacity to operate

[8] Included in the third *Report on Relations between States and Intergovernmental Organizations*, presented by M. Abdullah El-Erian, Special Rapporteur, at the 20th Session of the International Law Commission, held in Geneva, Switzerland, between May 27 and August 2, 1968.

[9] Article 1 letter a) of the Draft Articles.

[10] Marțian Niciu, *Drept internațional public*, Servo-Sat Publishing House, Arad, 1999, p. 85.

[11] Gheorghe Moca, *op. cit.*, p. 156.

[12] Ion Gâlea, *Manual de drept internațional*, vol. I, Hamangiu Publishing House, Bucharest, 2021, p. 209.

[13] According to Frédéric Joël Aivola, *Question de la personnalité juridique internationale des associations d'états,* Revue de la recherche juridique. Droit prospectif, N. XXXV - 134 (35ème année – 134ème numéro), 2010, p. 1740 (https://bec.uac.bj/uploads/publication/0e8ba4372126af1b573f0eb47fef05bf.pdf, accessed on 24 February 2021).

[14] For example, the Treaty establishing the European Atomic Energy Community (Rome, 1957) provides in Art. 184, the fact that Euratom has legal personality; the Constitution of the International Labour Organization provides in Art. 39 the following: "The International Labour Organization shall have full legal personality and, in particular, the capacity to: (a) contract; (b) to acquire and dispose of immovable and movable property; (c) to institute legal proceedings".

[15] *Ibidem*, p. 209.

[16] Adopted by the Commission on International Law at its 63rd session in 2011 and presented to the General Assembly as part of its report on its work (https://legal.un.org/ilc/texts/instruments/french/draft_articles /9_11_2011.pdf, accessed on 23 February, 2021).

[17] *Repair of Damage Suffered in the United Nations Service*, https://www.icj-cij.org/public/files/case-related/4/004-19490411-ADV-01-00-EN.pdf, accessed on 24 February 2021).

[18] Page 7 of the Opinion.

[19] Page 10 of the Opinion.

internationally. At present, it is the highest type of international organization and could not meet the intentions of its founders if it lacked international personality. It must be accepted the fact that its members, by conferring certain functions upon it, with the inherent obligations and responsibilities, have assigned to it, the competence required for those functions to be performed effectively"[20].

The European Union offers another situation of implicit legal personality, being an entity which, until the entry into force of the Treaty of Lisbon[21], had not expressly had legal personality[22]. However, taking into account the criteria used by the ICJ in its Opinion of 1949 (the mission, functions, rights and obligations that the UN fulfilled, according to the will of founding states), we can argue that the EU had implicit legal personality. Thus, the Union has been created for an indefinite period with the mission of "asserting its identity on the international stage"[23]; at the same time, the Union "defines and implements a common foreign and security policy"[24] (CFSP) and so on. In these circumstances, we can see that the Union organized the institution of "special envoys" in the person of the High Representative for the CFSP, in the Middle East, in Kosovo and others. Moreover, once the Treaty of Amsterdam entered into force on 1 May 1999, the Union acquired the capacity to conclude international agreements with third countries in the fields of CFSP, justice and home affairs.

Given the fact that international organizations are the result of the will agreement of states, the latter establish, by the constitutive act, their field of activity, purpose and mission. The clarification of the ICJ, stated in the Opinion of 1949 is important for our approach, because according to this clarification, the organization is not a state, "which, obviously, cannot be"[25], and "its legal personality, as well as its rights and obligations are the same as those of a state. (...) It does not even imply that its rights and obligations are necessarily exclusively international, just as not all the rights and obligations of a state are exclusively international"[26]. Therefore, legal personality under international law should not be confused with legal personality under domestic law.

3. Legal personality of domestic law of international intergovernmental organizations

As a rule, the constitutive acts of international organizations regulate, distinctly, their internal legal personality[27].

The legal personality of domestic law represents the possibility for the international intergovernmental organization to acquire "the status of subject of domestic law of the Member States, to hold rights and obligations, with the consequence of having" legal capacity "or" civil capacity»"[28]. According to the rule, the international organization benefits, on the territory of each of its members, from legal capacity to perform its functions and purposes. Thus, the organization can conclude contracts for goods, services, premises. Consequently, the organization has the right to establish legal relations with natural or legal persons of domestic law from states where it has its headquarters. By virtue of personality of domestic law, the organization may buy goods or rent premises for activities (premises agreement[29])[30]. The organization may also carry out a legal activity in the state in which it is established and may enter into agreements with Member States which enable it to operate. In case of contingent problems, it can defend its rights before the courts of these states. For example, according to the constitutive act, "the European Union may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings"[31].

International intergovernmental organizations also enjoy privileges and immunities, such as the inviolability of space and archives. The authorities of the headquarters State shall not have the right to enter the premises of the organizations without the authorization requested and received for this purpose from a representative of the organization. Tax and

[20] Page 9 of the Opinion.

[21] Following the Treaty of Lisbon, the Union expressly acquires legal personality, becoming a subject of international law, with its own legal order, distinct institutions, bodies, offices and agencies, to which precise objectives and values are added.

[22] On the legal personality of the EU, before and after the entry into force of the Treaty of Lisbon, see Augustin Fuerea, *Dreptul Uniunii Europene. Principii, acțiuni, libertăți*, Universul Juridic Publishing House, Bucharest, 2016, pp. 19-22.

[23] Article B of the Treaty on European Union, signed in Maastricht in 1992.

[24] *Idem*.

[25] Page 10 of the Opinion.

[26] *Idem.*

[27] For example: UN Charter, Art. 104: "The organization shall enjoy on the territory of each of its members the legal capacity necessary for the performance of its functions and the achievement of its purposes"; Treaty on the Functioning of the European Union, Art. 335: "In each of the Member States, the Union shall have the most extensive legal capacity recognized to legal persons under their domestic laws (...)".

[28] Ion Gâlea, *op. cit.*, p. 210.

[29] The premises agreement is an international agreement concluded between an international organization and the state on which territory it is based. Such an agreement can also be concluded with a state that is not a member of that organization (according to Djuma Étienne Galilée, *Quid de la personnalité juridique des organisations internationales?,* 2020 https://www.leganet.cd/Doctrine.textes/DroitPublic/ONG/Quiddelapersonnalitejuridiquedesorganisationsinternationales.Djuma%202020.pdf ,accessed on 26 February, 2021).

[30] According to Carmen Moldovan, *Drept internațional public. Principii fundamentale și instituții*, 2nd edition, Universul Juridic Publishing House, Bucharest, 2018, p. 332.

[31] According to Art. 335 TFEU.

financial privileges also allow organizations to avoid paying taxes and duties.

4. International legal personality of international intergovernmental organizations

After creating an international organization, States have to provide it with the indispensable and necessary legal instruments to carry out the inherent functions. *De facto*, the international legal personality allows the organization to act on the international stage, to use the instruments of international law[32].

International organizations have an international legal personality different from that of states, because organizations are limited to the functions entrusted to them by states.

The international legal personality of international organizations has two essential characteristics: objective and specialized. The objective nature results from the fact that "the legal personality of the international organization is opposable to third countries"[33], as emphasized by the ICJ in its Advisory Opinion of 1949[34]: "Fifty states, representing the majority of members of the international community, had the power, under international law, to establish an entity that has an objective international legal personality, not just a legal personality recognized only by them (...)"[35].

"The specialized character of the legal personality presupposes that the organization will be able to be the holder only of those rights and obligations that correspond to the assigned competences"[36].

By virtue of international legal personality, the international organization acquires several rights, namely: the right to conclude treaties; the right to file complaints against another subject of law; the right to stand in Court; the right to send and receive diplomatic missions (the right of passive and active legation).

The right to conclude treaties is recognized to international organizations, also through the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986) which, in Article 6 states: "the capacity of the international organization to conclude treaties shall be governed by the rules of that organization". "This capacity is not universal, but specific, depending on its purposes and functions"[37]. Therefore, this right is not absolute, in the sense that states can prohibit organizations to participate in international relations, by concluding treaties. The subjects of law with which they may conclude treaties are: Member States, third countries or other international organizations. An example worth mentioning is that of the European Union, which has concluded, in its own name or with the Member States (mixed agreements), 1266[38] agreements[39] in the most diverse fields. Some of these agreements establish reciprocal obligations (e.g., synallagmatic trade concessions), others contain interdependent obligations (e.g., compliance with fishing quotas in a certain marine area or the obligation to prohibit the use of certain dangerous substances on its territory)[40].

The right to file international complaints[41] is exercised both in its own name and for its agents, in the event that the international organization has suffered damages. Relevant in this regard is the same ICJ Advisory Opinion of 1949, in which the Court expressed its opinion on the request of the General Assembly that wished to know whether it could make a complaint in the place of Count Bernadotte, one of its officials who, in his capacity of UN mediator in Palestine (so, an agent of this organization) was assassinated. According to the Court, "the organization has the legal capacity to seek compensation for damage (...) and it is authorized to include reparation for the damage suffered by the victim". Moreover, the Court considers that "fifty States (...) had the power, under international law, to establish an entity with international legal personality (...) [and] the legal capacity to bring international claims"[42].

The right to stand in Court gives to international organizations, the opportunity to capitalize on possible claims, but also the benefit of a certain international legal status, based on the immunities and privileges it is endowed with.

The right of representation (active and passive legation) allows international organizations to send or receive diplomatic missions, respectively, to / from Member States, third countries or other international organizations.

In addition to the rights that it confers upon international organizations, the legal personality also requires them to comply with and apply the rules and

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[32] According to Djuma Étienne Galilée, *op. cit*.

[33] Ion Gâlea, *op. cit*., p. 211.

[34] *Precited*.

[35] Page 14 of the Opinion.

[36] *Idem*.

[37] Cristian Baci, Adrian Pătrașcu, Florin Nan (coord.), *Dreptul tratatelor. Noțiuni de teorie și practică,* Publishing House of the Ministry of Interior and Administrative Reform, Bucharest, 2008, p. 86.

[38] According to Service européen d'action extérieure, Treaties Office Database, https://ec.europa.eu/world/agreements/default.home.do, accessed on 26 February 2021.

[39] Of which 982 are bilateral agreements and 284 - multilateral agreements.

[40] According to Emanuel Castellarin, *Le sort des accords internationaux de l'Union européenne après le retrait du Royaume-Uni,* 2020, https://hal.archives-ouvertes.fr/hal-02951778/document, accessed on February 26, 2021.

[41] From another perspective, regarding complaints for maladministration, see Elena Emilia Ștefan, *The European Ombudsman and the right to good administration*, CKS e-book 2010, pp.748-763, http://cks.univnt.ro/cks_2010.html, accessed on 26 February 2021.

[42] Page 14 of the Opinion.

principles of international law (customary or conventional) in their relations with Member States, third countries, other international organizations and other subjects of international law[43]. Failing to comply with this obligation may result in the liability[44] of international organizations.

5. Conclusions

At international level, the legal personality of international intergovernmental organizations is relevant from the point of view of the acquisition of rights and obligations (benefit of rights and fulfilment of obligations). It is the sole way in which the will manifestation of the subjects of international law can be approached. Their action is limited to the will of states that establish the respective international organizations and that is regulated by different instruments of international law, as it is the case, for example, of the (UN) Charter, of the institutional/constitutive treaties (European Communities and the European Union) and of the Statute (Council of Europe). The current international society favours the multiplication of the subjects of international law, of the type of international organizations, in the most diverse fields, some of them of vital importance and of great topicality related to the evolutions of life, in general (environment, climate, technology, digitalization, etc. a.) and, implicitly, stimulates the establishment of a new type of legal personality, correlative to the inherent rights and obligations of such international organizations.

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[43] For example, the Sovereign Order of Malta.

[44] In Romanian, "two terms responsibility and liability are used with the same meaning or with very close meanings (...). Usually, the terms (...) have the meaning of a formally established obligation, to do or not to do something specific, in relations with other subjects of law (according to Elena Emilia Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ*, ProUniversitaria Publishing House, Bucharest, 2013, p. 13.