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INTERNATIONAL ORGANIZATIONS AND THEIR QUALITY OF SUBJECTS OF PUBLIC INTERNATIONAL LAW

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INTERNATIONAL ORGANIZATIONS AND THEIR QUALITY OF SUBJECTS OF PUBLIC INTERNATIONAL LAW

Roxana Alina PETRARU*

Abstract:

International organizations have demonstrated their important role in the system of international relations especially in the economic, social, fields as well as in the field of protection of human rights. They are not only instruments of cooperation between states, but also tools destined to raise awareness on the realities of a world going through a globalizing process. International organizations have both an intern and international legal personality. Their skills are normative, operational, of control and sanction.

Their quality of subjects of public international law is acknowledged both by the doctrine and by international treaties.

Keywords:

international organizations, public international law, subjects of law, globalization, international relations

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I. The subjects of public international law

In view of the International Court of Justice, in public international law, the notion of subjects of law refers to those entities possessing international legal personality, namely that are capable of having international rights and obligations, and retaining such rights through actions in court.[1]

This definition was completed by the doctrine, showing that even in the absence of the first condition, an entity may have limited legal status, which depends on the tacit acceptance or agreement of other acknowledged entities. Ian Brownlie deduces the following elements of legal personality in public international law:

- The capacity to conclude international treaties;
- Ability to act before international courts;
- Benefit of the privileges and immunities in national courts.

In another definition (Cretu, (2006),: 62), the subjects of international law are those entities that participate, on the one hand, in the elaboration of international law norms and, on the other hand, in the development of legal relations governed by these rules, thus acquiring direct rights and assuming obligations within the international legal order.

The subject of international law has also been identified as: a. the owner of rights and obligations in terms of international law, b. the holder of the right to bring an action before an international court; c. the holder of interests in respect of which there are provision in international law. The quality of subject of public international law needs to be addressed in the context of the peculiarities presented by this system of law (Besteliu-Miga, (2008),: 19). Thus, we should analyze not only the ability to have rights and obligations, but also the practical possibility of exercising them.

Martian I. Niciu (Niciu, (1998),: 80) considers that an entity may be subject of public international law if it meets two conditions: it is the direct recipient of international law -direct holder of international rights and obligations, and if participates in international legal relations directly.

In contemporary public international law, we identify the following categories of subjects:

a) states;

b) international intergovernmental organizations.

[1] Case Repairs for damage suffered in the service of the United Nations. Advisory opinion of International Court of Justice.

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Other entities, such as peoples and national liberation movements, international NGOs, transnational corporations, are included by some authors in the category of international subjects of law. They have a special status, and may acquire certain rights and assume certain international obligations, but without having full legal capacity worldwide. Also, the individual holds a special position in respect to international legal capacity.

II. International organizations, subjects of public international law

The emergence and development of international organizations was determined by historical factors primordial for social development. The most important factors are:

1. the need to prevent widespread or regional conflicts which affect the population and interstate relations and conflict prevention and peaceful resolution of international disputes

2. interdependencies that arise in the process of development of societies

3. new issues affecting society cannot be solved at state level, the solutions are possible only through globally international policies (Ispas, (2011),: 91). The states have undergone fundamental changes regarding the approach of conflicts, negotiations and diplomacy that are now the main values of international organizations.

The term "international organizations" is relatively recent. The phrase appeared in 1867, and was introduced by James Lorimer as a substitute for concepts such as "international public union", "international office" or "international commission". The final consecration of the term is owned to the work of Walter Schücking "World Organizations", published in 1908, and to the volume of "Public International Unions" by Paul S. Reinsch, from 1911.

The League of Nations Convention, signed in 1924, indirectly acknowledges the existence of international organizations. Thus, Article 23 suggests the creation of specialized international organizations to promote international cooperation, and Article 24 uses the concepts of "international office" or "international commission" for existing organizations at the time, underlining thus, voluntarily or not, the importance of creating new international organizations. Both articles

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define the vocation of universal organization of the League of Nations. After the Second World War, in the Preamble of the Charter of the United Nations the existence of an actual international organization was acknowledged: the signatories "establish in this way an international organization called United Nations".

The development of international organizations experienced a significant boom since the late '70s and early '80s. If in 1978 there were 9810 international organizations, of which 280 intergovernmental organizations, in 1985 their number exceeded 24,180 organizations, of which over 3500 were inter-governmental organizations, and in 1999 their number exceeded 50,000, intergovernmental organizations reaching more than 6,400 (Baloi , (2003),: 34). In these circumstances, the states were forced to give up their hegemony on the international arena and accept the emergence of these new subjects of public international law.

International organizations are derived subjects of international law, holders of rights and obligations in accordance with international standards established by states through agreements between them. The international organization is an association of states, determined by and based on a treaty aimed at common goals and which has its own special bodies, performing specific functions within the organization (Nastase, Aurescu, Jura, (2000),: 88).

An international organization (Bonciu, (2004): 143) is a structured set of participants, established under an agreement, working continuously to achieve common objectives by coordinating resources and actions. From the definition one can deduce the key elements of an organization (Bal, Dumitrescu (2006): 167). First, the organization is an organized framework that brings together many players which can be states (in case of governmental organizations), private associations (in case of non-governmental organizations such as Amnesty International, for example). Secondly, the organization results from an act of will of the participants, expressed in an agreement which takes the form of articles of organization, bearing different names - Status, Covenant, Charter, Convention, etc.. The organization is a mechanism for coordination of resources and actions to achieve certain goals. The organization has a distinct materiality from the members that compose it: a permanent office, an organizational structure and a functional autonomy of its own.

Governmental organizations are associations of states, established by a treaty, equipped with their own status and bodies, with a legal

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personality distinct from that of their member States (Miga-Besteliu, (2000): 9). There is a right of international organizations made up of the rules contained in their articles of organization, of those contained in treaties concluded by Member States, of the rules contained in the resolutions issued by the organization bodies and from customary rules.

An international organization is an "association", which can be static (bringing together many states) or non-state (bringing together natural or legal persons with different nationalities). The first category is called inter-governmental international organizations and the other non-governmental international organizations.

International organizations are acknowledged as subject of international law, but it is not comparable to that acknowledged in case of the states (they have no territorial supremacy) with limited personality, necessary to implement the mandate assigned by state's will.

In principle, international organizations are composed of sovereign states. Subjects of public international law, international organizations are not subjects of international order endowed with full legal and political skills. They are a creation of the States and their establishment meets the need to achieve certain objectives.

Membership can be obtained either by participating in the articles association, either by further accession or by the emergence of new states. States that attended the conference which drafted and adopted the articles of association of the international organization are called "founders" or "original" members. Acquiring membership by accession is made subsequent to the establishment of the organization and requires the compliance by the candidate state of certain conditions which generally differ from one organization to another. Thus, according to Article 4 of the UN Charter can become members of the United Nations all the other peace-loving states which accept the obligations of the Charter and which after assessing the Organization, are able and willing to comply with the Admission to membership of the United Nations of any state which meets these conditions will be performed by decision of the General Assembly on the recommendation of the Security Council.

Loss of membership can occur by voluntary withdrawal, expulsion, disappearance of a Member State or dissolution of an organization. Articles of organization of international organizations can provide expressly the termination of membership by voluntary retirement, the term in which the effects of this act take place. Excluding a state from

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an international organization may be the effect of applying a sanction or a decision of the organization by the possible situations which put it in a bad in the field of international relations.

In the discussion about the members of international organizations is useful to mention:

- Associate members – quality which is obtained by a sovereign state when it meets all the requirements to become a full member of an international organization. This is the case of the states in a particular geographical area which are interested in their work in the activity performed by a regional organization in another geographical area and of the states that wish to participate in an organization that requires special conditions for admission;
- Observers - status granted by international organizations to its Member States, but which are not members of one of its bodies, in order to participate in the works of that body; to national liberation movements and other international organizations;
- Participants with consultative status - the status is granted to NGOs whose work is tangent to that of the intergovernmental organization that grants this status.

III. Brief considerations on the functioning of international organizations

Most bodies of international organizations do not operate permanently, but meet regularly. These meetings are, generally called sessions. International organizations work in sessions - ordinary or extraordinary - after a certain procedure, and decisions are taken in accordance with the memorandum included in the articles of organizations by applying the rule of consensus, unanimity, weighted vote or majority.

A session has an official opening and closing date and consists of a series of meetings that can take place two or three times a day. Between sessions, the session is considered to be "adjourned". If the proceedings of a session can be resumed only after a longer period of time, they use the formula of closing and then of reopening of the session.

Bodies with few members normally meet at shorter intervals.

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The expenses made for organizing these sessions are divided into two categories: administrative and related to the participation in proceedings of delegations from member states. If the premiums are paid from the organization's budget, the treatment of the second category is different. Thus, some organizations pay transportation cost for five members from each country (UN), others pay both transport costs and per diem (IMF and IBRD), others pay neither the transportation costs nor the per diem for delegations participating in the proceedings of plenary bodies, but pay both for delegates in the executive bodies (UNESCO).

At each work session a leader is chosen. If special sessions are convened the member shall not be choosing a new president. This position will be accomplished by the head of the delegation of the state whose nationality the last president had. For reasons of time, often for the position of president of various bodies elections are no longer necessary. Thus, representatives of the member countries preside over the proceedings in turn, taking into account the alphabetical order of the member states (The Council of Europe, the EU Council), the date of organization (OPEC) or other criteria.

The president leads the session, appoints the members of subordinate bodies (committees, working groups), and is a mediator of disputes. Also, many times, if the for and against votes are equal, the Chairperson shall have the decisive vote. The President is assisted by one or more vice presidents. In addition, during the subordinate bodies' sessions, a rapporteur is elected or appointed whose mission is to inform their superior of the session.

The draft agenda shall be communicated to the members of the organization before the official opening of the session, for on this basis the states establish the delegations and their mandate. After the election of the office and approval of the agenda, they pass to the general debate statements consisting of declarations of the heads of delegation who have the opportunity to present the official point of view of the state that they represent regarding the organization's activities and the issues on the agenda. Usually the time allotted for these speeches is limited. The President of the session may close the list of speakers or close the debate on one of the items on the agenda.

Procedural motions are introduced through the so-called "call to order" that can be raised by any delegation, at any time of the debate, provided they are procedural and not substantive.

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The acts of international organizations may carry different names: resolutions, decisions, statements, decisions, recommendations, etc.. The process of adoption of these documents includes the following steps: initiative, negotiating and drafting the text of the decision and the adoption mechanism.

The budget is the legal basis under which will be collected, or paid, states' contributions to the organization costs. The sources of income of international organizations come from Member States' contributions, donations (it can be received either from the States, or from individuals or even from other international organizations and can take different forms - land for headquarters or offices, art, book fund, symbolic rents, interest-free loans and even non-refundable financial support, etc..) payments for services, fees, voluntary contributions (to finance various programs under aegis of the United Nations coming from Member States, non-members and other sources) loans.

IV. Conclusions

Although states still remain dominated entities of the system of international relations, international organizations, created by the will of the states play an important role in this system. Their most important function is to provide means of cooperation between states in areas where they have common interests (Ispas, (2011),: 96). However, contemporary international realities point to the need for restructuring the international organizations. Their role as subjects of public international law, however, is clearly defined and unmistakable.

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