

LEGAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS

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Abstract

Earlier the connotation of International law was not so wide. It was to a large extent of a formal character. Earlier it mainly dealt with delimitation of jurisdiction of States. The key aim of international law was coexistence and the preservation of international friendly relations. Its extent of applicability was so designed as to limit and restrain State action emphasizing rights and obligations of one state to another. But during last few decades manifold changes have taken place in field of International Law. An significant facet of international law is its international legal personality. With the acquirement of personality comes privileges, rights and obligations like right to implement treaties, right to immunity, right to send and receive legations etc. The instant article would shed light on studies that are there concerning Legal Personality of International Organizations & would come up with some recommendations.

Key words:

Legal Personality, Rights & Duties, International claims, Domestic legal personality, International Obligations, Reparations.

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INTRODUCTION:

The term international organization, which includes a wide range of organisations, in a wider sense also includes, non-governmental organizations (NGOs) and multinational corporations that have their origin in a state's domestic legal system. The key difference between the NGOs and the intergovernmental organizations is, their members, but another difference that is there is in comparison to the act of domestic law creating an NGO, intergovernmental organisations were established via an act of international law. Also, it is actually a daunting task to figure out an exact definition of Intergovernmental Organizations. The problem of the basis of international legal personality for this kind of entity will be discussed as part of the analysis and will include a summary of the basic criteria for becoming an international legal organisation with legal personality. To define an international organisation at this stage would therefore be a difficult and impractical task. The concept of legal personality exists in both international and municipal laws. By means of legal personality, the legal system assigns certain rights and obligations to an entity distinct from people like us. The extent of these rights and responsibilities depends on the existence of legal entities, meaning that not all legal entities are equal and do not automatically have the same rights and responsibilities. Many legal people may have a single right, while others may have manifold rights and obligations. An organisation that exercises rights, responsibilities and powers

on an international level, apart from its members, is said to have an international legal personality in the field of international law.¹

LITERATURE REVIEW:

Tuulaikhuu Enkhee observed that International organisations have international legal personality under international law or, through the possession of international legal personality, international organisations may exercise their functions. The concept of speciality extends to foreign organisations. Therefore, International organisations should have an international legal personality and in order to serve their tasks in their constitutions, they exercise their functions.. Nonetheless, there are several priority questions that need to be answered as diversity of international organizations is getting more difficult to determine whether international organizations have international legal personality.²

Henry G. Schermers and Niels M. Blokker (2011) observed that provisions oblige the members to regard the organization as a distinct international person, competent to perform act that in case of traditional international law could only be done by states. Thus, taking into account this theory, the most imperative prerequisite for possessing international legal personality under

¹ Kerstin Martens, *Mission Impossible? Defining Non-governmental Organizations*, 13 INTERNATIONAL JOURNAL OF VOLUNTARY AND NONPROFIT ORGANIZATIONS, 271, 271-285 (2002).

²Tuulaikhuu Enkhee, *International Legal Personality of International Organizations*, INTERNATIONAL LAW PERSPECTIVE, at 1, 1-5.

international law by an international organizations are the provisions on the international legal status of that organization in its constitution.³

Wladyslaw Czaplinski (2016) observed that the legal personality of international organisations depends on the will of the founding states and, at least by the members, it can not be challenged. Universal organisations such as the United Nations are opposed to all states, even non-members. Governmental bodies which are focused on international treaties may also have a practical international legal personality and restricted powers. The problem is much more difficult for groups of citizens or political factions. We do not suppose that they are subjects of international law. They only possess certain international legal rights and obligations, e.g. in the domain of the law of armed conflicts (as to admissible weapons and methods of warfare) and humanitarian law. The scope of those rights and obligations is dependent upon the recognition by third parties, and consequently on conferral by them. The recognition will be of constitutive importance. No characteristics of international legal personality, derived directly from general international law, are per se recognised by recognised non-state actors, except those linked to customary international human rights law. Certain doubt exist with regard to possibly collective nature of protection of minorities (individual rights can be exercised

jointly by the individuals belonging to the same group) and self-determination. The latter can be exercised exclusively if acknowledged by third parties, and thus a vicious circle starts.⁴

LIMITATIONS OF THE STUDY:

The instant research paper would rely on the pre-existing data for critically analyzing the research topic. Also quantitative method would not be used in the instant research paper.

RESEARCH METHODOLOGY:

The instant research paper would resort to qualitative methods for the purpose of data collection. Also, Bluebook 19th Edition citation style would be followed throughout the paper.

THE CONCEPT OF INTERNATIONAL LEGAL PERSONALITY:

International legal personality 'is a term where a fixed content is missing. If an organization has international legal identity, the effects may change from one entity to another. Consequently, one must go beyond pure concepts and look instead at the practical consequences of attributing international legal identity to an organization such as an international organisation.

Although no established substance exists, it can be argued that an organisation has an international legal identity if it is capable of international rights and obligations and has the capacity to protect its rights by making

³ Henry G. Schermers & Niels M. Blokker, *International Institutional Law: Unity within Diversity*, MARTINUS NIJHOFF PUBLISHERS, Pg. 988 (2011).

⁴ Wladyslaw Czaplinski, *Recognition and International Legal Personality of Non-State Actors*, 1 PECS JOURNAL OF INTERNATIONAL AND EUROPEAN LAW 7, 17 (2016).

international claims.⁵ Nevertheless, this view of the International Court of Justice (ICJ) has been claimed to be circular⁶ as questions such as what kind of person is worthy of possessing international law and duties are still left unanswered. The Court's claim, however, can still be used as a simple description of legal personality. As far as foreign organisations are concerned, the main point is that they have legal rights and obligations on their own behalf rather than in the name of their member. To do this, each judicial order shall describe its own legal entity, including an international one, and the extent of its legal personality.

Historically, states were seen only as the principal subjects of international law. As reiterated in the Lotus case in 1927 by the Permanent Court of International Justice (PCIJ), international law governs relations between independent states in order to monitor relations between these various co-existing societies or to achieve common objectives. States are still the primary subjects of international law, although a variety of other subjects have also joined. Foreign organisations are considered by many analysts to be subjects of international law. However, multinational companies and entities may also be regarded as objects of international law under particular circumstances. The concept of legal personality is distinguished from the

⁵ *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: ICJ REPORTS*, p. 179 (1949).

⁶ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* pg. 57 (5th Edition, Oxford University Press, 1998).

problem of subjects of law by some authors.⁷ For instance, the number of subjects of international law is at times perceived to be larger than the number of organizations with international legal personality. Nevertheless, some resort to the view that two ideas coincide in nature. The relevant question for the objectives of this study is the one concerning to legal personality, and there's no requirement to enter into the given debate. Therefore, a subject of international law would be treated as an international legal entity, and vice versa.

THE NOTION OF INTERNATIONAL AND DOMESTIC LEGAL PERSONALITY:

It is international legal personality of organisations that would mainly be taken into consideration. The issue of legal personality arises in different legal orders as a result of the fact that "international organizations usually carry out legal activities in several legal orders"⁸ Therefore, it is not proper to equate international legal personality with domestic legal personality. The latter is an effective personality within a given State's domestic legal framework. Therefore, each State would have its own laws and mechanisms for determining which entities in its domestic legal frame have legal personality. Even

⁷ D.I. Feldman, *International Personality*. IN: RECUEIL DES COURS.COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW,II , p. 343-414 (1985).

⁸ DEREK W. BOWETT, *BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS*, (5th edition by Philippe Sands and Pierre Klein. London: Sweet & Maxwell, 2001).

though the procedures may vary, many national courts would be using their conflict of law codes.

According to many legal bodies, an entity's legal identity and potential are decided by its 'personal' law.⁹ International organizations' 'personal' law is international law, and thus recognition of the organization's domestic legal personality would emerge from the existence of legal personality on the international plane. In such scenarios, the domestic legal personality develops directly from the international legal personality.¹⁰

As given above, it could be stated that each legal system decides for itself which entities are its subjects. Each State does so with the requisite powers via its legislature or some other organ. Of course international law is an independent and distinct legal system which decides its own subjects. Nevertheless, the issue lies in the specific features of that legal order. There's really no legislative branch empowered to take these decisions, nor there is a generic treaty that addresses the issue. This leaves us all with customary law and basic principles as the outlets for an examination in international law subject matter. However it could not be concluded that the manner in which domestic courts deal with international organisations is irrelevant. Their perceptions towards international organisations, in

debating about international legal identity, can be of great significance. What the distinction does say, however, seems to be that the problem of international legal identity must be determined on the basis of international law, as opposed to the domestic counterpart.

SIGNIFICANCE OF POSSESSING INTERNATIONAL LEGAL PERSONALITY:

It is worth questioning whether it's really imperative for the international organizations to possess distinct international legal identity. The legal identity that international bodies can hold renders them subject to international law and thus capable of imposing international rights and obligations as distinguished from functioning within the boundaries of separate municipal jurisdictions alone.¹¹

This points out that in order to function on the international level international legal personality is required. However, all the member states of any particular organization, will hold international legal personality. Then why do we necessarily need a distinct legal personality for the organization? The rationale here is that if this idea was not embraced, the independent legal interests of the organisation's members would be the ones through which the organization would work in the international arena. A solution such as this may trigger serious problems.

⁹ C.F. AMERASINGHE, PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS. P.6 (1st edition. Cambridge: Cambridge University Press, 1996).

¹⁰ International Tin Council v. Amalgamet Inc., 524 NYS 2d, P. 971 (1988).

¹¹ MALCOM N. SHAW, INTERNATIONAL LAW. P. 909 (4th edition. Cambridge: Cambridge University Press, 1997).

One illustration of this is the issue of organisation-related accountability. If the organization, on the international level, did not have its own legal identity, the probable obligation would be a common one borne by all Member States. This could result in member states experiencing practical difficulties and disputes. The opposite case, namely that the organization decided to bring an international claim against another foreign legal entity claiming responsibility, might also pose difficulties, as all the Member States would have to agree. This might sometimes contribute to political problems within the different Member States, and also between particular member States and third States.

Another illustration is the right of an international organization to appear on its own initiative in legal proceedings. Again disputes between member states, possibly related to issues unrelated to the organization's functioning, may hinder the organization's work. Problems may also occur with organizational disputes with a Member State. Also, it would become difficult for the organisation itself to manage these issues without directly involving all the other Member States and thus jeopardize their relations with the Member State concerned.

And hence, a distinct legal identity of international organizations has emerged as a realistic principle that allows organizations to function in their own right, both in legal proceedings and as entities with their own rights and responsibilities.

RELEVANT THEORIES ON THE POSSESSION OF PERSONALITY BY INTERNATIONAL ORGANIZATIONS:

The 'Will of the Founders' Theory:-

Often considered to be more popular theory, the school's 'will of the founders' treats an international organization's acquisition of international legal personality as contingent on the subjective desires of the founding states.¹² Such desires could be explicit, with a clause in the constituent treaty allowing the organization to have personality under international law. However, former Soviet writers believed that express conferment was the only means by which an international organization could acquire international personality.¹³ But, it is now acknowledged that the objectives of the founding states could also be sought indirectly, when considering what acts an organization is permitted to take and if such acts pre-assume the status of an international legal person.¹⁴ Whether it was the intention of the original Member States that the organisation have the legal personality or not could also be deduced from the nature of works undertaken, for example, to conclude treaties, transmit and receive diplomatic delegations or take claims for international obligations etc then it could

¹² AUGUST REINISCH, INTERNATIONAL ORGANIZATIONS BEFORE NATIONAL COURTS P. 57 (Cambridge University Press, Cambridge, 2000) .

¹³ Chris Osakwe, *Contemporary Soviet Doctrine on the Juridical Nature of Universal International Organizations*, 65 AJIL 502 (1971).

¹⁴ HENRY SCHERMERS AND NIELS BLOKKER, INTERNATIONAL INSTITUTIONAL LAW P. 989 (5th ed, Martinus Nijhoff, Leiden, 2011) .

be said that the organization possess the international personality. Because of the relative rareness of constituent Treaty clauses expressly conferring personality, this inductive reasoning would often be considered to be the test of a particular entity's legal status

Under this view the personality of these entities is unambiguously derivative. This results from an expression of the sovereign will of States, the original subjects of international law as stated in the constituent treaty. Accordingly, this theory matches up with a positivist view of the international law system where the rules binding on states derive solely from their consent.¹⁵ An international organization doesn't acquire personality unless the founding states wish to have that attribute, directly or implicitly, irrespective of how the organization behaves in action.¹⁶

Nevertheless, a theoretical discrepancy may occur where the will of the founders is not expressed in the organization's empirical truth. An international organization could exist only on paper, yet have personality if that is what the founders wished, or vice versa, an organization could lack personality adhering the express constitutional provision, yet act as a distinguished entity on the international stage.

¹⁵ France v Turkey, PCIJ (Series A) No 10, 18 (1927).

¹⁶ Jan Klabbers, *Presumptive Personality: The European Union in International Law* 231, 235, Martti Koskenniemi (ed) International Law Aspects of the European Union, KLUWER LAW INTERNATIONAL, THE HAGUE (1998).

The interpretation of the 'will of the founders' is also consistent with a restrictive interpretation of the powers of international organisations, whereby all these powers are exercised by the members of the state and are restricted to those required for the organization to fulfill the objectives set out in its constituent instrument.¹⁷ The discussion on the implementation of this theory continues, but the underlying premise i.e In the constituent treaty the powers of the organization are directly given by its member states- matches with the conception that the legal status of the organization is also directly drawn from the founding states.

The Objective Theory:-

The alternative viewpoint claims that the legal identity of international organisations is conferred by the impartial operation of international law.¹⁸ as per this view, if an organisation satisfies a certain set of requirements, the international legal system grants it the capacity to bear rights and to owe obligations which are enforceable under international law, irrespective of the basis. The emphasis in this theory is therefore on what the international organization is, as an

¹⁷ SEIDL-HOHENVELDERN IGNAZ, CORPORATIONS IN AND UNDER INTERNATIONAL LAW , (Grotius Publications, Cambridge, 81 1987).

¹⁸ JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 169 (8th ed, Oxford University Press, Oxford, 2012).

objective matter of fact,¹⁹ instead of what the member states aimed when it was created.

The objective theory has strong similarities with statehood acquisition, based on a rule of general international law that gives legal personality when particular conditions are met. It represents the nature of the independent existence of an organization, rather than the founding states' unrealistic (and possibly misplaced) purpose. This ability to supersede Member States' will gives the theory a non-voluntary flavor and thus sits disconcertingly with a positivist view of international law.²⁰ This does not, however, detach the organization from the control of its members, which still defines the functions, purposes and competences of the organization in its constituent instrument and retains the capacity to put an end to the existence of the organization. The constituent treaty remains the legal basis of the organization, but that isn't the origin of its personality which instead emanates from international law.²¹

THE LANDMARK JUDGEMENT OF ICJ ON INTERNATIONAL LEGAL PERSONALITY:

The ICJ 's seminal judgment on international legal personality was given when the

assassination of Count Bernadotte took place, a United Nations mediator, by Zionist militants in Jerusalem in 1948. Discussions in the General Assembly ensued to determine whether UN had the power to bring an international claim against Israel for reparation covering the damage resulted both to itself and to the victim. The ICJ had sought an advisory opinion on this issue, which first considered whether the UN could be considered a legal entity under international law. The League of Nations' status was never clearly defined,²² and there was no specific relevant provision in the UN Charter, except Article 104, only stipulating that the UN has domestic legal capacity within the territory of its member states.²³ At the San Francisco Conference, a recommendation to include an article on international legal personality was rejected as it was considered that if such personality existed, would have been implied in its entirety from the Charter. Thus, at that point there was no settled position on legal status.

After taking into account the general tenor of the UN Charter and the exercise of the United Nations, the court decided that the Organization was intended to exercise and enjoy operations and rights that can only be determined on the basis of the possession of a significant part of international personality and

¹⁹ ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT, (Clarendon Press, Oxford, 47-48 1994).

²⁰ Jan Klabbers "Presumptive Personality: The European Union in International Law", P. 241-242.

²¹ Arangio-Ruiz Gaetano, *The UN Declaration on Friendly Relations and the System of the Sources of International Law*, SIJTHOFF & NOORDHOFF, THE NETHERLANDS, 246-247 (1979).

²² Quincy Wright, *The Jural Personality of the United Nations*, AJIL 509 at 510 (1949).

²³ LELAND GOODRICH, EDVARD HAMBRO AND ANNE SIMONS, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS P. 619 (3rd ed, Columbia University Press, New York, 1969).

the ability to operate on an international level. It is actually the ultimate form of international organisation, and if it was stripped of international personality, it could not carry out its founders' intentions. It must be understood that its Members have clothed it with the competence needed to allow certain functions to be effectively performed by entrusting certain functions to it, with the attendant roles and responsibilities.

The ICJ then unanimously held that the UN did have the power to bring an international claim relating to the harm sustained by itself through functional need. A majority said that UN could claim reparation for the victim's damage, only through an infringement of obligations owed to itself.

The debate still continues over which school is most consistent with the reasoning, as the origin of the UN Personality was not clarified yet. But, the ICJ judgment's import and language can be read as coherent with the objective approach. The emphasis is on the roles and privileges that the UN currently exercises and enjoys,²⁴ which emphasizes the functional nature of the existence of the UN rather than its founding purpose. Also, the provisions of the Charter and its drafting history were not given the paramount importance that could have been predicted under the theory of 'will'.²⁵ Moreover, it was

very clearly articulated that legal personality was necessary if the UN were to carry out its functions as set out in the Charter.

For the development of international institutional law damages for injuries was absolutely vital. Through arguing that the UN had an international identity, the Court acknowledged that international law had progressed beyond the state-centered definition of the nineteenth century and, crucially, no longer perceived a dichotomy between active subjects and passive objects.⁸⁸ Instead, any organization regulated by international law was an international legal person with the potential to bear rights and duties. But much about how an international organization would acquire personality was left unclear. The application of the ICJ to a combination of intention-based and objective standards justifications, whether because the Court sought a rational middle ground or because it did not understand the dispute, has resulted in the judgment being quoted in favor of two profoundly contradictory positions. While the judgment is arguably more consistent with the objective curriculum, the Court has failed to explain its stance clearly and therefore it could be said that the decision isn't conclusive the either way.

RECOMMENDATIONS:

- It has been shown that legal personality is an important tool, both in relation to members as well as non-members. Thus, more good research could be done to make

²⁴ *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion), ICJ Rep 174, above n 39, P 179 (1949).

²⁵ Jan Klabbers "Presumptive Personality: The European Union in International Law", Above N 44, P. 244.

the concept more comprehensive and free from lacunae.

- When a status of legal personality is being bestowed upon an entity, that entity becomes capable of suing & being sued for wrongful acts. Therefore, experts should try to come up with some better ways of ensuring legal accountability of International Organizations.

CONCLUSION:

There is no hiding to the fact that International Organizations does play a vital role in the International community today, and almost all states belong to one of them. In relation to the members and non-members, legal personality is indeed a vital tool Also, it is clear by virtue of taking into account the relevant theories on Legal Personality of International Organizations that International Organization does possess legal personality under International law and could perform their functions by virtue of having it.