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ABOUT ESSENCE OF INSTITUTES OF LAW OF THE INTERNATIONAL ORGANIZATIONS

Abstract. The law of the international organizations is understood as the set of norms, which define standard and legal status of the concrete organizations in the international system of the relations. A key problem of the similar rights is regulation of activity of the organizations among themselves and the state system. The regulatory base regulating activity of the similar organizations is divided into two extensive branches. In international law standard contracts act the main way of regulation of the activity of the organizations. There are: the documents, establishing the procedure of interaction of the countries, the principles and operating procedure of the association (constituent contracts, charters, agreements, etc.); the documents defining the status of personnel; the agreements with the country of residence, confirming the rights of the organization for placement of representation; arrangements with other institutes. Intergovernmental organizations have own legal personality, competency and capacity. They can participate in law-making process. For example, to sign collective interstate contracts, obligatory for execution. The international government and non-governmental organizations are created as a result of signing of contracts on cooperation. Therefore, any organization for obtaining the status of "international" has to correspond to a range of criteria. And for each type they are different. The independent states participate in intergovernmental as the members of the organization, respect sovereignty of member countries. Functioning of intergovernmental organizations is possible, taking into account the paragraphs of the foundation agreement.

Keywords:international organizations, governmental organizations, non-governmental organizations, state system, international system, law-making treaties, regulatory base, international procedure, foundation agreements, agreements.

When, in the middle 1990s, international organizations started to administer territory on more or less regular basis, discussions quickly ensued in the relation to their possible privileges and immunities. After all, international organizations and their staff are typically immune from prosecution; yet, to the extent that administering territory includes the performance of law enforcement tasks, granting immunity from prosecution to individuals engaged in law enforcement would be difficult reconcile with the rule of law, whatever the precise conception of law-abiding state.

International organizations (i.e, intergovernmental entities) come in all forms and shapes. There are roughly 300 or more of these creatures in existence and the international lawyer's wisdom. While it is no doubt the case that when states create an organization they use existing as models, the variety among and between international organizations is nonetheless immense [1, P.55].

This variation is visible, when it comes to membership: organizations range from truly global (the United Nations) to almost global (the World Trade Organization) to regional (the EU, African Union, Organization of American States) and, indeed, even bilateral entities. In addition, some organizations have select membership along ideological lines (NATO, the Organization for Economic Cooperation and Development (OECD), Organization of Islamic Cooperation (OIC)). Variation is also visible with regards to their fields of activity: some are military alliances (NATO); some deal with finance (International

Monetary Fund (IMF)) or in effect investment banks (World Bank, Nordic Investment Bank); some address issues of trade or other aspects of the economy (WTO, International Labor Organization (ILO); some are essentially research entities (European Forest Institute); some address issues of general human welfare (World Health Organization (WHO), the United Nations Children's Fund (UNICEF), United Nations Educational, Scientific and Cultural Organization); and some have more or less general jurisdiction (UN, Council of Europe).

Regardless of the variety among the entities are formally presented as international organizations, there also exist entities that may not be so presented. In addition, a recent trend is the creation of international hybrids made up of the variety of other actors, sometimes encompassing both the public and the private sectors. Examples include the GAVI Alliance (once known as the Global Alliance for Vaccines and Immunization) and the Global Water Partnership, while the Contact Group on Piracy off the Coast of Somalia more closely resembles a network, with ever-changing participants, than a formal entity [2, P.61].

The law of international organizations applies by and large the same principles to all international organizations, regardless of their composition, their set-up or their tasks. Thus, all international organizations are thought to work on the basis of powers conferred upon them, either expressly or impliedly, by their member states. All organizations (or parts of organizations) are granted privileges and immunities from the jurisdiction of their member states, even if the precise scope of privileges and immunities may differ from organization to organization. All organizations are deemed subjected to the same international responsibility regime, authoritatively formulated by the International Law Commission under the guidance of Special Rapporteur, Paradoxically, these results in the situation that there is no proper law of international organizations; there are notions that apply to most or all international organizations, such as the implied powers doctrine, but no rules that are valid for all organizations. Indeed, it is no coincidence that no one speaks about the 'rule of implied powers' - the term 'rule' would suggest the universal applicability. If variety is the spice of life, nonetheless the law tends to treat most of these entities as if no variation exists.

In the special literature the international organizations are typically seen as entities set up between states to perform the task or function, based on a treaty and endowed with, at least, one organ and some independent powers, which enable to formulate and exercise the aggregate of its member states [3, P.19]. These elements, strictly speaking, do not form legal requirements; it is generally recognized and acknowledged that the law of international organizations lacks a robust legal definition. Instead, they are best regarded as regularly recurring elements, without prejudice to possible exceptions. Thus, there are also entities widely recognized as international organizations, which are not exclusively set up between the states: WTO, for example, counts the EU among its founding members. Likewise, there are international organizations that have their legal basis, for instance, a resolution, adopted by another organization, such as the UN Industrial Development Organization, set up by the General Assembly resolution in 1966.

An important point to note these elements lays in its formal nature: international institutional law does not look the entities, accomplished as the serious element. This is no coincidence; the prevailing concept of international organization, with its insistence on formal characteristics, needs to come to terms with the ambivalences, undergirding the existence of international organizations. In other words, the only safeguard law offers against possibly malicious or nefarious international organizations, for all practical purposes, all over the world. The general presumption of all international organizations inherently "good": they embody international cooperation (also seen as inherently "good") and seen to perform the task in the public interest. Otherwise, refuse to do business with them: the invisible hand on the marketplace of ideologies, or the invisible college of international lawyers [4, P.100].

There are surprisingly few court decisions: presenting a definition or concept of international organization. Often, whenever an international entity appears before the court, its status as an international organization is taken for granted or simply not considered relevant. Many cases, arriving before the domestic courts, for example, concern the possible privileges and immunities of such entities. Since the matter is usually governed by an agreement on privileges or immunities or a headquarters agreement, the courts will not look further. The agreement will govern the legal relations between the entity, concerned the state and international organization.

Hence, case law concerning the concept of international organization extent relevant judicial decisions; they tend to be 'in the negative'. The one 'positive' thing means that the Court considered as very informative, regardless the nature of international organizations: the UN was described as a subject of international law 'and capable of possessing international rights and duties' [5, P.21].

Some of the work of the Permanent Court of International Justice, addressing the legal status of the ILO in one of its very first advisory opinions, already provides a glimpse into the concept of international organization, albeit not very explicitly. Confronted with the question of whether the ILO was empowered to regulate the agricultural sector (in addition to industry), the Court first made it clear that it was temperamentally disinclined to engage in any 'theoretical' reflection on the nature of the ILO or of organizations generally [6, P.22].

There are some court decisions, which are little more instructive and seem to have one thing in common: they all stress that one of the hallmarks of the international organization is that it is engaged in public tasks or works for the public good. An example of a domestic court decision along these lines is the decision by the Court of Appeal of Paris in 1966, in Dumont Association de la Muette. After the French Ministry of Cultural Affairs negotiated an extension to the OECD headquarters, neighbors brought together in the Association de la Muette (the Parisian neighborhood in question was called La Muette) complained about the disturbance and went to court to seek an order for an investigation. The lower court agreed, upon which the contractors appealed, suggesting that public entities under French law were outside the jurisdiction of the French courts.

The Appeals Court noted, perhaps not surprisingly, that the OECD was to be considered as an international organization, though not as a public entity under French law. Court said a few words in passing about international organizations, when it suggested that the OECD 'as the fundamental aim of realizing in the Member States the greatest possible expansion of their economies and improving the well-being of their peoples and that it was clear and, moreover, uncontested that the OECD's aim was 'of general and indeed universal interest'.

The Court of Justice of the European Communities (now the EU) has on several occasions addressed the question to international organization. The leading decision is SAT Fluggesellschaft, in which the Court was asked about the status of Euro control. The case arose before a Belgian court, when German airline company (SAT) complained about the charges due to pay to Euro control, an international entity engaged with aviation safety. SAT suggested that Euro control was guilty of abusing a dominant position, giving rise to the question of whether Euro control should be seen as an 'undertaking' within the meaning of EU competition law [7, P.13].

Although some commentators interpret Article 2(4) as banning only the use of force directed at the territorial integrity or political independence of a state, the more widely held opinion is that these are merely intensifiers, and that the article constitutes a general prohibition, subject only to the exceptions stated in the Charter (self-defense and Chapter VII action by the Security Council). The latter interpretation is also supported by the historic context in which the Charter was drafted; the preamble specifically states that "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind" is a principal aim of the UN. This principle is now considered to be a part of customary international law, and has the effect of banning the use of armed force, except of two situations, authorized by the UN Charter. Firstly, the Security Council, under powers granted in articles 24 and 25, and Chapter VII of the Charter, may authorize collective action to maintain or enforce international peace and security. Secondly, Article 51 also states fixed: "Nothing in the present Charter shall impair the inherent right to individual or collective self-defense if an armed attack occurs against a state. There are also more controversial claims by some states of a right of humanitarian intervention, reprisals and the protection of nationals abroad" [5, P.29].

An Inter-governmental Organization (IGO) is defined as "association of States, established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfill particular functions within the organization". IGOs are established by treaty or other agreement. The founding treaty or agreement acts as a charter for the organization. The legal authority and structure of the IGO can be found in its charter. The founding charter may be annexed by additional treaties or agreements if the functions of the organization grow over time. An IGO is provided privileges and immunities in pursuit of

its mandate, and may be global (the United Nations) or regional (ASEAN) in scope. Privileges and immunities include exemption from taxes, customs duties, inviolability of premises and documents, and immunity from judicial process.

Hallmarks of an IGO: ability to enter into international agreements with other IGOs or nation states have a legislative body with creates decisions, resolutions, directives and other legal documents that can bind IGOs and member nation states. May have a dispute resolution body or procedure to resolve conflicts among its member states. Often has an executive body or Secretariat that manages the IGO. A Non-Governmental Organization (NGO) is defined as "those organizations, founded by private individuals, who are independent of States, oriented towards the rule of law, pursue public rather than private goals as an objective, and possess a minimal organizational structure. NGOs are not established by treaty. They do not have the same privileges and immunity status as an IGO; however, like an IGO, they can be global (Human Rights Watch) or in scope. Privileges and immunities include exemption from taxes, customs duties, inviolability of premises and documents, and immunity from judicial process [6, P.30].

The founding charter and later agreements that affect the structure of the organization can typically be found at that organization's web site. Documents and reports may be published directly by the IGO, or in other IGO publications (such as the United Nations or the Organization of American States). Anyone can review their web sites to make that determination. Many well-known international organizations are actually subsidiary bodies of the United Nations, and may collect national and international laws, related to their mission. For example, the International Labor Organization is a specialized agency of the United Nations. At its web site, you can find English translations of national labor legislation and related treaties, regarding the treatment of workers.

NGO's and the people, who organize them, are committed to the particular purpose and can be large organizations or small groups. Their commitment often results in policy positions, reports, and collection of national, customary and international laws that are important to their cause. For example, the International Committee of the Red Cross maintains an excellent library of international and customary law on the laws of war and peace.

Not all NGOs are created equally. Article 71 of the United Nations Charter provides opportunities for NGOs to obtain consultative status with the UNO. NGOs interact with the UN Secretariat, the Economic and Social Council, programs, funds, agencies, and UN Member States. Organizations with consultative status have greater access to intergovernmental meetings at the UNO and with the UNO subsidiary organs, and may have the ability to hold summits and conferences on matters of international law. These NGOs are highly developed and provided more research materials and make their libraries available to the organizations, without the consultative status [7, P.14].

The Security Council is authorized to determine the existence international peace and security. In practice this power has been relatively little used, because of the presence of five veto-wielding permanent members with interests in a given issue. Typically measures short of armed force are taken before armed force, such as the imposition of sanctions. The first time the Security Council authorized the use of force was in 1950, to secure a North Korean withdrawal from South Korea. Although it was originally envisaged by the framers of the UN Charter that the UN would have its own designated forces to use for enforcement, the intervention was effectively controlled by the forces under United States command. The weaknesses of the system are also notable in that the fact that the resolution was only passed because of a Soviet boycott and the occupation of China's seat by the Nationalist Chinese of Taiwan.

The Security Council did not authorize the use of significant armed force again until the invasion of Kuwait by Iraq in 1990. After passing resolutions, demanding a withdrawal, the Council passed Resolution 678, which authorized the use of force and requested all member states to provide the necessary support to a force operating in cooperation with Kuwait to ensure the withdrawal of Iraqi forces. This resolution was never revoked, and in 2003, the Security Council passed Resolution 1441, which both recognized that Iraq's non-compliance with other resolutions on weapons constituted a threat to international peace and security, and recalled that resolution 678 authorized the use of force to restore peace and security. Thus, it is arguable that 1441 impliedly authorized the use of force.

The UN has also authorized the use of force in peacekeeping or humanitarian interventions, notably in the former Yugoslavia, Somalia, and Sierra Leone.

An important method develop people' capacity for a critical understanding of the role and impact of international organizations is the active use of case-studies, including international and domestic case-law and cases demonstrating institutional complexities as well as the development and interpretation of legal principles, rules and standards by particular international organizations and bodies.

The constituent documents of international organizations are strange creatures, often said to occupy a special place in international law. On the one hand, they are treaties, concluded between duly authorized representatives of states, and as such no different from other treaties [6, P.35].

Thus, one would expect, they are simply subject to the general law of treaties. Yet, such constituent documents are not ordinary treaties: they establish an international organization, and, for that reason, most authors appear inclined to grant those treaties a separate status, from which follows the applicability of some special rules or, conversely, the argument that in some circumstances different rules apply to treaties establishing international organizations may lead to the conclusion that these instruments therefore occupy a special place. Constituent treaties have an 'organic-constitutive element' which distinguishes them from other multilateral treaties and influences their working. The constituent treaties are the ways of functionalism in legal shape and form. Member states assign functions to their organizations, and typically do so by means of a treaty.

As a theoretical matter, the claim that constituent documents are somehow different from other treaties has yet to find serious elaboration and substantiation; authors usually limit themselves to detailing in what respects organizational charters differ in practice from other treaties.

Thus, for some, an important difference is that constituent documents are often concluded for an indefinite period; may only be amended or terminated with the help of the organization's pertinent organs; and are often interpreted in light of the organization's goals. Others find the special position of constituent documents predominantly in the common purpose served by organizations: constitutions are then characterized by the circumstance that power is used in the pursuit of a common goal, rather than the concurring goals.

International organizations are generally counted among the subjects of international law, together with the states, individuals and perhaps some other entities as well. Thus, in accordance with the standard definition of 'subject', they are deemed capable of independently bearing rights and obligations under the international law [7, P.20].

In the late nineteenth and early twentieth centuries, it was customary for international lawyers to claim that states could independently bear rights and obligations under international law. Other entities were not to be considered as subjects or, at best, were analyzed in state-centric terms: as gatherings of states, or as derogations from statehood (for example, servitudes) or as essentially unclassifiable experiments. And the question is whether international organizations could be regarded as subjects of international law, or reverberated into the second half of the twentieth century.

As the International Court of Justice (ICJ) recognized in the Reparation for Injuries opinion, the subjects of international law may come in various shapes and guises. The Court held that: 'the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community'.

There is no standard set of rights and obligations for each and every subject of international law; 'subject' is a relative notion, the precise contents of which may differ from subject to subject and even between various subjects of the same category. While it is nowadays generally recognized, at least international organizations and individuals can be viewed as subjects of international law, not all individuals enjoy the exact same bundle of rights and obligations under international law: it may well make a difference, whether one lives in Norway or in Myanmar. Similarly, not all international organizations possess identical sets of rights and obligations.

In the conclusion we would like to note, that usually, the constituent treaties of international organizations control who can join the organization, under what conditions, and following which procedure. This makes, in principle, perfect functionalist sense: this way, organizations and their member states may screen applicants in terms of whether or not they are able to contribute to the organization's

functions. In practice, needless to say, decisions on membership do not always follow a functionalist logic: as it turns out, such decisions are often influenced by, for example, human rights considerations, or considerations relating more generally to the politics of the state concerned.

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ХАЛЫҚАРАЛЫҚ ҰЙЫМДАРДЫҢ ҚҰҚЫҚ ИНСТИТУТТАРЫНЫҢ МӘНІ ЖАЙЛЫ

Аннотация. Халықаралық ұйымдардың нормативтік және құқықтық мәртебесін айқындайтын нормалардың жиынтығы белгілі дәрежеде құқықтық нақты ұйымдардың халықаралық жүйесіне айналды. Олардың негізгі міндеті - өзара және осындай құқықтық ұйымдардың қызметін реттеудің мемлекеттік жүйесі. Мұндай ұйымдарға бөлінетін қызметін нормативтік база мен екі көлемді келеді. Халықаралық құқықта ұйымдардың қызметін реттеудің нормативтік негізгі тәсілі болып табылады. Оларға жататыны: елдердің өзара іс-қимыл қағидаттары мен рәсімі, бірлестіктері, жұмыс тәртібін белгілейтін құжаттары (құрылтай шарты, жарғылар, келісімге және т.б.); айқындайтын құжаттардыңтұлғалық мәртебесі; келісімді растайтын қабылдаушы елмен орналастыруға ұйымының құқықтық өкілдіктері; басқа институттармен уағдаластық. Үкіметаралық ұйымдар өз құқық субъектілігі, құқықтылық, сондай-ақ әрекет қабілеттілігі бар. Олар заң шығару процессіне қатыса алады. Мысалы, мемлекетаралық келісім бар ұжымдық қол қоюға орындауға міндетті болып табылады. Халықаралық үкіметтік және үкіметтік емес ұйымдарға ынтымақтастық туралы шартқа қол қою нәтижесінде құрылады. Сондықтан кез келген ұйым мәртебесін алу үшін «халықаралық» спектрі өлшемдерін сәйкес келуі тиіс. Сонымен қатар олар әртүрлі болыпи келеді. Жаңа үкіметаралық - Тәуелсіз мемлекеттер қатысады. Ұйымның мүшелері ретінде оның өзі де (қалай бірыңғай құрылым) қатысушы елдердің егемендігі құрметтеуге тиіс. Құрылтай шартының үкіметаралық ұйымдардың жұмыс істеуін тармақтарды ескере отырып жүргізіледі.

Түйін сөздер: халықаралық ұйымдар, үкіметтік ұйымдар, үкіметтік емес ұйымдар, мемлекеттік жүйе, халықаралықжүйе, нормативтіккелісімшарттар, нормативтік база,халықаралық процедура, құрылтай шарттар, келісімдер.

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О СУЩНОСТИ ИНСТИТУТОВ ПРАВА МЕЖДУНАРОДНЫХ ОРГАНИЗАЦИЙ

Аннотация. Под правом международных организаций понимается совокупность норм, которые определяют нормативный и правовой статус конкретных организаций в международной системе отношений. Ключевая задача подобных прав- регулирование деятельности организаций между собой и государственной системой. Нормативная база, регламентирующая деятельность подобных организаций, делится на двеобширные отрасли. В международном праве основным способом регулирования деятельности организаций выступают нормативные договора.Книмотносят:документы, устанавливающие процедуру взаимодействия стран, принципы и порядок работы объединения (учредительные договора, уставы, соглашения и др.);документы, определяющие статус персонала;соглашения со страной пребывания, подтверждающие права организации на размещение представительства;договоренности с другими институтами.Межправительственные организации имеют собственную правосубъектность, правомочность, а также дееспособность. Они могут участвовать в правотворческом процессе. Например, подписывать коллективные межгосударственные договора, которые являются обязательными для исполнения. Международные правительственные и неправительственные организации создаются в результате подписания договоров о сотрудничестве. Поэтому любая организация для получения статуса «международной» должна соответствовать спектру критериев. И для каждого типа они разные.В межправительственных – участвуют независимые государства. Как члены организации, так и она сама (как единая структура) должны уважать суверенитет стран-участниц. Функционирование межправительственных организаций происходит с учетом пунктов учредительного договора.

Ключевые слова: международные организации, правительственные организации, неправительственные организации, государственная система, международная система, нормативные договоры, нормативная база, международная процедура, учредительные договоры, соглашения.

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