International Legal Capacity Boundaries of Intergovernmental Organizations

(Analytical Study)

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Abstract

There are many persons of Public International Law, But the main persons (until now) are: states and intergovernmental organizations, because they have the right to create the rules of public international law.

Today, there are many intergovernmental organizations: global, continental, regional and specialized, which work towards specific goals in many fields and ultimately serve humanity.

International intergovernmental organizations are the best forms of international organization to achieve international peace and security, try to resolve international disputes by peaceful means and work for sustainable development, etc.

But there are some questions that this research is trying to answer it: Do international intergovernmental organizations have international legal capacity such as states? If yes, what are the Boundaries of this international legal capacity? Is it a full or limited international legal capacity?

1. Definition of intergovernmental organizations:

Intergovernmental organizations are the highest forms of international cooperation among States in all fields. Intergovernmental organization is a historical idea which requiring the solidarity of States at the global level in order to achieve certain objectives, as in the case of internal organization.

There is no consensus among researchers on a single definition of the international organization(1). Which leads us to say that the definition of the international organization is not easy, for the following reasons?

A. Because of the recent history of the emergence of international organizations in their current form.

B. Multiplicity of international organizations.

C. Confusion between the expected term of international organizations and among other terms that are approaching them and relate to them, such as:

- International systems(2): The term "systems" means a set of legal rules regulating a particular subject matter or associated with a specific objective framework, such as property systems in domestic law or systems of neutrality or diplomatic and consular representation in public international law.

- International organization: It means the framework within which the international community is formed. International regulation in this sense covers every aspect of international relations, such as diplomatic and consular relations, treaty-making, international conferences and other legal systems(3).

(1) Clive Archer, International Organizations, 4th edition, Routledge: Taylor & Francis Group, London & New York, 2015, pp. 1-28.
(2) For more see:
- Boleslaw A. Boczek, International Law a dictionary, Scarecrow press, INC., Lanham, Maryland, 2005.
- Edward H. Carr, The twenty – year crisis: 1919-1939, Macmillan, London, 1958, pp. 10-15.
(3) C. F. Amerasinghe, Principles of the institutional law of international organizations, second revised edition, Cambridge University press, New York, 2005, p. 1.

But generally the international organization can be defined as:

A permanent body established under general international law by some persons of public international law to achieve a set of legitimate objectives agreed upon in the Charter of the Organization. This body enjoys independent self-interest from its members through a range of organs.

2. The historical development for the establishment of the intergovernmental organizations[4]:

Since the idea of the state began to appear and settle in its modern sense, the war between these countries continues, each of which sought from the outset to expand its borders at the expense of the other.

It is noted that the scientific development, which included various fields, including the military field, led to an increase in the threat of war as it expanded to include different parts of the world, which began to warn of more human and economic losses.

States have begun to seek ways of mutual understanding to find acceptable solutions to their rivalry and conflict, which provide the scourge of war and preserve some kind of acceptable balance.

International organization has not made a single leap, but, like all other social organizations, it has taken the picture of evolution. If this development is often slow, it is still ongoing.

Where the emergence of the intergovernmental organizations at the beginning of its various forms until it reached what it is now, as follows:

(4) For more see:

- Walter carlsnaes, Thomas risse and Beth A. simmons, Handbook of international relations, Sage publications, London, New delhi, 2002.
- Bob reinalda, Routledge history of international organizations, Routledge: Taylor & Francis Group, London & New York, 2009.
- Jan klabbers, an introduction of international organizations law, 3rd edition, Cambridge University press, New York, 2015.
- Donald j. puchala, Theory and history in international relations, Routledge, LKondon & New York, 2003.
- http://www.wikipedia.org.

I. International conferences: Some researchers argue that international organizations are developing and expanding the idea of international conferences that were held for the conclusion of international treaties.

These international conferences covered an important historical period in the life of Europe from 1648 (Westphalia Conference) to 1907 (The Hague Conference II). Between these two events and over two and a half centuries, the European community has gone through various historical, legal, economic and political stages. The most important international conferences can be summarized as follows:

a. Westphalia Conference (24/10/1648): This conference recognized the establishment of permanent embassies between the European countries only. This is known as the principle of partial diplomacy. It also recognized the principle of balance in international relations and the need for continuous consultation to address its issues.

b. Congress of Vienna in 1815, which included:

- Put Switzerland in permanent neutrality.

- Joining Belgium with Netherlands.

- Union between Sweden and Norway.

c. The Treaty of the Holy Alliance (1815): Not only the European countries adopted the decisions of the Vienna Conference, they hastened to establish a Holy Alliance between Russia, Prussia and Austria with the accession of France, Sweden, Norway, Spain, Portugal, Netherlands, Denmark and with the consent of Britain.

d. The Hague Conferences (1899) and (1907)[5], which recognized the principle of codifying the rules of international law and procedures for the peaceful resolution of disputes. It should be recalled that the convening of the Hague Conferences (1899-1907) was particularly significant in that these conferences were held in

(5) M. Waters, Front dreams to reality the United Nations, New York, 1957, p. 7.

peacetime, unlike in the international conferences, since these conferences were held only in the aftermath of wars, to settle their effects . The two conferences also included countries other than Europe, which meant a broad base of participation in those conferences.

II. International Arbitration: It should be noted that the Hague Conferences of 1899 and 1907 had adopted the principle of compulsory arbitration and established arbitration rules and procedures, but they failed to establish a court to hear the disputes of States.

Indeed, the Permanent Court of Arbitration, established in 1899, was merely a list of judges who could be chosen as arbitrators when the States parties to the dispute agreed to resort to them.

The Permanent Court of Arbitration (PCA), which its headquarters in The Hague - Netherlands, provides the international community with a variety of dispute resolution services. Founded in 1899 as a result of the Hague Conference.

The Court was established to operate under the Hague Convention for the Peaceful Settlement of International Disputes, which emerged from the Hague Conference. At the Hague II Conference in 1907, the Convention on the Peaceful Settlement of International Disputes was revised and improved.

The Permanent Court of Arbitration is not a court of the traditional concept of the term, but the Permanent Court of Arbitration consists of a tripartite administrative structure:

a. Administrative Council: It is interested in politics and budget and consists of heads of diplomatic missions of Member States. The Secretary-General of the Commission shall submit an annual report to the Council on the activity of the Court.

b. Secretariat: Also known as the International Bureau, administered by the Secretary-General, composed of a team of jurists and administrators of various nationalities.

c. Members of the Court: They are a panel of arbitrators appointed by Member States. Each Member State may appoint between 1 and 4 members for a renewable term of six years. These members can nominate judges for the International Court of Justice and nominate personalities or bodies to win the Nobel Peace Prize.

III. International Committees(6): A part of the jurisprudence goes to that these Committees were established only as a means to promote and guarantee the freedom of navigation in some rivers, such as the Rhone Committee established in 1814 (which is one of the main rivers in Europe and flows out from Switzerland and pours in the southeastern of France with a length of 812 km, near its estuary in the Mediterranean Sea branches into two branches: the first branch known as Grand Rhone and the second branch known as Petit Rhone) and the Danube Commission which established in 1856 (called the river of capitals because it passes through ten European countries)(7).

As a result of the success of the two Committees in carrying out the tasks entrusted to them, their activities extended to other fields, such as the field of health where International Health Committees were established to work in the common health area among a group of States.

IV. The International Administrative Unions(8): The establishment of these Unions was only a means of organizing some facilities related to common international interests.

Among the most important Unions were "International Telegraph Union" which was established under Paris Convention of 1865, "Universal Postal Union" which was established under Berlin Convention in 1874, "International Union for Standardization" which was established in 1875, "Union for the Protection of Industrial Property which was established in1882, "International Union for the Publication of Customs Tariffs" which was established in 1890 and "Union for the

(6) ANZILOTTI Dionisio, Cours de droit international, L. G. D. J., France, 1999, p. 312.
(7) Et RUZIE David, Droit international public, 15eme edition, DALLOZ, Paris, 2000, p. 84.
(8) NEGULESCO Paul, Les principes du droit administrative international, In R. C. A. D. I, V. 51, 1935, pp. 35-36.

Protection of Literary Property" which was established under the Berlin Convention in 1886.

3. Elements of Intergovernmental Organizations:

I) International Character: Means that the international organization shall be established by States and International Organizations only. The organization concerned with this description is the intergovernmental organization and thus the organizations formed by the agreement of individuals, private bodies and groups are excluded from this description. These bodies are called Non-Governmental Organizations (NGOs), such as Amnesty International and Human Rights Organizations.

II) Continuity: One of the characteristics of the international organization is Continuity and Permanence, where the Organization is originally established to achieve common and continuous goals, and it is here that the Organization and its organs must continue. The permanence does not necessitate the material continuity of all organs of the Organization, but these organs shall be in a condition that allows them to heal when necessary.

The organs of the International Organization shall meet periodically in advance in the Charter established for them.

III) Common Goals: Each international organization has goals to achieve. The Organization is not an end in itself but a means to an end. The objectives of the Organization are usually defined in its Charter of Establishment. These goals may be general (political, economic, cultural, social ...) as in the UN, or specifically specific, such as economic, for example, as in the World Trade Organization, or social as in the International Labor Organization (ILO).

IV) The document establishing the international organization: Is the agreement concluded between the members of the international organization for the establishment of the international organization and how it works and the specific goals that the international organization must achieve. It is called a Covenant, as in the document establishing the League of Nations, or a Charter, as in the

document of the establishment of the United Nations, or a Constitution, as in the document establishing the World Health Organization.

V) Self-interest of the international organization (legal personality)[9].

4. Legal Personality of Intergovernmental Organizations[10]:

The international legal personality means the legal capacity which means the capacity to acquire rights, to assume duties and obligations, to conduct legal acts, and to have self-will for the international organization.

The self-interest of the international organization means the independence of its will from the will of the people of international law established by it and its members.

Since international organizations have existed in their current form, international jurisprudence has raised the question of whether international organizations enjoy international legal personality or not. It is noteworthy that the debate on this subject only intensified with the establishment of the League of Nations, where the era of the League did not indicate that the enjoyment or lack of the league with legal personality.

On this subject appeared two opinions:

A) The traditional trend: Denied the performance of the legal personality on organizations because only the States are legally entitled to be bound by duties and rights under international public law and the international organizations are only inter-State bodies with no jurisdiction over States. This view prevailed at a time when international organizations were in their infancy.

(9) Abdullah El-Erian, The legal organization of international society, sornsen, manual of public international law, 1968, p. 57.
(10) For more see:
- Tunkin, The legal nature of the United Nations, RCADI, 1966/III, tome 119, p. 20.
- F. Rama-Montaldo Manuel, International legal personality and BYBIL. 1970, p. 124.

B) The modern trend: Recognition of the international legal capacity of the international organization, but the competence of international organizations is not comprehensive, but specific to the goals set forth in its charter.

The International Court of Justice has examined the issue of the enjoyment of the International Organization with the international legal personality, through the search for the extent of the United Nations' ability to claim compensation for damages suffered by its staff while in service. The circumstances of this advisory opinion are based on what happened during the years 1948-1947 that some UN staff was injured in varying degrees.

The Court concluded in its advisory opinion that legal persons in any legal system are not necessarily identical in nature and within the scope of their rights, but the nature of each depends on the conditions of the society in which it arose and on its requirements ..., it also concluded that States are not the only persons of public international law. Other persons may enjoy with legal personality other than States if the circumstances of their origin and the nature of their objectives require recognition of their personality.

The Court finally noted that, while States enjoyed all the international rights and obligations recognized in international law, the Organization did not enjoy all these rights and obligations but depended on the extent to which it had the necessary extent to achieve its objectives and functions as expressly or implicitly indicated in the document which the Organization has conducted in its realist practices(11).

With regard to the position of international public law on this subject, it can be said that according to the text clearly and explicitly stated in international public law on the enjoyment of international legal personality by the international organization, there is no longer any doubt about this subject.

(11) I. C. J. Report, 1949, p. 174.

Where the Vienna Convention on Treaties was concluded in 1986 which is concluded between States and international organizations or among international organizations themselves.

Thus, international public law explicitly recognized the international legal personality of international organizations by granting them (together with States) the right to conclude international treaties, which is considered one of the main sources of legislation of general international law.

With regard to the terms for the enjoyment by the intergovernmental organizations with international legal personality, the following must be available:

a. The international organization shall have the right to form independent will that shall be independent from the will of its members, and this shall be done by forming organs for the exercise of its activities.

b. The International Organization shall have specific competencies whose its international legal personality shall only appear within its borders.

c. Other persons of public international law (states and international organizations) explicitly or implicitly shall recognize the international legal personality of this organization. This shall be by acceptance of such persons entering into with them in international relations.

5. Limitations on the enjoyment of international legal personality by intergovernmental organizations[(12)]:

If recognition of the legal personality of intergovernmental organizations is a foregone conclusion, this legal personality is not absolute but is limited by the following limitations:

(12) For more see:

- J. Samuel Barkin, International Organization: Theories and Institutions, PALGRAVE MACMILLAN, New York, 2006.
- Margaret P. Karns, Karen A. Mingst and Kendall W. Stiles, International Organizations: The Politics and Processes of Global Governance, 3rd Edition, Lynne Rienner Publishers, 2015.

First- the association of the organizations with their functions: International organizations are considered persons of public international law and have the ability to acquire international rights and duties. But the extent of these rights and duties depends on the purposes and functions of the Organization as defined in its charter(13).

Therefore, the degree of rights and duties that must be recognized for the international organization depends on its objectives and functions as set out in its charter or implicitly understood by the treaty which establishes it on the basis of its crystallized image through what has been done in international application.

Thus, the international character of the organizations is limited in nature, functional in character and depends on the amount and nature of the functions entrusted to the international organization, because the legal personality is recognized only for the Organization to carry out its functions and therefore cannot be imagined to be too large for such functions.

This results in a combination of results:

I) The idea of the job controls all aspects of the activity and powers of the international organization, which means that the international organization is obliged to exercise its competencies, because the exercise of competencies is not only a right of the international organization but a duty imposed upon it.

II) International organizations shall enjoy all powers and authorities to ensure the performance of their functions as provided for in the Charter, even if there is no explicit provision to speak of. Here the jurisprudence speaks of the functional interpretation of the treaties establishing international organizations. That the provisions of the treaty establishing the international organization should be interpreted in accordance with the objective it desired.

Second- Respect for the internal jurisdiction of States: The expansion of the interpretation of treaties establishing international organizations does not

(13) Mannel Rima – Montaldo, international legal personality and implied power of international organizations, B. Y. I. L., 1970, p. 180.

preclude the competence of the international organization to be restricted in nature. In addition, it is resisted by States. Perhaps the most important thing to be raised about these restrictions is (the theory of the scope reserved for States or issues that are the core of the internal jurisdiction of States).

This theory is based on the premise that if countries give international organizations certain competencies, the exercise of these competencies must be carried out in accordance with the competence of the States themselves.

The League of Nations stressed this theory in paragraph 8 of Article 15 by stating that "if a party to the dispute claims that the dispute is a matter of interference under international law in the purely domestic jurisdiction of one of the parties to the dispute, the Council may make no recommendations on the settlement of that dispute."

With regard to the Charter of the United Nations, the text of article 2, paragraph 7, states: "Nothing in this Charter shall justify the United Nations to interfere in matters which are within the domestic

Jurisdiction of any State.... This principle, however, shall not prejudice the measures of repression contained in Chapter VII).

This theory is based on the idea of sovereignty, which requires that each country be given the ability to solve its internal problems and decide its foreign policy in the way it sees fit with its interests.

However, the work under the United Nations has been to expand the terms of reference of the Organization and explain the internal limitation of the powers of States within narrow limits. The reason for this situation is the broad mandate that the UN Charter has decided on issues such as human rights.

With regard to the bases of knowledge of the internal affairs of States, the following points should be taken into account:

a. Issues that are certainly not within the private sphere of the State: Those matters which have been regulated by the customary international law such as

those concerning the immunities of the diplomatic organs of the State and the conclusion of treaties and human rights issues, and within these issues, the State operates through the international community and is subject to the competence of international organizations.

b. All the actions of the state, which do not fall into the first category, the state takes full liberty and acts in the manner that it sees to achieve its interests: In this case, international law or international organizations can not intervene in their actions as long as this freedom does not conflict with the general rules of international law and the State implements what it has committed to internationally in any of these matters on the basis of (pacta sunt servanda principle), generally.

c. There is a third category of issues that are not regulated by international law so far: Such as questions concerning the system of government in the State and the social system of the State.

Conclusions:

1- Intergovernmental organizations are the highest forms of international cooperation among States in all fields.
2- Where the emergence of the intergovernmental organizations at the beginning of its various forms until it reached what it is now, as follows:

I- International conferences.

II- International Arbitration.

III- International Committees.

IV- The International Administrative Unions.

3- Elements of Intergovernmental Organizations, are:

I- International Character.

II- Continuity.

III- Common Goals.

IV- The document establishing the international organization.

V- Self-interest of the international organization (legal personality).

4- The international legal personality means the legal capacity which means the capacity to acquire rights, to assume duties and obligations, to conduct legal acts, and to have self-will for the international organization.

5- If recognition of the legal personality of intergovernmental organizations is a foregone conclusion, this legal personality is not absolute but is limited by the following limitations:

I- the association of the organizations with their functions.

II- Respect for the internal jurisdiction of States.

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11- http://www.wikipedia.org.
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