

THE METHODS OF ACQUIRING LEGAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS

Elif Hoca Körbayram, page 155-163

ABSTRACT

International legal personality, in terms of units, can be characterized as an indicator of presence in the international arena. Accordingly, the ways of acquiring the legal personality of international organizations in the international arena are subject to distinction. These methods are considered as a continuation of the above-mentioned theories and are listed as follows; It is divided into four parts: acquiring by treaty, implicit (implicit) acquiring, personality given by central treaties, and finally, personality gained by the decision of the United Nations General Assembly.

It has been stated that international organizations have the personality of international law as well as various rights and obligations. However, although every international organization can't have this international legal personality, it has been established in a system in the form of certain criteria.

Keywords: Legal personality, international organization, international law, treaty, UN.

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I. INTRODUCTION

Various methods have been determined in the international arena in terms of the legal personality gains of international organizations. Depending on the method of acquiring personality, the personality of the organization is determined. While some organizations are subject to the legal status specified in their founding treaties, some organizations are bound by the domestic law of any state that is a party to the founding treaties and has the legal status specified in the domestic law of that country (Yıldıray Sak, 2010).

To participate in the international arena, these organizations need to acquire legal personality, which enables them to enter into agreements, sign treaties, and participate in legal proceedings. There are several methods of acquiring legal personality, including treaty-based, recognition-based, and functional methods. Treaty-based methods involve the creation of an international treaty, which provides legal personality to the organization that is created by the treaty. Recognition-based methods involve the recognition of an organization by other states or international organizations, while functional methods involve the exercise of functions that are traditionally associated with legal personality. Each of these methods has its advantages and disadvantages, and the choice of method depends on various factors such as the nature of the organization, its objectives, and the political climate in which it operates.

These organizations, within the framework of the law to which they are subject, have important functions that include a wide list of intergovernmental organizations that are subject to the legal status specified in their founding treaties. These functions are important for the sustainability of the international order. With the legal personality they have acquired, international organizations undertake the obligation to fulfill the responsibilities imposed on them by the international system as well as their functions (Elif Hoca, 2020). In line with these functions, the position of organizations in the international arena is also indicated (C. Brölmann, 2016, s. 16) (Gülsüm Kaya, *ULUSLARARASI HUKUKTA KİŞİLİK*, 2020, s. 180). To fulfill their functions, international organizations must acquire the personality of international law through one of the four methods determined in international law.

II. METHODOLOGY

This study relies on a literature review of scientific books and papers related to the topic of the legal personality of international organizations and the methods of acquiring it. The main sources of information are the online databases Google Scholar, Researchgate, and Dergipark, which include journals indexed by EBSCO, SCOPUS, and WEB OF SCIENCE. The keywords used for the search are: “legal personality”, “international organizations” and “methods of acquiring legal personality”. The publications selected for the review meet the following criteria: (a) they are written in English, Turkish, or other languages, (b) they are published between 1999 and 2023, and © they address the issues of establishing international organizations and their treaty obligations. More than 15 scientific papers that meet these criteria are retrieved from online databases. The literature review covers books and papers in different languages, such as English and Turkish, to enhance the references and the quality of this research.

III. THEORETICAL FRAMEWORK

(A) Acquiring Legal Personality by Treaty

In acquiring by treaty, which is the first of the ways of acquiring international legal personality, international organizations are established by a treaty where two or more states come together and their personality is clearly stated (*de jure*) in the founding treaty (Toshpulatov, 2021, s. 6). To give an example, although the International Criminal Court (ICC) is a judicial body, it was established with a special treaty unlike other criminal courts, its legal personality was clearly stated in Article 4 of the Rome Statute, which is its founding treaty, and the authority to sign treaties with states was recognized. With this feature, the ICC has an autonomous personality that prevents other states or organizations from intervening (Nergiz Emir, 2021, s. 109).

Another example in terms of organizations that gained legal personality with the Treaty is the French League of Nations. When it was founded in 1970, it is not based on a treaty with a large number of participants, like the (British) Commonwealth of Nations, and there was no clear definition of its personality. However, with the acceptance of the treaty in 2005, it was revised and its name was changed to the International Francophone Organization (l’Organisation internationale de la Francophonie (OIF)).

As stated in Article 9 of the Treaty, the IOF has the personality of international law.

The OSCE constitutes an issue that needs to be examined in terms of acquiring legal personality with the Treaty. When the Final Act (Helsinki Final Act), the founding document of the OSCE, was signed in 1975, it was not considered a treaty because it was a flexible legal document. With the institutionalization of the global world over time, many steps have been taken in terms of establishing the legal personality of the OSCE. However, the fact that its founding document is not a treaty is the biggest obstacle for the OSCE to gain legal personality, and the OSCE has not gained its legal personality until today (Ş. H. Çalıŝ; B. Akgün; Ö. Kutlu, 2006, s. 309-3011).

In the method of legal personality acquisition with the treaty, international organizations that have gained their personality are also directly connected with the Jus Cogens rules. Jus cogens restrict the freedom of states to undertake international obligations, including treaties, and counters the fragmentation of international law. International organizations play a role in the development and enforcement of jus cogens. They are mentioned in the Vienna Convention on the Law of Treaties and the Articles on the Responsibility of states and international organizations (Abdulmecit Nuredin, 2016).

(B) Implicit Personality

We mentioned that international organizations usually acquire their legal personality through international treaties. But in some cases, a clear and unambiguous definition of the legal personality of international organizations is not specified in their founding treaties. On the other hand, it has been accepted that she has a say in terms of judicial decisions and de facto practices. The United Nations can be cited as one of the most important examples of this. Although there is no clear and precise definition of its legal personality in the UN Charter, which is the founding treaty of the United Nations, the International Court of Justice stated in its advisory opinion in 1949 that the UN has a legal personality. The UN Charter is the document that established the United Nations as an international organization in 1945. The International Court of Justice is one of the main organs of the United Nations and the principal judicial organ of the international community (Nergiz Emir, 2021, s. 101-102).

When an organization engages in actions that can only be justified under international legal principles, it is assumed to have an international legal personality. However, the International Courts have yet to be consulted for advisory opinions on the legal personality of any International Organization. In past cases, such as those involving the International Labour Organization's competence in 1922 or the effect of awards on reparation for injuries, inquiries have been made into the organization's legal capacity and duration of said capacity (Mohd Imran, 2021, s. 6).

Although there are different examples in terms of the implicit acquisition of legal personality, the European Union and OPEC are among the basic ones. Although OPEC was founded in 1960, it gained legal personality thanks to the Algerian Conference held in 1980 (Kemal Başlar, 2012, s. 5-7).

(C) Personality Acquired by Center Treaties

In this method, which is accepted as another way of acquiring legal personality, the legal personality of the organizations is given a legal personality to the institution in question with a Central agreement made unilaterally by the host state. This type of acquisition is most common in Italy and Switzerland. The most obvious example is the Papacy. It was stated that the Papacy had authority and a legal personality thanks to the Lateran Treaty signed between the Papacy and Italy in 1929. The Lateran Treaty is an agreement that established Vatican City as an independent state and resolved the dispute between the Papacy and Italy over the former Papal States. The treaty was signed by Benito Mussolini for Italy and Cardinal Pietro Gasparri for the Papacy (Kemal Başlar, 2012, s. 8).

Another institution that can be given as an example in terms of acquiring legal personality through the central treaty is the International Court of Law of the Sea (ITLOS). There is no mention of any definition in the treaty about the legal personality of the court established by the 1982 Law of the Sea Convention (Abdülkadir Gülçür, 2017, s. 6-7). Another example is the International Committee of the Red Cross (ICRC). While the Committee of the Red Cross was an association established by the Swiss Civil Code at the beginning, the ICRC was given legal personality by the Federal Council in 1933 with a central agreement between Switzerland and the ICRC.

As another example Save the Children is an international non-governmental organization that promotes children's rights, provides relief and helps support children in developing countries. It was established in the United Kingdom in 1919 to improve the lives of children through better education, health care, and economic opportunities, as well as providing emergency aid in natural disasters, war, and other conflicts (Nessim Watson, 2023). Although there are very different examples of giving legal personality to international organizations with the central agreement between the host country and the international organization, the ones mentioned in the study constitute the most basic examples.

(D) Personality Acquired by United Nations General Assembly Resolution

There are organizations established by the decision of the UN General Assembly in the international arena. The most obvious example of this is the establishment of the Comprehensive Nuclear Test Ban Organization, established by the Comprehensive Nuclear-Test-Ban Treaty (CTBT), signed by 182 states and ratified by 155 states (Milli Savunma ve Dışişleri Komisyonları Raporları (1/347), 1999). However, the foundation agreement of the organization has not entered into force.

With the decision of the UN General Assembly on 30 June 2000, it was decided to establish a temporary organization called the Preparatory Commission. This organization has been accepted as an international organization that has the authority to make treaties, participate in negotiations and have the equipment to operate within the scope of its duties, in line with article 1 of the resolution of the UN General Assembly. In line with this example, it is seen that it is possible for an organization that exists and operates in the international arena to have legal personality, if deemed necessary, by the decision of the UN General Assembly. However, if the states that have signed the treaty do not ratify this treaty, the institution is deemed to remain an operating institution with the decision of the UN General Assembly (Kemal Başlar, 2012, s. 13).

IV. CONCLUSION

In conclusion, international organizations are subjects of international law and have legal personality which allows them to act independently and claim their rights before national or international authorities. Legal personality makes international organizations subjects of international law. International law constitutes, enables, and constrains international organizations.

International organizations are legal entities established to establish global or regional cooperation between sovereign states, to find solutions to problems and to provide order to the global system. These legal entities have emerged with the expectation of carrying out activities to meet the increasing global problems and needs. International organizations, as units operating in all areas of human life, regardless of their purpose and scope, play an active role in the foreign policies of states.

Various methods have been determined in the international arena in terms of the legal personality gains of international organizations that are active in the international arena and have important legal activities. Depending on the method of acquiring personality, the personality of the organization is determined. While some organizations are subject to the legal status specified in their founding treaties, some organizations are bound by the domestic law of any state that is a party to the founding treaties and has the legal status specified in the domestic law of that country. Within the framework of the law to which they are subject, units defined as intergovernmental organizations, which are subject to the legal status specified in their founding treaties, have important functions that include a wide list. These functions are important for the sustainability of the international order. In line with these functions, the position of organizations in the international arena is also indicated.

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