International Journal of Ethics & Society (IJES)
Journal homepage: **www.ijethics.com**
Vol. **3**, *No.* **1 (2021)**

(Review article)

Investigating Criminal Responsibility of International Organizations in the International Law System

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Abstract

Background: In addition to governments, the activities of international organizations such as a large multinational corporation may be detrimental and hazardous to international public order. For example, companies that produce microbial and chemical bombs and organizations that traffic women, children, opiates in addition to buying and selling human organs, or that carry out sexual terrorism and international prostitution. The objective of the present study is on the criminal responsibility of international organizations in the international law system as well as whether international law has ever attempted to identify the criminal responsibility of such persons?

Conclusion: At the turn of twentieth century, followed by the expansion of international exchanges and outbreak of ravaging wars, the advancement of science and technology, esp. military equipment technology, emergence of natural disasters or spread of dangerous infectious diseases, and stimulating humanitarian sensations and ... international organizations, including governmental or non-governmental, regional or global ones, with specific political, economic, cultural and social topics or a combination of them, were formed. Presence, activity and influence of these organizations in international relations arena was so epitomized that the international institutions are mentioned as the most important players of international relations after governments. Unfortunately, taking a glance at the international penal system structure, we find out that the international criminal regime drawn out in the 1990s is basically a system established based on the trial of real persons, and not legal entities. The regime of the International Criminal Court has explicitly excluded the trial of legal persons via this path. From this outlook, the situation of international organizations in terms of criminal law develops a gap in international criminal law that entails the action of the said key players in the international arena.

Keywords: Criminal Liability, moral responsibility, international Organizations, international Legal System
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Received: 18 Jan 2021
Accepted: 16 Feb 2021

[DOI: 10.52547/ijethics.3.1.9]

Introduction

Defeat of the individualistic instinct of the states, which eventually led to the bloody confrontation of the governments, now after the Second World War entails the governments to cooperate in political, economic, and cultural fields more than in the past to be able to establish the world peace and security longed for by humans to realize her/his dream.

Promotion of these goals were not possible without formation of institutions that would pursue these goals until global world peace dream is actualized. In fact, in past centuries relations were based on bilateral or multilateral relations between governments. Although some attempts were made in the nineteenth century to systematize international cooperation through Vienna Congress 1815 and Berlin Congress 1885, these efforts were not that much fruitful, esp. as their scope was limited to continental Europe. (1).

The "European concert" system, as an almost institutionalized system that had been survived even after the collapse of the "Holy Alliance" and was vanished by World War I, was the seed of formation of later international organizations. (2)

Yet the more complete form of nineteenth-century international quasi-organizations was Danube International Commission, set up by several European governments with the objective of internationally handling this waterway in the years after World War I. However, the turning point of international organizations evolution goes back to the years after World War I, when after the storm of World War I, at the behest of Wilson (American politician), European governments decided to establish a system, this time its scope encompassed the whole world, but unfortunately, the proud of national sovereignty of some governments was so strongly painful that it once again caused a storm of war far more severe than the first. The storm that ravaged the lives and property of millions of people for six years, so that by the end of 1945, rich Europe was no longer rich.

That was why the realities of that day of Europe and even the world led the international community to the formation of a world organization, which resulted in the birth of the United Nations and other organizations. Like the birth of any new phenomenon, it led to crises, in one case of which, the United Nations was forced to reach out to a judicial body of a nonmember state to seek legal advice for acquisition of its legal entity. (3)

Here there is no room for discussing all these cases, namely developmental changes in international organizations from the very beginning up to the present, because it could be out of the scope of the specialty of criminal law students and require another chance. Finally, in order to prepare the ground for addressing the main subject of the research, that is, the acceptance of international organizations as legal entities, after referring to a brief history of formation of these organizations in the next section, we try to address the concept of international organization as attended in the international law doctrine. Obviously, to delineate the basic concepts of the discussion, this exploration is inevitable.

International organizations from the outset until today

Increasing international trade and communication has led to the emergence and development of international organizations. With the advent of formation of governments, we saw an institution called START that would dispatch a statesman called 'ambassador' to other countries. Owing to inability of the procedure to resolve regional and global problems, the procedure was soon substituted by international conferences, and the tendency to hold such gatherings became more and more evident since the mid-nineteenth century. Among these gatherings one can refer to Westphalia International Conference in 1648, which is well known in history as the Treaty of Westphalia (2).

Later in the nineteenth century, there were many conferences, each of which led to the conclusion of various treaties. Among them, 1815 Vienna Congress and 1871 Berlin Congress are very well known. With respect to the political and commercial competition of European governments in the

[DOI: 10.52547/ijethics.3.1.9]

nineteenth century, another conference called Berlin was held on that continent in 1884 and 1885 to regulate these activities of European countries (4).
Held in 1899 and 1907, Hague Conference was another example of these international conventions that had enactment of the law of naval warfare and land warfare on its agenda. However, with regard to the need for cooperation between countries, these congresses and conferences were gradually replaced by public and governmental unions that pursued issues of common concern. (5).
Unlike congresses, these unions were permanent. Perhaps 1856 Danube River European Commission was the first international organization that had an administrative and legislative body.
The International Union of Rail Transporters in 1890, enumerated as the union uniting the domestic institutions of countries in the field of communication vehicles, and the World Postal Union in 1874, are the best examples of these organizations. In health, printing industry, and agriculture in early years of the twentieth century, institutions such as the International Copyright Union, the International Sugar Union and the International Agricultural Institute could be mentioned, which have been exercising outstanding activities since those years. Although the said international unions and forums are historically the outset of advent of current international organizations, the "League of Nations" establishment should be considered as a milestone in international organizations activities. This league, which embraced representatives of different countries around the world, was the first international organization to pursue a wide range of goals (6).
The aftereffect of World War II and the formation of the United Nations and its specialized bodies and some non-governmental organizations (NGOs) revealed the basic need of identifying the concept of international organizations and distinguish it from non-governmental organizations. This topic is pursued in the next section.
The concept of international organizations can be divided into two groups (7)
A. International governmental organizations.
B. International non-governmental organizations.

International governmental organizations are the community of a group of countries that cooperate with each other for the purpose of realizing special and common goals on various (economic, political, cultural, etc.) grounds. The basis of formation of an international governmental organization is the "Treaty of Establishment", which is the statute of that organization, and in fact, by concluding such a treaty, countries express their inclination and determination to cooperate directly in a specific area (8).
Based on the above definition, the characteristics of international organizations can be summarized as follows (9):
1. An international organization is made up of a community of governments.
2. An international organization is established on the basis of an "establishment document". The approval of the establishment deed leads to two things: first, the organization existence declaration, and second, its acquisition of a legal and international entity.
3. The organization members pursue common goals
4. The organization activity is continuous and incessant.
International governmental organizations are either global or regional. The United Nations and its affiliated specialized organizations, such as the International Labor Organization (ILO), World Health Organization (WHO), International Food and Agriculture Organization (FAO), United Nation Economic & Scientific Organization (UNESCO), the International Monetary Fund (IMF) are among international governmental organizations, and North Atlantic Treaty Organization (NATO), European Council of (EU), Economic Cooperation Organization (ECO), Arab League, African Unity Organization (AUO), American States Organization (ASO), Central American States Organization (CASO), and Islamic Conference Organization (ICO) are among regional governmental organizations. International non-governmental organizations do not have international legal entities and are considered as foreign legal entities. (2)
Any organization that has not established upon conclusion of a treaty between countries is consid-

[DOI: 10.52547/ijethics.3.1.9]

ered an international non-governmental organization. The object of activities of such organizations encompasses many different grounds, including humanitarian (International Committee of the Red Cross, ICRC), social (Trade Union Federation, TUF), scientific and cultural (International Law Institute), religious (World Council of Churches, WCC), technical (International Air Transport Association, IATA), sports (International Olympic Committee, IOC), political (Inter-Parliamentary Union, IPU) issues.

International non-governmental organizations are in turn divided into two groups:

A. For-Profit NGOs - Multinational corporations can be considered as prominent examples of for-profit NGOs. These companies play a very important role in international trade and even in international politics. There are currently more than 37,000 multinational corporations, whose criminal liability will be discussed in detail in the next section (2).

B. Non-profit NGOs: Contrary to multinational corporations, they have no profit-seeking aspect and act in the public interest. To mention a few, ICRC, IPU, IATA and International Law Institute could be exemplified.

Criminal liability of international organizations in international law

International organizations have legal entity and responsibility the same as any other institutions in this group. This responsibility is conceived in two categories of international civil responsibility and international criminal liability (10). In the following section, after an overview of the responsibility of international organizations, we point out a practical gap in the absence of criminal liability of these institutions.

Responsibility of international organizations: An overview

When ILC completed the second reading of the plan articles on the responsibility of governments for international illegitimate actions, UN General Assembly called on the commission to study the responsibility of international organizations in Resolution 56/82 of 12 December 2001. In this context, the Commission included the issue of responsibility of international organizations on its agenda and appointed Professor "Giorgio Gaya" as its Special Rapporteur to prepare a report on this ground (11).

ILC action in introducing the issue in its work plan was not new. In 1963, in his first report on relations between governments and international organizations, Professor al-Aryan described the responsibility of international organizations as a special problem that deserved the Commission's attention. He also pointed out that "it seems that the incessant expansion of the sphere of international organizations activity should give new dimensions to the problem of responsibility of international organizations." [12]

In the same year, a subcommittee on State Liability, examining the study of scope of articles of State Liability, proposed that the responsibility of other subjects of international law, such as international organizations, be excluded from his study. This view was confirmed by professor Eger in his first report.

(The proposal made by the subcommittee to abandon the study of the responsibilities of other subjects of international law, such as international organizations, has met with the general agreement of the members of the commission). (12)

The issue of the responsibility of international organizations was not generally attended in the plan of the articles on the responsibility of governments in the first reading, yet two of the articles were related to the behavior attributed to international organizations. One of them was Article 9 of the plan regarding the putting one of the organs of international organizations at the disposal of a government.

Another one on this problem was Article 13 of the same plan. This article addressed an aspect of the problem of attribution of that behavior within the framework of relations between a government and international organizations to an international organization, one of the elements of which intervened in the territory of that government. However, both Article 9 and Article 13 were cancelled in the final reading of the articles, and in the final plan, Article 57 states that the present articles are not violations to the issues of the international responsibility of

[DOI: 10.52547/ijethics.3.1.9]

international organizations. It can be concluded from this regulation that various issues regarding the responsibility of international organizations are not included in this plan (13).

Article 57 refers to the fact that this article relates to international organizations which "have a distinctive legal entity in international law, and such an organization is responsible for its own specific actions, namely, the actions which it carries out through its organs by its specific staff." (13)

After proposing that an organ under a government may be at the disposal of an international organization or vice versa, the interpretation of Article 57 of these articles does not essentially address the issue that the international organization is the actor and the government is considered responsible because of involvement in the organization behavior or having membership in that organization. He is considered responsible for being a member of that organization. This brief reminder leads us to the conclusion that in the course of drawing up the articles on the responsibility of governments for illegitimate international acts, some controversial problems regarding the responsibility of international organizations have been addressed more strongly. In addition, some of them resulted in debates in the commission. However, the independent plan of investigating the responsibility of international organizations is presently being studied by the commission independently, and so far the special rapporteur for the plan (June 2005) has submitted three reports, the most recent one of which dealt with the acts attributed to international organizations, in the fifty-seventh session of the commission. It is worth noting that in this study, as pointed out by the Special Rapporteur, Professor Gaia himself, it is fundamental and creates a kind of adaptation and uniqueness between the former performance of the Commission and the future plan on the responsibility of international organization. Of course, the point that can preoccupy the minds in the meantime is the debate over whether an international organization can be held criminally liable?

Conclusion

We basically know that international organizations have two independent legal entities: first, the legal entity of international organizations in compliance with the legal systems of member or nonmember countries of that international organization. It is obvious that in this case, the investigation of possible crimes of the international institution is subject to other valid rules in these countries applied for dealing with the crimes of the institution, regarding the fact that in line with this issue, the rules of immunity for such organizations formulated under international instruments is to be taken under consideration.

Second, the legal entity of an international organization in compliance with the international law and in international community scope. The question posed here is whether an international organization can be prosecuted and punished for committing an international crime. A glance at the structure of the international penal system gives a negative answer to this question. Basically, the international criminal regime established in the 1990s based on the experiences of the courts instituted after World War II and even before it (World War I), is a system established based on trial of real persons, and not legal entities. The regime of International criminal court has stipulated the exception of legal entities from trial. This may be owing to hesitations of whether international organizations have the right and capability of committing an international crime within the contents of Article 5 of the Rome Statute. This question, which was previously raised about the ordinary responsibility of international organizations, poses itself more clearly in criminal responsibility scope. Undoubtedly, in ultimate analysis, it is the person who commits international crimes and commits an act such as crime against humanity via genocide. However, this action can be actualized through an international organization element, and today, even theoretically, international organizations have the potential to be practically negligent in committing these acts. Another point that is worth noting in this arena, is the lack of the governance's barrier and impediment that can assist us in the formation of an equitable international legal structure.

[DOI: 10.52547/ijethics.3.1.9]

However, it should be noted that international law arena is not made upon human desires. International law is a positive law in which governments' will and procedure play a very important role. Procedures basically form the cornerstone of contemporary international law, as Marcello Cohen, a professor at the University of Geneva, wrote in his article at 2002 meeting of French Society for international law: In the absence of an international legislator, it is the governments that develop, via taking their steps, the processes of international law (14).

From this outlook, one should say that international organizations situation for criminal law indicates a gap in international criminal law that requires the principal players' action in international arena.

Ethical Consideration

In order to comply with the research ethic, the purpose of the research was first explained to the participants and they were assured that the findings are only for research work that has no other use and can be removed whenever the participants do not want to continue the interviews.

Acknowledgement

We owe it to ourselves to thank all the people who helped us in this research.

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[DOI: 10.52547/ijethics.3.1.9]