The Treaty-Making Capacity of International Organizations: Practice vs. Codification Efforts

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There is no doubt that international organizations in domestic laws of states possess the status of legal persons. Without such status, international organizations would not be able to function as independent units. They would not be in a position to conclude contracts, to rent buildings, own cars, or to pay bills, etc. In other words, they would simply not exist in the legal sphere.\(^1\) The status of international organizations in national laws has been less controversial – if at all – than in international law.

Quite a few international conventions establishing international organizations contain succinct provisions: the Charter of the United Nations:

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.\(^2\)

The Statute of the International Monetary Fund, however, is more specific: it provides that the Fund shall possess full juridical personality, and in particular, the capacity: (i) to contract; (ii) to acquire and dispose of immovable and movable property; and (iii) to institute legal proceedings.\(^3\) It seems safe to conclude that both of them have the same idea in the mind. The Treaty Establishing the European Community\(^4\) seems to be on the same line. Thus, Article 281 provides that “[t]he Community shall have legal personality”, and Article 282 adds the following:

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2 Article 104.

3 Articles of Agreement (1944), Article IX, Section 2: Status of the Fund.

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings...

Yes, the question of personality will in the first instance depend on the terms of the instrument establishing the organization. But this actually occurs only in a minority of cases. Personality on the international plane may be inferred from the powers or purposes of the organization and its practice. However, the status of international organizations in international law emerged on the international agenda as a result of two irreversible developments: first, by providing a special status and protection to individual international organizations and to persons involved in their official business and, second, by providing them with the ability to open up capacity to enter into international agreements. In this way, international organizations were connected with the existing international legal order. And yet, the constituent instruments establishing international organizations, as a general rule, continued to avoid the problem of their international legal personality.

Article 7 of the Covenant of the League of Nations laid the foundations on the global plane:

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

On the sub-regional plane, European and International Commissions on the Danube (1856) and the Act of Navigation for the Congo (1885) provided for the privileges and immunities of international sub-regional organizations. Article 18 of the latter reads:

The members of the International Commission, as well as its appointed agents, are invested with the privilege of inviolability in the exercise of

6 Peace Treaty concluded by Austria, France, the United Kingdom, Prussia, Russia, Sardinia and Turkey (Paris, 30 March 1856) regarding the European and International Commissions on the Danube and the General Act of the Berlin Conference on West Africa, 26 February 1885 regarding the Congo River. According to both, members of the Commission, officials, as well as bureaus and archives, enjoy privileges and immunities.