THE LEGAL FRAMEWORK FOR THE RESPONSIBILITIES OF INTERNATIONAL ORGANIZATIONS PURSUANT TO THE INTERNATIONAL LAW COMMISSION (ILC) DRAFT

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Abstract - This paper deals with the legal system of the responsibility of international organizations according to the draft articles of the International Law Commission, which is considered a complex subject in light of the multiplicity of legal persons who commit the wrongful act, and concluded that international organizations are responsible for damages to countries Or international organizations if a wrongful act was committed and assigned to it, in addition to it responsible although it didn't act the wrongful act in many cases explained in the articles of the international law commission.

Keywords - The Legal System, International Organizations, International Law Commission

I. INTRODUCTION

The topic of responsibility of internationalorganizatio ns has gained special importance especially in light of the denial by the jurisprudence of the legal person have a way that they possess civil acquire rights and assume obligations, which called on the side of Fiqh to say that the topic of international responsibility suffers from leukemia difference For two reasons: the Soviet Union and Eastern European countries feared that the recognition of the responsibility of international organizations would lead to more state powers, and that the recognition of international responsibility would alienate the idea that the state possessed the legal personality International [1] .

Although the issue of the responsibility of international organizations is not a modern issue, since 1963 it has emerged as part of the work of the International Law Commission. However, it remains outside the legal system. There are no legal rules regulating the responsibility of international organizations. The focus was on codifying the rules governing international responsibility States have to bear in mind that international practice refers to the multiplicity of situations in which the responsibility of States is exercised.

The real beginning of the issue was the establishment of legal rules that constituted the legal framework for the international responsibility of international organizations in 2000, when the Commission included in its long -term program of work the topic of international responsibility of international organizations. Indeed, the Commission began by mandating the United Nations General Assembly to establish the legal rules governing the international responsibility of organizations In which the Commission appointed Mr. Giorgio Gaja as Rapporteur in 2002, where the Commission received from the Special Rapporteur a draft of articles containing 61 articles during the sessions of the Committee from 2003-2009, and after the Committee received the comments of the Government Matt and international organizations In 2011, draft articles were adopted which constitute the legal framework for the international responsibility of international organizations.

However, the question arises whether there was a need to adopt and establish rules on the international responsibility of international organizations. However, the articles adopted by the Commission on the responsibility of international States are sufficient to establish the responsibility of international organizations.
To answer this question, we say that international organizations as persons of international law who enjoy legal personality qualify them to acquire rights and assume obligations are completely different from countries since international organizations are subject to the principle of specialization E That has Established to exercise certain tasks, and highlights the differences between the Organization and the State in terms of its organs and powers , and the size of its membership , but the mostimportant difference is that The constituent members of the international organization are often States with international legal personality , which makes it difficult to determine international responsibility for all of these. Legal rules on the international responsibility of international organizations have to be established. Therefore, the draft articles on the international responsibility of international organizations are gaining weight and importance , Of the International Organization.

In view of the importance of this subject and the modernity of the legal rules governing the international responsibility of international organizations, this study examines the legal framework of the international responsibility of

international organizations according to the articles of the International Law Commission .

II. THE FIRST TOPIC: THE CONCEPT OF INTERNATIONAL RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

Responsibility is the cornerstone of any legal system, both domestically and internationally, because one of the most important characteristics of a legal rule is that it is a binding rule that entails a breach of the penalty.

Itwas the concept of internationalresponsibility , whic hdescend from him the responsibility of international organizations is limited to states as a person 's only international law and hereknown professor Badvan international responsibility as " the law of the system entails whereby the State actually committed in violation of internationallaw to compen sate for damage to anotherState of the victim on them, while defined by the international jury as "holds the state responsibility as a result of a member of the body 's failure to execute its international obligations and cause damage to persons of foreign funds and the [2] ,

while the Arab jurisprudence went on to define it as "an international responsibility that rests only with the States and is not in their interests because of the act or omission of an act which requires compensation for damage and requires a judicial judgment in accordance with the provisions of international law through recourse to the judiciary or arbitration " [3] .

However , the concept of international responsibility evolved to include international organizations , and in light of the famous advisory opinion issued by the International Court in 1949 in the case of Count Bernadotte, which ruled the "The UN is not a state and is a state above states only It is an international person with this civil description necessary to preserve its rights and to obtain compensation for damage to or Bmozifaa, "hence the known Fiqh international responsibility of international organizations as" as an international organization work or refrain from doing this would A breach of an international obligation to cause damage to occur , and therefore requires compensation for such damage " [4] , and in turn know the international responsibility of international organizations as " the penalty resulting from the penalty resulting from the violation of international organizations of the obligations the imposed by the law of various confiscation established by Article 38 of the Statute of the International Court of Justice, and with the consequent harm to another person of international law "He said.

III. THE SECOND TOPIC: THE CONCEPT OF THE INTERNATIONAL ORGANIZATION FROM THE POINT OF VIEW OF THE INTERNATIONAL LAW COMMISSION.

Fiqh defines the beginning of the international organization as a "body agrees to a group of states to do its inception set of tasks and granted states a members of self - jurisdiction independent of the Charter of the take care of his statement Prepare and determine the purposes The principles yeh President [5]

This and the second article of the draft of the International Law Commission on the responsibility of international organizations for illegal work set of terms and intended for the purposesof the application of the draft articles have cited it identifies the meaning of the International Organization, and the rules of the organization, and an international organization, and the agent of the International Organization, where it was not revenue , such as These terms are in vain but necessary for attributing the illegal conduct of the international organization.

Hence , the International Organization Phil has been known as " an organization established by a treaty or other instrument governed by international law and has legal personality d special guardian of them. It can include a n membership in international organizations, in addition to Ba States entities other a [6] .

It should be noted here that the definition of the organization was not meant to be defined as a general definition but rather a statement of the common characteristics of international organizations for the purpose of determining the international responsibility of the international organization, bearing in mind that such characteristics are valid for purposes other than international responsibility. Those characteristics did not mean that some of the principles and rules contained in the draft articles could not apply to them.

IV. THE THIRD TOPIC: CASES OF ASSIGNING RESPONSIBILITY TO INTERNATIONAL ORGANIZATIONS ACCORDING TO THE DRAFT OF THE INTERNATIONAL LAW COMMISSION

The assignment of the wrongful act of the international organization is a fundamental element for determining its international responsibility for the injury suffered by third parties as a result of the wrongful act and, therefore, if the damage is not the result of an illegal act of the international organization, it can not be internationally questioned.

Since international organizations , people moral, the attribution of conduct has to be through the illegal activities carried out by natural persons or devices that organization, and I Article IV of the draft

of the InternationalLawCommission confirmed that th is pillar of responsibility extenso committed international organization internationally wrongful act is if The conduct of work or omission was attributable to the international organization under international law and constituted a breach of an international obligation to the international organization. Article 5 of the draft article indicated that the reference to the act of the organization as an unlawful act was international law J [7] .

Articles 6-9 of the ILC draft on the international responsibility of international organizations have shown cases of attribution of the illegal conduct of the organization, but it should be noted here that there is a need to distinguish between cases of assigning responsibility for the commission of an unlawful act by the organs of the State and situations in which responsibility arises The international organizations are responsible for an act that assigns to States and international organizations but their responsibility is determined as if the international organization imposed its coercion on other States or organizations to commit an internationally wrongful act , provided assistance and assistance for the commission of an unlawful act, T project [8] .

Hence, in this section, we will describe only cases in which the illegal conduct of an international organization is attributed to the following:

V. THE FIRST REQUIREMENT: THE CONDUCT OF THE ORGANS AND AGENTS OF THE INTERNATIONAL ORGANIZATION.

The attribution of conduct to an international organization shall be deemed to be the organ or entity for which the conduct has been declared an organ of the organization and its agents and in accordance with the definition contained in article 1 of the draft articles on the responsibility of international organizations.

International organizations often include in their constitutive instruments a census of their bodies. This census varies narrowly and narrowly from one organization to another. Hence, the Charter of the United Nations under Article VII is the number of the principal organs of the Organization. As for agents, the International Court of Justice Dealt with the status of persons acting on behalf of the United Nations by the extent to which such persons enjoyed official status, but that most concerned them People have been assigned To them the exercise of functions by aUnited Nations organ and this is confirmed by the Court in several opinions, including the advisory opinion in the case of compensation incurred by the service of the United Nations, which expanded the court to determine the concept of the agent did not know whether he enjoys official status or not I went to the agent is any Whether he is an official or not and whether he is permanently or otherwise employed as long as he has been delegated to perform any of the functions of the organization, ie, the person through which the organization operates [9] .

However, attribution of the conduct of the organ or agent to the international organization is conditional on such conduct being in the performance of its functions, that is, the disposition of the organ or agent for the functions entrusted to him, which means exclusion of the acts performed by the agency or agent in his personal capacity, The functions and functions of the organ or agent are the rules of the organization, but this does not mean that the rules of the organization are the only criterion for determining the functions of the organs and agents. Therefore, the functions assigned in the exceptional circumstances of a device or agent are taken into account for attribution of conduct to the organization. Manna rules Organization [10] .

But the question here is what if the agent or agent exceeds the limits of the authority vested in him. Can the conduct of the agent or the apparatus be delegated outside the scope of his functions and functions to the international organization?

Article 8 of the draft articles replied as follows: "The conduct of an organ or agent of an international organization shall be regarded as an act of that organization under international law if the organ or agent acts in an official capacity and within the general functions of the organization even if the conduct exceeds its authority or is contrary Instructions ".

It is understood from the text of Article (8) that it distinguishes between two cases of exceeding the limits of power:

- If the conduct exceeding the limits of authority falls within the functions of the international organization and its terms of reference, the conduct exceeds the competence of the organ or agent.
- If the act has exceeded the jurisdiction of the international organization, in the sense that the agent or the organ has exceeded its competence and exceeded the competence of the organization.

In the analysis of Article 6, we found that the rules of the organization are the reference in determining the functions and functions of the agent or the apparatus and thus the power to act. Thismeans that the rules of the organization are the decisive criterion in determining the functions and functions of the agent or the apparatus. The agent or the agency is not considered important for purposes of attribution of the act, unless it is binding on the agent or the agent.

However, it is necessary to attribute the excess of authority granted to the agent or the agency by the agent or the agency to act in an official capacity and in the framework of the functions of the organization, which means that if the agent or the agent acted in his personal capacity or outside the functions of the

organization, that conduct can not be attributed to International Organization.

With regard to the position of the International Court of Justice on the question of attribution of conduct that goes beyond the authority of the organ or agent to an international organization, ithas recognized that the acts of an organ were assigned to exceed the limits of its authority to the international organization in its advisory opinion on some of the expenses of the United Nations and went on to say " The procedure under consideration is within the purview of the organization, but it is alleged to have been initiated or implemented in a manner inconsistent with the division of functions between the organs of the organization. If the procedure was taken by the wrong organ it is considered to be contrary to the internal structure of the organization, but this does not mean that the expenses incurred are not the expenses of the organization " Perhaps Mo The court went on to say that "all the UN agents they work with should be careful not to go beyond the scope of their duties and act in a manner that does not lead to the filing of claims against the United Nations" [11] . Finally, it should be noted that if a person or a group of persons acted on the instructions of the organization or directed or under its control or control, these persons are considered agents of the organization within the meaning of the agent under Article II of the draft articles, and this is consistent with what we concluded previously that In exceptional cases, the person is charged with the functions of the Organization and if such posts are not provided for in the rules of the Organization.

VI. THE SECOND REQUIREMENT : THE CONDUCT OF THE ORGANS OF THE STATE OR THE ORGANIZATION OR ITS AGENTS PLACED AT THE DISPOSAL OF ANOTHER INTERNATIONAL ORGANIZATION.

In the first instance of cases of attribution of conduct to the international organization, we have shown that the actions of the agent of the organization or of the organization which is in violation of the obligations entrusted to the organization are entrusted to the international organization. However, it is possible that a state or organization may put one of its agencies or agents at the disposal of another organization The conduct of that organ or agent has been acted upon and has been a violation of international obligations of the recipient organization. Does that conduct be attributed to the organization, the State in question or the recipient organization?

Here we must distinguish between two cases:

- If the agent or the device is wholly qualified to the recipient organization, in this case the agent or agent shall be treated as if it were an organ of the Organization and the provisions of Articles 6 + 8 shall apply to him.
- The second case, which is dealt with by the provisions of Article (7), is if the organ or agent is still acting as a state organ [12] , or (agent or affiliate) of the organization or the state of calibration, and the most prominent example of this case the military forces placed by a state at the disposal of the United Nations for the purposes of peacekeeping, as long as the calibration state retain the powers of discipline and criminal jurisdiction over members of its national forces, The question of whether the conduct should be attributed to the State or the organization or to the receiving organization?

In this case, article 7 of the draft articles on the responsibility of international organizations replied that conduct was given to the receiving organization provided that that organization exercised effective control over the conduct, and here it should be noted that the contracting State or organization may conclude an agreement with the receiving organization by placing the agent or The Agency shall be at the disposal of the receiving organization and it is agreed that the receiving organization shall be responsible for the actions of that organ or agent, as in the case of the model contribution agreement relating to armed forces established by a Member State of the United Nations at the disposal of the Organization, UN is responsible to third parties , but it has the right to recover costs from troop - contributing in circumstances such as loss or damage to the state or death or injury caused by gross negligence, but such an agreement has nothing to do with the attribution of conduct, but the distribution of responsibility.

The criterion of attribution in this case is whether the conduct is assigned to the organization, the contributing State or the receiving organization as the effective control over the conduct as expressly provided for in article 7 above, meaning that the act is given to the recipient organization if the effective control is due to it Directing, controlling and implementing it.

It is thus clear to us that the actual control is intended to be the conduct of the agent or the organ has been supervised and implemented by the organization or the contributing State or the recipient organization.

The United Nations assumes that it has in principle the exclusive control over the deployment of national forces in a peacekeeping force. The UN legal adviser went on to say, "The act of a peacekeeping force is assigned to the United Nations as a subsidiary organ of the Organization. The act constitutes a breach of an international obligation, which entails the responsibility of the international organization and its responsibility to pay compensation " [13] .

The European Court of Human Rights affirmed the criterion of effective control for the purposes of attribution of conduct in the matter of the court's personal jurisdiction with respect to the conduct of the forces stationed in Kosovo at the disposal of the

United Nations. The Court concluded that the presence of the force in Kosovo was based on a resolution adopted by the Security Council, The powers of the United Nations Security Council are governed by Chapter VII, which has been delegated by law to initially support the contested procedure of the United Nations, and the acts of the criterion of effective control mean executive control as executive control is more important than the control of the brother Rh [14] . It is clear to us from the above that the international practice was in relation to the status of one of its organs at the disposal of the international organization. In cases where an international organization places one of its agencies or agents at the disposal of another organization and although this is considered a rare case, Which we have already concluded apply to this case as well. Examples that we can multiply in this regard are the Pan-American Health Conference, which was the result of an agreement between the World Health Organization (WHO) and the Pan American Health Organization (PAHO). The WHO Legal Counsel therefore noted that the actions of the Organization For the health of the American countries and their employees can afford the WHO responsibility.

VII. THE THIRD REQUIREMENT IS THE CONDUCT RECOGNIZED BY THE INTERNATIONAL ORGANIZATION AND ADOPTED AS A RESULT OF IT.

This case of attribution of conduct to an international organization presumes that no case of attribution of conduct under articles 6.8 has been made as if the conduct was carried out by a person whose functions the international organization is not exercising or in the event that the transgression exceeds the limits The conduct of the Organization and its functions, in which case the agent acts personally, or that the conduct of the agent or instrument lent to the international organization was not the effective control of his or her taking, direction and execution of an international organization. However, such conduct may be attributed to the international organization and shall be deemed to have been issued by the organization under international law if it recognized such act and adopted it on the grounds that it had confiscated it and to the extent that it recognized it and adopted it. It should be noted that international practice with regard to recognition, both with regard to State responsibility and to organizations, is not clear as to whether the attribution of conduct or the attribution of liability, as in the case of the European Communities, is the customs classification of certain computing equipment[15] .

However, the question of attribution of admissibility and admissibility was clearly addressed in the decision of the Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia in the case of the Prosecutor v. Dragan Nikolic to investigate whether the arrest of the accused was attributed to the Stabilization Force or not ? The Chamber concluded that "both parties use the same criteria of recognition, adoption, extradition, acceptance and recognition as used by the International Law Commission. The question is therefore whether it is possible on the basis of the presumed facts that the Stabilization Force recognized the conduct of the individuals concerned and adopted it as a conduct, It was recalled that the conduct of the Stabilization Force (SFOR) was not a manifestation of the wrongful conduct of its actions as an act of force [16] .

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