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**A CRITICAL ANALYSIS OF THE RESPONSIBILITIES
AND LIABILITIES OF INTERNATIONAL INSTITUTIONS
UNDER INTERNATIONAL LAW: THE UNITED NATIONS
AS A CASE STUDY**

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A CRITICAL ANALYSIS OF THE RESPONSIBILITIES AND LIABILITIES OF INTERNATIONAL INSTITUTIONS UNDER INTERNATIONAL LAW: THE UNITED NATIONS AS A CASE STUDY

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Abstract

This research paper highlighted different international Legal personalities which are basically states and international institutions. The researcher stated that international institutions are usually created by states in their full capacity or through the private citizens of states. This paper also revealed that international institutions are creatures of International Law who are obedient and loyal to the International Law that created them. Thus international institutions are clear reflections of the international law that created them. International Institutions are usually created and vested with legal mandates which form the bulk of their responsibilities. Thus they don't exist just for existence sake. There is usually a purpose beyond the creation of each international institution. This research work dealt with the responsibilities of International Institutions under international law. However the research focused the weight of his research on the United Nations which is the number one international institution in the world and the most influential international institution. The United Nations has the mandate of protecting the peace of humanity and ensuring the prosperity of humans of every nation. To perform her duty efficiently on her creation United Nations was vested with certain privileges and immunities. This is according to the 1946 Convention on Privileges and immunities. However most states through declarations and reservations have restricted the privileges and immunities of the United Nations in regards to their dealing with the United Nations. Thus this research work looked at all of these and provided efficient recommendations for the efficient discharge of duties by the United Nations. This includes a recommendation for the establishment of a special tribunal which will handle cases of commission and omission by the United Nations and her agents (staff and volunteers).

Keywords: *Immunities, Privileges, Personality, Liabilities and Organizations*

1. Introduction

A state is the primary subject of International Law. It is deemed to be the primary and principal subject of international law. Other subjects of international law are either created by the state or depend on the support of States for its sustainability. The United Nations, African Union, European Union and other Intergovernmental international institutions are created by states. Even International Humanitarian Organizations like the International Committee of the Red Cross that are created by private citizens derives their legitimacy from treaties that they entered with states and the ones states entered with each other to submit to the jurisdiction of such international organizations and even to protect such organizations. States stabilizes the international arena and therefore the duties of state should be efficiently studied by international law scholars and for everyone who is interested in global peace and security. However International Law is not only concerned with activities of states. International Institutions are also key players in the global arena. International Institutions like United Nations are the major players in the International arena. Most of them like the United Nations claim to have almost absolute immunity except where they decide to waive their immunity. The immunity bestowed on the United Nations is based on the unique nature of United Nations. Arguably no international institutions is as productive as United Nations. International Institutional law scholars believe that United Nations is the most powerful international institution. However with much power comes much responsibilities and even liabilities. Let's take a scholastic journey to discover if this is true of the United Nations¹.

2. Definition of Basic Terms

Legal Person

A legal person is any human or non-human entity. In other words, any human being firm or government agency that is recognized as having legal rights and obligation such as having the ability to enter into contracts, to sue and to be sued².

United Nations (UN)

This is an international organization established on October 24, 1945. The United Nations (UN) was the second multipurpose International organization established in the 20th Century that was worldwide in scope and membership.

His predecessor, the Leagues of Nations was created by the Treaty of Versailles in 1919 and disbanded in 1946. Headquartered in New York City the UN also has regional offices in Geneva, Vienna and Nairobi. Its official languages are Arabic, Chinese, English, French, Russian and Spanish³.

¹Emone Emmanuel, A Critical Analysis of Statehood.

²Oxford Dictionary of Law (Elizabeth A. Martin, Oxford Dictionary of Law (7th edn; Oxford: Oxford university Press 2003); Smith, Bryant, "Legal personality"[1928] Yale Law Journal 37(3); 283-299)

³Jasques form errand, Cecelia M. Lynch, Karen Mingst, Britannica, 2019

States

A state is more than a government; that is clear. Governments change, but states endure. A state is the means of rule over defined or "sovereign" territory. It is comprised of an executive, a bureaucracy, courts and other institutions⁴.

International Organisations

An international organization can be defined, following the International Law Commission, as an 'organization established by a treaty or other instrument governed by international law and possessing its own international legal personality'. International organizations generally have States as members, but often other entities can also apply for membership. They both make international law and are governed by it⁵.

3. Entitlements of International Institutions under International Law

The international arena is too big for only one player. Thus the international law was introduced for every player in the global arena. It seeks to regulate the conduct of state players and non-state players. It is presumed under the international law that every international player has legal personality. Thus both state parties and non-state parties should be held liable for their actions and omissions under the international law.

However in this paper the researcher wanted to narrow his research work to the responsibility and liability of international institutions under the international law.

International Institutions usually are the creation of states since states are the first player in the global arena. However, it is not only states that can create international institutions both citizens of states can create an international institutions and certain international institution can create another international institutions. It is important for us to note that International Law creates International Institutions and International Institutions create International Law.

What are the entitlements of international institutions under international law?

Basically an international institution is created by one or more element of the international law. Some international institutions like the United Nations are created by charters. Thus while others like the international committee or the Red Cross is created by treaties. No matter how an international institution emerged, it is deemed that it is the international law that gave birth to such institution thus the institution must be loyal to the international law that gave birth to her. So there is basically a presumption of a mother and a child relationship between International Law and International Institutions. A child of the international law cannot outgrow the international law.

⁴ <https://www.globalpolicy.org/nations-a-states/what-is-a-state.html>

⁵ <https://www.peacepalacelibrary.nl/research-guides/international-organisations-and-relations/international-organizations/>

No international institution no matter how wealthy or powerful that she is can do without the international law. Every international institution is dependent on the international law.⁶

Since International Law is a creation of the international law she derives benefits from the international law which includes:

a. Peaceful existence

The international law ensures that every organization that is created accordingly has the liberty to pursue his or her obligation under the law.

b. Protection for the organization and the staff of the organization.

No staff of an international organization operates in any part of the world, without the protection of the international law. These staff and volunteers are usually under the protective covering of the instrument that created the International Institution. This could ever be seen in the establishment of the international criminal court. The Rome statute mandated the host state to see to the protection of the international criminal court and her staff.

c. Access to legal remedies.

International institutions have legal personalities thus they can sue and be sued. International organizations like the United Nations, European Union and African union have judicial bodies through which they seek to enforce the rights of their members and staff.

d. Immunities of these international institutions.

Most of international organizations enjoy immunities under the charter that created them. The United Nations has enjoyed a great deal of immunity right from her creation and most international law scholars believe that this immunity is almost absolute.

In United Nations, first general Assembly in 1946, UN granted legal immunity to itself which has been ratified through the ratifying treaties that was signed by her member states. A critical examination of the Convention on the privilege and immunities of the United Nations will reveal the extent of their immunities⁷.

4. The Mandate of United Nations

The United Nations is an international organization founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter.

Due to its unique international character, the United Nations can take action on the issues confronting humanity in the 21st century, such as peace and security, climate change, sustainable development, human rights, disarmament, terrorism, humanitarian and health emergencies, gender equality, governance, food production, and more.

⁶ <https://www.globalpolicy.org/nations-a-states/what-is-a-state.html>

⁷ Emone Emmanuel, Entitlement of international organization under international law

The UN also provides a forum for its members to express their views in the General Assembly, the Security Council, the Economic and Social Council, and other bodies and committees. By enabling dialogue between its members, and by hosting negotiations, the Organization has become a mechanism for governments to find areas of agreement and solve problems together⁸.

5. The Legal Framework for the establishment of rights and liabilities of United Nations

ARTICLE I: Juridical Personality

Section 1.

⁹The United Nations shall possess juridical personality. It shall have the capacity:

- a) to contract;
- b) to acquire and dispose of immovable and movable property;
- c) to institute legal proceedings.

ARTICLE II: Property, Funds and Assets

Section 2

¹⁰The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3.

¹¹The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

6. The Immunity of United Nations

Most International Institutions are immune from the jurisdiction of domestic courts. These considerations have found legal expression in the various privileges and immunities instruments which contain an obligation to make available dispute settlement mechanisms to those who are deprived of access to national courts as a result of the international organization's immunity from suit. The prime example of such an obligation is found in the Convention on the Privileges and Immunities of the United Nations, the so-called General Convention.¹²

⁸<https://www.un.org/en/sections/about-un/overview/index.html>

⁹Articles 1, Privileges And Immunities of The United Nations

¹⁰Articles 2, Privileges And Immunities of The United Nations

¹¹Articles 3, Privileges And Immunities of The United Nations

¹²Articles 3, Privileges And Immunities of The United Nations

While granting wide jurisdictional immunity to the UN, the Convention demands that “the United Nations shall make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party.” An identical obligation is found in the Convention on the Privileges and Immunities of the Specialized Agencies, and similar obligations are contained in other privileges and immunities instruments dealing with other international organizations¹³.

“You can’t sue the United Nations in a domestic court or any court because governments have signed the treaty and some countries like the U.S. have even put it in domestic legislation¹⁴.” Since the Convention on the Privileges and Immunities of the United Nations, and the UN Charter has stated boldly the immunity of the United Nations, the U.S. Federal Court has ruled that “the UN is immune from suits unless it expressly waives its immunity.¹⁵”

It is also of interest to note that, the Appeal Court in The Hague ruled that “the UN has been granted the most far-reaching immunity, in the sense that the UN cannot be brought before any national court of law in the countries that are a party to the Convention¹⁶.”

7. Limitations of the Power of the United Nations

There are many states who by treaties have restricted the immunity of United Nations as provided in Privileges and immunities convention of 1946 but we will only highlight four of them in this research work.

The following states and the manner in which they restricted the privileges and immunities of United Nations through declarations and reservations made by these states are:

Canada

"With the reservation that exemption from taxation imposed by any law in Canada on salaries and emoluments shall not extend to a Canadian citizen residing or ordinarily resident in Canada."

Lao People's Democratic Republic

1. Laotian nationals domiciled or habitually resident in Laos shall not enjoy exemption from the taxation payable in Laos on salaries and income.
2. Laotian nationals who are officials of the United Nations shall not be immune from National Service obligations.

¹³The Immunity of August Reinisch, International Organizations and the Jurisdiction of their Administrative Tribunals, University Of Vienna, Department Of European, International and Comparative Law, 2007.

¹⁴NBC News <<https://www.nbcnews.com/news/other/why-cant-anyone-sue-united-nations-f8C11266822>> accessed on 2/12/2019 (per Larry Johnson, a former UN official who teaches international law at Columbia Law School).

¹⁵UN Watch <<https://www.unwatch.org/why-you-cant-sue-the-un/>> accessed on 2/12/2019.

¹⁶UN Watch <<https://www.unwatch.org/why-you-cant-sue-the-un/>> accessed on 2/10/2019.

Thailand

"Officials of the United Nations of Thai nationality shall not be immune from national service obligations"¹⁷.

Bahrain

Declaration: "The accession by the State of Bahrain to the said Convention shall in no way constitute recognition of Israel or be a cause for the establishment of any relations of any kind therewith"¹⁸."

8. Responsibilities of United Nations

To whom much is given much is excepted. So much power has been given to United Nations by the International Law that created her and much responsibility is excepted from her. The researcher belongs to the school of thought which believes that absolute power will corrupt absolutely. The researcher is hereby consoled by the discovery of the limitations of the powers of the United Nations under International Law.

Once there is responsibility there is a great need for accountability. If you have a duty to perform then you have the obligation to discharge your duty with uttermost good faith in alignment with global best practices. This is the situation that United Nations found herself in. She is like a child running errand for her mother(the international law that created her) and she is to perform that task like a good child who does not want to be disciplined by a mother that is aggrieved by the irresponsible actions or omission of her staff and volunteers.

The various responsibilities of United Nations under International Law include the following:

a. Election of United Nations Principal Agents.

The United Nations is mandated in the Charter to conduct elections for the selection of her principal agents which includes the Secretary General, Presidents of General Assembly, Prosecutor's of her International Criminal Court and the rest. This is a statutory provision that is expressly stated in United Nations Charter and she cannot escape from the responsibilities. Elections must be conducted for the emergence of her principal organs. Whether her elections is usually fair or flawed is subjected to various controversy. Some school of thoughts believe that it is fair since in the past some principal agents of UN like Boutros Boutros- Ghali who happened to be from Egypt and Kofi Annan of Ghana who emerged respectively as Secretary General of United Nations.

They believe that if the system is flawed that these responsible and eminent personalities though largely qualified should not have the opportunity to lead the largest and most important organization in the world since they are from Africa a continent that is considered as a third world. Another school of thought believes that the system is flawed and that the emergence of the principal agents of United Nations are politically manipulated by the Super power who might even allow the emergence of Africans as Secretary General of United Nations just to confuse some gullible citizens of the world. Despite these arguments by these two opposing schools of thoughts

¹⁷UN Watch <<https://www.unwatch.org/why-you-cant-sue-the-un/>> accessed on 2/10/2019

¹⁸United Nations, Treaty Series , vol. 1 , p. 15, and vol. 90 , p. 327 (corrigendum to vol. 1).

the researcher believes that the election of principal organs of United Nations is enough evidence of the noble claim which is that United Nations is held accountable under the International Law. United Nations is law abiding in this regards. The United Nations charter provides that she conducts elections for the emergence of her principal agents and she is really obeying these rules. Article 97 of the Charter 12 states, "The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council". General Assembly resolution A/RES/11(I) of 1946 states, inter alia,

"Both nomination and appointment should be discussed at private meetings, and a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot."

b. The United Nations is to be responsible for the neutrality of her staff.

1. "In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities¹⁹."

United Nations is mandated by Article 100 of the United Nations Charter to ensure that all the staff of United Nations should be neutral. This is to ensure that the United Nations is not hijacked by any state, government or interest group²⁰.

c. Admission of states as members of the United Nations

Membership in the Organization, in accordance with the Charter of the United Nations, "is open to all peace-loving States that accept the obligations contained in the United Nations Charter and, in the judgment of the Organization, are able to carry out these obligations". States are admitted to membership in the United Nations by decision of the General Assembly upon the recommendation of the Security Council.

How does a new State or Government obtain recognition by the United Nations?

The recognition of a new State or Government is an act that only other States and Governments may grant or withhold. It generally implies readiness to assume diplomatic relations. The United Nations is neither a State nor a Government, and therefore does not possess any authority to recognize either a State or a Government. As an organization of independent States, it may admit a new State to its membership or accept the credentials of the representatives of a new Government. The procedure is briefly as follows:

The State submits an application to the Secretary-General and a letter formally stating that it accepts the obligations under the Charter.

¹⁹Article 100 of the United Nations Charter

²⁰Emone Emmanuel, Responsibilities of United Nations under International Law.

The Security Council considers the application. Any recommendation for admission must receive the affirmative votes of 9 of the 15 members of the Council, provided that none of its five permanent members — China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America — have voted against the application.

If the Council recommends admission, the recommendation is presented to the General Assembly for consideration. A two-thirds majority vote is necessary in the Assembly for admission of a new State.

Membership becomes effective the date the resolution for admission is adopted. At each session, the General Assembly considers the credentials of all representatives of Member States participating in that session. During such consideration, which routinely takes place first in the nine-member Credentials Committee but can also arise at other times, the issue can be raised whether a particular representative has been accredited by the Government actually in power. This issue is ultimately decided by a majority vote in the Assembly. It should be noted that the normal change of Governments, as through a democratic election, does not raise any issues concerning the credentials of the representative of the State concerned²¹.

d. Responsibility to obey Convention between the United Nations and the government of the United States of America

The provisions of the Convention are as follows:

Section 14

²²Without prejudice to the provisions which are contained in annex II and subsequently in the General Convention referred to in section 32, and which relate to the immunities of officials of the United Nations and of the representatives of Members, the United Nations shall not permit the zone to become a refuge either for persons who are avoiding arrest under the law of the United States of America or are required by the Government of the United States of America for extradition to another country, or for persons who are endeavoring to avoid service of legal process.

Section 15

²³Subject to section 16, the law of the United States of America shall apply within the zone, and in particular the ordinary civil and criminal law.

Section 17

²⁴The courts of the United States of America shall, without prejudice to any provisions of annex II and subsequently of the General Convention referred to in section 32, have jurisdiction over acts done and transactions taking place in the zone, in the same manner as they have over similar acts and transactions taking place outside the zone.

²¹<https://www.un.org/en/sections/member-states/about-un-membership/index.html>

²²Section 14 of Convention between the United Nations and the Government of the United States of America.

²³Section 16 of Convention between the United Nations and the Government of the United States of America.

²⁴Section 17 of Convention between the United Nations and the Government of the United States of America.

Through these conventions the United States of America restricted the full operation of United Nations immunity as it regards her Host State relationship with the United Nations.

Conclusion

The researcher has embarked on this journey of enlightenment with the aim of bringing more attentions to the entitlement of International Institutions, the immunity of United Nations, her responsibilities and liabilities of United Nations. This is not all there is to this topic. This research work is therefore an invitation for all to seek and know the basic principles of the responsibilities of International Institutions especially the United Nations.

Recommendations

The United Nations should establish an independent tribunal, to hear the claims of those who allege they have been harmed by their actions. They should empower the tribunal, when applicable, to award appropriate relief. This action would be consistent with their responsibilities to respect human rights and to comply with international law²⁵.

Beyond the United Nations should ensure that her staff is adequately compensated for their time, knowledge, skills and expertise. This will enable the United Nations to maintain the neutrality of her staff and volunteers.

The researchers believe that there should be more enlightenment on the responsibilities and liabilities of the United Nations and other International Institutions.

²⁵ The Conversation <<https://theconversation.com/what-can-be-done-to-stop-the-united-nations-abusing-its-immunity-61227>> accessed on 2/12/2019.