

Analysis on the Impact of International Organizations on International Law

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ABSTRACT

Since the development of international organisations (IOs), it has become increasingly clear that international law is influenced by IOs. In today's system of public international law and related public law studies, the legislation of IOs has mostly become an important part of public international law. Therefore, this study will analyse the impact of IOs on international law as its subject. The author will conduct the study by locating, reading and collating documents from academic journals, relevant documents of IOs and international law in this fields. Due to the influence of the traditional concept of state sovereignty, there are some tendencies to be state-centric, to differentiate between states and IOs and to ignore the influence of IOs. Therefore, the influence of IOs on international law needs more attention, and it is of some significance to conduct a study on this issue. In this study, the author will discuss the influence of intergovernmental organisations and non-governmental organisations on international law, so as to draw the conclusion that IOs can play a positive role in influencing international law, and that the influence of IOs on international law cannot be ignored.

Keywords: *International Law, International Organisations, United Nations, European Union*

1. INTRODUCTION

In the international community, the development of international law is influenced by a variety of factors. At the same time, with the advancement of economic integration and legal globalisation, the number, size and types of IOs have grown considerably and have a more important position and influence in the international community and international legal order than ever before. The activities of IOs cover all aspects of international society and have a certain influence on international law, and as IOs develop, the influence of international law on IOs becomes more and more obvious. In the case of customary international law, although IOs have not gone as far as creating customary international law, they have changed the way in which customary international law has been formed in the past through their resolutions and declarations. The charters and regulations of many IOs point to common human values, and many principles and provisions have gradually become commonly followed concepts and customs.

In this field of study, many scholars acknowledge the positive role played by IOs in the process of the creation of customary international law and affirm that the

practice of IOs can be used as evidence for the identification of customary international law. However, most scholars have not explored in depth the role of IOs in the formation of customary international law, especially the question of which acts of IOs have contributed to the development of customary international law, which will be the main focus of this study. This study uses the literature analysis method to examine the main and representative IOs in a sub-subjective manner. This study will, to a certain extent, make more people aware of the positive significance of IOs for the development of international law, and thus make the influence of IOs more visible.

2. INTRODUCTION AND CHARACTERISTICS OF INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANISATIONS

International organisations, also known as international institutions, are organisations characterised by international behaviour and are permanent bodies with certain rules and regulations established by three or more states or other subjects of international law in order to achieve common economic and political purposes, on the

basis of treaties or other formal legal documents concluded by them [1]. Depending on the purpose of their establishment and the subjects involved, IOs can be divided into intergovernmental organisations and non-governmental organisations. Most of the world's important and influential IOs have been established for the purposes of economic coordination, strengthening political cooperation and maintaining world or regional peace. In the 21st century, various types of IOs have been committed to expanding their influence, growing in size and improving their internal structures. The legislation and statutes of IOs have increasingly influenced the development of public international law, and IOs have been described as law makers [2]. The specific characteristics of IOs can be derived from the concept of IOs, and there is a general recognition among scholars of the salient legal features of IOs, namely that they are established by agreement of States, that they have at least one body that is independent of the member parties and can act accordingly, and that they are established under international law [2].

3. THE IMPACT OF INTERGOVERNMENTAL ORGANISATIONS (IGOS) ON INTERNATIONAL LAW

International custom is a norm of conduct that is accepted by the majority of international subjects through continuous practice and whose legal effects are recognised. The International Law Commission has endorsed the view that the identification of customary international law involves both state practice and *opinio juris* [3]. The international community generally considers that states develop customary international law in three main ways: through technological facilitation, the expansion of the power of the powerful and military competition [3]. At the same time, however, the influence of IOs in the identification of customary international law has also been recognised. In this section, the author will discuss the influence of IGOs on customary international law, using the United Nations and the European Union as examples.

3.1 United Nations (UN)

3.1.1 The Role of the UN General Assembly in Demonstrating Customary International Law

Resolutions adopted by states in IOs and conferences play a role in the formation and identification of customary international law. This role can be seen in the resolutions of the UN General Assembly. Although not of a legislative nature, resolutions of the UN General Assembly can provide evidence of existing or emerging new law, and may sometimes have normative value [4]. Therefore, the evidential role of General Assembly

resolutions can therefore be seen in terms of proof of existing customary rules and proof of new customary rules. Firstly, in the case of existing customary rules, UN General Assembly resolutions can be used as a basis for corroborating the conduct of states, and they are important public documents for measuring state practice and developing customary international law when conflicts arise over issues of customary rules [5]. Secondly, in the case of new customary rules, resolutions of the UN General Assembly can be used as a means of constantly reinforcing the acceptance of a new customary rule by states. At the same time, a resolution can develop into a customary rule when it meets certain conditions, such as having the support of a majority of states and having a normative content. For example, the resolutions with human rights norms adopted annually by the UN aim at declaring human rights norms in different ways, and such urging resolutions are a transitional step towards the conclusion of multilateral human rights treaties [6].

It is noteworthy that, in more exceptional cases, resolutions can create general customary international law by the mere fact of their adoption when they have been unanimously or nearly unanimously accepted and when they demonstrate a clear intention on the part of their proponents to establish a rule of international law. The Vice-President of the International Court of Justice, Ammoun, has stated in Case Western Sahara that the General Assembly of the UN has affirmed the legitimacy of the struggle for freedom from foreign occupation in at least four resolutions which, taken together, have constituted a custom [3]. Moreover, in his view of rapid international law, Bordin argued that acceptance as law could mature in a short period of time in all or some member states of the UN, thus creating a new rule of customary international law in those states [7].

3.1.2 The Role of the UN General Assembly in the Development of International Law

Additionally, a resolution of the UN General Assembly may also facilitate the development of customary international law. Resolutions provide a formula for states to take a unanimous position, thus having a tendentious effect or exhorting states to act. Higgins has said that the voting and expression of the views of states in IOs is of legal importance as evidence of customary law and that collective action taken internationally, when repeated in large numbers and with high frequency and acquiescence, eventually acquires legal status [8]. Higgins also argues that the UN General Assembly, the Security Council and the Secretariat are central to the presentation of a clear focus on state practice. Typical of this is the Stockholm Declaration, which articulates principles that have gained widespread support in state practice and are considered legally binding by states, thus allowing them to be incorporated into the framework of customary international law [7].

Similarly, a UN General Assembly resolution may consolidate an emerging new rule of customary international law. A resolution may contribute to the finalisation of the rule and a resolution declaring or purporting to declare it requires only a relatively small body of evidence of actual practice to support it.

3.2 European Union (EU)

3.2.1 The Role of the EU in the Development of Customary International Law

The IOs can contribute to the formation of customary international law and can also be demonstrated by some of the EU's practices. Firstly the Treaty on EU provides that the EU should strictly observe and develop international law. International environmental law, for example, has been discussed by Hoffmeister in the context of the contribution of EU practice to international law and by Cremona in the context of the development of EU external relations law [9]. It can thus be seen that in a number of areas the EU has sought to influence the development of international law and to bring the process of international law into line with its own policies and values. In addition, in some cases the EU has called on member states to take action, thus putting pressure on the acting state. For example, in the current situation of the new crown epidemic, the EU Council and Commission have jointly issued recommendations for guidance to member states on measures to prevent and control the epidemic, with calls in the form of declarations or binding in the form of laws being forms of regulating state action [9].

3.2.2 The Role of EU Treaty Practice in the Promotion of Customary International Law

In addition to this, one of the main ways in which the EU promotes customary international law is through its distinctive practice with treaties. The EU's distinctive practice challenges the traditional dichotomy theory of states and IOs, a distinction on which the 1969 and 1986 Vienna Conventions on the Law of Treaties are premised [10]. Due to the EU's status as an international organisation, the 1986 Convention on the Law of Treaties represents a set of rules applicable to the EU. The provisions of the convention state that it is a treaty applicable between states and does not apply to international agreements concluded between states and other subjects of international law [11]. However, the Court of Justice of the European Union has generally applied the provisions of the 1969 Convention on the Law of Treaties when interpreting agreements to which the EU is a party, as the Court has held that the provisions of the 1969 Convention represent customary international law. The Court has also rejected some of the arguments used by the 1986 Convention on the Law of Treaties in its review of EU treaty practice [12]. It follows that,

although the EU is not a State, the rules of the 1969 Vienna Convention on the Law of Treaties are more relevant to the type of agreements to which the EU is a party.

4. THE IMPACT OF NON-GOVERNMENTAL ORGANISATIONS (NGOS) ON INTERNATIONAL LAW

In recent years, the change in the global governance model, the development of civil society and the rise of international social legislation have provided theoretical support for the participation of NGOs in international governance and the creation and implementation of international law, and have played a continuous role in promoting them. At the same time, the role of NGOs has become increasingly prominent as an alternative force to states and IGOs in dealing with global issues, and the effective operation of international law has begun to draw on the expertise of NGOs.

4.1 Contribution to the Codification of International Law

NGOs have a limited quasi-law-making function in certain circumstances, and although their acts and statements cannot be considered as State practice and *opinio juris* under the Statute of the International Court of Justice, they can indirectly influence the development of customary international law [13]. Firstly, NGOs bring global issues to the attention of the international community in a wide range of ways through advocacy, initiatives and lobbying, and influencing the negotiating positions of States on international treaties. A number of NGOs have, for example, formed the Cluster Munition Coalition to partner with sovereign states to advocate and mobilise widely for the Cluster Munition Coalition [1]. Secondly, NGOs have also contributed to the codification of international law by proposing legislation, drafting new international treaties, organising or participating in negotiations and international conferences, and forming transnational academic groups. In the case of the UN Framework Convention on Climate Change, for example, the Centre for International Environmental Law in London participated as a member of the Alliance of Small Island States delegation in the selection and identification of topics, the drafting of rules and the provision of expert opinions [19]. Besides, the phenomenon of soft law that has emerged in the international community in recent decades is closely linked to the activities of NGOs, particularly in the field of international environmental law and human rights, which have exerted a substantial influence on the preparation and signing of conventions such as the Convention on Biological Diversity, the Universal Declaration of Human Rights and the Convention on the Rights of the Child [4]. These soft laws, if accepted as binding by States or IOs, may provide a new source for the development of international law.

4.2 Important Role in International Justice

NGOs also play an active role in the process of international justice. When international judicial bodies are overloaded with cases and lack defence lawyers with expertise in a particular area, NGOs can participate in international proceedings as litigants and legal advisers. In the Americas, the European Court of Human Rights and the African Court of Human and Peoples' Rights, for example, NGOs can participate as parties to proceedings or as legal advisers [14]. Some professional Organisations are also open to NGOs, and NGOs have been active in bringing disputes to the International Court of Justice in the Nuclear Weapons case, and have acted as important lobbyists for one of the parties in the Danube Hydroelectricity case [5]. As international disputes have become more diverse and complex, some of the disputes originally handled by the International Court of Justice have been transferred to specialist or regional dispute resolution bodies. The European Court of Human Rights initially debated the participation of NGOs, but later amended its rules to clarify the manner and conditions of NGOs participation in the Court. In the ten years since its rules were amended, the European Court of Human Rights has accepted information and opinions from 37 relevant NGOs in 26 cases [12]. The 1998 final WTO decision in the case of the US Import Prohibition on Certain Shrimp and Shrimp Products confirmed that panels may request or accept materials and reports from NGOs on their own initiative in relation to the case [5], which confirmed in case law that NGOs This confirmed in case law the right of NGOs to participate in the WTO dispute settlement mechanism, thereby promoting the amendment or development of relevant substantive rules to recognise the right of NGOs to participate.

4.3 Monitoring Role in the Implementation of International Law

In some cases, NGOs can also monitor and strengthen the implementation of international law. They monitor states' compliance with international law and the fulfilment of international treaty obligations. For example, Amnesty International and Greenpeace often work to expose and protest against violations of the international treaties to which they are signatories, and use various means to bring countries or multinational corporations into compliance with their international obligations [15]. Such monitoring is enforced by states or IOs and is likely to be detrimental to friendly relations and international cooperation between states. In contrast, lobbying, public pressure and moral sanctions by NGOs can avoid this problem, thus demonstrating the unique advantages of NGOs involvement in the implementation of specific international treaties. In the field of human rights law, NGOs have contributed to the establishment and improvement of systems and procedures for dealing with human rights violations by the UN and its

specialized agencies. Through the publication of annual reports and media coverage, they bring to light human rights abuses by states and lead international public opinion to criticise and monitor them [1], thereby creating external pressure on states to comply with the basic norms of international human rights law. In specific human rights cases, NGOs also monitor human rights institutions by providing information and advice on how to resolve problems [6]. The involvement of NGOs as an important external force and the use of their unique influence enriches the means of implementing international law.

4.4 Building Autonomous Norms to Promote the International Legal System

In some areas where national and IOs are less involved, specialist NGOs develop autonomous norms and gradually refine them into autonomous normative systems. The International Organisation for Standardisation, for example, has developed hundreds of environmental standards for air, water and soil for national reference, with the aim of promoting standardisation and related activities [2]. In the field of international sport, the influence of NGOs on the legal order is even more pronounced. The International Olympic Committee is the largest international NGO in the field of sport and an international NGO with a high degree of jurisdiction, which has created and implemented a comprehensive and self-contained legal order that is recognised by a wide range of countries. The International Olympic Committee established in 1984 an international sports tribunal for the exclusive settlement of sports disputes, which, in accordance with its statutes, punishes violations of sporting rules and adjudicates related disputes without interference and legal protection from national courts [5]. NGOs have broken new ground in the construction and development of norms in areas such as standardisation and international sport. These autonomous normative systems are generally observed by states and some have been accepted or even incorporated into national or international law by national or international mechanisms [14]. Thus, in addition to interacting with national governments and IGOs, NGOs have also found a way to independently establish and develop a system of international law in a positive way.

5. CONCLUSION

According to the research above, it finds that IOs play an important role in the development of international law. IGOs contribute to the identification and implementation of state practice in the identification of customary international law, and can also contribute to the development of customary international law as autonomous and independent legal actors at the international level. NGOs have an influential role in the legislative, judicial and law enforcement processes of the

international community and contribute to the resolution of global problems. With the joint efforts of intergovernmental and non-governmental organisations, international law and the international order have evolved in a more open, transparent and just direction. With the development of modern international law and the international community, IOs are involved in the creation and implementation of international law, and the trend of international law regulating and supporting the development of IOs will become more obvious.

As the author's study focuses more on analysing some of the positive aspects of IOs in the process of influencing international law, this makes this study also subject to some limitations. For example, the legal status of some IOs is not clear enough, there are gaps in the system, and standards have not yet been established and harmonised. These are not conducive to the mutual promotion of IOs and international law. Only if the international community increasingly recognising and supporting the influence of IOs in international law will IOs be able to better exercise their independence and impartiality. Therefore, in the future research, the author plans to focus more on this aspect of the dilemmas faced by IOs in promoting the construction of international law, so that the author can analyse the subject in greater depth and comprehensiveness. In conclusion, the author believes that all countries should strengthen the cooperation of IOs, support them to play a more important role in the field of international law, and jointly promote the development of international law and global governance towards the idea of a community of human destiny.

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