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the settlement of international disputes to which international organizations are parties

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Abstract

The increasing number of international organizations raises many issues about them. One of the most important of these issues is international disputes that one of the parties is an international organization. In 2011, the International Law Commission paid attention to this issue and addressed the issues in its Draft. The Article with notice to Draft articles examined judicial proceeding in international court of justice and situation of advisory opinion in international courts, although advisory opinion doesn't have binding effects, This does not mean that they might not be used in the context of disputes. Advisory opinions are a powerful political tool. Arbitration proceeding is a useful way for settlement international organizations disputes. But it needs a contract or agreements for creating jurisdiction.

Key Words: international organizations, international court of justice, arbitration tribunal, advisory opinions

Introduction

Effective legal remedies are a necessary component of a functional accountability regime for international organizations. there is no different between disputes which international organization are parties. This would include disputes between international organizations and states and disputes between international organizations. This article focuses on disputes that are international and arise from a relationship governed by international law and disputes arises under a contract with states or private entity. There are some obvious difficulties common to the resolution of all international disputes to which international organizations are parties. Traditional methods of international dispute resolutions restricted access of international organizations and created barriers to the admissibility of claims brought both by and against international organizations.

This Article examine the scope of the claims that the international organizations are parties and primarily focus on judicial settlement of disputes and then arbitration tribunals is examined.

Presently the options for states and international organizations to obtain legally binding settlement of their disputes with each other are limited.

International court of justice

Article 34, paragraph 1, of the statute of the International Court of Justice limits *locus standi* before the court of states. Although paragraph 2 and 3 provide for a certain level of cooperation between the Court and "public international organization", so international organization are unable to appear as parties in contentious cases. The United Nations and authorized specialized agencies may seek advisory opinion on legal questions. (Article 96 of the charter of the United Nations) .Thus in a dispute between one of these bodies and a state , only that body will be able to initiate a claim. It means when there is a treaty obligation requires the submission of a dispute to the advisory

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procedure, they would be bound to do so. As the commission itself has noted an advisory opinion of this sort would be “imperfect”,”uncertain ”and” fraught with too many uncertainties for a binding character to be attached to the opinion thus obtained.”(yearbook….1980,vol.2 (part two),pp87-88,paras 9-11)

Under article 96.2 of the charter to the letter, international organizations that are not part of the UN family cannot request the ICJ advisory pinions. Indeed only organs of the United Nations and several specialized agencies of the UN can do so. This leaves out a large part of the world of international organizations. There are several agencies, programs and subsidiary organs not included in the list which might become involved in relevant legal issues during the carrying out of their mandate and which might benefit from being able to refer the matter to the ICJ. For example, the UN High Commissioner for Refugees, the United Nations Environmental Program, the United Nations Development Program, the United Nations Office of Crime Control and Crime Prevention are organs that might be benefits for refer to ICJ. Finally 21 UN organs and agencies can request the ICJ advisory opinions, in practice nly seven of them have exercised this faculty so far. Since 1945 the overwhelming majority of advisory opinions have been requested by the UN organs and the UN General Assembly. Only three Un agencies have requested opinions, UNESCO, International Maritime organization and WHO.

By the contrast, some other permanent courts and tribunals are open to international organizations parties. For example, with the International Tribunal for the Law of the sea, established by the United Nations Convention on the law of the sea of 1982, as well as the Appellate Body of the World Trade Organization.

International criminal tribunals have only criminal jurisdiction and cannot settle disputes, give advisory opinion or decide administrative cases. International criminal tribunals can only hear cases against individuals, not states. Human right tribunals hear cases brought by individuals or associations of individuals against states.

Advisory Jurisdiction

International judicial bodies sometimes might also be given the power to hear requests to give opinions on points of law. As a general rules advisory opinions are not binding upon the requesting party. This does not mean that they might not be used in the context of disputes. Advisory opinions are a powerful political tool. They might decisively influence the outcome of a dispute or the way is interpreted and the direction in which it will eventually develop.

We should notice that not all international judicial bodies are vested with he powers to render advisory opinions. For example, WTO dispute settlement system has no provision for such capacity. As the main objective of the system is solely the settlement of disputes. Non of the international criminal tribunals are given the power of rendering advisory pinions. When international judicial bodies have the power to render advisory opinion the capacity to request them is given not to individual states or groups of states, but to qualified international organizations and collegiate organs on international organizations, which would be expected to weigh the interests of the organization as a whole before making the request.

International Arbitration

Arbitration is a useful tool for the settlement of international disputes to which international organizations are parties. It presents the parties with a flexible system that, if needed, can maintain confidentiality. But we should say at present there is no general treaty open to international organization under which they could accept the obligation to submit such disputes to arbitration. Although a number of bilateral agreements containing such clauses. To date there seem to be four arbitrations between an international organization and a state that are in public domain. So under arbitration clause any dispute between parties, at the request of either party can be submitted to Tribunal of

arbitration. With regard to procedure they have been dealt with by optional rules for arbitration involving international organization and states (1996) of the Permanent Court of arbitration.[1]

The procedures are similar to classical arbitration procedures. The arbitrators are appointed by the parties, the parties may choose to keep the proceedings and awards confidential. There is no provision for *amicus curiae* participation.

In its 2004 report on the accountability of international organization recommended that international organizations continue to insert compulsory arbitration clauses into their agreements with both states and non-states broadly providing for the arbitration of any "dispute the parties are unable to resolve by other means. Further it recommended that the arbitrations be governed by the 1996 Optional Rules for Arbitration Involving International Organizations and States

These rules suggest that it regards them as preferable to other arbitration rules from an accountability standpoint. The rules themselves are an adapted form of the UNCITRAL rules, which the United Nations negotiate in 1976 for international commercial arbitrations. Some notable features include that the rules are potentially applicable to disputes involving an International Organizations and any states that need not be a member states on that international organization. They can choose tribunals composed of one, three or five arbitrators. Most of the additional modifications from the UNCITRAL rules are minor and there are differences between them. Under the international organization rules the tribunal must hold hearing for the presentation of evidence by witnesses or for oral argument if a party so requests at " any appropriate stage of the proceeding" .(International Organization rules , Art 15(2))

The word "appropriate" that there is not in UNCTAD Rule, may reflect an attempt to prevent procedural abuses which could interfere with functioning of either the state or international organization party to a dispute, or attempt to control costs. Another difference is that the parties may remove this issue of interim measures from the scope of the arbitration under the international organization Rules, but do not appear to have the same flexibility under the UNCITRAL rules. Also international organization tribunals have greater discretion to decide cases *ex aequo et bono* . (Article 33 international organizations Rules). The tribunals must apply the rules of the organization at issue, the law governing any agreement or relationship between the parties and where appropriate, the general principle governing the law of international organizations and general rules of international law.

Admissibility of claims

How customary rules relating to admissibility of claims apply to international organizations. We examine two area: diplomatic protection and exhaustion of local remedies.

Diplomatic protection is" the invocation by a state through diplomatic actions or other means of peaceful settlement, of the responsibility of anther states for an injury caused by an internationally wrongful act of that states to a natural or legal person that is a national of the former state with a view to a implementation of such responsibility"(General Assembly resolution 62/67 , 2007)

According to *the reparation for injuries* advisory opinion of the International Court of Justice , an international organization has the capacity " to exercise a measure of functional protection of its agents", (Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, p184)

[1] The Permanent Court f Arbitration was established by the 1899 Convention for the Pacific settlement of International Disputes(1899 Hague Convention). This entity is not a classical arbitral tribunal and does not itself arbitrate disputes. It facilitates arbitrations by maintaining a list of potential arbitrators designated by the parties to the 1899 and 1907 Hague Conventions and hostile oral proceedings.

International Commission in its Working Paper suggests that the requirement of exhausting of local remedies applies in the context of "functional protection" as it does in the context of diplomatic protection. Functional protection arises as an implied power of the organization necessary for the fulfilment of the organization functions. It's a limited power extending only insofar as it is required to allow the agent to perform his or her duties successfully. (Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, pp 181-184)

Responsibility of international organizations

Responsibility is connected with the breach of a valid obligation and can be either internal or international. The same as states, international organizations have responsibility for breach of international law . international Law Commission is a subsidiary organ of General Assembly that its duty is codification and progressive development of international law. The Commission prepared the Draft Article on the Responsibility of International Organizations for Internationally Wrongful Acts(2011) . the commission in 2011 Draft indicates that it is a principle of international law that the breach of any obligation entails the duty of reparation in a proper way. International organizations are entitled to claim their rights, but at the same time have the obligation to respect the rights of other subjects of international law. Their presence and activity in international level demand compliance with the rules of international law, behavior that ensures the peaceful coexistence and cooperation between the subjects and the other actors of international law.

Authority and activities of international organizations may pose difficult questions of responsibility because they increase the possibility of injury or grievance. As members of the international community, international organizations have rights and obligations. (Arsanjani , 1980, p. 136)

Conclusion

International organizations can participate in international judicial proceeding in various forms. They can be both plaintiffs and defendants. in between them International Court of Justice has the important rule and in Statute accepts the international organization jurisdiction to request of Advisory Opinion. Because of limited for international Organization in ICJ, reformation in Statute is taken into consideration. With notice to increase of international organizations, international courts should provide them the effective ways to resolve disputes. However arbitration and other peaceful settlement are useful and flexible tool for the settlement of international disputes to which international organizations are parties.

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