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INTERNATIONAL ORGANIZATIONS AS CREATORS OF INTERNATIONAL LAW

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Abstract: The capacity to create international law is one of the most important elements of international legal subjectivity. Moreover, the creation of international law for many subjects of international law is also their *raison d'être*. A look at the contemporary international law reveals that one type of these entities – international organizations, is playing an increasingly important role in the international legislative process. Therefore, the purpose of this paper is to analyze the participation of international organizations in the creation of international law primarily through two main ways of creating international legal norms – treaties and customary international law. Regarding the creation of international law by treaties, the paper discusses situations when international organizations directly create international law by concluding treaties, as well as situations when international organizations participate in the creation of international law indirectly through states that conclude multilateral treaties. When considering the participation of international organizations in the creation of customary rules of international law, special emphasis is placed on soft law. Finally, the paper reviews the binding acts of international organizations that can become a 'secondary' source of international law.

Keywords: International organizations, international legislative process, treaties, customary international law, soft law, binding acts of international organizations.

INTRODUCTION

There is no doubt that law can only exist in society, and that society cannot exist without law – *ubi societas, ibi ius* (Brierly, 1960, p. 42; Shaw, 2014,

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p. 1).[1] For this reason a system of legal rules has been established in the international community that regulates the relations of members of that same community. Members of the international community have thus become subjects of international law – holders of rights and obligations under the rules of international law. One of the important elements of international legal subjectivity is the capacity to create international law. Therefore, in this circular process that has been going on for centuries, the international community, i.e., its members – subjects of international law, guided by joint needs and interests, create international law whose rules, in turn, create subjects of international law – members of the international community. Moreover, due to the strong interconnectedness and existential dependence of the international community and international law, participation in the creation of international law for many writers is one of the most important elements of international legal subjectivity (Degan, 2011, p. 205; Mosler, 2000, p. 711; Portman, 2010, p. 8). However, as with most subjective rights in the international legal order, this right has long been reserved exclusively for states. From the very beginning of international relations, states began to develop two main ways to create international legal norms – treaties and customs. The two ways of creating international law mentioned above were also confirmed by Article 38(1) of the Statute of the International Court of Justice, which included them among the sources of international law. Article 38(1) thus lists three sources of international law: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations (Charter of the United Nations, United Nations, 1945). It should be noted that Article 38, despite the disagreement of some writers with the enumeration of sources of international law in it, is the most authoritative contractual provision which determines the sources of international law. However, in addition to the sources of international law listed in Article 38, there are other sources of international law in international practice: unilateral acts of states (e.g., promises and renunciations) and binding decisions of

[1] Brierly points out: "Law can only exist in a society, and there can be no society without a system of law to regulate the relations of its members with one another. If then we speak of the *law of nations*, we are assuming that a 'society' of nations exists (…)". Shaw presented a similar view: "Every society, whether it be large or small, powerful or weak has created for itself a framework of principles within which to develop".

international organizations (International Law Commission, 2006, pp. 369-381). It is precisely the emergence of international organizations on the international stage, among other things, that has resulted in the intensification of the creation of international law. Namely, the creation of international law for many international organizations is their main function, so the mentioned capacity of international organizations is one of the most developed elements of their *capacitas agendi*, i.e., business capacity in the international legal order. Today, it is an international practice that international organizations participate in the creation of international law in many ways (Brownlie, 2008, pp. 691-693).[2] They have achieved their participation in the creation of international law through two main ways of creating international legal norms – treaties and customs.

INTERNATIONAL ORGANIZATIONS AND TREATY-MAKING

With regard to the creation of international law by treaties, which, like international customs, are one of the formal sources of international law, the role of international organizations is twofold. On the one hand, by concluding treaties, international organizations directly create norms of particular international law, which over time may even become part of general customary international law. Beginning with the first treaty concluded by an international organization – the Concession Convention between France and the International Bureau of Weights and Measures of October 4, 1875 – we find many treaties in international practice whose parties are international organizations, including those aimed at the progressive development and codification of international law (Chiu, 1966, p. 7). For example, in 1998, the European Union became a party to the United Nations Convention on the Law of the Sea, the most important international legal instrument in the field of the law of the sea, which not only codified existing international law of the sea but also carried out its progressive development. It is interesting to note that only a part of international organizations in their constitutions contain provisions on the capacity to conclude treaties, and thus the capacity to create international law. Of the

[2] Brownlie highlights seven ways in which international organizations are involved in creating international law: a) forums for state practice; b) prescriptive resolutions; c) channels for expert opinion; d) decisions of organs with judicial functions; e) the practice of political organs; f) external practice of organizations, and g) internal law-making.

international organizations whose constitutions contain explicit provisions which provide for the capacity to conclude treaties, it is possible to single out primarily the United Nations and the European Union, as well as some specialized agencies of the United Nations – *Food and Agriculture Organization (*FAO), *International Civil Aviation Organization (*ICAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), and *World Health Organization (*WHO). On the other hand, in addition to the direct conclusion of treaties, international organizations participate in the international legislative process indirectly through states that conclude multilateral treaties (Runjić, 2019). Namely, until the appearance of the first international organizations in the 19th century, concluding multilateral treaties was a real rarity. The multilateral treaties concluded so far were the result of *ad hoc* international conferences convened, as a rule, on the occasion of the emergence of a particular problem. However, the aforementioned *ad hoc* international conferences showed a number of shortcomings, starting with the irregularity of the sessions, which were usually convened in response to a particular event; lack of clear criteria for inviting states to participate in conferences; using conferences as a place to pursue their own state policy rather than discussing and resolving issues, all the way to the fact that unanimity was required to make joint decisions (Amerasinghe, 2005, pp. 3-4). International organizations, which arose in part in response to the aforementioned shortcomings of *ad hoc* international conferences, have taken over one of their main functions – becoming "fora for the adoption of multilateral conventions" *(Sands, Klein, 2001, p. 281).* Moreover, international organizations have become one of the main initiators of the process of concluding multilateral treaties. One can single out the United Nations, i.e., the General Assembly of the United Nations, which initiated the procedure for concluding numerous multilateral treaties, as well as the International Law Commission, which also often initiated the procedure for concluding multilateral treaties. The process of concluding multilateral treaties by states within international organizations takes place in two ways. First, it is the international organizations that adopt the conventions and submit them to the member states, which in turn must give their consent to be bound by the conventions. After states' consent, the conventions become treaties, and thus part of positive international law. This way of concluding multilateral treaties was also recognized by the Vienna Convention on the Law of Treaties of 1969, which in Article 5 determines its applicability to treaties concluded within the framework of international organizations (Vienna Convention on the Law of Treaties, 2005). The constitutions of many

international organizations contain provisions that explicitly place the adoption of conventions under the jurisdiction of international organizations, i.e., their bodies. Article 62 paragraph 2 of the Charter of the United Nations thus provides that the Economic and Social Council may prepare draft conventions on matters falling within its competence for submission to the General Assembly (Charter of the United Nations, United Nations, 1945). On the basis of draft conventions prepared by the Economic and Social Council, the General Assembly adopted, *inter alia*, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (General Assembly Resolution 2200(XXI), 1966). Furthermore, the General Assembly has independently adopted many important conventions, such as: the Convention on the Privileges and Immunities of the United Nations (General Assembly Resolution 22(I), 1946), the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly Resolution 260(III), 1948), the International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly Resolution 3068(XXVIII), 1973), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly Resolution 39(46), 1984). Article XIV (1) of the FAO Constitution provides that the Conference (the FAO plenary body) may, by a two-thirds majority, approve and submit to the member states conventions and agreements on matters relating to food and agriculture (Food and Agriculture Organization, 2017). Pursuant to Article XIV of the FAO Constitution, the Conference has so far approved a total of eighteen conventions and agreements (FAO Treaties Database, 2022). A similar procedure is envisaged in Article 19 of the WHO Constitution, which stipulates that the World Health Assembly has the authority to conclude conventions or agreements in relation to any matter within the competence of the organization, whereby two-thirds of the votes of the World Health Assembly are required for the adoption of such conventions or agreements, which in turn shall enter into force for each member state when it accepts them in accordance with its constitutional procedure (World Health Organization, 2020). The constitutions of certain regional international organizations also contain provisions that place the adoption of conventions under the jurisdiction of those organizations. The Statute of the Council of Europe thus stipulates in Article 1(2) that the aim of the Council shall be pursued through its organs, *inter alia* by concluding agreements and adopting joint action in the economic, social, cultural, scientific, legal, and administrative fields (Statute of the Council of Europe, 1949). The Council of Europe has so far adopted

210 conventions, the most famous of which is certainly the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 2022). The constitutions of some international organizations contain additional provisions that oblige the member states to submit the adopted convention to their ratification bodies within a certain period, regardless of whether they voted for or against it during the adoption of the convention in the international organization, and report to the organization on the measures taken. Article 19 of the Constitution of the International Labour Organization (ILO) first provides that the convention, adopted by a two-thirds majority of the votes cast by the General Conference, shall be transmitted to the member states for ratification (International Labour Office, 2010). The member states are required to submit the convention to their legislatures within one year and, exceptionally, within eighteen months. Finally, the member state is obliged to inform the organization (Director-General of the International Labour Office) of the measures taken in relation to the Convention. A similar solution is provided by Article IV of the UNESCO Constitution, which stipulates in paragraph 4 that conventions adopted by a two-thirds majority of the General Conference must be submitted to the competent bodies of the member states within one year of the end of the session at which they were adopted, while paragraph 6 stipulates the obligation of states to inform on the measures taken (United Nations Educational, Scientific and Cultural Organization, 2020). Alternatively, multilateral treaties are concluded at international (diplomatic) conferences convened by international organizations. As a rule, convening an international conference is preceded by the exhaustive, and often lengthy, work of the international organization, i.e., its bodies and expert bodies, on studying the matter, drafting, and adopting the draft convention, which is then submitted to the international conference for discussion and final adoption. The United Nations is a classic example of an international organization under whose auspice international conferences of states are convened to adopt prepared drafts of conventions. The legal basis is Article 13 of the Charter of the United Nations, which stipulates that the functions of the General Assembly include initiating studies and making recommendations for the progressive development of international law and its codification. To achieve this goal, the General Assembly established the International Law Commission (ILC) in 1947 and approved its Statute (General Assembly Resolution 174(II), 1947). Pursuant to Article 1(1) of the Statute, the main goal of the Commission is to promote the progressive development of international law and its codification. "Progressive development of international law" is defined as the preparation of draft

conventions on matters which have not yet been regulated by international law or in respect of which the law has not yet been sufficiently developed in the practice of states, while "codification of international law" is defined as more precise formulation and systematization of rules of international law in fields where there is already extensive state practice, precedents, and doctrine (Article 15 of the Statute). The ILC, after receiving a mandate from the General Assembly or on the basis of its own decision, begins work on a specific issue. In doing so, a special reporter is appointed for each issue, who drafts a proposal for a draft convention. During his work, the Special Reporter shall report to the Commission on the results achieved, which shall discuss this at its meetings and give instructions to the Special Reporter on further work. At the same time, the Commission shall consult the member states to which it sends proposals for draft articles, inviting them to submit any comments. Once a year, the Commission shall send a report, including draft articles with accompanying comments to the General Assembly. The report is first discussed in the Sixth Committee (Legal) of the General Assembly and only then in the plenum of the General Assembly, which, as a rule, following the instructions of the Sixth Committee, gives the Commission further instructions for its work. After the Special Reporter has completed his work, the Commission adopts the final draft of the articles with a recommendation to the General Assembly to convene an international (diplomatic) conference of the member states to discuss the draft and adopt the convention. Thanks to the work of the ILC, the General Assembly has convened many international conferences to date, which has resulted in the adoption of significant conventions in various fields of international law. One can single out just some of the conventions adopted at international conferences under the auspices of the United Nations: the Convention on the Territorial Sea and the Contiguous Zone (1958), the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), the Vienna Convention on the Law of Treaties (1969), the Vienna Convention on Succession of States in Respect of Treaties (1978), the United Nations Convention on the Law of the Sea (1982), the United Nations Framework Convention on Climate Change (1992) and finally, the Rome Statute of the International Criminal Court (1998). Apart from the auspices of the United Nations, multilateral treaties have been concluded under the auspices of other international organizations. These are primarily United Nations specialized agencies that have convened international conferences to adopt conventions governing important issues in their field. The ICAO has convened several international conferences to adopt conventions governing international civil aviation issues (e.g., the

Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe (1956), the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), the Convention for the Unification of Certain Rules to International Carriage by Air (1999) etc.). The International Maritime Organization (IMO) has also convened several international conferences to adopt conventions governing issues within the scope of the IMO. One can thus single out just some of the most important conventions adopted at international conferences under the auspices of the IMO – the International Convention for the Prevention of Pollution from Ships – (MARPOL) (1973), the International Convention for the Safety of Life at Sea (SOLAS) (1974), and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) (1978). *It can be concluded that international organizations have significantly contributed to the international legislative process. First, thanks to the acquired capacity to conclude treaties, international organizations have become parties to many treaties, thus participating directly in the building of the international legal order. An even more significant role of international organizations in the international legislative process is reflected in the fact that they have become the main place for concluding multilateral treaties. This fact has been recognized by many writers who consider the emergence of international organizations crucial to the development of concluding multilateral treaties. Under the auspices of international organizations, primarily the United Nations and its specialized agencies, many conventions in the form of multilateral treaties have been adopted. The result is an expansion in the number of multilateral treaties concluded after the Second World War, so Szasz (1997, p. 30) points out the number of 1,500 multilateral treaties concluded until 1993 with a tendency to grow. For some of these treaties, primarily those concluded under the auspices of international organizations, the goal was the progressive development and codification of international law. Also, thanks to the rich practice of concluding multilateral treaties, international organizations have improved the technique of concluding multilateral treaties under their auspices, which has resulted in, among other things, the intensification of concluding multilateral treaties. In addition, international organizations, by becoming the main place for concluding multilateral treaties, have contributed to the "*democratization" of the international legislative process (Alvarez, p. 283). While the original ad hoc international conferences at which multilateral treaties were concluded were gathering places for a privileged number of states, primarily great powers, international organizations, as a venue for concluding multilateral treaties, enabled the inclusion of more states, including those "small", who thus gained the opportunity to protect their own interests by directly*

participating in the international legislative process (Alvarez, p. 283). In addition to small states, international organizations have opened the door to participation in the international legislative process and other international legal entities (e.g. international non-governmental organizations) (Ibid., p. 284). Despite the significant role that international organizations play in the international legislative process today, it is still too early to speak of international organizations as "international law-makers". They play this role indirectly through states that are still the most important international legislators at the current stage of the development of international law. Bowett has a similar opinion, believing that the participation of international organizations in the international legislative process is not real legislation, but rather the preparation of interstate legislation within international organizations (Sands, Klein, 2001, p. 282). On the other hand, there are writers, like Alvarez (2006, p. 274), who do not agree with this statement, believing that international organizations have achieved the role of an international legislator. However, it is difficult to adhere to this view, given that states can only commit themselves to the acceptance of a convention concluded under the auspices of an international organization with their own consent.

INTERNATIONAL ORGANIZATIONS AND CUSTOMARY INTERNATIONAL LAW

In addition to treaties, international organizations participate in the creation of international law by creating customary international law. There are two fundamental differences between these two ways of creating international legal norms. The first is manifested in the fact that customary rules are binding on all members of the international community, so they are the main source of general international law with the exception of regional or local customary rules, while treaties are binding only on their parties, thus representing the main source of particular international law (Cassese, 2001, p. 119). Another difference is the fact that customary rules are created in a way that is completely different from the way treaties are created (Ibid., p. 119). The Statute of the International Court of Justice*, determining in Article 38(1)(b),* "international custom, as evidence of a general practice accepted as law" *refers to the two main elements necessary for the emergence of a rule of customary international law. The first element is objective – general practice (repeated and uninterrupted practice; the second element is subjective – legal consciousness (opinio iuris) that this practice is mandatory due to the existence of an appropriate rule of international law (Andrassy, Bakotić, Seršić, Vukas, 2010, pp. 17-18). International organizations have exercised the right to participate in the creation of new customary rules of international law with both elements necessary for their emergence – practice and legal consciousness. First of*

*all, the United Nations General Assembly should be singled out, whose resolutions, adopted in the form of recommendations or declarations, have significantly contributed to the customary process and the emergence of new customary rules of international law. It should be noted that in certain cases, some writers attribute to the resolutions of the General Assembly, which are formally non-binding acts, the significance of the so-called soft law (droit mou). In addition to resolutions, soft law includes other international acts, such as final acts of international conferences, declarations of principles, guidelines, and codes of conduct – whose content is intended to influence the actions of subjects of international law, but in respect of which there is no clear will of states to be the source their rights and obligations (Andrassy, Bakotić, Seršić, Vukas, 2010, p. 31). Cassese (2001, pp. 160-161) singles out three main features that share the aforementioned acts. The first feature is that they are an indicator of new trends in the international community, while another feature is that they address issues that pose new problems to the international community to which the community has not previously paid sufficient attention. The third feature is that, for political, economic, or other reasons, states cannot fully approximate their positions on these issues, and therefore it is not possible to reach an agreement on the legally binding character of these acts. Although soft law does not create rights and obligations, i.e., it is not a law; it still influences the behavior of participants in international relations, so it is given the significance of "quasi-law" (*Shaw, 2014, pp. 83-84; Blutman, 2010, p. 623). *Moreover, soft law can become part of the customary process and thus become part of customary international law, or it can become part of treaties and thus also become part of international law. A look at some of the resolutions of the United Nations General Assembly, which at the time of their adoption were soft laws, reveals that, for example, the Universal Declaration of Human Rights (*General Assembly Resolution 217(III), 1948), *became part of customary international law, while the Declaration of Legal Principles* Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly Resolution 1962(XVIII), 1963) *was incorporated into the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (*United Nations Treaty Series, *1967). Apart from the United Nations, soft law is also found in other intergovernmental organizations. The Guidelines for Multinational Enterprises adopted by the Organization for Economic Co-operation and Development (OECD) are thus an example of a document containing soft law (Harris, 1991, p. 65). Alvarez, on the other hand, cites the FAO International Code of Conduct on the Distribution and Use of Pesticides (1985) and the WTO Doha Declaration (2001) as examples of soft law documents (Alvarez, 2006, pp. 232-233). Given that soft law can become part of the customary process and move into customary international law, on the example of*

*resolutions of the United Nations General Assembly, it is possible to show the transition of their content into customary international law. To make it happen, two main elements necessary for the emergence of a customary rule need to be met: general practice and the legal consciousness that this practice is mandatory due to the existence of an appropriate rule of international law. The content of the resolution must therefore be accepted by repeated practice primarily in the practice of states, but also by other subjects of international law, while the exercise itself must be accompanied by legal consciousness, i.e., the consciousness that the content of the resolution in practice is a mandatory legal rule (*Andrassy, Bakotić, Vukas, 2010, p. 28). *The very transition of the content of the resolution into international customary law, i.e., the "crystallization" of international practice into the international legal rule, which in turn arises as a consequence of the legal consciousness that this practice is a legal obligation, is quite difficult to determine (Degan, 2011, p. 77). First of all, it is necessary to establish the existence of general practice that precedes the emergence of legal consciousness of its obligation. This is primarily the practice of states, which is the most common and most important, but also the practice of other subjects of international law, including international organizations, in terms of implementing the content of the resolution. In addition to the existence of the general practice, it is necessary to establish the existence of legal consciousness that the mentioned exercise or practice is mandatory due to the existence of an appropriate rule of international law. Some writers, therefore, point out the way in which resolutions were adopted as proof of the existence of legal consciousness. Degan (2011, p. 83) thus considers that the declarations adopted unanimously or by consensus by the United Nations General Assembly constitute proof of the existence of legal consciousness of their legal obligation. Shaw (2014, p. 82) thinks similarly, pointing out that the vast majority of states that consistently vote for resolutions on a particular issue provide evidence of the existence of legal consciousness. For Brownlie (2008, p. 15), on the other hand, the adoption of resolutions by a majority vote is evidence of the opinion of governments, while the resolutions adopted in this way provide the basis for the progressive development of international law and "speedy consolidation" of customary rules. However, some writers, like Arangio-Ruiz (1972, p. 431), think that the majority by which resolutions are adopted in the General Assembly often has nothing to do with the intentions of the states that voted for their adoption. Thus, states often do not vote for a resolution out of a belief that it is a legal obligation, but vote for their own opportunistic reasons (e.g., not to remain politically isolated, to satisfy their allies, etc.) (Degan, 2011, p. 84). In order to determine whether the states really believe what they voted for, it is necessary to look at the practice of those states after the adoption of the resolution. Degan (Ibid.) also believes that the final proof of legal conviction of the existence of a legal obligation arises only from the behavior of states*

after the adoption of the declaration, so only the existence of the vast majority of states that adhere to the declaration in practice or invoke it, is confirmation of legal conviction. From the point of view of the International Court of Justice in the Case Concerning Military and Paramilitary *Activities* in and *against Nicaragua we see that the Court took the position that the behavior of states regarding the adoption of General Assembly resolutions can be evidence of legal consciousness* (I.C.J. Reports, 1986, pp. 99-100).[3] *The adoption of the text of the resolutions, in the Court's view, is thus an indicator of legal consciousness of the legally binding nature of the rules contained in the resolutions. The International Court of Justice resonated similarly in a 1996 advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, stating, inter alia, that United Nations General Assembly resolutions, even when not binding, may have normative value because in certain cases they may provide evidence relevant to establishing the existence of rules or the emergence of legal consciousness (*I.C.J. Reports, 1996, pp. 226, 254-255).[4] In order to determine the emergence of legal *consciousness,* it is necessary, in the Court's view, to look at the content of the resolution and the circumstances of its adoption. The Court pointed out that a series of resolutions could show the gradual evolution of legal *consciousness* needed for the emergence of a new customary rule. *We can thus single out some of the resolutions of the General Assembly that served as the basis for the creation of a new customary international law: Declaration* on the Granting of *Independence* to *Colonial Countries* and Peoples (General Assembly Resolution 1514(XV),

[3] 'This *opinio iuris* may, though with all due caution, be deduced from, *inter alia*, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves". (Merits, Judgment, 1986).

[4] "General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio iuris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it also necessary to see whether an *opinio iuris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio iuris* required for the establishment of a new rule". (Advisory Opinion, 1996).

1960); *Declaration* on the *Prohibition* of the *Use* of *Nuclear* and *Thermonuclear Weapons (*General Assembly Resolution 1653(XVI), *1961); Declaration on Permanent Sovereignty over Natural Resources (*General Assembly Resolution 1803(XVII), *1962); Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (*General Assembly Resolution 1962(XVIII), *1963); Declaration of Principles Governing the Sea-Bed* and the *Ocean Floor* and the Subsoil Thereof, *beyond* the Limits *of National Jurisdiction (*General Assembly Resolution 2749(XXV), *1970), etc. In addition to resolutions, international organizations have achieved their participation in the creation of new customary rules of international law through treaties concluded by them or multilateral treaties (conventions) concluded under the auspices of certain international organizations. Treaties concluded by international organizations can thus play an important role in the development of a rule of customary international law, as they can serve as proof of practice or as proof of the existence of legal consciousness of the legal obligation of that practice. However, multilateral treaties concluded under the auspices of international organizations play a much more important role in creating new customary rules. These are, above all, conventions concluded under the auspices of the United Nations, which have one of the key roles in the customary process. Namely, one of the main goals of the mentioned conventions, along with the codification of international law, is the progressive development of international law. The progressive development of international law regulates matters that are not yet regulated by international law or in respect of which law is still not sufficiently developed in the practice of states, and thus directly affects the creation of legal awareness of the legal obligation of that practice.* Finally, international organizations can achieve their participation in the creation of international law by adopting formally or, at least in terms of effects, binding acts for their member states. Given that the binding nature of these acts derives from the constitutions of international organizations, i.e., treaties that are the main sources of particular international law, Cassese (2001, pp. 154-155) treats binding decisions of international organizations as a "secondary" source of international law. *However, he believes that the emergence of this category of sources of international law is a characteristic feature of modern international law. In international practice, only a few constitutions of international organizations contain provisions that provide organizations with the power to adopt binding acts for the member states. Article 25 of the Charter of the United Nations therefore provides for the binding nature of Security Council resolutions for all member states. Article 288 of the Treaty on the Functioning of the European Union also provides that the institutions of the Union may, in the exercise of their powers, adopt regulations, directives and decisions which, in turn, shall be binding on the member states (*Official Journal of the European Union,

2010). Although the constitutions of most international organizations do not contain explicit provisions on the power to make binding decisions for the member states, the decisions of these organizations, although formally non-binding, can also be binding. The binding nature of these decisions derives from their nature, i.e., from the nature of their function, which is necessary for the functioning of international organizations (the doctrine of functional necessity). We can thus single out an example of the so-called technical recommendations of certain international organizations by which international organizations establish international standards (the so-called *standard-setting*), i.e., perform international legal regulation in matters within their scope (Alvarez, 2006, pp. 217-257; Lapaš, 2008, pp. 78-81). Thus, in 1962, the FAO and the WHO jointly adopted the Codex Alimentarius to protect consumer health and promote fair practices in the food trade (Codex Alimentarius Commission, 2022). This document contains about 200 standards governing issues such as pesticide use, food hygiene, use of additives, contamination, food labeling, etc. The development and maintenance of Codex standards is the responsibility of the Codex Alimentarius Commission, which includes 186 countries and one international organization – the European Union. *Members of the Commission have the option of complying with Codex standards or may at any time inform the Commission that they will not apply a particular standard. Articles 37 and 38 of the constitution of ICAO provide that the ICAO Council may adopt international standards and recommended practices (SARPs) relating to civil aviation, making them binding on the member states, except if they do not notify ICAO of rejection or reservation* (International Civil Aviation Organization, 2006). *Similar provisions are found in the WHO Constitution, whose Article 21 stipulates that the World Health Assembly may adopt regulations regarding the implementation of quarantine; nomenclatures with respect to diseases, causes of death and public health practices; standards regarding diagnostic procedures for international use; advertising and labeling of biological and pharmaceutical products in international commerce, while Article 22 of the Constitution stipulates that the said regulations shall come into force for all member states unless they notify the Director-General of the Organization of rejection or reservations within the prescribed period*. The ILO Constitution also obliges the member states to submit recommendations made by the General Conference to the competent authorities for implementation and to report to the organization on the measures taken. Similar provisions obliging members to report on the measures taken with regard to recommendations adopted by international organizations can be found in the constitutions of other international organizations such as the FAO and UNESCO.

CONCLUSION

Although for a long time they were considered a "second-class" subject of international law, international organizations have managed to become indispensable actors in the international legislative process. Moreover, the institutionalization of international cooperation has currently created the most appropriate framework for further improvement of the international legislative process and, consequently, for the faster development of international law. In addition to "technical" advantages, institutionalized multilateral cooperation has enabled a greater number of states, but also other actors such as intergovernmental organizations, international non-governmental organizations and transgovernmental organizations, to be involved in the creation of international law (Runjić, 2014). It is, therefore, not surprising that participation in the creation of international law, i.e., the regulation of relations between the subjects of that law, is for most international organizations one of their main functions assigned to them by their creators – the states. The analysis of the participation of international organizations in the international legislative process has definitely confirmed the capacity of international organizations to create international law – directly and indirectly. International organizations thus directly create international law by concluding treaties, but also indirectly through the states that conclude treaties. Participation in the creation of customary rules of international law "*with both elements necessary for their emergence – practice and legal consciousness",* represents further evidence of the capacity of international organizations to create international law. Finally, binding international decisions based on treaties – the constitutions of international organizations – can be considered a secondary source of international law. However, it should be emphasized that the creation of international law is still primarily the prerogative of states. Namely, despite the phenomenon of international organizations, but also the emergence of other, non-state actors (e.g., international non-governmental organizations, multinational corporations), as well as the pessimistic announcements of some writers from the end of the last century that they are nearing their end (Gu*éhenno, 1995;* Ohmae, 1993), states have remained the main actors on the international stage, and the international legal order is still state-centric conceived.

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