AGREEMENTS BETWEEN INTERNATIONAL ORGANIZATIONS AND INDIVIDUALS IN THE VISION OF DOMINIQUE CARREAU

Dumitrița FLOREA¹
Narcisa GALEȘ²

Abstract

Before analyzing the conception of Carreau must mention that there is a distinction between agreements between states and foreign private individuals and agreements between international organizations and private parties. The diversity of solutions is explained by the difference in legal status between states on the one hand and international organizations on the other. Agreements between states and foreign private individuals takes the form of international contracts, ie contracts that link with more than one legal or contracts that "not all elements are located on the same territory." These agreements are extremely numerous and cover many different situations. Still, they all ask the same legal issue that concerns the law applicable to this type of contractual relations. After much hesitation, and doctrinal and jurisprudential controversy, it seems that now goes off juridicum a new body in the birth of a genuine "international law of international contracts". Agreements may relate to the supply of goods for civilian or military services (contracts for studies or technical assistance), the exploitation of natural wealth local (concessions), the management of public services (concession contracts or exploitation) constructions in public areas (roads, ports). They may have an exclusively financial goal (loans) or form joint ventures between the state and a foreign private person.

Keywords:

international law, the international contracts, private persons, international organizations.

JEL classification: K 33.

¹ Lecturer Phd, Stefan cel Mare" University of Suceava, Romania, dumitritai@seap.usv.ro
² Lecturer Phd, "Stefan cel Mare" University of Suceava, Romania, narcisam@seap.usv.ro

INTRODUCTION

The state has created a comprehensive domestic legal system composed of civil law, commercial law, corporate law, private international law, family law, administrative law and others (L. Pascariu) that do not exist in international organizations. However, if EU could create a substantive "Community" law in these areas. In these circumstances, the national legal systems are likely to be laws about contracts concluded by international organizations with individuals. One certainty is that the state has the fullness of the international skills. However, international organizations have only a derived and functional competence. Consequently, the share of contracts that international organizations can conclude is necessarily more limited than that of the contracts concluded by states. A basic example: an international organization having, by definition, no territory will not be able to contract concession or exploitation of natural wealth. Subjecting international contracts to the international law does not answer to the same concerns when public counterparty is a state or an international organization.

TYPOLOGY OF CONTRACTS CONCLUDED BY INTERNATIONAL ORGANIZATIONS WITH INDIVIDUALS

Carreau distinguishes three types of contractual relationships:

• employment contracts linking the organization with its temporary agents and are assumed in contracts of administrative kind, known in some internal order;
• contracts relating to the activities of international organizations concerned: these can be commercial contracts for providing services or real estate (such as the purchase or rental of premises, construction contracts, etc.);
• contracts relating to the mission itself of the international organization: it may be the issue of cooperative projects undertaken with other partners or contracts for loans or warranties to financial institutions (eg the World Bank or regional development banks, Dominique Carreau, Fabrizio Marrella).

As regards the applicable law, we should mention that, in principle, it depends on the will clearly expressed by the contracting parties. However, the autonomy of the will is far from being manifested in a clear and systematic practice. In addition, there is no international law in the field.
They are provided and alternately held two general solutions: the application of a determined state law and international law enforcement.

Relating to the first issue, we can say that there are several possible choices. Most often the law of a determined state is that will govern the contractual relationship between an international organization and a private person when they relate to "current" commercial transactions or when they are directly related to the legal and economic systems in one country. In the case of supplies of goods or services, the applicable law will be that of the state in which the international organization has its headquarters, or in rare cases, the state whose nationality has private party. For loans launched by an international financial market, the law of the country is very precise, the law of this country of that branch will be the one to lead the transaction. Regarding the reasons for choosing a state in these areas law is very precise known private party concerned and meets all the security and predictability requirement to inspire confidence. For example, in order to launch a loan on a national financial market, an international organization will be subject to local regulations, to accept the jurisdiction of local courts and waive any immunity from jurisdiction and execution. In such cases, the submission of these transactions to a precise state-law is consistent with the interests of international organizations and the interests of private contractors.

Regarding the second issue concerned the application of international law point out that international law can keep two different sources: it will be either the internal law of the international organization considered either general international law.

- The internal law of international organizations: international organizations issue legal rules in order to govern certain situations or relationships that relate to their own operation and management (rules of procedure, financial, etc.). International organizations often adopt general rules, goals, of regulatory nature will be applied in the international contracts they will conclude with individuals. Therefore, such contracts of recruiting agents will comply with civil service status developed by the organization. This status will simultaneously constitute the basis and the applicable law in such contracts; in the case of litigation, the administrative tribunal of this organization will be the one to decide. Also, many international organizations, such as the national public administrations have set up the so-called specifications for awarding public international markets they agree to finance: these "type-clause " will be incorporated into their contracts with private parties (as contracts for loans from the World Bank or its subsidiaries, or the International Development Association - IDA).
International general law: here we find the same issues as those examined in the agreements concluded between states and individuals. The sources are identical. The content of this material as is the analogue of a notable difference in terms of the controversial validity called "stabilization" or "intangibility" (P. Mayer). Indeed, the term stabilization, when inserted in a contract between an international organization and one individual person has a different purpose: it is intended to protect both sides of amendments to the legislation of the state whose law was chosen in common agreement to govern the contract. For obvious reasons of legal certainty, the two sides intend to "freeze" the state of national law chosen as applicable. The public side is entitled to the prerogatives of sovereignty to modify its contractual obligations, even to revoke, in an unilateral manner. Such concern for the private reappears when the contract is subject to the domestic law of the international co-contracting organization.

The practice followed by international organizations in this field proves to be very divergent. International organizations determine the law which will apply to the contract with a private person: often, the legal status of such agreement will be that provided by a specific state law agreed between the parties. However, institutions such as the UN or the ILO concluded international contracts sui generis often unrelated to any specific national law and must be interpreted in the light of the rules of international law and in particular the principles of law. The practice developed by EBRD goes in this direction. In the general lending conditions in the public sector, the appeal to arbitration is provided for in the terms imposed by the UNCITRAL Convention, which states that judges will apply international law (section 8.04). This obsolete expression is defined in relation to sources of international law as they appear in art. 38 of the Statute of ICJ.

A good example is the IBRD loan agreements with non-state entities. When the World Bank agrees to lend one of the countries to finance an investment driven, this operation translates into a set of agreements quite complex, meaning that the bank concluded first agreement umbrella state (a loan agreement or, most often, warranty). It keeps public international law and can be assimilated to a treaty. Then the bank will conclude a specific agreement with user national lender of funds, the latter being a moral person related to the internal legal order of the Member State concerned by IBRD; strictly speaking this loan agreement concerns the conditions of the project financed by the Bank and the procedures for reimbursement of sums granted by EBRD. The legal nature of these loan agreements: and note that it is not treated within the meaning of the Vienna Convention of 1969.
Being registered with the Secretariat-General of the United Nations and published by him applying art. 102 of the Charter (in Adrian Năstase, Bogdan Aurescu, Ion Gâlea) does not allow to reach a different conclusion; these loan agreements are not recorded and published only as Annex, the original umbrella agreements concluded between IBRD and helped member country. In reality, we are here in the presence of a new category of international agreements concluded between subjects of law of nature and different legal regime. As regards the applicable law, these loan agreements cannot be governed by the law of the State of the World Bank helped. This would mean that these agreements should be fully subject to statutory schemes in all member countries IBRD. Obviously such surface of agreements must be applied a uniform legal regime regardless Contracting Parties partner with the World Bank.

**AGREEMENTS BETWEEN PRIVATE PARTIES**

In general, these agreements are not under international law, but a particular branch of law specific to each state: private international law (conflict of laws or law - conflict of law). Consequently, it is not international instruments that constitute a source of international law. On the other hand, international law does not apply those provisions except where there is the international conventions particular in the field (such as Articles 85 and 86 of the Treaty of Rome, which became Art. 101 and 102 TFEU on "restrictive business practices" that prevents free competition or abuse of dominance "or agreements relating to uniform laws in certain areas, responsibility and some international operations, such as for example sales of real estate objects. However, in some private sectors, from international economic relations, this petition of principle must be qualified, because she knows notable exceptions. Indeed, agreements between private persons can become "an area of international concern" (Carreau, Fabrizio Marella) and this in two ways: directly and indirectly. Whether some of these agreements - because the impact economic - are covered, framed on States and international organizations or, exceptionally, some agreements between private parties will give rise to binding rules of international law.

Control of international law on acts of "private economic power": restrictive business practices. The control of "restrictive business practices" is a well-established internal order and one of the concerns relatively old constitution. The first laws were adopted in the United States in the last century (as the Sherman Act) or at the beginning of

Since then, most of the countries, especially the developed countries have tried to fight against abuse of "economic power" and tried to obey the law. According to the OECD, "restrictive business practices" can be defined as all private or public undertakings actions affecting international trade restricting competition by limiting access to markets or introducing a monopolistic control. The considerable increase in international trade and in particular by the prodigious development of multinationals, restrictive trade practices became an international concern. Undoubtedly private individuals remain objects of international law; however, their anti-competitive activities will be directly subject to the rules of international law. In other words, the economic power of multinationals has pushed states and international organizations to act internationally.

The notion of international restrictive business practices. Internationally, such practices are in place by secret agreements or arrangements between private or public undertakings of different nationalities. They give rise to what is called a cartel. These restrictive practices snaps in concert sales prices and resale of a product, share markets geographically most often discriminate against certain customers (eg refusal to sell), limited production volume, limited transfers technology. These are often the practices of multinational enterprises. The most famous was the cartel ended September 17, 1928 Achnacarry the oil field by great age; this agreement known as is agreement has been the common lex petrolea for nearly 50 years.

International control of restrictive business practices. Although there are many ambitious projects, achievements remain limited due to the complexity enterprises. However, there are many gaps in the multilateral trading system. Havana Charter of 1948 which gave birth to the International Trade Organization (ITO) contains an entire chapter (V) on "restrictive business parties" which meant to control. However, this book never entered into force and OIC had never seen daylight. His successor, GATT has not received any jurisdiction in the few attempts intrepinse supervision of this institution have resulted in failure. This shortcoming was not covered by the new World Trade Organization (WTO). Currently, international control of restrictive business practices are at the heart of various draft codes of conduct for multinationals and technology transfer discussed in UNCTAD or the UN. But these codes of conduct are still at the discussion stage. So far, the only notable achievements were recorded in a regional framework. In particular, the 1957 Treaty of Rome establishing the EEC to set up an institutionalized control, while the Court of Justice in
Luxembourg has significantly contributed to the development of this new branch of law. Subsequently, the Council of Ministers adopted important guidelines entered into force on September 21, 1990 and extensively revised in 2004 which instituted a prior control of concentrations with a Community dimension. We note also that the EFTA reached appreciable positive results in this area. Most often, such control is not implemented only by means of very flexible cooperation between competent national authorities. Thus, the recommendations adopted by the OECD Council in 1967, 1973 and 1974 provide for infringements, exchange of information between governments and possibly coordinate prosecutions under their laws. In short, international law is still scarce in this sector very complex and difficult to deal with; he is far from able to control the activities of private economic power. Approaches often remain national where quite frequent frictions due to claims of countries from the US to want to give their own law a territorial effect. And hence the need for multilateral international treaties to prevent and control such conflicts of sovereignty and jurisdiction.

**Private individuals, direct authors of international law.** There are some exceptional cases, but increasingly important that individuals emit rules of international law apply to all actors in international society including states. It is one of the outstanding features of contemporary society and its right border. The fact is that these individuals could not play this role with the complicity sometimes active but mostly passive, nation-states. No doubt, the path remains unilateral action means privileged and most visible of these transnational actors. However, it happens more rarely be used and contractually two large sectors have here singled out: currency and finances on the one hand, compensation for pollution by hydrocarbons on the other hand.

**Private individuals, authors of the international financial and monetary rules.** The international monetary and financial sector which is of cardinal private monetary system is now essential reality, much more than public international monetary system established by states at the end of World War II around the IMF and IBRD. Private international banking power has developed progressively since 1960 two new international markets really: money market - one called the euro currency and financial markets, called the euro-obligations. It has a new legal order, suite, which takes the form of contract; these contracts (essentially loan agreements) standardized general commercial usage and practice currently formalizing banking profession; these usages and practices of general application and are as many clauses type (standard) of non-negotiable that all participants must
comply so that it is not excluded to be considered customary rules. These private customs are binding on all participants in these international markets, be it about other individuals or governments or international organizations, whether lent or borrowed funds. States, whether capitalist or socialist or developing, have always accepted these uniform rules needed, but that it was unable to formulate them.

**Birth of a private economic international order.** In short, in this financial and monetary field, the international banking power has created a true private economic international order covering gaps of conventional public international order and it is complementary and useful. Sometimes it simply replaces it. All these developments would not have been legally possible against the will of the states: they let things proceed or even encouraged them when they demanded interests (ie additional funding sources; To see, Euro-credits, Paris, Lictec, 1981, especially the contribution of MM. Blaise and Fouchard, p. 155 and the following, as well as Economic International Law, op. cit, nr. 1621).

**Simplifying the conditions of compensation for pollution by hydrocarbons for private persons.** Long before they were signed, the agreements called Tovalop, replaced by Plato 1985, now merged with opolitan crystal and FIPOL organization. These were concluded exclusively between private parties, namely carriers, oil companies, insurance companies and provide harmonized conditions for damages as a result of oil pollution (collisions at sea, damage, etc.) Conditions for compensation institute such agreements are net more favorable than those established by the intergovernmental Convention in Brussels on November 29, 1969 (C. Wu).

**Private contracts benefiting states.** Legal is a question of private law contracts, expressly subject to English law. Or, they cover important gaps of international law, not to speak of some national laws. In addition, the agreement has Tovalop in art. 7 (now resumed FIPOL) that governments will seize Management Authority which it establishes for the purposes of compensation; we are here in the presence of very exceptional stipulation which states are those that will benefit from the rights that have been recognized in a private agreement which were not obviously part. In other words, by private agreement, countries will be able to use certain rights against individuals signatories to these commitments. We are here in the presence of some kind of "stipulation for another inverted": Typically, states are making efforts to obtain favorable treatment for their nationals in treaties with third countries; except that here the situation is exactly the reverse.
CONCLUSIONS

We believe that it is wrong to assert that the border between private and public terms is meaningless. All these last examples of fundamental areas of contemporary international life shows that the famous and traditional boundary between public law and private law is exceeded, sometimes losing consistency. Elaboration of international / transnational contemporary law is the best illustration.

REFERENCES