

Proliferation of International Organizations

Legal Issues

edited by

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PROLIFERATION OF INTERNATIONAL ORGANIZATIONS

LEGAL ASPECTS OF INTERNATIONAL ORGANIZATION

VOLUME 37

PREFACE

The proliferation of international organizations is presently a hot issue. New international organizations have been created over the last few years such as the Organization for the Prohibition of Chemical Weapons and the World Trade Organization. At the same time a certain reluctance may be observed – often dictated by the fear for new costly bureaucracies – to creating new organizations. This is perhaps to be expected in a neo-liberal era of privatization, of more market and less government. It is often concluded that the costs of the creation of a new international organization outweigh the benefits. In addition, questions often emerge concerning the co-ordination of activities of international organizations. Overlapping activities and conflicting competences frequently occur and the need for co-ordination is evident. The events in former Yugoslavia are an example. Both during the armed conflicts in Bosnia and Kosovo and afterwards in the era of reconstruction, the need to co-ordinate the work of organizations such as the UN, NATO, the EU, the World Bank, OSCE, and the Council of Europe was vital.

Against this background, a number of legal issues which have not yet been researched extensively have become more important, perhaps the only exception being the proliferation of international tribunals. Questions include the following: Why were new organizations created while others already existed in the same or a related field? What specific legal problems arose that were related to the coexistence of different organizations working (partly) in the same area? What mechanisms or instruments have been developed to co-ordinate the activities and to solve legal problems?

These and other questions were discussed during a conference that took place from 18 to 20 November 1999 in the Academy Building of Leiden University, the Netherlands. The conference was organized under the auspices of the Europa Institute and the E.M. Meijers Institute of the Leiden Law Faculty. A large number of experts, both academics and practitioners, participated. Presentations were given, and the participants exchanged their views and experiences.

The purpose of this book is to present the issues discussed during the Leiden conference to a larger audience. This book is more than a collection of papers prepared for the conference. The papers were adapted where authors considered this appropriate. In some cases,

papers have been substantially expanded. Furthermore, the conference has stimulated some participants who did not present a paper to contribute to this book.

Therefore, we feel safe in concluding that both the idea – launched some three years ago – as well as the *travaux préparatoires* in preparing this conference and subsequently this book has catered to a need.

This book follows the structure of the conference. In the first part a number of topics will be discussed that explore the general theme from various angles, both academic and practical. First, there is a general introduction to the theme of the book, followed by a contribution concentrating on the attitude of states towards the proliferation of international organizations. Two further contributions will focus on possible ways to demarcate the working areas of international organizations: geographic demarcation (co-ordination between universal and regional organizations) and functional demarcation (between the UN and its specialized agencies, with reference to the 1996 WHO Advisory Opinion of the International Court of Justice). Some case studies of very different areas of international co-operation will be presented. The World Bank experience is discussed, as well as the proliferation of disarmament organizations and the case of multilateral environmental conventions.

Within the general proliferation theme one may distinguish, more specifically, the proliferation of law-making and judicial organs of international organizations. One contribution will examine the role of the International Law Commission (ILC). Among the questions addressed is the question of whether the ILC should concentrate on more general areas of international law, such as state responsibility, or should also be involved in law-making in more specialized areas such as telecommunications or human rights law. Further contributions will discuss the proliferation of judicial organs. Following a general analysis of the proliferation of international tribunals, presidents, members and officials of the International Court of Justice, the Law of the Sea Tribunal, the WTO's Appellate Body and the European Court of Human Rights will offer their comments.

The remainder of the book is devoted to two selected issues with which many organizations are increasingly confronted nowadays. First is the proliferation of standards. The more variety there is amongst the members of an organization, the more relevant the question becomes of whether the organization should maintain lower but at least uniform standards, or whether it is preferable to have different standards. This has long been a familiar issue within the International Labour

Organization. More recently, the issue has presented itself within the Council of Europe and the European Union, in view of their accomplished or forthcoming expansion of membership. The second issue is that of accountability, a prominent topic nowadays on the agenda of international organizations. As many organizations have developed or are developing their own accountability regimes, the question of the extent to which there is a need for general rules on accountability of international organizations will be examined. Additionally, one case study will analyze the question of whether the World Bank Inspection Panel will present an example of an 'accountability instrument' that could also be useful for other international organizations. The final contribution will offer some reflections inspired by the discussions during the conference.

We would like to express our deep appreciation to a large number of people and organizations without whose help it would not have been possible to organize the conference and prepare this book. First of all we express our gratitude to the sponsors of the conference: the Ministry of Foreign Affairs and the Ministry of the Interior, the Royal Dutch Academy of Sciences, the Cornelis van Vollenhoven Foundation, the Legatum Visserianum, the Europa Institute, the Leiden Law Faculty and Leiden University. We also warm-heartedly thank our colleagues whose assistance in the preparations has been indispensable. Without mentioning each of them individually, we would like to make an exception for our conference manager, Ms. Ine Houweling. The idea of organizing a conference is one thing, managing such a venture is something different. We are indebted to her for the smooth running of the conference. Last but not least, we greatly appreciate the support given by Kluwer Law International, not only by fully taking care of the work involved in this publication, but also by offering suggestions for participants to the conference and contributors to this book.

We greatly enjoyed this project in all its stages and hope that this book will contribute to further discussions both in the academic world and in practice.

Niels M. Blokker & Henry G. Schermers
Leiden, July 2000

TABLE OF CONTENTS

Preface	v
Proliferation of International Organizations: an Exploratory Introduction <i>Niels M. Blokker</i>	1
The Attitude of States towards the Proliferation of International Organizations <i>Ignaz Seidl-Hobenveldern</i>	51
Co-ordination between Universal and Regional Organizations <i>Christian Dominicé</i>	65
The World Court, the WHO, and the UN System <i>Nigel D. White</i>	85
Techniques to Avoid Proliferation of International Organizations – The Experience of the World Bank <i>Ibrahim F.I. Shibata</i>	111
The Proliferation of Arms Control Organizations <i>Paul C. Szasz</i>	135
The Proliferation of International Institutions Dealing with International Environmental Matters <i>Gerhard Loibl</i>	151
Organizational Proliferation and Centralization under the Treaty on European Union <i>Armin von Bogdandy</i>	177

The Proliferation of Law-Making Organs: A New Role for the International Law Commission? <i>Rosanne van Alebeek</i>	219
The Proliferation of Administrative Tribunals <i>Paul C. Szasz</i>	241
The International Court of Justice and other International Courts <i>Hugh Thirlway</i>	251
The Proliferation of International Judicial Organs: the Role of the International Court of Justice <i>Dietmar W. Prager</i>	279
The Dispute Settlement System of the World Trade Organization: Institutions, Process and Practice <i>Florentino Feliciano and Peter L.H. Van den Bossche</i>	297
Comments <i>Thomas A. Mensab</i>	351
Comments <i>Christos Rozakis</i>	361
Flexibility and the International Labour Organization <i>Dominick Devlin</i>	365
The European Union and the Concept of Flexibility: Proliferation of Legal Systems within International Organizations <i>Ige F. Dekker and Ramses A. Wessel</i>	381
Extending the European Family of Nations: The Response of the Council of Europe to Growing Membership <i>Rick Lawson</i>	415

The Primary Model Rules of Accountability of International Organizations: The Principles and Rules Governing their Conduct or the Yardsticks for their Accountability <i>Karel Wellens</i>	433
Views from Practice <i>Larry D. Johnson</i>	471
The World Bank Inspection Panel: A Model for other International Organizations? <i>Sabine Schlemmer-Schulte</i>	483
Final Remarks <i>Henry G. Schermers</i>	549
Index	563

PROLIFERATION OF INTERNATIONAL ORGANIZATIONS: AN EXPLORATORY INTRODUCTION

Niels Blokker*

INTRODUCTION

In the year 1900 only a few international organizations existed, such as the Rhine and Danube Commissions and communication organizations like the Universal Postal Union and the International Telegraphic Union. Notwithstanding visionary studies such as Lorimer's detailed *Scheme for the Organisation of an International Government* (1884), it was only in exceptional cases that States would structure their co-operation within the framework of a new legal entity.

This reluctance to create international organizations came to an end during and immediately after the Second World War. There was a true *hausse* at the time in the creation of new organizations, governing international co-operation in all kinds of areas, both at the global and the regional level. Gradually "a kind of superstructure over and above the society of States" emerged.¹ However, whereas for the society of States a substantial body of rules of international law has been developed, such a body of rules is largely absent for this "superstructure".

Today the existence of so many international organizations often leads to questions to which there are no easy answers. Overlapping activities and conflicting competences occur frequently and the need for co-ordination is evident. The events in former Yugoslavia are an example. Both during the armed conflicts in Bosnia and Kosovo and afterwards in the era of reconstruction, the need to coordinate the work of

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¹ H. Mosler, *The International Society as a Legal Community*, 140 RdC (1974 IV), at 189.

organizations such as the UN, NATO, the EU, the World Bank, OSCE, and the Council of Europe was vital.

The creation of international organizations, their development and proliferation is a fundamental development that requires our attention. However fundamental, the legal issues resulting from the proliferation of international organizations have not been researched extensively yet. What has been examined, in particular during the last few years, are elements of this larger subject, such as the proliferation of international tribunals. The main aim of this introduction is to introduce the wider issue of the proliferation of international organizations and to explore some general legal issues.

Although it is generally assumed that there is a proliferation of international organizations, there are good reasons to examine first of all if this is indeed true (Section 2). Subsequently Section 3 will briefly analyze how this proliferation can be explained. The largest part of this introduction (Section 4) is devoted to some general legal issues related to the proliferation of international organizations. A core issue is the delimitation of competences. Three case studies are presented to further illustrate this. Some general observations are made, and the case for an "inter-organization principle of good neighbourliness" is examined. Finally two frameworks for the delimitation of competences are briefly analyzed, the decentralized framework of the UN family and the centralized framework of the European Union.

PROLIFERATION OF INTERNATIONAL ORGANIZATIONS: IS THE TRUISM TRUE?

If there is one question concerning the theme of this book that seems to be superfluous, it is the question of proliferation itself. It is difficult to find a publication about international organizations in which it is not mentioned or denied that there is a proliferation of international organizations. However, there are three good reasons for nevertheless examining if this truism is true.

MUSHROOMING OF INTERNATIONAL ORGANIZATIONS? A BRIEF QUANTITATIVE ANALYSIS

First of all, there is the apparently easy question if there are more international organizations today than five, ten, or fifty years ago.

The most authoritative and up to date source of information for answering this question is the Yearbook of International Organizations. Most authors use this source when examining the number of international organizations and refer to a figure indicating the number of "intergovernmental organizations".² Until the mid-1980s literature could safely conclude on this basis that there was a true mushrooming of international organizations.³

Perhaps somewhat unexpected, the Yearbooks after 1985 show a significant decrease of this number. The latest issue of this Yearbook reports that, following an initial rise from 37 in 1909 to 118 in 1954 and to 365 in 1984, this number went down considerably since the second half of the 1980s: 309 in 1988, 286 in 1992, 260 in 1996, and 241 in 2000.⁴ Therefore, if this classification would cover all public international organizations the conclusion would be that the number of organizations has decreased significantly over the last fifteen years. Scholars seem to be in serious difficulties now if they want to give a scientific

² See e.g. P. Reuter, *Institutions internationales* (7th ed. 1972), at 198; A. Cassese, *International Law in a Divided World* (1986), at 85; D. Dormoy, *Droit des organisations internationales* (1995), at 4. In the latest edition of the Yearbook (1999-2000, Vol. 1B, at 2356), it is explained that the table presented "suggests different answers to the question 'How many international organizations are there?'". The first answer is of special relevance here: "conventional intergovernmental organizations, when attaching importance to the non-existence of international non-governmental organizations in terms of international law". Although this wrongly indicates that NGO's do not exist under international law, it rightly distinguishes between these two types of international organizations. It is assumed in this Yearbook that "an organization is intergovernmental if it is established by signature of an agreement engendering obligations between governments, whether or not that agreement is eventually published" (*id.*, at 2354). From a legal perspective it is indeed the origin and public function that distinguish intergovernmental organizations from NGO's.

³ See e.g. W.J. Feld and R.S. Jordan, with L. Hurwitz, *International Organizations – A Comparative Approach* (1983), at 9: using the Yearbook of International Organizations, it is observed that "[t]he number of IGOs and INGO's has grown tremendously since World War II. The total of IGO's operating in 1977 was about 308; their number may reach 380 by 1985".

⁴ Yearbook of International Organizations (2000-2001), Vol. 1B, at 2407. If this is examined in more detail, looking at the four subcategories distinguished in the Yearbook (types A (federations of international organizations), B (universal membership organizations), C (intercontinental membership organizations), and D (regionally oriented membership organizations)), this decrease is to a limited extent explained by the declining number of intercontinental membership organizations (from 51 in 1984 to 33 in 2000), but mainly by the reduction of regionally oriented membership organizations (from 283 in 1984 to 230 in 1988, and further down to 172 in 2000). See Yearbook 2000-2001, Vol. 1B, at 2407 (Appendix 3: table 2).

underpinning for the observation that there is a proliferation of international organizations.

However – as is often overlooked – public international organizations can also be found in other subdivisions of this Yearbook classification, such as “organizations emanating from places or persons or other bodies”,⁵ “organizations of special form”,⁶ or “multilateral treaties and intergovernmental agreements”. The figures for these subdivisions reveal a true explosion of international organizations.

It appears therefore that the above mentioned decrease does not relate to a sudden dissolution of so many organizations but to a transfer to one of the other subdivisions, as was confirmed by one of the editors of the Yearbook.⁷ Although it seems true that there is a proliferation of international organizations, certainly if the present situation is compared to that of 25 or 50 years ago, it is difficult to give precise figures. Much also depends on the definition of public international organizations. A careful analysis of the Yearbook figures has been made by Amerasinghe. He concludes that “it may be possible [...] to conjecture that the figure for public international organizations as such is certainly over 500 and probably under 700”.⁸ A similar estimate was made earlier by Virally.⁹

LESS PUBLIC INTERNATIONAL ORGANIZATIONS IN AN ERA OF PRIVATIZATION? INTERNATIONAL ORGANIZATIONS AS CHAMELEONS

In an era that is characterized by privatization, by more market and less government, it may be expected that there is not much interest in

⁵ For example, organizations created by other international organizations such as the Joint Vienna Institute are classified in this category (*id.* at 1690).

⁶ For example the Inter-American Development Bank (*id.* at 1122), Mercosur (Southern Common Market; *id.*, at 2104), the European Communities (*id.* Vol. 1A, at 711-714) and the European Union (*id.* Vol. 1A, at 876).

⁷ One of the editors of the Yearbook wrote to the present author that this question is not one of a decreasing number of organizations but “increasing selectivity on our part”. The parameters were changed during this period and some of the organizations previously included were “transferred” to other categories.

⁸ C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (1996), at 6 (footnote 10).

⁹ M. Virally, *Panorama du droit international contemporain*, 183 RdC (1983 V), at 252 (footnote 86).

international governance through international organizations.¹⁰ This is true to a certain degree. For example, whereas it was fashionable in the 1970s to create intergovernmental commodity agreements that in some cases had market intervention mechanisms, since the 1980s such agreements lost favour in particular of developed countries. The death-knell was rung over the more interventionist commodity agreements with the collapse of the 6th Tin Agreement, until then generally considered to be the most successful example in the long history of intergovernmental co-operation between commodity importing and exporting countries. Today little is heard of international commodity organizations.

However, at the same time this turning tide also reveals the chameleonic nature of international organizations that may change colours when the spirit of the age is deviating from the one prevailing when they were created. A good example is an organization that is virtually unknown, the International Center for Public Enterprises. It was created in 1974 to improve the performance of public enterprises in developing countries. When the concept of public enterprises lost most of the sympathy it once enjoyed among the member States, the organization was restructured. Since 1996 it is known under the name of International Center for the *Promotion* of Enterprises and its objective is now to promote enterprise development in the developing and transitional economies.¹¹

In addition, not only do existing organizations change colours, but also new organizations are created to serve new needs. Examples are the European Bank for Reconstruction and Development and the Joint Vienna Institute, whose creation followed the collapse of the Soviet Union.

Although it is difficult again to draw detailed conclusions, the net result seems to be positive in quantitative terms. While international organizations are occasionally dissolved, others are restructured and new ones are created. The era of privatization did not stop the proliferation of international organizations.

¹⁰ Cf. M. Bettati, *Le droit des organisations internationales* (1987), at 121: "Au 'moins d'Etat' de l'ordre interne correspond un 'moins d'inter-Etat' de l'ordre international".

¹¹ Emphasis added. See *Yearbook of International Organizations 2000-2001*, Vol. 1B, at 1261-1262.

MORE FLEXIBLE FRAMEWORKS FOR A ZAP SOCIETY? INSTANT INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL ORGANIZATIONS AS STABILIZERS

A third reason for questioning the truism that there is a proliferation of international organizations is that they are sometimes considered too bureaucratic, too lethargic as instruments for the dynamic co-operation that is sought. States often prefer more flexible and ad hoc forms of co-operation. Since 1975 the G-7 (now G-8) meetings have developed into a powerful forum for policy co-ordination, in economic affairs, and increasingly also in many other areas. For example a G-8 consensus was crucial in the spring of 1999 to "solve" the Kosovo crisis.

And there are many more examples. Ad hoc frameworks are often created to deal with a short- or medium term need for co-operation. For example, in May 1999 a high-level steering group for the Balkans was created, chaired jointly by the EU and the World Bank. This group was established by signing a statement by the European Commission and the World Bank.¹² This statement set out the objectives, modalities and procedures according to which they will coordinate "the response of the international community to the crisis in Kosovo".¹³ One of the four basic principles agreed upon for this operation is to "keep structures light and efficient, and where possible build on existing structures". A joint office was set up in Brussels and a small Task Force was created composed of officials from the Commission and the World Bank. The Task Force started its work immediately.¹⁴

Furthermore, there is an increasing number of joint programmes of international organizations to deal with issues that "belong" to the fields of operation of different organizations. Take UNAIDS as an example. Its current official name is Joint United Nations Programme on HIV/AIDS.¹⁵ Its mission is to "lead, strengthen and support an expanded response aimed at preventing the transmission of HIV, providing care and support, reducing the vulnerability of individuals and communities to HIV/AIDS, and alleviating the impact of the epi-

¹² On 27 April 1999, a special high-level meeting of governments and international agencies was held in Washington, and the World Bank and the Commission were called upon to coordinate needs assessment and modalities for assistance. The statement mentioned above is the answer to this call.

¹³ Europe, 15 May 1999, at 10.

¹⁴ *Id.*

¹⁵ Its original name was Joint and Co-sponsored United Nations Programme on HIV/AIDS. ECOSOC "took note" of the change of name in its Res. 1999/36.