

THE BIRTH AND DEVELOPMENT OF INTERNATIONAL INSTITUTIONAL LAW

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In 1953 when I was a young staff member of the Dutch Ministry of Foreign Affairs, I was charged with the Specialized Agencies of the United Nations. Traditionally, all international contacts had to go through the Ministry of Foreign Affairs. The Ministry wanted to remain the national centre to which all international contacts should be addressed but all technical questions had to be answered by the technical ministries. My job was to forward letters of the Food and Agricultural Organization (FAO) to the Ministry of Agriculture asking them what should be the reply and subsequently to send the reply to the FAO. Equally, I had to forward letters from the World Health Organization (WHO) to the Ministry of Health asking them how the Minister of Foreign Affairs should reply and subsequently forward that reply to the WHO. For all other specialized agencies the same rules applied. My task was to forward letters to the responsible ministries and be attentive that they were to be replied within a reasonable time. Whenever political questions, such as the participation of the German Democratic Republic or the credentials of the Chinese delegation, were involved I had to pass that on to the political department of our ministry.

After some time I discovered that many of the specialized agencies were confronted with a number of similar problems. The question arose whether the executive board had to be composed of experts in the field or of governmental representatives. Long lists of arguments were presented for both views, but the argumentation differed from one organization to another. Similar differences could be found in other issues, such as the question whether non-self-governing territories could participate in the work of the organization, how the budget should be divided amongst the Member States, privileges and immunities of delegates and many procedural questions such as the order of voting on proposed amendments, questions of quorum and a possibility of secret voting. I had the impression that our Ministry of Agriculture did not know that particular questions of the FAO had already been discussed in WHO or UNESCO and vice versa. Here I saw a task for the Ministry of Foreign Affairs and I started

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extending my letters forwarding requests of international organizations to the technical ministries. I informed them about results of similar discussions in other organizations. After some time this gave me a reputation of being expert in the institutional questions of the specialized agencies of the UN and whenever a technical ministry prepared its proposal to the Ministry of Foreign Affairs on how to reply to requests of a specialized agency they asked me to participate in their internal discussions about the preferred structure of the organization. This participation offered me further knowledge about the functioning of each organization.

As a young academic I still had to write my Ph.D. thesis and I decided to do so on a comparative study of the structure of the specialized agencies of the UN.¹ The appetite came with the eating. So, after I had defended my thesis in 1957, I decided to write a more substantial book on the constitutional questions which face all international organizations. That book finally appeared in 1972.² Ever since, I devoted a substantial amount of time to this branch of international law.

Five years after the defence of my thesis I was invited to become professor of the Law of International Organizations at the University of Amsterdam. This was a new chair next to the traditional chair of Public International Law. After Leiden University this was the second special chair for the Law of International Organizations. I decided to focus my inaugural lecture on the structure of the then existing international organizations, leaving the remaining field, that is the law coming out of international organizations, for later research.

First, I had to think of a name for this part of the Law of International Organizations. I considered “international constitutional law”, I rejected it, as constitutional law was a wider notion also including fundamental human rights. A second option was to reserve “constitutional law” for national constitutions and use “institutional law”, inspired by the institutions of the recently established European Communities, for the constitutions of international organizations. After some testing around with colleagues I finally decided to use the name International Institutional Law.

¹ H.G. Schermers, *De gespecialiseerde organisaties, hun bouw en inrichting*, thesis Leiden (A.W. Sijthoff, 1957).

² *International Institutional Law* (Sijthoff, Leiden, 1972) (now in its fourth edition with Prof. Dr N.M. Blokker, 2003).

In my inaugural lecture I tried to draw the borderlines between this field of law on the one hand and constitutional law, administrative law, public international law and the law of international organizations on the other hand.³

Civil servants in other ministries of foreign affairs and staff members of international organizations were confronted with the same need for comparing situations and were building up similar expertise. When international organizations became more and more important in international law, International Institutional Law also grew in importance and gradually developed into a separate branch of public international law.

Shortly after the Second World War a large number of new international organizations were established. There was even a certain tendency to create a new international organization for each new problem. This caused International Institutional Law to focus on a comparison between the different international organizations. Even though their purpose and their influence varied enormously, problems of procedure, financing, voting rights, admission of new members, sanctions, and legal force of decisions were met by almost all international organizations. There was much room for comparison. Gradually, however, international co-ordination provided answers to the common questions. At the end of the 20th century a certain aversion developed against the creation of new international organizations. It was considered cheaper and more effective to assign new tasks to existing organizations. Thus the building of new headquarters with separate assembly halls, separate finance departments, separate directorates for personnel, etc. could be saved. It was also considered that co-ordination of different activities would be easier within one organization than in between several separate organizations. Practice had taught us that separate organizations create separate interests which may hamper the switching of competencies to those who already performed similar or related activities.

The development of international organizations in the world means that a comparison between different international organizations becomes gradually less important and that the main focus of International Institutional Law is in the direction of an efficient and successfully functioning of each organization.

In many respects international organizations are confronted with the same administrative problems as national governments. Still, there are important differences which distinguish the functioning of international organizations. First of all, there is the sub-ordination to the Member States, often many States

³ Internationaal Institutioneel Recht, Openbare les, University of Amsterdam, 19 February 1963, *Internationale Spectator* 17, no. 11, pp. 288-304.

with different interests. Secondly, there usually is a great diversity amongst the persons involved. Their background varies with their national traditions and the way in which national administrations operate differs widely. International secretariats are composed of staff members not only from different backgrounds but also from different languages. Their views on how a secretariat should work vary widely. The wish of particularly the American administration that international organizations should operate as effectively as national administrations does not take the special problems of international secretariats into account and often leads to unfair criticism. Rules of international institutional law should lead to a fair balance.

International organizations are still confronted and will remain to be confronted with special problems.

Many lawyers in international organizations, in national administrations and in universities study these special legal issues rising in international organizations. Closer mutual contacts between them may help in finding solutions to existing and newly arising special problems. This justifies a special journal in which views can be exchanged. Hopefully, this new journal will be of help to many people thus involved.