CHAPTER TWO

PARTICIPANTS

§66 One element all international organizations have in common is that they have members. In most organizations, only states may become members. Increasingly, however, international organizations may also have other international organizations as members. For example, nowadays the European Union is a member of numerous international organizations, such as the Food and Agricultural Organization of the UN and the World Trade Organization.1 For reasons of brevity, and since in most cases only states are members of international organizations, we will usually refer to member states.

Member states play two roles in relation to ‘their’ organizations: an internal and an external role.2 In the former, states are the constituent parts of organs of the organization, and in pursuing their objectives these organs are dependent upon the will of the member states to cooperate. For example, for many years the UN Security Council was unable to perform the task for which it was created, mainly because of fundamental disagreement among its permanent members.

The internal role or capacity can easily be recognized in the composition and functioning of non-plenary, executive organs of international organizations. Members of these organs are often expected to act on behalf of all members of the organization.3 For this reason, the constitutions of most universal organizations contain provisions requiring that all geographic areas of the world are represented in these non-plenary organs.4 In practice, non-permanent members of the Security

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1 See below, §81-84. Cf. also the definition of international organizations adopted by the ILC in its draft articles on responsibility of international organizations (text adopted on first reading; see above, §29A): “…International organizations may include as members, in addition to states, other entities”.
3 E.g. Art. 24.1 of the UN Charter (“…the Security Council acts on their [–all UN members’–] behalf”). Cf. also H. Kelsen, The Law of the United Nations 280 (1951); J. Delbrück in B. Simma (ed.), The Charter of the United Nations 448-449 (2nd ed. 2002). Sometimes members of the Security Council explicitly state that they take into account interests or concerns of other countries of their region, or even of all UN members, when they have to determine their position in the Council (see e.g. UN Doc. S/PV.2977 (Part II)(closed resumption 3), at 322; UN Doc. S/ PV.3413, at 9).
4 E.g. ICAO, Art. 50(b); IMO, Art. 18(c); UNESCO, Art. V.A.2; WHO, Art. 24.
Council sometimes explicitly refer to their duty to take into account not only their own interests but also the concerns or interests of their regions.\(^5\)

In 2005 the Senate of the Dutch Parliament informed the Dutch Minister of Justice that it was of the opinion that the Minister should not participate in consultations in the EU Council relating to a specific item on the agenda. The Minister of Justice however refused to implement this wish of the Senate. One of the reasons for his refusal was his view that “the Minister as member of the Council is not exclusively a Dutch Minister, but also a member of an EU organ. His functioning as such is also governed by what is necessary in the general interest of the Union”.\(^6\)

In their external role, states are the counterparts of the organization. Organizations are created to influence the policies of the member states; and in pursuing its objectives, the organization takes decisions directed at an environment outside the organization itself. In their external role, members are confronted with these decisions that may have a direct or indirect impact on them, and they must respect such decisions to a degree which is commensurate with their legal effect. The position of members in this external role concerns the external relations of the organization and will therefore be discussed in Chapter Twelve.

\(^{§67}\) The distinction between the internal and external role of the member states is not always easy to draw. This is “inherent in most situations where international organs have to deal with conflicts of interests between states and, at the same time, are composed of representatives of states”.\(^7\) However, the distinction is fundamental and may have important legal consequences. Only in their internal role do member states cooperate within the framework of the organ and as such must respect the internal rules of the organization. For example, a decision was adopted in a meeting of the EC Council to provide special aid to Bangladesh after it had been devastated by a cyclone in April 1991. The Commission prepared a plan which was examined during a meeting of the Council, although it did not appear on the formal agenda of that meeting. On 14 May the decision was taken to provide special aid to Bangladesh in accordance with the Commission’s plan. The decision was the subject of a press release under the heading “conclusions of the Council”. The European Parliament sought the annulment of this decision, claiming before the Court of Justice that it was a Council decision. It argued that the decision had budgetary implications and should have been adopted in accordance with the procedure provided for in Article 203 of the EC Treaty (now Articles 313-314 of the TFEU). By failing to adopt the decision under this article, the Parliament contended that the Council had infringed the Parliament’s prerogatives. The Council challenged the admissibility of the action on the ground that the contested act was adopted not by the Council but by the member states and that it could not therefore be the subject of annulment proceedings before the Court under

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5 E.g. UN Docs. S/PV.2977 (Part II), at 311 (India) and 322 (Cuba); S/PV.3413, at 9 (Brazil).
7 Tammes, op. cit. note 2, at 354.