CHAPTER THREE

POWERS – A DEBATE BETWEEN FAMILIAR ADVERSARIES

An international organization consists of its members. Without any members (or at least two members) there would not be an organization. This is a common element of any definition of an international organization. Also the powers of an organization are granted to it by its members. At the same time, once an organization exercises its powers, irrespective of the extent of those powers, this act will bestow upon the organization an element of autonomy. By conferring powers to an organization members express a desire to subject themselves to the rules and procedures of the organization. The eventual decision will be presented as a decision of the organization. Yet, members are the ones who vote for or against that decision.

These two aspects of international organizations were identified by Virally in his classic search for a theory of international organizations as state sovereignty on the one hand (members of organizations being predominantly states), and the concept of ‘function’ on the other. This dualism establishes itself in all organizations and in various ways. As many authors have noted, the two images exist simultaneously, express themselves through all of institutional law, and carry with them “the seeds of conflict” in their eternal search for balance. The relationship has even been described as one of competing sovereignties.

The Laeken Declaration on the Future of the European Union explicitly took account of the dual image of organizations as a special challenge for redrafting the competence of the Union, by emphasizing that a redefined division of competence would have to ensure institutional dynamics,

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1 M. Virally, “La notion de fonction dans la théorie de l’organisation internationale”, in S. Bastid et al., Mélanges offerts à Charles Rousseau – La communauté internationale, 1974, Pedone, 277–300. The thoughts of Virally are reproduced in Schermers and Blokker (2003), at 10 et seq.


while at the same time avoiding ‘competence creep’. As to the WTO, Cass argues that one of the reasons for ambivalence in WTO Appellate Body case law has been the constant balancing between according control over policy-making to states and ceding trade decisions to the WTO (or more generally, between maintaining diverse national policies and integrating international trade). A conferral of powers is also a way of manifesting an organization – an organization ‘needs’ powers in order to display an autonomy. At the same time, as states cooperate for different reasons, they will also have different perceptions of what activities the organization should be engaged in. These differences can be expressed in various ways.

3.1. **Powers as A Manifestation of Autonomy**

3.1.1. *Constituting Organizations*

In demonstrating the importance of powers for organizations interest must be turned to the basic question: What is an organization? Answering this is by no means an easy task due to vast variation in between organizations. It may even be that any comprehensive definition is outright unattainable. In a most general sense, organizations could be characterized as vehicles for cooperation (whatever the end goal of that cooperation). This conclusion is borne out of the fact that organizations consist of members. The logical follow-up question to ask would be: Why do states cooperate? Why do states wish to create and bestow autonomy upon an actor?

This question has often been approached through abstractions. Realism, regime theory, functionalism, and institutionalism have all been presented as theories through which to explain the driving force for cooperation through organizations. Indeed, power-politics, selfishness, common challenges/interests, altruism, or domestic reasons may all serve as plausible explanations. Above all, the autonomy of an organization

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5 For several examples, see Cass (2005), at 127–128.
6 Klabbers (2002 ‘An Introduction’), at 7–8 suspects that international organizations as social creations defjinitions.
7 Whereas organizations are mainly vehicles for state cooperation, this should not hide the fact that organizations may also have other organizations as members. For an account of the EU and its membership in organizations, see Frid (1995).