THE LEGAL NATURE OF INTERNATIONAL ORGANIZATIONS

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I would like to make some brief general comments on Mr. Reuterswärds article on this subject in Vol. 49 pp. 14 ff. of Nordisk Tidsskrift for International Ret.

In a concrete discussion, dealing separately with each aspect, Reuterswärd supports the view of the Italian professor Rolando Quadri that international organizations are not subjects of international law – in reality it is their members which are such subjects. The article contains in my view many interesting and good observations, for example that international organizations are legal persons in national law and that their officials enjoy immunity for their official acts and that both of these principles apply even if there is no express provision to that effect. He also rightly points out that many of the arguments that have been advanced in favour of legal personality are not decisive – for example those based upon the constitution of the Organization.

However, when it comes to drawing a general conclusion as to whether the organizations are subjects of international law, one must in my view put the following question: Can each particular member of the Organization itself claim the rights that the Organization has acquired – for example through a headquarters agreement – and can each member directly be required to fulfill those duties which the Organization has undertaken – for example in an agreement on technical assistance? If the answer is in the affirmative in all respects, then the Organization is no subject of international law. But at least I for my part believe that one will have great trouble finding an organization in respect of which such an affirmative answer could be given.

It would take a very clear provision in the constitution of the Organization or elsewhere to enable us to assume that the member states have really authorized the Organizations to incur obligations *on their behalf* by its agreements, unilateral acts or illegal acts. If membership of regular international organizations had involved anything of this kind, the internal discussion in each country concerning membership would have taken a rather different course.

It is probably only in the supra-national organizations that responsibility of this kind can really be envisaged. And it is precisely that type of organizations – viz. the European Communities – that Quadri is concerned with. In these organizations the member states cede to the Organization some of their existing authority (partial federal states or territorial authority). And this may be coupled with the capacity to incur also obligations for the individual member states in certain respects (confederation). In such cases we frequently see that the individual member states, too, sign as parties – along with the European Communities – to the treaties that are concluded. But in many respects these Communities – like the normal international organizations – create through their acts rights and duties only for themselves as

organizations. Therefore, even the European Communities are subjects of international law.

Reuterswärd's construction at pp. 353 and 354, that the bilateral headquarters agreements concluded with host states and co-operation agreements concluded with other international organizations are merely extensions of the constitution of the Organization (the latter is a *multilateral* treaty between all member states) and that accordingly the member states, not the Organization, are the subjects of the rights and duties which these bilateral agreements institute vis-à-vis the host country and the other Organization, respectively, is not very convincing.

The author refers also to the convention of 24 March 1972 on international liability for damage caused by space objects, which provides, in article XXII, that when an intergovernmental organization conducts space activities, both the Organization *and its individual member states* shall be jointly and severally liable for any damage caused. However, this treaty certainly does not on this point express any obtaining principle of international law – quite on the contrary. This extraordinary provision was included in the treaty only through a peculiar political constellation. At the time the treaty was elaborated in the space committee of the United Nations, there were only two small Western European space organiziations in existence: ESRO and ELDO. The Soviet Union was at that time striving to avoid recognizing the European Communities as subjects of international law – and for parallel reasons it did not want to recognize ELDO and ESRO. The Soviet Union therefore insisted that the *member states* were to be responsible. The Western European countries opposed this strongly. However, when the Soviet Union and the United States later made a compromise to the effect that *both* the Organization and its member states were to be responsible, the Western European countries had to accept this compromise in order that the work might be concluded and the treaties signed. In 1971, however, also the Eastern European countries established their regional space organization, INTERSPUTNIK. And article 10 of its constitution provides to the contrary, viz. that "the Organization shall be liable with respect to its obligations within the limits of the property which it owns" and that the contracting parties shall *not* be liable with respect to the obligations of the Organization. On the basis of a corresponding Soviet proposal, a modified version of this principle was later included in the constitution of the global organization for maritime telecommunications via satellites, INMARSAT (article 22 in the constitution of 3 September 1976). And it is obviously this principle that applies when nothing else has been provided.

Actually it is merely a question of the most suitable theoretical construction whether one prefers to consider the organizations as subjects of international law, or whether one, like Reuterswärd, would say that the Organization acts as an organ or representative of the member states (see for example pp. 350 and 352–4). The choice of theoretical construction must depend upon which construction gives the correct practical results in the simplest and most natural way. When one has to conclude that the organizations have rights which the member states do not enjoy individually and duties which the individual member states can not be required to fulfil, I, like most others, find that the theory of legal person (subject of international law), is the most suitable. The analogy to associations in internal law and to the