

■ BOOK REVIEW

Ulrike Brandl

Dan Sarooshi, *International Organizations and Their Exercise of Sovereign Powers*, Oxford University Press, 2005, paperback 2007, p. 151.

This publication deals with a highly important topic of public international law, which is discussed controversially in theory and shows its crucial importance in practice. It is the conferral of sovereign powers to international organizations and their exercise of these powers. This question has been an issue in certain fields since the first establishment of organizations. The incremental need for international cooperation in heterogeneous fields has resulted in a greater activism of organizations. With the increasing importance of organizations as actors in the international community the conferral of powers considerably increased. These powers fall among the core of what is generally called sovereignty. It is commonly accepted that states as original subjects of public international law do have the full range of sovereign rights. These functions include legislative, executive and partly also judicial functions. As a consequence of such a conferral also international organizations exercise sovereign powers. It is however contested which powers exactly may be conferred and where the limits are. Moreover, the conferral of sovereign powers raises theoretical and practical questions of accountability and responsibility for acts of organizations and also enforceability of claims against organizations and against member states implementing obligations resulting from the (legislative) functions of organizations.

Chapter I starts with a discussion of the concept of sovereignty, one of the most unclear and controversial concepts of public international law, whose exact content cannot be precisely defined. According to the author's accentuated wording the concept is "being inherently unstable". The main example of an actor having original sovereignty is the nation state, whereas sovereignty of organizations derives from states. The author clearly illustrates the danger of undermining the separation of state powers going hand in hand with the conferral of powers to international organizations. Ontological functions of sovereignty are an explanatory element of the evolution of sovereignty of the constitution of communities. This highly theoretical discussion is accompanied by examples and gains practical importance through the description of activities of organizations. Chapter I ends with the question of *prima facie* application of domestic public law principles to organizations exercising sovereign powers. According to the author, sub-delegation of powers in cases where powers have been delegated to the organization serves as an example. An analogy between domestic and international law may help to clarify some issues but is as such not a generally appropriate concept.

The process by which states confer powers to international organizations is dealt with in Chapter II. These conferrals may happen by the founding treaty or on an *ad hoc* basis. The author concludes that the organization has to give its

consent to the conferral of powers as this would follow *mutatis mutandis* from the Vienna Convention on the Law of Treaties. Whereas one could question the basis of the conclusion, the result is convincing regarding the stage when the organization has already been created but does not seem to be fully clear for the founding stage, which is the concluding phase of the founding treaty.

Chapter III is meant to introduce the reader to different types of conferrals of sovereign powers. It starts with a discussion of the terminology and highlights that there is still a lack of clarity for labels describing the types of power conferrals. The author introduces a three column taxonomy of power conferrals namely agency relationship, delegation of powers and transfer of powers.

The first distinctive feature is that delegation as such is revocable where a transfer conceptually is not revocable (with exceptions). Second, the amount of powers conferred to organizations can be measured by the power of control the state retains or gains over the organization. The greater the degree of conferring of powers, the less is the degree of direct control. Whether the organization has exclusive or concurrent competence in conferred powers is the third characteristic element describing the conferral of powers between international legal actors.

The following chapters are devoted to an analysis of the types of conferral of powers and the consequences thereof.

The agency relationship construction (a special form of empowerment, a relation between principal = state and agent = organization) should be reserved to international organizations and non member states as membership of the organization itself would contradict using the organization as an agency.

Responsibility of international organizations for wrongful acts of the organization is supposed to be a clear issue. The responsibility of states for internationally wrongful acts committed by the organization to which they have delegated or transferred powers is however a complex and not yet clarified question. The author distinguishes between primary and secondary responsibility when powers are delegated. Also secondary responsibility, that is the responsibility for acts of the organization, is according to the author's opinion necessary "to ensure the systemic integrity of international law" (p. 64). States are responsible when they domestically implement internationally wrongful acts. States must aim at preventing organizations from committing internationally wrongful acts, e.g. by voting against the adoption of a legal act. Otherwise states could establish organizations, confer powers on them and thus be absolved from fulfilling their legal obligations.

In a previous review the lack of examples in some fields was seen as a minor point of criticism whereas in general the work was described as well documented (*Jean d'Aspremont*, <http://www.globallawbooks.org/reviews/getFile.asp?id=362>). As to the opinion of the present author examples, citations of cases and academic opinion are well balanced. However, such a controversial topic like the present discussion would require a more theoretical analysis of related underlying concepts, such as the definition of the legal personality of organizations as a derived "personality".

As a German speaking writer of this book review I certainly miss the debate on ideas expressed in academic literature published in German. The main example is Griller, St. "Die Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen: Eine Untersuchung zu Artikel 9 Absatz 2 des Bundes-Verfassungsgesetzes" (Forschungen aus Staat und Recht, Vol. 88, 1989).

Saroshi's book in general focuses brilliantly on the essential relations in the exercise of sovereign powers by various actors in international law, mainly but not necessarily subjects of international law. It avoids lengthy descriptions, but analyses clearly, sticks to the topic and impresses by its conceptual thinking (see Rosalyn Higgins in the foreword).

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