

Supranational Elements within the International Labor Organization

Scrutinizing the historical development of the general legal framework of the international organizations we do not find a stable pattern. Oscillations between a strong intergovernmental character and a supranational feature have succeeded each other in a nonlinear order. Moreover particularity has proved to be essential; some IO's were constituted from the start with a more supranational trait than others and kept that feature throughout their existence. Hence great diversity between IO's as far as their supranational elements are concerned, exists. It is however commonly agreed that the pure supranational international organization is a merely theoretical issue, as the great majority of the IO's still keep strong intergovernmental ties and in most of them this side still dominates. The European Community, which is usually designated as the closest to the ideal of a supranational organization, is a *sui generis* entity rather than the rule among the other IO's, and still has some strong elements of inter-state cooperation which obviously cannot be ignored.

We will not debate therefore on the existence or non-existence of the pure supranational IO, but we will focus on a selected international organization and inquire to what extent it fulfills the requirements of supranationalism (as opposed to its primary intergovernmental quality). Considering rather superfluous a detailed presentation of the importance of supranationalism, we will just remind the reader that determining the extent of the supranational character is one of the best indicators for understanding the nature of the institutional structure of a given IO. Moreover the immediate sequel would be the assessment of the IO's policy efficiency and even its policy scope¹. In this paper we will deal with the supranational versus the intergovernmental attributes within one of the most efficient IO's: the International Labor Organization (ILO). The paper will start off by presenting a short overview of the supranationalism as currently accepted notion and it will continue by applying its fundamental criteria in the realm of the ILO. We will finish by summing up the theoretical findings in the section reserved for the conclusions.

1. Supranationalism as notion

Although 'supranationalism' does not have a universally agreed definition, authors do seem to concur in what concerns the fundamental characteristics of a supranational international organization. In essence, supranationalism is the phenomenon of 'subsuming' a number of states within a larger whole. This can be realized by fulfilling several underlying criteria. Malanczuk for instance reveals a few essential attributes such as the access of the non-government representatives in the organs of the IO, the ability of the organs to take decisions by majority vote, the authority of those organs to adopt binding acts or the direct legal effect of those acts on individuals and companies (Malanczuk: 95).

Shaw notes that the essence of supranationalism is to be found in a gradual transfer of competencies to the higher level within the IO and in the evolution of a specific form of decision making at this higher level where decisions are increasingly taken by majority vote rather than by consensus. Shaw also distinguishes between a 'decisional' and a 'normative' supranationalism. Whereas the elements mentioned above would all belong to the decisional

¹ By policy scope we mainly understand the extent to which the IO in question is able to develop internal and external conventions or recommendations. In particular the legal personality of the international organization is also under scrutiny here.

side, the normative supranationalism is concerned with a specifically legal facet that she identifies, *par excellence*, within the relation between the EU and the European Court of Justice. The latter is, in her own words, able “to give binding and authoritative rulings on the nature and effects of EU law, and to fashion a legal system in which EU law takes precedence over national law, often termed constitutionalization of the [t]reaties” (Shaw: 23). As mentioned in the introduction, the EU is a peculiar entity inasmuch as supranationalism is concerned, hence the normative feature stated in the above form might be too strong for most of the IO’s. A ‘weaker’ but similar normative supranational feature is also mentioned by Malanczuk: compliance of the member states with their obligations and the validity of acts adopted by the organs of the organization are subject to judicial review by an independent court of justice (Malanczuk: 96). In this paper we will not make a difference between the decisional and the normative supranational character as such, but discuss the supranationalism in the form of fundamental characteristics applied to the chosen international organization.

2. Supranationalism within the International Labor Organization

2.1 ILO, the only surviving creation of the Treaty of Versailles

The International Labor Organization was created in 1919, at the end of the First World War, at the time of the Peace Conference, which convened successively in Paris and Versailles. Several industrialists such as Robert Owen of Wales and Daniel Legrand of France had advocated the need for such an organization already in the nineteenth century. Their ideas were incorporated into the Constitution of the ILO, adopted by the Peace Conference in the April of 1919, after a very intensive work of a few months.

As far as the mandate of the ILO is concerned, the International Labor Organization is the UN specialized agency which “seeks the promotion of social justice and internationally recognized human and labor rights”². It is remarkable and doubtless worth to mention that the ILO is the only major surviving structure of the Treaty of Versailles and that it became the very first specialized agency of the UN in 1946 (after being previously linked to the League of Nations). Hence the International Labor Organization is an IO with a lot of tradition and experience behind, absolutely necessary for fulfilling its declared goals. Among these purposes, the ILO is to formulate international labor standards in the form of conventions and recommendations setting minimum standards of basic labor rights: freedom of association, the right to organize, collective bargaining, abolition of forced labor, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues. It was established to provide technical assistance primarily in the fields of vocational training and vocational rehabilitation; employment policy; labor administration; labor law and industrial relations; working conditions; management development; cooperatives; social security; labor statistics and occupational safety and health. It should promote the development of independent employers’ and workers’ organizations and provide training and advisory services to those organizations³.

Without any doubt the objectives of the ILO are very far reaching and a smooth structure of the organization is more than necessary to ensure that efficiency requirements are met. The International Labor Organization has the reputation of being one of the most efficient international organizations ever, with a unique so-called “tripartite structure”, where next to the government representatives, delegates of the employers and of the employees are represented and can vote. But as the structure is already a very important point when analyzing the elements of supranationalism, we will discuss it in more detail in the next section of this paper.

² See the Preamble of the ILO Constitution

³ Idem

2.2 Supranationalism versus intergovernmentalism in the ILO

Strangely enough for the purpose of this paper, we need to start this section by mentioning an element belonging to the intergovernmental character of the International Labor Organization. The ILO was, as said above, established by a treaty between a number of sovereign states⁴ and one of the primary purposes was the cooperation between the ratifying governments in the policy areas mentioned above. Nonetheless treaties, having as main immediate concern the cooperation between the member states, have established the absolute majority of the IO's. That does not stop these IO's from acquiring a strong supranational feature given that that they carry out some of the previously dwelled upon criteria.

In what follows we depart in investigating some of the clear pro-supranationalism attributes of the ILO. Article 2 of the ILO Constitution clearly states the structure of the organization: "The permanent organization shall consist of:

- a) a General Conference of representatives of the Members;
- b) a Governing Body composed as described in article 7; and
- c) an International Labor Office controlled by the Governing Body"

We shall draw our attention to the General Conference, with emphasis on the formulation "representatives of the Members". The term is clarified in Article 3(1). We quote: "[the General Conference] shall be composed of 4 representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members". It is here that we find the famous and unique tripartite structure of the International Labor Organization. One of the reasons of ILO's efficiency is exactly this provision in the Constitution enabling employers and employees to directly cast their votes as the government does, through their representatives. This clearly is one of the main elements of supranationalism within the ILO.

If the General Conference has a clear structure favoring supranationalism, the Governing Body composition and election is even a more important step towards the supranational aspect. Article 7 of the Constitution is relevant in this sense. Paragraph 1 describes the composition of the Governing Body: "The Governing Body shall consist of 56 persons: 28 representing governments, 14 representing the employers and 14 representing the workers". Paragraph 2 of the same article points out the election procedure of the 28 government representatives: "...10 shall be appointed by the Members of chief industrial importance, and 18 shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the 10 Members mentioned above". We cannot leave unexplored an analogy with the structure of the United Nation, the General Conference being the analogue of the General Assembly and the Governing Body the synonym of the Security Council. Nonetheless there is a slight difference in the sense of the powers, clarified by Article 7 (3): "The Governing Body shall as occasion requires determine which are the Members of the Organization of chief industrial importance". Hence the supranationalism is not as strong as in the Permanent Committee of the Security Council of the UN where the 5 representatives are permanent and cannot be changed without altering the Charter. But to finish with the composition of the Governing Body, we have to add that the other 28 members shall be elected as indicated by Article 7 (4): "The persons representing the employers and the

⁴ The treaty establishing the ILO was the Treaty of Versailles. The ILO Constitution was in fact incorporated as Part XII of this Treaty.

persons representing the workers shall be elected respectively by the Employers' delegates and the Workers' delegates to the Conference⁵.

The parallel of the ILO with the United Nations goes even further (inheriting also the analogous supranational properties of the UN), the International Labor Office being the analogue of the Secretariat of the UN. The Director-General⁶ of the International Labor Office is appointed by the Governing Body (according to Article 8(1)) and he will further appoint the staff of the International Labor Office under regulations approved by the Governing Body (Article 9(1)). In addition the International Labor Office shall have functions more or less similar to the UN Secretariat such as 'the collection and distribution of information, [...], conduct of such special investigations as may be ordered by the Conference or by the Governing Body' (Article 10).

To sum up the findings so far, we have shown that the presence of non-government representatives in the two major organs of the ILO is reality and that the structure of the ILO can be paralleled to that of the United Nations in what regards the election of the Governing Body, respective Security Council and the role of the International Labor Office, respective the UN Secretariat. These constitute some major elements of supranationalism within the ILO.

We will further investigate the voting procedures within the ILO. We reproduce in this respect Article 17(2) of the ILO Constitution: "Except as otherwise expressly provided in this Constitution or by the terms of any Convention or other instrument conferring powers on the Conference or of the financial and budgetary arrangements adopted in virtue of article 13, all matters shall be decided by a simple majority of the votes cast by the delegates present". To this we add that all these other matters are decided by a qualified majority of the Members, hence we have another strong element of supranationalism here, as consensus is not used at all⁷. It is important to precise that although the conventions and the recommendations are adopted in the General Conference with a two-thirds majority, the result is subject to ratification by all Members and it is not binding, but the procedure concerning conventions and recommendations has to be respected exactly otherwise a complaint procedure is provided for⁸. Hence, although we have a strong intergovernmental character with regards to the decisions not being binding without independent ratification of every Member State, we do have a clear supranational trend in the voting behavior.

Another important attribute within the ILO is, as already touched upon above, the complaint procedure that can be initiated by any Member State against another Member for not respecting the regime of conventions and recommendations stated in the Constitution. Interesting here is the fact that if the authorized Commission of Inquiry makes certain recommendations concerning a given Member pursuant to a complaint and to its findings, and if the Member does not accept them then the matter shall be referred to the International Court of Justice (Article 29). Article 31 clearly establishes the position of the ICJ in this respect: "The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final". Pursuant to the decision of the ICJ, in case of failure to carry out recommendations of the ICJ, the Governing Body can recommend to the Conference such action as to secure compliance of the Member (article 33).

⁵ Thus, in principle, half of the size of the Governing Body could be composed of Members from totally different countries than the other half, which is another step towards escape from state control, hence towards supranationalism

⁶ In the same spirit, the Director-General of the International Labor Office can be compared to the Secretary-General of the United Nations.

⁷ It is remarkable that even amendments to the Constitution (Article 36) can be adopted by the General Conference by a qualified majority including 5 of the 10 Members represented in the Governing Body as Members of chief industrial importance in accordance with Article 7(3)

⁸ See Articles 5 and 6 concerning obligations of Members in cases of conventions, respective recomm.

Hence, even if the ICJ's decision will not be legally binding on the Member State, the Constitution has provided for further means to acquire compliance. Moreover, Article 37(1) enhances the role of the International Court of Justice within the ILO: "Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice"⁹. Thus we see that an impartial judicial court has the authority to decide complaint situations (and even if the decision is not directly binding it is final and compliance will be eventually ensured by a decision of the Conference) and moreover the Constitution and any other Convention can be subjected (by the Governing Body) to it for review. In other words we enhance even more ILO's supranational feature.

3. Conclusion

We have herein applied a few criteria of supranationalism/ intergovernmentalism to the ILO and found that the International Labor Organization has a rather strong supranational character, almost analogue to that of the United Nations and even stronger in some parts (see for instance the non-governmental composition of the main organs or the power of review of the ICJ). The result of this overview was expected, as an organization having to accomplish such goals as the ILO, needs to have a strong supranational character *per se*. Keeping all various standards of all the Member States cannot ensure efficiency. A certain degree of uniformity is required and Members of the ILO had to give up a relatively great amount of sovereignty when entering the ILO to the extent that this uniformity can be achieved.

As a last remark, we need to state that perhaps the most obvious consequence of the ILO's supranationalism is embodied in its legal status as Organization. The Constitution itself contains in Article 39 the extent of legal personality of the ILO: "The International Labor Organization shall possess full juridical personality and in particular the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings"

It is crystal-clear that "full juridical personality" entails by itself a relatively high degree of supranationalism¹⁰; thus our results are successfully confirmed.

Bibliography

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⁹ Paragraph 2 of the same article makes a slight derogation from this obligation, but as you can read from the following quote, the ICJ still has tremendous influence and ultimate decision power: « Notwithstanding the provisions of paragraph 1 of this article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination [...]. Any applicable judgment or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph... »

¹⁰ As a matter of fact, we could have mentioned this as one of the possible factors enhancing the supranationalism within the ILO ; nonetheless we prefer to mention it here, as the implication is double

¹¹ The source consulted was <http://www.ilo.org/public/english/about/iloconst.htm#pre>, the official site of the International Labor Organization