

# Lesson 4

## POWERS OF IOs

International Institutional Law  
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# Where do IOs derive their powers from?

Constituent treaty

# 1) Interpretation of the constituent treaty

## 1) PCIJ, *Competence of the International Labour Organization to Regulate the Conditions of Labour of Persons Employed in Agriculture*, Advisory Opinion of 12 August 1922

“It was much urged in argument that the establishment of the International Labour Organisation involved an abandonment of rights derived from national sovereignty, and that the competence of the Organisation therefore should not be extended by interpretation. There may be some force in this argument, **but the question in every case must resolve itself into what the terms of the Treaty actually mean**, and it is from this point of view that the Court proposes to examine the question” p. 23

# 1) Interpretation of the constituent treaty

## 2) PCIJ, *Competence of the ILO to Examine Proposal for the Organization and Development of the Methods of Agricultural Production*, Advisory Opinion of 12 August 1922

“The answer to the question whether the consideration of proposals for the organisation and development of the means of agricultural production, and the consideration of other questions of like character, fall within the competence of the International Labour Organisation, **must likewise depend entirely upon the construction to be given to the same treaty provisions from which, and from which alone, the Organisation derives its existence and its powers.**” p. 54-55

# 1) Interpretation of the constituent treaty

## 3) PCIJ, *Competence of the ILO to Regulate Incidentally the Personal Work of the Employer*, Advisory Opinion of 23 July 1926

“So, in the present instance, ... the province of the Court is to ascertain what it was the Contracting Parties agreed to. **The Court, in interpreting Part XIII, is called upon to perform a judicial function, and, taking the question actually before it in connection with the terms of the Treaty, there appears to be no room for the discussion and application of political principles or social theories, of which, it may be observed, no mention is made in the Treaty.**” p. 23



the proper scope of the powers of an IO is merely a matter of interpretation of its constituent treaty

## 2) Doctrine of attributed powers

PCIJ, *Jurisdiction of the European Commission of the Danube Galatz and Braila*, advisory opinion of 8 December 1927

“As the European Commission is not a State, but an international institution with a special purpose, **it only has the functions bestowed upon it by the Definitive Statute** with a view to the fulfillment of that purpose, but it has power to exercise these functions to their full extent, in so far as the Statute does not impose restrictions upon it.” p. 64



Doctrine of attributed powers

# 2. Doctrine of attributed powers

## Art. 5 TEU

1. The limits of Union competences are governed by the **principle of conferral...**
2. Under the principle of conferral, the Union shall act only within the limits of the **competences conferred upon it by the Member States** in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

## Article 2(7) UN Charter

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the **domestic jurisdiction** of any state ...; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

## 2. Doctrine of attributed powers

### **Problems encountered by this doctrine**

1. If the doctrine is taken to its extreme, then IOs become just puppets in the hands of their MSs, not entities with a will of their own
2. IOs are living creatures, their founding fathers cannot be expected to think of every possible contingency. The IO must be allowed some flexibility.



# 3. Doctrine of implied powers

## 1. First version – “*effet utile*”

Implied powers flow from a rule of interpretation, according to which each treaty provision must be interpreted in such a way as to guarantee its “*effet utile*” (its fullest effect).

ECJ, *Fédération Charbonnière de Belgique v High Authority of the European Coal and Steel Community*, Judgment of 29 November 1956

High authority has the power to regulate the market. Does it imply the right to set prices? Yes, otherwise right to regulate market would be deprived of its *effet utile*.

- **implied power flows from a specific provision of the constituent treaty.**

# 3. Doctrine of implied powers

## 2. Second version – implied powers flow from objectives and functions of the IO

Implied powers may be implied not only from an express provision, but rather from the functions and objectives of the Organization

ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, advisory opinion of 11 April 1949:

“Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication, as being essential to the performance of its duties.” p. 12

# 3. Doctrine of implied powers

## 2. Second version –

**implied powers flow from objectives and functions of the IO**

ICJ, *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, advisory opinion of 13 July 1954:

“the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity. **Capacity to do this arises by necessary intendment out of the Charter.**”

p. 14

# Doctrine of attributed powers v. Doctrine of implied powers?

## Doctrine of attributed powers

- Finds its rationale in the manifest will of the founders
- Stresses considerations of State sovereignty, because powers not expressly attributed are considered as the result of intentional omissions

## Doctrine of implied powers

- Finds its rationale in the needs of the organization
- Powers not expressly attributed, but which arise by necessary intendment, have also been conferred upon the organization – their implicit nature notwithstanding.

MANIFEST WILL v. IMPLICIT WILL

# 4. Doctrine of inherent powers

Organizations, ones established, would possess inherent powers to perform all those acts which they need to perform to attain their aims, not due to any specific source of organization power, and insofar as these acts are not prohibited in the IO's constituent treaty.

## **Conditions for an act to be performed**

1. Act must aim to (not “be necessary to”) achieve the organization's purposes
2. Act must not be expressly prohibited

Constituent treaty is not the source of powers, but may be the source of a prohibition to act

# 4. Doctrine of inherent powers

## Pros

- More plausible than implied powers doctrine (e.g. for external relations of the EU)?

## Cons

- Why should one look at the constituent treaty for express prohibitions, if the will of States is irrelevant?
- Why not also looking at implied prohibitions?
- How do we know if an act is aimed at contributing to the purpose of the IO?

# Final remarks

## **1. Powers of IO often interfere with powers of MS and vv**

Case of prohibition of advertisement concerning abortion abroad in Ireland (ECJ, *Society for the Protection of Unborn Children Ireland Ltd v. Grogan et al.*, judgment of 4 October 1991)

## **2. Powers of IO may also interfere with powers of other IO**

Case of WHO and legality of use of nuclear weapons (ICJ, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996)