
Horizontal Review between International Organizations: A Rejoinder to Rosa Raffaelli

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Dr. Raffaelli's Reply to my article¹ highlights some very useful areas for further exploration in the realm of global administrative law and inter-institutional interactions. Calling this a rejoinder may be a bit of a misnomer since I believe we are actually in broad agreement. In the spirit of debate, I will first draw out one apparent point of divergence – whether this is actually an instance of horizontal review – before canvassing our substantive areas of agreement.

Raffaelli asserts that, strictly speaking, the Parliamentary Assembly's (PA's) review of the World Health Organization (WHO) cannot be seen as an exercise of horizontal review between international organizations. She rightly points out that, according to the Statute, the PA is simply the 'deliberative' arm of the Council of Europe, with the power to make recommendations to the Committee of Ministers. The PA's resolution, it is reasoned, therefore has only 'internal relevance', and 'does not express the position of the Council of Europe at the international level'.

I would question, however, whether we should be so formalistic in our understanding of horizontal review between IOs. A series of categories to classify interactions has been tentatively staked out in the emerging literature: 'horizontal' interactions between institutions that are international actors; 'vertical' interactions between international and national institutions, where the latter are members of the international body; 'diagonal' interactions between an international institution and a national one where the national body is not a member; interactions between institutions from different countries; and relationships between different national institutions in the same country.²

These are high-level categories encompassing a wide array of actors with hugely varied organizational structures – and I would suggest that we must interpret them somewhat flexibly if they are to have analytical meaning. In the 'vertical' interactions

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¹ Deshman, 'Horizontal Review between International Organizations: Why, How, and Who Cares about Corporate Regulatory Capture', 22 *EJIL* (2011) 1089.

² Report of remarks of Benedict Kingsbury, 'Introduction: Overview of the Project, Workshop on "Analyzing and Shaping Inter-Institutional Relations in Global Governance"', Institute for International Law and Justice, New York University School of Law (16 Apr. 2012).

category, for example, the national institutions that most often and visibly review international actors are domestic courts and regulatory bodies.³ Strictly speaking, however, most constitutions formally give the executive branch authority to represent a country's position to the international community. On the international level, the *Bustani* case is an example of what I would view as a horizontal interaction. There the Administrative Tribunal of the International Labour Organization (ILO) reviewed the Organization for the Prohibition of Chemical Weapons' decision to remove its Director-General.⁴ It cannot be said that the Tribunal's decision represents the formal policy of the ILO as a whole. I nevertheless think there is analytical purchase in categorizing this as a horizontal, inter-institutional interaction. Particularly in the international realm, forms of governance are diverse and the legal relationships set out on paper will often map poorly onto the actual ebb and flow of power. If we are overly formalistic, we may lose sight of where the real inter-institutional interactions are taking place. As Raffaelli points out, despite the formal relationship set out by the Council of Europe's Constitution, the PA has become the true 'engine' of institutional power, with many additional informal powers.

I do agree, however, that we should be careful when categorizing interactions. For example, while the WHO is indisputably an international organization, the PA is a regional institution. Can we still analogize this to the archetypal horizontal review between two global international organizations? I suggest that we can, but only after a close inspection of the institution's membership composition and practical power dynamics. The Parliamentary Assembly is composed of powerful European states, many of which wield significant power within both the PA and the WHO. All PA members had the opportunity to vote on the WHO review. These facts make this interaction more 'horizontal' than might be the case if the review had been undertaken by another, less powerful, regional body. Indeed, if we focus on membership, some seemingly archetypal 'horizontal' interactions may be more comparable with typical 'vertical' or 'diagonal' interactions – if it is determined, for example, that a committee of an international organization is in reality composed of a few domestic representatives expressing a very domestic viewpoint.

Moving to Raffaelli's substantive points, the examination of the European Parliament's activities provides a logical and highly fruitful point of comparison. I find myself in full agreement with the main hypothesis – that a need to increase organizational visibility and responsibility is one factor that may propel an international organization to engage in horizontal review. Indeed, an organizational need for legitimacy was one of the factors identified in the H1N1 case study, which suggested that one reason for the different reactions of the European Parliament (which did not criticize the WHO) and the Parliamentary Assembly (which engaged in a robust review exercise) was the Parliamentary Assembly's greater need to demonstrate public legitimacy and relevance.⁵ The added analysis of the European Parliament's review activities over a

³ Kingsbury, Krisch, and Stewart, 'The Emergence of Global Administrative Law', 68 *L and Contemp Problems* (2005) 15, at 31–34.

⁴ Carotti, 'The Organization for Prohibition of Chemical Weapons: The *Bustani* Case', in S. Cassese et al. (eds), *Global Administrative Law: Cases, Materials, Issues* (2nd edn, 2008), at 119.

⁵ Dushman, *supra* note 1, at 1106.

longer timeframe nicely reinforces this suggestion – particularly when combined with Raffaelli's insight that the European Parliament's review occurred at a time when there was a need to build organizational legitimacy.

I was also very interested by Raffaelli's use of existing scholarship analysing the European Parliament's forays into human rights and international relations. Scholars have recently initiated broader studies of inter-institutional relations in global governance and global administrative law, observing that 'the way in which interactions happen in the global administrative space seems important and under-theorized'.⁶ As nicely demonstrated by Raffaelli's reply, however, the sources of, motivations for, and constraints on inter-institutional criticism have been extensively studied in relation to other normative areas – most notably human rights. This existing theoretical framework may be a useful comparison point for the ongoing work on inter-institutional relations in global governance.

⁶ Kingsbury, *supra* note 2. Note that the 9th Global Administrative Law Seminar, held in June 2013, also centred on the theme 'Inter-institutional relations in global law and governance': see www.irpa.eu/gal-section/11362/viterbo-ix-2013/.