3 *Inter-disciplinarity and the Law of International Organizations*

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Introduction

The law of international organizations is stuck in a rut. The legal framework governing the operation of international organizations developed in the late nineteenth and early twentieth century has not been changed since. Perhaps it was suitable once upon a time, for the world circa 1900, but whatever suitability it may once have had has long disappeared from view.[1]

The outdated nature of the legal framework, one might be tempted to think, is little more than a theoretical academic conceit. After all, international organizations continue to exist; they continue to multiply; they function more or less as they have done for over a century; and the world would decidedly be worse off without them. Indeed, states queue up to join them: no sooner has a state achieved independence than it wants to join the United Nations. No sooner has a European state achieved a certain level of economic development than it wants to join the European Union, as doing so is the smart thing to do (and withdrawing is economic suicide, as the UK is finding out). And even the stable genius that is Donald Trump, who once spent some time tweeting from the White House, saw fit, his reputation as gravedigger of international law and multilateralism notwithstanding, to have the US join international organizations. So what, then, if the theoretical framework is outdated?

And yet, there are practical ramifications – the theoretical immaturity has a 'spill-over' effect (pun intended) into the practical life of international organizations and, what is more, into our everyday lives.

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[1] See further J. Klabbers, 'The EJIL Foreword: The Transformation of International Organizations Law', (2015) 26 *European Journal of International Law* 9–82, with references.

This is most prominently visible when it comes to issues of control: international organizations operate without much political control, and without much judicial control; a point made with some regularity in the literature.[2] Hence, these highly important political actors – the institutions of global governance – can almost by definition do as they please in ways that are difficult to reconcile with basic ideas about democratic decision-making, the accountability of public power, or the cherished Rule of Law.

As a result, it should come as no surprise that many have proclaimed that the law ought to change, so as to facilitate the control over international organizations, especially perhaps when these are exercising public power. Neither is it very surprising that inspiration for the rejuvenation of international organizations is often looked for in the insights of neighbouring disciplines, in particular the discipline of International Relations (IR). And yet, much of this barks up the wrong tree. Mainstream IR, whether neo-realist or liberal-institutionalist, at its best can and does offer a deeper insight into political processes and the uses and limits of particular concepts; think only of some of the work of Robert Keohane.[3] But it often does so at the price of specific legal thought. So as a way to overcome problems of control, IR does not have all that much to offer, really, in much the same way that the brain surgeon is unlikely to find much help in the work of the surgeon specialized in knees. They may both occupy the 'same conceptual space', as Slaughter once delightfully yet misleadingly called it – but do not have all that much to teach each other.[4]

The call for inter-disciplinarity, which I was asked to address, makes sense in the abstract but is not without pitfalls. In what follows, I will explain what the problem is with international organizations law (in the section Functionalism's Limits), where and how the formation of theory should and could improve, and under what conditions which

[2] See, e.g., C. Ferstman, *International Organizations and the Fight for Accountability: The Remedies and Reparations Gap* (Oxford: Oxford University Press, 2017).

[3] Emblematic perhaps is R. Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder, CO: Westview, 1989). Seminal on accountability is R. Grant and R. Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99 *American Political Science Review* 29–43.

[4] A. Slaughter, 'International law in a World of Liberal States' (1995) 6 *European Journal of International Law* 503–538.

forms of inter-disciplinarity may be of assistance in arriving at a persuasive legal theory of international organizations (in the section On State-centrism and Inter-disciplinarity). In doing so, I depart from the less wide-ranging but excellent recent study by Gasbarri,[5] and will sketch my own intuitions about how to come to a proper understanding of international organizations law (in the section Towards a Supra-Functionalist Alternative). The Conclusion contains some final remarks.

Functionalism's Limits

The theory of international organizations law was effectively put in place about a century ago, after in particular Paul Reinsch and Francis Sayre had published their influential works.[6] Reinsch laid down the broad contours: under functionalism, as it came to be known, international organizations perform tasks assigned to them by their member states. These tasks are typically a-political, technical in nature (administrative, in today's language), cost member states little in terms of either loss of sovereignty or financial contributions, and yet, if all relevant sectors of social life are organized this way, world peace will be around the corner. The overwhelming functionalist sentiment is that through inter-state cooperation, swords can be turned into ploughshares.[7] To this Reinschian and still very recognizable basis, Sayre further added the idea that all forms of more than incidental inter-state cooperation, no matter their precise goal, ought to be seen as international organizations. This makes it plausible for the discipline to treat wide-ranging entities such as the World Bank and the European University Institute, or the World Health Organization, the

[5] L. Gasbarri, *The Concept of an International Organization in International Law* (Oxford: Oxford University Press, 2021).

[6] P. Reinsch, *Public International Unions, Their Work and Organization: A Study in International Administrative Law* (Boston: Ginn & Co., 1911); F. Sayre, *Experiments in International Administration* (New York: Harper, 1919). An insightful overview of the history of thinking about international organizations is J. Steffek, *International Organization as Technocratic Utopia* (Oxford: Oxford University Press, 2021).

[7] The biblical phrase is used to great effect in the title of I. Claude, *Swords into Plowshares: The Problems and Progress of International Organization*, 2nd edn (New York: Random House, 1959).

North Atlantic Treaty Organization, and the International Jute Study Group, as species of the same genus.

Functionalism's main strength is, no doubt, its normative appeal; as an explanatory theory, it has some traction – though not much, really. It can explain why Liechtenstein was refused admission to the League of Nations: not having an army of its own, Liechtenstein was considered unable to contribute to the League's function of maintaining peace and security. It can help explain why international organizations can boast certain powers (in order to facilitate their functioning) and it can explain why, as a general matter, international organizations enjoy privileges and immunities (again, in order to facilitate their functioning). But it is unable to explain why some organizations enjoy higher levels of immunities than others. And it cannot explain why some enjoy broader powers than others, or why some allow any aspirant state to join – in a telling development, Liechtenstein was warmly welcomed into the United Nations in 1990, despite still lacking an army of its own and despite the UN still having the same basic function as the League.[8]

Indeed, functionalism, for all its merits, has basic problems explaining some of the more visible or representative events happening to and within international organizations. None of these was more grim than the Rwandan genocide. During three months or so in 1994, some 800,000 Rwandans were slaughtered. The UN was timely informed; there could be no doubt that the matter fell squarely within the tasks of the UN; the death toll was exceptionally high; and yet the UN stood by idly, with no one on the Security Council wishing to even utter the word 'genocide' for fear of unleashing legal ramifications.[9] Functionalism is singularly useless here as an explanation: if ever there was something happening that would warrant UN action, this was it. And yet, nothing much happened. The most plausible explanation available in the literature is that while important states were rather lukewarm to begin with, neither did the UN itself (its secretariat, its department of peacekeeping operations) display much enthusiasm.

[8] The most plausible explanation then is that the UN has adopted a universalist rather than functionalist ambition. See Th. Grant, *Admission to the United Nations: Charter Article 4 and the Rise of Universal Organization* (Leiden: Martinus Nijhoff, 2009).

[9] M. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002).

This was attributed to a certain 'metal fatigue': having been shamed not long before in Somalia and having a difficult situation in the former Yugoslavia to contend with, there was just not enough interest or animus to address the Rwandan genocide.[10]

Functionalism is also unable to explain why, a few years later, the Director-General of the Organization for the Prohibition of Chemical Weapons (OPCW), Mr Bustani, was forced out of office. Bustani had been neither lazy nor corrupt, and in fact had just been re-elected for a second term as Director-General when the US started a campaign against him.[11] It is generally rumoured that the campaign was the result of Bustani proposing surprise inspections of chemical facilities not just in countries in the Middle East or Eastern Europe, but also in the US. This apparently rubbed US politicians the wrong way. A possible second explanation, sometimes whispered, is that Bustani was about to bring Iraq into the regime[12] – and if so, this would have made it so much harder to claim that Iraq was holding weapons of mass destruction, which could justify an invasion two years later. Both accounts suggest an organization (and organizational leadership) functioning very well, doing exactly what it was assigned to do. And yet, Bustani was ousted, in a manner that baffles functionalist theory: surely, one should not be ousted for effective functioning?

And functionalism would have a hard time explaining the US' *volte face* with respect to the Universal Postal Union (UPU). In 2018, the US announced its withdrawal from this classic international organization, having realized that the postal rates set by the UPU, the 'terminal dues', worked much more favourably for a country like China than for the US. In response, the UPU organized an extraordinary conference, adapted its terminal dues, and did so to the satisfaction of the US, which could happily announce not to withdraw after all. It is part of the function of the UPU to set terminal dues; yet the precise distribution thereof, and consequent allocation of costs and benefits, remains out of functionalism's reach.

[10] M. Barnett and M. Finnemore, *Rules for the World: International Organizations in Global Politics* (Princeton, NJ: Princeton University Press, 2004).

[11] J. Klabbers, 'The Bustani Case before the ILOAT: Constitutionalism in Disguise?' (2004) 53 *International and Comparative Law Quarterly* 455–464.

[12] As reported in E. Benvenisti, *The Law of Global Governance* (The Hague: Hague Academy of International Law, 2014) 153.

These three anecdotes all suggest that functionalism is insufficient. A more plausible explanation of the UN's indolence at the time of the Rwandan genocide taps into organizational sociology; the ousting of Bustani owes considerably more to naked power politics than it does to any functionalist concerns; and the UPU episode suggests that a perspective informed by institutional economics or political economy may be very welcome. These events all suggest that insights from neighbouring disciplines may help to understand them. More generally, it has been established that withdrawal, expulsion, or suspension of member states rarely is based on functionalist considerations alone. Claims concerning these matters will be dressed up in functionalist language (and sometimes not even that: surely, Zimbabwe's dismal human rights record has fairly little bearing on its capacity to contribute to the functioning of the Commonwealth), but usually owe next to nothing to concerns about the organization's functioning.[13]

Yet, the stories also suggest that, in all cases, the law played an important role (not necessarily benign) in structuring debates and discussions, and even in offering alternatives. In the Rwandan genocide, much energy went in to avoiding the term 'genocide', for fear that it would activate a legal duty to prevent and punish, under the terms of the Genocide Convention. In addition, it has been suggested that legal responsibility might rest on the UN for failing to perform in accordance with its mandate.[14] In the Bustani affair, legal procedures were required (and somewhat manipulated perhaps) to create the appearance of respectability, and Mr Bustani sought and found relief with the ILO Administrative Tribunal, which held that his dismissal had taken place unlawfully and ordered compensation. And in the UPU saga, one set of legal rules was replaced by a different set of legal rules, following established legal procedure. What is more, none of the episodes can be properly understood without taking into account the structuring role of the law: legal procedures channel the discussion, help decide which terms are considered acceptable, and help to create path dependencies. Any attempt to explain these incidents in purely

[13] A. Duxbury, *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge: Cambridge University Press, 2011).

[14] J. Klabbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act' (2017) 28 *European Journal of International Law* 1133–1161.

legal functionalist terms is bound to fail; but conversely, any attempt to explain these matters by ignoring the role of legal rules and procedures is likewise bound to fail.

On State-Centrism and Inter-disciplinarity

The anecdotes listed earlier, anecdotal as they may be, suggest two things of pivotal academic relevance. The first of these is the need to move beyond state-centrism. It is a remarkable and sadly ironic feature of much scholarship on international affairs, world politics, and global governance that it still tends to be highly state-centric: states are considered to be the central actors, and putative explanations are typically cast in terms of the interests of states. This is downright deceptive: states are conduits and have to be because this is how the international legal machinery is organized, but states rarely have interests of their own, beyond the ubiquitous and circular idea of the *raison d'état*. Instead, behind states there are the interests of groups and persons within the state.[15] Governments and politicians may wish to be re-elected; companies may wish to make a profit; individuals may wish to have opportunities, be protected against each other, or be free from unwarranted controls; and civil society organizations may wish to push a normative agenda. All these can be said to have interests which may or may not explain much, but states themselves, in isolation from these interest groups (*nomen est omen*…), have few interests of their own beyond perhaps sheer survival.[16]

The most obvious reason why states are given such a central role is epistemological in nature and has little to do with their actual relevance. States are few in number (some 200 or so, worldwide) and share a bunch of similar features, so they are extremely suitable for theory-building. The result is that much theorizing, by lawyers and social scientists alike, takes place in terms of state interests (and within international organizations in terms of member state preferences,

[15] R. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games' (1988) 42 *International Organization* 427–460.

[16] See further J. Klabbers, 'Rules, Institutions and Decisions: Taking Distribution Seriously', in G. Hellmann and J. Steffek (eds.), *Praxis as a Perspective on International Politics* (Bristol: Bristol University Press, 2022), pp. 127–142.

blissfully ignoring possible institutional autonomy), placing the state as the central unit – never mind that the subsequent analysis does not always elucidate what actually goes on in the world.

The state-centrism is taken to a further extreme when analysts start to count attitudes towards multilateralism or international law as meaningful in their own right, as in claims that 'state X is against multilateral institutions' or 'state X is the gravedigger of international law'.[17] Dubious as it is to think of states as having interests of their own to begin with, it is even less persuasive to think (beyond broad outlines) of states as having a position on international law in general. Surely, no state would decline the status of statehood, awarded by international law, or voluntarily forfeit the right of self-defence, a right that only makes sense (as far as states are concerned) under international law. States will not be for or against international law; they will, instead, be for or against particular sets of rules or regimes. And they will be for or against particular regimes depending on the desires, wishes, and interests of influential domestic factions.

The second lesson to be drawn from the earlier discussion is the lesson that inter-disciplinarity is needed, but much depends on how this is realized. What is clear is that individual scholars can learn from those working in different disciplines, and this, of course, makes eminent sense, and has made eminent sense from the very first days of academic specialization. Academics may think (and have to think) in little boxes, but the real world (however defined or conceptualized) cannot be expected to respect disciplinary boundaries. Clearly, being familiar with concepts, methods, and techniques, and borrowing from insights prevailing in other disciplines, can be highly beneficial. There are examples of international lawyers doing so fruitfully: think of the historically informed work of Martti Koskenniemi,[18] or the way Eyal Benvenisti sometimes weaves insights from economics into some of his legal work.[19] Likewise, some scholars active in IR make good use of jurisprudential insights and international legal

[17] S. Talmon, 'The United States under President Trump: Gravedigger of International Law' (2019) 18 *Chinese Journal of International Law* 645–668.

[18] M. Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge: Cambridge University Press, 2001).

[19] See, e.g., E. Benvenisti, 'Exit and Voice in the Age of Globalization', (1999) 98 *Michigan Law Review* 167–213.

understandings, perhaps none more so than Friedrich Kratochwil[20] and Nicholas Onuf.[21] And some are formally trained in several disciplines, integrating insights from the diversity of their backgrounds into their work.[22]

This need not result in formal cooperation between representatives from different disciplines, however: such formal collaborations are usually not very insightful, and often amount to the scholar from one discipline adopting methods and insights from the other.[23] It is not necessarily the case that the results are unhelpful: for instance, lawyer Kenneth Abbott and IR scholar Duncan Snidal have done some useful work together, with Abbott adding more than just a lawyer's sense of precision.

Yet, the example of Abbott and Snidal's work also suggests that inter-disciplinary collaboration is best done (if at all) between scholars with similar sensibilities. The rationalist IR scholar and the law and economics-oriented lawyer speak much the same language; they share the same working assumptions about rationality, profit maximization, the relevance of market analogies perhaps, and thus can fruitfully communicate. Much the same applies to the critical legal scholar and the constructivist IR scholar: both will have an innate understanding of the role and relevance of language in the construction of society, the relevance of tropes and biases, and the relevance of making legal claims. But collaboration between a critical legal scholar and a rationalist IR scholar is highly unlikely – their assumptions do not match, to the point where even bare communication may be extremely difficult. Likewise, the realist IR scholar or historian can only communicate with the most self-loathing lawyer: those who feel that law is by definition epiphenomenal cannot realistically communicate, let alone collaborate, with those for whom law is something relevant, however ephemeral or ineffective it may be perhaps.

[20] F. Kratochwil, *Rules, Norms and Decisions* (Cambridge: Cambridge University Press, 1989); F. Kratochwil, *Praxis: On Acting and Knowing* (Cambridge: Cambridge University Press, 2018).
[21] N. Onuf, *World of Our Making* (London: Routledge, 2013 [1989]).
[22] One example is G. Sarfaty, *Values in Translation: Human Rights and the Culture of the World Bank* (Stanford, CA: Stanford University Press, 2012).
[23] J. Klabbers, 'The Relative Autonomy of International Law or The Forgotten Politics of Interdisciplinarity' (2004) 1 *Journal of International Law and International Relations* 35–48.

It is also worth pointing out that it is perfectly respectable (and perhaps preferable) to be eclectic in terms of theory and method and discipline.[24] As a point of departure, the established methodologies in most academic disciplines can generate useful results (leaving poor scholarship aside, but this too is not bound to any particular approach). A couple of caveats are in place, however. First, it seems that in the more 'scientific' branches of international law scholarship (and by extension international organizations law scholarship) generating hypotheses is far more popular than actually testing them. This is understandable: generating a hypothesis, whether of the critical or the rationalist variety, is relatively easy. One needs a few facts, an established method, *et voilà*, a new hypothesis is born. In an industry which places a premium on output, visibility, and whatever is understood by impact, one can see the temptation.[25] The clever hypothesis-generator can this way easily churn out a dozen or so articles every year, and given that hypotheses can generate attention (more so than verification tends to do), he[26] can also end up being among the most cited scholars, without ever doing much research, properly speaking, whether empirical, doctrinal, or historical. This is particularly endemic in the law and economics tradition but is not only visible in those circles alone.

A further caveat harks back to the earlier point about eclecticism. All methodologies, it would seem, have their blind spots. Viewing states as profit maximizers tends to block from the view the relevance of non-state actors, as well as of such concepts as altruism; viewing actors as altruists, by contrast, tends to obscure the role of power. Focusing on power as formal authority tends to hide informal power exercises; et cetera. Regardless of whether a single truth can even exist,

[24] If only to overcome Arendt's rueful observation that 'it is in the nature of academic quarrels that methodological problems are likely to overshadow more fundamental issues'. H. Arendt, *Between Past and Future* (London: Penguin, 1968) 53.

[25] The discipline of international law is surprisingly reluctant to discuss how scholarship is affected by the structure of the academic industry. For a brief attempt, see J. Klabbers, 'On Epistemic Universalism and the Melancholy of International Law' (2018) 29 *European Journal of International Law* 1057–1069. See also J. Klabbers, 'The Ethics of Inter-Disciplinarity and the Academic Industry' (2024) 93 *Nordic Journal of International Law* 132–151.

[26] These clever academic industrialists are almost exclusively male, so the male pronoun seems appropriate here.

it seems rather obvious that the same thing can look differently to different people. The theologian may view a church as a place of worship; the sociologist as a site of expression, while the architecture historian may entertain yet a different view.[27] These need not be mutually exclusive, but can well be complementary; accordingly, it is folly to ignore what those in other traditions are doing.

And perhaps the most important practical caveat is to be reminded that inter-disciplinarity is a two-way street. Since the late 1980s and early 1990s, when Abbott[28] and Slaughter[29] started to endorse collaboration between IR scholars and international lawyers, it is fair to say that international lawyers have tried hard to familiarize themselves with IR scholarship and IR scholars. International lawyers have made an effort, and have often incorporated insights gained from the study of IR. But it is also fair to say that the love has remained unrequited. With the exception of some work in the constructivist IR tradition, IR scholars have spurned the advances of international lawyers – somehow the IR practitioners seem to think that a basic understanding of the law is a luxury, a bit like getting the topography of a state right.[30] Sometimes this is rather innocent: it may not be accurate to suggest the Universal Declaration on Human Rights has been 'ratified' (instead of adopted), but nothing much usually rides on this. But sometimes it gets considerably more serious, so much so as to jeopardize their insights.

One recent example concerns an ambitious attempt to understand international organizations, positing that these creatures are often the playball between universalist and parochialist sentiments, or function versus community.[31] Plausible as this is, it would have immensely strengthened the approach if the authors had realized that for some

[27] Seminal is H. Putnam, *Ethics without Ontology* (Cambridge, MA: Harvard University Press, 2004).

[28] K. Abbott, 'Modern International Relations Theory: A Prospectus for International Lawyers' (1989) 14 *Yale Journal of International Law* 335–411.

[29] A. Slaughter, 'International Law and International Relations Theory: A Dual Agenda' (1993) 87 *American Journal of International Law* 205–239.

[30] IR scholarship uses the law (if at all) in order to present or illustrate an IR analysis – rarely the other way around, as testified by almost all contributions to J. Dunoff and M. Pollack (eds.), *Interdisciplinary Perspectives on International Law and International Relations* (Cambridge: Cambridge University Press, 2013).

[31] L. Hooghe, T. Lenz, and G. Marks, *A Theory of International Organization* (Oxford: Oxford University Press, 2019).

hundred years or so, this very tension has been managed by what lawyers refer to as the 'implied powers' doctrine. And the implied powers doctrine is by no means an esoteric doctrine, but is the widely acknowledged centrepiece of international organizations law, discussed in even the most introductory of textbooks.[32] This then raises an awkward question: why do IR scholars not consult even those most introductory of textbooks? IR scholars working on economic issues would as a matter of course open an introduction to economics to learn about Ricardo's terms of trade or the Stolper–Samuelson theorem, but when it comes to the law, doing so is apparently considered unnecessary.

This can only be based on a fundamental misunderstanding of the relevance of law, a misunderstanding that most likely can be traced to the all-too-simplistic (and rather surreal) realist IR tradition. For those who view international law as merely engaged with constraining actors from behaving in a certain manner, it must indeed seem that international law is mostly useless. But here lies the rub: any half-way sophisticated understanding of the law will realize that constraining actors is but a small part of what the law aims to do. In much the same way as in domestic societies law is more than just crime and (sometimes[33]) punishment, so too is international law far more about facilitating the interactions amongst autonomous agents (call them states, if you will), and about both enabling and possibly controlling the exercise of public power. Societies cannot function without private law (contract, property, tort, family law); societies cannot function without public law (constitutional and administrative), and much the same applies to international society, regardless of whether one thinks it is deserving of the label society or needs to be prefaced by adjectives such as anarchical.[34]

[32] See, e.g., J. Klabbers, *An Introduction to International Organizations Law*, 4th edn (Cambridge: Cambridge University Press, 2022), or N. White, *The Law of International Organisations* (Manchester: Manchester University Press, 1996), or C. F. Amerasinghe, *Principles of the Institutional Law of international Organizations*, 2nd edn (Cambridge: Cambridge University Press, 2005), or H. Schermers and N. Blokker, *International Institutional Law*, 6th edn (Leiden: Martinus Nijhoff, 2018).

[33] Edelman suggests that criminal law can never be completely enforced: it takes far too many resources to do so. See M. Edelman, *The Symbolic Uses of Politics* (Urbana, IL: University of Illinois Press, 1985 [1964]).

[34] The three branches (criminal, civil, and public) come with different ideas about accountability as well. See P. Cane, *Responsibility in Law and Morality* (Oxford: Hart, 2002).

Towards a Supra-Functionalist Alternative

International organizations lawyers have been seduced, perhaps under the influence of Sayre writing a century ago, to view international organizations as manifestations of 'the international': international organizations give effect to cooperation between states, and since cooperation is by definition considered a good thing (the alternative seemingly being the Hobbesian world of all against all where life is 'nasty, brutish, and short'), it follows that international organizations are generally considered as good things – for who could possibly argue with the promise of turning swords into ploughshares?

This view painfully ignores that international organizations are not merely manifestations of the 'international' but also 'organizations'. There must be a reason why the organizational form is preferred over alternative possibilities of establishing cooperation (think of the treaty, the congress, the informal coalition, etc.). The most obvious reason, historically defensible moreover, is that the organizational form is better suited than alternatives if two imperatives need to be met in tandem: the combination of widespread participation and permanent management. Put bluntly: the COVID crisis would have worked out rather differently if the global health regime had consisted merely of a single treaty between a few handfuls of states, with the parties meeting once a year for two days. Instead, global health requires permanent management and widespread participation: it is surely no coincidence that already in the mid-nineteenth century the organizational form was chosen to protect the West against infectious diseases originating elsewhere. Much the same applies to customs classifications, or the regulation of postal traffic – this cannot properly be done on an incidental basis or with only a few handfuls of states.

As organizations, international organizations (like all organizations) do essentially three things.[35] First, they regulate. The UPU may set terminal dues. The International Telecommunication Union (ITU) distributes radio frequencies (and much besides). The World Meteorological Organization (WMO) figures out when a storm is

[35] This builds on J. Klabbers, 'International Organizations and the Problem of Privity: Towards a Supra-Functionalist Approach', in G. Politakis et al. (eds.), *ILO 100: Law for Social Justice* (Geneva: ILO, 2019), pp. 629–646.

properly to be called a storm, and the International Civil Aviation Organization (ICAO) harmonizes safety standards.[36]

Second, as organizations (like all organizations), international organizations monitor and manage. They monitor compliance with the standards they have established but also engage in further monitoring activities: the International Organization for Migration does not just set standards and offer best practices but also studies migration patterns and collects data.[37] The WMO does not just regulate what constitutes a typhoon but also follows weather patterns, tries to predict what will happen next, and issue warnings in case of bad weather, to the point of the WMO being one of the driving forces behind the Intergovernmental Panel on Climate Change.[38]

And like all organizations, international organizations allocate costs and benefits. The terminal dues set by the UPU benefit some more than others; the distribution of radio frequencies benefits some more than others, and much the same applies to declarations of a Public Health Emergency of International Concern by the WHO or a declaration of airworthiness by the ICAO. Distributing radio frequencies or declaring a public health emergency are activities with an inevitable technical, expertise-based component: there is a reason why the ITU tends to be directed by engineers or natural scientists, and why much of the staff at WHO is medically trained. But at the same time, these tasks are inherently political: decisions will involve winners and losers.

It follows that there might be merit in not (only) viewing international organizations law through functionalist lenses but also studying how this body of rules helps to structure patterns of winners and losers; which institutional biases are inherent in institutions and carved in legal texts, and how those legal texts come about. Tracking the role of law in the distribution of costs and benefits by international organizations manifests a decidedly novel approach to the law of

[36] Intriguingly, ICAO's website declares, not without a sense of drama, that ICAO is not a global regulator, and should not be criticized for acts that remain the prerogative of sovereign states. See www.icao.int/about-icao/Pages/default.aspx (visited 26 November 2021).

[37] An excellent recent study is M. Bradley, *The International Organization for Migration: Challenges, Commitments, Complexities* (London: Routledge, 2020).

[38] L. Andonova, *Governance Entrepreneurs* (Cambridge: Cambridge University Press, 2017).

international organizations, as does the study of these processes in terms of their effects not on member states alone but on other actors as well, in particular effects on the private sector. What seems clear is that the law is not merely the final outcome of political processes, as it is so often assumed to be, but it in turn also helps channel and structure those same political processes. Political processes are embedded in legal rules – it could not be otherwise. And those legal rules therewith are not merely innocent technical devices, but help to shape political outcomes. If even war, so often seen as the antithesis of law, is recognized as a highly legally regulated affair,[39] the same applies to everyday political processes.

The insight has serious implications for the law of international organizations. It entails that the law of international organizations can no longer be plausibly viewed as a set of rules and doctrines aiming to facilitate the effective functioning of international organizations in a setting where those organizations are pitted against their member states – this, one might conclude, is sheer ideology.[40] The relevant struggle is not merely the struggle between the principals and their agent, the member states and their organization; it also pits member states against each other, organizations against each other, and, most of all, involves interests within those member states.

To provide one example among many possible examples: the outbreak of the swine flu and the WHO's response thereto owed fairly little to any conflict between the WHO and its collective member states; nor did it reflect any conflict among member states. Instead, it turned out that those whose interests were affected were mostly pharmaceutical companies. Those whose vaccines were marketable made a handsome profit; those who were less well-prepared did not.[41]

Either way, what mattered eventually (and these are the points on which the WHO received considerable flak afterwards) was the

[39] D. Kennedy, *Of War and Law* (Princeton, NJ: Princeton University Press, 2006).

[40] J. Klabbers, 'What Role for International Organizations in the Promotion of Community Interests? Reflections on the Ideology of Functionalism', in E. Benvenisti and G. Nolte (eds.), *Community Interests across International Law* (Oxford: Oxford University Press, 2018), pp. 86–100.

[41] S. Machado Ramirez, 'The WHO and the A1H1 Pandemic: Some Reflections about Third-Party Effects of International Decision-Making', in J. Klabbers (ed.), *International Organizations Engaging the World* (Cambridge: Cambridge University Press, in press).

combination of substantive decision-making and the timing thereof. Had the WHO not declared a public health emergency, its (in-)activity would not have had much impact on pharmaceutical companies. But it did, and its timing became subjected to predictable criticism: the pharmaceutical companies whose vaccines were not yet ready complained that the decision had possibly been taken prematurely. Others retorted, not unreasonably, that postponing the decision could have sacrificed human lives. Both positions are plausible enough, and decision-making of this kind often amounts to political action of the 'damned if you do, and damned if you don't' variety. The best one can hope for is a reasonable exercise of discretion and judgement by the decision-makers – what Aristotle already recognized as *phronesis*.[42]

Noteworthy in all this is that the law never is an innocent bystander. The WHO's decision-making is embedded in legal rules, granting considerable powers to its director-general. The declaration has obvious legal effects: once a public health emergency is declared, national governments can take measures they may not take otherwise; and citizens may vie for vaccines while they otherwise might be reluctant or simply indolent. Critics too have little choice but to voice their discontent in legal terms. They cannot simply claim that the WHO got it wrong because their companies or industries were badly affected; instead, their claims have to be presented in legal terms, and follow legal procedures to be heard.[43]

All this suggests, as noted earlier, that inter-disciplinary scholarship can be very useful. The study of international organizations law (and the understanding of international organizations) can be enriched by taking on board insights from neighbouring and even not so neighbouring disciplines. Examples abound. International organizations are generally seen as playing an economic role: indeed, there is an entire branch of economics studying the roles and effects of institutions, under the label 'institutional economics'.[44] This too is likely

[42] J. Klabbers, *Virtue in Global Governance: Judgment and Discretion* (Cambridge: Cambridge University Press, 2022).

[43] See further also J. Klabbers, 'Towards a Political Economy of International Organizations Law' (2023) 20 *International Organizations Law Review* 82–101.

[44] D. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); E. Ostrom, *Governing the Commons* (Cambridge: Cambridge University Press, 1990).

to enhance the lawyer's understanding. By the same token, there is scholarship studying patterns of administration, whether public administration or business administration: in essence, while there are differences between the government agency and the private company, there are also similarities, and both are institutions of some sort. Consequently, the student of international organizations may well derive insights from scholars of both public administration and business administration and related sub-disciplines such as organizational sociology. It may be relevant, e.g., that organization scholars have developed the idea that some organizations are composed of other organizations (i.e., meta-organizations[45]), something that may well apply to international organizations: meta-organizations of states. If so, the dynamics are bound to be different in some respect than with organizations composed solely of individuals: organizations have constituencies in ways that individuals do not, and for instance the idea of states as conduits may well result from this realization: states have constituencies, after all, while individuals do not – at least not in the same way. Public administration scholars and organization sociologists have also long studied patterns of distributing and sharing accountability. The problem of the 'many hands', e.g., has long informed these branches of scholarship,[46] as have ideas about the leaking away of responsibility and accountability as related to the outsourcing of authority.[47]

Historians can tell us what went into the decision-making of international organizations on specific points or what role specific organizations (or even their organs) played in particular policy domains,[48] or in politics at large.[49] Intellectual history, additionally, can tell us

[45] G. Ahrne and N. Brunsson, *Meta-organizations* (Cheltenham: Edward Elgar, 2008).

[46] M. Bovens, *The Quest for Responsibility* (Cambridge: Cambridge University Press, 1998); M. Harmon, *Responsibility as Paradox* (Thousand Oaks, CA: Sage, 1995).

[47] R. Jackall, *Moral Mazes* (Oxford: Oxford University Pres, 2010 [1988]).

[48] S. Pedersen, *The Guardians* (Oxford: Oxford University Press, 2015); P. Clavin, *Securing the World Economy* (Oxford: Oxford University Press, 2013); V. Lagendijk, *Electrifying Europe* (Amsterdam: Aksant, 2008).

[49] D. Gorman, *The Emergence of International Society in the 1920s* (Cambridge: Cambridge University Press, 2012); A. Iriye, *Global Community* (Berkeley, CA: University of California Press, 2002); E. Rosenberg, *Transnational Currents in a Shrinking World, 1870–1945* (Cambridge, MA: Harvard University Press, 2014).

about the underlying ideas, concepts, and assumptions[50] – and some good historical work contains instructive and informative elements of both.[51] Anthropologists and ethnographers can help us understand how organizational cultures, practices, and rituals affect the acts of participants and other stakeholders and of those organizations.[52]

Conclusion

If this chapter constitutes something of a manifesto, it seems fitting to offer not conclusions but rather final suggestions. Good academic work is work that has soul and is somehow connected to people of flesh and blood. That does not exclude analytical philosophy (quite the opposite), but it does, or should, limit the amounts of energy spent on trying to prove that Foucault was right, or that Latour is superior to Bourdieu or vice versa. Those are suitable topics for conversations over a glass of Armagnac on the Left Bank, but less interesting as scholarly ventures.

That is no slight on Foucault, or Latour, or Bourdieu. Instead, I hope to have suggested that a good international organizations lawyer takes careful note of the insights these scholars have to offer on, among other things, power, expertise, and social capital, as their insights can help us understand the topic of our study. But it should not derail into a race between them, or a competition, as is sometimes the case.[53]

If it is true that all theories and methods have their own blind spots, it follows (in much the same vein, really) that the best academic work is driven rarely by theory or by method but rather by curiosity. The point of academic work is not to show that the neo-realists are right, or that rational choice is methodologically superior – if only because

[50] M. Mazower, *Governing the World* (London: Allen Lane, 2012); G. Sluga and P. Clavin (eds.), *Internationalisms* (Cambridge: Cambridge University Press, 2017).

[51] The enumeration is far from exhaustive: much can be learned from diplomatic historians, social and economic historians, and cultural historians, to name a few.

[52] R. Niezen and M. Sapignoli (eds.), *Palaces of Hope: The Anthropology of Global Organizations* (Cambridge: Cambridge University Press, 2017).

[53] An excellent recent example of studying international organizations law with the help of the previously mentioned thinkers is D. van den Meerssche, *The World Bank's Lawyers: The Life of International Law as Institutional Practice* (Oxford: Oxford University Press, 2022).

much depends on the object of study and the research question. Those of us interested in the best interpretation of article 2, paragraph 7 of the UN Charter will not gain much from a law and economics approach, and neither will those of us interested in the accountability of the World Bank. But should we wish to know why some organizations have withdrawal clauses, then insights from economics may be helpful.[54] In other words, the research question should influence the choice of theory and method, rather than the other way around.

Likewise, there is little point in trying desperately to achieve a paradigm shift. True paradigms are rare, especially in the social sciences and humanities, where they might be non-existent.[55] Research funding agencies, themselves bureaucracies that should be studied as such, are keen on paradigm shifts, but that is largely a conceit drifted over from the natural sciences, and akin to the amateur football team dreaming of one day winning the Champions League. It is useful to set the bar high, but few of us will ever realize a paradigm shift – so this kind of language ought not to be taken overly seriously. A good academic study is one that tells us something we did not already know or makes us understand something we did not understand before. And as the discussion in this chapter will have made abundantly clear, there is no substitute for reading and studying widely and broadly.

[54] Classically A. Hirschman, *Exit, Voice, and Loyalty* (Cambridge, MA: Harvard University Press, 1970).

[55] This was the opinion of Thomas Kuhn, the scholar who popularized the notion of paradigm. For the record, he said little about the humanities, but held that there were no true paradigms in the social sciences, and given his own background in the natural sciences, it is not impossible that to his mind the humanities were not 'science' to begin with. Th. Kuhn, *The Structure of Scientific Revolutions*, 2nd edn (Chicago, IL: University of Chicago Press, 1970).