

Book Review

Nigel White, *The Law of International Organisations* (Manchester University Press, 3rd ed, 2016)

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White's textbook on the law of international organizations was recently published in a third, substantially revised edition. This review will first describe how the new book differs from its predecessor, and will later engage with some of its central themes.

Whilst *The Law of International Organisations* is still divided in ten chapters (as was its first edition), the structure is considerably new. The most visible innovation is the introduction of 22 case studies which accompany the reader throughout the volume. This is a useful improvement, employing a zoom in/zoom out dynamic that allows the author to move nimbly from the general to the context-specific. Every chapter includes at least one (more frequently two or three) focussed discussion on historical facts, reproducing in a concise narrative style the most well-known circumstances in which the law of international organizations developed. These range from a discussion on 'The veto' in the context of the definition of 'inter-governmental organization', to 'Sexual abuse by peacekeepers in the DR Congo' in the context of 'Accountability, access to justice and remedies'.

For instance, chapter 8 deals with 'Military measures', in which the use of force by the United Nations is first presented from a 'static' perspective, discussing the legal framework in which the organization operates. The virtues and vices of peacekeeping and peace enforcement missions are first introduced as detached from the political context and later immersed in their historical development with three case studies. The first is named 'From Korea to Kuwait', in which White analyses the "deficient collective security actions authorised by IGOs, rather than ambitious claims of collective self-defence".¹ The second concerns the 'Uniting for Peace Resolution 1950', and the third 'The UN, the Responsibility to Protect and Libya 2011'. After these historical perspectives, the chapter goes back to delineate the legal framework of peacekeeping missions.

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¹ Nigel White, *The Law of International Organisations* (Manchester University Press, 3rd ed, 2016), 205.

Five chapters reorganise and update the content of the first edition, while the others are substantially new. In contrast to the second edition, the book does not only deal with the ‘classical’ themes of the law of international organizations (such as personality, powers, membership), but also with United Nations (‘UN’)-specific discussion on sanctions, military measures, law-making and responsibility. Updated chapters include the definition of inter-governmental organizations (chapter 1), membership (chapter 2), international legal personality (chapter 4), doctrine of power (chapter 5), and institutional lawmaking (chapter 6). The new chapters discuss the legal character of the constituent treaty (chapter 3), sanctions (chapter 7), military measures (chapter 8), responsibility (chapter 9), and accountability (chapter 10).

The book is based on four theoretical pillars. First, the author contends that the law of international organizations is dominated by the United Nations, and the book focuses on this institution and its specialised agencies. Second, the book is based on the assumption that law has to be separated from politics. Third, central importance is given to the relationship that the United Nations has with its member states. Fourth, the book concentrates on the relationship between law-making and the creation of legal regimes.

The UN-centric approach reflects a concept of organization based on the dichotomy intergovernmental/supranational. The two categories have in common that they refer to institutions created by states under international law and endowed with a permanent institutional element, but only the first “is based on cooperation, consent and respect for sovereign equality”.² The UN has limited elements of supranationalism represented by the concentration of power in the Security Council, but the differences with organizations such as the European Union impose a rigid doctrinal separation.

Following White’s attention to legal theory, the third edition honours the tradition to dedicate the first chapter to frame the notion of intergovernmental organizations in the context of legal positivism, realism, liberalism, functionalism, constructivism, and critical theories. Moreover, the new edition complements this overview with an interesting discussion on the ‘Legal character of the constituent treaty’ in chapter 3. After introducing the complex relationship between member states and United Nations, the third chapter innovates the structure of the book, going back to the notion of intergovernmental organization from the

² Ibid 9.

perspective of its constituent treaty. White describes the blurred line that separates an organization created by the means of a ‘contract’ or by the means of a ‘constitution’.

The development of a constitution implies autonomy from the member states, which is considered as a matter of degrees. The United Nations, and thus the object of the book, should be somewhere on the spectrum between supranational organizations and contractual forms of cooperation. While the European Union is the paradigmatic example of supranational organization, the North Atlantic Treaty Organization is considered to be the paradigmatic example of the contractual-type. However, the two models are rarely found in their pure form, and the United Nations ‘dominates’ the law of international organizations, possessing features of both the institutions.

The second foundational approach of the book is introduced on the first page: “law and politics can be separated but it is important to understand their relationship, an understanding that provides the method behind this book”. The politics-law divide reflects what White calls the three levels of legal analysis used in the textbook.³ The first sees law as something stable and immutable which is above politics. It provides for the legal framework in which organizations operate, allowing for criteria of validity between what is adopted within the limits of consensualism and what is adopted *ultra vires*. The second level of analysis considers law as a system of general principles that applies across organizations, dealing with common issues such as powers, personality, or financing. The UN is the paradigm of unity within the law, embodying the tension between supranationalism and contractualism. Third, the book adopts the perspective of the legal output of international organizations, underling the importance of their law-making function and the capacity to produce legal orders.

Consequently, the book is structured in the dialectical relationship between these three approaches, in the attempt to separate law and politics within organizations. The idea to isolate case-studies within chapters is a manifestation of the distinction between theory and practice. For example, in chapter 4 the controversial notion of legal personality is introduced with case study 7, dedicated to ‘The assassination of Count Bernadotte’. The historical circumstances and the opinion of the International Court of Justice in *Reparations for Injuries*⁴ precedes a theoretical debate on how the UN is independent from member states and, at the same time, dependent upon them.

³ Ibid 27.

⁴ *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174.

The third theoretical pillar on which the book is founded is the analysis of the complex relationship between the UN and its member states. Every chapter discusses at some length the difficulty in framing the issue in a consistent theory. In particular, chapters 5 and 6, dealing with powers and law-making, reveal White's focus on this theoretical and practical dilemma.

The theories on the powers of international organizations (attribution of competences, implied or inherent powers) are presented with the help of three case studies, concerning the legality of peacekeeping missions (the *Certain Expenses* advisory opinion⁵), the competence of the World Health Organization and of the United Nations in relation to nuclear weapons (the *Nuclear Weapons* advisory opinions⁶), and the legislative powers of the Security Council (Resolution 1373/2001). The relationship with member states is described on the basis of the distinction between contractual and constitutional foundations. On the former, member states remain in control of the constituent treaty and the organization may have separate will but with limited development. On the latter, organizations possess a significant separate will and may develop substantial powers. When organizations have a constitutional foundation, the doctrine of powers is predominated by the practice of the organization, overturning the relationship with member states by dominating the members. They create “‘customary constitutional law’ that gradually fills in the legal framework created by the constitutive document”.⁷

Institutional law-making is presented from the perspective of two case studies, concerning ‘The General Assembly and the regulation of outer space’, and ‘The WHO and health regulation’. White stresses the importance of traditional forms of international law produced by states, while presenting the significant change from a pure Westphalian system of self-regulation towards complex forms of law-making. In particular, chapter 6 focuses on the General Assembly and the specialised agencies. The topic is approached from the complex relationship between member states and international organizations, considering how law-making is a constant balancing act between acceptance by states and autonomous will of organizations.

White contends that the distinction between ‘hard’ and ‘soft’ law is not conclusive on what constitutes institutional legislation, and neither reflects states’ compliance. Then, he distinguishes between ‘Executive law-making’ dealing with UN Security Council mandatory

⁵ *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter) (Advisory Opinion)* [1962] ICJ Rep 151.

⁶ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Advisory Opinion)* [1996] ICJ Rep 66; *Legality on the Threat of Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226.

⁷ White, above n 1, 122.

powers and ‘Plenary law-making’ describing General Assembly declarations. In short, institutional law-making can feed into the traditional sources of international law, either as the basis of subsequent treaties, or by becoming custom, or as interpretation of constituent documents or as an expression of general principles.⁸ Otherwise, it constitutes law through a process of ‘deformalisation’, without tracing its origins to treaty law. The relationship between member states and the organization becomes relevant in the development of a legal output that is only the product of the separate will of the organization. The soft/hard law dichotomy fails to acknowledge the autonomy at the sources of institutional law-making.⁹

The fourth and last foundational theme concerns the creation of ‘legal regimes’ by means of law-making. White describes this approach considering that “An IGO that has legal independence from its member states and operates within a constitutional framework provides governance principally in the form of norms, so that there are many, sometimes overlapping, institutional orders”.¹⁰ The creation of “institutional legal orders” is strictly related to the independence of the organization from its member states, and regimes are defined in the words of Stephen D Krasner as “a set of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”.¹¹ White contends that the law-making function of international organizations contributes to the development of regimes within which states’ behaviour is not primarily guided by the traditional sources of international law.

The importance of legal regimes in the structure of the book can be seen in chapter 7 on ‘Sanctions’. After describing the concept of sanction, White considers that in law sanctions are placed in the hands of the central organs of a legal order, even if for international law this has not been significantly realised. Thus, he describes “the universal sanctioning competence” of the Security Council in comparison with regional and particular legal order. Interestingly, the complexity of regimes interaction emerges in the difference between sanctions imposed by organizations and countermeasures adopted by states.¹² These are distinct notions that overlap considering the collective right to take countermeasures. Sanctions are defined as instruments

⁸ Ibid 161.

⁹ Ibid 167.

¹⁰ Ibid 148.

¹¹ Stephen D Krasner, ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’ (1982) 36 *International Organization* 184, 186.

¹² White, above n 1, 176.

of particular regimes which can go further (i.e. terminate a trade agreement) than general proportionate countermeasures (i.e. suspension of a trade agreement).

In conclusion, the third edition of *The Law of International Organisations* by Nigel White is a useful resource for teachers and students of the United Nations system. In approximately 300 pages, the book updates and innovates a classic of the law of international organizations. Its new structure and the new chapters successfully improve on the previous editions.