
Many scholars have short, or longer, lists of books they would like to write before, or during, their retirement. And occasionally items on that list can be crossed out, for instance because a book has suddenly been written by someone else who had his priorities straight. A book on membership in international organizations was indeed on my list, and so far, I only succeeded in scribbling down a few first ideas that were published in the present journal some years ago.¹ The reason for my interest in membership issues, is that one of the most fascinating aspects of international organizations concerns the status of their members. Sometimes they are just sovereign states (for instance when they together get the idea to create an international organization), sometimes they are mere agents of the organization they created (eg, when performing tasks on behalf of the organization), and in other situations they are something in between a member and an outsider (eg, when they simply use the organs of an organization as a meeting place). (Member) States change roles. Once they occupy their ‘seat’ in an international organization, they become part of that organization's institutional set-up and they allow the organization to take decisions.

When I started reading the book under review here, I happily noticed that Gerd Droesse shares this fascination, as well as the idea that membership is a key notion in the law of international organisations: “Membership is a core element in all traditional theories of international organization. One of the mantras of public international law is that there cannot be an international organization without members.” (p. 2). Admittedly, the later sentence often features in my own first lecture in a course on international organizations: to understand the distinction between the organization and its Member States (something that may be blurred when following certain debates at, for instance, the UN Security Council), it is important to understand that those states are a member of something. Hence, they created something else of which they became a member; the UN, the WTO, or the EU cannot be equated with their members. This, essentially, is the key distinction between an organization and a conference: the first one is a separate entity. This simple notion also forms the backbone of the notion of legal personality (and, yes, I do belong to the group of scholars who see legal personality—or what amounts to the same

thing, the existence as part of the legal system—as a defining element of an international organization).²

One of the claims in the book by Droesse is that we largely seem to ignore the dynamic and changing nature of international organizations. They are not just entities that were once created and in which state members always have the same role to play. He claims that traditional theories regarding membership are no longer in line with changed realities. Moreover, Droesse even goes one step further (and makes your reviewer slightly nervous) by stating that: “international organizations do not need to have members as the parties to the constituent agreement (if there is such an agreement) and do not necessarily need to become members of the new international organization that will be established”. In fact, “there are international organizations which do not have any formal membership structure” (p. 4). There goes the age-old first lecture in my course on international organizations, in which the concepts of international organization and membership were closely linked. The idea that international organizations can do without members, or the absence of “any formal membership structure”, seems primarily related to the emergence of ‘Private International Unions’ in the period between 1826-1907 that led to many ‘public congresses’ in many fields of international cooperation. In many cases, these were the initiatives of individuals. Later, ‘International Administrative Unions’ (‘IAUs’)—such as the General Postal Union or the Central Commission for the Navigation on the Rhine—were established to deal with transnational issues. The narrative is not so convincing in supporting the claim that there are no members at all. In the end, the point seems to be much more that the notion of ‘subject of international law’ needs to be changed, and that we have to accept that other actors, and not just states or public authorities participate in international organizations. The early IAUs, for instance, already accepted technical administrations and dependent territories as members. And, indeed, in many cases, initiatives for international cooperation find their basis in national law (with recognition of international legal personality and privileges and immunities under international law following later). Examples include the Global Fund to Fight Aids, Tuberculosis and Malaria (Global Fund) and Gavi, the Vaccine Alliance (Gavi Alliance). What we are talking about then is, indeed “a new class of dual and hybrid organizations” (p. 51). While we

² Organizations denying their legal personality cannot function well and try and find ways around it to create a de facto legal personality. See Niels M Blokker and Ramses A Wessel, ‘Revisiting Questions of Organizationhood, Legal Personality and Membership in the OSCE: The Interplay Between Law, Politics and Practice’ in Mateja Platise Steinbrück, Carolyn Moser, and Anne Peters (eds), The Legal Status of the OSCE (Cambridge University Press, 2019) 135–164.
are used to the fact that not all international organizations are based on a formal treaty and that state and non-state actors may be at the same table in some of their organs,\(^3\) this as such does not affect the \textit{general} notion of an international organization, right? For Droesse, it does. And he frankly admits that his new concept “will substantially increase the number of recognised ‘intergovernmental organizations’ and ‘international organizations’, possibly to the thousands” (p. 7).

In showing the development and proliferation of international organizations, the book does an excellent job by providing a very nice and interesting overview. The aim of this overview is to make the reader aware of the fact that not only the membership of international organizations changed, but also the nature of these entities. “International law and the law of international organizations need to take account of the fact that there are a number of organizations which have not been established by a treaty ... These can be established either with or without legal personality. A new class of international organizations with dual or hybrid character has also emerged, established under municipal law, but with privileges and immunities under international law” (p. 51). Scholars in the field would agree with the claims that the distinctions that are made in most textbooks between public and private international organizations, between general and special organizations, or between intergovernmental and supranational organizations, are not able to reflect the variety of international institutions we see today. Most scholars would also accept that many organizations fall somewhere in between these categories; they would see the classification merely as a way to bring some kind of order in an otherwise fragmented landscape.

With regard to the legal foundation of an international organization, one of the main claims of the book is that “a constitution does not need to be adopted as a treaty” (p. 90). I would certainly agree with Droesse that international cooperation is increasingly based on less formal arrangements, that the number of new treaties has been declining for a while, and that our dogmatic obsession with ‘the sources of international law’ as we know them may prevent us from seeing completely new (and quite well functioning) forms of international cooperation, between various international actors.\(^4\) According to Droesse, the


\(^4\) In that sense, Droesse refers to some publications in our ‘informal international lawmaking’ project: Joost Pauwelyn, Ramses A Wessel, and Jan Wouters, ‘When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking’ (2014) 11 \textit{European Journal
many new forms of international cooperation force us to rethink the concept of international organization.

Furthermore, the concept of ‘membership’, while perhaps theoretically clear (as the mirror-image of ‘participation’), suffers from a somewhat sloppy use in practice. Both states and international organizations use the term ‘membership’ even for participation in fora that would not fall under the classic definitions of an international organization. This latter point is quite fundamental and Droesse questions the textbook claim that “[o]ne element all organizations have in common is that they have members”. The author does this along three lines of argumentation: “[f]irst, an international organization does not need to be established by a treaty, nor is there a need for membership structures to be established by a treaty. Second, the parties to the treaty establishing an international organization do not need to become members of the organization. Third, an international organization does not need to have members and in fact, there are organizations which qualify as ‘international’ even though they do not have any members” (p. 134). This, indeed, is refreshing and the claims are substantiated by many examples from practice.

Obviously, this has consequences for the way we define ‘subjects of international law’ and ‘legal personality’. Droesse notices that “the notion of subject of international law is broader than that of international juridical personality. Hence, organizations such as the OSCE and organizations established as trust funds with or without juridical personality may qualify for recognition as subjects of international law. The same is also true for dual and hybrid organizations, incorporated under municipal law but with recognition of international legal personality and privileges and immunities under international law” (p. 207). It is true that the concept of ‘legal personality’ has always remained somewhat confusing because it has been used in different ways. Droesse’s claim that even entities lacking international legal personality could be subjects of international law, first and foremost seems to be a definitional issue. When one would accept the idea that international legal personality implies nothing more (or less) than the recognised existence of an entity in the international legal system, it becomes easy to accept the legal status of entities even if they have not been created on the basis of a treaty that was concluded between states. In that sense, it is indeed essential to accept that “[i]nternational legal

of International Law 733–763; and Joost Pauwelyn, Ramses A Wessel ,and Jan Wouters (eds), Informal International Lawmaking (Oxford University Press, 2012).

Schermers and Blokker (2018), §66.
personality may be acquired subsequently based on its progressive institutionalisation and taking account of the position which other recognised subjects of international law have adopted in its regard” (p. 271). In the end, however, the question is whether a legal entity can have rights and obligations under international law. Whether that is on the basis of legal personality or by being a subject of international law indeed seems to depend on definitions.

So, the question remains, what’s new? Droesse has a point when he claims that current textbook definitions are far too limited to take the large variety of international institutions onboard. He also has a point when he argues that by holding on to our traditional definitions, we ignore that, these days, international cooperation has different shapes and forms and is conducted by different state and non-state actors. At the same time, this is what literature already revealed over the past fifteen years or so, when ‘global governance’ was defined in terms of various ways in which different actors cooperate in a plethora of formal and informal bodies and fora. In fact, ‘regulation’ and ‘standardisation’ by all these different bodies has been a key topic and has led to many new insights into the different types of international (institutionalised) cooperation.6

Perhaps the key—and important—contribution by the book under review here is mapping the impact of all these developments in the international legal system on our understanding of the concept of international organization(s). In thirty theses the concluding chapter of the book convincingly lists how we, scholars, need to redefine and fine-tune the concepts and classifications we are used to working with. Indeed, while many of us will have referred to the new developments in our courses and textbooks, we have not fundamentally changed our definitions and classifications to take the variety of international institutions onboard and to reassess key concepts such as membership. In that sense, the book by Droesse can be read as a wake-up call that deserves to be

6 Without extensive referencing, what comes to mind is Slaughter’s influential analysis of ‘transgovernmental regulatory networks’ (Slaughter, 2004), Kingsbury and others’ studies on ‘global administrative law’ (Kingsbury, Krisch, and Stewart, 2005), Alvarez’ analysis of law-making bodies (Alvarez, 2005), Von Bogdandy and others’ introduction of international bodies exercising public authority (Von Bogdandy, Wolfrum, Von Bernstorff, Dann, and Goldmann, 2010); the project led by Cafaggi on ‘Private Transnational Regulatory Regimes’ (Cafaggi, 2012), empirical research on global economic law-making (Block-Lieb and Halliday, 2017), the project on ‘The Architecture of Postnational Rulemaking’ (University of Amsterdam, 2013); and the project on ‘informal international law-making’ referred to above (Pauwelyn, Wessel, and Wouters, 2012).
heard by everyone studying the law of international organizations (broadly defined of course).

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