In the same vein, he makes a clear 'choice' in favour of the right of access to a court when this right is in conflict with the immunity from execution (at 686–688).

On these five topics, and on many other questions addressed in the book, much more could be said. In fact, as will have become clear from the preceding comments, Éric David's *Droit des organisations internationales* is of particular interest because it sparks debates – and this notably because of the 'militant' or ambivalent positions set out. In this sense, *Droit des organisations internationales* is a thought-provoking book in the guise of a traditional textbook on international institutional law. It will certainly find its place alongside the well-known textbooks written in English, but it brings to the field a particular approach and its own style. The book should be welcomed as a contribution to the diversity of studies on the law of international organizations – an echo, perhaps, of the diversity of international organizations themselves.

Frédéric Dopagne

Associate Professor University of Louvain;
Brussels Bar
Email: frederic.dopagne@uclouvain.be

doi:10.1093/ejil/chaa036

Gerhard Ullrich. ***The Law of the International Civil Service.*** Berlin: Duncker & Humblot, 2018. Pp. 538. € 89,90. ISBN: 978-3-428-14914-8.

The Law of the International Civil Service, by Gerhard Ullrich, offers a detailed and up-to-date picture of one of the densest and most legalistic areas of the law of international organizations (IOs). The back cover describes this volume as 'practice-oriented' and, cryptically, 'legal-dogmatic'. These reveal two fundamental features of the book that characterize not only its major virtues but also its limits. While the main virtue of the volume lies in its encyclopaedic character, its primary limit is a lack of theoretical analysis, which reflects the fact that this is a field of law usually considered to be the exclusive interest of practitioners. Yet this need not remain so, and, in this review, I take advantage of the opportunity to introduce this work in a manner that encourages an academic focus on the law of the international civil service.

The book is divided into three parts. The first part, entitled 'Basic Elements', describes the fundamental principles of employment relationships within IOs. The second part, making up two thirds of the work, focuses on the sources of international civil service law. The last part considers the system of legal protection for members of the international civil service and the role of international administrative tribunals. Throughout, Ullrich makes ample use of bullet points to structure the core elements of employment relationships, including lists of legal cases with their *ratio decidendi*. This is particularly useful for a legal advisor who may only have 15 minutes to provide an opinion on a particular issue. In this book he or she can find a clear account of the fundamental rules as applied by different IOs and their administrative tribunals. Ullrich perfectly addresses the demands of writing legal opinions and provides a basis for conducting further research.

Nevertheless, *The Law of the International Civil Service* leaves several lines of inquiry unexplored, which limits its relevance to an academic audience. This begins with its methodological approach, which Ullrich, rather enigmatically, defines as 'legal-dogmatic', without further explanation. I believe the term may result from the challenges of translating the German '*rechtsdogmatik*' into English. Indeed, the book is a second edition of a volume published in German in 2009, which promised a '*rechtsdogmatische*' contribution to the field.[1] Linguistic challenges aside, Ullrich's legal-dogmatic take, while certainly sufficient for a practitioner writing a legal memo, limits its usefulness to academic debate. In particular, Ullrich mixes several approaches to the law of IOs, commonly called 'unity within diversity', 'state analogy' and 'functionalism'. A clear systematization of these distinctive approaches, or justification for their blending, would have helped the analysis considerably.

To begin with the first, 'unity within diversity' frames IOs as an archipelago of isolated entities, each one having its own internal set of rules but, at the same time, connected to every other organization belonging to the 'IO archipelago' by common principles.[2] Historically, the 'unity-within-diversity' approach allowed the development of an academic field of IO law, shaped by generalist IO lawyers whose focus was less on the specificities of the legal regime created by any one IO (that is, environmental law, trade law, *jus ad bellum* and so on) but more on the general characteristics of IOs – a focus on the archipelago rather than on the islands, as it were. Ullrich contends that the law of international civil servants, with its well-developed principles, is one of the most advanced sub-fields, reflecting that there is indeed a common law of IOs (at 31). In particular, the development of administrative tribunals with jurisdiction over several IOs enhances cross-fertilization between IOs and further entrenches the idea that there is a common set of institutional rules. Consequently, he argues, the insular nature of IOs is no longer an obstacle for the development of a consolidated field of 'archipelagic' research (at 32). Ullrich calls this approach '*pars pro toto*', which allows him to offer a comprehensive presentation of the law governing employment relationships moving from one organization to another with a selection of examples (at 35).

At the same time, the diversity of IOs' bureaucracies plays an important role in the book: Ullrich distinguishes between 'families' of institutions that share a similar civil service system (at 43). This is an uncommon classification for scholars working on the law of IOs, which are used to classify IOs on the basis of their competences, membership or level of integration.[3] Ullrich categorizes IOs based on a typology of their employment systems. The first family is identified as the 'UN Common System'; it includes 18 international organizations and seven United Nations (UN) affiliated programmes.[4] The civil service system of the European Union (EU) makes up Ullrich's second family. This common set of rules applies to the EU and 50 inter-institutional bodies, specialized agencies and other entities that refer to the EU staff regulations in their constituent instruments. The third family is defined as that of the 'coordinated organisations' and comprises a diverse group of IOs, with limited common regulations, such as a system for the adjustment of salaries and allowances of their staff (at 46). It includes the Organisation for Economic Co-operation and Development, the North Atlantic Treaty Organization, the Western European Union and the Council of Europe. Finally, the fourth family is the 'mixed (hybrid) civil service system' – that is, the civil service systems that merge the characteristics of several families (at 46). The European Patent Organization is adopted as the main example of this family

1 G. Ullrich, *Das Dienstrecht der Internationalen Organisationen* (2009).

2 H.G. Schermers and N.M. Blokker, *Institutional Law: Unity within Diversity* (2011), para. 22.

3 See J. Klabbers, *An Introduction to International Organizations Law* (2015), at 23, also on the value of classification as such.

4 See United Nations Common System, available at https://icsc.un.org/Home/CommonSystem.

because it merges the staff regulations of the EU family with the pension scheme of the coordinated organizations – or the third family.

Employing his *pars pro toto* approach, Ullrich uses this classification to attempt a comprehensive description of the law of the international civil service. This results, however, in a tension between Ullrich's premise that there is a common law found in the law of international civil servants and the subsequent fragmentation of the field into several families. This tension is never resolved or even addressed: the book does not explore whether the differences between families undermine the formation of general principles and other common norms. Still, Ullrich's study on the different typologies of employment systems will benefit generalist scholars working on aspects of the law of IOs: these usually assume the existence of a common regulatory framework applicable to every organization (the existence of the archipelago) and adopt an external perspective, which does not acknowledge the internal structural differences between organizations (islands). For instance, the project of the International Law Commission on the responsibility of international organizations is frequently criticized for not taking into consideration the perspective internal to each IO.[5] Ullrich's typology, developed to categorize islands of employment relations, may not fit other aspects. However, it shows awareness for the diversity within unity.

In addition to the unity diversity theme, Ullrich also approaches the law of the international civil service from the perspective of the 'state analogy'; this is the second approach explicitly adopted by him. It is based on his thesis that IOs not only are employers but also act as substitute states for their employees (at 48). Ullrich maintains that IOs assume obligations for their personnel that are more akin to national legal systems than international law because they develop a system of human rights protection, social infrastructure, taxation system, family-related benefits and welfare measures. He describes in depth how IOs protect the human rights of their employees and identifies 10 relevant areas: human dignity, privacy, data protection, non-discrimination, freedom of association, freedom of expression, property, freedom of thought, safety and effective remedy (at 100–150). A comprehensive list of relevant judgments of international tribunals with their *ratio decidendi* is compiled at the end of every section, covering the case law on specific rights.

Ullrich does not state whether he sees in the state analogy only a descriptive tool or whether he considers it to have normative value. In particular, it is not clear if, to him, the employment relationships within each IO comprise separate legal systems with their own constitutions and, if this were the case, how they would relate to international law, national systems and other norms within the same IO. This affects Ullrich's analysis of the state analogy, as his treatment of freedom of association illustrates. Protecting the constitution of internal trade unions, freedom of association is particularly relevant to Ullrich's development of the state analogy (at 118ff.). Ullrich contends that the capacity of IOs to act as states towards their employees is based on the respect of the freedom of association, as the only means to counterbalance the concentration of power at the top of IOs. Indeed, he claims that the right to constitute trade unions aims at effective dialogue beyond consultation rights. However, he does not explain whether the state analogy means that IOs are developing a constitutional dimension separate from international law. More specifically, it is not clear how freedom of association within IOs relates to international and national law, also considering that the trade unions in question are usually formed under the law of a member state. It would be extremely interesting to conduct further research on the implications that the normative relevance of the state analogy, as discussed in many other areas of IOs law,[6] has on the study of employment relationships.

[5] Paasivirta and Kuijper, 'Does One Size Fit All? The European Community and the Responsibility of International Organizations', 36 *Netherlands Yearbook of International Law* (2005) 169.

[6] For a comprehensive account of the state analogy, see F.L. Bordin, *The Analogy between States and International Organizations* (2018), reviewed by S. Besson in this issue.

The state analogy also helps distinguish Ullrich's book from its anglophone predecessors and, in particular, from the 1994 edition of Chittharanjan Amerasinghe's *The Law of the International Civil Service as Applied by International Administrative Tribunals,*[7] which have tended to discuss employment relations within IOs free from any state analogy. Where Amerasinghe was more concerned with the systems of dispute settlement, Ullrich's work stresses the hierarchical structure of an internal body of IO law forming a legal system similar to states. He contends that employment relationships are regulated by a hierarchical pyramid of norms, within which he detects a 'shadow constitution', general principles and secondary norms (at 31). In comparison to Amerasinghe's book, Ullrich is less focused on how judicial decisions developed the source of international civil service law: legal cases are instead used to sustain and clarify the legal instruments approved by competent institutional bodies.

While all of this reflects the relevance of the state analogy to Ullrich's approach, he still views employment relationships within IOs in a traditional, functionalist perspective. This is the third approach adopted in the book, and it seems to undermine Ullrich's earlier reliance on the state analogy. Under this traditional conceptualization, IOs are nothing but instruments of member states created to perform specific functions.[8] The International Court of Justice famously underlined the differences between states and IOs in its advisory opinion in *Reparations*, claiming that 'the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is "a superstate", whatever that expression may mean'.[9] Seen in this functionalist light, IOs are not 'states by analogy' but radically different from them, even in the relationship with their employees. The autonomy that an organization enjoys when perceived under the state analogy is consistently diminished if the same organization is perceived as an agent of its member states. From a functionalist perspective, Ullrich defines the internal law of an IO as a 'particular international public law since it is restricted in its effects to member states' (at 31). This is a peculiar characterization for a book dedicated to the law of employment relationships, which does not address states but, rather, the individuals working for organizations. And, yet, in Ullrich's argument, the law of international civil servants is the most developed self-contained area of IOs law, designed to assure independence from member states. These ideas do not add up but sit in direct contention with each other: either IOs are state-like entities able to develop self-contained normative regimes, or they are functional entities governed by international law, set up to perform particular tasks. Ullrich addresses this contradiction by referring to the dual roles played by IOs, which, at the same time, are an employer and a substitute state, but the normative implications of this finding are not made clear.

As is clear from these considerations, if looked at as an academic text, the book's 'legal-dogmatic' approach comes with limitations. In particular, it is affected by Ullrich's decision not to discuss the precise legal status of IO employment relationships. In some instances, the law governing international civil service is presented as an isolated system of law, internal to each institution in the way national law is internal to each state. In other instances, Ullrich emphasizes its public international law nature. Ullrich, to be sure, is not alone in his decision to avoid the discussion. The framework within which the law of the international civil service is to be approached has never been clear; and the field would benefit from an in-depth coherent doctrinal exploration. In the literature, employment rules are described, variously, as forming

[7] C.F. Amerasinghe, *The Law of The International Civil Service as Applied by International Administrative Tribunals* (2nd edn, 1994).

[8] Klabbers, 'The EJIL Foreword: The Transformation of International Organizations Law', 26 *European Journal of International Law* (2015) 9, at 10.

[9] *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1949, ICJ Reports (1949) 174, at 179.

part of international law,[10] internal law,[11] international law in a 'general sense'[12] and international law that possesses national characteristics.[13] In his *Law of the International Civil Service*, Amerasinghe proposed one of the more interesting solutions by emphasizing the dual nature of international employment rules: '[T]he most practical and viable solution to the problem of classification would seem to be to regard such internal law as being situated in and derived from the system of public international law and therefore being a part of public international law, while at the same time having a special character as a system akin to municipal law, particularly because it operates in an area in which municipal law has been traditionally known to operate'.[14] However, Amerasinghe did not follow up and never spelled out the implication of this statement, such as on the dual (international and internal) limits of legal validity of employment law or the reciprocal effects between international law and IOs employment law. As mentioned, Ullrich does not do so either. For instance, he does not analyse how international standards of human rights protection affect disputes before administrative tribunals, and, again, it is not clear whether Ullrich classifies employment relationships as belonging to internal or international law. In some cases, his book does not present them as relationships between different legal systems (international and institutional) but, rather, as relations between special and general rules (*lex specialis*/*lex generalis*) operating within the same (international) legal system. A rich field of research opens for generalist scholars wishing to work on the extremely interesting field of the law of international civil service.

In conclusion, Ullrich's book offers an extremely useful overview of the relevant rules and cases from a practice-oriented perspective. It is clearly written and well organized, making it a precious asset for practitioners looking for a clear account of the complexities characterizing the law of international civil service. However, for academics seeking to understand the law of the international civil service, the book has less to offer. In this respect, it is reductive and lacks a clear theoretical framework. Perhaps one could say that the book suffers from its attempts to be encyclopaedic: too many distinct issues are addressed and too little time is spent on the development of a coherent argumentative starting point. This in turn is a general feature of the study of the law of the international civil service. Generalist IO scholars will find in this book many reasons why it is worthy to dedicate more effort to conducting research on this field of law.

Lorenzo Gasbarri

Bocconi University
Email: lorenzo.gasbarri@unibocconi.it

doi:10.1093/ejil/chaa033

[10] Suzanne Bastid, 'Have the United Nation Administrative Tribunals Contributed to the Development of International Law?', in W. Friedman (ed.) *Transnational Law in a Changing Society* (1972).

[11] A. Plantey, *The International Civil Service: Law and Management* (1981).

[12] Carlston, 'International Administrative Law: A Venture in Legal Theory', 8 *Journal of Public Law* (1959) 329.

[13] Amerasinghe, *supra* note 7, vol. 1.

[14] *Ibid.*, at 25.