in international law are also institutional and, vice-versa, that IOs are constituted of states (and, hence, clearly institutionally enmeshed with them),[5] such distinctions only contribute to making things more indeterminate.

Further, such a continuous institutional account of states and IOs could keep at bay the dangers of functionalism in international institutional law and the risks that have long been associated with the reduction of states' political legitimate authority to governmental functions and their infinite delegation (for example, at 7, note 25, 82–83, 96). It could also help to counter arguments for the complete identification of IOs with states. Such arguments of equality (or equal autonomy) between states and IOs have indeed progressively made their way into the debate,[6] sometimes leading to the endorsement of a further 'rule of incorporation' (to quote Bordin, at 8–10, 82–86), albeit in favour of IOs this time.[7] The difficulty is that those who propound such claims could actually find ammunition for their arguments from the book's argument for legal analogy (for example, at 86; despite the author's intent, as confirmed by his reference to states' exclusive right to 'sovereign equality', at 146).

In sum, institutional 'continuity' rather than 'analogy' is what we should aim at in our future interpretations of general international law and the rights, duties and responsibilities of IOs. Bordin's book is truly eye opening in this respect and the best imaginable companion for a new generation of international institutional lawyers.

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Éric David. ***Droit des organisations internationales***. Brussels: Bruylant, 2016. Pp. 829. 124€. ISBN: 9782802749028.

French literature on international law has never followed the trend, in English scholarship, of publishing textbooks on international institutional law. French-speaking authors no doubt have made crucial contributions to the discipline. However, their work has seldom taken the form of comprehensive studies akin to the well-known and regularly re-edited books that exist in the English language – with Evelyne Lagrange and Jean Marc Sorel's *Droit des organisations*

[5] On the intimate relation between international 'law' and 'institutions', see Besson, 'Review of José Alvarez's *The Impact of International Organizations on International Law*', 30 *European Journal of International Law* (2019) 344; Raz, 'Why the State?', in N. Roughan and A. Halpin (eds), *In Pursuit of Pluralist Jurisprudence* (2017) 136; R. Collins, *The Institutional Problem in Modern International Law* (2016).

[6] See, e.g., Dunoff, 'Is Sovereign Equality Obsolete? Understanding Twenty-First Century International Organizations', 43 *Netherlands Yearbook of International Law* (2012) 99.

[7] For a critique, see Klabbers, 'Transforming Institutions: Autonomous International Organizations in Institutional Theory', 6(2) *Cambridge International Law Journal* (2017) 105.

*internationales* so far being one of the rare exceptions.[1] Against this backdrop, Éric David's recent book should be welcomed, quite apart from its contribution to the doctrine on international institutional law, as a valuable step towards filling a gap in the French-language literature.

David's textbook is written in the peculiar style for which the author is known: critical, at times 'militant' – to the extent that clear 'political' stances are taken, for example, in favour of stronger human rights protection where there is a grey zone or a tension between conflicting interests that allows for such a 'choice'[2] – and enlivened with fairly frequent humoristic touches. The law of international organizations presented by David has a very 'live' dimension, which will likely be appreciated by students in particular. Numerous (historical) illustrations add to this (some of which are presented in perhaps too much detail), as do passages duly situating the relevant case law.

Based on the author's course, given until a few years ago at the Université libre de Bruxelles, the book suffers somewhat from the varying extent to which the respective topics addressed have been updated: whilst the majority of chapters or sections do include references to the most recent practice, case law, literature and International Law Commission's (ILC) work, others would have benefited from a more thorough update.[3] On the whole, though, the book is a mine of information; this is particularly true for the legal opinions prepared by legal advisers and offices of legal affairs of international organizations, which constitute a rich – yet usually overlooked – source of material that is systematically brought to the fore here.

In regard to his systemic approach, David views the law of international organizations as essentially rooted in general public international law;[4] this explains his reflex of 'falling back', at various places in the book, on principles and concepts that belong to general international law and, primarily, to the law of treaties.[5] Readers may also appreciate the balanced 'Belgian dimension' of *Droit des organisations internationales*, which can be considered of general interest to international lawyers as well. Interestingly, David goes much beyond the handful of prominent Belgian judgments (notably, on questions of immunity) regularly addressed in the literature[6] – for example, the original solutions and mechanisms that the far-reaching federalization of the Belgian state has entailed with respect to the representation of its federated entities within international organizations are particularly worth mentioning in this regard (at 239–245).

In determining the scope and structure of his work, Éric David has had to confront essential choices facing any textbook on international institutional law.[7] The first well-known issue lies at the very heart of the definition of the discipline itself. As the law of international organizations begins where the regime of one particular international organization ends – a point made by David early on (at 17) – any textbook needs to decide to what extent it should refer to the rules and practice of individual organizations and how it treats such references: are these individual rules and practices illustrative examples or do they express (or crystallize) a general principle? David points out in his general introduction (at 19) that he has opted for the latter approach. However, the book still refers to rules and practices of individual organizations that likely have a purely illustrative value – for example, references to the tax, social and customs exemptions of

1 E. Lagrange and J.-M. Sorel (eds), *Droit des organisations internationales* (2013).

2 See, e.g., at 264 (concerning the rejection of credentials of the South African delegation by the United Nations [UN] General Assembly) and at 686–687 (concerning the conflict between the organization's immunities and the individual's right of access to a court).

3 See, e.g., the parts on sanctions at 411ff, 519ff, where a discussion of the provisions on countermeasures in the Articles on the Responsibility of International Organizations (ARIO) could have been added. International Law Commission (ILC), Articles on the Responsibility of International Organizations, with Commentaries (ARIO), Doc. A/66/10 (2011).

4 See at 18; see, moreover, Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331, Art. 5.

5 See, *inter alia*, at 277–279 (concerning withdrawal of members from the organization).

6 On which see, among others, at 670–673.

7 For comment on these choices, see the contributions by a number of distinguished textbook authors in 5 *International Organizations Law Review* (2008) 141.

certain international organizations (at 693–698) were probably not meant to highlight general principles applicable to all organizations.

The second general issue pertains to the balance between timelessness and topicality: should a textbook focus on questions that appear to have continuing relevance or should it follow the (perhaps natural) inclination to devote more attention to aspects that, at the time of writing, are in the spotlight? In this respect, Éric David's *Droit des organisations internationales* proves more attentive to the 'timeless' topics. It covers a range of issues that have 'stabilized' to a large extent – *inter alia*, admission to an organization (at 167–248) and the interpretation of, and amendments to, the constituent treaty (at 106–159). This focus reflects the function of a textbook to deal with the 'classics', which certainly is plausible, but it does leave David less room to address recent issues that have yet to become 'classical': this would include, for example, cooperation between international organizations, interactions with private entities and judicial review of the acts of international organizations.

Building on his preference for the general law of international organizations, and the classic themes arising within it, David has structured his work into a general introduction (mainly dedicated to the concept of international organization) and five substantive chapters, which address the constituent acts, participation, institutional acts, legal personality, and privileges and immunities of international organizations. Rather than retracing the content of these chapters, it may be convenient to assess David's book by looking at it through the lens of five persistent questions and controversies that have arisen in recent practice.

The first of these is the withdrawal of members from an organization – an issue that has become 'live' again following Brexit and the 2017 withdrawal of the USA and Israel from the United Nations Educational, Scientific and Cultural Organization (UNESCO). Éric David's textbook covers neither of these instances (as they took place after it went to press). But it does offer some treatment of the legal consequences of withdrawal – that is, questions such as the privileges and immunities of the organization on the territory of the withdrawing state; the situation facing agents of the organization that are nationals of the withdrawing state; the financial obligations of the withdrawing state and the withdrawing state's obligations resulting from the acts adopted by the organization (at 280–288). On these issues, however, although the author's own opinion is not always expressed, the approach is essentially a case-by-case one, and, unfortunately, David's overview of the practice is largely limited to rather old precedents (for example, the 1983–1984 USA's and United Kingdom's withdrawals from UNESCO).

Sanctions adopted by international organizations offer a second perspective on Éric David's work. On this matter, David offers a lot of detail. In fact, some may wonder whether his protracted survey of military actions taken by the United Nations (UN) Security Council pursuant to Chapter VII of the UN Charter (at 438–458, 525–546) fits in this chapter, given that such measures are not meant to react to breaches of international law specifically[8] and, therefore, following Éric David's own definition (at 411), should not be categorized as sanctions. That said, his textbook offers not only the traditional typology of sanctions against states (at 418–438: suspension of voting rights, exclusion and so on) but also an in-depth analysis of the increasing phenomenon of sanctions against individuals, especially asset freezes, and of the jurisprudence (mainly of the Court of Justice of the European Union [CJEU]) that has ensued (at 459–496). At the end of these developments – the prominent focus of the chapter on sanctions – David argues that, contrary to assertions by the Security Council as well as the CJEU, asset-freezing measures have a criminal nature since they respond to illegal conduct and cause damage to the person or entity targeted (at 494). He goes on to posit that such measures should only be imposed through

[8] Amidst extensive literature, see notably H. Kelsen, *The Law of the United Nations* (1950), at 294.

a judicial procedure that preserves the rights of defence (at 494). This is a far-reaching – and probably unrealistic – suggestion and one that perhaps misses out on nuances. One may regret, for example, that *Droit des organisations internationales* does not discuss the evolving functions and operation of the Office of the UN Ombudsperson for counterterrorism,[9] as this mechanism offers a striking illustration of how fundamental rights, in fact, are increasingly taken into account in the area of UN targeted sanctions.

Third, Éric David's discussion of the legal personality of international organizations is of interest (at 549–587). To be sure, this debate may appear old-fashioned: the current, well-established position of international organizations in the international legal order can hardly be compared to the circumstances prompting the advisory opinion in the *Reparations* case,[10] which was rendered at a time when (a limited number of) international organizations had begun to emerge as genuine international actors. Nevertheless, certain issues continue to arise in practice, and the topic obviously still sparks academic discussion. For example, there is still no consensus among authors whether legal personality is a constitutive element of the concept of international organization. In this respect, Éric David's stance is clear: by definition, and regardless of any provision in the constituent instrument, he considers all international organizations to possess legal personality (at 560). This position is perhaps too categorical: Benelux was explicitly denied international legal personality by the founding member states in 1958[11] – a position that was only reversed in the revised Benelux Treaty of 2008.[12] This suggests that member states can withhold legal personality from international organizations. In cases like this, only members of an organization – but not the organization itself – possess rights and obligations, can submit international claims or can incur international responsibility.

This latter aspect – the responsibility of international organizations – is the fourth topic that deserves scrutiny. Rightly, David addresses responsibility as a consequence of legal personality: because international organizations enjoy legal personality (and, by David's account, they always enjoy it), they can incur and invoke responsibility (at 582ff). This seems correct in principle, but perhaps the discussion could have been somewhat expanded. To be sure, David covers thorny issues pertaining to the attribution of conduct (including the well-known court cases involving UN peacekeeping operations[13]) and addresses to what extent a state can incur 'responsibility … in connection with the conduct of an international organization' (to use the terms of the title of Part V of the Articles on the Responsibility of International Organizations [ARIO])

[9] Established initially by Doc. S/RES/1904 (2009). See the Ombudsperson's mandate in Doc. S/RES/2368 (2017).

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

[11] See the official commentary of the three governments on Art. 95(2) of the 1958 Benelux Treaty in J. Karelle and F. de Kemmeter, *Le Benelux commenté: Textes officiels* (1961), at 158.

[12] Art. 28 of the Traité portant révision du Traité instituant l'Union économique Benelux, 3 February 1958, available at www.benelux.int/files/3914/0067/7093/trait_Benelux_17.06.2008Ondertekend.pdf.

[13] ECtHR, *Behrami and Behrami v. France and Saramati v. France*, Appl. nos 71412/01 and 78166/01, Judgment of 2 May 2007. All ECtHR decisions are available at http://hudoc.echr.coe.int/; ECtHR, *Al-Jedda v. United Kingdom*, Appl. no. 27021/08, 7 July 2011; Dutch Supreme Court, *The Netherlands v. Nuhanovic*, Case no. 12/03324, 6 September 2013, available at www.asser.nl/upload/documents/20130909T125927-Supreme%20Court%20Nuhanovic%20ENG.pdf. More recently, see also Court of Appeals of The Hague, *Stichting Mothers of Srebrenica v. The Netherlands*, Case nos 200.158.313/01 and 200.160.317/01, 27 June 2017, available at https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2017:3376.

(at 588–615).[14] On the other hand, the analysis of the other constitutive element of the internationally wrongful act – that is, the breach of an international obligation – is restricted to relatively few pages of the book's general introduction that deal with the identification of the international law applicable to the organization (at 57–65). Given the importance, and, indeed, in many situations the difficulty, of determining the specific international obligations binding on an organization and given the fact that this dimension was voluntarily left aside in the ILC's codification work that led to the adoption of the ARIO, this is an issue that commentators could concentrate more on in the years to come.[15] In other words, it may be time to shift the focus away from the secondary rules of responsibility and on to primary norms (even if, to some extent, these primary norms will inevitably vary from organization to organization); arguably, there is still room for 'horizontal' studies – beyond the rules peculiar to each organization – on, for example, the specific human rights obligations binding on international financial institutions or the international humanitarian law obligations binding on regional organizations engaged in military operations.

While treating responsibility rather briefly, the book devotes a voluminous chapter (of no less than 160 pages) to the immunities of international organizations – the fifth question of special interest. In addition to the privileges and immunities of the organization itself, Éric David covers those of international civil servants and agents and of missions and delegations accredited to the organization – two categories that usually attract less attention in academic writings. As far as immunities of the organization itself are concerned, his position on the existence of rules of customary international law seems ambivalent: on the one hand, he notes that organizations could not in principle invoke immunity from jurisdiction unless such immunity is provided for in a treaty; on the other hand, he finds it nonetheless logical that immunity be applicable – in member states, not third States – should this be necessary to the functioning of the organization (at 681). A similar ambivalence is shown with respect to conduct unrelated to the functions of the organization: here, Éric David firmly challenges trends in the case law that denied immunity based on the alleged *jure gestionis* nature of the act at stake, yet he preserves the possibility for domestic judges to dismiss the immunity where the act concerned has no connection whatsoever with the aims and purposes of the organization (at 656–661). By contrast, David takes clear positions in regard to the conflict between the immunity of the organization and the individual's right of access to a court. For example, he contests (at 671) the restrictive interpretation of the notion of reasonable alternative remedies adopted by the Belgian Court of Cassation in a widely commented ruling rendered in 2009,[16] and he openly regrets (at 673–674) the approach in *Stichting Mothers of Srebrenica and Others v. The Netherlands*,[17] in which the European Court of Human Rights did not accept that, in the absence of reasonable alternative remedies, 'the recognition of immunity is *ipso facto* constitutive of a violation of the right of access to a court'.[18]

[14] ARIO, *supra* note 3, Arts 58–63.

[15] See already in this sense the concluding remarks by Klein, 'Les articles sur la responsabilité des organisations internationales: quel bilan tirer des travaux de la CDI?', 58 *Annuaire français de droit international* (2012) 1, at 25–27.

[16] Belgian Court of Cassation, *Union de l'Europe occidentale v. S.M.*, Case no. S.04.0129.F, 21 December 2009, available at http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20091221-7. The Court decided that the members of the Appeals Board of the Western European Union, appointed for two years by an intergovernmental committee of the organization, cannot be considered independent and that therefore the limitation on the right of access to a court entailed by the immunity from jurisdiction is not admissible.

[17] ECtHR, *Stichting Mothers of Srebrenica and Others v. The Netherlands*, Appl. no. 65542/12, Judgment of 11 June 2013.

[18] *Ibid.*, para. 164. *Contra*, see the book under review at 666–667.

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.

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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.