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Hidden Gems in International Organizations Law – A Brief Introduction

Devika Hovell[*], Jan Klabbers[**] and Guy Fiti Sinclair[α]

International organizations law, it is fair to say, is dominated by a functionalist approach. States, so this approach provides in a nutshell, create international organizations to tackle transboundary problems. States delegate functions and competences to those organizations, and international organizations law has developed to facilitate the work of the organizations. International organizations can boast such 'implied powers' as are necessary for their effective functioning, and are typically granted privileges and immunities to ensure that functioning is unimpeded.

Whatever the merits of such an approach (and much here may depend on the political perspective adopted), it comes with a few drawbacks. Most notably, everything that cannot be pictured in terms of the principal/agent relationship (between the organization and its member states) becomes difficult to explain and difficult to practice. The most obvious issue here is the accountability of international organizations towards third parties: since third parties are not part of the principal/agent relationship, the functionalist approach has little to offer – as numerous, ultimately fruitless attempts to establish accountability or responsibility regimes demonstrate.

In order to come to terms with such issues, there might be merit in searching for alternative approaches to international organizations law. To the extent that other traditions about thinking about this corpus of legal rules can be discerned, do they offer any possibilities to move beyond the principal/agent fixation inherent to functionalism as it has developed?

One of the kneejerk reflexes of the discipline is to look at scholarship in the neighbouring academic discipline of International Relations, but this, we thought, was not very promising. For one thing, the principal/agent model is arguably even more forcefully entrenched in IR scholarship than it is in scholarship in the law of international organizations. And even more importantly, scholarship in IR often remains somewhat

[*] Associate Professor in Public International Law, London School of Economics, London, UK. Email: d.c.hovell@lse.ac.uk.
[**] Professor, Faculty of Law, University of Helsinki, Helsinki, Finland. Email: jan.klabbers@helsinki.fi.
[α] Associate Professor, Auckland Law School, University of Auckland, Auckland, New Zealand. Email: guy.sinclair@auckland.ac.nz.

oblivious to the law, to legal concerns, to legal structures, to legal doctrines and their relevance.

Two of us (Klabbers and Sinclair) organized a symposium in these pages some years ago with a view of trying to uncover different intellectual resources in thinking about international organizations *law*, specifically. Drawing on our own understanding of the field, we invited a handful of scholars to further explore the thought of H.G. Schermers, Hans Kelsen, C.W. Jenks, Paul Reuter, Louis Sohn and Georges Abi-Saab – all of whom we thought might have offered insights into either functionalism itself (and especially its limits) or alternative approaches.[1] Needless to say, the list of protagonists was not and is not exhaustive. We tried to limit the enterprise by selecting protagonists who had focused on the law of international organizations in general or whose work could be thus generalized – rather than on a particular international organization only, not even the UN – and could be assumed to have exercised some influence on the discipline through their writings or teaching (or both).

That earlier symposium has been generally well-received, but we (and the Journal's Editors) nevertheless thought there might be merit in further searches. This time, Devika Hovell generously agreed join the editorial team to assist in casting the net even wider. Together, we published a call for papers announcing that we were looking for 'reconsiderations, hidden gems, and new perspectives' on international organizations law.[2] In particular, we drew attention to the need for more scholarship on the contributions to international organizations law by women and scholars from the Global South. We suggested a number of individuals whose thought and/or practice might be worth exploring, but also left the door open to articles that offered a synthetic analysis or novel theoretical (re)construction of the field from vantage-points that are systematically under-represented in the literature.

The result was overwhelming: we received several dozen abstracts and proposals covering a wide range of subjects and perspectives, well beyond those we had mentioned in our call. Out of these initial offerings, we selected some 15, and invited these authors to develop their thoughts in short papers. The resulting papers were discussed at a workshop with external commentators. Eventually a generous handful were invited to produce a full paper – these have still gone through several rounds of blind peer-review following the Journal's usual process. The resulting works will be published in this and following issues of the Journal, one or two per issue.

The current issue will start with two of the articles thus produced. In the first of these, Dimitri van den Meerssche uncovers the hitherto underappreciated innovations of Anne-Marie Leroy, former legal counsel of the World Bank and as such the *auctor intellectualis* of a 'legal risk management approach' that sets her apart from more traditionally-minded approaches focusing on the permissiveness of the law – or

[1] 'Symposium: Theorizing International Organizations Law', 31 *European Journal of International Law* (2020) 489.

[2] 'Re-Theorizing International Organizations Law: A Call for Reconsiderations, Hidden Gems, and New Perspectives', available at https://www.ejiltalk.org/re-theorizing-international-organizations-law-a-call-for-reconsiderations-hidden-gems-and-new-perspectives/

does it? The second is a contribution by Fernando Lusa Bordin, reconsidering the work of Finn Seyersted. As Bordin acknowledges, it is not very plausible to suggest that Seyersted has remained unknown: he is often cited, albeit usually in a somewhat perfunctory manner and without attracting much of a following. Yet, as Bordin suggests, there might be more to Seyersted than usually meets the eye. To be continued…