

Philippe Sands and Pierre Klein (eds), *Bowett's Law of International Institutions*. London: Sweet & Maxwell, 5th ed., 2001. Pp. 610, with bibliographies, table of cases and abbreviations, and index.

Philippe Sands, prominent UK barrister and professor at London University, and Pierre Klein, professor at the Université Libre de Bruxelles, are to be commended for undertaking this ambitious updating of Bowett's famous book. In an age of proliferating efforts at international regulation, anyone who attempts to distil the 'law of international institutions' — of entities as varied as the WTO and the Anzus Council and covering every imaginable subject of human endeavour from the regulation of sugar prices to the regulation of the high seas — is engaging in a task worthy of Sisypheus. Given the ever increasing tendencies for international lawyers to specialize in ever more narrow fields, synthesizing efforts such as these are vital to keeping alive the possibility that a distinctive and unified subject called 'international law' continues to exist and can be made comprehensible in doctrinally cohesive fashion. Undertaking this task when so many of us scarcely seem capable of keeping track of the burgeoning developments in much narrower specializations such as European human rights or trade law manifests an admirable faith that the subject of international organizations can still be taught and studied. At a time when, at least in the United States, there no longer exists even a single casebook that attempts a comprehensive treatment of

the subject²⁵ and courses on the topic are floundering in law schools, the arrival of this reasonably priced paperback will be welcomed by law teachers around the world.

Although Bowett's original work has been substantially rewritten (and expanded by over a third in length), its niche in the literature remains the same. This is, as Sands and Klein indicate, an introductory overview of matters covered more exhaustively elsewhere, most prominently in Schermers and Blokker's dryly encyclopaedic and indispensable (but less readable) *International Institutional Law*, but also in more specialized works on topics such as international administrative law or international dispute settlement.²⁶ The new edition, like the old, aspires to be of particular use to students and practitioners who need both an overarching framework for understanding basic components of international governance as well as particular answers to matters regarding basic institutional law, as with respect to the privileges and immunities enjoyed by such organizations or personnel associated with them, but not at the level of detail provided by other works.

The structure of Bowett's book has been tweaked a bit but not dramatically altered. The book still retains Bowett's original introduction, a wonderfully compact survey of the history of associations of states, from the private international unions to the League of Nations. Similarly, Part I of the original edition, containing fairly comprehensive descriptions of the basic institutional

²⁵ The last such effort, F.L. Kirgis, Jr., *International Organizations in Their Legal Setting*, was published in 1993.

²⁶ See, e.g., H. G. Schermers and N. M. Blokker, *International Institutional Law* (3rd ed., 1995); C. F. Amerasinghe, *The Law of the International Civil Service: As Applied by International Administrative Tribunals* 2 vols (2nd ed., 1994); Sands, Mackenzie and Shany, *Manual of International Courts and Tribunals* (1999); J. G. Merrills, *International Dispute Settlement* (3rd ed., 1999) as well as numerous more specialized works such as T. Buergenthal, *Law-Making in the International Civil Aviation Association* (1969).

provisions of global, regional and specialized organizations, builds upon the original Bowett text to cover newer developments and institutions. The new edition, like the original, contains capsule descriptions of what lawyers ought to know about the principal and subsidiary UN organs (from UNICEF to the UN High Commissioner for Human Rights), the UN specialized agencies, other autonomous organizations dealing with specialized subjects (trade, disarmament, human rights, environment, commodities, maritime affairs, the Antarctic, fisheries, telecommunications), and regional organizations in Europe, the Americas and the Caribbean, Asia, the Middle East and Africa. Similarly, Bowett's original Part III, his surprisingly comprehensive treatment of 'common institutional problems', addressing issues of applicable law for organizational actions such as contracts and torts, legal personality, membership and representation issues, and financial or budgetary concerns, emerges largely intact, if considerably expanded. A new section, including both new and old material reorganized into a new Part II, describes the 'functions' of international organizations through relatively short chapters enumerating the 'legislative', 'executive' and 'judicial/quasi-judicial' functions of the institutions canvassed in Part I. At the same time, as might be expected, this is a book about the law *of*, not *by*, these institutions. Those expecting a survey of, for example, the substantive law established by ICAO or the WTO's DSB will be disappointed and the occasionally extensive but uneven bibliographies provided at the beginning of all 17 chapters as well as within sub-parts to each cannot be relied upon to suggest the best or most current literature on that law.

Bowett's definitional and theoretical frameworks have been retained. The authors continue to define international organizations as entities composed of states and/or other international organizations, established by treaty, having an autonomous will distinct from that of their members, vested with legal personality, and capable of adopting norms (p. 16). Like Schermers and Blokker who use a similar definition, the authors use this definition to

distinguish international organizations from non-governmental organizations or multilateral commercial enterprises that do not generally perform the same 'governmental' functions described in Part II or share the 'common' institutional characteristics described in Part III. To the extent that the authors provide a rationale for the enormous proliferation of modern international organizations that their book documents, it is the same functionalist account that pervades the original Bowett book and that Bowett himself articulates here. The 'driving force behind the growth of these many institutions, whether global or regional, remains what it always has been: the actual need for States to co-operate through permanent, organised structures', writes Bowett in a short preface. 'It is not idealism. It is the practical need for co-operation in an age when communications, trade, the environment and security demand continuing, close co-operation between States' (p. vii).

As this suggests, readers should not expect explicit connections to prominent theories within political science or economics concerning the functions of these international organizations, including neo-realism, regime theory, game theory, constructivism or liberal theory ('embedded' or otherwise). This is very much a lawyers' book. It focuses on the descriptive minutiae of these organizations as established in innumerable constitutive instruments and day-to-day institutional precedents, not on theory. What we get are the bare legal facts that others, including non-lawyers, are using to address ever more pressing questions about 'international governance', including whether or to what extent these institutions are eliciting better compliance with international law or making its rules more effective; whether international legal rules are becoming more or less harmonious in substantive content or drawing upon common values (such as the value of the free market, 'democracy' or human rights); whether and to what extent these institutions are evolving into 'constitutional' frameworks; whether certain institutions (most prominently in Europe) which rely upon directly

applicable international norms imposed by cooperative international tribunals in liaison with domestic courts are serving as models elsewhere and if so with what effect; whether perceptions of a democratic ‘deficit’ or ‘backlash’ pose serious problems for international forms of governance and what ought to be done about it; and whether and why the ‘organizational frenzy’ has spared some regions.²⁷ While the authors do not address any of these broad issues head on, much of what they say relates indirectly to these questions. The attentive reader will find that the authors clearly suggest that European institutional models, discussed as the most effectively ‘supranational’, are being attempted elsewhere but with as yet unknown success; that distinct institutions are confronting ‘democratic deficit’ concerns but are resourcefully responding through a variety of as yet unproven mechanisms; that ‘constitutional’ frameworks for analysis, drawing upon more teleological forms of treaty interpretations and concepts of ‘checks and balances’ or ‘separation of powers’ are becoming increasingly relevant within distinct regimes; that there is indeed an ‘Asian’ aversion to international organizations; and that the ‘organizational frenzy’ elsewhere tends to be accompanied by judicial empowerment at least on the international level.

The authors, like Bowett in earlier editions, are generally in favour of the increased forms of international regulation that they describe, as well as the spirit of multilateral cooperation these institutions appear to evince. To this extent, the cover jacket photo of a ‘veiled’, presumably Islamic woman, holding up a sign that reads ‘Shut Down the WTO’ is a bit misleading about the book’s contents. If there is a ‘dark side’ to international organizations

— because all or some of these institutions constitute new forms of hegemonic power²⁸ or because these institutions impose the will of Thomas Friedman’s capitalist ‘electronic herd’²⁹ or because there are positive aspects to sovereignty traditionally construed or to some forms of unilateralism — readers will get little of such ‘retrograde’ arguments here. This is an optimistic look at globalization that by, for example, enumerating the many institutional responses to the ‘democratic deficit’ implies that all will be well if we continue to let lawyers construct institutions for the world.³⁰ While the authors do not quite suggest that we are back to Mitrany’s ‘federalism by installments’³¹ or that these institutions are creating

²⁸ Cf. L. Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions* (2000) (arguing that supranational institutions such as those in Europe or NAFTA do not result in positive-sum consequences for all but are weapons for the powerful to impose substantial losses on those who only appear to be ‘voluntarily cooperating’ with such arrangements).

²⁹ See, e.g., T. L. Friedman, *The Lexus and the Olive Tree* (2000) (arguing that countries need to respond to the needs of multinational corporations as well as to the ‘ancient forces of culture, geography, tradition, and community’).

³⁰ Thus, Sands and Klein describe attempts at greater transparency/accountability as through mechanisms for ‘inspection panels’ in financial institutions; greater participation by members of international civil society (as through proliferating forms of parliamentary bodies at the regional level and greater access to some forms of dispute settlement); independent judicial review of organizational acts in ever more regimes (including perhaps for the Security Council); and attempts at organizational cooperation to address linkages between, for example, the environmental and trade regimes. The authors do not appear so favourably inclined to another tactic to keep some of these institutions ‘accountable’ favoured in particular by the United States: namely the deployment of a newly acquired (and illegal) financial veto.

³¹ See D. Mitrany, *A Working Peace System* (1943), at 28 and 83 (contending that world government will evolve from functionalist needs increasingly met through ‘peace by pieces’).

²⁷ For a recent survey of such questions by both political scientists and lawyers, see ‘Special Issue on Legalization and World Politics’, 54 *International Organization* (Summer 2000). Except for some mention of the large compliance literature, there is little reference to such interdisciplinary work in the bibliographies supplied by Sands and Klein.

a global 'demos' favourable to world government, their biggest change to Bowett's original work — the addition of Part II — begins to address whether the institutions described 'comprise a system, a loose agglomeration, or simply bric-a-brac' (p. 437). Part II, and the book as a whole, speaks volumes about the mainstream international lawyers' hopes for 'international governance' through the many intergovernmental institutions now emerging.

Those intending to put this book to use in the classroom as intended should be aware of a number of flaws that will hopefully be corrected in later editions. As suggested, the quality of the bibliographies supplied varies tremendously and cannot always be trusted to direct those who are not knowledgeable about a particular subject to the most relevant or timely scholarship. The quality of the descriptions of various organizations is erratic, with global, European and environmental institutions and mechanisms receiving more nuanced treatment than those of the Americas or the Middle East.³² There are also

the inevitable misleading passages that will need attention in future editions,³³ as well as

larly, although readers are told that the Gulf Cooperation Council is one of that region's 'most effective' institutions (p. 240), nothing is said to indicate why this is so. Cf. the more evaluative, detailed description provided for the OAU (pp. 241–250) and for African institutions generally (pp. 256–257).

³² Thus, the authors' descriptions of the various dispute settlement systems within the NAFTA inexplicably omit discussion of what is probably emerging as the most controversial and far-reaching mechanism, the investor/state arbitration system contained in NAFTA's Chapter 11 (pp. 415–416); informative (if short) evaluative sections comparable to those that the authors provide for the Strasbourg Court and even the relatively recent European Parliament (pp. 185–186) are missing for even such well-established institutions with a record of achievements and failures as the Inter-American Commission or Court; and numerous regional conventions in the fields of telecommunications, fisheries and environment in the Americas are omitted even though comparable European institutions are described. Neither in the section dealing with commodities nor in the section on Middle East institutions (which does not even include a general introductory section comparable to other regions) do the authors update Bowett's description of OPEC, an entity which, despite its singular impact on the price of a basic commodity, gets almost no mention here. Simi-

³³ This includes a contention that some judges, including Sir Hersch Lauterpacht, have contested the legality of all reservations to particular types of disputes under the World Court's compulsory jurisdiction (p. 358), an implication that the Security Council has never enforced a decision of the ICJ under Article 94 (p. 362) and suggestions that the Council's actions on private parties are limited to those rare occasions in which it has authorized the provisional administration of a territory (p. 285). The first misstates Lauterpacht's separate opinion in the *Norwegian Loans* case (directed at 'self-judging' reservations only); the second ignores the Council's enforcement of the Court's order in *Libya v. Chad*, while the third ignores the impact on private persons of many other Council actions, such as authorized breaches of contracts in various sanctions resolutions and decisions by the UN Compensation Commission as well as by the Council's various sanctions committees. Similarly misleading are suggestions that the General Assembly has failed to enforce Article 19 sanctions against the United States for failure to pay UN dues (p. 542) despite later clarification that the triggering event for such sanction has never occurred (p. 577); a suggestion that the Committee of Ministers still plays an 'important' role in the supervision of the judgments of the Strasbourg Court (p. 163); the authors' conclusion that NATO is a 'regional organization' for purposes of Chapter VIII of the UN Charter, without any suggestion that this might be contested by the institution itself (p. 193); or their statement that ICAO's Article 84 recourse to arbitration or the ICJ has never been used (p. 343; cf. Buergethal, *supra* note 2, at 123–197, and Kirgis, *supra* note 1, at 443–468 (describing disputes brought in 1952 and 1971)).

omissions that will put off some specialists.³⁴ Those interested in doctrinal purity over comprehensiveness might also take issue with the authors' decision to include a number of institutional arrangements, such as 'conferences of the parties' and other 'loose' arrangements under environmental agreements as well as privatized and commercial entities such as INMARSAT and INTELSAT, that do not fulfil one or more of their own definitions for an 'international organization' and do not share the 'common' institutional problems discussed in Part III. But inclusion of a number of bodies that either do not have clearly established international personality, are not created under treaty, include non-state members, are not clearly distinguishable from the members from which it is constituted, or may be involved in 'commercial' as opposed to 'governmental' activities also posed challenges to Schermers and Blokker for their third edition, six years ago, and the proliferation of non-traditional entities has only increased the challenge for Sands and Klein. As is suggested by the establishment of the CSCE, the transformation of the GATT, and the recent rise in 'transnational' networks of bureaucrats such as the Basle Committee (composed of central bankers),³⁵ lawyers have

shown considerable creativity in establishing associations that do not fit traditional formulations. Sands and Klein's decision to include some but not all of these 'non-traditional' groupings is defensible so long as those who use the book remain clear concerning the (in)applicability of certain legal doctrines, such as privileges and immunities or legal personality, with respect to such associations.
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³⁴ For example, the elaborate description of the ILO's approach to treaty-making (pp. 278–279) is misleading without some acknowledgement of the mixed success of that regime, both in securing ratifications to ILO conventions (and not just with respect to federal systems such as the United States) as well as in terms of compliance with the many reporting obligations theoretically imposed on states. Cf. Sands and Klein's acknowledgement of reporting difficulties in other regimes, at 318–319. Similarly, the authors' discussion of ICAO's 'contracting out' scheme for the adoption of annexes ignores the practice of that organization — which no longer presumes compliance from lack of notification. Cf. Sands and Klein, at 282 and 317 to Kirgis, *supra* note 1, at 306.

³⁵ For discussion of these associations of sub-units of states, not generally discussed by Sands and Klein, see Slaughter, 'The Real New World Order', 76 *Foreign Affairs* (1997) 183.