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# The Love for International Organizations

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## Abstract

Albeit the object of compelling criticisms in recent decades, international organizations continue to occupy a very central place in the practical, conceptual, cognitive, imaginary, and emotional universe of international lawyers. This article argues that the resilient centrality of international organizations in international legal thought and practice is the manifestation of international lawyers' love for such institutions. This article's main aim is to provide an account of the drivers that inform international lawyers' love for international organizations with a view to elucidating what lies behind the centrality of international organizations in international legal thought and practice. Among the drivers of international lawyers' love for international organizations, attention is paid to the representations of international organizations as taking care of people, as showing where to look for power, as knowing so much, as romanticising history, as providing a shared standard of experience, as textualising the universe, as providing and organizing space for discontent, as expanding international lawyers' field of study, and as holding many secrets.

## Keywords

the law of international organizations – international law – international legal theory – history of international law – emotions – the emotional turn – textuality – commensurability – poststructuralism

Albeit the object of compelling criticisms in recent decades, international organizations continue to occupy a very central place in the practical, conceptual, cognitive, imaginary, and emotional universe of international lawyers. In fact, there is hardly any argument, study, dispute, theory or critique related to international law that does not have an institutional dimension or bear institutional consequences. This article aims at offering some explanatory insights as to why international organizations constitute such a resilient kingpin of international legal thought and practice. It is premised on the idea that the centrality of international organizations in international legal thought and practice is not self-evident, let alone natural.<sup>1</sup> It argues that international lawyers continuously and systematically put international organizations at the centre of their practical, conceptual, cognitive, imaginary, and emotional universe because they experience a very deep love for them.<sup>2</sup> Drawing on the legal practice and legal literature devoted to international organizations, this article's main aim is to provide an account of all the drivers of international lawyers' love for international organizations with a view to elucidating what lies behind the centrality of such institutions in international legal thought and practice.

In the following sections, the attention is particularly paid to nine drivers of international lawyers' affection for international organizations, namely the latter's representations as taking care of people, their showing where to look for power, their knowing so much, their romanticising history, their providing a shared standard of experience, their textualising the universe, their providing and organising space for discontent, their expanding international lawyers' field of study, and their holding many secrets. These nine drivers are examined in turn. The article starts with a few introductory remarks meant to define the idea of love for international organizations and to delineate to scope of the inquiry it seeks to offer. The article ends with a few concluding observations.

Two important preliminary caveats are in order. First, it is important to highlight that the following account is surely not exhaustive, for other phenomena may be at work in international lawyers' love for international organizations. It suffices to mention the career paths and sources of income which international organizations can constitute for those trained as international lawyers as well as the sophistication they seem to provide

1 On the relationship between international law and institutions see Samantha Besson, *Reconstructing the International Institutional Order: Inaugural Lecture delivered on Thursday 3 December 2020* (OpenEdition Books/Collège de France, 2021).

2 In the same vein, see the remarks of Eyal Benvenisti, 'Upholding Democracy Amid the Challenges of New Technology: What Role for the Law of Global Governance?' (2018) 29(1) *European Journal of International Law* 9.

international law with.<sup>3</sup> One could similarly explore potential psychoanalytical factors and affects<sup>4</sup> to seek to explain international lawyers' love for international organizations and the centrality they enjoy in the practical, conceptual, cognitive, imaginary, and emotional universe of international lawyers.<sup>5</sup> Yet, the inquiry conducted in this article limits itself to the nine abovementioned drivers, for these drivers can come across as counter-intuitive, especially in the light of the current contestation of international organizations, or, alternatively can prove so self-evident that they often elude international lawyers' own epistemological consciousness. Second, it must be stressed that the nine drivers of international lawyers' love for international organizations that are discussed in the following sections are not presented as being constitutive of a single universal experience shared by all international lawyers engaging with international organizations.<sup>6</sup> To be sure, international lawyers may experience some of them and not others. Likewise, the degree and the ways in which they experience the drivers of their love for international organizations may be the object of immense variations.<sup>7</sup> In that sense, the following account of the drivers of international lawyers' love for international organizations is not aimed at providing any kind of clinical knowledge of international lawyers' emotional engagement with international organizations but to narrate, in a novel fashion, how international lawyers build their claims about the status, rights, duties, responsibility, normative output, failures and falls of international organizations.<sup>8</sup>

3 I am grateful to Daniel R Quiroga-Villamarin for sharing his interesting insights in that respect.

4 On the idea that affects and cognition are not very distant processes and yet that strong affects theories suffer from severe limitations, see Eve K Sedgwick, 'Paranoid Reading and Reparative Reading; or, You're So Paranoid, You Probably Think This Introduction Is about You' in Eve K Sedgwick (ed), *Novel Gazing: Queer Readings Fiction* (Duke University Press, 1997) 1–37.

5 In that regard, one could be tempted to see international organizations as what Freud as defines as a totem animal which is reminiscent of the murdered primitive father, and which is both loved, hated, feared while carrying the guilt for this original and ancestral murder. See Sigmund Freud, *Totem and Taboo* (Routledge, 2012). I am grateful to Janne Nijman for her interesting thoughts on that matter.

6 I have explored elsewhere the idea of international organizations as being the product of specific and varied experiences by international lawyers. See Jean d'Aspremont, *The Experiences of International Organizations. A Phenomenological Approach to International Institutional Law* (Edward Elgar, forthcoming 2023).

7 This is a point I owe to Niels Blokker.

8 On the idea that actions of human beings are "lived narrativizations", see Hayden V White, *The Content of the Form: Narrative Discourse and Historical Representation* (Johns Hopkins University Press, 1987) 54. Cf with the definition of narrative of Michael S Roth, 'Foreword:

## 1 Introductory Remarks: the Love for Institutions

Turning to love as an explanatory tool to account for the centrality of international organizations in international legal thought and practice, as this article does, is not short of idiosyncrasy, especially in the light of the scientist spirit that reign over international law.<sup>9</sup> Indeed, since the consolidation of international law as both a profession and a discipline,<sup>10</sup> and notwithstanding the idea of international legal science being discredited the last decades of the 20th century,<sup>11</sup> international legal studies have remained very attuned to scientist modes of thinking. Following a general pattern of thought typical of 18th and 19th century modern thinking that leaves discussion of affects and emotions to literature and excludes them from positivist studies,<sup>12</sup> international lawyers have turned a blind eye to the study of affective interests<sup>13</sup> and considered that such phenomena are of no relevance for studies and

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“All You’ve Got is History” in Hayden V White, *Metahistory: The Historical Imagination in the 19th-Century Europe* (Johns Hopkins University Press, 2014) xv (“A narrative is a rhetorical strategy through which we mold our experience into a meaningful whole that can be communicated to others”).<sup>9</sup> See generally Jean d’Aspremont, ‘International Law and the Rage against Scienticism’ (2022) 33(2) *European Journal of International Law* 679; Anne Orford, ‘Scientific Reason and the Discipline of International Law’ (2014) 25(2) *European Journal of International Law* 369.

<sup>10</sup> See Jean d’Aspremont, ‘The Professionalization of International Law’ in Jean d’Aspremont, André Nollkaemper, Tarcisio Gazzini, and Wouter Werner (eds), *International Law as a Profession* (Cambridge University Press, 2017) 19; see also the remarks of Jean d’Aspremont, ‘Belgium and the Fabrication of the International Legal Discipline’ (2020) 31(4) *European Journal of International Law* 1521.

<sup>11</sup> For some classical exposition of international law as a science, see Lassa Oppenheim, ‘The Science of International Law: Its Task and Method’ (1908) 2(2) *American Journal of International Law* 313; Roberto Ago, ‘Science Juridique et Droit International’ in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 90 (1956)* (Brill Nijhoff, 1968) 851; Frede Castberg, ‘La Méthodologie du droit international public’ in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 43 (1933)* (Brill Nijhoff, 1968). On the fall of the scientist self-representation of international law, see the remarks of Martti Koskenniemi, ‘Letter to the Editors of the Symposium’ (1999) 93(2) *American Journal of International Law* 351; James Crawford, ‘International Law as Discipline and Profession’ (2012) 106 *Proceedings of the annual meeting—American Society of International Law* 471. For Anne Orford, it ended with the 2nd World War. See Anne Orford, ‘Scientific Reason and the Discipline of International Law’ in Jean d’Aspremont et al, *International Law as a Profession* (Cambridge University Press, 2017) 93, 105–108.

<sup>12</sup> Before the consolidation of modernity in the 18th century, passions drew a lot of attention as is illustrated by the work of Spinoza, Hume, Locke, and later Rousseau. See the remarks of Michel de Certeau, *Histoire et psychanalyse entre science et fiction* (Gallimard, 2016) 94.

<sup>13</sup> See the use of the notion of affective interest by Marielle Macé, *Façons de lire, manières d’être* (Gallimard, 2022) 40.

practices that claim to be rigorous and grounded in the real.<sup>14</sup> In that context, the inquiry conducted here can be read as an attempt to resuscitate studies of discourses<sup>15</sup> through affects and emotions.<sup>16</sup> It is an inquiry that does not ask the usual questions of ‘what about power?’ or ‘what about legitimacy?’ but rather wonder ‘what about love?’. In doing so, it is an inquiry that provides the rudiments of theory of attachment to international organizations rather than a theory of power or legitimacy.<sup>17</sup>

As the following inquiry is envisaged as providing the rudiments<sup>18</sup> of a theory of attachment to international organizations, it must immediately be made clear that examining the affection for institutions is not unknown to studies in humanities.<sup>19</sup> For instance, the strategies through which legal institutions have ensured that they are loved by those subjected to them have drawn considerable attention in French critical theory.<sup>20</sup> Likewise, International

14 For some exceptions, see Anne Saab, ‘Emotions and International Law’ (2021) 10(3) *European Society of International Law Reflections* 1; Andrea Bianchi and Anne Saab, ‘Fear and international law-making: An exploratory inquiry’ (2019) 32(3) *Leiden Journal of International Law* 351; Gerry Simpson, *The Sentimental Life of International Law. Literature, Language, and Longing in World Politics* (Oxford University Press, 2021).

15 A discourse is understood here in a rather generic way as to refer to any system of meaning and set of connected utterances through which one speaks about and come to experience the world and human phenomena. On the notion of discourse, see generally Hayden V White, *Tropics of Discourse: Essays in Cultural Criticism* (Johns Hopkins University Press, 1982) 4–5. See also Michel Foucault, *Dits et écrits, I: 1954–1975* (Gallimard, 2001) 623. On the idea that a discourse does violence to things, see Michel Foucault, *L'ordre du discours* (Gallimard, 1971) 55.

16 Freud is sometimes credited for reigniting studies based on affects and passions. See the remarks of de Certeau (n 12) 94 and 141. See also Sedgwick, ‘Paranoid Reading and Reparative Reading; or, You’re So Paranoid, You Probably Think This Introduction Is about You’ (n 4) 2.

17 In the same vein, see Rita Felski, *The Limits of Critique* (University of Chicago Press, 2015) 17–18 and 177–178 (for a defense of affective hermeneutics).

18 On the idea that our theories can at best be rudimental, see Roland Barthes, *Leçon* (Seuil, 1978) 15–16; Roland Barthes, *Le bruissement de la langue: Essais critiques IV* (Seuil, 1984) 80; Theodor W Adorno, *Negative Dialectics*, tr EB Ashton (Bloomsbury Academic, 1981) 42. On the idea that resistance to theory is theory, see Paul de Man, *The Resistance to Theory* (University of Minnesota Press, 1986) 19–20. For a rejection of strong theory, see also Sedgwick ‘Paranoid Reading and Reparative Reading; or, You’re So Paranoid, You Probably Think This Introduction Is about You’ (n 4).

19 For a useful collection of essays summarising research on emotion in various disciplines, see Michael Lewis, Jeannette M Haviland-Jones, and Lisa Feldman-Barrett (eds) *Handbook of Emotions* (Guilford, 3rd ed, 2010).

20 Pierre Legendre speaks of the “love for the censor” (“l’amour du censeur”) to describe how, since the advent of Canon law, legal institutions organize a love for subordination or mobilise sexual symbols; see Pierre Legendre, *L’Amour du Censeur: Essai sur l’ordre dogmatique* (Seuil, 2005) especially 6, 45–49, and 197). For his part, Michel Foucault

Relations literature has also been infused with thoughtful reflections on the love for institutions.<sup>21</sup> The present venture into the love for international organizations witnessed in international legal thought and practice, despite exploring a discursive posture that has drawn little attention in international legal scholarship, does not accordingly claim to make an argument that is totally unheard of. It finds itself in good company in other areas of the humanities.

Although envisaged as the groundwork for a rudimentary theory of attachment to international organizations, the following account of the drivers of international lawyers' love for international organizations resists any thorough theorisation of the very idea of 'love'. It does so, for any theorisation thereof would necessarily fail to capture the diversity of affective interests that international lawyers engaging with international organizations may experience. For that very reason, the idea of 'love' mobilised in the following sections is kept broad and all-embracing. It thus encapsulates a range of emotions as varied and distinct as desire, affection, attachment, admiration, adoration, adulation, need, etc.<sup>22</sup> In resisting to theorise the idea of 'love' any further, the following inquiry accordingly refrains from drawing on the multi-layered and intricate taxonomies of affects forged in the 18th century literature.<sup>23</sup>

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speaks of the erotic attachment to power apparatuses and the erotic dimension of the latter: see Foucault, *Dits et écrits, I: 1954–1975* (n 15) 1520–1521.

- 21 On the so-called “emotion turn” in International Relations, see Maeva Clement and Eric Sangar (eds), *Researching Emotions in International Relations: Methodological Perspectives on the Emotional Turn* (Palgrave Macmillan, 2018); Véronique Pin-Fat, “What’s love got to do with it?” Ethics, emotions, and encounter in International Relations’ (2019) 45(2) *Review of International Studies* 181; Roland Bleiker and Emma Hutchison, ‘Fear no more: Emotions and world politics’ (2008) 34 *Review of International Studies* 115; Ronald Bleiker and Emma Hutchison, ‘Theorizing emotions in world politics’ (2014) 6(3) *International Theory* 491; Neta C Crawford, ‘Institutionalizing passion in world politics: fear and empathy’ (2014) 6(3) *International Theory* 535; Neta C Crawford, ‘The Passion of World Politics: Propositions on Emotion and Emotional Relationships’ (2000) 24(4) *International Security* 116; Janice B Mattern, ‘On being convinced: an emotional epistemology of international relations’ (2014) 6(3) *International Theory* 589; Jonathan Mercer, ‘Human nature and the first image: emotion in international politics’ (2006) 9(3) *Journal of International Relations and Development* 288; Jonathan Mercer, ‘Emotional beliefs’ (2010) 64(1) *International Organization* 1; Andrew AG Ross, ‘Coming in from the Cold: Constructivism and Emotions’ (2006) 12(2) *European Journal of International Relations* 197; Brent E Sasley, ‘Theorizing States’ Emotions’ (2011) 13(3) *International Studies Review* 452. I am grateful to Anne Saab for her insights on this point.
- 22 I am thankful to all the participants of the Faculty Colloquium organized by Anne Saab and Fuad Zarbiyev at the Geneva Graduate Institute on 22 December 2023 for their very insightful remarks on this point.
- 23 On the idea that the complex distinctions between passions and affects constitute a product of the 18th century literature to which they had been relegated, see Georges

Two final remarks are warranted to properly delineate the scope of the following inquiry into the drivers of international lawyers' love for international organizations. First, although this article zeroes in on the love of international lawyers for a very specific type of institutions, namely international organizations, the drivers of such love as they are discussed here can certainly be of relevance to anyone interested in elucidating, more generally, why international lawyers love institutional phenomena. Second, it must be highlighted that the nine drivers of international lawyers' love for international organizations examined in the following paragraphs do not stand in isolation of one another. On the contrary, they often work alongside each other. For instance, it is because international lawyers love international organizations for what their alleged taking care of the world,<sup>24</sup> that the latter show them where to look for power,<sup>25</sup> that their action is based on knowledge,<sup>26</sup> and that they come to provide a space for discontent as well as a will to reform international organizations.<sup>27</sup> The same discontent with international organizations and the will for reform can simultaneously be read as a separate marker of the romanticisation of the history of ideas about international organizations, which is yet another driver for international lawyers' love for international organizations.<sup>28</sup> By the same token, that international organizations are entities deemed to belong to the same transcendental legal phenomenon<sup>29</sup> is what allows international organizations to be perceived as textualising the universe.<sup>30</sup> Likewise, international organizations' holding many secrets<sup>31</sup> also contributes to the expansion of the field of study of international lawyers and thus, the love thereof.<sup>32</sup> The same mutual reinforcement is found in the love for international organizations being knowledge hubs that govern through expertise<sup>33</sup> and the love for international organizations textualising the world.<sup>34</sup>

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Vigarello, 'Joie, tristesse, terreur ... La mécanique classique des humeurs' in Georges Vigarello (ed), *Histoire des émotions: 1. De L'Antiquité aux Lumières* (Seuil, 2016) 314, 314 and 327.

24 See below section 2.

25 See below section 3.

26 See below section 4.

27 See below section 8.

28 See below section 5.

29 See below section 6.

30 See below section 7.

31 See below section 10.

32 See below section 9.

33 See below section 4.

34 See below section 7.



## 2 International Organizations Take Care of People

It is first submitted that international lawyers experience a feeling of love for international organizations by virtue of their common representation of the latter as *global caretakers*. According to such representation, international organizations are deemed to play a critical role in the daily lives of people around the world<sup>35</sup> while providing collective goods,<sup>36</sup> common good,<sup>37</sup> and societal change.<sup>38</sup> They are similarly considered the managers of common problems,<sup>39</sup> especially when the State no longer looks sufficiently equipped or resourced.<sup>40</sup> Such portrayal of international organizations as global caretakers is often accompanied by the belief that addressing new global problems that arise calls for new international organizations to be created<sup>41</sup> or, alternatively

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- 35 Jan Klabbers and Guy F Sinclair, 'On Theorizing International Organizations Law: Editors' Introduction' (2020) 31(2) *European Journal of International Law* 489, 491; Guy F Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (2015) 26(2) *European Journal of International Law* 445, 446; Guy F Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford University Press, 2017) 1; Laurence Boisson de Chazournes, Lorenzo Casini and Benedict Kingsbury, 'Foreword' (2009) 6(2) *International Organizations Law Review* 315, 315; Niels M Blokker, 'International Organizations: The Untouchables?' (2014) 10(2) *International Organizations Law Review* 259, 261; CF Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge University Press, 2nd ed, 2005) 7; CF Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (2004) 1(1) *International Organizations Law Review* 9, 10.
- 36 Andrew Guzman, 'International Organizations and the Frankenstein Problem' (2013) 24(4) *European Journal of International Law* 999, 1010.
- 37 Laurence Boisson de Chazournes, 'Functionalism! Functionalism! Do I Look Like Functionalism?' (2016) 26(4) *European Journal of International Law* 951, 951.
- 38 Georges M Abi-Saab has claimed that if not bared by certain conservative forces, international organizations can be used for social and societal changes. See Georges M Abi-Saab, 'The Newly Independent States and the Scope of Domestic Jurisdiction' (1960) 54 *American Society of International Law Proceedings* 84, 90.
- 39 Jan Klabbers, 'Two Concepts of International Organization' (2005) 2(2) *International Organizations Law Review* 277, 278.
- 40 Niels M Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (2008) 5(1) *International Organizations Law Review* 197, 202; Niels M Blokker, 'Member State Responsibility for Wrongdoings of International Organizations' (2015) 12(2) *International Organizations Law Review* 319, 321; Henry G Schermers and Niels M Blokker, *International Institutional Law* (Brill Nijhoff, 6th ed, 2018) 1; Amerasinghe, *Principles of the Institutional Law of International Organizations* (n 35) 7; Jacob Katz Cogan, Ian Hurd and Ian Johnstone, 'Preface' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press, 2016) v, x; Guzman (n 36) 1010.
- 41 Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 11.

for existing ones to be reinforced.<sup>42</sup> This representation of international organizations also entails a depiction of international organizations as constantly reacting to “new realities”<sup>43</sup> and “real problems.”<sup>44</sup> Their care-taking role is similarly interpreted by international lawyers to be adjustable to the emergence of new needs<sup>45</sup> and to increase in times of emergencies.<sup>46</sup> By the same token, their ever growing care-taking role is perceived as requiring a constant adjustment of the legal categories through which international organizations and their practices are thought.<sup>47</sup> In the same vein, the extent to which they take care of people is said to be instrumental in public trust.<sup>48</sup> The most propitious variants of such representations of international organizations as global caretakers even projects an image of international organizations as “bring[ing] heaven to earth”,<sup>49</sup> contributing to the “salvation of mankind”,<sup>50</sup>

42 CF Amerashinghe, ‘International Institutional Law—A Point of View’ (2008) 5(1) *International Organizations Law Review* 143, 146.

43 de Chazournes, Functionalism! Functionalism! Do I Look Like Functionalism?’ (n 37) 951.

44 Blokker, ‘Comparing Apples and Oranges? Reinventing the Wheel? Schermers’ Book and Challenges for the Future of International Institutional Law’ (n 40) 209.

45 Clarence W Jenks, ‘Some Constitutional Problems of International Organizations’ (1945) 22 *British Yearbook of International Law* 11, 17; Laurence Boisson de Chazournes, ‘Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies’ (2009) 6(2) *International Organizations Law Review* 655, 656; Schermers and Blokker (n 40) 1–2.

46 On international organizations as crisis-managers, see Michel Virally, ‘Le rôle des organisations inter-nationales dans l’atténuation et le règlement des crises internationales’ (1976) 41(6) *Politique étrangère* 529. On this aspect of the work of Michel Virally, see the remarks of Jorge E Vinales, ‘“The Secret of Tomorrow”: International Organization through the Eyes of Michel Virally’ (2012) 23(2) *European Journal of International Law* 543. On the role of international organizations as in relation to public health emergencies, see Julinda Beqiraj and Francesca Ippolito, ‘COVID-19 and International Organizations: Challenges and Opportunities from the Perspective of Good Governance and the Rule of Law’ (2021) 18(3) *International Organizations Law Review* 293; Lukasz Gruszczynski and Margherita Melillo, ‘The Uneasy Coexistence of Expertise and Politics in the World Health Organization: Learning from the Experience of the Early Response to the COVID-19 Pandemic’ (2022) 19(2) *International Organizations Law Review* 301. On the role of international organizations in relation to the crisis in Ukraine, see Ingrid (Wuerth) Brunk, and Monica Hakimi, ‘Russia, Ukraine, and the Future World Order’ (2022) 116(4) *American Journal of International Law* 687; and Martina Buscemi, ‘Outcasting the Aggressor: The Deployment of the Sanction of “Non-Participation”’ (2022) 116(4) *American Journal of International Law* 764.

47 Angelo Jr Golia and Anne Peters, ‘The Concept of International Organization’ in Jan Klabbers (ed), *Cambridge Companion to International Organizations Law* (Cambridge University Press, 2022) 25.

48 Beqiraj and Ippolito (n 46) 294.

49 This expression is from Klabbers, ‘Two Concepts of International Organization’ (n 39) 280.

50 Nagedra Singh, *Termination of Membership of International Organisations* (Stevens & Sons, 1958) vii.

improving the management of welfare,<sup>51</sup> creating better living conditions,<sup>52</sup> and being instrumental to the creation of a better world.<sup>53</sup>

Needless to say that the abovementioned representations of international organizations as global caretakers is not benign, for they, most of the time coincide with claims that acknowledge and legitimise international organizations' exercises of public authority<sup>54</sup> as well as their "far-reaching powers"<sup>55</sup> in an ever growing number of areas.<sup>56</sup> From that perspective, international organizations ability to make law<sup>57</sup> and to change the content of international law<sup>58</sup> as well as their capability to intervene on a military, financial, economic, political, social and cultural levels is constantly celebrated.<sup>59</sup> Such celebrations and legitimisations of international organizations' caretaking powers often build on an ever growing expectation of what we expect international organizations to accomplish.<sup>60</sup> Such complacent and legitimising discourse is occasionally pushed as far as indicating that problems at the global stage come from States not giving international organizations the authority necessary to solve global issues.<sup>61</sup>

It is argued here that the abovementioned representations of international organizations as global caretakers—and thus the love for such institutions that they nurture—may be facilitated by the great familiarity that they

51 Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 200.

52 Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 11–12.

53 Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35) 446.

54 See, e.g., Jan Klabbers, 'Reflections on Compliance' (2008) 5(1) *International Organizations Law Review* 1, 3.

55 Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35) 1.

56 de Chazournes, 'Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (n 45) 665.

57 It has been asserted that much modern customary international law would not exist but for the opportunities provided by international organizations, see José E Alvarez, *International Organizations as Law-makers* (Oxford University Press, 2005) 592; Sufyan Droubi, 'The Role of the United Nations in the Formation of Customary International Law in the Field of Human Rights' (2017) 19 *International Community Law Review* 68. See generally Jonathan I Charney, 'Universal International Law' (1993) 87(4) *American Journal of International Law* 529.

58 Alvarez (n 57) 627.

59 Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35) 446.

60 Alvarez (n 57) 607.

61 Guzman (n 36) 999.

may provoke among international lawyers. Indeed, such representations can be construed as mirroring an understanding of domestic structures of governance geared towards the care for the population and its management by experts that are familiar to most international lawyers. The consolidation at the domestic level of such structure of governance centered on the care for the population and its management by experts in the 18th century is what has been called the governmentalisation of the State.<sup>62</sup> It also said to correspond to the exercise of a bio-power over the population.<sup>63</sup> In that sense, it can be said that the abovementioned representations of international organizations as global caretakers projects an image of international organizations as governmentalised structures that exercise a form of bio-power over global populations that is reminiscent of tasks long bestowed upon States. Such similarity surely is conducive to international lawyers feeling that they are dealing with a very homelike structure of governance and thus with something that they can embrace and cherish without much risk.

### 3 International Organizations Show Where to Look for Power

According to the argument developed in this section, international lawyers love international organizations, for the latter show them where to look for power.<sup>64</sup> Indeed, international organizations are commonly represented, in international legal thought and practice, as *power hubs*, that is delineated spaces where power is exercised in certain instances by certain bodies using certain forms and symbols, that is in a very predictable way. This is for instance the case when international organizations are depicted as counterparts of States' sovereign powers<sup>65</sup> or as spaces where State consent has been diluted.<sup>66</sup>

62 Michel Foucault, *Dits et écrits, II: 1976–1988* (Gallimard, 2001) 17–18 and 655–656; Michel Foucault, *Sécurité, Territoire, Population: Cours au Collège de France. 1977–1978* (Gallimard, 2004) 107–113 and 242.

63 Michel Foucault, *Naissance de la biopolitique: Cours au Collège de France (1978–1979)* (Ehess Gallimard Seuil, 2004) 24; Michel Foucault, *Histoire de la Sexualité I: La volonté de savoir* (Gallimard, 1976) 184–185. Cf with the claim of Craig N Murphy that international organizations exercise a form of surveillance. See Craig N Murphy, *International Organization and Industrial Change: Global Governance since 1850* (Polity, 1994) 65–66.

64 On the idea that the fascination with power is always fascination with dead power, see Jean Baudrillard, *Forget Foucault* (Semiotext(e), 2007) 65.

65 Anne Peters, 'Membership in the Global Constitutional Community' in Jan Klabbers, Anne Peters and Geir Ulfstein, *The Constitutionalization of International Law* (Oxford University Press, 2009) 153, 209.

66 Cogan, Hurd and Johnstone (n 40) ix. This is a claim already found in the interwar discourse. In that respect, see Jochen von Bernstorff, 'Autorité oblige: The Rise and Fall of

A similar representation infuses the claims that international organizations exercise a supranational type of power,<sup>67</sup> that they embody a type of global governance without government<sup>68</sup> or that they discipline interactions on the world stage.<sup>69</sup> The prolific literature on international organizations' separate will (*volonté distincte*)<sup>70</sup> similarly carries a representation of international organizations as delineated spaces where power is exercised in certain instances by certain bodies and using certain forms and symbols. The same holds for accounts of global law-making according to which most rules generated at the international level are said to be initiated, negotiated, formulated, interpreted and implemented by international organizations,<sup>71</sup> especially in times of emergencies.<sup>72</sup> In the same vein, the extensive literature and case-law on functionalism can be read as a way to justify and organise such representations of international organizations as delineated spaces where power is exercised in specific and predictable ways.<sup>73</sup> Such representations of international organizations as delineated spaces where power is exercised in certain instances by certain bodies and using certain forms are certainly reinforced by doctrines like that of international legal personality<sup>74</sup> or that of international responsibility.<sup>75</sup>

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Hans Kelsen's Legal Concept of International Institutions' (2020) 31(2) *European Journal of International Law* 497, 499; Alvarez (n 57) 615.

67 Cogan, Hurd and Johnstone (n 40) ix.

68 Ibid x.

69 Monica Hakimi, 'Why Should We Care About International Law?' (2020) 118(6) *Michigan Law Review* 1283, especially at 1300.

70 Niels M Blokker, 'International Organizations and Their Members: "International Organizations Belong to All Members and to None"—Variations on a Theme' (2004) 1(1) *International Organizations Law Review* 139; Nigel D White, 'Separate but Connected: Inter-Governmental Organizations and International Law' (2008) 5(1) *International Organizations Law Review* 175.

71 Alvarez (n 57) x.

72 Mark Eccleston-Turner and Pedro A Villarreal, 'The World Health Organization's Emergency Powers: Enhancing Its Legal and Institutional Accountability' (2022) 19(1) *International Organizations Law Review* 63.

73 Guy F Sinclair, 'Towards a Postcolonial Genealogy of International Organizations Law' (2018) 31(4) *Leiden Journal of International Law* 841, 869.

74 See generally David J Bederman, 'The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Sparte' (1995) 36(2) *Virginia Journal of International Law* 275. See also Schermers and Blokker (n 40) 1026–1036.

75 See, e.g., Jean d'Aspremont, 'International Responsibility and the Constitution of Power' (2015) 12(2) *International Organizations Law Review* 382.

It is further argued in this section that, for international lawyers, such representations of international organizations as power hubs have the advantage of inscribing power in a definite time and space. In fact, as a result of power being inscribed in a definite time and space, power comes to look visible, locatable and apprehensible. And once seen, located, and apprehended through the vocabularies, forms, and symbols of international organizations, power, to the delight of international lawyers, come to look like it can be more easily scrutinised, counter-balanced, and subjected to accountability. In that respect, it is no coincidence that, having inscribed power in a definite time and space, international lawyers are often prompt to elaborate sophisticated taxonomies of powers<sup>76</sup> as well as mobilise elaborate vocabularies—like that of global administrative law<sup>77</sup> or that of constitutionalism<sup>78</sup>—in order to confront that power that is now seen, located, and apprehended. This is why it can be said that international lawyers love international organizations for the latter assuaging the former's desire to keep exercises of power at the global level in check.

It must be acknowledged that, whilst international lawyers can experience a great satisfaction in finding where to look for power, the inscription of power in a specific time and space can simultaneously make them feel some severe discontent at the precarity of accountability mechanisms to which such exercises of power may—or may not—be subjected despite being inscribed in a definite time and space. Such discontent—to which this article later returns<sup>79</sup>—is however not at variance with the satisfaction that international lawyers continue to experience as long they are shown where to look for power.

Another important remark is in order. The above-mentioned representations of international organizations as power hubs and the great satisfaction that it generates among international lawyers should not obfuscate the fact that the latter seem content with a very simplistic understanding of power. All those interested in the way in which power is exercised have long been warned that associating the exercise of power with the decision-making privileges of public or private institutions tells very little about how power works.<sup>80</sup> The latter does not merely and plainly reside in institutions, for institutions are at

76 Adrién Schifano, 'Distribution of Power within International Organizations' (2017) 14(2) *International Organizations Law Review* 346.

77 de Chazournes, 'Functionalism! Functionalism! Do I Look Like Functionalism?' (n 37) 954.

78 Jan Klabbers, 'Constitutionalism Lite' (2004) 1(1) *International Organizations Law Review*, 31, 55–56. See also the remarks of Schermers and Blokker (n 40) 12–16.

79 See below section 8.

80 Foucault, *Dits et écrits, I: 1954–1975* (n 15) 1626. See also Foucault, *Dits et écrits, II: 1976–1988* (n 62) 35. See also Gilles Deleuze and Claire Parnet, *Dialogues* (Champs essais, 1996) at 157.

best the apparatus behind which power ebbs and flows.<sup>81</sup> It has similarly—and convincingly—been shown that power is not exercised by an institution over an individual or another institution but takes the form of a myriad of mutually constitutive relations that produce a certain normality, a certain hierarchy, a certain individuality, a certain naturalness, a certain plurality, etc.<sup>82</sup> And yet, international lawyers, in their representations of international organizations as power hubs, have continued to abide by an elementary understanding of power. This is maybe not entirely unexpected. After all, simplifying its manifestations as well as its locations is exactly what power does: power induces misunderstanding of itself.<sup>83</sup> For that very reason, the love for international organization which international lawyers experience as a result of the former showing the latter where to look for power may simply be the offspring of that very power.

#### 4 International Organizations Always Know So Much

With a view to elucidating this third driver of international lawyers' love for international organizations, it must be recalled that international lawyers have long espoused a very modern attitude whereby they aim at securing some kind of truth about the meaning of the world, of its institutions and of its rules,<sup>84</sup> knowledge, rather than revelation, being the intuitive access to truth.<sup>85</sup> This may provide an inkling of another reason why international lawyers love international organizations so much. Indeed, they often perceive international organizations as *knowledge hubs* where the exercise of power is informed by knowledge carefully obtained through the use of experts.<sup>86</sup> This attitude

81 Foucault, *Dits et écrits, I: 1954–1975* (n 15) 1680.

82 Foucault, *Dits et écrits, II: 1976–1988* (n 62) 35–37, 124, 180, 311 and 979. See also Foucault, *Histoire de la Sexualité I: La volonté de savoir* (n 63) 122–133.

83 Bourdieu coined the idea of 'miscognition' ("méconnaissance") to seek to capture this induced misunderstanding by power. See Pierre Bourdieu, 'A Lecture on the Lecture' in Pierre Bourdieu, *In Other Words: Essays towards a Reflexive Sociology*, tr Matthew Adamson (Stanford University Press, 1990) 177, 183 and 189. See also Pierre Bourdieu, *Langage et pouvoir symbolique* (Seuil, 2001) 210.

84 See Jean d'Aspremont, *After Meaning: The Sovereignty of Form in International Law* (Edward Elgar, 2021) 2–13.

85 Michel Foucault, *Leçons sur la volonté de savoir: Cours au Collège de France 1970–1971* (Ehess Gallimard Seuil, 2011) 261.

86 This is different from the claim that one acquires new knowledge and learns from the experience of international organizations. For some critical remarks on this claim, see Jean d'Aspremont, 'The League of Nations and the Power of "Experiment Narratives" in International Institutional Law' (2020) 22(3–4) *International Community Law Review* 275.

simultaneously carries a belief in the a-political nature of the expertise on which international organizations rely.<sup>87</sup> Such expertise is not only thought as being a-political but also as being very dynamic, constantly adapting to changing circumstances and new challenges, skills and networks.<sup>88</sup> The same perception of international organizations as knowledge hubs re-surfaces in the frequent lamentations by international lawyers that politics too often infiltrate technical and science-based decision-making processes within international organizations.<sup>89</sup>

The representation of international organizations as knowledge hubs and their resorting to expert-based knowledge is quite well documented in the international legal literature and it would be of no avail to expand thereon here.<sup>90</sup> It matters more to emphasise that international lawyers' love for international organizations as knowledge hubs is also a love for a managerial approach to international organizations.<sup>91</sup> A managerial approach refers here to a conviction that international organizations—and international organizations' experts—provide the technical vocabularies to both define and resolve global problems.<sup>92</sup> The love for international organizations as

87 Paul Reuter, 'La conception du pouvoir politique dans le Plan Schuman' (1951) 1(3) *Revue française de science politique* 258, 270; Paul Reuter, 'Techniciens et politiques dans l'organisation internationale' in Centre de sciences politiques de l'Institut d'études juridiques de Nice, Gaston Berger, *Politique et technique* (Presses Universitaires de France, 1958) 181.

88 Cogan, Hurd and Johnstone (n 40) viii.

89 Gruszczynski and Melillo (n 46).

90 See, e.g., the work of the International Organizations for Migrations as discussed by Jan Klabbers, 'Notes on the ideology of international organizations law: The International Organization for Migration, state-making, and the market for migration' (2019) 32(3) *Leiden Journal of International Law* 383. On the role of expertise in decision-making processes at the World Bank, see Dimitri Van Den Meerssche, *The World Bank's Lawyers. The Life of International Law as Institutional Practice* (Oxford University Press, 2022); Dimitri Van Den Meerssche, 'Performing the rule of law in international organizations: Ibrahim Shihata and the World Bank's turn to governance reform' (2019) 32(1) *Leiden Journal of International Law* 47. See more generally David Kennedy, *A World of Struggle. How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016) 108–167.

91 See the remarks of Klabbers, 'Two Concepts of International Organization' (n 39) 280–281. For some remarks on Wilfried Jenks's managerialist approach to international organizations, see Jean d'Aspremont, 'Jenks' Ethic of Responsibility for the Disillusioned International Lawyer' *European Journal of International Law* (forthcoming).

92 The idea of 'managerialism' in international legal thought was coined by Martti Koskenniemi. See Martii Koskenniemi, 'Constitutionalism, Managerialism and the Ethos of Legal Education', 2007 1 *European Journal of Legal Studies* 1; Martti Koskenniemi, 'The Politics of International Law: 20 Years Later' (2009) 20(1) *European Journal of International Law* 7; See also the remarks of Martti Koskenniemi who sees Lauterpacht's



knowledge hubs thus also manifests a deep attachment of international lawyers to expert jargon and textual governance, which is yet another facet of their love for international organizations to which this article returns later.<sup>93</sup>

## 5 International Organizations Romanticise Global Histories

This section makes the point that international lawyers' love for international organizations can also be explained through the type of historical narratives that international organizations enable. In fact, international organizations are not only a very central and common marker of the histories told by international lawyers and through which they provide the formless past with form, order, and causal sequencing.<sup>94</sup> They are also the linchpin of a type of narrativisation that represents international organizations, their creation, their normative output, their achievements, and even their failures and falls, as a *romantic marker* of global histories.<sup>95</sup> Indeed, in most histories of international law told by international lawyers, the world is deemed to be growing better thanks to international organizations, to the normative output they produce, to what they achieve, and to what one learns from their failures and falls.<sup>96</sup> To

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1933 *The Function of Law in the International Community* as a treatise of managerialism for international lawyers who want to rule the world. See the introduction of Martti Koskenniemi, in Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford University Press, 2011) xlvii; Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (n 90); On governance through knowledge by international courts and tribunals, see Jean d'Aspremont 'The Control over Knowledge by International Courts and Arbitral Tribunals' in Thomas Schultz and Federico Ortino (eds), *The Oxford Handbook of International Arbitration* (Oxford University Press, 2020) 328.

93 See below section 7.

94 On the idea that the past is formless and has no meaning other than what is given to it in the present, see Hayden V White 'The Question of Narrative in Contemporary Historical Theory' (1984) 23(1) *History and Theory* 1, 26–57. On the idea of international lawyers as the disc jockeys of historical narratives about international law, see Jean d'Aspremont, 'Turntablism in the History of International Law' (2020) 22(2–3) *Journal of the History of International Law/Revue d'histoire du droit international* 472. Cf with the idea of disc jockeys of advanced capitalist ethnocracies of Gayatri Chakravorty Spivak, *In Other Worlds: Essays In Cultural Politics* (Routledge, 2006) 149. On the idea of history creating a reality effect, see Roland Barthes, 'Le discours de l'histoire' (1967) 6(4) *Social Science Information* 63, 74.

95 According to Jacques Le Goff, the notion of progress was first coined and promoted by Mirabeau in 1757. See Jacques Le Goff, *Faut-il vraiment découper l'histoire en tranches?* (Seuil, 2014).

96 On the idea that progress is a form of vanity whereby one puts societies at their peak as well as having reached the highest degree of their refinement and development, see the

put it more precisely, international organizations allow international lawyers to romanticise<sup>97</sup> global histories, that is to package them through a progressive narrative in which international organizations, their normative output, their achievements as well as their failures and falls are construed as a cause of improvement of individuals' condition on the globe.<sup>98</sup> It is in that sense that it can be argued that international lawyers love international organizations for their constituting a key as historical marker that embellish global histories.

The romanticisation of global histories enabled by international organizations, understood as a romantic historical marker, is commonly verbalised, in the international legal literature, through a myriad of historical narratives, some of which should be mentioned here. One of the dominant variant of these romanticising narratives depicts the 19th century and the beginning of the 20th centuries as having witnessed the birth of a new form of political organization as important as the modern State.<sup>99</sup> According to this narrative, this new form of political organizations went on to proliferate in the rest of the 20th century through the repeated creation of new international organizations<sup>100</sup> for the fulfillment of ever growing

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remarks of Michel Serres, *Eclaircissement: Entretiens avec Bruno Latour* (Le Pommier, 2022) 75.

97 Cf with the idea of sanitising of the histories of human societies as is discussed by Régis Debray, *Le Scribe* (Grasset et Fasquelle, 1980) 217. See also Foucault, *Dits et écrits, II: 1976–1988* (n 62) 271.

98 For a traditional account of the history of international organizations that locates the origins in the first ad hoc conferences and the public unions, see Amerasinghe, *Principles of the Institutional Law of International Organizations* (n 35) 1–6; Amerasinghe 'International Institutional Law—A Point of View' (n 42) 143–146; Catherine Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (Hart Publishing, 2007) 39–44. See also Bob Reinalda, in his monumental *Routledge History of International Organizations: From 1815 to the Present Day* (Routledge, 2009).

99 Michel Virally, *L'organisation mondiale* (Armand Colin, 1972) 5. On the idea that international organizations constitute a form of governance without government, see Cogan, Hurd and Johnstone (n 40) x; on the idea that international organizations constitute the invention of supranationality, see Cogan, Hurd and Johnstone (n 40) ix.

100 Amerasinghe, 'International Institutional Law—A Point of View' (n 42) 146–148; Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 11. Schermers and Blokker (n 40) 7–8. See however the claim by Guy F Sinclair according to which the expansion of the powers of international organizations over the course of the 20th century was simultaneously linked with those organizations' attempts to make and remake modern states on a broadly Western mode. See generally Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35). In the same vein, see Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35); see also BS Chimni, 'International Organizations, 1945—Present' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds),

needs.<sup>101</sup> Such narrative goes on to claim that this new form of political organization came to defeat the early resistance against it as well as the lack of recognition thereof by judicial bodies,<sup>102</sup> before being boosted by the accelerating decolonisation process<sup>103</sup> as well as the end of the Cold War.<sup>104</sup> Still according to this romanticising narrative, international organizations have continued to grow in importance ever since<sup>105</sup> and are now “fixed elements of the international legal landscape”,<sup>106</sup> “a common feature of international relations”<sup>107</sup> or an element of “everyday life in the world”.<sup>108</sup>

The abovementioned variant of these romanticising narratives is commonly supplemented by yet another narrative whereby international organizations, as a romantic historical marker, are said to take care of the tasks that the modern State is no longer able to deal with,<sup>109</sup> while also pouring resources more effectively than the latter.<sup>110</sup> As a romantic historical marker, international organizations are also said to be structures with a formidable transformative potential<sup>111</sup> that have already secured considerable success.<sup>112</sup> In the same vein,

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*The Oxford Handbook of International Organizations* (Oxford University Press, 2016) 113, 125.

- 101 de Chazournes, ‘Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies’ (n 45) 655.
- 102 See Jan Klabbers, ‘The Life and Times of the Law of International Organizations’ (2001) 70 *Nordic Journal of International Law* 287; Jan Klabbers, ‘The Paradox of International Institutional Law’ (2008) 5(1) *International Organizations Law Review* 151; Cf with Philip Burton, ‘Ordering Institutions: The Judicial Function of the Permanent Court of International Justice in Relation to Interwar Organizations’ (2021) 18(3) *International Organizations Law Review* 540.
- 103 Sinclair, ‘Towards a Postcolonial Genealogy of International Organizations Law’ (n 73).
- 104 On this historical marker, see the remarks of Chimni ‘International Organizations, 1945—Present’ (n 100) 118.
- 105 Catherine Brölmann, ‘Member States and International Legal Responsibility Developments of the Institutional Veil’ (2015) 12(2) *International Organizations Law Review* 358, 360.
- 106 Klabbers and Sinclair (n 35) 491.
- 107 Amerasinghe, ‘International Institutional Law—A Point of View’ (n 42) 146.
- 108 Amerasinghe, ‘The Law of International Organizations: A Subject Which Needs Exploration and Analysis’ (n 35) 9.
- 109 Blokker, ‘Comparing Apples and Oranges? Reinventing the Wheel? Schermers’ Book and Challenges for the Future of International Institutional Law’ (n 40) 202; Blokker, ‘Member State Responsibility for Wrongdoings of International Organizations’ (n 40) 321; Amerasinghe, *Principles of the Institutional Law of International Organizations* (n 35) 7; Cogan, Hurd and Johnstone (n 40) x.
- 110 Guzman (n 36) 1010.
- 111 Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35) 3.
- 112 For some praise on the achievements of international institutions in managing world problems, see Clarence W Jenks, ‘The Impact of International Organisations on Public

international organizations, as a romantic historical marker, are celebrated for providing a “formal framework of a universal world order and the formal elements of a universal legal order”,<sup>113</sup> Such supplementary romanticising narrative about international organizations is often accompanied by the claim—very prominent in the interwar discourse—that international organizations are structures that downplay State sovereignty and diluted radical consensualism accompanying it in the 19th century<sup>114</sup> while also making the world move away from war, disorganisations and chaos.<sup>115</sup> International organizations being a cornerstone of this much cherished universalisation of the global legal order from the perspective of such romanticising narrative, it is no coincidence that the League of Nations came to be represented as a major milestone in the move from a pre-institutional to an institutional era.<sup>116</sup> In this narrative, the United Nations Charter is commonly awarded a similar status, for it is portrayed as having perpetuated the League’s institutionalisation, and possibly constitutionalisation, of the international legal order.<sup>117</sup>

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and Private International Law’ (1951) 37 *Transactions of the Grotius Society—Problems of Public and Private International Law, Transactions for the Year 1951* 23.

113 Clarence W Jenks, *The Common Law of Mankind* (Praeger Publishers, 1958) 2.

114 Peters, ‘Membership in the Global Constitutional Community’ (n 65) 209; Cogan, Hurd and Johnstone (n 40) ix. This is a claim already found in the interwar discourse. In that respect, see von Bernstorff (n 66) 499; Alvarez (n 57) 615.

115 For the famous claim that international organizations contribute to the “salvation of mankind”, see Singh (n 50) vii. On this aspect of such historical narratives, see the remarks of David W Kennedy, ‘The Move to Institutions’ (1987) 8 *Cardozo Law Review* 841, 845 and 848.

116 On the making of the League as a historical marker, see Kennedy, ‘The Move to Institutions’ (n 115) 844–845. On the League as a historical marker, see, e.g., Walther Schücking, ‘Le développement du Pacte de la Société des Nations’ in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 20 (1927)* (Brill Nijhoff 1968) 353; William E Rappard, ‘Vues Rétrospectives sur la Société des Nations’ in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 71 (1947)* (Brill Nijhoff 1968) 117, 121, 174; L Oppenheim, *International Law: A Treatise*, ed Ronald F Roxburgh (Longmans, Green 6& Co, 3rd ed, 1920) 300–301. See contra Kennedy, ‘The Move to Institutions’ (n 115) 867; JL Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (Clarendon Press, 4th ed, 1949) 276; Georg Schwarzenberger, *A Manual of International Law* (Stevens & Sons, 3rd ed, 1952) 125; Charles de Visscher, *Théories et Réalités en Droit International Public* (A Pedone, 4th ed, 1970) 69. On the idea of the Covenant of the League as a constitutional instrument emerged as early as 1930, see Arnold McNair, ‘The Functions and Differing Legal Character of Treaties’ (1925) 11 *British Yearbook of International Law* 100, 110, 116–117.

117 On the idea of a constitutionalisation of the international legal order through the United Nations, see Bruno Simma, ‘From Bilateralism to Community Interest in International Law’ in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 250 (1994)* (Brill Nijhoff 1997) 221–384, 262; Bardo Fassbender, ‘The United Nations

As a romantic historical marker, international organizations have given rise to yet another romanticising narrative whereby they are portrayed as more inclusive and more transparent structures of governance,<sup>118</sup> ones that are also subject to more accountability mechanisms.<sup>119</sup> According to such romanticising narrative, international organizations are represented as platforms that allow a greater participations of non-State actors in international law-making,<sup>120</sup> thereby transforming such structures of governance into important sites of struggle over how to create a better world<sup>121</sup> or better living conditions.<sup>122</sup>

It is noteworthy that, in many of all the romanticising narratives mentioned here, the concept of functionalism plays a central role. Indeed, functionalism

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- Charter as Constitution of the International Community' (1998) 36(3) *Columbia Journal of Transnational Law* 529. See contra Benedetto Conforti, *The Law and Practice of the United Nations* (Kluwer, 1997) 10. Sometimes, the creation of European Community is seen as yet another experiment, albeit at the regional level, of the constitutionalisation of an international legal order. See the remarks of Ole Spiermann, 'The Other Side of the Story: An Unpopular Essay on the Making of the European Community Legal Order' (1999) 10(4) *European Journal of International Law* 763; see also Jean d'Aspremont and Frédéric Dopagne, 'Two Constitutionalisms in Europe: Pursuing an Articulation of the European and International Legal Orders' (2008) 69 *Heidelberg Journal of International Law (ZaÖRV)* 939. On the judicial organs of the European Union calling the latter a constitutional order and resorting to a constitutional vocabulary to describe the nature of its political organization, see *Parti Ecologiste "Les Verts" v European Parliament* (C-294/83) [1986] ECR 1339, para 23; *Opinion 1/91 of December 14, 1991 delivered pursuant to the second subparagraph of Article 228(1) of the Treaty—Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area ["EEA I"]* (C-1/91) [1991] ECR I-06079, para 21; *Opinion 2/94 of March 28, 1996, Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms* (C-2/94) [1996] ECR I-01759, paras 34–5; *Opinion 2/13 of the Court (Full Court) December 18, 2014. Opinion pursuant to Article 218(n) TFEU* (Court of Justice of the European Union, C-2/13, ECLI:EU:C:2014:2454, 18 December 2014), para 158.
- 118 See, e.g., C Wilfred Jenks, *Law, Freedom and Welfare* (Stevens & Sons, 1963) 58–59; Alvarez (n 57) 646. See however the remarks of Anne Peters, 'International Organizations and International Law' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press, 2016) 33, 56–58. For some critical remarks on the narratives that locate the centrality of power in the plenary bodies of these institutions, see the remarks of Kennedy, 'The Move to Institutions' (n 115) 951.
- 119 On the growing accountability of international organizations, see Peters, 'International Organizations and International Law' (n 118) 33.
- 120 Alvarez (n 57) 603.
- 121 Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35) 446.
- 122 Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 11.

often is the very paradigm that makes it possible to narrate that States gradually understood it was better to delegate certain limited functions to organizations which can then carry them out in an a-political manner for the common good.<sup>123</sup> It is submitted here that the—sometimes very serious—challenge of the functionalist paradigm in recent decades<sup>124</sup> and its occasional claims that functionalism has been superseded by a constitutionalist paradigm have not jeopardised the abovementioned romanticisation of global history but have, on the contrary, served it.<sup>125</sup> In fact, such conceptual debates have themselves been conducive to yet another romanticising narrative: the rise of a new type of intellectualism,<sup>126</sup> as well as a new discipline<sup>127</sup> with its own heroes—it suffices to mention the Schermers<sup>128</sup> or Jenks,<sup>129</sup> Reuter,<sup>130</sup> Louis Sohn,<sup>131</sup> and their many associates.

It is important to stress that all the romanticising narratives that populate the legal literature, and which are enabled by the use of international organizations as romantic historical markers, are never sleek and linear. Indeed,

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- 123 Jan Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations' (2014) 25(3) *European Journal of International Law* 645.
- 124 Jan Klabbers, 'Beyond Functionalism. International Organizations Law in Context' in Jan Klabbers (ed), *Cambridge Companion to International Organizations Law* (Cambridge University Press, 2022), 7–24; Jan Klabbers, 'The EJIL Foreword: The Transformation of International Organizations Law' (2015) 26(1) *European Journal of International Law* 9–82.
- 125 See generally Klabbers, 'Constitutionalism Lite' (n 78); Catherine Brölmann, Richard Collins, Sufyan Droubi and Ramses A Wessel, 'Exiting International Organizations' (2018) 15(2) *International Organizations Law Review* 243, 248; On this shift from a functionalist paradigm to a constitutional one, see the remarks of see Jean d'Aspremont, 'The Law of International Organizations and the Art of Reconciliation: From Dichotomies to Dialectics' (2014) 11(2) *International Organizations Law Review* 428, 453.
- 126 For an intellectual history of the law of international organizations, see Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (n 98) 44–48, 54–64.
- 127 On the rise of the discipline around the study of the law of international organizations, see the account provided by Klabbers, 'The Paradox of International Institutional Law' (n 102) 151; see also Sinclair, 'Towards a Postcolonial Genealogy of International Organizations Law' (n 73) 850–853. See more generally below section 9.
- 128 See the remarks of Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40).
- 129 Guy F Sinclair, 'C. Wilfred Jenks and the Futures of International Organizations Law' (2020) 31(2) *European Journal of International Law* 525.
- 130 Evelyne Lagrange, 'Functionalism According to Paul Reuter: Playing a Lone Hand' (2020) 31(2) *European Journal of International Law* 543.
- 131 Ian Johnstone, 'Louis Sohn's Legacy' (2020) 31(2) *European Journal of International Law* 583.

they remain pockmarked by crises and failures.<sup>132</sup> The “move to institutions”<sup>133</sup> is, for instance, said to be nowadays followed by a more dramatic “move away from institutions”.<sup>134</sup> Yet, what is striking is the way in which all those romanticising narratives present crises and failures as opportunities for renewal or reform of international organizations<sup>135</sup> as well as events which international lawyers are supposed to learn from.<sup>136</sup> So romanticised, the crises and failures of international organizations are always begging the question of how to do better *with*—rather than without—international organizations.<sup>137</sup>

The brief account, provided in this section, of the romanticising narratives that populate the international legal literature and feed into international lawyers' love for international organizations calls for a final observation. Global histories to which the abovementioned romanticising narratives contribute are never benign. In fact, they are justificatory of the field, of the discipline, of the present content of international law, of all what international law does to the world, which such histories project as a necessity.<sup>138</sup> Most importantly, such histories confirm the ideologies, hegemonies, and geographies enabled by international law. In that sense, the telling of global histories to which the abovementioned romanticising narratives contribute can be construed as a technique meant to bring more people on board with international law, with

132 On the idea that crisis narrative constitutes a very common mode of representation of the present, see Foucault, *Dits et écrits, I: 1954–1975* (n 15) 1571. On international law being a crisis discourse, see Makane M Mbengue and Jean d'Aspremont (eds), *Crisis Narratives in International Law* (Brill Nijhoff, 2022).

133 Kennedy, 'The Move to Institutions' (n 115).

134 Jan Klabbers, 'The Changing Image of International Organisations' in Jean-Marc Coicaud and Veijo Heiskanen (eds), *The Legitimacy of International Organizations* (UN University Press, 2001) 3; Alvarez (n 57) 585. See also Klabbers, 'Reflections on Compliance' (n 54) 1. See also Brölmann, Collins, Droubi and Wessel (n 125) 243–263.

135 Gabrielle Marceau, 'Never Waste a Good Crisis: The End of the WTO Dream, or the Beginning of Something Greater?' (2020) 17(2) *International Organizations Law Review* 345–349.

136 On the idea of international organizations as an experiment from which one learns, see d'Aspremont, 'The League of Nations and the Power of “Experiment Narratives” in International Institutional Law' (n 86).

137 On the idea that that most problems related to international organizations is due to insufficient coordination within existing organizations, see Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 206.

138 On the idea that discourse creates self-serving and self-confirming narrativisations of history, see Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (n 8) 54.

its ideologies, with its hegemonies and with its geographies.<sup>139</sup> This is maybe where the use of international organizations as romantic historical markers, and the love that it bolsters, cease to be romantic.<sup>140</sup>

## 6 International Organizations Provide a Common Standard of Experience

The driver of international lawyers' love for international organizations introduced in this section calls for a preliminary remark. It is uncontested that international organizations contribute to constituting and shaping the world in a certain way. Indeed, they inscribe in the world new experiences of space, of personhood, of publicness, of conflicts, etc.<sup>141</sup> In other words, they provide a very specific alphabetical structure to the world.<sup>142</sup> This is no novel finding. It is the manifestation of the general performativeness of the sign.<sup>143</sup> This is why it is no coincidence that, in the literature, it has already been amply demonstrated that, for instance, international organizations produce

139 On the idea to tell stories and histories to bring people on board, see Régis Debray, *Cours de médiologie générale* (Gallimard, 2001) 178.

140 In the international legal literature, there have been some occasional calls for being alert towards such romanticised histories, especially of the idea of progress informing it, see Chinni 'International Organizations, 1945—Present' (n 100) 113; Kennedy, 'The Move to Institutions' (n 115); Inis L. Claude, *Swords into Ploughshares: The Problems and Progress of International Organization* (Random House, 4th ed, 1971); Rose Parfitt, 'Empire des Nègres Blancs: The Hybridity of International Personality and the Abyssinia Crisis 1935–1936' (2011) 24(4) *Leiden Journal of International Law* 849, 850; d'Aspremont, 'The League of Nations and the Power of "Experiment Narratives" in International Institutional Law' (n 86); Benedict Kingsbury and Lorenzo Casini, 'Global Administrative Law Dimensions of International Organizations Law' (2009) 6(2) *International Organizations Law Review* 319, 326–328; Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35) 468–469.

141 See generally Timothy Mitchell, *Colonising Egypt* (Cambridge University Press, 1991) ix. On the idea that institutions always anticipate and repress subjectivity by pre-determining forms of individuality, see Pierre Legendre, *Sur la question dogmatique en Occident: Aspect théoriques* (Fayard, 1999) 31. On the individual being the product of power, see Timothy Mitchell, *Colonising Egypt* (Cambridge University Press, 1991) xi and Michel Foucault, *Naissance de la clinique* (Presses Universitaires de France, 1963) 11–12; Foucault, *Dits et écrits, II: 1976–1988* (n 62) 37 and 180.

142 The expression is from Foucault, *Naissance de la clinique* (n 141) 165.

143 On the performativeness of sign, see generally Judith Butler, 'Critically Queer' (1993) 1(1) *GLQ* 17, 17–18; John Law, *After Method: Mess in Social Science Research* (Routledge, 2004) 143; Foucault, *L'ordre du discours* (n 15) 59.



and normalises certain—mostly Western<sup>144</sup>—institutional and political configurations at the expense of others.<sup>145</sup> Surely, international lawyers may experience—or not—a great attachment to the world as it is constituted by international organizations and, thus, to the constitutive performances of international organizations. Yet, this is not the driver for love that this section is grappling with.

It is submitted here that international lawyers love international organizations because they allow the world of international organizations to be subjected to a common standard of experience. Said differently, and more philosophically, international lawyers fall for international organizations because the latter are very instrumental in perpetuating a type of *commensurability thinking*<sup>146</sup> the former are usually so fond of.<sup>147</sup> Commensurability thinking refers here to the presumption that all facts, artefacts, instruments, institutions, practices that international lawyers can possibly observe or make the experience of in relation

144 Chimni 'International Organizations, 1945—Present' (n 100) 125; Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35) 283; Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35).

145 Dimitri Van Den Meerssche, 'International Organizations and Performativity of Measuring States: Discipline through Diagnosis' (2018) 15(1) *International Organizations Law Review* 168, 175 and 200; see also Van Den Meerssche, 'Performing the rule of law in international organizations: Ibrahim Shihata and the World Bank's turn to governance reform' (n 90). See more generally also Van Den Meerssche, *The World Bank's Lawyer: The Life of International Law as Institutional Practice* (n 90).

146 On the idea that commensurability correspond to the subjection to a common standard and should be distinguished from incompatibility or incomparability, see François Jullien, *L'incommensurable* (L'observatoire, 2022) 53–55 and 84. In the literature, the notion of commensurability is usually discussed through its anti-thesis, namely incommensurability. This notion is commonly attributed to Pythagoreans (see Ruth Chang, 'Introduction' in Ruth Chang (ed), *Incommensurability, Incomparability, and Practical Reason* (Harvard University Press, 1997) 1, 1. The notion resurfaced, in the 20th century, in the philosophy of science in relation to the inability to translate on theory in the terms of another theory (see Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago University Press, 1970) 85 ff and 150 ff) as well as in moral philosophy where it has been extensively discussed in relation with the incommensurability of values; see generally Ruth Chang, *Incommensurability, Incomparability, and Practical Reason* (Harvard University Press, 1997). Mention of incommensurability has occasionally been made in legal theory (Joseph Raz has sought to show the logical possibility of incommensurability (Joseph Raz, *The Morality of Freedom* (Oxford University Press, 1986) 322 and 334; see chapter 13 on incommensurability, at 321 ff; See also Cass Sunstein, 'Incommensurability and Valuation in Law' (1994) 92(4) *Michigan Law Review* 779; Nick Smith, 'Incommensurability and Alterity in Contemporary Jurisprudence' (1997) 45(2) *Buffalo Law Review* 503).

147 For some critical remarks on the manifestations of commensurability thinking in other parts of international legal thought, see Jean d'Aspremont, 'Comparativism and

to international organizations actually belong to the same transcendental legal phenomenon across time and space,<sup>148</sup> which, in turn, allows all of them to be constructed or judged according to the same standard.<sup>149</sup> Said differently, commensurability thinking corresponds here to the postulation of a “universal transcendent measure”<sup>150</sup> or a “pre-comparative tertium”<sup>151</sup> against which everything related to international organizations can similarly be gauged.<sup>152</sup>

Commensurability thinking, so understood, is rife in international lawyers’ engagement with international organizations. Indeed, subject to some rare exceptions,<sup>153</sup> international lawyers approach all the creations, the foundations, the procedures, the practices, the outputs, the modes of action, the achievements, the failures and even the falls of each and every international organization as belonging to a similar transcendental legal phenomenon and subjecting them to the same transcendental standard of experience and

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Colonizing Thinking in International Law’ (2020) 57 *Canadian Yearbook of International Law* 89.

- 148 Cf with Sundhya Pahuja, ‘Laws of encounter: a jurisdictional account of international law’ (2013) 1(1) *London Review of International Law* 63, 65–66 (“In this ready-made world, one variant of jurisdiction is ‘law’ tout court, a limited range of authority is seen as law-giving, and the elements, objects, and subjects of that are already formed, and have a status which pre-exists the law”).
- 149 For a similar use of Kuhnian commensurability, see Sahib Singh, ‘Narrative and Theory: Formalism’s Recurrent Return’ (2014) 84(1) *British Yearbook of International Law* 304, 317–318.
- 150 Plato, *Phaedo* (Oxford University Press, 1st ed, 2009) 100e–101a.
- 151 Ralph Weber, “How to Compare?”—On the Methodological State of Comparative Philosophy’ (2013) 8(7) *Philosophy Compass* 593, 596.
- 152 For Bruno Latour, commensurability thinking corresponds to a relativist solution allowing one to always move between frames of reference and compare traces coming from frames traveling at very different speeds and acceleration. See Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press, 2005) 12 and 163–174.
- 153 See, e.g., Paul Reuter’s famous scepticism towards the comparativism at the heart of the law of international organizations and the idea of extraction of common rules and practices. See Paul Reuter, ‘Sur quelques limites du droit des organisations internationales’ (1980) *Festschrift für R. Bindschedler* 491, especially at 507; Paul Reuter, ‘Principes de droit international public’ in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 103* (1961) (Brill Nijhoff 1981); Paul Reuter and Jean Combacau, *Institutions et Relations Internationales* (Presses Universitaires de France, 1980) 285. On this aspect of Paul Reuter’s work, see the remarks of Lagrange (n 130) 551–552. For some more recent sceptical observations towards the idea of a law of international organizations, see Klabbers, ‘The Paradox of International Institutional Law’ (n 102). See also Klabbers, ‘Beyond Functionalism: International Organizations Law in Context’ (n 124) 7–24.

comparison.<sup>154</sup> It is such commensurability thinking that allows them to compare and evaluate all those creations, the foundations, the procedures, the practices, the outputs, the modes of action, the achievements, the failures and even the falls of each and every international organizations according to the same standard.<sup>155</sup> It is also such commensurability thinking that allows them to distill some shared or inherent characteristics<sup>156</sup> and infer common principles of collective governance across all international organizations.<sup>157</sup> Making the world of international organizations commensurable is not only key for anyone who engages in the exercise of comparison and the distillation of shared characteristics of general principles. It is also a prerequisite for all the taxonomies of international organizations,<sup>158</sup> of their powers<sup>159</sup> or of their identities<sup>160</sup> that are regularly witnessed in the literature and which international legal scholarship intensively draws on.

154 See, e.g., Schermers and Blokker (n 40) 24–31. On the systematic use of comparative methods in the study of the law of international organizations, see Lorenzo Gasbarri, *The Concept of an International Organization in International Law* (Oxford University Press, 2021) 1; Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 16–17. It has been said that it is the very doctrine of functionalism that requires such comparative exercise. See the remarks of Klabbers (n 123) 647.

155 For some critical remarks on the very flat and one-dimensional understanding of international organizations that such commensurability thinking entails, see Klabbers, 'Two Concepts of International Organization' (n 39) 278.

156 Alvarez (n 57) 3; Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 210. Among all the shared characteristics which international lawyers see as enabling commensurability thinking about international organizations, there is no doubt that international legal personality—which they have themselves tautologically recognised to international organizations—plays a central role. In that respect, see generally Bederman (n 74). Pierre d'Argent, 'La personnalité juridique internationale' in Evelyne Lagrange and Jean-Marc Sorel (eds), *Droit des organisations internationales* (Librairie générale de droit et de jurisprudence, 2013) 439–464. For a debate on how to adjust the concept of legal personality to better capture the 'reality', see Golia and Peters (n 47).

157 Guzman (n 36) 1011.

158 See Michel Virally, 'De la classification des organisations internationales' in *Miscellanea WJ Ganshof van der Meersch* (ed), *Miscellanea WJ. Ganshof van der Meersch: studia ab discipulis amicisque in honorem egregii professoris edita* (E Bruylant, 1972), 365; Michel Virally, 'Définition et classification: Approche juridique' (1977) 29 *Revue internationale des sciences sociales* 61; Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (n 98) 22–24; Schermers and Blokker (n 40) 54–64.

159 Schifano (n 76).

160 Ramses A Wessel and Ige F Dekker, 'Identities of States in International Organizations' (2015) 12(2) *International Organizations Law Review* 293–318.

Unsurprisingly, subjecting the world of international organizations to a common standard of experience requires a multitude of sophisticated conceptual and discursive moves.<sup>161</sup> In fact, commensurability between all international organizations takes more than the postulation of a transcendental legal phenomena. Some very refined constructions are often resorted to with a view to making the world of international organizations commensurable. It is the purpose of the rest of this section to sketch out those moves necessitated by the commensurability thinking about international organizations that is so cherished by international lawyers.

Upholding such commensurability thinking has, for instance, been facilitated<sup>162</sup> by the use of very formal categories,<sup>163</sup> including administrative law<sup>164</sup> and public law<sup>165</sup> concepts as well as the resort to traditional models of governance.<sup>166</sup> The same can be said of the many contractual<sup>167</sup> as well as constitutional<sup>168</sup> analogies that so commonly populate the legal literature on international organizations. It could be claimed that the sophisticated doctrine of functionalism has similarly been instrumental in mapping and ordering the world of international organizations according to a similar standard of experience.<sup>169</sup> Such commensurability thinking is also smoothed by the

161 Bruno Latour, *La Science en action: Introduction à la sociologie des sciences* (La Découverte, 2005) 430.

162 For some critical remarks on the mobilisation of new heuristics to capture the governance activities by international organizations, see Van Den Meerssche, 'International Organizations and Performativity of Measuring States: Discipline through Diagnosis' (n 145) 169–170.

163 See the remarks of Jan Klabbbers, 'Formal Intergovernmental Organizations' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press, 2016) 133, 135.

164 de Chazournes, 'Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (n 45) 655.

165 Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35) 2, 18.

166 Schifano (n 76); Kingsbury and Casini (n 140) 319; Simon Chesterman, Ian Johnstone and David L Malone, *Law and Practice of the United Nations. Documents and Commentary* (Oxford, 2nd ed, 2016) xxxiv.

167 Brölmann, Collins, Droubi and Wessel (n 125) 247.

168 Ibid 248.

169 Michel Virally, 'La notion de fonction dans la théorie de l'organisation internationale' in *La communauté internationale: Mélanges offerts à Charles Rousseau* (A Pedone, 1974) 277; Klabbbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations' (n 123); Brölmann, *The Institutional Veil in Public International Law: International Organizations and the Law of Treaties* (n 98) 25–27; de Chazournes, 'Functionalism! Functionalism! Do I Look Like Functionalism?' (n 37). For an overview of various functionalist theories, see Alvarez (n 57) 17–29. On this use of functionalism to create a commensurable world, see the remarks of Klabbbers, 'The EJIL Foreword:

postulation, witnessed in the literature, of a temporal continuity between various organizations.<sup>170</sup>

The mobilisation of a whole range of formal categories, concepts, doctrines, and continuities is not the only conceptual and discursive move deployed in international legal thought and practice to make the world of international organizations a commensurable place. It is also as an enabler of commensurability thinking that one can construe the formidable dualism of thought at work in international legal thought and practice about international organizations.<sup>171</sup> Whilst dualism of thought permeates international legal thought as a whole,<sup>172</sup> there is hardly a domain of the international legal discourse that is more dominated by dualism than the literature and the case-law related to international organizations. In fact, dualist constructions are aplenty in international legal thought and practice about international organizations. Mention can be made of the common distinction between the legal and the political<sup>173</sup> that continues to inform legal debates about international organizations. Likewise, dualist structures of thought are systematically mobilised to unify the character of the law international organizations produce,<sup>174</sup> to elucidate the nature of international organizations' constitutive instruments,<sup>175</sup> the nature of international organizations themselves,<sup>176</sup> etc. This feature of the legal discourse about international organizations matters a

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The Transformation of International Organizations Law' (n 124) 9, 10. For some critical remarks on how functionalism works as an ideology, see Klabbers, 'Notes on the ideology of international organizations law: The International Organization for Migration, state-making, and the market for migration' (n 90).

170 d'Aspremont, 'The League of Nations and the Power of "Experiment Narratives" in International Institutional Law' (n 86).

171 On the idea that thinking only works through differences, see Gilles Deleuze, *Différence et Répétition* (Presses Universitaires de France, 1968) 354. On the idea that, in the West, dualism of thought comes from the traditional distinction between the sacred and the profane, see Debray, *Cours de médiologie générale* (n 139) 90.

172 Jean d'Aspremont, 'Two Attitudes towards Textuality in International Law: The Battle for Dualism' (2022) 42 *Oxford Journal of Legal Studies* 963–984.

173 On this aspect of the work of Michel Virally, see the remarks of Vinuales (n 46) 552–554.

174 Gasbarri, *The Concept of an International Organization in International Law* (n 154) 14; Lorenzo Gasbarri, 'The Dual Legality of the Rules of International Organizations' (2017) 14(1) *International Organizations Law Review* 87; Christiane Ahlborn, 'The Rules of International Organizations and the Law of International Responsibility' (2011) 8(2) *International Organizations Law Review* 397.

175 Gasbarri, 'The Dual Legality of the Rules of International Organizations' (n 174) 103. For an earlier study on the dual nature of the constitutive instruments of international unions, see Andrea Rapisardi-Mirabelli, 'Théorie Générale des Unions Internationales' in Hague Academy of International Law, *Recueil des cours, Collected Courses, Tome/Volume 7 (1925)* (Brill Nijhoff 1972).

176 Gasbarri, *The Concept of an International Organization in International Law* (n 154).

lot for the sake of the argument made in this section. Indeed, dualism of thought always presupposes commensurability. The distinctions and dichotomies in which dualism materialises can only be distinctions and dichotomies between objects that belong to the same commensurable space. Said differently, there cannot be a distinction or a dichotomy between incommensurable elements.<sup>177</sup> In that sense, all the dualist constructions around which the legal discourse on international organizations is articulated can be read as enablers of commensurability thinking and thus drivers of international lawyers' love for international organizations.

Commensurability is similarly at work in the numerous dialectical constructions that populate the international legal literature and case-law related to international organizations.<sup>178</sup> In fact, just like there cannot be dualism short of commensurability, there cannot be dialectical moves between elements that are not located in a commensurable space.<sup>179</sup> To illustrate this point, it suffices to mention the dialectical constructions manifesting themselves in the now much used concept of institutional veil,<sup>180</sup> the findings of an oscillation between two conceptualisations of international organizations,<sup>181</sup> the findings of an oscillation between the law of treaty and the law of the organization in the practice and theory of international organizations,<sup>182</sup> the claims of a mutual and ontological need for one another between international organizations and their member States,<sup>183</sup>

177 Michel Foucault, *Les mots et les choses* (Gallimard, 1966) 65–67.

178 On the idea that dialectics serves reconciliation, see Adorno (n 18) 6. See also Michel Foucault, *Il faut défendre la société: Cours au Collège de France, 1976* (Ehess Gallimard Seuil, 1997) 50.

179 On the idea that dialectics reinforce dualism, see Bruno Latour, *Nous n'avons jamais été modernes. Essai d'anthropologie symétrique* (La Découverte, 1997) 77.

180 The concept of institutional veil is invoked as allowing one to simultaneously construe international organizations as both open structures where states are visible as well as closed structures that ensures their autonomy from states. See, e.g., Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (n 98); Brölmann, 'Member States and International Legal Responsibility Developments of the Institutional Veil' (n 105) 358–381. See also Gasbarri, 'The Dual Legality of the Rules of International Organizations' (n 174) 91.

181 Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (n 98) 5.

182 Brölmann, Collins, Droubi and Wessel (n 125) 251.

183 Blokker, 'International Organizations and Their Members: "International Organizations Belong to All Members and to None"—Variations on a Theme' (n 70); Dekker and Wessel (n 160) 293–318.

the very popular idea of *dédoublement fonctionnel*,<sup>184</sup> the mundane findings of interactions between law and politics,<sup>185</sup> the frequent resort to hybridity to define the practice or nature of international organizations,<sup>186</sup> etc. Even the doctrine of functionalism has been understood in a dialectical way, one that allows to make the world of international organizations commensurable.<sup>187</sup> As one of the most common constructions of the legal discourse on international organizations, dialectics helps generalise commensurability thinking about international organizations.<sup>188</sup>

Finally, it is submitted that commensurability thinking about international organizations is facilitated by findings of paradoxes.<sup>189</sup> Indeed, a paradox can only arise within a unitary system of commensurability.<sup>190</sup> Interestingly, findings of paradoxes, and thus findings of commensurability, are aplenty in the legal discourse on international organizations. It suffices to mention here the common findings of a paradox of States being members of a collective entity while being sovereign entities,<sup>191</sup> a paradox related to international organizations' need for independence to carry out their mission while remaining dependent on member States,<sup>192</sup> a paradox between the doctrine of functionalism and the idea international organizations pursuing the common good and universal peace,<sup>193</sup> a paradox between organizations being

184 For some critical remarks about the dialectics at work in the concept of *dédoublement fonctionnel* see d'Aspremont, 'The Law of International Organizations and the Art of Reconciliation: From Dichotomies to Dialectics' (n 125) 440–441.

185 Chesterman, Johnstone and Malone (n 166) xxxi.

186 Gasbarri, 'The Dual Legality of the Rules of International Organizations' (n 174) 92–95.

187 See d'Aspremont, 'The Law of International Organizations and the Art of Reconciliation: From Dichotomies to Dialectics' (n 125) 445–448.

188 For some critical remarks on the use of dialectics to unify the field and iron out tensions and contradictions, see d'Aspremont, 'The Law of International Organizations and the Art of Reconciliation: From Dichotomies to Dialectics' (n 125) 428.

189 See the remarks of Niels Blokker on the paradoxes of the field in 'International Organizations and Their Members: "International Organizations Belong to All Members and to None"—Variations on a Theme' (n 183) 161.

190 Michel Foucault, *L'archéologie du savoir* (Gallimard, 1969) 205.

191 Blokker 'International Organizations and Their Members: "International Organizations Belong to All Members and to None"—Variations on a Theme' (n 183) 139; Schermers and Blokker (n 40) 2.

192 Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 210.

193 Jan Klabbbers, 'Schermers Dilemma' (2020) 31(2) *European Journal of International Law* 565, 575. For a history of the consolidation of the concept of functionalism, see Klabbbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations' (n 123); Klabbbers, 'The EJIL Foreword: The Transformation of International Organizations Law' (n 124) 15–22. See also Klabbbers, 'Beyond Functionalism: International Organizations Law in Context' (n 124) 8–17.

forces for good while being a product of sovereign States,<sup>194</sup> a paradox lying in the constitutionalisation of international organizations always bringing about a counterforce,<sup>195</sup> a paradox between contractual and constitutional elements of international organizations,<sup>196</sup> a paradox between international organizations' rules and practices being regulated by the law of international organizations and international organizations' simultaneous subjection to public international law, paradoxes related to the ways in which the rules of international organizations are construed,<sup>197</sup> etc. All those paradoxes can only be thought in a commensurable space, thereby nurturing the widespread commensurability thinking about international organizations that dominate international lawyers' engagement therewith.

The foregoing has outlined some of the ordinary conceptual and discursive moves found international legal thought and practice about international organizations that allow international lawyers to consider all the creations, the foundations, the procedures, the practices, the output, the modes of action, the achievements, the failures and even the falls of each and every international organization as belonging to a similar transcendental legal phenomenon, and thus permit the constant exercise of comparison at the heart of international institutional law. The love for international organizations that is discussed here can thus also be approached as a love for all the sophisticated taxonomies, formal categories, dualist constructions, dialectics, and paradoxes that enable the making of a commensurable space where international organizations, their creations, their foundations, their procedures, their practices, their output, their modes of action, their achievements, their failures and their falls can be compared and evaluated *ad infinitum*.

## 7 International Organizations Textualise the Universe

It is argued in this section that international lawyers' love for international organizations is also a love for texts, for textual constructions, for textual practices, for textual moves, for textual figures, for textual aesthetics, for textual controversies, for textual reforms, etc. More specifically, the love discussed here is a love for international organizations as constituting a huge *textual universe*. Claiming, as this section does, that international organizations

194 Klabbers, 'Schermers Dilemma' (n 193) 582.

195 Klabbers, 'Constitutionalism Lite' (n 78) 58.

196 d'Aspremont, 'The Law of International Organizations and the Art of Reconciliation: From Dichotomies to Dialectics' (n 125) 428–453.

197 Ahlborn (n 174); Klabbers (n 39) 278.



constitute a huge textual universe has two facets. First, this means that international organizations themselves boil down to big textual spaces where signs indefinitely refer to other signs. Second, it refers to international organizations translating the world in which they intervene into a text. The following paragraphs will substantiate each of the two facets of the claim that international organizations constitute a huge textual universe—and hence two of the reasons why international lawyers' love for international organizations is informed by a love for texts.

It is first argued in this section that international organizations are big textual spaces saturated by textual practices.<sup>198</sup> It is not only that the academic discipline as well as the judicial practice organised around the practice of international organizations is an extensive textual practice.<sup>199</sup> It also that that international organizations are themselves extensive texts.<sup>200</sup> The textuality of international organizations can be explained as follows. They are the creation of a big text—the constitutive treaty—which governs, limits, gives expression to, verbalise, all what international organizations do and stand for.<sup>201</sup> In that sense, all the deeds of international organizations are apprehended, comprehended, and defined through the text of their constitutive treaty. In the same vein, it can be said that international organizations are big textual spaces because their action primarily takes the form of a huge textual output. Indeed, their output is first and foremost a textual output, be it in a form of decisions, resolutions, recommendations, executive summaries, reports, minutes of meetings, etc.<sup>202</sup>

198 This argument does not go as far as claiming that international organizations produce determinate meaning through such text. On the idea that international organizations do not systematically produce determinate meaning, see Monica Hakimi, 'The Work of International Law' (2017) 58(1) *Harvard Journal of International Law* 1, 19. On the more general idea that meaning is absent from international legal texts because it is perpetually deferred, see Jean d'Aspremont, *The Sovereignty of Forms in International Law* (Edward Elgar, 2021).

199 On the field organized around the study of international organizations, see below section 9.

200 For a similar approach, see Kennedy, 'The Move to Institutions' (n 115) 844. Cf with the idea that society itself is just a big text. See Legendre, *Sur la question dogmatique en Occident: Aspect théoriques* (n 141) 48 and Pierre Legendre, *De la Société comme Texte: Linéaments d'une Anthropologie dogmatique* (Fayard, 2001) 17.

201 Evelyne Lagrange speaks of international organizations as "evolving forms", see Lagrange (n 130) 555.

202 Cf with the idea that international organizations produce "speech", see Guzman (n 36) 1013.

Second, it is argued here that international organizations constitute a huge textual universe because they textualise the world in which they intervene.<sup>203</sup> This is so because their constitutive treaty as well as their textual output provide the categories, vocabularies, words, signs, symbols through which the world is apprehended, defined, problematised, organised, and experienced.<sup>204</sup> As a result of international organizations' textual interventions, the world is turned into a text that continues the very texts constituting international organizations and their output and which ought to be interpreted by reference to the very texts having constituted it.<sup>205</sup> Such textualisation of the world—and of one's experience of the world—by international organizations' constitutive treaty and textual output is possible by virtue of the necessary correlation between the word and the world,<sup>206</sup> that is between the verbalisable and the perceivable.<sup>207</sup> It could be said that international organizations' textualisation of the world amounts to their putting into place a “programme of perception”<sup>208</sup> of the world.

A final observation about the specific driver of international lawyers' love for international organizations discussed in this section is warranted. It should be no surprise that international lawyers fall for texts. After all, what international law does to the world it does it with texts.<sup>209</sup> Yet, may international lawyers

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- 203 On the idea that international organizations transform deeds into words, see Kennedy, 'The Move to Institutions' (n 115) 843.
- 204 On the idea that the world is constituted through texts, see de Man (n 18) 11; Paul Ricoeur, *Temps et récit, Volume 1, L'intrigue et le récit historique* (Seuil, 1983) 151; Paul Ricoeur, *Temps et récit, Volume 2, La configuration dans le récit de fiction* (Seuil, 1984) 190; Legendre, *De la Société comme Texte: Linéaments d'une Anthropologie dogmatique* (n 200) 20. On the idea that the text and the world are not distinct, Sophie Rabau, *L'intertextualité* (Flammarion, 2002) 31. On the idea that the subject is but a form, see Foucault, *Dits et écrits, II: 1976–1988* (n 62) 1537; Jacques Rancière, *Le partage du sensible: Esthétique et politique* (La Fabrique, 2000) 61–62.
- 205 On the idea that law always starts by transforming the world into a huge book which then ought to be interpreted, see Bruno Latour, *La fabrique du droit: Une ethnographie du Conseil d'Etat* (La Découverte, 2004) 235. On this process of self-confirming thinking, see Jean d'Aspremont, 'A Worldly Law in a Legal World' in Andrea Bianchi and Moshe Hirsch (eds), *International Law's Invisible Frames* (Oxford University Press, 2021) 38–82.
- 206 See generally d'Aspremont, 'A Worldly Law in a Legal World' (n 205) 53.
- 207 Foucault, *Naissance de la clinique* (n 141) 270; Rancière (n 204) 61–62.
- 208 The expression is from Pierre Bourdieu, *Ce que parler veut dire: L'économie des échanges linguistiques* (Fayard, 1982) 100 and 150.
- 209 On the idea that text is a distinctive technology of governance, see Mitchell (n 141) xv and xvi. On the idea that writing is a way to organize the world, see Roland Barthes, *Critique et Vérité* (Seuil, 1999) 35. On the idea that legal texts pave the world with continuities, see Bruno Latour, *An Inquiry into Modes of Existence: An Anthropology of the Moderns*, tr Catherine Porter (Harvard University Press, 2013) 371.

remember that the textualisation of the world by international organizations, as it has been sketched out in this section, is not innocent.<sup>210</sup> International organizations textualise the world in a specific way rather than another, thus allowing certain experiences of the world rather than others. Such selectivity is no idiosyncrasy. After all, any language comes with a form of ideology, that is a certain way to experience reality.<sup>211</sup> Such selectivity of experiences of the world that follows the latter's textualisation by international organizations, although a common effect of any language, is a reason for resisting any complacency with how the world is textualised by international organizations. In fact, international lawyers, notwithstanding their deep affection for international organizations as constituting a textual universe, should realise that their engagements with international organizations' constitutive texts, textual output, and, more generally, textual interventions are themselves caught in that textual universe, the writing thereof international lawyers, through their engagements, perpetuate.<sup>212</sup>

## 8 International Organizations Provide Space for Discontent

In this section, it is argued that international lawyers love international organizations thanks to their *criticability*.<sup>213</sup> For the sake of this argument, the criticability of international organizations refers to the specific discontent that is enabled by international organizations themselves. Indeed, the point made here is that international lawyers do not experience just any discontent towards

210 On the idea that no language is innocent, see Debray, *Cours de médiologie générale* (n 139) 111. On the idea that metaphors constitute a way to govern and organize the world. See Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (n 15) 2, 252. See also Steven L Winter, *A Clearing in the Forest. Law, Life and Mind* (The University of Chicago Press, 2001) 65; Barthes, *Le bruissement de la langue: Essais critiques IV* (n 18) 88.

211 On the idea that what we call ideology is precisely the confusion of the linguistic sign with natural reality, see de Man (n 18) 11. In the context of international lawyers' engagements with international organizations, there seems to be no doubt that the English language, today the main vernacular of most international organizations and most scholarly discussions about them, shapes what is perceivable by international lawyers, for instance by promoting a techno-economic image of the world into which international organizations intervene. On the extent to which the English language provides techno-economists understandings of the world and of its future, see Debray, *Cours de médiologie générale* (n 139) 111.

212 On the idea that research is a prudent shorthand for writing, see Barthes, *Le bruissement de la langue: Essais critiques IV* (n 18) 374.

213 The expression is from Michel Foucault. See Foucault, *Il faut défendre la société: Cours au Collège de France, 1976* (n 178) 7. See also Foucault, *Dits et écrits, II: 1976–1988* (n 62) 163.

international organizations but only that very discontent that is permitted by international organizations, by their constitutive treaty, by their normative output, by their actions, and by their interventions in the world.<sup>214</sup> In other words, there is never as much discontent as international organizations, their constitutive treaty, their normative output, their actions, and their interventions allow. That discontent towards international organizations is that enabled by them can be very satisfactory and reassuring for international lawyers. In fact, discontent being experienced in the very space left to it by international organizations, it never goes unbridled or out of control. Instead, discontent always follows the paths designed by contested international organizations, by their constitutive treaty, by their normative output, by their actions, by their interventions in the world.

To unpack this argument, the extent of the contemporary discontent generated by international organizations must draw the attention first. It seems uncontested that the time where international organizations were construed as the beacon of good is long gone. The deficiencies for which international organizations are blamed are now the object of a very prolific literature.<sup>215</sup> Speaking of international organizations, it is now common for international lawyers to talk about the crisis of confidence in such institutions,<sup>216</sup> their fall from grace,<sup>217</sup> or them being under strain.<sup>218</sup> Mention is also sometimes made of a current “move away from institutions”.<sup>219</sup> Similarly, the legitimacy of international organizations is sometimes deemed to be in tatters.<sup>220</sup>

214 Cf with Monica Hakimi’s argument that institutions also enhance global governance arrangements by enabling certain conflicts. See Monica Hakimi, ‘Constructing an International Community’ (2017) 111(2) *American Journal of International Law* 317, 350–353.

215 For an overview of various contestations, see Alvarez (n 57) 29–45.

216 Alvarez (n 57) 338–500; Brölmann, Collins, Droubi and Wessel (n 125) 243; Kristina Daugirdas, ‘Reputation and the Responsibility of International Organizations’ (2015) 25(4) *European Journal of International Law* 991–1018; Cogan, Hurd and Johnstone (n 40) x; Blokker, ‘Comparing Apples and Oranges? Reinventing the Wheel? Schermers’ Book and Challenges for the Future of International Institutional Law’ (n 40) 202.

217 Klabbbers, ‘The EJIL Foreword: The Transformation of International Organizations Law’ (n 124) 50.

218 Jed Odermatt and Ramses A Wessel, ‘The Challenges of Engaging with International Institutions: The EU and Multilateralism under Strain’ in Ramses A Wessel and Jed Odermatt (eds), *Research Handbook on the European Union and International Organisations* (Edward Elgar, 2019) 658–672.

219 Klabbbers, ‘The Changing Image of International Organisations’ (n 134) 3; Klabbbers, ‘Reflections on Compliance’ (n 54) 1.

220 Alvarez (n 57) 627; de Chazournes, ‘Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies’ (n 45) 627; Klabbbers, ‘The EJIL Foreword: The Transformation of International Organizations Law’ (n 124)

The reasons for such contemporary discontent towards international organizations are aplenty. For instance, their decision-making processes are regularly deemed to suffer from insufficient transparency and participation.<sup>221</sup> Likewise, they are said to lack proper accountability mechanisms.<sup>222</sup> In the same vein, the institutional cooperation that international organizations facilitate is deemed to be outclassed by alternative governance platforms.<sup>223</sup> As is illustrated by the controversies pertaining to international organizations' interventions in Haiti<sup>224</sup> and in Srebrenica,<sup>225</sup> there has simultaneously been a realisation that international organizations' actions may prove harmful<sup>226</sup> and can bear negative effects on the States and populations in which they

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- 65–74; Peters, 'International Organizations and International Law' (n 118) 41–42; Jeffrey L Dunoff, 'The Law and Politics of International Organizations' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press, 2016) 60, 73–75; Ian Hurd, *Legitimacy and Power in the United Nations Security Council* (Princeton University Press, 2007); Peter Bursens, Dirk De Bièvre, Christopher Lord, Jarle Trondal and Ramses A Wessel, *The Politics of Legitimation in the European Union: Legitimacy Recovered?* (Routledge, 2022).
- 221 de Chazournes, 'Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (n 45) 659–661.
- 222 Blokker (n 35) 259; de Chazournes, 'Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (n 45) 661–664; Kristen E Boon and Frédéric Mégret, 'New Approaches to the Accountability of International Organizations' (2019) 16(1) *International Organizations Law Review* 1–10; Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 208–213; Klabbers and Sinclair (n 35) 491; de Chazournes, Casini and Kingsbury (n 35) 315; Kristen E Boon, 'The United Nations as Good Samaritan: Immunity and Responsibility' (2016) 16(2) *Chicago Journal International Law* 341; Alexander Orakhelashvili, 'The World Bank Inspection Panel in Context: Institutional Aspects of the Accountability of International Organizations' (2005) 2(1) *International Organizations Law Review* 57; Eccleston-Turner and Villarreal (n 72) 63–89; Peters, 'International Organizations and International Law' (n 118) 41–42; Dunoff (n 220) 71–73.
- 223 de Chazournes, 'Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (n 45) 665.
- 224 See *Georges et al. v United Nations* (Southern District of New York, Complaint No 13-07146, 9 October 2013). See the remarks of Daugirdas (n 216) 1000–1007. See also Klabbers, 'The EJIIL Foreword: The Transformation of International Organizations Law' (n 124) 65–74.
- 225 See *Stichting Mothers of Srebrenica et al. v. The Netherlands and the United Nations* (Dutch Supreme Court, Case No 10/04437, 13 April 2012).
- 226 Blokker, 'Member State Responsibility for Wrongdoings of International Organizations' (n 40) 323.

intervene.<sup>227</sup> They are even occasionally portrayed as human rights violators.<sup>228</sup> Their environmental impact is also denounced.<sup>229</sup> Their effectiveness and omissions have been bemoaned as well.<sup>230</sup> By the same token, the long-lasting controversies about the growing extent of their powers has continued to fueled controversies,<sup>231</sup> the metaphor of Frankenstein having enjoyed a steady popularity in the international legal scholarship.<sup>232</sup> Their cost for the taxpayer has been the source of resentment too.<sup>233</sup>

More structural objections have been raised. For instance, the inadequate representations of women,<sup>234</sup> the gender biases of their decision-making processes,<sup>235</sup> and their perpetuation of gendered economic governance<sup>236</sup> have been considered scandalous. An equally fundamental critique is raised following the finding that international organizations are hegemonic structures that perpetuate a neo-colonial, imperial, and capitalist configuration of the world.<sup>237</sup> In that respect, it has been argued that some of the key concepts

227 Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35); Frédéric Mégret and Florian Hoffmann, 'The UN As a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities' (2003) 25(2) *Human Rights Quarterly* 314; Kevin Danaher and Muhammed Yunus (eds), *Fifty Years Is Enough: The Case against the World Bank and the International Monetary Fund* (South End Press, 1994).

228 Mégret and Hoffmann (n 227) 314.

229 Orakhelashvili (n 222) 57.

230 Peters, 'International Organizations and International Law' (n 118) 38.

231 For a very early controversy of the powers of international organizations, see the debate on the powers of the Security Council of the United Nations. See Hans Kelsen, 'Collective Security and Collective Self-Defence under the Charter of the United Nations' (1948) 42(2) *American Journal of International Law* 783. For the recent idea that the United Nations should focus on a stronger, more limited core of international legal norms that protects international peace and security, not human rights, see, Ingrid (Wuerth) Brunk, 'International Law in the Post-Human Rights Era' (2017) 96 *Texas Law Review* 279. For an overview of such controversies, see Schermers and Blokker (n 40) 163–202. See also the remarks of Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35) 1–2.

232 Guzman (n 36); Klabbers, 'Constitutionalism Lite' (n 78) 37; Alvarez (n 57) 648.

233 Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 12.

234 Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 171.

235 See generally Charlesworth and Chinkin (n 234) and especially Chapter 6. On the exclusion of feminists from the 1918 Peace Conference, see Kennedy, 'The Move to Institutions' (n 115) 846.

236 Elisabeth Prügl, 'International Institutions and Feminist Politics' (2004) 10(2) *Brown Journal of World Affairs* 69, 81.

237 Antony Anghie, 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World' (2000) 32(2) *New York University Journal of*

of international institutional law are inherited from colonial administration practices.<sup>238</sup> Likewise, it has been claimed that international organizations work for the reinforcement of States along the lines of a broadly Western model.<sup>239</sup> The purported universality of many of international organizations' output has similarly been put into question for failing to take into account the perspectives of developing States.<sup>240</sup> This charge includes the finding that the inadequate representations of the Global South within international organizations has still not been addressed.<sup>241</sup> In the same vein, international organizations have been said to provide the structure for the worst forms of capitalism to thrive.<sup>242</sup>

As this inevitably scant account of the contemporary discontent towards international organizations suffices to demonstrate, there is thus no dearth of criticisms towards international organizations. And yet, it is argued here that such discontent is always confined to the very terms set by international organizations, by their constitutive treaty, by their normative output, by their actions, and by their interventions in the world. It is thus a discontent that is always contained, predictable and located in familiar territories. In particular, it is a discontent which leaves the total discontinuation of international organizations out of the thinkable, and which reduces the consequences of discontent to reform and change rather than radical disruption.<sup>243</sup>

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*International Law and Politics* 243; BS Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) 15(1) *European Journal of International Law* 1; Chimni 'International Organizations, 1945—Present' (n 100) 130; See, e.g., Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011); Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press, 2011); See also the remarks of Peters, 'International Organizations and International Law' (n 118) 42. See also, Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018).

238 Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations' (n 123). See also the remarks of Sinclair, 'Towards a Postcolonial Genealogy of International Organizations Law' (n 73).

239 Chimni, 'International Organizations, 1945—Present' (n 100) 125. See also Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (n 35).

240 Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 *Harvard International Law Journal* 201.

241 Peters, 'International Organizations and International Law' (n 118) 38.

242 See the remarks of Chimni, 'International Organizations, 1945—Present' (n 100) 126.

243 Marceau (n 135); Kingsbury and Casini (n 140) 319; Alvarez (n 57) 338–500; Gian L Burci, Lisa Forman and Steven J Hoffman, 'Introduction to a Special Issue on Reforming the International Health Regulations' (2022) 19(1) *International Organizations Law Review* 1; Hans Corell, 'Reforming the United Nations' (2005) 2(2) *International Organizations Law Review* 373; Gruszczynski and Melillo (n 46).

The foregoing points to the great conservatism informing international lawyers' discontent towards international organizations, and thus of the reforms and changes that such discontent can possibly give rise to. This is not surprising. After all, the critique of order always belongs to that order.<sup>244</sup> What is more, it is important to realise that claiming that an institution is in crisis is a very conservative move that is geared towards the vindications of some original, pre-crisis, and essential functions of the institution concerned.<sup>245</sup> There is yet another—possibly more fundamental—reason for the discontent towards international organizations being always confined to the very terms set by international organizations, by their constitutive treaty, by their normative output, by their actions, and by their interventions in the world. In fact, the discourse on international organizations, like any discourse, organises the contestation of itself,<sup>246</sup> thereby ensuring that contestation always takes places within the very vocabularies, geographies, hegemonies, and institutions around which such discourse is organised.<sup>247</sup> The legal discourse on international organizations is no exception to that.

That the discontent experienced by international lawyers always is, as has been argued in this section, the discontent that is allowed by international organizations, by their constitutive treaty, by their normative output, by their actions, and by their interventions in the world explains the extent of international lawyers' love for the criticability of international organizations, even of those organizations that are the most contested. In fact, however acute the resentment towards international organizations and however harsh the criticisms such discontent brings about, international lawyers come to feel that they are never stepping out of their common imaginary world, that is a world where their cherished international organizations are there to stay. They accordingly discharge their compelling criticisms, and the frustrations and anger that come with them, without ever displacing international organization from the centre of their practical, conceptual, cognitive, imaginary, and emotional universe.

244 Spivak (n 94) 12; Jean-François Lyotard, *La Condition Postmoderne* (Editions de Minuit, 1979) 107. On the idea that modernity started by identifying itself as critique, see the remarks of Terry Eagleton, *The Function of Criticism* (Verso, 2005) 9–10. On the idea that contestation is itself a bourgeois concept, see Barthes, *Le bruissement de la langue: Essais critiques IV* (n 18) 116. On the idea that the fate of modern critique is cynicism and disloyalty, see Peter Sloterdijk, *Critique of Cynical Reason* (University of Minnesota Press, 1987) 6.

245 On the idea that crisis discourses are very conservative, see Noam Chomsky and Michel Foucault, *The Chomsky-Foucault Debate on Human Nature* (The New Press, 2006) 58–59.

246 Foucault, *L'ordre du discours* (n 15) 23; Debray, *Le Scribe* (n 97) 120.

247 On the idea that the modes of resistance to colonial power are always formed within the organizational terrain of the colonial state, rather than some wholly exterior social space, see Mitchell (n 141) xi; Edward Said, *Reflections on Exile and Other Literary and*



## 9 International Organizations Constitute a Natural Field of Study

In this section, it is argued that international lawyers love international organizations because the latter are constitutive of a *field of study*. Indeed, international organizations, their creations, their foundations, their procedures, their practices, their output, their modes of action, their achievements, their failures and even their falls are represented as an ever-active and ever-changing worldly phenomenon which international lawyers feel they must examine, scrutinise, organise, systematise, criticise, interpret, comment on, etc. By virtue of the representation of international organizations as a field of study, there is not a single day without international organizations producing new texts, new practices, new actions, new controversies, etc., that it behoves international lawyers to examine, scrutinise, organise, systematise, criticise, interpret, comment on,<sup>248</sup> including by resorting to their traditional international law's categories.<sup>249</sup> As a field of study, international organizations provide international lawyers with a continuous outpouring of materials and practices to think of, chew on, debate, litigate, and write about.<sup>250</sup>

Although the scholarly interest for international organizations dates back to the first half of the 20th century,<sup>251</sup> it is nowadays common to claim that the law of international organizations consolidated as a proper field of study in international legal studies in the decade preceding the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.<sup>252</sup> This consolidation of the law of international organizations as a field of study is said to have followed the spectacular position of the Court in its 1949 Advisory Opinion on

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*Cultural Essays* (Granta, 2001) 377; Spivak (n 94) 338. On the idea that culture generates its own mode of repression, see Legendre, *De la Société comme Texte: Linéaments d'une Anthropologie dogmatique* (n 200) 60.

248 Alvarez (n 57) ix.

249 On the use of analogies with the State to build the law of international organizations, see Fernando Lusa Bordin, *The Analogy between States and International Organizations* (Cambridge University Press, 2019).

250 See Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 199, 202; Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 9.

251 See, e.g., C Wilfred Jenks, 'The International Labour Organisation as a Subject of Study for International Lawyers' (1940) 22(1) *Journal of Comparative Legislation and International Law* 36.

252 This historicization of the field is that provided by Gasbarri, *The Concept of an International Organization in International Law* (n 154) 1.

Reparations<sup>253</sup> as well as the publication of the first introductory textbook in English in 1963.<sup>254</sup> In that respect, it has also been claimed that the University of Amsterdam played a leading role in constituting the field by the creation of a chair in the law of international organizations.<sup>255</sup>

The claim made in this section is not limited to international lawyers paying extensive attention to international organizations and representing the latter as constitutive of a field of study. What is most noteworthy is that international lawyers have simultaneously considered their creations, their foundations, their procedures, their practice, their output, their mode of action, their achievements, their failures and even their falls as a *natural* object of study for them, that is a worldly phenomenon on which international legal studies makes a natural claim. Said differently, notwithstanding the occasional acknowledgement of the epistemological challenges for international lawyers to study international organizations,<sup>256</sup> international lawyers experience their turn to international organizations as a natural state of things. Such experience that international organizations constitute a natural object of study for international lawyers manifests itself, for instance, in their belief that, as a field of study, international organizations are rooted in public international law<sup>257</sup> of which international institutional law constitutes a sub-field.<sup>258</sup>

Needless to say that one should always be suspicious of arguments grounded in the supposed natural character of social attitudes and social constructions.<sup>259</sup> It is argued here that international organizations providing international lawyers with a permanent and natural object of study should not be considered a natural state of things: the creations, the foundations, the

253 See *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174. On the idea that the Reparation for Injuries constitute the repository for several of the fundamental doctrines of the law of international organizations, see d'Aspremont, 'The Law of International Organizations and the Art of Reconciliation: From Dichotomies to Dialectics' (n 125) 428–453. See also Bederman (n 74) 279.

254 Derek W Bowett, *The Law of International Institutions* (Stevens & Sons, 1963).

255 Klabbers, 'Schermers Dilemma' (n 193) 569. See also Arnold JP Tammes, *Hoofdstukken van internationale organisatie* (Brill Nijhoff, 1951).

256 See Catherine Brölmann, 'A Flat Earth? International Organizations in the System of International Law' (2001) 70(3) *Nordic Journal of International Law* 319.

257 Éric David, *Droit des organisations internationales* (Bruylant, 2016) 18; Laurence Boisson de Chazournes, 'Mainstreaming International Law within the United Nations' (2007) 4(2) *International Organizations Law Review* 165, 166.

258 Niels M Blokker, 'The Floor is to the Authors: Perspective on the Law of International Organizations as a Separate Field of Study' (2008) 5(1) *International Organizations Law Review* 141.

259 For a strong criticism of naturalised necessities and naturalized knowledge, see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identify* (Routledge, 2nd ed,

procedures, the practices, the output, the modes of action, the achievements, the failures and the falls of international organizations do not constitute a naturally legal phenomenon that naturally falls within the scope of international legal studies. With a view to challenging international lawyers' experience that international organizations constitute a natural object of study for them, some of the most mundane narratives about international lawyers' natural hold on international organizations ought to be scrutinised and questioned in the following paragraphs.

The most traditional justification by international lawyers for claiming their natural grasp on the study of international organization is the mode of creation of international organizations, namely the treaty.<sup>260</sup> It is submitted here that the fact that international organizations are commonly created by virtue of an international treaty does not suffice to make it an object naturally falling within the scope of international legal studies. Such treaty-related justification for international lawyers' grasp on the study of international organizations is tautological and self-explanatory. Indeed, it is because international lawyers define international organizations as being treaty-based structures and that a treaty-based foundation is a condition of existence of an international organization that international lawyers can, in turn, claim that it is an object naturally falling within the scope of international legal studies. Said differently, elevating the presence of an actual treaty into a condition of what it takes to be an international organization<sup>261</sup> is the very discursive move that allows international lawyers to justify their hold on the matter. What is more, one should remember that there are many institutions, regimes, arrangements, policies which are enabled or created by treaties which never appear on the radar of international lawyers and fall outside the scope of international legal studies. There are even international organizations that are created by treaty but which, over the years, have fallen out of the scope of international legal studies and have become an autonomous field of study and possibly a distinct discipline. In that respect, one may think of the European Union whose

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1990) xxiii, xxiv, and 45; Judith Butler, *Notes Toward a Performative Theory of Assembly* (Harvard University Press, 2018) 5. See also Foucault, *Naissance de la biopolitique: Cours au Collège de France (1978–1979)* (n 63) 18.

260 The corollary is also that the law of international organizations is at the crossroads of the law of treaties and international institutional law. See, e.g., Brölmann, Collins, Droubi and Wessel (n 125) 244.

261 See however the debate on the legal personality of the Organization for Security and Co-operation in Europe (OSCE). See, e.g., Helmut Tichy and Catherine Quidenus, 'Consolidating the International Legal Personality of the OSCE' (2017) 14(2) *International Organizations Law Review* 403.

foundations, procedures, practices, output, modes of action, achievements, and failures, whilst being once an object of attention of those studying general international law as well as the law of international organizations,<sup>262</sup> is now the *chasse gardée* of another and very distinct cohort of lawyers and scholars, a monopoly which international lawyers interested in international organizations never seek to jeopardise these days.<sup>263</sup>

Another justification for international lawyers' natural grip on the study of international organizations is found in the claim that such grip simply follows the wide practice of litigation related to international organizations. It is true that the advent of international organizations and their proliferation have brought about a generalisation of legal conflicts before domestic courts, within international organizations endowed with a judicial system of sorts, and very occasionally before international courts. And yet, it is submitted here that the increase of litigations related to international organizations cannot justify that the latter constitutes an object naturally falling within the scope of international legal studies. Once again, there are many phenomena or institutions that give rise to permanent legal conflicts and which are followed by judicial proceedings while never drawing the attention of international lawyers, just like there are many phenomena or institutions that do not give rise to legal conflicts or litigations that are the object of intense scrutiny by international lawyers.<sup>264</sup>

A third justification that is invoked for the sake of claiming that the creations, the foundations, the procedures, the practices, the output, the modes of action, the achievements, the failures, and the falls of international organizations constitute an object naturally falling within the scope of international legal studies lies in the international legal personality that is recognised to most international organizations. Here too, the argument is tautological and unpersuasive. International organizations do not fall within the scope of international legal studies as a result of them having an international legal

262 As Jan Klabbers recalls, Schermers, after moving from the University of Amsterdam to Leiden University where he held yet another chair in international organizations law, became the editor in chief of the *Common Market Law Review* which still is a leading periodical in European Union Law. See Klabbers, 'Schermers Dilemma' (n 193) 570.

263 For a vindication that that European Law belongs to international law, see Derrick Wyatt, 'New Legal Order, or Old?' (1982) 7 *European Law Review* 147; Bruno De Witte, 'Rules of Change in International Law: How Special is the European Community?' (1994) 25 *Netherland Yearbook of International Law* 299.

264 On the variety of views on non-state actors in international legal studies, see Jean d'Aspremont (ed), *Participants in the International Legal System, Multiple Perspectives on Non-State Actors in International Law* (Routledge, 2011).

personality. Instead, it is by virtue of international lawyers—including judges—recognising an international legal personality to international organizations that meet the conditions they have set that the latter enter the realm of international legal studies. It can also be objected against this third justification that being endowed with an international legal personality, or any other kind of legal status, has never been a condition of entry for an institution or any kind of institutional phenomenon into the international legal field. It suffices to think of all those institutions and institutional phenomena that are nowadays studied by international lawyers without them corresponding to any pre-existing formal legal category or being endowed with any kind of formal legal status.

In the light of the above, it is argued here that there is hardly any argument that can justify that international organizations are considered as naturally falling within the scope of international lawyers' expertise and field of study. The seizure of that topic by international lawyers is the result of a very calculated, strategic, and expansionist move, one that seeks to permanently nourish the field with new practices, new materials, new controversies, new critiques, etc.<sup>265</sup> Such expansionism is not, as such, anything to be surprised of, let alone to bemoan. After all, all professions, disciplines, and more generally all discourses, move and define their boundaries strategically.<sup>266</sup> What is more interesting is that international lawyers love the expansionism enabled by international organizations. International lawyers' love for international organizations also is a love for expansionism.<sup>267</sup>

## 10 International Organizations Carry Many Secrets

This section introduces a ninth and final driver of international lawyers' love for international organizations. It is submitted here that international lawyers'

265 Expansionism is rife in international legal thought. I have studied two manifestations of it elsewhere. See Jean d'Aspremont, 'Softness in International Law: A Self-Serving Quest for New Legal Materials' (2009) 20(3) *European Journal of International Law* 911. See also Jean d'Aspremont, 'Expansionism and the Sources of International Human Rights Law' (2017) 46 *Israel Yearbook on Human Rights* 223.

266 On the idea that discourses exercise control over themselves, see Foucault, *L'ordre du discours* (n 15) 23. Cf with the idea that interpretive strategies do not come from the reader but from the interpretive community, see Stanley Fish, *Is there a text in this class?* (Harvard University Press, 1980) 14.

267 This may simultaneously bespeak a love for the very field whose constitution was enabled by international organizations. This is a point I owe to Niels Blokker.

love international organizations for their being an infinite trove of secrets that it behoves them to search, discover and make public. More specifically, international lawyers experience deep affection for international organizations as the *receptacle of secrets* which they hold as knowable and which they feel bound to reveal.

That international organizations are the receptacle of many secrets is a rather mundane premise of most international legal studies devoted to them. It is, for instance, common to refer to the puzzles of international organizations,<sup>268</sup> the half-truths that populate the field,<sup>269</sup> the difficulty to pierce the veil that hide the realities of international organizations.<sup>270</sup> By the same token, it is often affirmed that many details of the practice of international organizations are yet to be disclosed.<sup>271</sup> The process of expansion of international organizations' powers is similarly held as being secretive.<sup>272</sup> So are the legal meanings of the new administrative law principles that inform the practice of international organizations.<sup>273</sup> Likewise, the sources of the law of international organizations, the question of their autonomy<sup>274</sup> and their contribution to the verticality of international law<sup>275</sup> are said to be in need of being further revealed.<sup>276</sup> It is the same presumption that international organizations hold many secrets that informs international lawyers' constant quest for a better understanding of international institutional law<sup>277</sup> of their role,<sup>278</sup> of how organizations are legally structured,<sup>279</sup> or of their impact.<sup>280</sup>

268 Klabbers and Sinclair (n 35) 491.

269 Alvarez (n 57) 586.

270 Michel Virally, 'L'O.N.U., d'hier à demain' (1961) 14(2) *Revue française de science politique* 10.

271 Kingsbury and Casini (n 140) 320.

272 Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (n 35) 1.

273 de Chazournes, 'Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (n 45) 665.

274 Jean d'Aspremont, 'The multifaceted concept of the autonomy of international organizations and international legal discourse' in Richard Collins and Nigel D White (eds), *International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order* (Routledge, 2011) 63; Ramses A Wessel and Steven Blockmans (eds), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (Springer, 2013).

275 Schermers and Blokker (n 40) 8.

276 Amerasinghe, 'The Law of International Organizations: A Subject Which Needs Exploration and Analysis' (n 35) 20.

277 Blokker, 'Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law' (n 40) 201; Alvarez (n 57) xi.

278 Guzman (n 36) 1001.

279 Klabbers and Sinclair (n 35) 492; Guzman (n 36) 1001.

280 Guzman (n 36) 1001.

International lawyers similarly claim that political forces within international organizations are yet to be elucidated.<sup>281</sup> Such examples could be multiplied indefinitely.

Interestingly, international lawyers engaging with international organizations are inclined to recognise that their frameworks of intelligibility and conceptual choices are often responsible for such secrets not having been revealed yet.<sup>282</sup> In fact, in the literature, it is said that many secrets are kept hidden by the use of public international law categories.<sup>283</sup> The lack of theorisation of the field is sometimes deemed a cause for the many secrets about international organizations that are yet to be unveiled.<sup>284</sup> In the same vein, it is also claimed that international organizations continue to carry many secrets because of the lack of a comprehensive legal concept of international organization,<sup>285</sup> of gaps in the knowledge about why international organizations comply with international law,<sup>286</sup> of the lack of clarity in the relationship between organizations and their members States,<sup>287</sup> or of the unresolved question of the nature of the rules of international organizations.<sup>288</sup>

It is submitted here that the holding of international organizations as the receptacle of many secrets, as has been exposed in the previous paragraphs, surely is a good reason to fall for them. After all, mysteries and untold truths commonly elicit excitement. But such excitement, it is argued here, calls for caution. In fact, as the rest of this section seeks to demonstrate, approaching international organizations as a receptacle of secrets is not accidental but,

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- 281 Jenks, 'Some Constitutional Problems of International Organizations' (n 45) 11.
- 282 Van Den Meerssche, 'Performing the rule of law in international organizations: Ibrahim Shihata and the World Bank's turn to governance reform' (n 90) 48; See Sinclair, *To Reform the World: International Organization and the Making of Modern States* (n 35) 9; Klabbers, 'The EJIL Foreword: The Transformation of International Organizations Law' (n 124) 9.
- 283 de Chazournes, 'Functionalism! Functionalism! Do I Look Like Functionalism?' (n 37) 954.
- 284 Klabbers and Sinclair (n 35); Klabbers, 'The EJIL Foreword: The Transformation of International Organizations Law' (n 124) 9; Jan Klabbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act' (2018) 28(4) *European Journal of International Law* 1133, 1133; Schermers and Blokker (n 40) 10–11; de Chazournes, Casini and Kingsbury (n 35) 316; Alvarez (n 57) xii.
- 285 Gasbarri, *The Concept of an International Organization in International Law* (n 154) 208.
- 286 Daugirdas (n 216) 991–1018.
- 287 See, e.g., Ahlborn (n 174); Gasbarri, *The Concept of an International Organization in International Law* (n 154) 6; Gasbarri, 'The Dual Legality of the Rules of International Organizations' (n 174) 87.
- 288 Gasbarri, 'The Dual Legality of the Rules of International Organizations' (n 174) 87; Ahlborn (n 174).

instead, is yet another effect of the legal discourse on international organizations. The point made here is that the representation of international organizations as carrying secrets that are knowable and that must be revealed constitutes a way for the discourse to induce speaking and make international lawyers speak about international organizations. In other words, it is not that secrets are out there in international organizations, in their creations, in their foundations, in their procedures, in their practices, in their output, in their modes of action, in their achievements, in the failures and even in the falls, ready to be discovered and revealed. Instead, it is the discourse that makes international lawyers inscribe knowable secrets in international organizations, their creations, their foundations, their procedures, their practices, their output, their modes of action, the achievements, the failures and even the falls<sup>289</sup> before making them feel bound by an obligation to truth.<sup>290</sup> The outcome of such economy of secret is formidable. It not only makes international lawyers speak about international organizations and their secrets *ad infinitum*. It also makes them speak about international organizations along the very lines of the caretaking responsibilities allocated to them, the way in which they embody power, the expertise they showcase, the historical narratives of which they are the linchpin, the common standard of experience they allow, the textual universe they constitute, the discontent that they enable, and the natural objects of studies they provide. In that sense, the secrets that those secrets-hunting international lawyers end up inscribing in international organizations and revealing to the world are all already within international organizations.<sup>291</sup> In other words, revealing secrets about international organizations is nothing more than a perpetuation of all what international organizations already do, represent, and mean to them. It is yet another example of the extent to which the legal discourse on international organizations works for itself.<sup>292</sup> And

289 On the idea that secrets are produced, see Anne Dufourmantelle, *Défense du secret* (Payot & Rivages, 2019) 20, 36, 49, 113; Jacques Rancière, *L'inconscient esthétique* (Galilée, 2001) 22. See also Foucault, *Dits et écrits, II: 1976–1988* (n 62) 554 and 565; Foucault, *Dits et écrits, I: 1954–1975* (n 15) 1562; Foucault, *Histoire de la Sexualité I: La volonté de savoir* (n 63) 33.

290 Foucault, *Sécurité, Territoire, Population: Cours au Collège de France. 1977–1978* (n 62) 241; Foucault, *Histoire de la Sexualité I: La volonté de savoir* (n 63) 48–49.

291 On the notion of sovereign power of the eye, see Foucault, *Naissance de la clinique* (n 141) 11, 20.

292 See for instance the extent to which the legal discourse on international organizations organizes discontent (see above section 8) or deploys expansionist strategies (see above section 9).



the possible most efficacious way in which a discourse works for itself is by inducing its users to speak indefinitely about the object of that discourse.

## 11 Concluding Remarks: an 'Emotional Turn' in the Law of International Organizations?

As was said in the introduction, there are possibly other drivers of international lawyers' love for international organizations than international organizations' caretaking responsibilities,<sup>293</sup> the way in which they incarnate power,<sup>294</sup> the expertise they showcase,<sup>295</sup> the historical narratives of which they are the linchpin,<sup>296</sup> the common standard of experience they allow,<sup>297</sup> the textual universe they constitute,<sup>298</sup> the discontent that they enable,<sup>299</sup> the natural objects of studies they provide,<sup>300</sup> and the secrets they carry.<sup>301</sup> These nine drivers should however suffice to explain why international organizations have remained at the centre of international lawyers' practical, conceptual, cognitive, imaginary, and emotional universe notwithstanding the scathing and cogent charges raised against international organizations in recent decades. These nine drivers should similarly be enough to confirm, once more, that the centrality of international organizations in international legal thought and practice is nothing natural or inherent in international legal studies and international legal practice. It could simply have been otherwise: international law could have been thought and practiced without international organizations, as it previously was for centuries. If anything, this article has sought to show that it is international lawyers' love for international organizations, and its perpetuation in spite of all the criticisms directed at international organizations, that explain that the latter have been placed, and maintained at the centre of international lawyers' practical, conceptual, cognitive, imaginary, and emotional universe.

Just like international law could live without international organizations, international lawyers could do without studies of their affective interests for

293 See above section 2.

294 See above section 3.

295 See above section 4.

296 See above section 5.

297 See above section 6.

298 See above section 7.

299 See above section 8.

300 See above section 9.

301 See above section 10.

such institutions, let alone the rudiments of a theory of attachment as those offered here. After all, there is no obvious reason why the law of international organizations should imitate the ‘emotional turn’ witnessed in International Relations literature.<sup>302</sup> Whilst the author of these lines has always been a strong supporter of the dismantling of disciplinary borders,<sup>303</sup> the literature on the law of international organizations ought not to mimic the interdisciplinary practices witnessed in International Relations scholarship. In fact, they are so many other ways in which one can debate and reflect on international lawyers’ engagement with international organizations, the most basic one being probably the narration of new stories. This is why the turn to love to explain the contingent centrality of international organizations in international legal thought and practice has been nothing more than a narrative device to tell a new story about international lawyers’ engagement with international organizations. And yet, stories, especially stories about love, are very serious matters.<sup>304</sup> Even for the ever scientist-minded international lawyers.

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302 See above footnote 18.

303 See, e.g., Jean d’Aspremont, ‘International Law, Theory and History: Ordering Through Distinctions’ in Jean d’Aspremont (ed), *The History and Theory of International Law, Volume I: Historicizing the Theory of International Law and Volume II: Theorizing the Histories of International Law* (Edward Elgar, 2020).

304 On the idea that all narratives belong to the order of meaning of the real as much as scientific discourses, see the remarks of Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (n 15) 122. See also Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (n 8) 5.