BOOK REVIEW


Picture this. A dreary Friday afternoon in Geneva. The annual meeting of the plenary body of the International Labour Organisation is coming to an end, in an atmosphere of great frustration. Despite weeks of intense preparation, lobbying and negotiations, the meeting is about to turn into a failure: it does not result in a consensus on topic X, to the great anguish of everyone involved. When the first delegates have already left to catch an early plane, all of a sudden the coffee lady, hitherto busily cleaning away the cups after the last coffee break, runs to the microphone, takes the floor, and proposes, with audible exasperation: why not do things in such-and-such a manner?

Nothing much happens, except that the coffee lady gets a stern lecture from the ILO’s management about the impropriety of taking the floor. Still, as the weeks and months go by, states slowly start to take the coffee lady’s proposal and turn it into bits and pieces of domestic legislation. NGOs have picked up on her suggestion and adopt resolutions endorsing it, and start lobbying in other fora. Within the ILO itself, internal documents start to make reference to what in the corridors has already become known as the Coffee Rule (more pompous commentators speak of a Lex Arabica, after the beans used), and after a year or two, a court somewhere starts to apply the Coffee Rule in a labour dispute. Another couple of years later, academics studying labour law are unanimous: there can be no doubt that the Coffee Rule represents the law on the topic.¹

The one question those academics are heavily disagreeing about is how to explain the legal effects of the Coffee Rule. Good old positivists are able to point to state practice and thus are inclined to explain the Coffee Rule as simply a rule of customary international law. Their critics point out though that this misses the fairly essential point about the Coffee Rule’s origins: the rule was

¹ Blue Book aficionados and other pedants: let me (equally pedantically) point out that this example is purely a figment of my imagination. I do not know whether ILO meetings end on Fridays, or whether coffee is being served at those meetings (let alone whether it is served in the afternoon, and whether it is served by ladies or by gentlemen). Nor are there any identifiable NGOs or academics who endorse the Coffee Rule (as far as I am aware, at any rate, but with those groups, one can never be sure), and the court too is merely my own invention.
born during a plenary meeting of an international organization, and surely that circumstance must be of some weight.

Indeed, those same critics of positivism tend to explain the rule as an emanation of the normative effort of international organizations. This, however, miffs the positivists a bit: after all, they insist, it was the coffee lady who presented the proposal; and it seems reasonably clear from the ILO’s constituent document that the coffee lady, first of all, is not an organ of the ILO, and secondly, lacks any powers of legislation and initiative. Formally, then, there was not even a proposal, so why credit the ILO for what was, in effect, a lucid moment on the part of the coffee lady followed by the practice of states?

Yet others might point out that the Coffee Rule became accepted because it seemed the right thing to do: the coffee lady simply hit the nail on its head and hammered home the right solution; the Coffee Rule was, so to speak, a legitimate rule. This, however, displeases both the positivists and their critics. The positivists point out that surely, it cannot be the case that all good ideas become law just like that, if only because there is bound to be some disagreement, usually, as to what would be the right thing to do. Indeed, so the positivists would continue, it is precisely for this reason that we need to have some formal rules separating law from non-law. Likewise, the critics of positivism would have a hard time accepting the idea that anything of substance might be law; legitimacy, they would suggest (aligning themselves with the positivists, against their instincts), does not depend on substance alone, but also on the circumstances in which things came about and on whether or not correct procedures have been followed. Had the coffee lady uttered the same proposal on the bus, or during her own coffee break addressing a colleague rather than the plenary, the Coffee Rule would have been unlikely to have come into existence.

This is the problematique that inspired José Alvarez to write the book under review, and like our positivists, their discontents, and the substantive school, he does not come up with a satisfying solution either. His starting point is that it is somewhat unsatisfactory to analyze the normative output of international organizations in terms of international law’s classic sources doctrine. Much of that output, so he suggests, cannot be captured in terms of treaties, customary law, or general principles of law; doing so hides from view the fundamental role played by international organizations as providing fora, facilitating the convening of meetings, making it easier to reach agreement by preparing norms in expert committees, and what have you. The world of international organizations is large and manifold, and so is the book: it comes in at roughly 650 pages, and discusses a wide array of topics related to the normative role of international organizations.