Book Review


Article 38 of the Statute of the International Court of Justice (ICJ) is by tradition considered an almost sacrosanct codification of the sources of international law. However, the Article is also essentially state-centred. It is this state-centred image of international law that Alvarez takes issue with. International organizations are nowadays involved in a great deal of international lawmaking. This should also be reflected in the definition of the sources of international law. The traditional view of sources is uninformative for exploring the nature of the pow- ers of organizations. It also fails to explain the source of the obligations arising from the activities of organizations. In short, Article 38 does not explain “why states obey” norms produced by international organizations.

In demonstrating ways in which international organizations have an impact on lawmaking, Alvarez draws inspiration from a “new generation of institution-alists” who believe in interdisciplinary collaboration between international lawyers and political scientists (p. 57). The result is a massive book on different aspects of the impact of organizations in the making of international law. Alvarez focuses on three areas in particular—international institutional law, treaty making and institutionalized dispute settlement—all of which, Alvarez claims, the traditional concept of sources misrepresents.

In working his way through these three areas, many contemporary issues of international law are considered along the way. Alvarez has a lot that he wants to communicate to the reader. Given his ambition of re-imaging the sources of law, the text occasionally takes the reader in unexpected directions. Even when Alvarez is engaged with more familiar “textbook issues”, he often does this by retelling the story from a slightly unorthodox angle, hereby breathing new life into the discussions. Alvarez uses a huge amount of examples with which to illustrate his reasoning, and the organizations he relies upon (international organizations that aspire to universal membership) are institutions he apparently knows very well. This makes the text rich with detailed insights into the practice and involvement of organs of different organizations in the making of international law. Alvarez makes many interlinkages between a range of issues of international
law and international organizations, and his reasoning usually succeeds quite well in convincing the reader.

Sometimes, however, the chapters end up not so reader-friendly. At least on a first reading, the reader may at times lose track of the main argument. However, with a bit of patience (and a lot of time), the reader is rewarded with a refreshing look at the possibilities and limits of legal regulation at the international level. The sheer range of topics covered enables many potential ways to review the book. There is a lot that could be said on each issue discussed. The remarks of this review will be constrained to some of the basic definitions that Alvarez builds upon in making his case.

“Lawmaking” is arguably the most central notion of the book. This is of course suggested already by its very title. As “lawmaking” and “sources of law” are closely connected, Alvarez’s unease with the narrow use of the latter also applies for the notion of “lawmaking”. It is in broadening this concept that the insights from political science become most clearly useful. The broad definition of “lawmaking” that Alvarez puts forth is very valuable as it provides a focus beyond the traditional preoccupation of international lawyers. In e.g. discussing the United Nations (UN) Security Council as a lawmaker, Alvarez not only deals with the issue of the legal powers of the Council and the impact of the exercise of those powers, but also examines the legitimating authority of the Council and its role in the creation and maintenance of hegemonic international law. In this respect, Alvarez demonstrates how Security Council decision-making may become too closely associated with the policies of certain members, hereby undermining the equality of states, and potentially also the legitimacy of the institution itself. Further, in discussing organizations and multilateral treaty making, focus is not only on the more familiar topic of what roles organizations have in initiating treaty negotiations, arranging treaty making conferences, drafting documents or “managing” the treaties established. Each of these issues Alvarez deals with in some detail. However, he does not stop there, but goes on to ask whether organizations have actually improved upon the facilitation of cooperation in treaty making, whether there is a risk that organizations may actually impede cooperation and how we are to assess whether the increased involvement of organizations has made treaties any better.

While the task of widening the concept of “lawmaking” is the driving force of the book, the many tracks that are pursued in order to achieve this widening come with a cost. As mentioned above, sometimes the reader may have a hard time keeping track of the connection between organizations, lawmaking and the topic being discussed. On occasion the question could also be raised whether Alvarez is not ascribing a bit too much of the changing patterns of international relations and international law to organizations. While one may agree that the increasing participation of states and other actors in cooperation through organizations has