Catherine Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (Hart Monographs in Transnational and International Law, 2007, ISBN–13 9781841136349, hardcover, 256 pages)

REVIEWED BY GILLIAN TRIGGS*

Putting aside sovereign states, the most dominant actors within the international legal community have been inter-governmental organisations ('IGOs'). IGOs have entered the international arena in thousands throughout the 20th century and range from the United Nations ('UN') and the Council of Europe to the World Trade Organisation ('WTO') and the International Postal Union. As international personalities in the global legal environment, to use the language of classic international law, the nature and function of IGOs raise vital contemporary questions. In particular, the responsibility of IGOs for their internationally wrongful acts, especially in the context of military operations, environmental impacts and human rights, is now under consideration by the International Law Commission ('ILC'). Why is it, for example, that Yugoslavia was confined to applications to the International Court of Justice against individual member states for compensation after the NATO bombing of Kosovo?

IGOs are to international law what companies are to national law. They have become the independent vehicle through which states can achieve their objectives in the international environment. It is not surprising therefore that, just as the company benefits from the semi-transparent 'corporate veil' at domestic law, IGOs similarly employ the 'institutional veil' to shield them from the full legal consequences of state responsibility. In *MacLaine Watson v Dept of Trade,* for example, the UK Court of Appeal dismissed the claim of secondary liability of member states of the International Tin Council.[1]

In her scholarly monograph, *The Institutional Veil and International Responsibility,* Catherine Brolmann argues that any discussion of the responsibility of IGOs for their international wrongs requires an understanding of their dual status as independent actors at international law and as a forum for sovereign states. She considers IGOs through the lens of the *1969 Vienna Convention on the Law of Treaties* ('*1969 Vienna Convention*'),[2] examining the historical development of IGOs as subjects of international law and their treaty practices, particularly within the UN, and their place within the classic inter-state law of treaties.

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1 *MacLaine Watson v Dept of Trade* [1988] 3 ALL ER (Kerr LJ).
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2 *Vienna Convention on the Law of Treaties,* opened for signature on 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

While scholarship has tended to emphasise the internal structure of IGOs, Brolmann examines them from an external perspective as actors in general international law. She does so in the context of negotiation for the *1986 Convention on the Law of Treaties Between States and International Organisations or Between International Organisations* ('*1986 Convention*')[3], concluding that the variously multi-faceted character of international organisations makes them 'less than well-suited for the law of treaties system'. As ILC Rapporteur Paul Reuter observes, unlike states, IGOs are 'neither sovereign nor equal'.[4] They have been created to achieve defined purposes and their treaty practices are not constricted by the need to achieve a consensus. When an IGO is a party to a treaty, it acts like a state. When it is a forum for law-making negotiations, an IGO is a more 'open' system in the sense that the role of the members is more transparent. The attempt to equate IGOs with states and to absorb them within the existing laws of the *1969 Vienna Convention* was thus an awkward exercise and ill-suited to the activities of IGOs in today's globalised world.

The chronological description of the drafting process for the *1986 Convention* and the analysis of its major clauses make a scholarly contribution to our understanding of how completely IGOs have been integrated into the existing body of treaty law. Indeed, Brolmann observes that the legal effect of the *1986 Convention* is that it is 'practically identical' to the *1969 Vienna Convention*, a result that was virtually dictated by the aim of the drafters to create a unified body of rules. Rather, she argues, IGOs should have been included in the *1969 Vienna Convention* in the first place.

To treat states and IGOs as the same in respect of treaty law is, Brolmann argues, not appropriate or workable in light of the multi-layered nature of international organizations. Adopting the analogy of the 'veil', she concludes that the institutional veil of IGOs is transparent, relative to the impermeable sovereign veil of states. She examines the activities of the United Nations High Commissioner for Refugees and the United Nations Environment Programme within the UN to illustrate how the roles of constituent member states and organs within an IGO can 'show through' in some contexts, with potential impacts on the legal capacity of an IGO, the binding nature of their obligations and their international responsibility. Some general rules of international law are, Brolmann concludes, needed to provide clarity on these questions.

This work is not concerned with the secondary responsibility of states for the international wrongs of IGOs. It is clear at international law that states are not directly accountable for the international wrongs of the IGOs that they create. The ILC Special Rapporteur on *Responsibility of Organisations* in his 2006 Report has proposed an exception to this principle where a member state accepts responsibility to an injured third party.[5] In short, the institutional veil of an IGO will not normally be pierced to make way for

3 *Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations,* opened for signature on 21 March 1986, 25 ILM 543 (not yet in force).

4 Paul Reuter, 'Sixth Report on the Question of Treaties concluded between States and International Organisations and between two or more International Organisations' [1977] *Yearbook of the International Law Commission*, vol II, UN Doc. A/CN.4/298, 120.

5 International Law Commission, *Report of the International Law Commission – 58th session* (1 May -9 June and 3 July -11 August2006) < www.untreaty.un.org/ilc/reports/2006/2006report.htm > accessed 22 August 2008.

a claim against member states. Brolmann recognises however that the principles of responsibility have a 'practical urgency' above the need to reconsider treaty laws as they apply to IGOs. The recommendations of the ILC on responsibility will be important in meeting this urgency.

The research is a valuable source of scholarship on the application of treaty law to IGOs and provides a thoughtful analysis of the differing legal needs of states and international organisations. As Brolmann's arguments are illustrated by the practices of the United Nations only and other IGOs such as the WTO, the Antarctic Treaty System or the Organisation of American States are not considered, it is necessarily limited work. The conclusions reached might also have been demonstrated by case studies or examples of the failure of international law to provide for the multi-layered character of international organisations. It remains for other scholars to test the central hypothesis that IGOs require more appropriate rules to 'capture their variety' within the international legal system. As the international body politic now demands accountability of IGOs for their acts, the search for principles of responsibility and treaty law that recognise the complex structures of IGOs becomes vital.