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Book Review | Dan Sarooshi, *International Organizations and Their Exercise of Sovereign Powers* (2005) & Margaret P. Karns & Karen A. Mingst, *International Organizations: The Politics and Processes of Global Governance* (2004)

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BOOK ANNOTATIONS

BADINTER, ROBERT AND STEPHEN BREYER, EDs., *JUDGES IN CONTEMPORARY DEMOCRACY: AN INTERNATIONAL CONVERSATION* (New York, New York: New York University Press, 2004).

BECKER, TAL, *TERRORISM AND THE STATE: RETHINKING THE RULES OF STATE RESPONSIBILITY* (Portland, Oregon: Hart Publishing, 2006).

CASS, DEBORAH Z., *THE CONSTITUTIONALIZATION OF THE WORLD TRADE ORGANIZATION: LEGITIMACY, DEMOCRACY, AND COMMUNITY IN THE INTERNATIONAL TRADING SYSTEM* (New York, New York: Oxford University Press, 2005).

KAHLER, MILES AND BARBARA F. WALTER, EDs., *TERRITORIALITY AND CONFLICT IN AN ERA OF GLOBALIZATION*. (New York, New York: Cambridge University Press, June 2006).

KARNS, MARGARET P. AND KAREN A. MINGST, *INTERNATIONAL ORGANIZATIONS: THE POLITICS AND PROCESSES OF GLOBAL GOVERNANCE* (Boulder, Colorado: Lynne Rienner Publishers, 2004).

MACLEAN, GEORGE A., *CLINTON'S FOREIGN POLICY IN RUSSIA: FROM DETERRENCE AND ISOLATION TO DEMOCRATIZATION AND ENGAGEMENT* (Burlington, Vermont: Ashgate Publishing Company, 2006).

POSNER, RICHARD A., *NOT A SUICIDE PACT: THE CONSTITUTION IN A TIME OF NATIONAL EMERGENCY* (New York, New York: Oxford University Press, 2006).

SAROOSHI, DAN, *INTERNATIONAL ORGANIZATIONS AND THEIR EXERCISE OF SOVEREIGN POWERS* (Oxford, United Kingdom; Oxford University Press, 2005).

SKACH, CINDY, *BORROWING CONSTITUTIONAL DESIGNS: CONSTITUTIONAL LAW IN WEIMER GERMANY AND THE FRENCH FIFTH*

in a slightly less dry manner, thereby allowing a greater number of people to comprehend this important intersection of globalization and territorial conflict and to apply these insights to their understanding of international politics and the prevention of conflict.

International Organizations: The Politics and Processes of Global Governance. Margaret P. Karns and Karen A. Mingst. Boulder, Colorado: Lynne Rienner Publishers, 2004. Pp. xvi, 602. \$69.95 (hardcover), \$32.50 (paperback).

International Organizations and Their Exercise of Sovereign Powers. Dan Sarooshi. Oxford, United Kingdom; Oxford University Press, 2005. Pp. xvii, 151. (Oxford Monographs in International Law).

REVIEWED BY CHRISTOPHER GIBSON BRADLEY

International Organizations: The Politics and Processes of Global Governance is a thorough, well-organized, and surprisingly readable presentation of a sprawling and increasingly important field of study for scholars of international law and politics.

In Part One of *International Organizations*, Margaret P. Karns and Karen A. Mingst introduce the actors and problems of global governance and then summarize basic theoretical approaches to global governance. In Part Two, the authors provide a more extensive treatment of what they call “the pieces” of global governance, the actors—states, NGOs, regional organizations, and global organizations—who determine much of the content and scope of international regimes. The United Nations (UN) receives a particularly detailed treatment. Mingst and Karns focus on organizational description, but they do not ignore the structural and political tensions the UN has faced since its founding. They note that struggles for control of the UN have often hindered its ability to act efficiently and energetically, and yet these conflicts, by marking it as the site of the most vehement struggles for influence, have also signaled the acceptance of the UN as the prime organ of global governance. Here, as throughout *International Organizations*, Karns and Mingst strike a satisfying balance among description, analysis, and theory.

Part Three offers detailed examples of fields in which international organizations exercise, or seek to exercise, global governance powers. Karns and Mingst select four areas of policy concern: peace and security, human development and economic well-being, human rights, and the environment. Necessarily, in covering such broad topics, these chapters remain general. But Part Three is more than a series of subject area summaries. These examples demonstrate the great complexity with which all of the “pieces” presented in the rest of the book interact. There is no one hero or villain in these stories, just dense tangles of interconnected actors, interests, and goals. The authors close with a short Part Four, which reiterates a major theme in the volume: There are many profound challenges standing in the way of efficient or just global governance.

Karns and Mingst are veteran collaborators in the field of international organization studies, having co-authored *The United Nations in the Post-Cold War Era* and co-edited *The United Nations and Multilateral Institutions*. What sets Karns and Mingst apart from other treatments of international organizations is their commitment to putting forth an integrated view of international organizations. They insist that knowledge of politics, theory, and history are all indispensable to a rich understanding of the problems and processes of global governance. This is consonant with other current thinkers about international order—for example, Anne-Marie Slaughter’s views as expressed in her recent *A New World Order*. But whereas Slaughter elides many of the seemingly intractable problems plaguing the international system in her promotion of global governance “networks,” Karns and Mingst squarely face the facts on the ground. Theory, for them, is a valuable tool for helping to understand these facts, but they wear any normative agenda they might have more lightly than most.

A challenge to this sort of volume is that the information regarding the scope of organizations and the major conflicts within and between levels of organizations will be quickly dated due to the fast-evolving nature of the field. One hopes that Mingst and Karns (and their publisher) will stay invested enough in the project to produce updated editions. Their treatment of security in particular will require updating. As it stands, their presentation on security emphasizes (1) the continuing, preeminent role of the state, as a unitary and inde-

pendent sovereign, in protecting security, and (2) the difficulties of peacekeeping operations and the practical and theoretical difficulties of intervention. But both of these emphases surely deserve another look. Increasingly, transnational integration of state security apparatuses is a priority for the protection of security across the world as well as within the territories of Western democracies. The reality of terrorism has already provoked, and will certainly continue to provoke, innovation in, and attention to the further development of, this aspect of global governance. Furthermore, the structural readjustments in state security wrought by global terrorism are certain to change the face of future peacekeeping and humanitarian interventions.

The most serious complaint about the book is the lack of any substantial consideration of international law. The authors do mention international law several times in passing, particularly emphasizing the enormous expansion in the number of multilateral treaty agreements in the last half-century. But the “aspirational” or “soft-law” nature of many of these treaty agreements seems to damn them in the eyes of these political scientist authors, who see global crises as most often addressed by the will and interest of powerful actors instead of by the guidance of pre-established legal rules or principles. Their approach to global governance is not cynical, but they seem to believe the greatest hope for a just international order lies in the organizational and mobilizing capacity of those committed to such an order (including currently marginalized states, regions, and groups). There is, in general, appeal to this approach.

But international organizations’ substantive measures to enhance equality and development are incomplete if they do not attend to the problems mentioned in Part Four: global actors’ need for greater legitimacy, accountability, and effectiveness. These are problems that law can help address. For example, U.S. corporate law provides some powerful ways to approach agency problems in private organizational contexts; similarly, U.S. administrative law offers well-developed ways to monitor the behavior of actors wielding delegated authority in public contexts. Recent work in the field of “global administrative law,” as well as the increasing importance of the WTO Dispute Settlement Body, demonstrate something of the unique role law can play in enhancing legitimacy and account-

ability. Effectiveness too could be improved by law—redundant or conflicting exercises of control are more easily avoided if appropriate decisionmaking channels for different types of decisions are specified in advance. Thus, legal approaches could provide some basic means of enhancing the legitimacy, accountability, and quality of international organizations' action. Of course, empty legal formalities serve the interests of none. But just as importantly, substantive measures taken by actors unconstrained by established rules, even if the measures are considered to be fair, set an unsettling precedent.

Dan Sarooshi, who is a fellow at Queen's College, Oxford, and a lecturer in the Oxford law faculty, holds out more hope for international law. In its brief, dense one hundred and twenty-two pages, Sarooshi's *International Organizations and Their Exercise of Sovereign Powers* makes two major contributions. The first is a taxonomy or "typology" of conferrals of sovereign powers. The second is an exploration of the circumstances in which an organization's exercise of power pursuant to these conferrals is most likely to be contested by domestic actors.

Sarooshi outlines three types of conferrals of states' sovereign powers to international organizations: (1) those creating an "agency relationship," (2) those which he calls "delegations of powers," and (3) those which he calls "transfers of powers."

Agency relationships require consent (explicit or implied) from both the state and organization, in order to enter into the relationship. This type of conferral of power is revocable and creates a fiduciary duty in the organization. But since the control is close, the state will be responsible for most acts within the scope of the conferral.

With delegations, the conferral is still revocable, but the state has less direct control over the powers exercised. Thus, the state will not, in most cases, be responsible for the organization's actions, nor will the organization owe a fiduciary duty to the state.

Transfers of power are different still. A transfer can be "full" or "partial." "Full" transfers of sovereign powers result from a state's "agree[ment] to give direct effect within its domestic legal order to the obligations that flow from the organization's [actions] . . . without the need for separate domestic legislation." "Partial" transfers, on the other hand, emerge from the state's agreement to be bound on the "international

plane” by the organization’s decisions. For both types of transfer, the conferral is not lawfully revocable (although states do sometimes, unlawfully, withdraw from transfer agreements), and while states agree to be bound by the decisions of the organization, they do not exercise direct control over the agency’s actions, so they will bear liability for the organization’s action only under certain limited circumstances. If this last clause sounds vague, it is necessarily so. As Sarooshi is well aware, transfers are the most complicated and contested type of conferral.

The main points of doctrine summarized above are used primarily to set up the crucial Chapter Six, which amounts to over a third of the book. Here Sarooshi demonstrates how the abstract doctrine can be help out in real world situations with a subtle but compelling normative approach. He suggests that well-specified legal rules, by providing an appropriately nuanced framework for actors to use in structuring their relations and designing their agreements, will help to guarantee and increase the predictability and consistency of international interactions. Such a framework will also, he asserts, include significant means for states to challenge the actions taken by international organizations wielding transferred powers.

Sarooshi’s empirical claim is that the problem with a transfer of powers is that domestic actors rarely are comfortable with such a conferral, and they are thus most likely to challenge the actions taken by an organization under such a conferral. The two examples of this principle he presents are (1) European domestic courts’ assertion of their prerogative to determine the limits of the “authoritative decision-making” power of the European Union, and (2) the U.S. Congress’s continued insistence that it retains a significant degree of latitude in taking steps to ensure that the U.S. value of “corporate economic autonomy” is respected by its trading partners, even if such steps conflict with WTO rules to which the U.S. is bound. In both of these cases, the underlying problem, according to Sarooshi, is that domestic states’ “sovereign values”—those which “encapsulate fundamental values of the polity” (the phrase, quoted by Sarooshi, is Joseph Weiler’s)—are threatened by the transfers of power. These “sovereign values” are, in the first, European, example, the capacity of domestic courts to determine “the content of human rights” and, in the

second, U.S., example, the power of the legislature to ensure that its businesses are trading on "fair" terms with those of other countries. Sarooshi contends that a state's interest in protecting those values it considers central to its sovereignty, values which are consistently implicated in state decisionmaking of every sort (executive, legislative, administrative, judicial), is not totally relinquished when some of these powers are being exercised by international organizations.

Thus as both a political and a normative matter, the international order would be superior if more effective means of "contestation" were available. While Sarooshi does not elaborate at length what sorts of contestation mechanisms he has in mind, he considers the "contestability deficit" to represent a superior way of framing concerns with legitimacy and accountability than the usual ways of framing these concerns (e.g., as resulting from a "democracy deficit"). This is an intriguing insight that one hopes he will address more fully in future work, as it is consonant with what seems to be an increasingly strong intuition among international legal thinkers that the "democracy deficit" is something of a red herring, and is a stand-in for a more broad and pressing—but as yet not clearly defined—crisis of legitimacy. It bears mentioning that this insight also provides a needed rejoinder to Mingst and Karns's skepticism toward international law.

The only serious failing of Sarooshi's monograph is essentially an organizational one. Particularly in a first read, this book is unnecessarily difficult to follow because Sarooshi relegates much fleshing-out of the argument to footnotes, including crucial illustrations of the principles he is outlining. For example, on page nineteen, Sarooshi claims: "There have been a number of cases where a group of States ha[s] concluded a treaty . . . providing for conferrals of powers on an organization on an ad hoc basis." To find any illustrations of such cases, one has to look to a footnote—a long one, which stretches well into the next page. The first third of the footnote could have made its way into the main text without the argument losing any of its tautness. Similarly, in the next page Sarooshi notes that "in the case of a deliberative organ the adoption of a resolution accepting the conferrals may be appropriate." Offering no further elaboration, he then simply adds a semi-colon and proceeds with his doctrinal explication. Only in the footnotes does one find any concreteness: "Con-

sider the following three examples” Amidst all of the doctrine, which is rather abstract and comprises almost the entire main text of the book, simple and practical illustrations to ground this doctrine in the practice of states and in examples from the history of international law would be helpful.

Despite the bare-bones state of its text, this remains a useful and very intelligent book. Sarooshi’s terminological precision and clarity of argument are impressive. Particularly when considered in conjunction with a detailed summary of the actual state of international organizations from a practical political view, such as that presented in the Mingst and Karns volume, Sarooshi’s concentrated theoretical explication is valuable. His strength is depth, while Mingst and Karns’ is breadth. The subject, itself both broad and deep, rewards both approaches.

Clinton’s Foreign Policy in Russia: From Deterrence and Isolation to Democratization and Engagement. George A. MacLean. Burlington, Vermont: Ashgate Publishing Company, 2006. Pp. x, 162. \$89.95 (hardcover).

REVIEWED BY ANGELA YEN

The collapse of the Soviet Union demanded a complete reorientation of American foreign policy. At the helm of this reorientation was Bill Clinton, a foreign affairs neophyte elected on a decidedly domestic platform. George A. MacLean seeks to illuminate Clinton’s foreign policy with respect to Russia by analyzing the 1994 US-Russia Highly Enriched Uranium (HEU) Purchase Agreement. MacLean argues that this obscure agreement was indicative of the principles that drove Clinton’s Russia policy—engagement, nuclear security, and democratization—and that in this instance these principles ultimately won out over countervailing domestic commercial interests.

The HEU Agreement involved the purchase of forty percent of Russia’s total holdings of HEU, which is removed from dismantled warheads, over the course of twenty years. Whereas previous nuclear non-proliferation agreements dealt only with the reduction of warhead stocks, the HEU agreement dealt with the actual nuclear material used in the warheads. America agreed to the \$12 billion purchase of the ura-