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For the Love of Structure

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Abstract

This short essay engages with an article by Jean d'Aspremont (2023 IOLR), who through a phenomenological lens reflects on the reasons why international lawyers are drawn to international organizations – a condition summarized as *love*. I argue that to the nine ‘drivers’ for this love identified by d'Aspremont, at least one should be added: international organizations offer *structure*. ‘Structure(dness)’ has strong affective power, due to a combination of images evoked by the concept particularly in an international law context. I address four: structure is aesthetically attractive; structure creates clarity and transparency; structure creates (positive) constraints; structure brings order to chaos. Of course these images, which are the groundwork for classic institutional attributes such as neutrality, fairness and a-politicalness, in our time can appear as naive projections. Still, even if ‘the progress narrative that characterised the turn to IOs’ has been debunked, it is a source of inspiration at the experiential plane. And if we want to go by the insight that international organizations ultimately exist only through our gaze, this better be the gaze of a *loving* observer.

Keywords

international organizations – structure – aesthetic – order – neutrality – institutionalisation – transparency– emotional turn

The¹ following are some reflections prompted by Jean d'Aspremont's article, in which he considers the reasons for international lawyers being drawn to international organizations – a condition summarised as *love*. It is a timely exploration amidst the rise of phenomenology as a theoretical perspective on law² and something of an emotional turn³ in international law scholarship. Seen through a phenomenological lens, organizations are re-revealed as phenomena whose existence is not linked to form or manifestation in the empirical world, and whose significance is sourced only from the lived experience of human beings. The connection with lived experience provides a good starting point for exploring what motivates legal scholars and practitioners to keep such a strong focus on international organizations – something which, as the author puts forth, is not self-evident, nor natural.

That the taboo on lawyers' emotional response to international law has been lifted, appears also from the Symposium organizers' straightforward invitation to "explain why you love (or hate) international organizations." Against this backdrop I am sufficiently comfortable to declare my *love* for international organizations, apparently shared by many other lawyers. The nine images which Jean d'Aspremont identifies as 'drivers' for this love are certainly plausible, even if some (such as 'organizations are taking care of people' or 'organizations show where to look for power') seem more recognisable to me than others (such as 'organizations are holding many secrets').

Still, I believe one additional representation deserves to be singled out as a distinct influence on our affection for international organizations. That is, specifically, an organization's *structure*. To be clear, in this account the word does not point to (post-)structuralism' or 'structuration' as theoretical views (as frequently in French writings), nor to the concept of 'being an edifice' or a 'construction' (as the term is often used in English). Rather, *structure* is meant to refer to 'the quality or fact of being organised in a particular manner; definite or purposeful arrangement of parts within a whole arrangement'⁴ – in short, the quality sometimes colloquially called 'structuredness'. Of course this is an element in the 'commensurability thinking' skillfully traced by d'Aspremont in relation to international organizations law.⁵ That all parts and practices of all international organizations could be placed in a limited number of categories,

1 This is the text of a presentation given at the 20th Anniversary IOIR Conference, after grammatical improvements and afforded with some references.

2 cf Jean d'Aspremont, *The Experiences of International Organizations. A Phenomenological Approach to International Institutional Law* (Edward Elgar, Cheltenham, 2023).

3 cf Anne Saab, 'Emotions and International Law' (2021) 10:3 *ESIL Reflections*.

4 *Oxford English Dictionary* (Oxford UP 2023), s.v. 'structure.'

5 Jean d'Aspremont, 'The Love for International Organizations' (2023) 20 *International Organizations Law Review* 111, 133–141.

is a very attractive idea. But while notions of taxonomy and commensurability are related to my point, they do not quite put the emphasis where I believe it should (also) be, especially when we are speaking about *love*.

This leads to my claim that ‘structure(dness)’ as such has strong affective power. To many observers an international organization is a monolithic construction, notoriously opaque also in a political sense, with on the inside a labyrinthine mix of practices and stakeholders. In contrast, when international lawyers look at an international organization - especially when they are not its employees - they tend to notice regularity and logic, and crisp institutional design (possibly in apparent contrast to national deliberative and decision-making arrangements). International organizations *law* has the same appeal, as dedicated users of the iconic Schermers-Blokker handbook,⁶ and its all-encompassing table of contents, will confirm.

This affective power stems from a combination of images evoked by the concept of ‘structure,’ particularly in an international law context. We can immediately see four: structure is aesthetically attractive; structure creates clarity and transparency; structure creates (positive) constraints; structure brings order to chaos.

The *aesthetic appeal* of structure is at the same time a truism and a theme too big to broach in this short space. That being said, it is uncontested that ‘compositional regularities’ play a role in ‘aesthetic emotion.’⁷ Possibly the aesthetic response even has a neurological component next to the different images associated with ‘structure’ as part of the social imaginary. It has been argued, in a somewhat different vein, that an ‘aesthetic’ (experiential) conception of international law “can help go past the limitations imposed by rationalist accounts of legal order.”⁸ While this is a convincing argument, it does not preclude that in the case of international organizations for many lawyers the rationalist account of objective legal structuredness *is* the aesthetic experience. The cover images of several books on international organizations law⁹ are a case in point.

Secondly there is the image of structure creating *clarity and transparency*, which implies overview and manageability. Those who lecture on international

6 Henry Schermers and Niels Blokker, *International Institutional Law*, sixth rev. ed. (Nijhoff, Leiden, 2018).

7 ‘Aesthetic emotion is defined as an affective evaluation ... of compositional regularities’ (Slobodan Marković, ‘Components of aesthetic experience: aesthetic fascination, aesthetic appraisal, and aesthetic emotion’ (2012) 3 *Iperception* 1, 1).

8 Sebastian Machado, ‘Towards an Aesthetic Epistemology of International Law’, (2022) 91 *Nordic Journal of International Law* 509, 522.

9 See for example the covers of books on international organizations published by Jan Klabbers.

organizations know how an audience can be momentarily mesmerised at the sight of a handsome organizational chart. The aspect of clarity and transparency is exemplified by the Schermers-Blokker handbook's mapping and categorising – *structuring* – the law and practice of organizations (in what may well be a mutually constitutive process).¹⁰ It is also worth considering that when it comes to international organizations, the effect of structure is reinforced by the combination with spatiality. Intuitively we assume that a highly structured treatise on a classic and complex field of (international) law would not give people the same feeling of *love* – for the reason that such a treatise would not carry the connotation of an actual *space* and an actual *entity*. This connotation is highlighted also by the role of 'caretaker' ascribed to organizations in d'Aspremont's article.¹¹

Yet another commanding image is that of structure creating *constraints*. Limitations can be experientially positive, as for a poet who prefers the sonnet-form over free verse. But in the context of international law, the constraints inherent in 'structure' have a key role in the representation of organizations. The constraining aspect of structure supports the trope of organizations' 'neutrality', where organizations are seen as 'pooling sovereign interests or as neutral appliers of the real interests of all states'.¹² Similarly, it buttresses the picture of organizations as 'technical' and 'a-political'.¹³ While also in the early decades of the UN international lawyers cautioned against the idea that Specialized Agencies 'can ever be political eunuchs unmoved by the passions of the world',¹⁴ claims of a-politicalness are still made today, also by international organizations themselves.¹⁵ The constraining aspect of 'structure' has made international organizations eminently suited for the legalist vision of a legal institution that could be 'better' than its creators. It also aligned

10 As in other fields of PIL – cf Penelope J Ridings, 'The Influence of Scholarship on the Shaping and Making of the Law of the Sea' (2023) 38 *The International Journal of Marine and Coastal Law* 11.

11 Jean d'Aspremont, 'The Love for International Organizations' (2023) 20 *International Organizations Law Review* 111, 118–121.

12 Jose Alvarez, 'International Organizations: Then and Now' (2006) 100 *The American Journal of International Law* 324, 342.

13 See also Catherine Brölmann, 'Regional Organizations in International Law: Exploring the Function-Territory Divide' (2024) 21 *International Organizations Law Review* 132, referring to Anne Peters and Simone Peter, 'International Organizations: Between Technocracy and Democracy', in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (OUP, Oxford, 2014).

14 C Wilfred Jenks, 'Due Process of Law in International Organizations' (1965) 19 *International Organization* 163, 171.

15 See Marieke Louis and Lucille Maertens, *Why International Organizations Hate Politics: Depoliticizing the World* (Routledge, Oxford-NY, 2021), who, incidentally, consider 'depoliticization' as a political process.

with the post-war narrative that pitted multilateralism against individual sovereign interests, and that envisaged international law to thrive the more international power and authority could be organized along functional lines.¹⁶ The writings of institutional law scholars such as Henry Schermers and Ignaz Seidl-Hohenveldern in the 1960s-1980s bear witness to this optimism.

Finally, perhaps the most compelling image associated with ‘structure’ is that of creating *order*. ‘Structure’ is a key element in the epic and indeed (as an aspect of *logos*) biblical opposition between chaos and order. Arguably for international lawyers ‘chaos’ in the world causes still greater anxiety than ‘fragmentation’ of the law (as opposed to ‘integrality’, or in classic international law terms, ‘universality’). Accordingly, the ‘transformative power of institutionalization’¹⁷ for many has been a real phenomenon and at different times also the last hope. The Hague Academy lectures in 1939 on ‘collective international instruments’ opened with the statement that “[l]a communauté internationale est menacée aujourd’hui d’une désintégration complète.”¹⁸ The year of writing aside, the lectures reflect the enduring picture of international organizations as keepers of the international rule of law, always against the background of a powerful image of order over chaos.

In sum, my point is that *structure* be taken as a self-standing trope, concept, value and experience relating to international organizations, and thus as an independent driver of the lawyer’s love for organizations. Structure gives beauty, clarity, self-betterment, protection from the chaos in peoples’ minds and from the unravelling of -for whom it exists- the outside world.

This brief piece has touched upon four images associated with international organizations’ structure, which bring out the *allure* of the concept. It will be noticed that these images hinge on attributes - transparency, neutrality, fairness, a-politicalness, the promise of bringing order to chaos – which today are not in earnest ascribed to international organizations. It is widely acknowledged that the optimism about ‘institutionalization’ of international law in the 1970s and 1980s – and in the 1990s, tied to the vision of a new world made up of liberal-democratic states– has faded rapidly in the 2000s.¹⁹

16 “For [Lauterpacht and his generation], sovereignty had become the problem.” (Martti Koskenniemi, ‘The Fate of Public International Law: Between Technique and Politics’ (2007) 70 *Modern Law Review* 1, 3).

17 David Kennedy, ‘The Move to Institutions,’ (1987) 8 *Cardozo Law Review* 841, 984.

18 C Wilfred Jenks, ‘Les Instruments Internationaux à Caractère Collectif,’ in *Recueil Des Cours de l’Academie de Droit International* (Vol.69, 1939), 451.

19 One of the first papers (written just before “9/11”) to note and articulate this trend is Jan Klabbers, ‘The Changing Image of International Organizations,’ in Jean Marc Coicaud and Veijo Heiskanen (eds), *The Legitimacy of International Organizations* (UN University, Tokyo, 2001).

Thus, not unlike some of the ‘drivers’ described in Jean d’Aspremont’s article, the different aspects of ‘structure’ that rouse our love for organizations to some extent appear as naive and idealistic projections. But while indeed ‘the progress narrative that characterized the turn to IOs’²⁰ has been debunked, it does seem to work as a source of inspiration at the experiential plane, as has been set out above. If we then want to go by the insight that international organizations do not have an objective existence and are constituted only by our gaze, this better be the gaze of a *loving* observer.

20 Jose Alvarez, ‘International Organizations: Then and Now’ (2006) 100 *The American Journal of International Law* 324, 346.