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Samantha Besson and Jean d'Aspremont (eds.),
The Oxford Handbook on the Sources of International Law
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The editors and contributors to this book have put together an unrivalled collection on one of the most debated topic within the discipline of international law: sources. It is a rich and fascinating collection about the sources of international law, with attention being paid to the histories, theories, functions and regimes of the sources of international law. It is a handbook that seeks to “offer an authoritative guide to navigating the doctrines and debates about the sources of international law”.¹ It is a handbook that is divided into four parts and various subsections, and this dissection gives the handbook the feeling of a compilation of several regular books compiled into a single compendium. Yet, one of the novel approaches in this handbook is that each topic is addressed by two different authors that adds richness, diversity and occasionally raw academic disagreement(s). This approach, the editors label as “dialogical” and self-standing contribution,² as each contributor was tasked to “spell out their understanding of the sources as well as the functions they vest upon them”³ and to flesh out any cause of disagreements.⁴

Although the contributors are some of the most well-known publicists of international law in European academic institutions, there are also publicists from other jurisdictions such as Canada, the United States, Latin America, Israel, New Zealand, India and a South African of European descent. This geographical diversity of the contributors allowed for contentious debates such as third world approaches to

¹ Samantha Besson and Jean d'Aspremont (eds.), *The Oxford Handbook on the Sources of International Law* (OUP, 2017), p. 15.

² *Ibid.*, p. v.

³ *Ibid.*, p. 8.

⁴ *Ibid.*, p. 16.

international law (TWAIL) and the need for cautionary approach to aspects of the sources of international law. Beyond that, some critics may find that the narratives in the handbook are purely constructions of what I characterise as *enlightened European cosmopolitanism* as the axis of a Euro-centric international law.

Of course, it is difficult to include all the possible narratives of framing or responding to the sources of international law. For example, other narratives could well be: what is the place of Scandinavian (legal) realism, modern African movements in the international legal system or treaties of *Kievan Rus* in early medieval time as part of the sources of international law. But, perhaps those might be unfair questions in the light of the volume, its review and interpretive approach to sources of international law. After all, the preface to the handbook states that it questions the previous order and presentation of the sources of international law, and focuses on four novel perspectives: the histories, theories, functions, and regimes of sources,⁵ and, as the editors, rightly acknowledge, sources of international law remains a divisive subject, but “nowadays deeply entrenched”⁶ in how international law is practiced or theorised.

The focus of my discussion is not to review the entire book; rather, I want to focus on the discussions raised by the contributors under the general heading “the regimes of the sources of international law”. A full review of the entire handbook is not possible due to space, and even my narrow focus on “regimes of sources” is still subjective. However, it is worth to read the introductory chapter by the editors, as they set out the arguments of the respective contributors with clarity and how they fit into the volume. The regimes of sources was chosen for its relative ease to read, and its avoidance of sometimes overlapping but fascinating arguments in the previous parts of the handbook. Moreover, the other parts will no doubt be familiar to seasoned readers

⁵ *Ibid*, p. v.

⁶ *Ibid*, p. 14.

as some sort of “replicas” of other handbooks in the series.⁷ Finally, as a reviewer, I asked myself a simple question: what do the regimes of the sources of international law convey in contemporary times? My own question was motivated by the various research questions each contributor posed at the top of their chapters.

The regimes of sources of international law discussion in the handbook⁸ questions how sources are allocated in the different regimes of international law. Given that regimes of international law⁹ are almost as infinite as how questions on international law sources are, it was not surprising that the handbook only focused on a few regimes. The traditional regimes such as human rights, international humanitarian and criminal law, international environmental law, international organisations law, international law trade, international investment law and international law’s interaction with domestic law were the focus of discussions.

Yet, resorting to only a few regimes to illustrate their sources paints a picture of how the traditional sources of international law, that is, through states or customs, have shifted to what are essentially “epistemic forces” sources. With the exception of the section that deals with the special nature of the comparative context of international law in the domestic context (chapters 51–52) and also the international organisations law chapters (45–46), the other regimes are mostly contemporary innovations. Arguably, the emergence of these contemporary regimes in the international legal system were mostly as a result of non-state actors (I am constructing this as a broad reference to multiple actors apart from states in international legal relations) where

⁷ E.g., Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the International of International Law* (OUP, Oxford, 2012); Anne Orford and Florian Hoffman (eds.), *The Oxford Handbook of the Theory of International Law* (OUP, Oxford, 2016).

⁸ Besson and d’Aspremont (eds.), *supra* note 1, chapters 39 – 52.

⁹ E.g., Margaret Young (ed.), *Regime Interaction in International Law: Facing Fragmentation* (OUP, Oxford, 2012); Heejin Kim, *Regime Accommodation in International Law: Human Rights in International Economic Law and Policy* (Brill, Leiden, 2016).

expertise and other international advocacy networks set the foundation for states to construct “international law” through different international treaties and conventions.

Great efforts were made by the contributors in part four to convey that the regimes of sources are either linked to treaty law and or general principles of international law (classical sources). Now, there is nothing wrong there, as indeed in the case of treaty law that is certainly the case concerning most of the regimes covered. But my contention is – what about the underlying process that gave rise to those regimes – the powerful and often *dark* advocates in the background prior to the emergence of those regimes in the international legal system. A partial attempt was made in chapter 42 by Steven Ratner on war crimes and limits of the doctrine of sources where he argues that international humanitarian law “challenges our understanding of sources as it offers a strong case, more than any other area of law, to count the practice of and *opinio* of non-State actors”.¹⁰ But that was it.

There are a few reasons, in my view, why an emphasis on different aspects of non-state actors such as the different level of expertise and their publishing activities for example are important in telling the story on the sources of international law. The first is that non-state actors (again broadly construed to include experts and publicists of international law) have been quite active in the development of international law that is treaty based (or acknowledgment in international cases), and moreover they have been a staple of the modern international law movement since the post-World War 2 era and decolonisation. In other words, modern international law, in a sense has been taken over by *networks, experts, publicists and elites*, and an account of their role and normative weight is not often factored in when discussing the sources of international law. Suffice to say, there have been recent scholarship in this direction, most notably by one of the handbook editors, Jean d’Aspremont.

¹⁰ Besson and d’Aspremont (eds.), *supra* note 1, p. 925, see generally, pp. 925 – 928.

A second reason why the observation is important is that for an important part of the handbook the lack of a full narrative of non-state actors (experts, networks, publicists, etc.) in the regimes of sources discussion only demonstrates that there is a *legitimacy* problem with international law and it is best to stick to only the classical sources. In any event, the regimes of sources discussion in general would have benefited from a structured thematic approach that (a) flows with the *madness in the method* style the handbook adapts. Further, (b) a thematic approach on non-state actors (broadly construed to include networks, experts or publicists) throughout the various treaty law regimes discussed in the part would have added a level of novelty to questioning regimes and their sources in international law outside of the classical domain.

Those were issues I would have loved to see the contributors in the regimes of sources address given that the entire handbook takes a *heterodoxical* approach in conjunction with “a dialogical methodology in recognition of the fact that law develops through a process of genuine dialectical engagement”.¹¹ At least, in telling the background non-state (actors) powers behind those treaties would have addressed this critique.

But this does not mean that the narratives in the section of the handbook under review are by any means weakened by these criticisms. On the contrary, the regimes of sources discussion delivers a consistent and verbose insight on the sources of international law and represents the strength of the handbook. Those discussions contains scholarly interpretations that are relevant to how future generations will examine the role of non-state actors in the sources of international law. Thus, the regimes of sources discussion is, in the end, one of the few heterodox approach adopted in a handbook that gives contrasting and refreshing arguments on the sources of international law. On a personal level, I must highlight the fact that Joost Pauwelyn’s contribution “Sources of International Trade Law: Mantras and

¹¹ *Ibid.*, pp. 16 – 17.

Controversies at the World Trade Organization” evokes provocation and an intellectual odyssey.

Although the regimes of sources discussions in the handbook falls back on the classical sources narrative of international law and lent a structured approach with reasoning in order to rescue any waywardness of the other parts of the handbook, it is one of most interesting part of the handbook. As such, *The Oxford Handbook on the Sources of International Law* is unorthodox; it is impressive, filled with further research questions and comes across as an outstanding reference work.

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