

ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

# Beyond the machinery metaphors: Towards a theory of international organizations as machines

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## Abstract

This article builds upon the common metaphor of international organizations as the ‘machinery’ of international law to present a theoretical exploration of these institutions. This metaphor has remained unexamined, a reflection of the paradoxical status of international organizations as objects lacking theoretical attention. By tapping into the metaphor’s full theoretical potential and expanding it into a theory of international organizations as machines, this article introduces a new conceptualization of their role and operation. This is accomplished by applying a particular machine concept from social theory, as developed in the work of Felix Guattari and his collaboration with Gilles Deleuze. The proposed machinic perspective enables the casting of the relation between international organizations and states in a new light, building on the classical concerns with these entities’ attributed powers and granted international legal personality. It presents an image of these institutions as agents focused on the production of connections and links with external ideas and forces, in order to produce unforeseen powers and capacities.

**Keywords:** Felix Guattari; functionalism; international institutions; international organizations law; machine theory

## 1. International law’s ‘black box problem’

The field of international organizations law resides on a scholarly paradox, whereby its core object of study is not explicitly and variably theorized.<sup>1</sup> Decades, *centuries* have passed. It is more than 200 years after the establishment of the first interstate assemblages, such as the Central Commission for the Navigation of the Rhine, 150 years after the first ‘specific function’ organizations, such as the International Telegraph Union, 100 years after the modern ‘move to institutions’ in the post-First World War international legal order, and 30 years after the fundamental reorientation of multilateralism brought about from the collapse of the Soviet Union.<sup>2</sup> By now, international law is faced with its own long-standing ‘black box problem’<sup>3</sup> when

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<sup>1</sup>J. Klabbers, ‘The Paradox of International Institutional Law’, (2008) 5 *International Organizations Law Review* 151.

<sup>2</sup>D. Kennedy, ‘The Move to Institutions’, (1986) 8 *Cardozo Law Review* 841; J. G. Ruggie, ‘Multilateralism: The Anatomy of an Institution’, (1992) 46 *International Organization* 561.

<sup>3</sup>The ‘black box problem’ is currently debated in the context of AI and refers to the opaque nature of the operation and calculation of AI networks, to the point of rendering it difficult or hidden from human comprehension, leading, in similar

it comes to these entities, which is, putting it rather starkly, that ‘our understanding of the law of international organizations does not run very deep’.<sup>4</sup>

It has been suggested that a primary reason for this lack of understanding is the field’s dominant paradigm of functionalism, a theory that has not been seriously challenged and updated in the last century.<sup>5</sup> Functionalism conceives the international organization as a functional instrument, set up by sovereign states to ‘perform specific tasks for the greater good of mankind (sic) and, as such, in need of legal protection’.<sup>6</sup> It is thought to be ‘endowed with several organs and a will of its own, which performs technical tasks (said to be a-political) delegated by its member states, in pursuit of the global common good, and usually at the behest or on behalf of the collective membership’.<sup>7</sup> In this reading therefore, functionalism emerges as a principal-agent theory, where international organizations are understood based on their relation to the original and primary subject of international law, the sovereign state,<sup>8</sup> as well as a normative theory of how such institutions should behave – as technical and apolitical instruments – under the watchful gaze of their member states.<sup>9</sup> The distance between the reality and complexity of contemporary international institutions<sup>10</sup> – in both form and substance – and the field’s own imagination of them means that such descriptions present more of an ideal-type rather than an empirical definition of their operation.<sup>11</sup>

The centrality and dominance of this functionalist schema has been contested.<sup>12</sup> The contestation is based on the absence of any coherent and avowed functionalist theoretical treatise and on the questioning of the reconstructed intellectual history of the emergence of this theory.<sup>13</sup> However, neither the absence of clear functionalist theory nor the need to reconstruct such a theory from scraps of international law scholarship is surprising given the classical tendencies and practices of this scholarly field. David Kennedy characterized international institutions law as a ‘discipline of deeds’, *not words*, ‘that considers problems of situated and pragmatic management rather than normative authority and application’.<sup>14</sup> Jorg Kammerhofer articulates this pragmatic sentiment in polemic terms: ‘anti-intellectualism is rampant in international legal scholarship, as are attendant delusions of nonetheless being able to say something on these theoretical matters’.<sup>15</sup> Therefore, it is plausible to argue that international organizations law is yet another ‘field where theorization by lawyers has been kept to a minimum’,<sup>16</sup> fitting with the broader legal discipline’s ‘unease with theory’; or rather unease with engaging with explicit, self-aware, and comprehensive theorization.<sup>17</sup> The absence of a theoretical account does not indicate an absence of a coherent,

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fashion to IGOs, to issues surrounding trust and accountability surrounding such entities. See W. J. von Eschenbach, ‘Transparency and the Black Box Problem: Why We Do Not Trust AI’, (2021) 34 *Philosophy & Technology* 1607.

<sup>4</sup>J. Klabbbers, ‘The EJIL Foreword: The Transformation of International Organizations Law’, (2015) 26 *European Journal of International Law* 9, at 9.

<sup>5</sup>J. Klabbbers, ‘Theorizing International Organizations’, in A. Orford and F. Hoffmann (eds.), *The Oxford Handbook of The Theory of International Law* (2016), 618, at 624; J. Klabbbers and G. F. Sinclair, ‘On Theorizing International Organizations Law’, (2020) 31 *European Journal of International Law* 489.

<sup>6</sup>See Klabbbers, *supra* note 4, at 11.

<sup>7</sup>J. Klabbbers, ‘Notes on the Ideology of International Organizations Law: The International Organization for Migration, State-Making, and the Market for Migration’, (2019) 32 *Leiden Journal of International Law* 383, at 383.

<sup>8</sup>See Klabbbers, *supra* note 5, at 620.

<sup>9</sup>See Klabbbers, *supra* note 4, at 20.

<sup>10</sup>I will be using the terms organizations and institutions interchangeably throughout this article.

<sup>11</sup>See Klabbbers, *supra* note 7, at 383.

<sup>12</sup>G. F. Sinclair, ‘The Original Sin (and Salvation) of Functionalism’, (2016) 26 *European Journal of International Law* 965.

<sup>13</sup>*Ibid.*

<sup>14</sup>See Kennedy, *supra* note 2, at 843.

<sup>15</sup>J. Kammerhofer, ‘International Legal Positivism’, in F. Hoffmann and A. Orford (eds.), *Oxford Handbook of the Theory of International Law* (2016), 407, at 414.

<sup>16</sup>See Klabbbers and Sinclair, *supra* note 5.

<sup>17</sup>R. Cryer et al. (eds.), *Research Methodologies in EU and International Law* (2011); E. Fisher et al., ‘Maturity and Methodology: Starting a Debate about Environmental Law Scholarship’, (2009) 21 *Journal of Environmental Law* 213.

comprehensive or dominant theory, but simply a determined unwillingness to offer such an explicit account. This is especially the case when such an account would have to venture into vexing questions of epistemology and its entanglements with ‘continental’ thought.<sup>18</sup>

There is, however, no dearth of theoretical and historical accounts in the field. In addition to the works cited so far in this article, there are examples of intricate mappings of international authority and expertise regimes.<sup>19</sup> Within the critical history of international law, a concerted focus on uncovering international institutions’ underlying rationalities of colonialism, imperialism, and neoliberalism has been established.<sup>20</sup> Even objects *themselves* of international law have received theoretical attention,<sup>21</sup> and the legal anthropology of international organizations has flourished.<sup>22</sup> What unifies such accounts is their provenance from broadly construed critical, historical and interdisciplinary approaches to international law. What the existence and increasing proliferation of these accounts tells us – when contrasted to the generalized theoretical paucity and silence from the rest of the field – is that there is a gap between what can be termed mainstream-doctrinal and interdisciplinary-critical approaches to international law. A brief look at a few shorthand indicators, such as appointments to the International Law Commission, the invitations of the Hague Academy of International Law, or the contents of major international law textbooks will confirm this in phenomenon. Whether this gap is decreasing or increasing as the world lumbers from crisis to crisis is beyond the scope of the present article. The relevant point here is that, a Hilary Charlesworth appointment or a Phillippe Sands intervention aside, the pipeline between elite academia and the international judiciary, the path of how to become a ‘highly qualified’ jurist for the purposes of Article 38, remains largely unaltered, and it involves leaving on the periphery certain types of thinking about international institutions.<sup>23</sup>

When this theoretical and historical scholarship is momentarily set aside therefore, we are then still left with the diffuse and surreptitious dominance of functionalism. In fact, it can be argued that this dominance has been so overwhelming and unacknowledged, that the field does not view it as a theory, but as the common-sense way to view and describe these institutions; a fact, or rather a ‘factish’.<sup>24</sup> The common metaphor of international organizations as the ‘machinery’ of international law reflects and reinforces this understanding. A veritable technical discourse of tools, instruments, vehicles, vessels, levels, and platforms permeates the field. The metaphor tells us that an international organization is like a machine, a complex tool efficiently designed to perform function(s) set by its maker, the collective of member states. Any autonomy that this machine may possess is limited by and in pursuit of these function(s) assigned by its member states, its ultimate designers and operators. Functionalism and the common machinery metaphor

<sup>18</sup>J. d’Aspremont, ‘Affects, Emotions, and the Cartesian Epistemology of International Law’, (2023) 14 *Journal of International Dispute Settlement* 281.

<sup>19</sup>D. Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (2016); F. Johns, *Non-Legality in International Law: Unruly Law* (2013); A. Orford, *International Authority and the Responsibility to Protect* (2011); I. Roele, ‘Style Management: Images of Global Counter-Terrorism at the United Nations’, (2022) 33 *Law and Critique* 273.

<sup>20</sup>A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); S. Pahuja, *Decolonising International Law: Development Economic Growth and the Politics of Universality* (2011); Q. Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (2018); L. Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (2015); R. Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (2019); G. F. Sinclair, ‘A “Civilizing Task”: The International Labour Organization, Social Reform, and the Genealogy of Development’, (2018) 20 *Journal of the History of International Law/Revue d’histoire du droit international* 145.

<sup>21</sup>J. Hohmann and D. Joyce (eds.), *International Law’s Objects* (2018).

<sup>22</sup>R. Niezen and M. Sapijnoli (eds.), *Palaces of Hope: The Anthropology of Global Organizations* (2017); M. Halme-Tuomisaari, ‘Toward Rejuvenated Inspiration with the Unbearable Lightness of Anthropology’, (2021) 115 *AJIL Unbound* 283.

<sup>23</sup>A. Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (2016), at 5–19.

<sup>24</sup>The term here is used to indicate the seeming total acceptance of an element or theory, and subsequent strategic use, as per S. Pahuja, ‘Laws of Encounter: A Jurisdictional Account of International Law’, (2013) 1 *London Review of International Law* 63, at 74. This, in turn, is a reference to B. Latour, *On the Modern Cult of the Factish Gods* (2010), at 1–34, on the merging of ‘fact’ and ‘fetish’ in modernist theory and practice.

thus are mutually re-enforcing, promoting an apolitical, technical, and legal understanding of international institutions. By now, if classical international organizations law is to be followed, we no longer think that organizations are *like* instruments or machines, we think that they *are* so.<sup>25</sup> They have become the black box of international law; a technology (of government) that we continue to use, without fully understanding its operation.

The point of departure for the following work is that there is significant theoretical potential in the common metaphor of organizations as machinery, on the condition that it is untethered from functionalism and adapted with elements that do not implicitly or explicitly serve the project of this limiting paradigm. This article performs this untethering and locates such elements in the work of Felix Guattari and his collaborations with Gilles Deleuze that yield an overall theory of machines.<sup>26</sup> Engaging with the machinery metaphor from a constructed machinic perspective, this article develops a theory of international institutions as machines. The aim, therefore, is to make a theoretical contribution to our understanding of these institutions and to reducing the black box problem of international organizations law. The advantage of this approach is that it uses a simple metaphor that is safely ensconced within the doctrinal paradigm of international organizations law to develop a theory of the latter, thus engaging with the divergent – or at the very least parallel – doctrinal and interdisciplinary paths that structure the field. While it purposefully starts from and is thus initially ‘wedded to a functionalist imaginary’,<sup>27</sup> it overcomes its limitations by shifting focus from the restricted design of stable institutional forms to the open discovery of temporal international machine; by going beyond the machinery metaphor.

The following section establishes some basic parameters of this machinic perspective, with a focus on sorting through and building on the different meanings and interpretations of the relevant terminology. The third section offers an initial analysis of what can be termed the machinic operation of international organizations, based on two types of machines from the relevant literature: theatre and nomad. In the fourth section, the contributions of this machinic conception are discussed in the context of classical doctrines of international legal personality, organizational powers, and immunities. Since the long dominance of functionalism underpins these well-established doctrines, its substitution has several critical implications. The concluding section outlines a sketch of the first steps towards a theory of international machines presented in this article and situates this theoretical endeavour firmly within the conception of international organizations law as a practical ‘discipline of deeds’, despite machine theory’s entanglement with the discipline of words that is continental thought.

## 2. From the machinery metaphor to international machines: A machinic framework

Machinery is defined in the *Oxford English Dictionary* (OED) as ‘Machines, or the constituent parts of a machine, regarded collectively’, as well as ‘the workings, organization, or functional equipment of a system, institution, subject; the means or procedures available for action in a particular field or serving a particular purpose’.<sup>28</sup> The dictionary further defines a machine, in technical terms, as an ‘an apparatus constructed to perform a task or for some other purpose’ and ‘a complex device, consisting of a number of interrelated parts, each having a definite function, together applying, using, or generating mechanical or (later) electrical power to perform a certain

<sup>25</sup>This claim proceeds by analogy with R. Lewontin, *The Doctrine of DNA: Biology as Ideology* (2001), at 14, and his critique of the dominance of the Cartesian and mechanistic world view in the modern world.

<sup>26</sup>F. Guattari, ‘Machine and Structure’, in F. Guattari (ed.), *Psychoanalysis and Transversality: Texts and Interviews 1995–1971* (2015), 318; G. Raunig, *A Thousand Machines* (2010); J. Conway, ‘Deleuze, Guattari, and the Concept of Social Assemblage’, in G. Delanty and S. P. Turner (eds.), *Routledge International Handbook of Contemporary Social and Political Theory* (2021), 232; G. Deleuze and F. Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (2004); G. Deleuze and F. Guattari, *What is Philosophy?* (1994); G. Deleuze and F. Guattari, *Anti-Oedipus* (2004).

<sup>27</sup>I would like to thank one of the anonymous reviewers for this phrase and observation.

<sup>28</sup>Dictionary, *machinery*, n., available at [www.oed.com/view/Entry/111856](http://www.oed.com/view/Entry/111856).

kind of work'.<sup>29</sup> These senses are largely in accord with the common machinery metaphor employed in the field of international organizations law. In the same entry however, there are remnants of pre-modern, different, or less technical meanings of the machine, such as: 'material or immaterial structure . . . a scheme or a plot . . . contrivance in either theatre or literature . . . a conceptual, abstract, or theoretical mechanism or device'. Machine, or rather the Ancient Greek term *mekhanê*, was used to denote ruse, deception, or artifice in the *Iliad*.<sup>30</sup> Conversely, the 'mechanical arts', the knowledge of machines was related to the 'construction of artificial entities, of traps fabricated against nature in order to capture its energy'.<sup>31</sup> The complexity of the term soon becomes apparent, as machines 'have a semantic legacy to do with ruse and deception'.<sup>32</sup>

Taking this cue from the OED, the article posits that there is more to the discourse of institutional machinery than just the safe metaphor of technical apparatuses. By tapping into this pre-modern, and perhaps disused, semantic legacy and the meanings of machine as machination, scheme, ruse, deception, plot, or contrivance, one can discover the concept's duality as immaterial and conceptual as well as material and technical, device. Some historical examples can illustrate the potential of this duality. The Trojan horse can be considered both a technical war machine, as in physical device, with the aim of breaching Troy's walls, as well as a cunning plot or ploy, a 'machination', seeking to achieve the same objective through deception and a ruse.<sup>33</sup> Secondly, the god from the machine (*deus ex machina*) was both a physical stage contraption allowing an actor to impressively appear as flying into the stage from above, as well as a device for resolving the tangled plots of the play. As a first step therefore, we can posit a duality; a machine can be both technical and conceptual – concrete and abstract – enabling the merged deployment of both an 'apparatus technique' and a 'narrative technique',<sup>34</sup> representing a duality of materiality and immateriality.

A second element of these machines, as observed in both examples of the Trojan horse and the *deus ex machina*, is that they require and are aimed at an 'audience', which is the target of their concrete and abstract operation. That is to say, the operation of these machines is not only dual, but also ambiguous, in the sense of a 'psychosocial meaning of trick, artifice, or deception'<sup>35</sup> towards an audience or a public that is the intended target.<sup>36</sup> This conceptualization may appear contrarian, but it simply outlines a notion of the institution constituting a scheme designed for certain audiences. It covers audiences of many hues, including, but not restricted to, member states.

Duality of operation and ambiguity towards audiences are thus foundational aspects of the machinic perspective and offer an initial response to the normative and principal-agent structural aspects of functionalism. The interminable debates regarding binding status and soft law demonstrate an emphasis on the normative status of international institutions' conduct, positioning, and output; the latter 'an ever-present subject of international legal enquiry'.<sup>37</sup> This emphasis on how the organization should behave – arguably that is to say an emphasis on the organization's authority – further indicates a preoccupation – arguably an *anxiety* – with its relation to the state. Under a strong principal-agent conceptualization, the 'state-as-principal', the member state, is the only audience that matters. The effect(s) of a function attributed to the

<sup>29</sup>Dictionary, *machine*, n., available at [www.oed.com/view/Entry/111850](http://www.oed.com/view/Entry/111850).

<sup>30</sup>B. Cassin et al. (eds.), *Dictionary of Untranslatables: A Philosophical Lexicon* (2014), 526.

<sup>31</sup>*Ibid.*

<sup>32</sup>*Ibid.*

<sup>33</sup>See Raunig, *supra* note 26, at 68–9.

<sup>34</sup>*Ibid.*, at 38.

<sup>35</sup>*Ibid.*, at 37.

<sup>36</sup>This also follows parallel insights from law and governance literature, where this audience or public becomes a set of 'interested constituencies'. See K. E. Davis et al., 'Global Governance by Indicators', in K. E. Davis et al. (eds.), *Governance by Indicators: Global Power through Quantification and Rankings* (2012), 3, at 11.

<sup>37</sup>N. Mansouri, 'International Organizations and World Making Practices: Some Notes on Method', (2022) 19 *International Organizations Law Review* 528, at 528.

organization is not accorded as much attention as the form and legality of the attribution itself. This connects institutional machinery with a broader legal positivism,<sup>38</sup> whereby the international institution exists on the basis of a particular self-identification of its operation and outputs as legal by reference to narrow immanent and internal criteria,<sup>39</sup> such as the particular wording of this mandate as reflected in constituent instruments and related agreements. Such emphases represent a form of legal protection and ultimately control that machines struggle against.<sup>40</sup>

By building on different notions of machine, we are able to introduce duality and ambiguity to the previously purely technical understanding of machinery that the common metaphor serves. Yes, international organizations are like machines; keep using the metaphor. The term does not mean what its habitual users think it means. Because a dual and ambiguous international machine of its own plots and schemes is a different creature from an international institution as a technical and functional instrument of the states' plots and schemes. The proposed machinic perspective begins to make inroads into the black box of international organizations law by building on the privileging of the relation between the institution and its member states as a source of understanding, practiced by international organizations law, and towards incorporating the institution's relation to the broader world, including the public(s) affected by its actions.<sup>41</sup> To fully pursue this move that expands upon the machinery metaphor, we need an engagement with the parameters of what can be called machinic thinking as it is adapted and applied to develop this notion of international institutions as international machines.

### **2.1 From structure to machine: Beyond the closed international system**

Functionalism emerges as a 'principal-agent theory, with the collective principal (the member states) assigning one or more specific tasks – functions – to their agent'.<sup>42</sup> This theory thus aims to represent a 'closed universe'<sup>43</sup> where the hierarchical relation between the two discreet subjects is wholly 'structured and embedded' by law.<sup>44</sup> The position of organizations within the international legal order, as indeed the structure itself of the legal order, is fixed by sovereign states, as illustrated by adjectives such as interstate or intergovernmental. The subjects and their relation are co-determined in this closed universe conception.

The machinic perspective opposes the principal-agent conception of structure underpinning the relation between states and organizations and by extension the totality and state-induced coherence of the international legal order as a legal system. This is because the particular concept of machine employed here is to be distinguished from a particular concept of structure.<sup>45</sup> If such 'structure' works to determine and fix relations, to uncover the eternal and the universal, such as the transcendental collective good of the international community, then its merit in terms of international legal enquiries is obvious; 'the machine becomes the universal metaphor for a utilitarian and functional order'.<sup>46</sup> A well-functioning institutional machinery serves the universal project of international progress and this common good, as guaranteed by the state-principals.

<sup>38</sup>On the various possible distinctions between international legal positivism, formalism and functionalism see Kammerhofer, *supra* note 15; J. Kammerhofer and J. d'Aspremont (eds.), *International Legal Positivism in a Post-Modern World* (2014).

<sup>39</sup>A. Pottage, 'The Materiality of What?', (2012) 39 *Journal of Law and Society* 167, at 173. This point is further explored in Section 2.1, *infra*.

<sup>40</sup>This point is further explored in Section 2.2, *infra*.

<sup>41</sup>See Klabbers, *supra* note 4, at 24; Klabbers, *supra* note 5, at 619.

<sup>42</sup>See Klabbers, *supra* note 4, at 11.

<sup>43</sup>*Ibid.*

<sup>44</sup>*Ibid.*

<sup>45</sup>See Guattari, *supra* note 26, at 318.

<sup>46</sup>See Raunig, *supra* note 26, at 20.

In place of this structured universe of subjects determined by their position within, general machinic thought proposes an open universe of machines,<sup>47</sup> which are not stable, uniform subjects, but (machinic) composites;<sup>48</sup> arrangements of ideas, concepts, spaces, people, acts, statements, hierarchies, and practices that continually (re)produce their subjectivity as actors of international law. This mechanical ‘art’ is a form of thought opposed to ‘organic conceptions of unity’.<sup>49</sup> The subject is never fully formed and complete, a uniform actor. International organizations, then, also constitute machines as in collectives, groups, factions, formations, or assemblages. Their shifting and changing – that is to say machinic- composition, fuelled by connection with new elements and components has the potential to produce the new.<sup>50</sup>

Such machines are therefore more than complex instruments or advanced tools, more than just technical machinery, but can develop duality and ambiguity in their operation. They may constitute events or breaks; temporal, often ephemeral, momentary outcomes of a process of assembling, arranging, ‘concatenating’,<sup>51</sup> and composing. The ‘churn’ of the machine operates by bringing in new components that serve to disrupt and disorganize, challenge existing structures. A new connection is made, a new power or competence assumed; fixed institutional positions and structures, technical spheres of competence and jurisdictions redesigned and repoliticized immanently, until the states (re)intervene. Aspects of such – momentary – disruptions have been observed in relation, for example, to the International Telecommunications Union (ITU)<sup>52</sup> or the United Nations Conference for Trade and Development (UNCTAD)<sup>53</sup> and their efforts to compose alternatives to market-oriented and neoliberal realities; albeit not described in the machinic terms outlined in this article. The map of this machinic composition does not yield overarching or underlying coherence and unity, ‘only particular moments of unification’.<sup>54</sup> Conceiving of an organization as a machine therefore denotes a change in discourse. It introduces an approach that emphasizes the ‘lines of flight’: how ideas, processes and practices ‘flow’, that is, connect, move, and assemble, as opposed to what they are and their fixed form.<sup>55</sup> Under this framework, communication and connection, a non-market ‘paradigm of exchange’ replaces the paradigm of function.<sup>56</sup>

## 2.2 From form to movement: The search for machinic quality

Under the principal-agent understanding of a structured relation between states and international organizations within a closed international system, there are two main avenues by which the former seek to control the latter. First, there is the ‘genius of functionalism’,<sup>57</sup> which depicts these institutions as apolitical and neutral ‘machinery’ because the political decisions regarding the functions and the collective ‘good’ to be pursued via the institution take place ‘elsewhere’, namely in the extra-legal sphere of (high) politics that is regarded under the exclusive control of the

<sup>47</sup>Indeed, broader machinic thought starts from the provocation that ‘everywhere it is machines’ and ‘everything is a machine’. See Deleuze and Guattari, *supra* note 26, at 1–2. For more on the genealogy of the machine concept see Raunig, *supra* note 26, at 18–27; Cassin, *supra* note 30, at 524–7.

<sup>48</sup>See Deleuze and Guattari, *supra* note 26, at 361–6.

<sup>49</sup>See Conway, *supra* note 26, at 233.

<sup>50</sup>G. Genosko, *Félix Guattari: A Critical Introduction* (2009), 5–8.

<sup>51</sup>See Raunig, *supra* note 26.

<sup>52</sup>N. Mansouri, ‘Money, Magic, and Machines: International Telecommunication Union and Liberalisation of Telecommunications Networks and Services (1970s–1990s)’, (2023) 11 *London Review of International Law* 231.

<sup>53</sup>M. Fakhri, *Sugar and the Making of International Trade Law* (2014), 163–70; Q. Deforge and B. Lemoine, ‘The Global South Debt Revolution that Wasn’t: UNCTAD from Technocratic Activism to Technical Assistance’, in P. Penet and J. F. Jendejas (eds.), *Sovereign Debt Diplomacies: Rethinking Sovereign Debt from Colonial Empires to Hegemony* (2021), 232.

<sup>54</sup>See Conway, *supra* note 26.

<sup>55</sup>T. Lorraine, ‘Lines of Flight’, in A. Parr (ed.), *The Deleuze Dictionary* (2005), 144.

<sup>56</sup>See Raunig, *supra* note 26, at 30–2.

<sup>57</sup>See Klabbers, *supra* note 4, at 18.

sovereign states. ‘The member states create the organization’s mandate and tell it, roughly, what to do and how to do it.’<sup>58</sup> Political conceptions of the collective good or the functions can never be created within or by the institution, which is a tool for achieving goals and decisions made elsewhere. Secondly, control is further reinforced by the fact that the collective principal (i.e., the member states of the organization) exists both outside (in the political sphere) and inside the organization, specifically via its representatives within the primary decision-making body of the organization. In other words, ‘the principal is supposed to control and direct the agent, but it is also part of the institutional structure of the agent’.<sup>59</sup> The function and output of the machinery is thus defined and constrained.

These control methods generally accord with the mostly Kelsian preoccupation with separating the legal form and legal norms from the non-legal as the basis of any international law enquiry and professional practice.<sup>60</sup> The functions assigned to these international institutions by their member states generally determine the capacities and limits. Given that such functions are legally enshrined and ascertained – e.g., via the treaty or other founding document – this creates a *prima facie* legal obligation for the institution to act in particular ways (or refrain from acting).<sup>61</sup> Their assigned form, in the shape of an appropriate modicum of international legal personality and separation from its member states, creates their function, position and role within the international legal order. That is to say, in this context, legal form embeds these organizations into the international legal order as neutral machinery for action.

The seeming certainty and clarity of legal structure and form obscures the underlying classical fear of Frankenstein’s monster; of the design exceeding its specifications, of technology turning on its ‘creator’.<sup>62</sup> Even tightly controlled, international organizations can represent a challenge to sovereign states. The deception, trick or artifice, the ambiguity, relates to circumventing this imposed structure and form, and thus escaping control. An infamous example of this deception is the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES)’s surprise replacement of the very concept of ecosystem services with the far more contextual and political concept of ‘nature’s contributions to people’.<sup>63</sup> The only reason that the furious reaction to this idea and its politicization of natural science<sup>64</sup> did not extend to international lawyers is because IPBES itself, as a ‘transnational scientific institution’<sup>65</sup>, does not qualify doctrinally as an international organization and thus the normative status of its outputs is of no real concern. Nevertheless, this is a good illustration of the type of ‘danger’, posed by international institutions, relating to the infiltration of political elements into the pure technicality of the machinery of international law. It also relates to formalist disciplinary and ‘epistemological anxieties’<sup>66</sup> about the

<sup>58</sup>*Ibid.*, at 17.

<sup>59</sup>*Ibid.*, at 25.

<sup>60</sup>See Kammerhofer, *supra* note 15, at 408–11; M. Koskeniemi, ‘International Law as “Global Governance”’, in J. Desautels-Stein and C. Tomlins (eds.), *Searching for Contemporary Legal Thought* (2017), 199.

<sup>61</sup>Although the doctrine of implied powers has muddled this, but less so in recent decades compared to its mid-twentieth century expansion. An example of ‘retraction’ of these powers is Case C-376/98, *Tobacco Directive* EU:C:2000:544.

<sup>62</sup>J. Gaunce, ‘The Animated Organization: International Organizations, International Law, Frankenstein, and Freud’, *Critical Legal Thinking*, 13 September 2021, available at [criticallegalthinking.com/2021/09/13/the-animated-organization-international-organizations-international-law-frankenstein-and-freud/](http://criticallegalthinking.com/2021/09/13/the-animated-organization-international-organizations-international-law-frankenstein-and-freud/).

<sup>63</sup>S. Díaz et al., ‘Assessing Nature’s Contributions to People’, (2018) 359 *Science* 270; U. Pascual et al., ‘Valuing Nature’s Contributions to People: the IPBES Approach’, (2017) 26–27 *Current Opinion in Environmental Sustainability* 7.

<sup>64</sup>L. C. Braat, ‘Five Reasons Why the Science Publication “Assessing Nature’s Contributions to People” (Díaz et al. 2018) Would Not Have Been Accepted in Ecosystem Services’, (2018) 30 *Ecosystem Services* A1; J. O. Kenter, ‘IPBES: Don’t Throw Out the Baby Whilst Keeping the Bathwater; Put People’s Values Central, Not Nature’s Contributions’, (2018) 33 *Ecosystem Services* 40.

<sup>65</sup>O. Perez, ‘The Hybrid Legal-Scientific Dynamic of Transnational Scientific Institutions’, (2015) 26 *European Journal of International Law* 391.

<sup>66</sup>See Mansouri, *supra* note 37, at 530.



acquisition of competences and authority by these institutions beyond their formal mandate and institutional life.

This danger and anxiety is the focus of what can be called a ‘machinic’ enquiry. Instead of form, it is a search that focuses on movement, which it understands as a process of formation, connection, composition, and concatenation. In the place of a structured organization positioned with an international order, the machine is a moving assemblage that offers glimpses of temporary coherence, a result of an always temporary arrangement, ontologically and epistemologically opposed to a fixed form with a permanent definition.<sup>67</sup> Under the terms of this machinic enquiry, even referring to a stable international institution with a specific name and acronym may be regarded as misleading and an obstacle to understanding. An international machine is always in the process of forming itself, with its functions coming from connections made between its internal and external components. There are tendencies, groupings, factions to uncover through historical, socio-legal and other interdisciplinary methods. Rules, principles, norms, and practices are imported, adapted, and exported, in a kind of movement that consists of connecting with other machines to form linkages and syntheses.

All institutions have the potential to be this type of machines; that is to say, to harness this machinic potential. Not all of them harness this potential; nor do the ones that do so always towards ends that could be considered beneficial towards the collective good of an international community or even widely agreed or consented to by their varied audiences. Institutional, *machinic*, will is understood as a drive to keep churning, moving, and flowing, assembling the requisite connections to perform functions that are created by the act of connection in the first place. This movement should not be fetishized as inherently good or damned as inherently bad. In Section 3, this movement is explored further through an analysis of nomad organizations that exhibit such machinic quality. This machinic will or quality is what can drive the international machine away from the externally imposed form, function, and position in the international order. The temptation and tendency to implicitly or inherently assume that this escape will inevitably lead to a ‘better’ (however defined) outcome should be resisted. There is no implicit valorization of machinic potential over, e.g., formalism or functionalism, for its own sake; such a valorization would simply replicate the established valorizations of international institutions as somehow rising above and being elevated above the messy politics of sovereign states. In a sense, a machinic enquiry constitutes a search for a machinic quality in these institutions, but this will can be destructive or beneficial (and this may differ for various audiences) and everything in between.

Such an approach to international organizations law, therefore, enables a concerted examination of these institutions in their own right, and not based on their relation to their member states. It is an approach that does not begin with what the organization has been handed by or is lacking in relation to the sovereign state, but with how the former can challenge the latter. The international organization can be more than a mere technical instrument or machinery, it can also be a composition of ideas and practices, characterized by unpredictable movement. The very category of an international institution loses cohesion and coherence under this perspective. Duality and ambiguity, fear and danger, are inherent in the concept of the international machine, ever threatening to spin out of control. The first step, undertaken in this article, is to identify and document this will, to understand the operation of these international machines. Additional steps will be needed, undertaken in subsequent work, focusing on the direction and design of such machines.

In response to the ‘black box’ problem of international organizations law, the common machinery metaphor has now been stretched and infused with theoretical elements to create the parameters of a new and alternative approach to these institutions, which is applied to legal doctrine in Section 4. Under this theoretical framework, a machinic enquiry represents a search for a particular machinic quality in international organizations that are no longer purely technical

<sup>67</sup>See Guattari, *supra* note 26.

instruments, but a moving composition of elements. In the following section, this machinic quality is captured and explained in further detail.

### 3. The machinic operation of international organizations

This section explores what can be termed the international organizations' machinic operation as compositional movements through the international legal order. Departing from the restricted understanding of these institutions as institutional machinery, a broader analysis of the challenge they pose is presented. This analysis is anchored by two operating logics of the theatre machine and nomadism. This lays the groundwork for the discussion of the specific effects of this machinic interpretation on established doctrines of international organizations law, which is undertaken in Section 4 further below.

#### 3.1 'International theatre': The organization as an invention

In similar fashion to the contrast between the irresolvable, tangled plots of a theatre play and the capacity of the technical '*deus ex machina*' to resolve them, international organizations law relies on an implicit contrast between states as irredeemably powerful, but flawed, actors tangled up in great games of interests and politics, but that concurrently somehow 'establish creatures that are inherently good, whose mere existence contributes to the salvation of mankind [sic]'.<sup>68</sup> Under this conception, organizations are technical inventions by states for the pursuit of specific aims, in an instrumental manner. These aims are not created internally and immanently but are delivered to these inventions by their member states through the political process. Under this classical conception, these aims can be located in the treaty or other founding document and can be adapted – through another high-level meeting of the member states. This depoliticized invention of the international organization, under this functionalist schema, thus paradoxically involves the pursuit of political ends – that are turned into transcendental goals of the international community – via the suspension of politics. There is, therefore, self-serving deception in the sense of these technical inventions appearing somehow above politics: 'the only politics in pure functionalism involved is the promise of global peace'.<sup>69</sup>

Organizations are thus a kind of *deus ex machina* within a type of international theatre that promises global peace and welfare that will arrive despite the fatal, national, entanglements of the principal actors, their member states. No matter how 'bad' sovereignty gets,<sup>70</sup> multilateralism will provide the resolution. It is this promise of a better world that makes international organizations inherently worthy of legal protection and functionalism itself 'attractive'<sup>71</sup> to both scholars and practitioners.

If we delve further into viewing these institutions in such a way, as theatre machines, then we can fully explore in their duality and ambiguity as inventions, and their associated deceptions. They become both technical, material, institutional machines invented to achieve functions, as well as immaterial deceptions and stories that the international (as in interstate) community of states 'tells' itself. We can have clarity that these institutions constitute not just machinery, but also a machination of sorts. They are both achievements, as well as tricks of international law – the latter aspect remains unacknowledged and is picked up by this machinic enquiry. This particular theatre machine aspect, therefore, constituting a 'neighbouring zone between the double artifice of technical art and artistic creation',<sup>72</sup> clearly illustrates the duality of these institutions as both

<sup>68</sup>See Klabbers, *supra* note 4, at 28.

<sup>69</sup>*Ibid.*

<sup>70</sup>L. Henkin, *International Law: Politics and Values* (1995), at 8.

<sup>71</sup>See Klabbers, *supra* note 4, at 28.

<sup>72</sup>See Raunig, *supra* note 26, at 37.

material and immaterial. They are certainly invented devices, made to perform specific tasks and allocated functions, but they also ‘assist’ discursively and conceptually in the overall narration of the story regarding the politics and inherent progressive movement of international law.<sup>73</sup>

Once this is acknowledged, the question then becomes how to develop this particular aspect of the machinery metaphor, of organizations as theatrical devices beyond the existing state-centric structure and framing. There is a long genealogy of critique against the theatre machine, starting from Aristotle’s *Poetics*.<sup>74</sup> This has resulted in the long-standing conception of this device as a simplistic crutch for a mediocre author that is essential for resolving a poorly constructed play or story, in the absence of other more organic options that are internal and immanent to the plot. Such pejorative connotations easily translate to the context of international law. The first thing that comes to mind when a term such as ‘international theatre’ is put forward is certainly not a positive connotation, but something closer to the futile phenomenon of ‘security theatre’.<sup>75</sup> For example, if one were to push further and claim that international organizations simply constitute ‘international theatre’,<sup>76</sup> i.e., technical devices serving to obscure the operation of state sovereign power. By taking that route, we emerge closer to realist interpretations of international organizations as masking the true operation of power in international affairs.<sup>77</sup> Any inherent valorization, protection, and immunity under international law is now to be treated with suspicion. Their ambiguity is in service to national(ist) projects of sovereign states, whereby the factish of purely instrumental machinery also acts as an additional form of control of their position, an ‘overcoding by the state apparatus’.<sup>78</sup> After all, unlike ancient theatre, the workings of machinery and technical apparatuses are now often hidden in both modern and ‘international’ theatre and serve ‘a rapid change of scenery or the perfect illusion’.<sup>79</sup>

For the machinic perspective however, the metaphor of the theatre machine leads to a different path. This is accomplished by developing further the duality and ambiguity of the theatre machine and of the international organization as an invention. The traditional critique of *deus ex machina* ‘overlooks the purposefully and carefully constructed cross-point and climax of technical spectacle and invention of intrigues’.<sup>80</sup> Equally, the invention of the international organization should not be simply equated with a mask produced by states to provide their games of power with a patina of progress. This is because neither the politics nor the invented ‘story’ of the organization’s specific function are determined necessarily and solely by its member states as the functionalist schema likes to posit and maintain.

This is because the theatre machine introduces the third element of the audience,<sup>81</sup> in relation to which it operates. If the organization is the ‘good’ instrument contrasted to the ‘bad’ sovereign states, this is because it offers salvation, welfare, and progress to this third element, the public, the social body of the international community not of states, but of people. After all, all these collective goods are understood to refer to nebulous ideas of a community of people or nations, beyond that of sovereign states. That is how the contrast between bad states and good organizations operates. In the context of international organizations law, this refers to the external relations of the institution with the world. Therefore, the overall theatre aspect of the machinery metaphor serves

<sup>73</sup>T. Skouteris, *The Notion of Progress in International Law Discourse* (2011); M. Koskenniemi, ‘The Fate of Public International Law: Between Technique and Politics’, (2007) 70 *Modern Law Review* 1.

<sup>74</sup>For a snapshot see Raunig, *supra* note 26, at 40–1.

<sup>75</sup>T. P. Paige, ‘Zombies as an Allegory for Terrorism: Understanding the Social Impact of Post-9/11 Security Theatre and the Existential Threat of Terrorism through the Work of Mira Grant’, (2021) 33 *Law & Literature* 119.

<sup>76</sup>This is narrower conception of international organizations as theatrical devices. For a wider interpretation of rule of law as theatre see S. Humphreys, *Theatre of the Law: Transnational Legal Intervention in Theory and Practice* (2010).

<sup>77</sup>See Bianchi, *supra* note 23, at 110–13.

<sup>78</sup>See Raunig, *supra* note 26, at 52.

<sup>79</sup>*Ibid.*, at 40.

<sup>80</sup>*Ibid.*

<sup>81</sup>As discussed in Section 2, *supra*.

to introduce this crucial third party to a previously binary, wholly determinative, relation between organization and states, which is that of the audience or public targeted and affected by the decisions and acts of the organization.

This path can be rendered even more detailed through the machinic perspective. If the organization itself is a machinic composite that consists of many other machines, it is not just a technical machine for achieving specific functions. The drive and machinic quality of the institution produces multiplicity. If one unpacks a machine, they will find even more smaller machines.<sup>82</sup> The internal workings of the organization can be construed as a series of machines contributing to a series of ‘international theatre’ events. Now, in place of the singular agent of the principal-agent functionalist theory, there is a multiplicity of actors: staff lawyers, secretariats, bureaus, political participants (e.g., state delegates, and their lawyers/advisers), observers (e.g., representatives of other international organizations, NGO observers (of different kinds: scientists, industry, associations, indigenous, and other communities etc.)). These actors participate and ‘perform’ in a series of events (i.e., the meetings, the conferences, the declarations, the statements, the negotiations). Technical machines are constructed for these performances in the shape of procedures, processes, spaces, and places. Actors and machines work together for the delivery of the ‘plot’, which is the production of decisions, rules, norms, and concepts. When the organization however brings in new partners and observers, and makes new connections beyond its original function, it enhances its machinic potential. The theatre ‘play’ develops in unforeseen ways, thus enhancing the creative possibility for difference and alternative visions to emerge.

An international organization as an invention and an international (theatre) machine is, therefore, not a single, uniform agent. Its operation consists of machines connecting and facilitating the flow, disposition, and concatenation of the organization, bringing the components of discourse/narrative, technical apparatuses and legal forms, and the social body together to create and produce. Conceiving international organizations as international machines requires a shift in perspective from defining international organizations based on their relation to their member states to a wider understanding of the organization in the context of the world. Understanding the operation of the theatre machine assists with this shift, which has implications for the classical international law doctrines of international organizations under international law. These implications are discussed further in Section 4 below.

### **3.2 The ‘nomad organization’: Disruption of the intergovernmental order**

The notion of international organizations as technical machinery under the control of their member states, the principal subjects of international law, also serves an image of the international system, whereby states are essentially extra-legal subjects existing outside the international legal order and incapable of being bound to act without their will. This type of hierarchical positivism, which can also be called ‘sovereignism’,<sup>83</sup> strictly means that the organization cannot act without their explicit consent, as reflected for example in the founding treaty. This control also manifests in practice with states being the primary members of the organization’s own decision-making body. Thirdly, this control also manifests more indirectly and broadly in the structure of the international legal order, which is underpinned by the broad institutional pillars of the Bretton Woods arrangements and the partition and division of tasks between the ‘Geneva’ (economy) and ‘New York’ (security) visions of the world.<sup>84</sup> In addition to assigned functions, these large partitions create the ‘lanes’ within which international organizations are conceptually and legally obliged to stay. Even though developments in international human rights law and international

<sup>82</sup>See Deleuze and Guattari, *supra* note 26, at 155–6.

<sup>83</sup>See Kammerhofer, *supra* note 15, at 411.

<sup>84</sup>D. Bethelam, ‘The End of Geography: The Changing Nature of the International System and the Challenge to International Law’, (2014) 25 *European Journal of International Law* 9.

environmental law challenge these forms of control, they still serve to mitigate against the fear of Frankenstein's monster.

From a machinic perspective, the international machinery that conforms to this triple functionalist, formalist and positivist image is to be considered 'dead'. As long as it remains isolated and does not create new connections,<sup>85</sup> this is considered problematic, due to its lack of machinic quality and will. Legal scholarship of international organizations, getting lost in the trees of an isolated instance of a single organization, is replete with such manifestations of 'dead' machinery. The opposite of this status is what can be called 'nomadism'.<sup>86</sup> For an international machine to operate in a machinic manner, developing links and concatenating, it would have to constitute a moving, unfolding composition that produced unforeseen effects for the states that sought to control and deploy it as an instrument. The deception produces surprise. In short, it would have to behave like a nomad, moving both in and out of the 'lanes' of the international legal order, its very existence a project of disruption.

A nomad organization possesses two elements or driving rationalities: exteriority and mobility. First, the machine resists the narrow mandate and function imposed by its member states by seeking to connect to 'external', i.e., from other legal lanes, extra-legal, or political elements (environment, development, equality, justice, etc.) and thus constructing itself outside the confines of that imposed mandate and construction as technical machinery. The machinic composition allows for the escape of the institution from the place within the international legal order assigned to it by its member states. An organization achieves its potential when it resists the form and mandate imposed on it, and creates their own, operating in a machinic fashion. The aim that a nomad organization strives for is to escape the position that has been imposed upon it.

The concatenation of external elements propels the movement of the international machine and underlines the second rationality of mobility or 'line of flight'.<sup>87</sup> This movement is not towards the transcendental and universal goals assigned to the institution by its member states, but away from them towards functions created within the institution itself. Nomads create their own routes and patterns of travel, allowing for flexibility of movement in relation to external situations. For such a nomad organization, the threat is the rigid, hierarchical, and fixed form, the 'apparatus of state capture',<sup>88</sup> that will turn the machine back into purely technical machinery.

This 'nomadist' conception of the international organization accepts the role of Frankenstein's monster, of rogue technology, of out-of-control machinery as it relates to the potential and capacities of these organizations. It conceptualizes the danger and threat that machinic organizations pose to the states. These institutions compete and struggle by becoming different to its assignment and external to the order that begot it. Their power resides in a rationality that prioritizes becoming over being, and difference over direct opposition. The nomad seeks to avoid capture by the international order conceived as an interstate order, which plans to appropriate or suppress it as a technical instrument of state will, seizing it for its own ends, 'encasting' it and negating its nomad potential.<sup>89</sup> The more exterior elements are brought into the composition, the more its mobility is extended, enabling the escape from the apparatus of capture. The nomad organization is thus as a creative force, motivated by a desire not to be structured, as in sedentary, classified, compartmentalized, rigid, and fixed. The nomad evades imposition via composition that supports acts, such as norms, concepts, policies that disrupt dominant systems of thought and practices, as well as the varied and inherent *a priori* of the interstate system.

<sup>85</sup>See Raunig, *supra* note 26, at 107.

<sup>86</sup>The following analysis further adapts concepts and terminology from Deleuze and Guattari, *supra* note 26, at 387–467.

<sup>87</sup>R. Deuchars, 'Creating Lines of Flight and Activating Resistance: Deleuze and Guattari's War Machine', in J. L. Shaw and M. Hemmingsen (eds.), *Human Beings and Freedom: An Interdisciplinary Perspective* (2011); Raunig, *supra* note 26, at 57.

<sup>88</sup>See Deleuze and Guattari, *supra* note 26, at 393–7.

The following is further influenced by P. Clastres, *Archaeology of Violence* (2010); P. Clastres, *Society Against the State: Essays in Political Anthropology* (2013).

<sup>89</sup>See Deleuze and Guattari, *ibid.*, at 469.

Conceptualizing the international organization as a nomad entails looking for the instances of nomad practices – however fleeting – where the organization becomes external and mobile, assembling and creating new *modus operandi*, unforeseen by its member states or constituent documents. After the organization is opened as a collective invention through the theatre machine concept, the enquiry further entails seeking to pinpoint an organization's true Trojan horse-like disruptive potential, as opposed to the safe disruption of common universals.

This task is to be undertaken with careful consideration and precision. Loose forms of co-operation and transnational networks, such as the Contact Group on Piracy off the Somali Coast or the Busan Partnership for Effective Development Cooperation, should not be automatically identified as such machines, simply due to their seeming flexibility. An international machine should not be simply equated with a loose form or *ad hoc* partnership, when such flexibility is a political legal design decision from the part of the controlling and/or founding states that indicates a lack of appetite for the legal forms of full multilateralism.<sup>90</sup> Such an equation would revert to comprehending the organization through its legal form, which has been shown to ultimately be the lens of its member states, their will, interests, and desires. Even a 'light global structure'<sup>91</sup> only becomes a nomad organization in practice when it controls its operation in the machinic, nomad manner outlined in this section. Examples of such nomad flights can be environmental organizations extending their concerns to questions of justice<sup>92</sup> or the economy,<sup>93</sup> economic institutions extending their governance reach through the publication of indicators, indexes, and other rankings.<sup>94</sup>

This interpretation of international organization as international machines, which comes with a prospectus regarding their operation as multitudinous and disruptive agents, has implications for the established doctrines of international organizations law. The following section explores some of these core doctrines when they are no longer approached from the sole perspective of the relation between the institution and its member states.

#### 4. Theoretical and methodological contributions of the machinic perspective

The International Law Commission (ILC), which has produced an authoritative, although by no means uncontested,<sup>95</sup> statement on international organizations law, focusing on the issue of responsibility.<sup>96</sup> In these Draft Articles on the Responsibility of International Organizations (ARIO), the ILC indirectly defined an international organization as an 'organization established by treaty or other instrument governed by international law and possessing its own legal

<sup>90</sup>M. Kaltenborn, 'The Legal Significance of Global Development Partnerships: European Development Cooperation and Its Contribution to the International Law of Development', (2010) 2 *Goettingen Journal of International Law* 843; D. Guilfoyle, 'Prosecuting Pirates: The Contact Group on Piracy off the Coast of Somalia, Governance and International Law', (2013) 4 *Global Policy* 73.

<sup>91</sup>B. Killen, 'Busan Partnership for Effective Development Cooperation: What is it? How will it work? What are the ways to engage?', 2012, available at [www.uhc2030.org/fileadmin/uploads/ihp/Documents/IHP\\_\\_news/Busan.EffDevCoop.OECD.Jul2012.pdf](http://www.uhc2030.org/fileadmin/uploads/ihp/Documents/IHP__news/Busan.EffDevCoop.OECD.Jul2012.pdf); S. Kindornay and Y. Samy, 'Establishing a Legitimate Development Cooperation Architecture in the Post-Busan Era', in H. Besada and S. Kindornay (eds.), *Multilateral Development Cooperation in a Changing Global Order* (2013), 271.

<sup>92</sup>C. G. Gonzalez, 'Environmental Justice and International Environmental Law', in S. Alam et al. (eds.), *Routledge Handbook of International Environmental Law* (2012); S. Alam et al. (eds.), *International Environmental Law and the Global South* (2015).

<sup>93</sup>A. Kotsakis, *The Use of Biodiversity in International Law: A Genealogy of Genetic Gold* (2021).

<sup>94</sup>See Davis, Kingsbury and Merry, *supra* note 36.

<sup>95</sup>J. d'Aspremont, 'The Articles on the Responsibility of International Organizations: Magnifying the Fissures in the Law of International Responsibility', (2012) 9 *International Organizations Law Review* 15; K. Daugirdas, 'Reputation and the Responsibility of International Organizations', (2015) 25 *European Journal of International Law* 991; M. Möldner, 'Responsibility of International Organizations – Introducing the ILC's DARIO', (2012) 16 *Max Planck Yearbook of United Nations Law* 281; J. Klabbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act', (2018) 28 *European Journal of International Law* 1133.

<sup>96</sup>ILC, Draft Articles on the Responsibility of International Organizations, UN Doc. A/66/10 (2011), § 87.

personality',<sup>97</sup> and added that its members are expected to be predominantly states.<sup>98</sup> Although this was not intended to be a universal definition of such organizations,<sup>99</sup> this definition strongly reflects the textbook narrative of these institutions viewed through the functionalist lens.

In addition to the emphasis on institutional taxonomy that establishes specific boundaries between the legal and the non-legal, a second major focus of this narrative is the legal status of the outputs of these institutions. This is an area where 'delegated and implied powers are treated as some type of objective truths to be scientifically deduced from IOs' mandates in the laboratory of international legal enquiry',<sup>100</sup> and where the danger and anxiety over the organization somehow exceeding its legal mandate manifests more overtly. Evidence of – and a flashpoint for – this anxiety can be found in the ILC's draft conclusions on identification of customary international law, adopted in 2018.<sup>101</sup> Characterized as a 'disciplinary battleground',<sup>102</sup> the final report, in Conclusion 12, explicitly constrains the normative or legal aspect of international institutions as it relates to custom, stating that: '[a] resolution adopted by an international organization or at an intergovernmental conference cannot, of itself, create a rule of customary international law'. While this statement is restricted to the aim of these draft conclusions, which is to identify what constitutes custom and how the latter is formed, it also reinforces the notion and impression that an international institution's outputs can be potentially dangerous and have to be restrained.

The lines of this narrative are therefore by now familiar. The work of the ILC can serve as a baseline for and what can be termed as traditional, mainstream, or doctrinal international organizations law. Broadly, an organization is an entity created by states to meet specific functions, based on a founding international agreement. To achieve these functions, this entity is endowed with specific powers and is allowed to develop its own distinct will via an organ that possess an amount of autonomous decision making (e.g., via majority vote) from its member states. The latter is what 'justifies the conferral of separate legal personality'.<sup>103</sup> Venturing beyond this neat, compartmentalized operating 'envelope' crosses the boundary from the legal to the non-legal and thus is effaced from legal enquiry. Nomads and other machinic organizations operate beyond that very envelope.

What is also quite evident by now is that not all international organizations possess all these characteristics or operate in this manner, and that fact has not precluded their recognition or operation, despite what the textbook narrative – and its attendant detailed classifications of such entities – may indicate. For example, the International Court of Justice (ICJ) recently allowed the International Union for the Conservation of Nature (IUCN) to participate in its proceedings, even though its membership is not solely restricted to sovereign states.<sup>104</sup> In the environmental field, organizations without an explicitly distinct legal personality and essentially consist of a series of a treaty organs (conference of the parties, secretariats, etc.). These somewhat lacking 'autonomous institutional arrangements'<sup>105</sup> have been called 'soft'<sup>106</sup> international organizations in the

<sup>97</sup>*Ibid.*, Art. 2(a).

<sup>98</sup>*Ibid.*

<sup>99</sup>According to the Special Rapporteur for the project and subsequent ICJ Judge Gaja, '[n]o attempt has been made in the articles on international organizations to give a general definition of international organizations'. G. Gaja, 'Articles on the Responsibility of International Organizations', *United Nations Audiovisual Library of International Law*, 2014, available at [legal.un.org/avl/pdf/ha/ario/ario\\_e.pdf](http://legal.un.org/avl/pdf/ha/ario/ario_e.pdf), at 2.

<sup>100</sup>See Mansouri, *supra* note 37, at 533.

<sup>101</sup>ILC, Draft Conclusions on Identification of Customary International Law, UN Doc. A/73/10 (2018), § 65.

<sup>102</sup>See Mansouri, *supra* note 37, at 532.

<sup>103</sup>D. Akande, 'International Organizations', in M. D. Evans (ed.), (2018) *International Law* 227, at 229.

<sup>104</sup>D. B. Garrido Alves, 'The Concept of International Organization in the Practice of the International Court of Justice', *EJIL:Talk!*, 27 July 2023, available at [www.ejiltalk.org/the-concept-of-international-organization-in-the-practice-of-the-international-court-of-justice/](http://www.ejiltalk.org/the-concept-of-international-organization-in-the-practice-of-the-international-court-of-justice/).

<sup>105</sup>R. Churchill and G. Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law', (2000) 94 *American Journal of International Law* 623.

<sup>106</sup>J. Klabbers, 'Institutional Ambivalence by Design: Soft Organizations in International Law', (2001) 70 *Nordic Journal of International Law* 403.

literature, and more often recently the international relations and political science terminology of ‘regime’ has been employed.<sup>107</sup> The salient point is that purity in the doctrine of international organizations as solely intergovernmental organizations meeting all the formal criteria and the technical machinery of the common machinery metaphor, excludes certain institutions and projects, thus only providing a partial view of the international legal order.

The search for international machines and nomads, driven by the will to compose and assemble, invent and disrupt, presents a different view of the international legal order. In the following sections, this different set of machinic characteristics and operations is set against three main aspects of this standard narrative of international organizations law: (i) the doctrine of international legal personality and the question of what constitutes a subject of international law, (ii) their overall autonomy, capacities, and powers, and (iii) the rules regarding the responsibility of these institutions under international law. Viewing these established aspects through the prism of the machinic framework provides an understanding that is descriptively closer to their multitudinous operation on the ground. This account also provides guidance for future directions of travel when it comes to the design of these machines.

#### **4.1 Breaking the unity of the international legal person**

The question of international legal personality relates to the separation of an organization from its member states and thus the creation and legal basis for its autonomy of action. The classical legal source of this debate is of course the ICJ’s advisory opinion in *Reparations for Injuries*.<sup>108</sup> Following patterns from the debate surrounding statehood recognition,<sup>109</sup> doctrinal discourse centres on whether the explicit will of the founder member states to specifically create the organization as a separate legal person is the sole determinant of personality, or whether the organization acquires this by default the moment of its creation and establishment.<sup>110</sup> This debate is complicated by the fact that provisions explicitly recognizing such legal status on organizations’ founding documents are few and far in between, whereas the number of international organizations operating as international legal persons in some shape or form is rather large; another notable gap between doctrine and reality. The emphasis on subjects and persons, and their positioning as ‘unalterable constraints’, has been called a ‘conservative belief’ and ‘an intellectual prison of our own choosing’ by Rosalyn Higgins.<sup>111</sup>

From the machinic perspective, the core question of international legal personality lies in the definition of the personality itself, prior to its acquisition by entities such as states or organizations. Any international legal person is considered a subject of certain rights and duties under international law; that is to say that person is emulating or mimicking some aspects of the sovereign state under international law, the original and primary subject; another common metaphor of a legal ‘person’, a stable and coherent form that ‘acts’ and assumes responsibility. There is, ultimately, one type of international legal personality, the fullest extent of which belongs to the state. To claim that an international institution is an international legal person means that it is, in some pre-determined aspects, like a state.

<sup>107</sup>For example, R. O. Keohane and D. G. Victor, ‘The Regime Complex for Climate Change’, (2011) 9 *Perspectives on Politics* 7; K. Raustiala and D. G. Victor, ‘The Regime Complex for Plant Genetic Resources’, (2004) 58 *International Organization* 277.

<sup>108</sup>*Reparations for Injuries Suffered in the Service of United Nations*, Advisory Opinion of 11 April 1949, [1949] ICJ Rep. 174.

<sup>109</sup>R. Portmann, *Legal Personality in International Law* (2010).

<sup>110</sup>J. D. Fry, ‘Rights, Functions, and International Legal Personality of International Organizations’, (2018) 36 *Boston University International Law Journal* 221; T. Gazzini, ‘Personality of International Organizations’, in J. Klabbers and A. Wallendahl (eds.), *Research Handbook on the Law of International Organizations* (2011), 33; F. Seyfersted, *Common Law of International Organizations* (2008).

<sup>111</sup>R. Higgins, *Problems and Process: International Law and How We Use It* (1995), at 49–50.



It certainly needs to be like a state, in the sense of possessing a stable and recognized legal form. The machinic framework, however, regards this form with suspicion and instead explores what lies beyond this metaphor and legal fiction of the unitary international legal person. What if the institution is to be viewed not as a single person but many, a set of groups, factions and collectives incorporating heterogeneous components that pull the international machine in different directions? We can then see the international machine 'as a productive connectivity that forms assemblages of component parts, each running at the same time, but *without forming a whole*'.<sup>112</sup>

Such an approach further changes the way the eventual acquisition of international legal personality is understood. Under the classical perspective, the organization needs to equally be seen as a single entity with an autonomous will, distinct from its member states in order to become an international legal person. Its parts, and organs (especially the primary decision-making body) have to make sense operationally and constitute, also thus be subsumed, within a well-defined single entity. The international organization is expected to have a fixed, substantive structure, preferably created by its constituent instruments; to be another unified subject. The legal fiction of the organization has to echo the legal fiction of the sovereign state. This personhood or subjectivity is thus of a unified whole, a unitary representation, whether is explicitly created by the states, indirectly through recognition by third states, or inherently by the existence of the organization by itself. Irrespective of how this subjectivity is acquired, it is anchored by the necessity of institutional unity and coherence.

An international machine, however, is not anchored by the conception that ascribes to the international institution a single, fixed, 'proper' form and an associated fixed and pre-determined legal mandate. It is not one, but many. The entity acquires subjectivity by becoming a nomad, i.e., 'moving' outside of its imposed mandate, which in machinic thought is understood as connecting with new ideas, communities, and problems and composing new formations. In the process, machines become manifold and they create new and additional institutions. International machines are not fixed frames, but fluid assemblages that move and connect, engaging in instituent flight. Consequently, an organization is defined associatively<sup>113</sup> by its external connections and nomadic potential, not by its legal form or internal, fixed criteria. For example, the capacity to come together to establish the Intergovernmental Panel on Climate Change is a defining feature of both the World Meteorological Organization and the United Nations Environment Programme's understanding within machine theory.

The international organization as a machine does not acquire personality by simply existing or by being attributed or recognized by states, in the process confirming the implicit hierarchy of the international legal order and taming its politics by the use of legal form. The understanding of the institution is delinked from its form, as well as from its assigned functions, enabling an engagement with organizations in their increasing multiplicity as they operate. Such an approach invariably introduces a type of methodological requirement for interdisciplinarity in the study of these international machines, as it represents a departure from commitments to textualism and formalism. Legal texts and forms are no longer sufficient.<sup>114</sup> This invariably affects the ways the output of these machines is evaluated. Understanding and evaluating the decisions and overall output of an international organization requires inputs from other fields and disciplines. An introduction to this endeavour is presented in the following section.

<sup>112</sup>See Genosko, *supra* note 50, at 5 (emphasis added).

<sup>113</sup>For more on associative thought as a pluralist theory of external relations see G. Deleuze and C. Parnet, *Dialogues* (1977).

<sup>114</sup>D. McBarnet and C. Whelan, 'The Elusive Spirit of the Law: Formalism and The Struggle for Legal Control', (1991) 54 *Modern Law Review* 848.

## 4.2 The powers of a nomad organization

International law tells us that states seek to construct *just* the right machinery for the specified aim. They assign to the organization precisely the level of autonomy and precisely attribute the scope of powers required to achieve this aim, just the requisite amount of carefully delegated sovereignty for the organization to operate as an agent. When an organization exceeds these attributed powers, the act will be declared invalid. At the same time, this is an area where the classical trope of the doctrine of attributed powers has been adapted and extends to include the - contested as to its precise base and content- doctrine of implied powers.<sup>115</sup> These are powers not directly attributed, but ‘conferred upon it by necessary implication as being essential to the performance of its duties’.<sup>116</sup> This expanded doctrine explains the situation where the organization, as an international person and subject of duties, is deemed to assume new and additional powers and competences, not included in its founding documents, which are deemed necessary for the pursuit of the function assigned to it.<sup>117</sup>

The lineage of the wide standard proposed by the ICJ, coupled with the spectre purposive or teleological interpretation (which by default generally offends certain quarters of legal thought and practice) of the organization’s founding documents or even in the UN Charter itself,<sup>118</sup> which underpins the manifestation of implied powers, lies at the core of the fear of Frankenstein’s monster that also drives the machinery metaphor. Because implied powers means that the organization will achieve a level of personality and autonomy not foreseen and potentially against (certainly without) the will of its member states. The early expansion of EU’s and the World Bank’s powers encapsulates an example of this doctrine and related fear. The reaction can be found in diverse legal sources, from the work of the ILC referenced at the beginning of this section, to the confirmation of a principle of subsidiarity in treaty form,<sup>119</sup> to the express invocation of a strict doctrine of attributed powers in international judgements.<sup>120</sup>

In such a context of struggle between the state and the international organizations over delegation and agency, several ‘containment vessels’ for the perceived ‘dangerous’ technology of the international machine can be discerned. As mentioned before, member states usually maintain a presence within the organization via membership of its primary decision-making organ or conference of the parties. Secondly, the doctrines of invalidity and *ultra vires*, although ostensibly related to the question of immunities and responsibility of the organization, also serve as a lever of control of the organization’s activities. Thirdly, the possibility of escaping from control, i.e., from the stated mandate of an organization’s constituent documents, via purposive or teleological interpretation is mitigated by international legal positivism and attendant techniques of literal or textual legal interpretation.<sup>121</sup> Nevertheless, a wariness is always present underlying the relation between international organizations and states. When scholarship claimed that the EU was the *de facto* future of public international and international organizations law,<sup>122</sup> this may have not been accepted in all quarters of the international legal order.

<sup>115</sup>J. Wouters and P- De Man, ‘International Organizations as Law-Makers’, in Klabbers and Wallendahl, *supra* note 110, at 208; Klabbers, *supra* note 4, at 27–32.

<sup>116</sup>See *Reparations for Injuries Suffered in the Service of United Nations*, *supra* note 108, at 182.

<sup>117</sup>D. Akande, ‘The Competence of International Organizations and the Advisory Jurisdiction of the International Court of Justice’, (1998) 9 *European Journal of International Law* 437.

<sup>118</sup>*Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion of 20 July 1962, [1962] ICJ Rep. 151, at 168.

<sup>119</sup>1992 Treaty on European Union, Art. 5.

<sup>120</sup>*Legality of the Use of a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep. 66, at 75–6; Akande, *supra* note 117, at 443–52.

<sup>121</sup>See Kammerhofer, *supra* note 15.

<sup>122</sup>A.-M. Slaughter and W. Burke-White, ‘The Future of International Law Is Domestic (or, the European Way of Law)’, (2006) 47 *Harvard International Law Journal* 327.

From a machinic perspective, the expansion of capacity and competence via the assumption of implied powers by an organization is an aspect of the movement, of the 'line of flight' of international machines that operate as nomad organizations. Seeking to evade capture by the legal form and the member states, which in this case manifest most concretely in the doctrine of attributed powers, machines 'move' by bringing previously external elements, unforeseen by the signatories of their founding documents, to expand their spheres of competence and their very agency as international actors. Similar to its resistance to form, the output of an international machine is equally deceptive the audience of international lawyers. The process takes the organization further away from inhabiting the fixed, pre-given legal position to which a literal reading of the founding documents and the will of their member states attributed. This is because by settling for this given legal positioning, the organization becomes settled and predictable, and thus subject to state and legal control.

Instead, machinic and nomad, organizations can deceive and 'betray' the states' original vision, for example by combining the ecological concern with biodiversity loss with the economic concern with intellectual property on genetic resources and thus 'diluting' technical conservation questions with politics.<sup>123</sup> In this example, parts of the global biodiversity regime collaborated with parts of the Global South to bind together elements that were previously deemed distinct. This artifice, in the sense of acquisition of extra capacities, fermenting to the states' concern or possibly their ire and fury, is a quintessential characteristic of the nomad organization; quintessential for the machinic vision of an international machine to be realized. Through their composition and movement, nomad organizations continue to not only possess, but further develop their own distinct agency, and by extension capacity to interpret their own constituent documents, determine their own jurisdiction within their sphere of competence and assume new and unforeseen powers and capacities deemed essential to achieve their purposes and objectives. To refer back to legal terminology, for nomad organizations, the acquisition and expansion of implied powers are the norm, and the maintenance and performance of attributed powers are the exception.

The machinic perspective therefore enables the casting of the relation between international organizations and states in a new light, building on the classical concerns with these entities' attributed powers and granted international legal personality. It casts these institutions as potential agents of disruption focused on the production of connections and links with 'external' ideas and concepts, and other institutions to produce unforeseen capacities, jurisdictions, and activities.

### **4.3 Moving past the binary of the organization against the state**

It can be argued that international law maintains a valorization of international institutions as a kind of 'god machine' that facilitates the elevation of the international legal order above the messiness of national interests and its attendant politics and conflicts, even in the face of crises<sup>124</sup> and a generalized loss of belief in these institutions.<sup>125</sup> They constitute the machinery that promise to resolve the complexities of the pernicious concept of sovereignty that represents an obstacle to internationalism. Such inherent valorization manifests in the legal

<sup>123</sup>A. Kotsakis, 'Change and Subjectivity in International Environmental Law: The Micro-Politics of the Transformation of Biodiversity into Genetic Gold', (2014) 3 *Transnational Environmental Law* 127; C. R. McManis, 'Intellectual Property, Genetic Resources and Traditional Knowledge Protection: Thinking Globally, Acting Locally', (2003) 11 *Cardozo Journal of International and Comparative Law* 547; G. Dutfield, *Intellectual Property, Biogenetic Resources and Traditional Knowledge* (2004); M. D. Coughlin, 'Using the Merck-INBio Agreement to Clarify the Convention on Biological Diversity', (1993) 31 *Columbia Journal of Transnational Law* 337.

<sup>124</sup>H. Charlesworth, 'International Law: A Discipline of Crisis', (2002) 65 *Modern Law Review* 377.

<sup>125</sup>M. Mazower, *Governing the World: The History of an Idea* (2013).

protections afforded to these organizations via the doctrine of immunities,<sup>126</sup> as well as in the grant of political access (e.g., as an observer in other organizations) and/or legal access (e.g., as *amicus curiae* in the proceedings of international courts). Theoretical support to organizational immunities is rendered through the related doctrine of functional necessity,<sup>127</sup> meaning that ‘organizations enjoy such immunities as are necessary for their effective functioning: international organizations enjoy what is necessary for the exercise of their functions in fulfilment of their purposes’.<sup>128</sup>

Care should be exercised therefore regarding the possibility of a double valorization at play here, where a valorization of international organizations as disruptive agents seeking to subvert the interstate system is surreptitiously added to the implicit valorization of the same organizations as remedial agents seeking to support and improve the same system. Namely, far-reaching, open-textured acquisition of powers and spheres of competence (as espoused by machine theory), coupled with far-reaching, open-textured immunities for the institutions, its organs, and staff (as espoused by functionalism) is a heady mix to be approached with caution. These two notions cannot co-exist in such a simplistic manner, as there is considerable conceptual slippage that will allow this double valorization to sabotage already pressing questions surrounding the broader responsibility and accountability of international organizations.<sup>129</sup>

It is thus important to mitigate against the replication, within machine theory, of a binary between the ‘good’ organizations somehow created by the ‘bad’ states, as if these are inherent qualities that these entities somehow possess. This is not solely because such a simplistic vision would be following the rudimentary a-political politics of international law and its bias in favour of these institutions due to their inherent and permanent pursuit of the collective good of the fiction of the international community.<sup>130</sup> It is also because the convergence of neoliberal globalization and international law has demonstrated that facile attacks on state sovereignty and jumping on the pursuit(s) of breaking up and weakening the state form is not an inherently benign activity to be valorized without careful thought.<sup>131</sup> Its markets and corporations-oriented move away from a state-led international legal order has the effect of ‘undoing the domestic social contracts that underlay post-war political stability even while failing to secure peace and prosperity internationally’.<sup>132</sup> Thirdly, such valorization of international institutions on the basis of transcendental values appears outdated. Recent applications of international organizations’ immunity have challenged the standing of international institutions in relation to the world.<sup>133</sup> The World Bank Group’s exploration and development of its disruptive agent potential through its innovative governance by indicators, such as the ‘Doing Business’/

<sup>126</sup>C. Ryngaert, ‘The Immunity of International Organizations Before Domestic Courts: Recent Trends’, (2010) 7 *International Organizations Law Review* 121.

<sup>127</sup>P. Bekker, *The Legal Position of Intergovernmental Organizations: A Functional Necessity Analysis of Their Legal Status and Immunities* (1994).

<sup>128</sup>J. Klabbers, *An Introduction to International Organizations Law* (2022), 133.

<sup>129</sup>In relation, for example, to access to justice for individuals or communities suffering breaches and violations of their human rights as a result of decisions and acts of international organizations. A. Reinisch and U. A. Weber, ‘In the Shadow of Waite and Kennedy: The Jurisdictional Immunity of International Organizations, the Individual’s Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement’, (2004) 1 *International Organizations Law Review* 59; M. Singer, ‘Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns’, (1995) 36 *Virginia Journal of International Law* 53.

<sup>130</sup>See Klabbers, *supra* note 4, at 29.

<sup>131</sup>D. S. Grewal, ‘Three Theses on the Current Crisis of International Liberalism’, (2018) 25 *Indiana Journal of Global Legal Studies* 595.

<sup>132</sup>*Ibid.*, at 621.

<sup>133</sup>For example in relation to the Haiti cholera outbreak. See Klabbers, *supra* note 4, at 65–74.

'Business Ready' Index,<sup>134</sup> or investment brokerage<sup>135</sup> approaches has significant detractors from a variety of perspectives.<sup>136</sup>

After all, machines, both technical and conceptual, both material and immaterial, can also become instruments of subjection and enslavement. The ideal-type of the organization as an agent of its member states cannot be replaced with another ideal-type, of the organization as an out-of-control agent of disruption, lest we find ourselves in familiar and disturbing ground, where the application of a theory bears no resemblance to its original commitments.<sup>137</sup> As Deleuze and Guattari insist, a lively 'war machine' should be absolutely distinguished from the 'dead' military apparatus, which the former turns into when it is captured by the state. Furthermore, a machine's power should not be confused with state domination: '*The State has no war machine of its own; it can only appropriate one in the form of a military institution, one that will continue to cause it problems.*'<sup>138</sup>

This caveat places methodological emphasis on charting the self-construction of a nomad organization as a process of movement and composition and on assessing whether its construction has or will become fixed, rigidified and transformed into state, bureaucratic, economic, corporate, or security apparatuses. The point precisely with international machines is to escape the machinery metaphor; how to not become fixed in place, efficient and sedentary – a stable apparatus captured by the logic of its form and beholden to external interests. In sum, machine theory articulates a methodological requirement to investigate the international organization in a process-orientated way, with a view to identifying the possible avenues for developing new machinic connections. This represents a departure from examining and assessing these institutions and their outputs on the basis of the pursuit of transcendental values or references to universal international communities.<sup>139</sup>

## 5. Conclusions

The overall machine theory introduced in this article builds upon the common metaphor of international organizations as the machinery of international law to present a theoretical exploration of these institutions. This simple mechanical metaphor is habitually used as a shorthand, but it has remained largely unexamined, a reflection of the paradoxical status of international organizations as objects lacking theoretical attention. By tapping into the metaphor's full theoretical potential and expanding it into a theory of international organizations as machines, this article introduces a new conceptualization of their role and operation. This work builds on existing interdisciplinary scholarship on international organizations.

The second section initiates the problematization of the technical-legal perception of an organization as technical machinery existing beyond politics. Despite their prevalent roles and burgeoning forms, international organizations represent a black box problem for international law, with the field's theoretical paradigm of functionalism remaining both unchallenged and increasingly divorced from the complexity of the reality of the phenomenon that it aims to

<sup>134</sup>T. C. Halliday, 'Legal Yardsticks: International Financial Institutions as Diagnosticians and Designers of the Laws of Nations', in K. Davis et al. (eds.), *Governance by Indicators: Global Power through Quantification and Rankings* (2012), 180.

<sup>135</sup>The approach intensified under the leadership of President Jim Yong Kim. J. Y. Kim, 'Rethinking Development Finance', *The London School of Economics and Political Science*, 11 April 2017, available at [www.lse.ac.uk/assets/richmedia/channels/publicLecturesAndEvents/transcripts/20170411\\_1830\\_rethinkingDevelopmentFinance\\_tr.pdf](http://www.lse.ac.uk/assets/richmedia/channels/publicLecturesAndEvents/transcripts/20170411_1830_rethinkingDevelopmentFinance_tr.pdf); J. Y. Kim, 'Banker to the Poor: A Conversation with Jim Yong Kim', (2014) 93 *Foreign Affairs* 70.

<sup>136</sup>R. Uruña, 'Indicators as Political Spaces: Law, International Organizations, and the Quantitative Challenge in Global Governance', (2015) 12 *International Organizations Law Review* 1; G. McCormack, 'Why "Doing Business" with the World Bank May Be Bad for You', (2018) 19 *European Business Organization Law Review* 649.

<sup>137</sup>E. Weizman, *Lethal Theory* (2006), 53.

<sup>138</sup>See Deleuze and Guattari, *supra* note 26, at 390–2.

<sup>139</sup>G. Deleuze, 'What is a Dispositif?', in D. Lapoujade (ed.), *Two Regimes of Madness* (2007), 343, at 348–50.

understand. While interdisciplinary and critical scholarship has made inroads towards alternative directions, international organizations law as a subject of teaching and practice remains ultimately wedded to functionalism. Hence, the latter remains the object of critical analysis. This contemporary reality is not of technical instruments meeting the doctrinal criteria of what constitutes an international organization, but of a variety of entities operating autonomously and whose collaboration begets even newer forms of entities and functions, and can exceed the control of its makers, the sovereign states. A chaotic reality is increasingly coming to clash with doctrinal law's need for orderly theorizations of such a reality, leading to the production of classifications and definitions that exclude large parts of contemporary global governance (e.g., environmental, and transnational network arrangements) from the legal definition of international organizations. An urgent and insisted requirement to come to grips with the varied output of these institutions now characterizes the field.

The third section seeks to capture the complexity of institutions in their operation and manifold forms and to identify more concretely what can be termed their machinic potential. It casts international organizations as international machines that is collective multiplicities, concatenations of internal and external components, protean and unfolding forces; not fixed substances or forms, nor tools or instruments, a technology for accomplish aims pre-defined by its member states. The section sets the parameters of their understanding on the basis of their own operation, and not (the lack of) elements of state sovereignty. To achieve this conceptualization, it presents two operating logics of the theatre machine and the nomad organization. This dynamic unfolding is what can be identified as the machinic operation of international organizations, their operation constituting a type of compositional movement as machinic collective subjects. Stepping away from the principal-agent framing of functionalism, the machinic perspective places these international machines in a position of struggle with their member states, seeking to escape the confines of the form to which international law insists on binding them through doctrines, such as that of international legal personality or of attributed powers. The fourth section of the article further develops this reframing of international organizations within the international legal order, by expanding on the theoretical and methodological contributions of machine theory, in relation to three key established legal doctrines.

The theory presented in this article engages with a scholarly problem, that of the 'black box' of international organizations law. It argues that this problem stems from the theoretical reticence of the field itself, which prevents the full departure from a 'common sense' version of functionalism that does not reflect the practical reality of international institutions in the twenty-first century. The theoretical development effort expended here, however, is only with a view to addressing a concrete, practical and long-standing problem of international law and politics. This is the problem of creating and maintaining an effective, lasting, innovative, and progressive international institution, in order to -at the very least- redefine and realize, more than 100 years later, the potential of the move to institutions in the international legal order. This task is far more pressing than contending with another niche problem of legal scholarship's fixations. Despite the interdisciplinary influx, the effort is still in keeping with the field's pragmatic self-conception as a discipline of deeds, not words. The theoretical and methodological contributions contained in this article initiate an engagement with that larger practical problem that will continue in subsequent works.