comparative international law that is human rights.

Part Seven, which concludes the collective volume, includes a disparate group of three chapters relating to comparative international law in investment and law of the sea. This section also contains some of the most captivating chapters in the volume. Tomer Broude, Yoram Z. Haftel, and Alexander Thompson begin with a chapter entitled "Who Cares About Regulatory Space in BITs? A Comparative International Approach" (p. 527). Makane Moïse Mbengue and Stefanie Schacherer then elaborate on the Pan-African Investment Code (PIAC) as an example of comparative international law (p. 547). The authors take PIAC as an example to identify similarities and differences between the Pan-African approach and what is considered the norm in international investment law and also with the new reform process that investment law is undertaking. They identify some of the novelties of the treaty—for example the requirement that an investor has substantial business activity in the host state, its take on the most-favored nation and national treatment standards, and the absence of a provision on fair and equitable treatment. This contextualization of PIAC within the larger framework of international investment law is an apt demonstration of the advantage of the comparative international law approach. In the book's last chapter, Emilia Justyna Powell presents a fascinating study of the United Nations Convention on the Law of the Sea (UNCLOS) in Islamic Law states (p. 571). She observes that while Islamic Law states are generally skeptical of international law, they have mostly ratified UNCLOS. She then uses a comparative international law approach to explain why that occurs, and concludes that the substantive and procedural congruence of Islamic law with the UNCLOS regime, as well as the possibility of adding stipulations, including declarations and restrictions. The chapter is particularly novel and makes an interesting contribution to the volume.

Overall, this is noteworthy and valuable volume. It makes a significant case as to the important learning available from the understanding of how and why nations' approaches of international law are different.

CHIARA GIORGETTI
University of Richmond School of Law

Research Handbook on the Theory and Practice of International Lawmaking. Edited by Catherine Brölmann and Yannick Radi. Northampton, MA: Edward Elgar, 2016. Pp. xvii, 484. Index.
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The concepts of "international law" and "lawmaking" have long been a favored subject of debate among international legal scholars. However, the recent developments on the international scene—the complex problems on the global agenda calling for regulation; the deepening of the interdependence between states, economies and societies; the pluralization of actors on the international stage (including civil society organizations, public-private partnerships, networks of regulators, among many others); and the multiplication of instruments that aspire to international normativity—all have contributed to a renewed uncertainty of those concepts and to giving the traditional debate a novel urgency. In this context, the *Research Handbook on the Theory and Practice of International Lawmaking* is particularly timely.

In this volume, the editors Catherine Brölmann, associate professor of international law at the Universiteit van Amsterdam, and Yannick Radi, professor of international law at Université Catholique de Louvain and editor in chief of the Brill Research Perspectives in International Legal Theory and Practice, set out to provide an account of the different meanings and dimensions of the concept of "lawmaking" in today's international legal sphere. Their Handbook takes stock of the developments, both at the conceptual and empirical levels, of the phenomena of international lawmaking, presenting a

picture that is "quite unlike the doctrinal framework usually found in textbooks" (p. 1).

Following an introduction by the editors, the Handbook is organized into four parts. Part I, "Theoretical Views of International Lawmaking," opens with a critical assessment of consensualism by Wouter G. Werner (Chapter 1), challenging the argument that international law as a whole rests on the tacit or express consent of states. Jean d'Aspremont discusses dominant paradigms about international lawmaking and the roles conferred to different participants, highlighting the importance of assuming one's cognitive choices and their implications when studying this topic (Chapter 2). Dennis Patterson discusses the theoretical dimensions of transnational lawmaking and how this phenomenon can be accommodated in the positivist account of international law (Chapter 3). Part I concludes with Ingo Venzke's account of contemporary theories of international law and how these are shifting the focus from sources of law toward communicative practices (Chapter 4).

Part II addresses "International Lawmaking in an Inter-State Setting," focusing on the classical sources—treaty, custom, and general principles—and discussing them in light of the new complexities of the international legal order and the participation of new actors. Treaty negotiations are addressed by Kirsten Schmalenbach, who discusses both their legal framework and practical aspects, including the influence of actors such as non-governmental organizations (NGOs), legal experts, and other stakeholders (Chapter 5). In turn, Daniel Costelloe and Malgosia Fitzmaurice look into the treaty practices that lead to the creation of, or change of, legal norms under a treaty while not following the formal rules and procedures laid down in the 1969 Vienna Convention on the Law of Treaties (Chapter 6). They give particular attention to the role of conferences and meetings of the parties under multilateral environmental agreements and to evaluative interpretation by international courts, specifically in the case of the European Court of Human Rights. Omri Sender and Michael Wood provide an overview of theory and practice concerning the emergence of customary international law, contrasting the "heated theoretical debates" (p. 145) with the practice among relevant international actors, which remains "relatively straightforward" in the adoption of the traditional two-element approach (p. 157) (Chapter 7). Finally, Beatrice I. Bonafé and Paolo Palchetti deal with the uncertainty surrounding the definition and reliance on general principles of international law (Chapter 8).

In Part III, "International Lawmaking Beyond the State," seven authors set out to address instances of lawmaking that go beyond the traditional state-centric approach. Ramses A. Wessel looks into the development of the lawmaking functions of traditional international organizations and the emergence of lawmaking by a variety of informal international bodies and networks (Chapter 9). He further looks at interactions between institutions and the emergence of a "global normative web." In the following chapters, Gleider I. Hernández discusses the role of international judicial bodies in the development of international law, ranging from the International Court of Justice, to regional human rights courts, ad hoc tribunals, and the World Trade Organization Appellate Body (Chapter 10); Antonios Tzanakopoulos discusses whether domestic courts have the power to develop international law (Chapter 11); and Mara Tignino enquires whether quasi-judicial bodies (such as the Aarhus Compliance Committee, the Economic Social and Cultural Rights Committee, and the investigative mechanisms of international financial organizations) can be viewed as international lawmakers (Chapter 12). International lawmaking by hybrid bodies is addressed by Michael S. Barr, with a focus on the financial sector (Chapter 13). This Part closes with an analysis by Barbara K. Woodward of how the practice of civil society members—in particular, NGOs—contributes to the development of international law (Chapter 14) and an inquiry into the role of legal scholarship in the process of international lawmaking by Jörg Kammerhofer (Chapter 15).

Part IV is composed of five chapters that analyze the phenomena of "International Lawmaking in Selected Issue Areas," notably in human rights law (Vassilis P. Tzevelekos, in

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Chapter 16), international criminal law (Sergey Vasiliev, in Chapter 17), trade law (Mary E. Footer, in Chapter 18), international environmental law (Francesca Romanin Jacur, in Chapter 19), and natural resources law (Owen McIntyre, in Chapter 20).

Through the coverage of a wide range of theories, actors, and fields, and a selection of authors that, for most cases, have extensively worked and published on the topic they examine, the editors provide an up-to-date and comprehensive discussion of recent developments in international lawmaking. Regardless of the division between theory-oriented and practice-oriented chapters, the different contributions in this volume engage with each other in a number of ways, with two particular topics capturing our attention: the multiplicity of conceptions of lawmaking, and the different views on the centrality of the role of states.

Brölmann and Radi announce at the outset that the book adopts a broad working definition of "law" and "lawmaking," approaching normativity on a sliding scale and not following a binary classification in "law" and "non-law" (p. 2). In fact, several definitions of the scope of lawmaking come into play in different chapters.

A view that seems to be shared by several authors in this volume is that international lawmaking should be studied as a *process*. This conception diverges quite significantly from the traditional static conceptualization of lawmaking, according to which international rules "stem from the will of states expressed through one of the formal sources of international law" (p. 50) and the materialization of that source is the identifiable lawmaking moment. Instead, it builds on the legacy of the New Haven school, which moved "towards the study of lawmaking as a set of processes rather than through the lens of formal subjects" (p. 47).[1] According to this view, even for the most formal of sources—treaty law—recent developments seem to defy the identification of a single lawmaking moment after which rules remain unchanged until states consent otherwise. Costelloe and Fitzmaurice discuss lawmaking of treaty rules as covering both the deliberate process of rule-creation by treaty parties and less deliberate "evolutionary" processes that result from a haphazard development (p. 111). In particular, they argue that treaty regimes can evolve on the basis of decisions of treaty bodies, which sometimes result in changes to the primary obligations of states, and an evolutive interpretation by judicial organs. The latter argument is shared by Tzevelekos, who, writing specifically about human rights law, concludes that international judicial bodies may recognize the existence of "new" or "renewed" human rights through their practice, by widening already existing rights and interpreting them in an evolutive way (p. 350). An example of this recognition is the "right to truth" in cases of disappeared persons, which, after being the object of several soft law instruments, including UN General Assembly resolutions, has been recognized as an aspect of the right to life by both the Inter-American and European Courts of Human Rights (pp. 339, 342). Today, this right is included in the 2006 International Convention for the Protection to All Persons from Enforced Disappearance.

A discursive, pluralized, and multi-participant approach to international lawmaking is taken by Wessel, Tignino, Barr, and Woodward, who describe a scenario in which different actors—ranging from states and traditional international organizations, to informal bodies and networks (such as conferences of parties under multilateral environmental agreements, the G20 and the Basel Committee), quasi-judicial bodies, standard-setting bodies, and NGOs—interact in diverse arenas and produce instruments that have legal effects. These include both hard law instruments, such as treaties, and soft law declarations, resolutions, guidelines, and standards (e.g., pp. 187, 289–90, 439). It is a scenario of this sort that Jacur describes when discussing the making of international environmental law (pp. 419–20). Finally, Wessel signals the emergence of a global normative web, in which "the origin of a norm may very well be found in a meeting of one of the hundreds of international

[1] *See* Mary Ellen O'Connell, *New International Legal Process*, 93 AJIL 334 (1999).

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bodies and networks that exist internationally" (p. 199). Such an approach is in line with Venzke's account of contemporary theories of international lawmaking, which describe it as a continuous communication process "in which a plethora of actors use, claim and speak international law" and contribute to its development (p. 66).

This discussion recalls the projects on deformalization of international law and informal lawmaking, in which lawmaking processes can be identified without reference to the formal sources of international law (output informality), the traditional diplomatic actors (actor informality), and the traditional forums for negotiations, such as international organizations or diplomatic conferences (process informality).[2]

In contrast, the contributions by Sender and Wood and Bonafé and Palchetti reinforce a conceptualization of lawmaking that retains at its center the formal sources of international law. Sender and Wood maintain that the academic debate that surrounds the theory of customary international law and the so-called modern theories that propose "to revise or 'up-date' custom"[3] (p. 144), mostly by deemphasizing or dispensing altogether one of two requirements, has "not found much resonance among legal practitioners," who generally continue to adhere to the two-element approach (p. 145). Bonafé and Palchetti conclude that, regardless of the wider discretion enjoyed by the interpreter (primarily, international judicial bodies), general principles remain a consensual source of international law that is ultimately based on the general acceptance of states (pp. 163, 176).

Rather than converging on a unique definition of lawmaking, the contributions in this volume highlight the plurality of definitions that can lie beneath the concept. This is, no doubt, the goal of the editors, who refer to linguistic instability in their introduction (p. 1). It equally explains the difficulties faced by the authors in Part I of the book to make sense of lawmaking from a theoretical point of view, while discussing the very foundations of the validity of international norms. The tone that emerges from their contributions is similar: the different paradigms all have their merits and difficulties and there is not one that trumps the others in explaining all practices (p. 54). The main takeaway in this respect seems to be the one formulated by d'Aspremont: "it seems of importance, when one grapples with issues of lawmaking, that one consciously assumes one's cognitive choices" (*id.*).

As indicated above, the premise that all international law rests on the tacit or express consent of states is challenged by Werner in the first chapter of the Handbook. He points out several paradoxes of consensualism that make it unfit to "provide a stable foundation for the validity [of] international legal obligations" (p. 30) and challenges the "assumption of the state as privileged and unitary actor" (p. 15). One of his most interesting arguments, which equally links with some of the propositions that are advanced in other chapters, points to the rise of functionalism as a leading principle in different areas of international law, and its consequences. As new and specialized fields of international law emerge (international environmental law, international trade law, or international criminal law, to name just a few), speaking the expert language of each of them becomes increasingly important. This has led to a "disaggregation of the State," which increasingly participates in the international order through its specialized agencies, and to the emergence of new forms of transnational governance (p. 27).

Transnational networks of regulators, international organizations, their specialized agencies, and even more specialized bodies are all important actors of a *New World Order* that Slaughter discussed in 2004[4] and that the present volume

[2] Joost Pauwelyn, Ramses A. Wessel & Jan Wouters, Informal International Lawmaking 15–22 (2012). *See also* Jean d'Aspremont, *The Politics of Deformalization in International Law*, 3 Goettingen J. Int'l L. 503 (2011).

[3] The expression is from Bruno Simma and Philip Alston, *The Sources of Human Rights Law: Custom,* Jus Cogens, *and General Principles*, 12 Australian Textbook Int'l L. 82, 83 (1988–1989).

[4] Anne-Marie Slaughter, A New World Order (2004).

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further endeavors to describe. Wessel paints the picture of lawmaking by international organizations and a variety of other international bodies and networks, including treaty-based conferences, informal intergovernmental cooperation structures (such as the G20), and even private organizations (of which the International Organization for Standardization constitutes an example) (pp. 183–84, 187). He argues that these institutions have gained an autonomous position in the global legal order and that they adopt instruments which, in many cases, come closer to a decision of their organs than to an international agreement concluded between states (pp. 179–80). Furthermore, lawmaking in complex international issues often results from interactions and exchanges between several of these actors.

The role played by transnational actors and private actors is further elaborated upon by Barr, in relation to the financial field, and Woodward, who highlights the role of civil society, namely NGOs, in influencing negotiations in multilateral conferences, UN processes, normative processes inside other organizations, and enforcement processes (pp. 291, 304).

Nevertheless, when it comes to international lawmaking, the authors are careful not to dismiss the role of states quite yet. States have center stage in the chapters concerning the formal sources of international law, even though Schmalenbach also recognizes a role for NGOs, legal experts, and diverse stakeholders (for instance, interested companies) in treaty negotiations through influencing the decisions of governments (pp. 102–03). Sender and Wood and Bonafé and Palchetti maintain that the consent of states is fundamental in developing and identifying new rules of customary international law and new general principles (respectively, pp. 145–46 and p. 176). Hernández finds that international courts and tribunals influence the development of international law through the articulation of principles that can later be applied, clarified, modified, or rejected by international actors—most notably, states (pp. 208, 211, 221). Tignino makes a similar argument in relation to quasi-judicial bodies: even if the importance of these bodies in the elaboration, interpretation, and application of norms is to be recognized, states remain the final lawmaking authority (p. 261).

Finally, it is worth noting that the range of relevant participants in lawmaking processes is not uniform across the specific fields discussed in the final part of this volume. For instance, while Footer views treaty-making and treaty revision by states as the primary means of making trade law (pp. 398–99, 417), Jacur describes the making of international environmental law as a process involving states, international organizations, treaty bodies, judicial and quasi-judicial bodies, and other non-state actors, such as NGOs, private persons, and standard setting organizations (pp. 419–20, 438–39). The latter nevertheless mentions that "lawmaking is still predominantly a [s]tate prerogative" (p. 438).

The overarching idea in this respect seems to be that, while states retain a predominant role in international lawmaking, they are no longer the exclusive participants.[5] On the one hand, the state has disaggregated itself into a multiplicity of actors, intervening in lawmaking through its legislators, regulators, agencies, and courts, and participating in transnational networks.[6] On the other hand, other public and private actors have emerged: in addition to intergovernmental organizations, a variety of other bodies and institutions, informal cooperation structures, transnational networks, and NGOs increasingly participate in lawmaking processes and adopt their own lawmaking instruments.

In this regard, Werner formulates a well-advised conclusion. While he opens the volume by maintaining that "it is necessary . . . to free

[5] For a defense of the language of "participants," see Robert McCorquodale, *An Inclusive International Legal System*, 17 LEIDEN J. INT'L L. 477 (2004); Robert McCorquodale, *Sources and the Subjects of International Law: A Plurality of Law-Making Participants*, *in* THE OXFORD HANDBOOK OF THE SOURCES OF INTERNATIONAL LAW 749 (Samantha Besson & Jean d'Aspremont eds., 2017).

[6] For an account of this evolution, see Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1 (2002).

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ourselves from state consent as a foundational myth," he also argues that "there is no point in theorizing state consent away" as it retains an important role in understanding the construction of international law (p. 31). It is the idea that "international law can be traced back to one single formula" (*id.*) that he mostly objects to, and this is particularly well illustrated throughout this valuable book.

RITA GUERREIRO TEIXEIRA AND JAN WOUTERS
Leuven Centre for Global Governance Studies, KU Leuven

The Changing Practices of International Law. Edited by Tanja Aalberts and Thomas Gammeltoft-Hansen. Cambridge, UK: Cambridge University Press, 2018. Pp. xix, 251. Index.
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In a 2000 special issue of *International Organization,* Kenneth Abbott, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal explored the legalization of world politics that resulted from the international institution-building that followed the end of World War II.[1] This led to a reliance on legal instruments to regulate aspects of international relations and cooperation. Beth Simmons and Richard Steinberg noted in their collection on the two fields that international relations by the turn of the twenty-first century were "not only built on power relations but also on explicitly negotiated agreements."[2] The end of the twentieth century saw the completion of 158,000 treaties and related actions and the establishment of 125 international courts and tribunals, "legal regimes for each and every issue area in foreign policy" (p. 208). Has this thickening international legal system led to a more orderly and possibly law-abiding world?

This is the question that Tanja Aalberts, professor of public international law at Vrije Universiteit Amsterdam, and Thomas Gammeltoft-Hansen, professor of migration and refugee law at the University of Copenhagen, address in their edited work, *The Changing Practices of International Law.* The book is divided into nine chapters, including an editors' overview of how international law operates in the present international legal and global environment. This is followed by a discussion of how states play "sovereignty games" in order to recover some of the autonomy that international legal regulation and institutionalization may have constrained. Six case studies then follow to demonstrate how conflicting and competing legal standards and regimes have created opportunities for states to pick and choose their legal obligations and responsibilities. This occurs when specific legal instruments and institutions are created to accomplish goals in particular ways, despite the implications of such actions for related international or domestic law. The final chapter includes an appeal for the development of a practice approach to provide "a way to keep in focus the mutually constitutive relationship between international law and politics, which in turn enables a grounded understanding of how international law is politicized without reducing law to an epiphenomenon of power politics, based on various understandings of what power entails" (p. 218).

The editors pay particular tribute to Wolfgang Friedmann's *The Changing Structure of International Law,* entitling their own volume as a continuation of Friedmann's project.[3] As Friedmann did in his classic text, the editors of this volume walk the reader through the present global environment and the specific challenges it poses to international law. These include the problems of "climate change, global economic flows, corporate power and the new forms of governance, each of which remain caught between the need for dynamic regulation and the

[1] Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter & Duncan Snidal, *The Concept of Legalization*, 54 INT'L ORG. 401 (2000).

[2] INTERNATIONAL LAW AND INTERNATIONAL RELATIONS, at xxx (Beth A. Simmons & Richard H. Steinberg eds., 2006).

[3] *See* WOLFGANG FRIEDMANN, THE CHANGING STRUCTURE OF INTERNATIONAL LAW (1964).