

# Book Reviews

## History and Theory of International Law

*“L’être situé”, Effectiveness and Purposes of International Law: Essays in Honour of Professor Ryuichi Ida*

edited by Shotaro HAMAMOTO, Hironobu SAKAI, and Akiho SHIBATA.

Leiden/Boston: Brill-Nijhoff, 2015. 315 pp. Hardcover: \$161.

doi:10.1017/S2044251316000333

Professor Ida’s profound thoughts on international law are scattered in numerous books and papers that he has produced over a prestigious academic career. In this volume dedicated to Professor Ida at his retirement, the contributors have been able to pick up one point each and develop it further in their analysis of a contemporary issue.

The volume addresses three major concepts developed by Professor Ida. Part I concerns what Professor Ida described as *“l’être situé”*, which requires that states be viewed in concrete contexts rather than as abstract and equal sovereigns. The idea was initiated in international development law, a relatively new branch of international law that burgeoned only after World War II. The key point is the differential treatment between developing and developed countries in order to compensate for substantive injustice. This thinking is further elaborated in Professor Zhian Wang’s theoretical contribution on the functional approach to international development law (Chapter 3), and is also put to test in four scenarios: fair and equitable treatment in international investment treaties (Chapter 1), the accession of developing countries to the WTO (Chapter 2), Thailand’s experience with the WTO dispute settlement mechanism (Chapter 4), and universal jurisdiction (Chapter 5). These analyses demonstrate that the dichotomy between developing and developed countries has begun to exert normative influence on international law, but that such influence is mostly limited to the field of development.

The title of Part II is vivid and seems self-explanatory: “Effectiveness: Formality of Law and Amorphous Reality.” It goes well beyond an empirical discussion of the extent to which certain rules of international law have in reality performed effectively. While the three contributions in this part do not contain much direct reference to Professor Ida’s work on the effectiveness of international law, they represent a pleasing effort to explore ways by which to enhance the effectiveness of some of the most cutting-edge international law regime issues of our time: the institutional design of Japan’s free trade agreements (Chapter 6), the test for provisional measures in investor-state arbitration (Chapter 7), and the relationship between the United Nations and the African Union on matters concerning peace and security (Chapter 8). Accordingly, three possible methods of ensuring effectiveness are identified: flexibility in treaty design, the balancing of contrasting interests, and dialectical dialogue. Implicit in the thinking of the three contributors is the idea of balancing amongst different actors and their interests. The purpose is not to give better effect to rules but to tackle real problems and, accordingly, this is an understanding of effectiveness that differs from that traditionally used in international law.<sup>1</sup>

The third part addresses international law-making, which is analyzed through the perspective of the social dependence of law as applied to international law. This is one of Professor Ida’s basic ideas regarding international law: that the normative effect of international law largely depends on its

---

1. For an earlier discussion on effectiveness in international law, see e.g. Hans KELSEN, *Principles of International Law* (New York: Rinehart & Company, 1952) at 414.

effectiveness, which in turn hinges on the compliance consciousness of states. Perhaps the best illustration of this approach is soft law, which is addressed in two of the contributions in this part. While soft law acts as the bridge between social needs and hard law (Chapter 12), the former also has the normative implications of clarifying, supplementing, and adapting the latter (Chapter 10). Other examples of compliance consciousness can be found in the very existence of a rule on necessity in times of emergency (Chapter 11) and the interaction between domestic and international law in the implementation of international environmental liability (Chapter 9). The four contributions have successfully demonstrated the value of social dependence as an analytical tool additional to the traditional sources doctrine by which to approach international law-making.

The three themes examined exhibit a deviation from the positivist and rule-based view of international law, and the whole volume may well be considered a proper case-study for an anti-formalistic thinking in international law. Though as an edited volume, each of the contributions may not necessarily be closely tied to one overall theme, the book, with its excellent combination of theory and practice, still constitutes a significant contribution to the study of international law in the contemporary period.

*reviewed by* Yang LIU  
University of Hong Kong

*Invitation to the Sociology of International Law*

by Moshe HIRSCH.

Oxford: Oxford University Press, 2015. xvii + 221 pp. Hardcover: £50.

doi:10.1017/S2044251316000345

Following in the footsteps of Peter Berger's *Invitation to Sociology* and Kitty Calvita's *Invitation to Law and Society*, Moshe Hirsch's heuristic book *Invitation to the Sociology of International Law* is a welcome and timely reminder of the underexplored sociological dimension of international law. Indeed, Hirsch's bold yet meaningful attempt takes place against the backdrop of a paradoxical status quo, i.e. the relative absence of a substantiated sociological approach to international legal issues in the increasingly mature field of socio-legal scholarship. This book was not achieved overnight. It is rather the interim result of Hirsch's long-term endeavours as exhibited in a series of academic papers. Ever since the publication in 2005 of his seminal work *The Sociology of International Law: Invitation to Study International Rules in their Social Context*, Hirsch has devoted himself to offering the present invitation.

This book, as Hirsch emphasizes, is not an introductory textbook comprehensively addressing the core topics in both sociology and sociology of international law. On the contrary, it aims at illustrating the potential contribution of sociological tools to international law scholarship in order to "broaden our understanding of the development and implementation of international law". To this end, the book focuses on the sociological approach to international law by discussing some important topics in current international law on the one hand, including economics, compliance, and legal fragmentation, and several sociological topics, for instance collective memory and social identity, on the other. The underlying premise is that certain particular socio-legal features of various communities form one of the foundations of the international legal order from the social constructive perspective, and that international law and sociological factors and processes are interdependent.

The book comprises seven chapters, which can be divided into three major parts. The first part, comprising two chapters, provides a basic framework for understanding the sociological perspective. Following a general introduction in Chapter 1 of the central assumptions and certain key concepts from the sociological perspective, Chapter 2 presents three major theoretical approaches in