

RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY RICHARD B. BILDER

REVIEW ESSAYS

RECENT SCHOLARSHIP ON NGOS

NGOs in International Law: Efficiency in Flexibility? Edited by Pierre-Marie Dupuy and Luisa Vierucci. Cheltenham, UK; Northampton, MA: Edward Elgar, 2008. Pp. vii, 281. Index. \$140, £75.

Global Stakeholder Democracy: Power and Representation Beyond Liberal States. By Terry Macdonald. Oxford, New York: Oxford University Press, 2008. Pp. x, 237. Index. \$90, £45.

NGO Involvement in International Organizations: A Legal Analysis. By Sergey Ripinsky and Peter van den Bossche. London: British Institute of International and Comparative Law, 2007. Pp. xv, 362. £65, paper.

Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit? Edited by Jens Steffek, Claudia Kissling, and Patrizia Nanz. Basingstroke, Eng.: Palgrave Macmillan, 2008. Pp. xvii, 244. Index. \$80.00, £55.

NGO Involvement in International Governance and Policy: Sources of Legitimacy. Edited by Anton Vedder. Leiden: Martinus Nijhoff, 2007. Pp. xi, 234. Index. \$119, €84.00.

A dozen years ago, I advanced the hypothesis that the degree of involvement and impact of non-governmental organizations (NGOs) in international lawmaking exhibits a pattern of cyclicity, with surges and ebbs of influence.¹ Looking back

¹ Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 268–70 (1997).

at the decade of the 2000s, particularly during the financial crisis, one might detect an ebbing of the NGO role and the claims for its significance as compared to the 1990s. No example comes to mind in recent years of a hugely successful NGO international campaign or a new technique of NGO persuasion.

If NGO innovation and activism has slowed, the same is not true of scholarship about nonstate actors, and especially NGOs. In the past couple of years, several important studies have been published on aspects of the topic of international law/governance and NGOs. In this review, I take note of five new books, including three edited volumes. One book styles itself as theoretical, whereas the others have mixed methodologies, including some fruitful empirical work.

Several questions preoccupy contemporary scholars on NGOs: First, has international law been updated to accommodate a new legal status for NGOs, giving them international legal personality? Second, are international organizations (IOs) rendered more legitimate by extending a consultative role to NGOs? Or, in other words, can NGOs make amends for the so-called democratic deficit of IOs? Third, how can NGOs be made accountable for the tasks that they perform, and to whom is such accountability owed? Fourth, in particular cases, how has the NGO role changed outcomes with respect to treaty content, implementation, or enforcement? One or more of these questions receives attention in each of the new books reviewed here.²

Edited by Pierre-Marie Dupuy and Luisa Vierucci, *NGOs in International Law* is a volume of

² This review does not cover the discussion—in several chapters in the different books—regarding the NGO role in European institutions.

essays that builds upon a workshop about NGOs held at the European University Institute in 2002. Several themes are developed in the book. In the introductory essay, Vierucci and Christine Bakker explain that there is a “recurrent dilemma haunting modern international law: on the one hand, the perceived benefits of regulating an existing and progressing practice of NGO involvement in the international legal order; and, on the other hand the perceived risks of legalizing the participation of these non-state actors in the traditional state-dominated system” (p. 7). Yet as they explore the many issues, the book’s contributors find that there are serious challenges in achieving new international regulation of NGOs. The problem is that formalization is hard to achieve because of the wide variety of NGOs and the myriad ways that NGOs participate in international processes. In addition, the book shows that this informality has proven valuable to NGOs, governments, and IOs. Nevertheless, the continuing operation of NGOs in a “legal vacuum” has its own costs: the continuing uncertainty as to when and how NGOs have rights and obligations, and as to how an NGO can be held internationally accountable for its actions.

In his conclusion to the volume, Dupuy creatively explores the “difficulties that the rapid development of NGOs has created for legal scholarship” (p. 207), both with respect to legal doctrine and the “increasing and progressive widening of the gap between the declared status of NGOs and their actual power of participation” (p. 212). Noting that NGOs have “become indispensable to the efficiency of the more or less rigid structures of international organizations” (p. 205) and that “[t]here is currently an increasing awareness on the part of the international judge of the fruitful contribution that NGOs may bring to international proceedings” (p. 210), Dupuy posits that “the only way for legal scholars to apprehend the reality of the NGOs’ involvement is to go beyond the rigid inter-state and voluntarist conceptions usually put forward by the positivist school of thought” (p. 214). He predicts that the largest and most involved NGOs may eventually “be granted some form of legal personality” (p. 210). Yet he also suggests that the “question of the international legal personality of NGOs might not neces-

sarily be the right one” (p. 213) because in increasing legal certainty, NGOs would “risk losing flexibility” (*id.*). Dupuy sees the flexibility of NGO international involvement as efficient for NGOs, states, and IOs. He suggests that scholars should focus less on the legal status of NGOs and more on whether NGOs are “an effective and legitimate power to have a say on the content of international norms” (p. 215). Furthermore, he calls for NGOs to “satisfy a requirement of transparency” and to “accept the necessary minimum control over the gathering and verification of the information provided” (p. 213).

The longest essay in the book, by Emanuele Rebasti, recounts how the interaction between NGOs and IOs has deepened, with NGOs now perceived as being in “partnership” with intergovernmental organizations (IGOs), rather than being mere observers or simply in “consultative status.” Indeed, he posits that “non-governmental participation is strongly emerging as a parameter of good governance for IGOs” (p. 23), and notes that attempts by states to reduce NGO participatory rights “regularly meet fierce opposition from other member states which justify the defence of NGOs’ prerogatives with the need to preserve the effectiveness of intergovernmental action” (p. 67). Furthermore, he suggests that the NGO role can “strengthen the accountability of international organizations by compensating for the lack of procedural rules and review mechanisms of IGOs’ action” (pp. 69–70). But this enhanced NGO role leads to a greater need for regulation “in the selection of civil society interlocutors, in the definition of the modalities of interaction and in the supervision of NGO activity” (p. 43). With regard to the latter, Rebasti sees “an emerging trend to include mechanisms of self-regulation in formal participatory schemes” (p. 64).

Olivier de Frouville contributes a fine essay exploring the phenomenon of government-oriented NGOs—which he calls “servile society” (p. 72). In contrast to civil society serving a public interest, servile society serves a state interest. Such NGOs are hardly new, but his essay documents an increasing sponsorship of such NGOs in international forums by China, Cuba, Tunisia, and other states. As de Frouville explains, servile society was

ushered in back in 1996 when the UN Economic and Social Council (ECOSOC) changed its long-time rules so as to be more open to the participation of national-level NGOs. This essay provides an overview of the practices of ECOSOC's inter-governmental committee on NGOs—practices that, he says, result “in the admission of servile NGOs and the exclusion of independent ones” (p. 82). The committee's review processes can be used to try to intimidate NGOs “considered too critical” (p. 92) of affected states by threatening to have their UN status suspended or withdrawn. Indeed, de Frouville worries that “all the reform processes that were started in recent years at the United Nations resulted in a decrease in the rights of NGOs without compensation elsewhere, such as in the level of participation” (p. 111). The author is doubtful that the committee can perform more effectively “as long as this organ remains purely intergovernmental” (pp. 113–14). Instead, he suggests that the committee should be reconstituted with independent experts or a mix of such experts and NGOs.

In her essay on international courts and tribunals, Vierucci uses a comparative approach to illustrate the many modalities of NGO involvement at both international and regional levels. With respect to the direct standing of NGOs, she points to some important recent developments but finds that the “primary avenues of NGOs for legal enforcement are still domestic tribunals” (p. 160). With respect to indirect participation by NGOs as *amici curiae*, she sees a potential for NGOs to “give a terrific contribution to the law” (p. 166) and envisions the possibility of a “determination of the leave to file *amicus* briefs as a matter of customary law” (p. 174). Yet she also expresses a concern that *amicus* briefs “may increasingly shift towards representation of either party interest or a direct legal interest of the intervener itself” (p. 164 n.32). Looking ahead, she argues that “a more formalized legal status for NGOs' participation, be it direct or indirect, in international adjudication seems unavoidable in order to address the tension between the differing interests at stake” (p. 169), particularly to protect the rights of the parties. She calls for an intervening NGO to clearly state its interest in a proceeding.

Two essays in the book address the NGO role in international environmental lawmaking. Attila Tanzi surveys the variety of practices of NGO involvement and finds that much of that involvement is ad hoc. He concludes that both states and NGOs “seem to have, for opposite reasons, a strong interest in avoiding the formalization of a regulatory framework for public participation” (p. 151). Cesare Pitea examines the participation by NGOs in noncompliance procedures such as in the Aarhus Convention and the Montreal Protocol on Ozone. He finds that while NGO involvement has led to “furthering the effectiveness of the compliance review action,” governments have not wanted to allow NGOs to initiate noncompliance procedures as that “may undermine the non-confrontational functioning of those procedures and bear negatively on their efficiency” (p. 199).

A final observation about *NGOs in International Law* is that the book lacks a good index but does contain a bibliography and some useful documents in appendices.

In *Global Stakeholder Democracy*, Terry Macdonald, a political theorist teaching at Monash University, proposes a framework (or model) for conceptualizing whether public power is exercised democratically over populations beyond the territorial boundaries of states. While noting that her model would also be applicable to states, IOs, and transnational corporations, Macdonald focuses her book on NGOs. She does so in order to respond to the debate about “the democratic dilemmas surrounding the power of NGOs in contemporary world politics” and also because NGOs provide a lens “to rethink some standard state-centric assumptions about the fundamental elements of a democratic system” (p. 6). She suggests that her model can help NGOs “build stronger democratic credentials as representatives of various stakeholder groups” (p. 15).

A key intellectual move in the book is to ask the reader to forgo the assumption that democracy needs to occur within a closed society having a unified agent of public power and a discrete community of citizens. Instead, Macdonald postulates a pluralist global liberal democratic order with “multiple agents of public power held to account

by their multiple overlapping 'stakeholder' communities" (p. 13).³ Her definition of the exercise of "public power" is a broad one embracing any "prominent and influential role in the processes of production and maintenance of autonomy-constraining regulative norms" (p. 64). The impact of the norm on an individual generates a stake and consequently gives those stakeholders "participatory entitlements" (p. 41) to exercise democratic control. At the international level, as she explains, "nation-state representation cannot achieve legitimate social choice in global politics" (p. 14) because of inadequacies in representing diverse interests, in responding to intensity of interest, and in using rational deliberation. Macdonald, who views herself as a "realist" (p. 32), is not suggesting that the "nation-state model of global representation" be abandoned, even though she views it as "fundamentally flawed from a democratic point of view" (p. 138). Rather, she proposes a hybrid approach that "incorporates multi-stakeholder representation within more conventional structures of representation by nation-states" (p. 15). For global politics, "all individuals whose autonomy is problematically constrained by the exercise of public power" (p. 102) are to be considered members of the stakeholder community.

Macdonald devotes a chapter to demonstrating that NGOs can wield "public power" that, like all public power, needs democratic control. While conceding that many NGO activities are "private power," particularly when done at "grassroots levels," she argues that when NGOs gain "privileged access" to "authoritative institutional sites" such as IOs (p. 65), the power exercised can properly be viewed as "autonomy-constraining" and hence "public" (p. 81). That is so not only because norms developed by NGOs can be treated as authoritative, but also because such norms "can feed back into the formal international legal system" (p. 69).

³ Macdonald does not take note, and was undoubtedly unaware, of an important 2002 article by Bosire Maragia proposing an ontology of world politics featuring multiple sites of authority and multiple sources of legitimacy, and then applying these concepts to the question of the legitimacy of NGOs. Bosire Maragia, *Almost There: Another Way of Conceptualizing and Explaining NGOs' Quest for Legitimacy in Global Politics*, 2 NON-ST. ACTORS & INT'L L. 301 (2002).

Besides norms, she points to the operations of NGOs—for example, in refugee camps—as evidencing "public" power.

Because individuals have multiple (rather than unitary) interests, the role of the NGO is to be a representative agent of a stakeholder community. To perform that role, NGOs "must be institutionally delegated in some way, to ensure that they will advance the particular outcome-interests that are specified by their stakeholder constituents" (p. 142). Macdonald devotes several chapters to elaborating the conception and operation of her "liberal pluralist" model to show how "unelected agents such as NGOs can possess legitimate representative agency" (p. 163) through "non-electoral mechanisms of authorization and accountability" (p. 165) to stakeholders. Specifically, the book suggests the use of methods such as transparency, stakeholder surveys, NGO codes of conduct, monitoring NGOs, and reliable disempowerment practices.

NGO Involvement in International Organizations, by Sergey Ripinsky and Peter Van den Bossche, examines the legal basis within IOs for NGO involvement. Their research project consists of a series of case studies on ten of the most vital agencies and institutions, and then weaves it all together in a concluding chapter written from a comparative perspective. For each organization examined, the authors report whatever institutional law exists providing for NGO involvement and then take note of the secondary rules on consultative status or accreditation, along with the formal and informal practices in place. The case studies look at the nature of NGOs permitted to be involved, the forms of participation actually used, the accreditation process, and practices for reviewing NGOs. The organizations studied are ECOSOC, International Labour Organization (ILO), International Monetary Fund (IMF), UN Conference on Trade and Development (UNCTAD), UN Environment Programme (UNEP), UN Development Programme, World Bank, World Health Organization (WHO), World Intellectual Property Organization (WIPO), and World Trade Organization (WTO). All ten organizations invite in NGOs for some activities; the differing practices "are

explained by the specific characteristics of the international organizations concerned" (p. 223).

In my view, the study's most important findings are as follows. There is "no necessary or direct link between the fact that the engagement with NGOs is envisaged in the organization's constituent instrument, and the intensity of such engagement" (p. 208). Only two of the ten organizations, the IMF and the WTO, "have expressly taken a position that engagement with civil society is primarily the task of national governments" (*id.*). Official NGO advisory committees are uncommon. In the "less-NGO-friendly" organizations (such as the WTO and WIPO), the trend has been to allow NGOs to attend the rarely convened formal meetings of the supreme organ but to deny participation in organs that meet regularly. NGOs have a formal right to propose agenda items only in the ECOSOC and UNEP. In most of the accreditation processes, the NGOs being vetted are not given an opportunity to speak or to be present. Two international bodies, the ECOSOC and WHO, have established formal grounds for withdrawal and suspension of an NGO's consultative status.

The book reaches the conclusion that "international organizations would generally benefit from a further 'legalization' of NGO involvement. Providing for explicit rules on engagement with NGOs would contribute to the predictability of this engagement and prevent arbitrariness" (p. 224). Although the authors recognize NGOs as "fully-fledged actors in international governance" (p. 1), they contend that "the gap between the institutional activism of NGOs and their legal standing in terms of international rights and duties is growing" (p. 7).

This volume makes a useful contribution to the literature on NGOs in international law by focusing on the administrative law governing NGO participation. Each of the case studies is rich with interesting detail, and the authors have taken great care to document their points. The only major flaw I see is that the book lacks both an index and a bibliography. The publisher, the British Institute of International and Comparative Law, should know better.

Civil Society Participation in European and Global Governance is a product of the "Transformations of the State" project at the Collaborative Research Centre at the University of Bremen. The project's background assumption is that the democratic deficit of global governance can be ameliorated by more "deliberative democratization" (p. 2). The authors (all political scientists) posit that "organized civil society may serve as a 'transmission belt' between a global citizenry and international organizations" (p. 208). The term "civil society organizations" (CSOs) is used in the book's title and in many of the essays, although some of the authors use the term "NGO" synonymously.

The purpose of the project was to assess the capacity of particular international institutions "to bring about free, informed and inclusive deliberation—and, hence, a high level of democratic quality" (p. 210). For this purpose, the authors selected and measured four criteria: access to deliberation, transparency and access to information, responsiveness to stakeholder concerns, and inclusion of all voices. The dataset for the study comprised thirty-two institutions at the international level (for example, the IMF) or in the European Union.

With respect to access and transparency for CSOs, the authors were able to reach conclusions by using a list of twenty indicators to rate each institution; one indicator, for example, is whether CSOs have the right to put topics on the agenda of an IO. Overall, the researchers found that almost all the institutions studied held consultations with CSOs. The three exceptions were the Bank for International Settlements, the North Atlantic Treaty Organization, and the G8 Summits (although summit host governments may consult CSOs).

The authors found that responsiveness and inclusiveness were not as easily measured. For those criteria, the project performed case studies of several institutions. These studies suggest that the presence of CSOs can sometimes "expand the range of viewpoints present in international negotiations and can give a voice to the concerns of marginalized groups—such as indigenous peoples—that are not well represented in the inter-governmental process" (p. 28). The case studies

also show, however, that the responsiveness of intergovernmental decision makers to the concerns presented by CSOs “is surprisingly low even under the most favourable circumstances” (p. 213), such as extensive opportunities for NGO participation.

One of the best case studies, written by Lars Thomann, examines the ILO. He begins by conceding that because of the ILO’s tripartite structure, all four of the project’s criteria “are fulfilled to an extent not seen in any other international organization” (p. 76). But the theme of the chapter is that the ILO is nevertheless deficient because there is a “representational gap” (p. 82) in that only the worker and employer organizations get that treatment. Thomann does not consider those organizations to be NGOs because their goals “are largely orientated toward the interests of their members” (p. 77). In his view, “the access of NGOs to the policy-making level of the ILO—meaning the [ILO’s International Labour Conference] and the supervisory mechanism—is rather limited and marginalized” (*id.*). As a result, many workers “are increasingly not represented” (p. 91) at the ILO. In another essay, Claudia Kissling and Jens Steffek also discuss the oversized role for workers and employers at the ILO, and note that “[t]hese privileged partners have vigorously forestalled the introduction of ‘quadripartism’ within the ILO that would result from associating more closely with CSOs” (p. 212).

All of the case studies are well done. Charlotte Dany examines the UN World Summit of the Information Society (held in 2003), which provided for active CSO participation. Steffek and Ulrike Ehling examine the WTO and conclude that “[o]pportunities for civil society to influence the deliberation process directly at the WTO are quite scarce. Remarkably little has changed since the [General Agreement on Tariffs and Trade] became operational in 1948” (p. 110). Peter Meyer compares the North Atlantic Treaty Association to the Organization for Cooperation and Security in Europe and finds more opportunities for CSOs in the OSCE, possibly because it is a leaner organization than NATO.

In my view, the most valuable chapter in the volume is written by Claudia Kissling, who exam-

ines the evolution of the legal status of NGOs in the international order. Her thesis is that providing “legal standing” (p. 32) to NGOs and inter-parliamentary assemblies will help to overcome the legitimacy deficit in IOs. In other words, Kissling seeks to show how the rights and duties of NGOs have “legitimizing capabilities” (p. 33). These rights and duties are not located in customary international law, she says, but rather are delineated within specific IOs.

To examine multiple organizations using a common framework, Kissling devises a comprehensive matrix to describe the degree of an NGO’s legal status. On an ascending scale, the status varies from “no status” to “subject” to “person,” and then to the “comprehensive legal status” (p. 37). For an NGO to be a subject, it has to enjoy rights or duties. For example, there could be a right to speak and a duty to fulfill certain accreditation conditions. Kissling distinguishes a “person” from a “subject” in that the NGO “person” can lodge a complaint against an IO or state to enforce the NGO’s rights. Analogously, the NGO person is accountable for its duties. She also considers whether the NGO’s status is granted in treaty (primary) law or in secondary law. Kissling summarizes her findings in a table presenting a broad range of IOs divided into groups, including environment, development, human rights, economic and financial affairs, and security. For each organization, she reports the degree of NGO status and the year that such status was obtained, both in primary and secondary law. Only the ILO grants comprehensive legal status—and did so in 1919.

The construction of this matrix is an impressive achievement. The terms “person” and “subject” are not ideal, but the categories that Kissling employs are especially useful in showing the trends for how governments and IOs accord status to NGOs. In my view, Kissling is right to see the rights and duties of NGOs as indicia of the status of NGOs in international law. One hopes that scholars will invest time in understanding her matrix in order to refine her analysis.

The last book to be reviewed emerges from a multiyear research project at Tilburg University and the University of Maastricht. The product is a volume of essays examining the “legitimacy” of

NGOs in international governance. The rationale for the exercise is that “[a]s the activities of NGOs have ever further-reaching consequences, their ability to demonstrate the legitimacy of their activities becomes more important” (p. 7). The aim of the project is to develop a workable concept of legitimacy. The volume, *NGO Involvement in International Governance and Policy: Sources of Legitimacy*, consists of seven essays by members of the research team, all edited by Anton Vedder. A leadoff essay by Vivien Collingwood and Louis Logister reports on the perceptions of NGO legitimacy by NGO officials and other stakeholders, and is nicely written.

The volume attempts to deconstruct the concept of NGO legitimacy. Several of the authors employ a three-part concept of legitimacy that looks at moral, social, and regulatory aspects. Moral legitimacy is whether the NGO’s value and norms are acceptable in principle for all, and whether the NGO is effective at promoting those norms. Social legitimacy is whether there is consent or representation of those involved or affected. Regulatory legitimacy is whether the NGO’s involvement conforms to applicable international rules. The essay by Anke van Gorp presents the result of his study examining the Web sites of selected NGOs, with the specific goal of determining how much information is provided for all three aspects. Among the findings is that “there are no Internet-only NGOs” (p. 103) and that some NGOs, such as Greenpeace and Global Witness, do not seek to represent anyone.

The essay by Peter Van den Bossche examines regulatory legitimacy in the law of IOs. He sets out to consider whether the actual NGO involvement in major IOs matches the rules of each organization prescribing NGO involvement. With regard to allowing NGOs to be involved in the organization’s activities, Van den Bossche finds that the IMF and the World Bank do so without any explicit legal basis and that the ECOSOC, UNCTAD, and UNEP engage with NGOs in ways that go further than technically allowed by the relevant rules. With respect to practices on accreditation, he finds that UNCTAD has not implemented its own substantive rules.

The essay by Menno Kamminga looks at various systems for regulating the status of NGOs at both the national level and international levels. For example, Kamminga reviews self-regulation by NGOs and suggests that such codes are feasible for NGOs that are focused on particular issues. Another interesting finding concerns NGO coalitions, which can indirectly serve a mutually validating purpose. The essay’s overall conclusion is that “states are not at all the best judge of the legitimacy of NGOs” (p. 193).

The essay by Anton Vedder takes the debate about NGO legitimacy to a higher level by suggesting that the focus should really be on possible *illegitimacy*. In particular, he argues that “it does not seem to make much sense to talk about NGOs qualifying as legitimate, or about some NGOs being more legitimate than others. It seems more appropriate to establish whether, and if so, in what ways the legitimacy of a specific NGO may be doubted” (p. 208).

Overall, this book makes a useful contribution to our understanding of NGO legitimacy, though it is limited by its reliance on scholarship only from the past twenty years. The bibliography does not contain any book or article about NGOs written earlier than 1989. One wonders why a group of scholars would insulate themselves in that way, particularly when located so closely to great research libraries.

Although none of the books makes strong claims that IO legitimacy is enhanced by NGO participation, the books do suggest that such participation provides value added to IOs. As noted above, Rebasti finds that NGOs can strengthen the accountability of IOs, and the *Civil Society Participation* collection contends that NGOs improve deliberation in IOs. In arguing that NGOs can provide democratic representation at the international level, Macdonald is implicitly suggesting that the state-centric conception of IOs is not as democratic as it could be.

In a recent book review about NGO accountability in this *Journal*, Kenneth Anderson argues against the idea that NGOs play “a legitimating role in global governance.”⁴ I agree with Anderson

⁴ Kenneth Anderson, *What NGO Accountability Means—And Does Not Mean*, 103 AJIL 170, 176 (2009)

to the extent that he is saying that NGOs are not necessarily legitimacy enhancing and that IOs are not necessarily deficient in legitimacy. But I do think that at its best, NGO participation has helped to ameliorate some of the worst pathologies of IOs, such as a lack of transparency and lack of efforts to reconcile IOs' functional missions with those of parallel organizations. For example, I believe it was the NGOs that instigated the pressure that led the WTO to be more sensitized to the impact of trade on the environment and human rights.

While all five books under review take a pro-NGO approach, Macdonald's book is different. Whereas the other four books can be characterized as mainstream, she offers a paradigm-shifting model in which NGOs are viewed as *representatives* of stakeholders. Because NGOs are not elected, she recommends establishment of non-electoral mechanisms of democratic authorization and accountability. Before reading Macdonald, I had shared Anderson's view that the "glory of civil society institutions ought to be that they are *not* representative, and, because they are not, are free to argue and shout their visions of social justice, seek to persuade, and offer alternatives that representative institutions cannot."⁵ Of course, Anderson qualifies this point by agreeing that NGOs "still need to be accountable . . . in the transparency sense, so that others can judge them and their programs."⁶ But the accountability he seeks is not for the purpose of improving the representativeness of NGOs; both authors are employing the term "accountability" but are using it somewhat different ways. It will be interesting to see how Anderson (who has written thoughtfully about NGOs from a more skeptical position than the books reviewed here) responds to Macdonald's ambitious framework. Reading Macdonald's book made me reconsider the question of whether one should conceptualize NGOs not only as being lobbyists or norm entrepreneurs, but also as carrying out representative functions in a democratic

(reviewing NGO ACCOUNTABILITY: POLITICS, PRINCIPLES & INNOVATIONS (Lisa Jordan & Peter van Tuijl eds., 2006)).

⁵ *Id.* at 177.

⁶ *Id.*

global system. The NGO debate has become more complex.

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Of the Board of Editors

SOCIOECONOMIC RIGHTS AND REFUGEE
STATUS: DEEPENING THE DIALOGUE
BETWEEN HUMAN RIGHTS AND
REFUGEE LAW

International Refugee Law and Socio-economic Rights: Refuge from Deprivation. By Michelle Foster. Cambridge, New York: Cambridge University Press, 2007. Pp. xlvii, 387. Index. \$120.

Over the past two decades, international human rights law has provided an increasingly useful framework for interpreting key criteria of the definition of a refugee.¹ According to the 1951 Convention Relating to the Status of Refugees (Refugee Convention), a refugee is one who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."² A human rights-based approach to analyzing this definition helps to ensure the application of a universal and objective standard, thereby increasing consistency and uniformity in decision making by state parties regarding who qualifies for international protection. The concept of persecution is now widely understood as a "sustained or systemic

¹ Deborah E. Anker, *Refugee Law, Gender and the Human Rights Paradigm*, 15 HARV. HUM. RTS. J. 133, 136 (2002); see also JAMES C. HATHAWAY, *THE LAW OF REFUGEE STATUS* (1991); JANE MCADAM, *COMPLEMENTARY PROTECTION IN INTERNATIONAL REFUGEE LAW* 29–33 (2007) (examining the human rights foundations of the Refugee Convention, *infra* note 2, and discussing it a specialist human rights treaty).

² Convention Relating to the Status of Refugees, Art. 1A(2), July 28, 1951, 189 UNTS 150 *amended by* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 UST 6223, 606 UNTS 267 [hereinafter *Refugee Convention*].