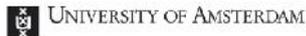


THE ACTORS OF POSTNATIONAL RULEMAKING AND THEIR LEGITIMACY



6 June 2014

The Royal Netherlands Academy of Arts and Sciences, Old Meeting Room
Kloveniersburgwal 29, 1011 JW Amsterdam

Organized within the project [‘The Architecture of Postnational Rulemaking’](#)

The conceptualisation of “actors” engaging in rule-making, i.e. those who adopt acts, practices and/or standards in the exercise of legal authority, is central to theorising power, autonomy, influence and legitimacy in rule-making. This is particularly the case in rule-making beyond the Nation State, where the actors may either be fledging or manifold and where the rule-making practices may vary substantially from conventional practices.

Legal doctrine employs formal, limiting criteria to assess “actorship,” such as legal personality, legal authority to act and institutional autonomy, largely rooted in an understanding of the *Trias Politica*. Yet formalism may pose many limitations for theory. Consider those seeking to conceptualise actors in international law as “participants” or those arguing for a departure from an understanding of international legal personality limited to State actors. In non-legal scholarship studying regions and organisations, the phenomena of “actorness” embraces less readily evolving organisations or their institutional components, even when they obtain legal personality or legal authority to act. Formalist understandings of those who are “actors” engaged in rule-making are unable to capture new manifestations of “executive” actors beyond the State, powerful and independent judicial components or the rise of transnational parliamentarianism, broadly understood as actors engaged in rule-making beyond the State. To be sure, some may act with considerably more institutional, social or political legitimacy than others.

We may say that formalist criteria and theorisations operate to exclude the acts or practices of *institutional entities or components that are part of international organisations who exercise public authority beyond the State*, who are not regarded as unitary actors or equivalent to the organisation itself, leaving aside the actions of private associations, unions or certain experts.

Such actors may manage to engage in rule-making practices through exhibiting *inter alia* influence, independence, autonomy, contestation and an active development of their functions and roles. However, the nature of such rule-making may be said to occur *in the shadow* of other institutions or bodies within organisations, who are “formal actors”, eluding thus a more doctrinal debate. It remains “in the shadow” in so far as it may occur as part of a larger organisation or structure where it may have many informal influences, lack formal power structures, may operate with a grey-zone of autonomy or independence or may even be subject to multiple influences beyond other institutions. On account of its ostensibly elusive characteristics, we

may overlook the significance of “acting in the shadows” for rule-making and our understanding of who are actors engaging in rule-making.

We aim to explore what we may term the *gap between doctrine, theory, lexicon and practice* so as to assess the descriptive and normative dimensions of “actors engaging in rule-making” in European and International law and we reflect upon the *relevance and place of legitimacy* in this exercise. We propose to consider what role, *inter alia*, empirics, thresholds, typologies and functionality plays in our understanding of actors in the postnational setting. Additionally, we explore the relationship between understanding actorship and *inter alia*, the social, political and institutional legitimacy of those the subject of analysis. We consider whether this enables us to address further questions such as the acceptance of the practices of post-national rule-making, especially the social legitimacy thereof.

Draft/ Programme

8.30-9.00 **Coffee and registration**

9.00-9.15 **Introduction to roundtable and goals**

Dr Elaine Fahey (Amsterdam Centre for European Law & Governance / Architecture Project)

9.15-11.00 **OVERVIEW OF THE DOCTRINE, THEORY AND LEXICON OF ACTORS IN RULE-MAKING**

Chair: Prof. Andrea Bianchi (Graduate Institute, Geneva)

- *Actors in Global Governance Institutions: ASEAN and the EU*
 - Dr Jens-Uwe Wunderlich, Aston University
- *The EU: A Shadowy Global Actor*
 - Prof. Jan Wouters, KU Leuven
- *Mapping the Terrain of Institutional 'Law-Making': Form and Function in International Law*
 - Dr Richard Collins, University of Sheffield

11.00-11.15 **Coffee break**

11.15-13.15 **WHAT PRACTICES CONSTITUTE "ACTING IN THE SHADOWS"? EXPLORING SPECIFIC PRACTICES AND THEIR LEGITIMACY**

Chair: Dr Marija Bartl (Centre for the Study of European Contract Law/ Architecture Project)

- *The Many Faces of Rulemaking in the EU*
 - Prof. Matthias Ruffert, Friedrich-Schiller-Universität Jena
- *Lawmakers in the Shadows: Legal academics in the Construction of European Private Law*
 - Prof. Ruth Sefton-Green, University Paris-1
- *Lobbyists: Rule-makers in the Shadow*
 - Dr Emilia Korkea-aho, University of Helsinki
- *Accountability and Legitimacy of Global Governance: Strengthening the Formal Role of Civil Society*
 - Prof. Frank Biermann, VU University Amsterdam

13.15-14.00 **Lunch break**

14.00- 15.45 **"NEW" INSTITUTIONS AND SITES OF INSTITUTIONALISM**

Chair: Dr. Machiko Kanetake (Amsterdam Center for International Law/ Architecture Project)

- *Transnational Parliamentarism and Global Governance: The New Practice of Democracy*
 - Dr Davor Jančić, London School of Economics and Political Science
- *The Practices of the "New" European Council*
 - Prof. Henri De Waele, Radboud Universiteit Nijmegen/ University of Antwerp
- *Actor Interaction as a Site of Post-National Rule Making: A Methodology*
 - Dr René Urueña, University of Los Andes, Bogota

15.45:- 16.45 **CLOSING ADDRESS**

Prof. Benedict Kingsbury, New York University

Law' and 'Publicness' in Global Hybrid and Private Governance Institutions

Discussant: Dr Ingo Venzke (Amsterdam Center for International Law/ Architecture Project)

16.45-17.15 **Conclusions and follow up**

17.15 **Drinks reception**