Buchbesprechungen

***Miles*, *Cameron*: Provisional Measures before International Courts and Tribunals.** Cambridge, UK: Cambridge University Press. 2017. ISBN 978-1-107-12559-9 (Hardback). lxiii, 517 pp. £ 99,99 / ISBN 978-1-107-56517-3 (Paperback), £ 29,99; ISBN 978-1-316-77756-5 (eBook), £ 27,69

Un droit sans lois, ni juges, ni gendarmes goes an old French adage conveying the "primitive" character of international law at a time when the fundamental sovereign powers – legislative, executive, and judiciary – were completely decentralized. For over a century now, however, the efforts that jurists have been making have led international law to a turning point. In this context, the imaginative power of *Hans Kelsen's* monism, *Hersch Lauterpacht's* cosmopolitanism and *Georges Scelle's* universalism, to mention but a few, has fuelled the myth of "the unity of the legal world view" (*Kelsen*). The most realistic solution to ensure its legality was then found by legal scholars and practitioners in the judicialization of the "anarchist" community of States. Nevertheless, since the latter has never been a homogeneous and pacified community, the effort has not resulted in a monocentric system. After the end of the Cold War, indeed, different tensions towards conflicting values led to the establishment of likewise jurisdictional systems, which today compete in the interpretation of (general) international law and risk to jeopardize legal certainty.

Dealing with the international law of provisional measures, *Cameron Miles*, barrister of Gray's Inn at 3 Verulam Buildings (London), proves to be perfectly aware of such complex implications. Not only has he addressed them elsewhere ("The Influence of the International Court of Justice on the Law of Provisional Measures", in: M. Andenas/E. Bjorge (eds.), A Farewell to Fragmentation. Reassertion and Convergence in International Law, Cambridge, 2015), but his "Provisional Measures before International Courts and Tribunals", although without dedicating a specific section to the topic, can certainly be read as an extraordinary antidote to the fragmentation of international law. Without "post-modern anxieties", *Miles* appropriately uses a comparative approach which, on the one hand, enables him to collect the different practices followed by international courts and tribunals with respect to provisional measures and, on the other hand, to bring coherence among them.

The book is the result of the studies that the author carried out during his doctorate, completed, under the supervision of *James Crawford*, at the University of Cambridge in 2017. In the wake of previous contributions, such as "General Principles of Law as Applied by International Courts and Tri-

bunals" (London, 1953) by *Bin Cheng*, and "A Common Law of International Adjudication" (Oxford, 2007) by *Chester Brown*, *Miles* aspires to outline an international procedural law, which could regulate the application of provisional measures. Considered that, at the present stage, there exists only one relevant general principle of international law –, i.e., that from which stems the power to grant interim reliefs binding on the concerned parties –, the author prefers a cautious formula, closer to the French concept of *jurisprudence constante*. To this end, in Part II, he outlines what he defines as a "common approach" to the issuing of provisional measures, shared by international courts and tribunals. It consists of a set of principles rapidly evolving towards a real regulatory system – this is the *fil rouge* that runs through the entire discussion.

The text is divided into three parts and ten chapters, whose Chapters 1 and 10 respectively provide some introductory insights and concluding remarks. Part I, "Preliminary Matters", starts with Chapter 2, where *Miles* retraces the history of provisional measures, highlighting the municipal nature they had until the modern age. The early exercises of an international adjudicative function dates back to the second half of the XIXth century. The chapter ends with an overview of the Permanent Court of International Justice (PCIJ), the first body to issue provisional measures as they are commonly understood nowadays. In Chapter 3, the author introduces the main characters of the book, i.e., the international courts and tribunals whose practice is examined in the following pages: (i) the International Court of Justice (ICJ), (ii) the International Tribunal for the Law of the Sea (ITLOS) and the other arbitral tribunals established on the basis of Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS), (iii) investment arbitration tribunals, especially within the framework of both the International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL) systems, and (iv) inter-state arbitral tribunals, e.g., those established under the auspices of the Permanent Court of Arbitration (PCA). After having outlined the general features of each of these bodies, *Miles* examines their constitutive instruments and the relevant procedural rules applicable before them.

Part II, "Provisional Measures in General", starts with Chapter 4. First of all, the author underlines the incidental nature of interim reliefs, always dependent on a main claim. A further matter of great interest is the legal basis of the power to award interim relief. It can alternatively be classified as a general principle of law within the meaning of Article 38 (1) (c) of the ICJ Statute, it can be derived from the inherent powers doctrine or, according to

a voluntarist conception, it can be justified because of the consent of the parties. In this respect, the author takes the view that the power stems from an inherent power which in turn constitutes a general principle of (procedural) law, as such, available to adjudicators even in the absence of an express reference in their constitutive instruments (pp. 136, 172). In the third place, *Miles* wonders "[h]ow then, can an international court – which may lack jurisdiction – make an order touching on rights subject to litigation before it has finally determined whether jurisdiction exist?" (pp. 147-148). The question is not about whether or not a preliminary review over jurisdiction is needed, rather the appropriate extent to which it must be established. For this purpose, in the 1970s, the ICJ has set the threshold standard of *prima facie* jurisdiction. In this field the ICJ arguably influenced other international adjudicatory bodies, given that "the need for *prima facie* jurisdiction is the most uniform element of the uniform approach", in the words of the author (p. 172). Likewise, the Court took the position that, before awarding interim reliefs, it is also necessary to evaluate the admissibility of the main claim, on the basis of a *prima facie* standard, but, in this respect, other international courts and tribunals have proved more reluctant. Lastly, *Miles* addresses the admissibility of the request for interim relief in itself.

Chapter 5 is focused on the purposes for which provisional measures are ordered. A first and general type of measures aims "to preserve the respective rights of the parties pending the decision of the Court" (p. 1). To this end, the adjudicatory body is required to assess, on the one hand, whether or not the rights which provisional measures are intended to protect are "linked" to the subject matter of the main proceeding and, on the other hand, the plausibility of the claims presented by the applicant. Whereas, as regards the first issue, the ICJ played a leading role, establishing the so-called "link test", it has been rather hesitant to accept a preliminary assessment of the merits, at a stage where its competence has not been fully determined yet. Therefore, it elaborated a "plausibility test", according to which the applicant is burdened to prove its own prospects of success on the merits. A second type of measures can be awarded for the non-aggravation of the dispute, meant as an objective interest other than that of the parties. The necessity to ensure the effective administration of justice, in fact, entitles the judicial authority to act *motu proprio* (p. 208), as an autonomous inherent power (p. 224), whose extent nevertheless is still under discussion.

In Chapter 6 the author examines the requirements of provisional measures. By breaking down the unitary concept of "necessity", it is possible to distinguish, on the one hand, the "irreparable prejudice" of the rights

sub iudice – as it cannot be settled through restitution, compensation or other remedies – and, on the other, the "urgency", understood as the damage that may reasonably occur before the determination of the judgment. If, as regards the latter prerequisite, international courts and tribunals seem to have developed a common approach, a discrepancy can still be found with respect to the former, between the standard of "irreparable prejudice", required by the ICJ, and the less burdensome "significant damage", adopted by some ICSID tribunals. If someone is considering a hypothesis of fragmentation, (s)he may easily change her/his mind: it is rather about a terminological divergence – explains the author (p. 226).

Miles addresses content and enforcement of provisional measures in Chapter 7. First, he retraces the long path which led to the affirmation of the binding nature of interim reliefs, taking as a watershed the decision of the ICJ in *LaGrand* (2001). In light of this and other decisions, it can now be said that international courts and tribunals have "an inherent power to order binding interim relief, by way of a general principle of international law" (p. 298). Furthermore, with respect to the content, he distinguishes provisional measures aimed at protecting substantive rights from those ensuring the effectiveness of procedural powers, and then discusses their proportionality and duration. The last point concerns the enforcement, in the event that the party to which the measures are addressed has not spontaneously complied with the order. As the binding nature of provisional measures is now generally accepted, it can be derived, as a logical consequence, that the failure to fulfill the obligation gives rise to an international wrongful act, whose effects are governed by customary law, mostly codified in the 2001 Draft articles on Responsibility of States (p. 319 et seq.).

Part III, "Specific Aspects of Provisional Measures", starts with Chapter 8, where *Miles* first addresses various issues of both substantive and procedural law. The first set of questions relates to the way judicial bodies approach interim relief, when the subject matter of the dispute (i) intersects human rights and humanitarian law, (ii) there is an overlap with the functions of the United Nations Security Council, or (iii) a parallel proceeding is pending before other authorities. The subsequent set concerns the possibility for provisional measures to be awarded when a party does not appear, or in the context of advisory, interpretative and – as regards the ICSID system – annulment proceedings. In the second place, the author faces the procedure for the modification or revocation of interim reliefs, once they have been ordered. Lastly, *Miles* resorts to a realistic approach in Chapter 9, where he confers to his characters a body and soul (even evil at times). Provisional measures, in fact, may play a primary role in the litigation strategy

the parties follow in view of purposes other than the physiological ones. This is because interim reliefs may aid in the immediate attainment of a party's wider objective, up to the point of resulting in the abuse of process.

The book, characterized by a clear and flowing style, contains an impressive number of questions regarding interim relief, analyzed in a comparative perspective by reference to the different practices of selected international courts and tribunals. It also proves to have an eye-opening character by virtue of the systematic insights it gives about the source of the power to issue provisional measures, their binding nature, and the consequences arising from non-compliance as well as those of a more practical concern, addressed in the last chapter. One point that might be critically highlighted concerns the extent of *Miles*' research. He excluded the case law of the Court of Justice of the European Union (CJEU), arguing that "[it] may be said to have developed its own distinct character such that it does not need necessary interact [...] with other international bodies at all or at least to the same degree" (p. 8). Although it must be recognized that the CJEU has a somewhat hybrid nature, this does not preclude that it can contribute to determining that "unified approach to provisional measures in international law" that *Miles*' comparative effort aims to outline. In addition, the more or less necessary and intense interaction with other international courts and tribunals could only be assessed as a result of a specific investigation on the point. On the other hand, it should be considered that the jurisprudence of the CJEU can contribute to the fragmentation of international law (e.g., *Kadi*) as well as to safeguard its unity, through the judicial dialogue with other international bodies, and especially with the ICJ, whose judgments it regularly cites in cases involving questions of public international law.

Likewise, the practice of regional systems for the protection of human rights has been left out of the scope of the inquiry, since "these bodies have developed a slightly different tradition of interim relief [...]" – explains the author (p. 7). On the contrary, one could say that dealing with a particular practice is not an obstacle, but the prerequisite for a comparative research aimed at verifying the existence of a "common approach" among international adjudicative bodies. The few references to the European Court of Human Rights (ECtHR) case law seem to demonstrate that it would have deserved some more attention. As it is well known, indeed, those systems have deeply contributed to the development of general international law. In this respect, it can be mentioned, for instance, the position taken by the ECtHR in *Belilos* (1988) and *Loizidou* (1995), as regards the regime of treaty reservations. These remarks, however, limit in no way the importance of the ambitious project that *Miles* pursues. He does not confine himself to

acknowledging the already existing degree of coherence, nor is he moved by the conservative fear that fragmentation could affect the law of provisional measures. Courageously, instead, he starts shaping the future of international dispute settlement towards a "harmonious system [...] to the benefit of international society as a whole".

Donato Greco, Napoli

***Noltenius, Rainer* (Hrsg.): Mit einem Mann möcht ich nicht tauschen. Ein Zeitgemälde in Tagebüchern und Briefen der Marie Bruns-Bode (1885-1952).** Berlin: Gebr. Mann Verlag. 2019. ISBN 978-3-7861-2799-4 (Hardcover). 328 S. € 29,00

Nahezu ihr gesamtes Leben führte *Marie Bruns-Bode* ausführliche Tagebücher. 2.776 handschriftliche Seiten und 18 Tagebücher dokumentieren, dass das Schreiben für sie fast eine Profession war. Die Aufzeichnungen spiegeln vier Epochen deutscher Geschichte sowie das sich im Lauf der Zeit verändernde weibliche Rollenbild des Bildungsbürgertums wider. Zu einer interessanten Quelle der Zeitgeschichte und der Geschichte des Völkerrechts werden die im Privatbesitz der Familie befindlichen Tagebücher dadurch, dass die Schreiberin zentrale politische und kulturpolitische Ereignisse aus nächster Nähe beobachten konnte. 1885 als Tochter des einflussreichen Museumsmanagers und Kunsthistorikers *Wilhelm* (seit 1914 von) *Bode* geboren, genoss sie eine von Internationalität geprägte Erziehung und kam bereits als Teenager in Berührung mit den kulturpolitischen Netzwerken des Kaiserreichs. Als Ehefrau des Völkerrechtlers *Viktor Bruns*, der 1924 das Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht (das heutige Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht) gründete, war sie indirekt Zeitzeugin internationaler Schiedsprozesse, die nach dem Ersten Weltkrieg außenpolitische Weichen stellten.

Eine Auswahl der Tagebücher sowie Briefe von *Marie Bruns-Bode* hat ihr Enkel *Rainer Noltenius* im vergangenen Jahr im Berliner Gebrüder Mann Verlag herausgegeben. Der Herausgeber forschte als Germanist an der Universität Dortmund und hat mit dem Band seiner Großmutter ein ehrendes Denkmal gesetzt. Obwohl *Noltenius'* Charakterisierung von *Marie Bruns* als emanzipierte Frau und subversive Regimegegnerin während der NS-Zeit, die er im Nachwort versucht, auf Basis der vorgelegten Quellenedition nicht recht nachvollziehbar ist, überzeugt das Buch als Sammlung von bislang nicht beachteten Selbstzeugnissen. Neben einem Bildteil, der außer Fotos auch Zeichnungen umfasst, enthält der Band ein umfassendes Quellen-

verzeichnis, sowie biographische Übersichten und die vollständigen Schriftenverzeichnisse von *Marie* und *Viktor Bruns*.

Besonders wertvoll ist die Ergänzung der Tagebücher durch Briefe von *Marie Bruns*. Leider fällt dieser Teil deutlich schmaler aus. Vor allem aus der Zeit 1935 bis 1944, in der *Marie Bruns* einen Großteil ihrer Tagebuchaufzeichnungen vernichtete, hätte man sich mehr Briefe gewünscht, um ein Bild dieser Jahre zu gewinnen. Der Korrespondenzteil ist überdies aufschlussreich hinsichtlich des Quellenwerts der Tagebücher. Denn nicht selten klaffen die Bewertungen desselben Geschehens im Tagebuch und im Brief weit auseinander, was zeigt, dass die Tagebücher nicht als Dokumente unmittelbaren Erlebens gelesen werden können.

Vielmehr waren sie stilistisch am zeitgenössischen literarischen Kanon inspirierte Familienchroniken, wie der Germanist und Rezeptionsforscher *Noltenius* kenntnisreich im Nachwort ausführt: Tagebücher, oft prachtvoll in Leder gebunden und mit Goldschnitt versehen, wurden gern im Familienkreis vorgelesen und besaßen eine zentrale Aufgabe für die Bildung des Familiengedächtnisses und die Selbstversicherung des Familienverbands über mehrere Generationen hinweg. Entsprechend selten enthalten sie Schilderungen persönlicher Krisen, Misserfolge und Enttäuschungen. Mit dem Quellenband schreibt der Herausgeber diese Tradition fort, denn mit seiner Publikation rückt er die Großmutter postum aus dem Privatissimum der Familie in die große Öffentlichkeit.

Marie Bruns stammte aus einer bildungsbürgerlichen Familie, was ihren weiteren Lebensweg prägte. Ihr Vater, *Wilhelm Bode*, wurde 1905 Generaldirektor der Berliner Museen, in denen er zuvor eine steile Karriere durchlaufen hatte. Ihm ist der Aufbau der heutigen Kunst- und Antikensammlung der Berliner Museumsinsel ebenso zu verdanken, wie die Gründung der beiden Museen auf der Museumsinsel, in denen die Sammlungen bis heute der Öffentlichkeit präsentiert werden: das 1904 eingeweihte Kaiser-Friedrich-Museum, heute nach *Bode* benannt, und das Pergamonmuseum, dessen Eröffnung 1930 *Bode* selbst allerdings nicht mehr erlebte.

Marie begleitete ihren Vater als Teenager auf zahlreiche Italienreisen, bei denen er Kunstwerke für die Sammlungen erwarb, und partizipierte früh an dessen Netzwerken als Teil seiner kulturpolitischen Arbeit mit Sponsoren, Sammlern, Stiftern und den Medien. Aufenthalte in Oxford und Paris stärkten *Marie Bodes* Begeisterung für die bildende Kunst und vermittelten ihr neben entsprechenden Sprachkenntnissen eine solide Grundausbildung der Kunstgeschichte, die sich als wissenschaftliche Disziplin gerade herausbildete.

In einer Zeit, da Frauen der Zugang zur Universität verschlossen war, hätte *Marie Bruns* immerhin der Lehrerinnenberuf offen gestanden, was ihr "heißester Wunsch" (S. 175, Brief an den Vater, 3.5.1903) war. Andere Frauen aus bildungsbürgerlichen Haushalten gingen diesen einzigen Weg zur Berufstätigkeit, darunter auch ihre Freundin *Agnes von Harnack*, Tochter des Kirchenhistorikers *Adolf von Harnack*, der 1911 mit der Kaiser-Wilhelm-Gesellschaft die Vorläuferin der heutigen Max-Planck-Gesellschaft schuf. Doch auf Geheiß ihres Vaters, der um die Gesundheit der Tochter besorgt war, stellte *Marie Bruns* ihre beruflichen Ambitionen zurück. Dank der guten Kontakte ihres Vaters zum preußischen Hof gelang es ihr dennoch, ihren Traum zu verwirklichen. Von 1907 bis 1910 arbeitete sie als Privatlehrerin der Kronprinzessin *Viktoria Luise*. Danach war sie als externe Lehrerin mit geringer Stundenzahl an einer katholischen Schule tätig, die ihr 1914 allerdings kündigte, da *Marie Bruns* aus ihrer liberalen religiösen Einstellung gegenüber den Schülerinnen keinen Hehl machte.

1915 heiratete *Marie Bode Viktor Bruns* und richtete ihr Leben fortan an seinem aus, zeichnete und schrieb „natürlich nur für den Hausgebrauch" (S. 282, Brief an den Vater, 8.1.1915). Während ihre engste Freundin *Marie von Gebsattel* von 1919 bis 1923 als Abgeordnete im Bayerischen Landtag saß, ab 1922 als Dezernentin im Kultusministerium das Mädchenschulwesen in Bayern verantwortete und es bis zur Oberregierungsrätin brachte, stellte *Marie* ihre Tätigkeit als Pädagogin für Kunstgeschichte in Schule und Museum zugunsten von Heim und Familie bewusst zurück. Erst in den 1930er-Jahren nahm sie ihre Tätigkeit als Kunstvermittlerin wieder auf. Als Ehefrau und Tochter *Wilhelm von Bodes* hatte sie allerdings weiterhin Teil am gesellschaftlichen Leben.

Im Fokus ihrer Tagebücher standen zum einen die Karriere von *Viktor Bruns*, zum anderen das Privatleben der Familie, die sich bald um die Töchter *Hella* (geb. 1917) und *Edith* (geb. 1921) vergrößerte, sowie Reisen. Mehrere Fehlgeburten machten den Traum von einer großen Familie zunichte. Wie wichtig die Familie für sie war, ermisst sich daran, dass sie ihren Kindern jeweils eigene Tagebücher widmete, die deren Entwicklung bis ins frühe Erwachsenenalter hinein festhalten. Obwohl *Marie Bruns* in einem Brief an ihre Freundin *Marie Gebsattel* festhielt, dass sie mit ihrem Mann "kaum über berufliche Belange" (S. 229, Brief an *Marie Gebsattel*, 24.3.1923) spreche, zeichnet sie in den Tagebüchern ein anderes Bild. Als Gattin begleitete sie *Viktor Bruns* auch zu repräsentativen Diners mit diplomatischem Hintergrund. Als Sekretärin schrieb sie Teile seiner wissenschaftlichen Werke nieder.

Die Heirat mit *Viktor Bruns* erweiterte *Marie Bode-Bruns*' Netzwerke noch einmal erheblich, denn mütterlicherseits entstammte *Viktor Bruns* der Familie Weizsäcker. Besonders den Onkel *Carl Weizsäcker*, der von 1906 bis 1918 Ministerpräsident von Württemberg war, schätzten *Viktor* und *Marie Bruns* als kompetenten Beobachter des politischen Geschehens und wichtigen Gesprächspartner für die Erörterung außenpolitischer Fragen. Von ihm beeinflusst sind vermutlich viele kritische Bemerkungen zur Tagespolitik, wie bei Kriegsende über *Kaiser Wilhelm II*: "Die Wahrheit sickert allmählich durch, dass Deutschland ihm den Verderben bringenden Krieg in erster Linie zu verdanken hat. […] Er ist auch Schuld daran, dass die zweimaligen Bündnisangeboten von England abschlägig beantwortet wurden" (S. 90).

Viktor Bruns wurde 1884 in Tübingen geboren und studierte Rechtswissenschaften in seiner Heimatstadt und in Leipzig. Nach der Dissertation war er von 1910 bis 1912 außerordentlicher Professor für Römisches Recht in Genf und ab 1912 außerordentlicher Professor für Staatsrecht und Völkerrecht an der Berliner Universität. Während des Ersten Weltkriegs entdeckte er im Kriegs-Presseamt in Stuttgart sein Talent als Verfasser juristischer Artikel zu tagesaktuellen außenpolitischen Fragen. Nach dem Krieg arbeitete *Viktor Bruns* zunächst wieder wissenschaftlich an der Universität Bonn und kehrte 1919 auf seine alte Position an die Berliner Universität zurück.

Der Karriereplanung ihres Mannes widmete seine Frau *Marie* im Tagebuch viel Raum. Sie schilderte ihn als Mann mit ebenso großem Talent wie Ambitionen, sowohl wissenschaftlich und politisch-publizistisch zu arbeiten, als auch für die Diplomatie oder die Regierungsbürokratie. Seinen verschiedenen Neigungen konnte *Viktor Bruns* schließlich als Gründungsdirektor des Kaiser-Wilhelm-Instituts (KWI) für Völkerrecht folgen, dessen Gründung er mit initiierte. Details zu den Jahren der Institutsgründung sind in *Marie Bruns*' Tagebuch allerdings nicht festgehalten, da die Aufzeichnungen aus den Jahren 1924 bis 1929, vermutlich während der Kriegszeit, verloren gingen.

Das Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht (KWI) wurde 1924 zunächst als Verein gegründet und den wissenschaftlichen Statuten der Kaiser-Wilhelm-Gesellschaft verpflichtet, in die es 1938 überführt wurde. Die Neugründung war *Viktor Bruns*' Antwort auf die Herausforderungen, vor der die deutsche Außenpolitik nach dem Ersten Weltkrieg stand als sie darum rang, Deutschland wieder in die internationale Staatengemeinschaft zu integrieren. Dabei galt es, die politischen und wirtschaftlichen Beziehungen zu anderen Staaten unter Berücksichtigung der im

Versailler Vertrag niedergelegten Bestimmungen neu zu gestalten. Für die hochkomplexen Sachlagen war rechtswissenschaftliche Kompetenz gefragt und eine neue Methodik, die *Bruns* im Rechtsvergleich fand. Folgen des Krieges, wie die Rheinlandbesetzung oder der Polnische Korridor ins nunmehr vom Reichsgebiet abgetrennte Ostpreußen schufen außenpolitische Konflikte, die innenpolitischen Zündstoff bargen und für deren Regelung diplomatisches Geschick allein nicht genügte.

Als Direktor des die Regierung in Fragen des internationalen Rechts beratenden KWI vertrat *Viktor Bruns* den deutschen Staat in internationalen Schiedsgerichten sowie am Ständigen Internationalen Gerichtshof in Den Haag. So wirkte er an der Gestaltung der politischen und wirtschaftspolitischen Landkarte nach dem Ersten Weltkrieg mit. Die Tagebücher seiner Frau dokumentieren unter anderem seine Rolle bei den Verhandlungen beim Internationalen Schiedsgerichtshof in Den Haag über die deutsch-österreichische Zollunion, die abgewiesen wurde. Begeistert schilderte *Marie Bruns* dagegen die erfolgreichere Verhandlung über den Status Danzigs zwischen 1928 und 1931 am Ständigen Internationalen Gerichtshof in Den Haag, in der *Bruns* als Richter mitwirkte: "Nachdem die Polen schon in einer öffentlichen Versammlung verkündet hatten, Danzig sei jetzt polnisch geworden, hatte Viktor den freien Staat den Polen entrissen. Mir war, als sei ich die Frau eines großen Generals, der eine Stadt vom Feinde entsetzt hatte. Aber nicht mit Schwertgewalt, sondern mit den friedlichen Waffen des Geistes" (S. 127). Ein authentischer Bericht über die anstrengende Verhandlungswoche aus *Bruns* eigener Feder ist ins Tagebuch als langes Briefzitat eingeflochten. "Aber was als Jurist mich empört, das ist das ganze illegale Gebaren einer skrupellosen Politik, das in den Mantel des Rechts eingehüllt wird und nichts anderes als eine Entweihung des höchsten Gutes, das den Menschen neben der Religion gegeben ist, nämlich des Rechtsgedankens als der Verwirklichung der Gerechtigkeit" (S. 126).

Ein wichtiges Hilfsmittel dieser Arbeit für die deutsche Außenpolitik war das völkerrechtliche Archiv, dessen Aufbau ein Kerngeschäft des neuen Instituts wurde. Die Sammlung sollte im Konfliktfall einen schnellen Zugriff auf juristische Grundlagen und Dokumente ermöglichen und bei der Schlichtung helfen. Als neue völkerrechtliche Methodik führte *Bruns* den Rechtsvergleich und die Erforschung auch des ausländischen öffentlichen Rechts ein, was ein Novum für die Völkerrechtsforschung bedeutete. *Marie Bruns*' Reflexionen dazu in ihrem Tagebuch sind vermutlich von Bemerkungen ihres Mannes angeregt: "Völkerrecht ist eben in der Hauptsache noch ungeschriebenes Gewohnheitsrecht, das nur auf einzelnen internationalen Verträgen beruht. Als Wissenschaft muss es erst begründet werden.

Dazu bedarf es einer großen Dokumenten- und Büchersammlung, die Viktor mit vielen Gehilfen in die Hand nehmen will." (S. 232, Brief an *Anna Rimpau*, 21.2.1925). *Marie Bruns*, die mit der Kunstgeschichte schon früher die Herausbildung eines neuen wissenschaftlichen Fachs aus nächster Nähe miterlebt hatte, mag hier, wo es gleichfalls um eine neu aufkeimende Wissenschaft ging, besonders aufmerksam beobachtet haben. Sie selbst übernahm engagiert Hilfstätigkeiten, wie das Schreiben von Karteikarten für den Zettelkatalog der neuen Bibliothek.

In *Marie Bruns'* Tagebüchern bleibt die Zeit des Nationalsozialismus unterbelichtet, da sie selbst 250 Seiten ihrer Aufzeichnungen aus den Jahren 1936 bis 1944 herausriss, wie der Herausgeber kommentiert. Er mutmaßt, diese Tagebuchseiten hätten Passagen enthalten, die Sympathien mit dem Kreis der Verschwörer vom 20. Juli 1944 verraten hätten und aus Angst vor einer Hausdurchsuchung nach dem gescheiterten Putsch vernichtet worden seien. Die These entbehrt nicht der Plausibilität, da *Viktor Bruns* engen Kontakt zu dem von ihm hochgeschätzten Mitarbeiter *Berthold Schenk Graf von Stauffenberg* pflegte. Wie dieser war auch *Helmuth James Graf von Moltke* am Putsch beteiligt und seit 1939 unter *Bruns* am Institut tätig. In dieser Zeit war das Institut dem Oberkommando der Wehrmacht unterstellt, wohin auch Mitarbeiter abgeordnet wurden, darunter *Moltke* und *Stauffenberg*.

Auch privat pflegte die Familie *Bruns* über die Bekennende Kirche in Berlin-Dahlem Kontakte zu nationalkonservativen Milieus, die wenig später in Opposition zum NS-Regime gerieten. Die Konfirmation und die Trauung von *Hella Bruns* wurden Pastor *Martin Niemöller* anvertraut. Die Eheschließung konnte *Niemöller* allerdings nicht vollziehen, da er kurz zuvor als Staatsfeind verhaftet worden war, was *Marie* kurz erwähnt. Dagegen spiegeln ihre Tagebuch-Einträge auch eine Anpassung an die NS-Gesellschaft und eine grundsätzliche Zustimmung zur Rasseideologie, was allerdings einem allgemeinen, von biologistischen Vorstellungen der Zeit getragenem, gesellschaftlichem Konsens entsprach.

Zur Einordnung des Verhaltens des Ehepaares *Bruns* in der NS-Zeit, können die wenigen Quellen des Bandes letztlich kein eindeutiges Bild liefern. Der Vergleich, den der Herausgeber im Nachwort zwischen *Viktor Bruns* und dessen Cousin *Ernst von Weizsäcker* zieht, der 1938 Staatssekretär im Auswärtigen Amt wurde und Karriere im NS-Staat machte, ist wenig glücklich. Beide seien, so *Noltenius*, geblieben um Schlimmeres zu verhindern. Angesichts neuer Erkenntnisse der historischen Forschung über *Weizsäckers* Verhalten und dessen Kenntnissen der Pläne zur "Endlösung der Judenfrage" erscheint das Urteil wenig reflektiert. Überdies musste sich

Viktor Bruns in seiner Position weit weniger mit den Machthabern arrangieren.

Er starb, zeitlebens an Herzproblemen leidend, 1943. Wenig später vernichtete eine Bombe große Teile der Bibliothek seines Instituts im ehemaligen Berliner Stadtschloss. Die Reste wurden in *Bruns*' Villa gebracht und dort mit seiner Privatbibliothek zusammengeführt. Die so entstandene Sammlung kam nach Heidelberg, wo sie den Grundstock des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht bildete. *Marie Bruns* nahm regen Anteil an der Neueröffnung des Instituts unter Leitung von *Carl Bilfinger* im September 1949. Sie überlebte ihren Mann um neun Jahre.

Erst in dieser Zeit und gezwungen durch die Notzeit nach dem Krieg setzte sie ihre über Jahre geschulten Fertigkeiten als Porträtzeichnerin – nun schon in fortgeschrittenem Alter – professionell ein, um einen Teil des Familienunterhalts zu erwirtschaften.

Marie Bruns' Biographie und ihre Aufzeichnungen sind insgesamt eine interessante Quelle für die Genderforschung. Denn sie geben Anhaltspunkte, warum die meisten Frauen aus dem gehobenen Bürgertum trotz einer liberalen Einstellung, guter Ausbildung und einem Umfeld, in dem Vorbilder nicht fehlten, in traditionellen Rollenschemata verharrten. Der Vergleich mit männlichen Karrieren zeigt, dass Frauen einer aktiven Unterstützung durch die Familie bedurften, um ihre Talente in einem Beruf ausleben zu können. Während *Wilhelm von Bode* seinen beruflichen Traum trotz des väterlichen Verbots in einem zweiten Anlauf mit großem Erfolg realisierte, gelang seiner Tochter das nicht – obwohl sich auch ihr eine zweite Chance bot. Sie entschied sich für das Familienleben. Wie sehr sie traditionelle Rollenbilder akzeptierte, zeigt, dass sie der eigenen Tochter trotz ihres großen Talents untersagte, ihrem Wunschberuf Sängerin nachzugehen. Stattdessen absolvierte diese eine Ausbildung zur Krankengymnastin. "Das Ziel wird ja doch die Ehe werden, und für die kann Hella in ihrer Berufsausbildung viel lernen" (S. 162), schrieb *Marie Bruns* angesichts dieser Berufswahl 1936.

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***Ruys, Tom/Corten, Olivier/Hofer, Alexandra* (eds.): The Use of Force in International Law: A Case-Based Approach.** Oxford: Oxford University Press. 2018. ISBN 978-0-198784-36-4 (Paperback). 960 pp. £ 53,00

The book under review is intended as "the first attempt to systematically bring together the main *jus contra bellum* precedents since 1945 into a single work of reference" (p. 3). It is thus meant to be a reference work. It has an introduction written by the editors and a chapter on the *Caroline* incident

written by *Sir Michael Wood*, which was included because of "its omnipresence in legal doctrine and state discourse" (p. 2), and 64 case studies divided into three eras: the Cold War era, the post-Cold War era, and the post 9/11-era.

Where most previous works are divided by theme, with individual cases mentioned incidentally, *The Use of Force in International Law: A Case-Based Approach* is instead divided by case, with the relevant thematic questions mentioned incidentally. This novelty constitutes the "approach" mentioned in the book's title. The book covers no less than 64 post-1945 cases, each of which gets one chapter. The editors justify their approach by arguing that "precedents from state practice [...] is indeed an important and unavoidable element from which the *jus contra bellum* derives its compliance pull" (pp. 2 et seq.).

Even with its 64 cases across 932 pages, the editors admit that the book "is not exhaustive" (p. 2). For example, it excludes the various incidents of the China-Taiwan conflict, the Vietnam War (the book only covers the Gulf of Tonkin incident), the 1994 invasion of Haiti, the 1948 Arab-Israeli War, the Balkan Wars (the book only covers the North Atlantic Treaty Organization [NATO] interventions), the Armenia-Azerbaijan War, the Lebanese Civil War (the book only covers Israel's 1982 involvement), the Biafra conflict, and the two Chechen wars. While all of these conflicts are politically important, many of them are largely civil wars or wars of secession, whose legal assessments may turn as much on questions of statehood or self-determination as on the law of the use of force. It is therefore sensible to exclude them from a book like the one under review.

Some of the inclusions in the book are unsurprising, for example the Korean War (1950-1953), the Entebbe Raid (1976), and the 2001 invasion of Afghanistan. Some inclusions are more surprising, such as the Larnaca incident (1978) and South African incursions into Lesotho (1982). As the book itself notes, "most of the case studies included in this volume have previously been the subject of scholarly analysis" (p. 2). The book nonetheless collects the various incidents and analyses them in a comprehensive and uniform way, which is useful.

The editors explain that "in order to ensure consistency and transparency, and to maximize the value of the volume as a work of reference, all case studies follow a common approach" (p. 3). Each chapter thus has four parts: facts and context, the positions of the parties, questions of legality, and precedential value. That is a good decision. It makes it easier to connect and compare different chapters. It also pushes every writer to reach relatively clear conclusions about the legality of each event.

One impression that the book leaves is that there have been many violations of the prohibition of the use of force. Over the 64 cases the book covers, individual states have used force 306 times. The book classifies 122 of them as violations of the prohibition (these calculations are made by the reviewer). Having a rule that is so frequently violated could contribute to undermining respect for international law more generally. However, the book cannot cover all the times the prohibition has influenced states *not* to use force. The book also shows that some states that are later found to have violated the prohibition, could have plausibly believed that they were on the right side of the law at the time. For example, when Israel attacked Lebanon in 1982 it invoked a large number of alleged terrorist attacks from Lebanese territory, with its justification only being rejected later by the United Nations (UN) Security Council (p. 295). In short, what may seem like a high level of non-compliance with the prohibition of the use of force, is actually less significant than it appears.

Every chapter discusses the official positions of the parties in significant detail. This gets repetitive, especially during the Cold War. The same blocs of states consistently criticize each other, regardless of the underlying facts, and regardless of whether they happen to contradict a previous statement of their own. The book spends perhaps too much time on reproducing generic official statements that add little to our understanding of the issues. This is noted by *Tsagourias*, who, when writing about the "US Intervention in Panama" (1989), thinks that UN "votes were influenced by states' political affiliations or by their historical experiences" (p. 431). He is "not convinced that any *opinio juris* can be derived from a state's negative attitude towards this action if the same opinion is not expressed for a similar action taken by one of its allies" (p. 438).

Many legal issues recur throughout the book, and many of those are issues that international lawyers still struggle with. This includes humanitarian intervention, pre-emptive and anticipatory self-defence, the use of force to protect nationals, and self-defence against non-state actors. These legal issues are thoroughly discussed on in the respective chapters of the book, which is useful. The book as a whole does not draw any overall conclusions on the state of the law, however, as mentioned later in this review.

All the book's chapters are interesting in some way and could form the basis for further discussion. This review only has space for commenting on five of them, which have been chosen because they make particularly interesting points (the first three) or because they could have included additional points (the last two).

Quigley's chapter on the Six Day War discusses the legality of Israel's use of force and concludes that it was illegal. Not only that, he criticizes authors who have reached the opposite conclusion and used that as a precedent for the legality of anticipatory self-defence. *Quigley* sees this a case of "a 'precedent' […] created out of thin air by writers who ignored the facts" and believes that "[t]he legal academy has performed a disservice whose full consequences may not yet have been realized" (p. 142). That is a damning verdict, but *Quigley* makes his case convincingly.

The Six Day War was the start of Israel's occupation of the West Bank, Jerusalem, the Golan Heights, and Gaza. *Dubuisson* and *Koutroulis* touch on the *jus ad bellum* legality of the occupation in their chapter on the "Yom Kippur War" (1973), and find that "it would be difficult to conclude that the continuing Israeli occupation meets the conditions of necessity and proportionality" (p. 197). They thus conclude that Israel's occupation is illegal under *jus ad bellum*. This can be the case first of all since Israel's initial use of force in the Six Day War was illegal (as discussed in *Quigley's* chapter mentioned above), and also because even if the initial use of force was legal, it would not be necessary or proportional to occupy the relevant territories for another 50 years. This approach is refreshing. There are plenty of voices decrying how Israel's occupation violates *jus in bello* in various ways, for example by illegal settlement building. Israel's annexation (as opposed to occupation) of Jerusalem has also been widely labelled as illegal. The *jus ad bellum* aspects of the occupation are discussed much less often.

An important nuance is put forward in the chapter on the 2001 invasion of Afghanistan, where *Byers* thinks that it is "important not to conflate the development of the right of self-defence that occurred in 2001-2002 with later efforts to stretch the rule to include a right to attack terrorists operating from states that are unaware or unable to deal with them", since "[t]he Taliban was knowingly and willingly harbouring Al Qaeda" (p. 638). That is a useful reminder. It is possible to accept the legality of the 2001 Afghanistan invasion without subscribing wholesale to the increasingly creative *jus ad bellum* justifications of the "War on Terror".

The book also has a chapter on a more contemporary part of the Israel-Palestine conflict, written by *Henderson*, and covering three Israeli attacks on Gaza, in 2008-2009, 2012, and 2014. The chapter argues that Israel's attacks were not justified under Article 51 of the UN Charter. However, the chapter goes somewhat too directly to Article 51. Article 51 is an exception from Article 2(4). The chapter should have first established whether the customary equivalent of Article 2(4) even applies to Gaza (or Palestine) in the first place. This presupposes either that Palestine is a State or that the prohi-

bition applies to non-State actors. Both of those suppositions can be debated, and should be clarified before Article 51 is applicable. *Henderson* concludes that Israel still occupies Gaza, even though Israeli ground forces have been pulled out of the territory (pp. 742 et seq., 743). Israel still controls Gaza's borders, sea, and airspace, and it is therefore reasonable to conclude that Israel is still in effect an occupying power. The occupation stretches back to the Six Day War, as mentioned in the paragraph above. The point here is that if it is assumed that Israel is still the occupying power in Gaza, the legality of the occupation must be determined before it is possible to comment conclusively on the legality of any specific action taken in the context of the occupation. Only discussing Article 51 does not give a complete legal picture of this rather unique legal situation.

The chapter on "The Intervention in Somalia" (1992-1995) is, in contrast to most of the other chapters, somewhat disappointing. Unlike other case studies in the book, it focuses primarily on politics and strategy rather than law, which makes it less relevant to the overall theme of the book. This is a missed opportunity, since it does not, for example, say anything about how that incident contributed to the understanding and development of the phrase "threat to the peace" in the UN Charter Article 39. The aim of the intervention was "to establish […] a secure environment for humanitarian relief operations" inside Somalia (UN Security Council Resolution 794), which is somewhat different from the traditional "international peace and security" concerns that Article 39 focuses on.

The book has an introductory chapter written by the editors but lacks a concluding chapter at the end. That would have been a useful addition. After going through 64 separate case studies, there is a need to summarize and take stock. In the absence of a conclusion, the end result is somewhat fragmentary. There are numerous cross references between chapters, but it is left to the reader to draw overall conclusions. This in turn reduces the added value of the book. The book's back cover notes that "[t]his expertly written volume compares over sixty different instances of the use of cross-border force […] to ask a complex question: how much authority does the power of precedent really have in the law of the use of force?" Without a solid methodological starting point or a gathering up of loose threads at the end, that question is not fully answered.

It is therefore not entirely clear what *legal significance* the book's "case based approach" may have. It is a "work of reference" (p. 3) with a large number of case studies, but what relevance do the case studies have to the current law on the use of force? Some past disputes still matter to a current legal situation, such as the Six Day War (which matters to Israel's continued

occupation of Palestinian territories, as discussed above). Other cases may matter only for their precedential value, which can be significant enough to merit a present-day revisit. While each chapter explains each case's "precedential value", the book as a whole makes no attempt at explaining *what kinds* of precedents they are. In this regard the various cases discussed in the book may be intended as "subsequent practice" for interpreting the UN Charter Article 2(4) and Chapter VII, as per the Vienna Convention on the Law of Treaties (VCLT) Article 31(3)(b). While the latter provision is not retroactive (according to the VCLT Article 4), and therefore does not apply directly to the older UN Charter, it can be assumed to reflect customary international law. The provision requires that the practice in question "establishes the agreement of the parties" to the UN Charter. Such "agreement" could, for example, be expressed through UN resolutions adopted by a significant number of member states. The cases may also be taken as instances of state practice, possibly accompanied by *opinio juris*. This could make them relevant for ascertaining the content of the customary international law prohibition of the use of force, which exists alongside the UN Charter Article 2(4). A complicating factor is that the prohibition of the use of force is *jus cogens*. *O'Connell* argues in her chapter on "The Crisis in Ukraine 2014" that because of this "[t]he prohibition is not susceptible to change through […] changing patterns of state practice" (p. 860). This is a complicated question, and it would have been interesting to have had the editors' views on it.

Even so, the editors and authors of the book under review have done a tremendous effort and have produced a unique and valuable reference work on the international law on the use of force. Similar reference works could be useful in other fields of international law that are largely based on precedents, such as the principle of non-intervention or state immunity.

The book is thorough on the facts. This can be challenging to achieve, since some events are unclear and sometimes deliberately obfuscated by the actors involved. It is nonetheless essential for a book like this, since a precise legal analysis is impossible without properly established facts. The book is also a rich source of official documents, especially from the UN, and of relevant literature. It gives an objective legal assessment of a large number of incidents, which is especially interesting for those that never came or will come before a court or tribunal. The book would nonetheless have benefited from a clearer methodological grounding, and from an attempt to draw some overall conclusions from the massive and sometimes fragmentary material it presents. That would have made things easier for

readers. Then again, as a self-proclaimed reference work, the book is presumably not meant to be read cover-to-cover.

Sondre Torp Helmersen, Tromsø

***Steinitz, Maya*: The Case for an International Court of Civil Justice.** Cambridge, UK: Cambridge University Press. 2018. ISBN 978-1-316-73006-5 (eBook). US$ 88,00 / ISBN 978-1-107-16285-3 (Hardback). XIII, 241 pp., £ 85,00

Over the past decades, the power and influence of multinational corporations (MNCs) have drastically grown – as have the adversarial effects of their activities on humans and the environment. At the same time, factual, legal and political complexities have hindered the development of effective regulation and mechanisms of accountability, often leaving victims of corporate abuses with no or very limited redress. This disparity between immense power and lacking accountability has long been noted, studied and decried – and has led to regulatory efforts at various levels. These include self-regulation of corporations, domestic legislation, the adoption of guidelines by the United Nations (UN) and Organisation for Economic Cooperation and Development (OECD) and a potential legally binding instrument on "business and human rights" that is currently discussed by a UN-based intergovernmental working group. Despite undeniable progress in some regards, these efforts have so far failed to bring about lasting improvements on a broader scale: In the vast majority of cases, victims of corporate abuses continue to face enormous hurdles when trying to hold corporate perpetrators to account.

In her book "The Case for an International Civil Court of Justice", *Maya Steinitz*, Professor of Law at the University of Iowa, offers a plea to think in a different direction. The adequate answer to the outlined problems, she submits, is the creation of an International Civil Court of Justice (ICCJ) that would be competent to adjudicate over "cross-border mass torts". The two main arguments in support of this proposition can be summarized as follows: Firstly, the existing fora (and this chiefly means domestic courts) are not only inherently ill-equipped to play a meaningful role in such cases, but should not do so for policy and normative reasons either. Hence, there must be a new institution, specifically designed for the adjudication of cross-border mass torts: the ICCJ. Secondly, the creation of an ICCJ is not only a desirable proposal but a feasible and politically viable one, too. That is because an ICCJ would not only benefit those that are harmed by corporations but also whom one might intuitively suspect to be opposed to such a court, namely MNCs and states. Finally, in what is the third main element

of the book, *Steinitz* gives further shape to her proposal by offering a blueprint for the ICCJ and its main procedural and institutional features.

Across the book's five chapters (181 pages, excluding notes), *Steinitz* draws from an ample array of fields and subject areas, including positive law analysis, case studies, institutional theory, as well as economic, normative and policy considerations. *Steinitz'* book can be (loosely) placed in the somewhat opaque category "business and human rights" but goes beyond that. The scope of her analysis is defined by one of the book's central notions: "cross-border mass torts". Torts are considered *mass* torts when they refer to "a large number of injuries […] arising from the same set of underlying facts and characterized by a commonality of issues and actors" (p. 46). The number of plaintiffs must "exceed[s] a numerical […] or discretionary […] threshold" (p. 11). The *cross-border* criterion requires that "plaintiffs in one country are injured by defendants (often MNCs) from another country" (p. 46). The following will unfold and examine her proposal to create an ICCJ with exclusive jurisdiction over such cross-border mass torts of MNCs in more detail. It does so by summarizing and, in turn, critically reviewing each of the book's three main elements, followed by a brief contextualization and some concluding remarks.

Desirability: "The Problem of the Missing Forum"

As indicated above, *Steinitz'* case for an ICCJ can be roughly broken down into three steps or segments. The first proposition is that the existing mechanisms do not, cannot and should not provide a forum for the settlement of cross-border mass torts. Due to this "problem of the missing forum" there must be a new forum: the ICCJ. To substantiate this finding, *Steinitz* recurs to case studies of the three well-known cases *Bhopal*, *Chevron* and *Kiobel* (chapter 2), followed by a more analytical examination (chapter 3). The analysis mainly focuses on the courts of the corporations' home states and thus nearly exclusively on the United States (US) and Europe where most MNCs are domiciled. Here, victims of corporate wrongdoing face high hurdles when trying to pursue their claims against an MNC. One of the underlying reasons is the cross-border nature of those cases. US courts, for instance, make use of the doctrine of *forum non conveniens* to dismiss cases that have a stronger connection to the jurisdiction of another state – which is typically the case in cross-border mass torts. A second factor complicating adjudication is the *modus operandi* of MNCs and the design of their corporate structures. It is rarely MNCs themselves that act on the ground but subsidiaries established under the law of the host states. As a matter of corporate law, however, an MNC (acting as the parent company)

and its subsidiary are typically treated as two distinct and independent entities (principle of separate legal entities). Concomitantly, MNCs cannot, in principle, be held liable for acts of their subsidiaries (doctrine of limited liability). This so-called "corporate veil" is one of the main hurdles that plaintiffs face on a level of both substantive law and for purposes of establishing the jurisdiction of courts. Next to these legal obstacles, plaintiffs encounter enormous factual and financial difficulties when initiating transnational lawsuits. Finally, *Steinitz* outlines that the procedures available before domestic courts were not designed for cross-border mass torts and struggle to accommodate their specificities. In sum, the courts of MNC's home states such as the US and Europe are "*de facto* unavailable" (p. 93) for victims of cross-border mass torts.

Turning to the courts of the host states, *Steinitz* comes to the same conclusion, albeit for different reasons. She identifies corruption, the lack of capacities and resources as well as insufficiently developed law as significant obstacles for plaintiffs. Furthermore, here too, MNCs and their subsidiaries have to be distinguished. Therefore, the host states courts' jurisdiction is typically confined to a – potentially underfunded – subsidiary, leaving the MNC itself beyond the reach of the host states' courts. Even if claimants would be able to overcome these hurdles and receive a favorable judgment against an MNC itself, it would be of little value: Judgments rendered in host states are often difficult or impossible to enforce in the MNCs' home states which is, however, where their financial assets typically lie.

Steinitz goes beyond individually describing the factual and legal hurdles that victims of corporate abuses and outlines why domestic courts are structurally inadequate to deal with cross-border mass torts. That is because they lack uniform or similar legal standards and coordination. This enables, or forces, plaintiffs to start proceedings in more than one jurisdiction. Depending on the case, they might turn to the courts of both home and host states and potentially even to third states, thereby setting the ground for lengthy and strenuous multi-fora litigation. This may amount to a "never-ending game of global whack-a-mole" (p. 1) which is very costly for businesses and does not benefit victims of corporate abuse either. In sum, "no one wins": "Victims have no access to justice. But MNCs must nonetheless defend themselves, often over and over again" (p. 82).

Furthermore, *Steinitz* identifies multiple policy and normative concerns about domestic courts assuming the role of "global courts". She points out that this would be hardly justifiable from a democratic legitimacy perspective and that it might expose the home states to charges of legal imperialism. Furthermore, adjudicating upon cross-border mass torts can trigger diplo-

matic discord with the relevant states and go against the concept of comity. From a domestic perspective, there are "reasons to doubt whether the taxpayers of MNCs' home states […] should bear the significant cost" of such trials (p. 83). Doing so would moreover inevitably thwart the foreign relations prerogatives of the executive branch. In light of this, she concludes that domestic courts not only fail to provide a meaningful forum. They cannot and should not do so either.

The outline of the "problem of the missing forum" is completed by a brief discussion of various other fora. International arbitration tribunals, for instance, are presently not open to individual plaintiffs in cross-border mass torts. There are, however, initiatives that seek to open them up to claims between victims of corporate abuses and businesses (see, for instance: "The Hague Rules on Business and Human Rights Arbitration", launched in December 2019). *Steinitz* disagrees: Firstly, the procedures and the informality of international arbitration are unsuitable for the settlement of mass torts. Secondly, the adjudication of mass torts commited by MNCs fulfills essential public functions such as punishment and deterrence and must thus not be privatized and left to an "invisible college of international arbitrators" (p. 102). Other than that, *Steinitz* finds voluntary and self-regulatory initiatives and mechanisms such as the "OECD Guidelines for Multinational Enterprises" to be important but to lack effectiveness. Finally, suggestions to create "single-issue courts" (for human rights, the environment or corruption) are rejected since they would only "tackle[s] part of the problem" and "are unlikely to garner enough support to be politically viable" (p. 103). These findings imply the book's first main finding: Due to the "problem of the missing forum" there is a need for a new institution that is specifically tailored to accommodate the characteristics of cross-border mass torts and avoid the pitfalls of the existing fora: the ICCJ.

Steinitz' thorough outline of the deficiencies of the existing fora as such will not trigger much disagreement, nor will her call for more effective accountability mechanisms. What is more controversial is the conclusion that (only) the ICCJ can and should provide such a mechanism as well as the line of reasoning that leads her to this conclusion. Among many other issues that could be discussed, it is the rather absolute verdict on domestic courts that stands out. Many of her normative concerns about domestic courts, however, are primarily developed against the background of so-called "foreign-cubed cases": foreign plaintiffs sue a foreign defendant for extraterritorial wrongdoing. In such cases – where there is no (strong) link between the case and the forum – many of *Steinitz'* concerns certainly have merit. They less readily apply to cases that fall outside this category. Consider, for in-

stance, cases brought against a corporation that is domiciled in the forum state (so-called "foreign-squared cases"). Here, there is a clear jurisdictional link between the corporation and the forum state. In these cases, the charges of legal imperialism and detrimental judicialization of foreign policy, the comity concerns and the unease about spending taxpayers' money are less conclusive or might not be justified at all.

Against this background, it is difficult to uphold the rather sweeping verdict to completely rule out domestic courts as a (potential) forum. That is not to ignore the enormous factual, financial and legal hurdles that plaintiffs face before domestic courts. Yet, *Steinitz*, at this point, makes a normative case against domestic courts which is not primarily based on their current deficiencies but would persist even in the hypothetical case of extensive reforms. The normative arguments against domestic courts are, in this form, not only inconclusive but unnecessary: After all, even if domestic courts are evaluated in a more differentiated way, one might find an ICCJ to be the preferable option. Whether and to what extent the ICCJ is eventually preferable over other fora will depend on the perspective: For those potentially affected by cross-border mass torts, the ICCJ certainly entails the promise of more effective redress than the *status quo*. MNCs and their home states would need other incentives (which will be the subject of the next part). Besides this, *Steinitz* convincingly outlines structural advantages of an ICCJ over other fora and especially domestic courts. These advantages are laid out against the background of the deficiencies of other fora under the *status quo*. One must, however, consider that the ICCJ would be the product of long and intense political struggles and that other fora might be more appealing if similar efforts were vested in their reform. Consider, for instance, that the efforts at the UN level would be successful and lead to a treaty that improves the coordination between domestic legal systems and establishes common standards for the regulation and accountability of MNCs that are to be implemented domestically. In this case, *Steinitz'* desirability case may lose (some of) its strength. The discussion of the ICCJ's desirability, therefore, interrelates with its feasibility and political viability, the subject of the next section.

Feasibility: "The Business Case for the ICCJ"

The second main argument of the book is that the creation of an ICCJ is not only desirable but feasible and politically viable. The feasibility claim is, to some degree, argued as a continuation of the desirability case. The ICCJ, the argument goes, is feasible because it is desirable for all actors involved, including MNCs and states which one might intuitively suspect to be op-

posed to such a court. *Steinitz* primarily tackles this issue in her fourth chapter, titled "The Business Case for the ICCJ". Her key claim is that "there are strong reasons to believe that informed MNCs would support the creation of an ICCJ" (p. 108). That is because, contrary to an outdated belief, MNCs do not "benefit from forum shopping under the status quo" (p. 108). Rather, they suffer from high direct costs such as attorneys' fees (which are exceptionally high in cross-border litigation) and indirect costs. Such indirect expenses result from "uncertainty about the corporation's long-term viability", litigation that "distract managers and employees" as well as adverse effects on a corporation's "reputation and goodwill" and the "investment climate" (p. 114). These costs are exacerbated by a "new transnational litigationscape" (p. 109) where litigation of cross-border mass torts is fueled by rapidly growing litigation finance, the rise of the "global entrepreneurial lawyer" (p. 128) and increasingly plaintiff-friendly legislation in some jurisdictions. As a result, "plaintiffs still lose, but winning has become very, very expensive for corporate defendants" (p. 110).

The ICCJ, in contrast, would enjoy exclusive jurisdiction over cross-border mass torts and lower costs by "eliminating or reducing forum shopping and parallel and sequential litigation" (p. 113). Furthermore, the ICCJ's exclusive jurisdiction would allow MNCs to obtain "global legal peace", i.e., "a final end to all litigation" (p. 123). That sets it apart from domestic courts which either cannot provide for finality or only after lengthy proceedings and at a very high price. Moreover, before the ICCJ, "the direct expenses would only be incurred once, and the indirect effects would be time-bound instead of stretching off long into the future" (p. 126). The ICCJ would not be prone to corruption and would remove the risk that MNCs "find themselves at the receiving end of populist rage" of host states' governments (p. 119). Beyond that, an ICCJ would improve the investment climate and might help to "minimize anger and backlash in nations and regions where the defendant may wish to continue doing business" after instances of corporate wrongdoing (p. 120). Moreover, *Steinitz* points out that corporate social responsibility and similar initiatives have proliferated which shows that many MNCs have an interest in aligning their activities with ethical standards. The ICCJ picks up these threads. It would, furthermore, benefit those businesses that (already) do so. In sum, *Steinitz* finds that MNCs should support the creation of an ICCJ – if not for ethical reasons, then for economic reasons alone.

Although less extensively, the perspective of states is also discussed. States, too, have economic incentives to join the ICCJ since it would lead to a more favorable investment climate and generate more foreign direct in-

vestment. Furthermore, capital-exporting states have an interest in supporting their MNCs (assuming that they would, in turn, support an ICCJ). Capital-importing states seek to provide their citizens or residents with an effective forum to address corporate abuses. *Steinitz* embeds her "business-case for an ICCJ" into a broader context of how international courts come into being (chapter 1). She explores conditions and facilitating factors for the creation of international courts such as economic incentives, the increasing complexity of a given issue area, pressure by social movements and academic discourse. Often, the proposal of an international court gains traction when it is triggered by a "constitutional moment", i.e., major events like the end of World War II. With regard to the ICCJ, she finds that many of the factors that contribute to the creation of international courts are already present or at least within reach. There are "growing calls for reforming the existing system for resolving disputes arising from FDI [Foreign Direct Investment]", "growing global embrace of collective redress and class actions"; besides this, "NGOs [Non-Governmental Organizations], IGOs [Intergovernmental Organizations], academics, and even corporate responsibility initiatives" seek to "improve adherence to human rights, environmental, and other norms" (pp. 42 and 43). Against that background, "with the right academic and policy discourse, blueprints developed now may meet their constitutional moment in the first half of the twenty-first century" (p. 44) – and lead thus to the creation of the ICCJ.

While a proper discussion of *Steinitz'* feasibility argument is beyond the scope of this review, two issues can be pointed out. Firstly, one might wonder whether states would not be more hesitant than suggested. From a perspective of political viability, it is an advantage of the ICCJ (over, say, a World Court of Human Rights) that the ICCJ is not competent to deal with instances of state injustice as such. Still, states would inextricably be entangled in at least some cases. That applies but is not limited to cases where MNCs are charged with complicity in state wrongdoing or when the acts in question are committed by state-owned enterprises.

The second observation concerns the "business case for the ICCJ" and the underlying calculation that having an ICCJ in place is less costly for MNCs than sustaining the *status quo*. When describing and analyzing the *status quo*, however, *Steinitz* very much focuses on cases such as *Chevron*, *Kiobel* and *Bhopal*, that is, cases which are in many ways exceptional, most importantly, exceptionally big. While *Chevron* might in hindsight indeed prefer proceedings before an ICCJ over its odyssey through years of expensive multi-fora litigation, it seems less evident whether this logic can be transferred to the whole array of cross-border mass torts. After all, the bulk

of cases to be brought before the ICCJ would be located on a smaller level. Due to the outlined factual, financial and legal hurdles, a (substantial) share of these cases at the moment likely slips through the nets of the "transnational litigationscape" and never makes it to a court or only to be quickly dismissed. After all, the deficient *status quo* does not only play out to the detriment of MNCs.

The ICCJ, to the contrary, would by design be the first forum designed and equipped to provide effective redress in cross-border mass torts and does so as a permanent court with compulsory and exclusive jurisdiction. If it is live up to its ambition, the ICCJ would likely enable victims of corporate abuses to pursue their claims that were so far not able to do so. At the same time, the ICCJ would administer these cases more effectively, leading to judgments or settlements of substantial amounts. In other words, the ICCJ might lead to both a quantitative increase and qualitative improvements in the litigation of cross-border mass torts. It would thus come with a price that might level out, or even exceed, the costs that the ICCJ is supposed to save. That is not to ignore the high costs MNCs incur under the *status quo* of transnational litigation. Certainly, MNCs would welcome an end to multi-fora litigation and the opening of an avenue to global legal peace. But that does not mean that the advantages of an ICCJ, such as the promise of finality, are sufficiently attractive to MNCs to make them swallow the other, less attractive, parts that would come with it.

These (unjustly) selective doubts about the "business case for the ICCJ" are, of course, difficult to verify or invalidate. Still, they reveal and illustrate a broader conflict inherent to *Steinitz'* case for an ICCJ: the tension between the at least *prima facie* conflicting expectations and interests of the victims of corporate abuses on the one hand and those of MNCs on the other. *Steinitz* resolves this tension by pointing to her finding that the interests of both the potential plaintiffs and MNCs run in parallel: Both suffer from the problem of the missing forum and both would profit from an ICCJ. Yet, as outlined, there are good reasons to be more hesitant about the second part of that proposition, namely whether the ICCJ can indeed benefit corporations and provide effective redress for victims at the same time. If not, the ICCJ would either be less feasible or less desirable. The underlying tension between the interests of victims and the interests of MNCs will resurface and crystallize more clearly in the next section which introduces how *Steinitz* envisions the design and details of an ICCJ.

A Blueprint for the ICCJ: "Institutional and Procedural Features"

In what is the third main element of the book, *Steinitz* takes her proposal one step further and offers a blueprint for the ICCJ (chapter 5). Its key institutional feature would be a two-tiered structure based on two separate treaties. The first one (akin to the "Rome Statute of the International Criminal Court") would serve as the ICCJ's foundational treaty. This ICCJ Statute *inter alia* establishing the court's exclusive jurisdiction over cross-border mass torts that take place on the territory of its member states. The second treaty (similar to the "New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards") would govern the recognition and enforcement of decisions of the ICCJ. This two-tiered structure of the ICCJ seeks to ensure broad participation by catering to the different interests of states. Capital-importing states, where corporate wrongdoing typically materializes, are "primarily concerned with providing their citizens with a forum to adjudicate their claims" (p. 10). They should become members to both treaties but, most importantly, to the ICCJ Statute in order to guarantee jurisdiction of the ICCJ over acts on their territories. Capital-exporting states, in contrast, mainly seek global legal peace for their MNCs. *Inter alia* "because their own courts provide a viable forum for their own plaintiffs" (p. 10), they would be reluctant to accept the ICCJ's jurisdiction over acts on their own territory. Thus, capital-exporting states would only be expected to join the ICCJ enforcement treaty, securing that ICCJ decisions are enforceable in those jurisdictions where MNCs' assets typically lie.

Turning to the ICCJ's jurisdiction in more detail, *Steinitz* foresees the ICCJ to operate based on a model of territorial jurisdiction: The court would be competent to deal with all acts of corporate abuses that occur on the territory of a state party to the ICCJ – irrespective of the nationality of the victims or the perpetrators. To achieve one of its key aims, namely the elimination of multi-fora litigation, the ICCJ should have exclusive jurisdiction over cross-border mass torts. Other options such as subsidiarity or complementarity are "either impracticable or distinctly inferior" (p. 159). The ICCJ's jurisdiction would, finally, extend to cross-border mass torts and environmental claims. *Steinitz* adds that "[w]ithin the very large category of torts, the ICCJ's jurisdiction should cover intentional torts and negligence that results in physical injury" (p. 155). This restriction is owed to the "pragmatic need not to overburden the court via overly broad jurisdiction" (p. 155).

That the jurisdiction of the ICCJ hinges upon the cross-border nature of a case triggers problems when the nationality of the harmed individuals and

the MNC's subsidiary coincide. That is because, according to *Steinitz'* definition, the cross-border nature of a case requires that at least two different nationalities are involved. To tackle this problem, *Steinitz* proposes a broad understanding of enterprise liability: The ICCJ should be permitted to consider not just the entity that acts on the ground but the entire MNC which typically is incorporated abroad, provided that the immediate author of the harmful act is owned or controlled by the MNC (suggesting a minimum of 10 % ownership as a guidepost or starting point). That such a broadening of enterprise liability is difficult to achieve on the domestic level is no reason for *Steinitz* to abandon this idea for the ICCJ – quite to the contrary. The ICCJ would be autonomous from domestic legal systems. Therefore, establishing a model of broad enterprise liability at the ICCJ "would not undermine limited liability for businesses in any other area of law and would not bind national courts in any context" (p. 154). The autonomy of the ICCJ makes possible what is typically impossible at the domestic level: the "piercing of the corporate veil".

Steinitz completes her blueprint with a discussion of how the ICCJ's procedures could accommodate the specific characteristics of cross-border mass torts in the best way. As a core issue, *Steinitz* discusses the question to what extent the different claims of victims should be consolidated and coordinated. It is evident that the ICCJ needs some form of "aggregate litigation" or "collective action" to achieve its goal to provide finality and global legal peace. *Steinitz* lays out the different aspects of this problem and draws on lessons learned from both civil and common law systems. She proposes "that the ICCJ should have a flexible approach with respect to joinder, consolidation, and coordination – aggregating all or parts of the process of adjudicating similar claims as appropriate" (p. 162). Beyond that, *Steinitz* advocates for the ICCJ to have a supervision procedure of aggregate settlements and the competence to grant interim relief as well as, in certain circumstances, punitive damages. Furthermore, she envisages the ICCJ to allow for litigation financing and feature "an access to justice fund for impecunious claimants" (p. 173). Exploring administrative and institutional matters, *Steinitz inter alia* recommends the ICCJ to be a stand-alone institution independent from the UN, with its judges to be elected by the state parties and financed by fees to be paid by the parties to the disputes before it.

Steinitz' discussion of the design choices for the ICCJ covers a wide array of issues which, again, makes the following brief remarks very selective. A first observation regards the relationship of the law envisioned to be applied by the ICCJ and domestic law. Amongst other open questions, there might be some potential for conflict and confusion: From an *ex-ante* perspective,

it might not always be sufficiently clear to MNCs whether it would be ICCJ law or domestic law that governs a future activity. While legal standards would overall be similar, some differences, such as the outlined diverging scopes of enterprise liability, would inevitably remain.

Secondly, one might wonder whether *Steinitz* sufficiently accommodates the ramifications of the principle of separate entities. As outlined above, she discusses the issue with regard to the cross-border criterion and proposes a broad understanding of enterprise liability. Yet, there is another aspect to this. Based on *Steinitz'* jurisdictional construction, the ICCJ would have no solid jurisdictional basis to decide over claims against MNCs whose national state opposes the ICCJ. That is because host states, in principle, do not enjoy territorial jurisdiction over an MNC that they could "delegate" to the ICCJ since it will the MNC's subsidiary and not the MNC itself that acts on the ground. A broad understanding of enterprise liability cannot help to overcome this problem. After all, applying such a broad understanding would still depend on the consent of the MNC's national state – which is lacking in the present scenario. The jurisdiction of the ICCJ would thus need to be derived from a factor other than territoriality. While not perfectly clear under international law, there are other factors that could establish jurisdiction of a host state over an MNC – such as certain interests of states or universal interests. As long as none of these other factors is fulfilled and the MNC's home state does not consent, however, the ICCJ's jurisdictional basis seems to be less solid than suggested by *Steinitz'* plan.

The third, related, observation more directly concerns *Steinitz'* proposal to "pierce the corporate veil": It remains largely unclear what the scope of *Steinitz'* proposed broadened enterprise liability would be and when it would apply. Her only two remarks that go into this direction are that "[p]iercing the corporate veil may be the only way to serve justice" and that it should only apply "when it was used abusively transnationally" (p. 106). "Serving justice" and "used abusively" are, of course, very vague notions that make it difficult to grasp what the scope and conditions of its use by the ICCJ would or should be. Given the fundamental importance that the doctrine of limited liability has, it would have deserved closer attention.

Independent of these uncertainties regarding the scope, *Steinitz* makes the interesting proposition that "piercing the corporate veil", while unthinkable of in the domestic sphere, would be possible if restricted to the ICCJ. Yet, here, too, her point remains somewhat vague. Her decisive argument is that the prevention of spillage to domestic law and other kinds of cases will allow MNCs and states to support such an exception at the international level. Even if so, she fails to explain why the prevention of spillage

is only possible at the international level and could not equally be achieved by limiting the hypothetical domestic version of "piercing of the corporate veil" to the exact scope that it would have at the ICCJ. Besides this, it is doubtful whether the "piercing of the corporate veil" will be acceptable to MNCs – even if it is limited to the international level. After all, many activities of MNCs could potentially trigger the jurisdiction of the ICCJ. Hence, MNCs would be forced to align some, or even most, of their transnational activities with the ICCJ's rules – including the broadened enterprise liability. They could thus no longer rely on the "corporate veil" but and would need to factor in the potential liability for operations of their subsidiaries.

One might well approve of such a scenario. After all, many see the fiction of the principle of separate entities as the legal corroboration of one of the root causes of many corporate abuses: the externalization of risks and costs from parent companies in the global north to subsidiaries in the global south or, more bluntly, from the global north to the global south. Irrespective of this debate, the outlined concerns certainly add to the feasibility doubts and corroborate the tension between the interests of victims of corporate abuses and those of MNCs. That is because, on the one hand, an ICCJ would indeed make little sense if it comes without an answer, and exceptions, to the principle of separate legal entities and limited liability. On the other hand, the principle of limited liability is, in *Steinitz'* words, a "cornerstone of the modern economy" (p. 78) and thus central to the very business model of MNCs. It is unlikely that corporations would be willing to give up this principle even if it is part of a trade-off for lower litigation costs. That is all the more so since the promise of cost reduction seems less reliable than *Steinitz* suggested.

In sum, the blueprint is very helpful to illustrate the abstract idea of an ICCJ. While some of the features are not decisive for the essential function of the ICCJ or the overall validity of the proposal, others are. Issues such as jurisdiction or the problem of "piercing the corporate veil" extrapolate the fundamental questions that underlie the proposal of an ICCJ and are likely to co-determine whether or not one subscribes to *Steinitz'* proposal.

A Brief Contextualization

While there have been calls for an international court for MNCs before, they have never reached the level of depth and elaboration of *Steinitz'* proposal. What sets it apart is *inter alia* the comprehensive claim that underlies it. It is not solely an advocacy call for the improvement of "access to justice" for victims of corporate abuses. Instead, it seeks to comprehensively incorporate and accommodate the interests of all actors involved. Along

similar lines, *Steinitz'* pursues a constructive approach that is not limited to outlining the deficiencies of the *status quo* but seeks to address them by turning them into arguments in favor of an ICCJ. While the ICCJ is not expected to solve all problems and would remain an "imperfect compromise" (p. 13), it is a very bold and ambitious proposal that goes far beyond the level of incremental or even medium-sized changes and pushes for one of the biggest solution possible. Finally, even though *Steinitz* acknowledges that an ICCJ may take time to realize, her case for an ICCJ swims against the current in an era that is perceived to be increasingly hostile towards multilateralism and international institutions. It goes against the widespread view that the emphasis should first and foremost lie on preserving international law and its institution, rather than further developing them.

Steinitz' proposal is also intriguing on a systemic level. While tort law is regularly used in disputes between individuals and corporations on the domestic level, its transfer to the international level, in the way proposed by *Steinitz*, is new. Although to a varying degree, most international regulatory instruments and proposals to hold MNCs to account remain state-centered and anchored within the framework of human rights. The ICCJ, in contrast, would be disconnected from human rights and constitute a form of private dispute settlement, i.e., *civil justice.* This prompts many questions regarding the differences between what one could call "international tort law" on the one side and approaches that at least to some extent rely on human rights on the other. Of course, tort law performs a vital role with regard to human rights, for instance, by providing remedies for human rights violations. That notwithstanding, tort law and human rights are not congruent. There will be many cases that are covered by human rights (for instance, economic and social rights) but would not be encompassed by the tort law to be applied by the ICCJ. Even to the extent that the two bodies of law overlap in their scope: Isn't there an added value to human rights? Is tort law well-equipped to capture the socio-political implications of corporate abuses? To be clear, these questions do not as such speak against *Steinitz'* proposal. But it might have benefited from outlining more clearly what the benefits, and limits, of tort law are.

Relatedly, the ICCJ remains rather detached from other regulatory instruments or initiatives that promote accountability of MNCs and that *Steinitz* mainly referred to as "tributaries on their way to join a single river that leads to an ICCJ" (p. 43). One is left somewhat curious how the relationship of the ICCJ to both existing regulatory instruments and other initiatives would be. This particularly applies to the UN working group that drafts a binding instrument on business and human rights. *Steinitz* raises

this "open and complex question" (p. 180) herself without, however, further discussing it. Finally, *Steinitz* also quickly discards the proposal of a World Court of Human Rights (WCHR) since it only "tackles part of the problem" (p. 103). That, however, neglects that the WCHR was foreseen to encompass claims against business corporations and thereby partly even go beyond the ICCJ. It might have been useful to contrast the proposal of an ICCJ against the WCHR – especially given that some of the charges that were brought against the proposal of a WCHR (such as feasibility and desirability concerns) are likely to be brought against the ICCJ as well.

Concluding Remarks

In sum, *Steinitz'* book is an original, thought-provoking and highly ambitious addition to the existing literature on "business and human rights". It is a very informative and insightful reading that impressively covers many different issues and fields. Despite its breadth, the book manages to point out and discuss the different thoughts in a concise and stringent way and to eventually combine them to make the "case for an ICCJ". The book strikes a balance between theoretical and practical elements which is certainly also owed to *Steinitz'* experience in both academia and practice. Perhaps with the exception of a few quite technical sections, the book is perfectly accessible for readers that are not specialized in the various fields touched upon by the book. What may be pointed out, however, is an occasional tendency to generalize and derive findings from observations on, for instance, the US that might not, or less strongly, apply to other jurisdictions.

Regarding the book's substance, there are many issues and questions that would deserve closer attention and discussion but are beyond the scope of this review. These include the following: Can one uphold the strict distinction between capital-importing and capital-exporting states? How does *Steinitz* envision the scope and modalities of environmental claims to be adjudicated by the ICCJ? What about (formally) independent contractors that are *de facto* controlled by an MNC or its subsidiaries? Given that many cases of corporate abuse arise in this setting: Is there a role for the ICCJ to play in these cases as well? What this review has discussed, albeit selectively, is *Steinitz'* line of reasoning and her major arguments. As outlined, there is room to disagree with some of the book's argumentative steps as well as with its conclusion. This includes the outlined "smaller" problems and inconsistencies as well as more decisive ones such as the problems arising around the "corporate veil".

More importantly, one might challenge one of the central pillars of *Steinitz'* argumentative construct: the proposition that the ICCJ, in its pro-

posed form, is feasible and desirable at the same time. This proposition hinges on successfully resolving the tension between the interests of victims and corporations by showing that both sides would profit from an ICCJ. As outlined, there are, however, good reasons to doubt whether the current proposal of an ICCJ manages to resolve this tension and, in fact, whether it is resolvable at all: If the ICCJ is to fulfill its ambition to effectively serve the interests of victims of corporate abuses, it is less likely that MNCs and states will support it. This jeopardizes *Steinitz'* feasibility claim and thereby one of the aims of the book, namely to "galvanize a critical mass of readers into thinking it [an ICCJ] is *possible*" (p. 181, emphasis in the original). That does not preclude the – from today's perspective certainly unlikely – possibility that the plan of an ICCJ might gain traction in the long run. Yet, if the case for an ICCJ will be pursued further, it may be inevitable to give up, or at least reconsider, the "business case" in its current form and thereby a large portion of *Steinitz'* feasibility claim. That would deprive her proposal of some of its originality and push it further in the direction of an advocacy call to improve "access to justice".

Irrespective of that, "The Case for an International Civil Court of Justice" might achieve another of its aim, namely to open up discussions that often concentrate on the domestic level. The book indeed successfully breaks up an initial unfamiliarity and almost instinctive skepticism towards such a new and sweeping proposal. Thereby, it paves the way for an interesting discussion of *Steinitz'* line of reasoning and the feasibility and desirability of an ICCJ. It is within the framework of this discussion that one can, however, point to the many open questions, concerns and counterarguments that her intriguing proposal evokes.

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