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The Case for an International Court of Civil Justice. By Maya Steinitz. Cambridge, UK: Cambridge University Press, 2019. Pp. xiv, 242. Index.
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One of the tragedies of globalization consists in allowing multinational enterprises (MNEs) to organize production processes across national borders, through foreign investment and global supply chains, without adequately protecting individuals, particularly in developing countries, against harm caused by the underlying commercial activities, whether in the exploitation of resources, manufacture, or distribution of final

products. How to close this governance gap, and ensure corporate accountability, is a *locus classicus* of the debates on regulating MNEs that has occupied the international community for decades.¹ The predominant focus so far has been on how to use international law to impose substantive obligations (either directly or indirectly) on MNEs in order to meet development goals; respect human, labor, and indigenous rights; protect the environment; etc. This focus characterizes the (failed) United Nations (UN) Code of Conduct for Transnational Corporations,² the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises,³ the UN Guiding Principles on Business and Human Rights,⁴ and the ongoing negotiations, under the auspices of the UN Human Rights Council, of a treaty on business and human rights.⁵ It is also reflected in the international legal scholarship that forms part of the newly emerged field of “business and human rights.”⁶

¹ For a classic overview, see PETER MUCHLINSKI, *MULTINATIONAL ENTERPRISES & THE LAW* (2d ed. 2007).

² See Karl P. Sauvant, *The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned*, 16 J. WORLD INV. & TRADE 11 (2015).

³ For a recent assessment of the OECD Guidelines, see the contributions in 40 ANS DES LIGNES DIRECTRICES DE L'OCDE POUR LES ENTREPRISES MULTINATIONALES [40 YEARS OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES] (Nicola Bonucci & Catherine Kessedjian eds., 2018).

⁴ See UN Human Rights Council, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, Annex, UN Doc. A/HRC/17/31 (Mar. 21, 2011). See further THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: FOUNDATIONS AND IMPLEMENTATION (Radu Mares ed., 2012).

⁵ For the most recent draft, see Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, Legally Binding Instrument to Regulate, *in* International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (rev. draft, July 16, 2019), available at www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf.

Maya Steinitz, a professor at the University of Iowa College of Law, who has litigation experience in a global law firm and who teaches civil procedure, international dispute resolution, international business transactions, and corporations, joins these debates with an intriguing, highly original, some may even say radical, proposal. In her book, *The Case for an International Court of Civil Justice*, she takes a step away from the grand, and so far not very fruitful, debates about trying to establish corporate obligations under international law and mobilizing human rights law to address corporate wrongdoing in a transborder context.⁷ Instead, Steinitz suggests using tort law in order to find a solution to one of the most dire outgrowths of corporate impunity in our global economy, that is, the commission of mass torts, involving injury to the lives and limbs of a great many people, or large-scale environmental harm, where those injured are the poor and voiceless in the Global South, and those allegedly responsible are MNEs from the developed North.

In those situations, as Steinitz forcefully shows, victims of mass torts face a “problem of

⁶ See, e.g., SURYA DEVA, *REGULATING CORPORATE HUMAN RIGHTS VIOLATIONS – HUMANIZING BUSINESS* (2012); JOHN RUGGIE, *JUST BUSINESS – MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS* (2013); LAW, BUSINESS AND HUMAN RIGHTS – BRIDGING THE GAP (Robert C. Bird, Daniel R. Cahoy & Jamie Darin Prekert eds., 2014); THE BUSINESS AND HUMAN RIGHTS LANDSCAPE – MOVING FORWARD, LOOKING BACK (Jena Martin & Karen E. Bravo eds., 2015); NADIA BERNAZ, *BUSINESS AND HUMAN RIGHTS: HISTORY, LAW AND POLICY – BRIDGING THE ACCOUNTABILITY GAP* (2016); BUSINESS AND HUMAN RIGHTS: FROM PRINCIPLES TO PRACTICE (Dorothee Baumann-Pauly & Justine Nolan eds., 2016); BUILDING A TREATY ON BUSINESS AND HUMAN RIGHTS: CONTEXT AND CONTOURS (Surya Deva & David Bilchitz eds., 2017); DALIA PALOMBO, *BUSINESS AND HUMAN RIGHTS: THE OBLIGATIONS OF THE EUROPEAN HOME STATES* (2020).

⁷ See, e.g., MARKOS KARAVIAS, *CORPORATE OBLIGATIONS UNDER INTERNATIONAL LAW* (2013); HUMAN RIGHTS OBLIGATIONS OF BUSINESS BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? (Surya Deva & David Bilchitz eds., 2013). For a critical account from a theoretical perspective, see also Samantha Besson, *The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Quiet (R)Evolution?*, 32 SOC. PHIL. & POL'Y 244 (2015).

the missing forum: a reality in which, *de facto*, there often is no forum that can and will issue enforceable judgments against those who commit the most extensive, and at times most heinous, torts—even if, *de jure*, they should be able to do so” (p. 45). More specifically, victims of mass torts are routinely denied access to courts in developed countries, which could handle the complex tort litigations against “their” multinational corporations and provide remedies and compensation, and instead only have access to the courts in developing countries where the tort occurred, which are often enough unable to grant effective relief. Instead of closing this access-to-justice problem either at the domestic level (whether in home or host states), or through a human rights approach to corporate accountability, Steinitz relies on a remarkable range of doctrinal, empirical, normative, and interdisciplinary insights to argue that the preferable solution is the creation of a new international court—the International Court of Civil Justice (ICCJ). Unlike proposals to establish a World Court of Human Rights, which would grant remedies and reparation to victims of human rights violations, including in cases brought against MNEs,⁸ the ICCJ would provide a forum in which victims of transborder mass torts can file, ideally on an exclusive basis, tort claims against foreign corporations, and subsequently enforce resulting monetary judgments.⁹

Steinitz’s book is structured to present her proposal, which is aptly summarized in the Introduction, in five analytical steps. Being well aware that proposing the creation of a new international court may be seen as a naïve proposal from the ivory tower, Chapter 1 argues that the

⁸ See Manfred Nowak, *The Need for a World Court of Human Rights*, 7 HUMAN RIGHTS L. REV. 251 (2007); JULIA KOZMA, MANFRED NOWAK & MARTIN SCHEININ, *A WORLD COURT OF HUMAN RIGHTS: CONSOLIDATED STATUTE AND COMMENTARY* (2010).

⁹ The ICCJ would be different from a human rights court in that it is aimed at producing civil law judgments providing for monetary compensation for harm done and would not be called to review the conformity of the applicable domestic legal framework, or any state measures taken in that respect, with international human rights law. The ICCJ would thus also not be part of the judicialization of human rights law.

creation of the ICCJ is feasible (p. 13). For this purpose, Steinitz delves into international relations theory—realism, idealism, and the theory of international socialization of states—on “when and why states support the creation of new international courts” (p. 17) in order to determine “whether the time is ripe for the ICCJ” (p. 21).

Drawing on four case studies—the creation of the International Criminal Court (ICC) (pp. 21–27), the World Trade Organization (WTO) Dispute Settlement Body (pp. 27–29), the Iran-United States Claims Tribunal (pp. 29–35), and (albeit the odd man out, as it is not an international court) the Jerusalem Arbitration Center (pp. 35–36)—Steinitz suggests that even such *prima facie* “implausible” courts are possible when three factors come together: (1) “idea contagion,” meaning that states have become accustomed to the idea of creating international courts and are able to build on experience with existing models and prototypes; (2) the presence of “change agents,” including “social movements of scholars, jurists inside and outside academia, practitioners, politicians” (p. 16) who call for the creation of an international court; and (3) the coming of a “constitutional moment,” that is, the right circumstances that give the final push for the creation of an international court. Idea contagion, Steinitz argues, is present, considering the post-Cold War proliferation of international courts and tribunals; change agents exist given the existing soft law instruments addressing corporate social responsibility and the ongoing negotiations at UN level of a treaty on business and human rights; what only remains amiss is the right constitutional moment (pp. 42–44).

After this theoretical start, which Steinitz suggests can be skipped by readers interested in the practical side of the proposed ICCJ (p. 14), Chapter 2 starts out with three case studies of transborder mass tort litigation, all with a U.S. connection: (1) the Bhopal industrial disaster, which caused numerous deaths and injury to several hundreds of thousands of inhabitants of the mid-sized Indian city of Bhopal, following a gas leak in a chemical plant operated by a subsidiary

of a U.S. corporation (pp. 47–62);¹⁰ (2) the litigation against Chevron (respectively its predecessor Texaco) arising out of environmental harm and injury to local populations in connection with oil explorations in Ecuador's Amazon rainforest (pp. 62–70);¹¹ and (3) claims against Dutch oil company Shell for human rights abuses in Nigeria, which lead, *inter alia*, to the U.S. Supreme Court case in *Kiobel*¹² under the Alien Tort Statute (ATS) (pp. 70–76). These three case studies serve to illustrate the systemic problems that exist in litigating cross-border mass tort claims before domestic courts.

Steinitz uses the examples of Bhopal and Chevron to trace how U.S. courts, as the courts of the corporations' home, use legal doctrines, most importantly *forum non conveniens*, to send victims to courts in the host state where the damage occurred. Those courts, however, are largely unable to deal effectively with the claimed grievances, including due to lack of expertise in, and appropriate judicial procedures for, dealing with complex mass tort litigation, judicial backlog, and corruption, ultimately resulting, if at all, in judgments that hardly do the victims justice (as in Bhopal) or the enforcement of which is resisted by the corporation for lack of due process (as in Chevron). The Bhopal scenario further shows that corporate structuring, and the implementation of foreign investment operations through local subsidiaries, may further complicate holding MNEs accountable. The *Kiobel* case, finally, illustrates how the decision of the U.S. Supreme Court to exclude the extraterritorial application of the ATS foreclosed access to justice in U.S. courts for victims of mass human rights violations against non-U.S. based companies.

Yet, the three case studies not only show that there is an access-to-justice problem; they also illustrate the complexity of mass tort litigation

in multijurisdictional settings. After all, both the dismissal for *forum non conveniens* and the narrowing of the ATS hardly mean the end of litigation for MNEs. On the contrary, and increasingly often, Steinitz argues, complex follow-up litigation will ensue. In the case of Chevron, litigation in Ecuador was followed by efforts to enforce the resulting judgment for environmental harm against the company in several jurisdictions, counter-litigation by Chevron for racketeering against the U.S. lawyer representing the plaintiffs in Ecuador, and investment treaty arbitrations for denial of justice against Ecuador. While probably an extreme example, the Chevron saga shows that modern transborder mass tort litigation will often involve multijurisdictional battles, which are increasingly fueled by—mostly U.S.-based—entrepreneurial lawyers and third-party funders. This scenario, Steinitz concludes, is neither attractive for victims, nor for corporations, and reduces overall welfare and efficiency. In short, “no one wins under the current system” (p. 82).

Chapter 3 builds on the three case studies—Bhopal, Chevron, and *Kiobel*—and argues that for victims the key obstacle in transborder mass tort cases is not a problem of substantive law, but mainly the problem of a missing forum. Steinitz provides a detailed analysis of the doctrinal approaches that courts in developed states, where most MNEs are (still) headquartered, use in order to limit access to courts for victims of mass torts from developing countries. Although her focus is principally on how U.S. courts keep victims away—through *forum non conveniens* and the narrowing of the ATS (pp. 85–93)—Steinitz also explains that European courts, which in her view lack the litigation culture to address complex transborder mass torts effectively, do not fare any better (pp. 93–98). Similarly, host state courts, particularly those in developing countries, that are unable to handle complex mass tort litigation and often struggle with endemic corruption, are mostly incapable of affording victims access to justice (pp. 99–100). Chapter 3 also addresses why international arbitration, which Steinitz views as lacking democratic legitimacy, is not an option for addressing transborder mass

¹⁰ For the main litigation in U.S. courts related to the Bhopal disaster, see *In re Union Carbide Corp.*, 634 F. Supp. 842 (S.D.N.Y. 1986) and 809 F.2d 195 (2d Cir. 1987).

¹¹ For the main litigation in U.S. courts, see *Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002).

¹² See *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).

torts (pp. 100–02). The ICCJ, by contrast, would close the resulting access-to-justice gap (pp. 104–07).

Chapter 4—perhaps the most intriguing of Steinitz’s argumentative steps—then turns to setting out “the business case for the ICCJ” (p. 108). The chapter claims that not only victims would have an interest in the establishment of the ICCJ, but also MNEs. The latter, Steinitz argues, should support the ICCJ, and lobby for its creation, in order to avoid the increasing direct and indirect costs that transborder mass tort litigation brings. In the past, Steinitz explains, it was unlikely that victims started follow-up litigation in other jurisdictions after losing on *forum non conveniens* in a U.S. court; meanwhile, however, what Steinitz calls the “new transnational litigation landscape” (p. 109)—consisting of the creation of more pro-plaintiff and litigation-enabling environments in domestic courts in a number of foreign jurisdictions, the growth of litigation finance, entrepreneurial lawyering, and the increase in parallel and sequential litigation across multiple jurisdictions (pp. 127–34)—brought significant change, and an immense increase in expenses for MNEs. These consist not only of the direct costs of litigation and the payment of compensation (pp. 111–13), but also include indirect costs connected to the uncertainty regarding a corporation’s long-term viability in light of complex mass tort litigation, the distraction of managers and employees, the loss in share value and/or reputation, and changes in the investment environment that could harm long-term business interests more than the direct costs of mass torts and mass tort litigation (pp. 113–20). For this reason, MNEs should favor the establishment of the ICCJ, provided that that Court would be able to provide for “global legal peace,” meaning the preclusion of claims brought before the ICCJ in domestic courts (p. 123). Such preclusion would be of immense economic value for MNEs.

Chapter 5, finally, outlines the core design features of the proposed ICCJ. Steinitz imagines a stand-alone institution that is separate from existing organizations, such as the UN or the World Bank (p. 149), with first and appellate instance

(pp. 176–77). The subject-matter jurisdiction of the ICCJ would extend to the most serious transborder mass torts, which the ICCJ Statute would need to define; it should include injury to people’s “lives, limbs, and livelihoods” (p.154) based on intentional and negligent torts, as well as serious environmental harm, and be based on a broad theory of enterprise liability in order to ensure the responsibility of MNEs for subsidiaries set up in host states (pp. 152–56). The ICCJ’s personal jurisdiction would extend to claims against all foreign persons, natural and corporate, in the same way the domestic courts of the host state would normally exercise jurisdiction (pp. 157–58). The Court’s jurisdiction would ideally be exclusive, thus precluding recourse to domestic courts (pp. 158–61).

As for procedure, Steinitz considers that a careful balance should be struck between U.S.-style approaches to mass tort litigation and the litigation cultures in other countries. Both common law and civil law traditions should be reflected in order to create a court that plaintiffs and defendants from anywhere in the world can embrace (pp. 163–64). On this basis, Steinitz favors representative action modelled on U.S. class actions, but without the negative outgrowth, such as overly expensive litigation, the bringing of frivolous claims to extract settlements, or excessive discovery; allowing for entrepreneurial lawyering; permitting contingency fee arrangements and third-party funding; and maintaining an access-to-justice fund for impecunious claimants (pp. 167–74). The ICCJ should adopt a strong managerial role in conducting litigation and support settlement efforts of parties through mediation (pp. 164–66). The ICCJ should also have a special unit for the distribution of funds made available as part of settlements (pp. 174–75). Remedies would focus on damages and compensation, but could also include ordering more creative solutions, such as providing for “medical treatment, repair of property, removal of a hazardous or defective product, and the provision of psychological or other counseling” (p. 175). For particularly reprehensible torts, punitive damages should be available (p. 176).

A particular problem in the design of the ICCJ is how to ensure widespread support from both capital-exporting and capital-importing states (see pp. 145–47). As Steinitz explains, developed states should be interested in creating a system that ensures global legal peace for their MNEs, and would thus want to ensure enforcement of ICCJ judgments, but may be less likely to cede the competence of their own courts for the resolution of mass tort claims. Developing states, in turn, may fear that ceding jurisdiction to the ICCJ may create a comparative disadvantage in attracting foreign investment if other developing states that compete with them for capital do not join the Court.

In order to resolve this dilemma, Steinitz imagines the ICCJ operating through two separate treaties: the first treaty, the ICCJ Statute, would establish the Court and provide for mandatory jurisdiction in the same way the domestic courts of the member state would exercise jurisdiction over transborder mass tort; the second treaty would deal with the recognition and enforcement of ICCJ judgments only. Membership in the ICCJ Statute would require membership in the enforcement treaty, but not vice versa; furthermore, the ICCJ Statute would only enter into force if participation of both capital-exporting and capital-importing states reaches a sufficiently high threshold. Through this structure, Steinitz hopes to incentivize capital-exporting states to join the Court's enforcement regime and preempt the concern of capital-importing states that adhering to the ICCJ may divert foreign investment.

Steinitz's book is a must-read for those interested in transborder mass torts litigation and in the current business and human rights debate. Readers will find a convincingly argued, well-thought-through and practical proposal on resolving a grave concern for human rights protection before a new international court. At the same time, it is important to emphasize that Steinitz's proposal does not come as a human rights proposal to enhance corporate accountability in transborder contexts. Her approach is one of a tort lawyer who shares with the human rights community an interest in providing effective remedies and

adequate reparation for the violation of rights, but who makes use of the elements and instruments of private tort law to reach these goals.

The book is therefore a highly recommended read for a much broader set of audiences and not limited to the business and human rights field. Steinitz's analysis of the lack of coordination and cohesion in transnational litigation across multiple domestic jurisdictions, and its impact on commercial actors and third parties, is exemplary; it is a vivid, detailed, yet analytically concise exposure to the problems that transnational litigation generally, even outside the context of mass tort claims, raises.

Moreover, those interested in foreign direct investment and investor-state dispute settlement (ISDS) will find enlightening the sections unsparingly detailing the structural problems of host state courts. The problems with domestic judicial institutions that Steinitz describes are the same that have resulted in the creation of the investor-state arbitration system, but in the case of mass tort litigation they are used to support the establishment of a very different kind of international judiciary, one in which those affected by activities of foreign investors can sue investors. Steinitz's analysis will also thus resound among those who call for more institutionalization and centralization in ISDS, given the book's discussions of why a centralized international court is superior to decentralized arbitration or multijurisdictional litigation.

It is difficult to disagree with Steinitz's problem description: the access-to-justice situation for victims of transborder mass torts is abominable. Steinitz's argument that MNEs will increasingly be discontent with the lack of "global legal peace" is equally compelling. What will generate greater controversy, however, is her claim that the called-for solution is the creation of a new international court.

To start with, expanding possibilities for mass tort litigation in MNEs' home jurisdictions may be sufficient to address the most glaring access-to-justice problems. Requiring U.S. courts to limit their application of *forum non conveniens*, for example, would arguably go a long way in affording victims legal protection and compensation.

Similarly, in Europe, several jurisdictions have either recently introduced, or are actively considering, legislation requiring commercial entities to exercise due diligence in monitoring their supply chains for compliance with human rights and environmental norms and allow holding MNEs liable for damage their subsidiaries or suppliers have caused abroad.¹³ Such changes at the domestic level arguably would be much easier to implement than creating a new international court, even if the global legal peace domestic solutions could afford to MNEs is not comparable. Such changes would arguably also sit more easily with constitutional restrictions that may limit the extent to which dispute settlement between private parties could be transferred mandatorily to a jurisdiction outside the state.¹⁴

Much also speaks against the political feasibility of the proposed ICCJ. In respect of its jurisdiction, it would be the first permanent international court with jurisdiction for what are essentially private law claims between private parties, and thus unprecedented at the global level. The blueprints Steinitz draws on—be it the ICC, the WTO, or the Iran-United States Claims Tribunal—appear too different, in terms of their jurisdiction and as regards their relationship to domestic courts, to permit clear analogies.

¹³ For the French legislation, see *Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* 2017 (JORF) 2017–399. For comparative analysis of the situation in France, the United Kingdom, and Switzerland, see Dalia Palombo, *The Duty of Care of the Parent Company: A Comparison Between French Law, UK Precedents and the Swiss Proposals*, 4 *BUS. & HUM. RTS. J.* 265 (2019).

¹⁴ The principle of autonomy of European Union (EU) law could be one such constitutional limitation for EU member states. See CJEU, Opinion 1/19 (8 March 2011) ECR 2011, I-1137 – European and Community Patents Court. Other constitutional law principles, such as the principle of democratic governance, governance according to the rule of law, or the protection of fundamental and human rights could equally pose limits to the creation of international court. See, e.g., German Constitutional Court [Bundesverfassungsgericht], Case No 2 BvR 739/17, Decision of 13 February 2020, ECLI:DE:BVerfG:2020:rs20200213.2bvr073917, paras. 103–40, available at www.bundesverfassungsgericht.de/e/rs20200213_2bvr073917.html.

Moreover, Steinitz's proposal comes at a time when many states show little appetite for creating new international courts, and instead worry about keeping existing international courts alive. How should an ICCJ be feasible when we have just witnessed the dismantling of the WTO Appellate Body, with little prospects of that institution coming back into operation anytime soon?¹⁵ Instead, arbitration is promoted widely, both as a means to deal with appeals in the WTO,¹⁶ and even in the business and human rights context.¹⁷

The dismantling of the WTO Appellate Body, as well as the backlash against international courts and tribunals more generally, further show that states' interest in establishing an international court or tribunal is not only a matter of the extent to which such an institution can provide a solution to an identified concern. Instead, as a reaction to the growing experience with international courts and tribunals since the mid-1990s, states are by now equally concerned that a court or tribunal, once created, will remain within the mandate given, and not render decisions that actively develop the law they apply significantly further. In fact, the concern of states, scholars, and civil society for the continuous viability and legitimacy of the international public authority exercised by international courts and tribunals has generated an important strand of literature, with which Steinitz unfortunately does not engage.¹⁸ While

¹⁵ See, e.g., Joost Pauwelyn, *WTO Dispute Settlement Post 2019: What to Expect?*, 22 *J. INT'L ECON. L.* 297 (2019); Geraldo Vidigal, *Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis*, 20 *J. WORLD INV. & TRADE* 862 (2019).

¹⁶ Pauwelyn, *supra* note 15, at 312–15.

¹⁷ See The Hague Rules on Business and Human Rights Arbitration (Dec. 2019), available at www.cilc.nl/cms/wp-content/uploads/2019/12/The-Hague-Rules-on-Business-and-Human-Rights-Arbitration_CILC-digital-version.pdf.

¹⁸ See *in particular* ARMIN VON BOGDANDY & INGO VENZKE, *IN WHOSE NAME? A PUBLIC LAW THEORY OF INTERNATIONAL ADJUDICATION* (2014); INTERNATIONAL JUDICIAL LAWMAKING – ON PUBLIC AUTHORITY AND DEMOCRATIC LEGITIMATION IN GLOBAL GOVERNANCE (Armin von Bogdandy & Ingo Venzke eds., 2014); *THE LEGITIMACY OF INTERNATIONAL TRADE COURTS AND TRIBUNALS* (Robert Howse, Hélène Ruiz Fabri,

not necessarily providing arguments against the creation of a new international court, this literature may have invited further considerations on important issues of institutional design of the ICCJ, namely how to structure the selection and appointment mechanism for judges, and how to ensure the Court's continuous control by the contracting parties through appropriate legislative organs and procedures.

It would be premature, however, to dismiss Steinitz's proposal as a utopian vision from the ivory tower, as a committed, but ultimately little realistic proposal to resolve a grave concern in the business and human rights context. Steinitz herself is well aware of the uphill struggle she is facing among politicians, ministers, and diplomats to make this court a reality. It is perhaps for this reason that she addresses academics, practitioners, and corporations themselves as her principal audience in order to "galvanize a critical mass of readers into thinking [the ICCJ] is possible" (p. 181). Steinitz's work is also not that of a human rights activist who disregards the forceful business interests that are at stake. While acknowledging that access to justice is a human right, which is itself the prerequisite for the enjoyment of any other human right, Steinitz's main contribution to the debate is to highlight that MNEs themselves have a business interest in the establishment of the ICCJ in order to avoid unnecessary costs. The business case she makes may indeed be a game-changer in advancing the case for such a court.

What is more, a constitutional moment for Steinitz's proposal may be closer than many anticipate, namely if the proposal to create the ICCJ falls on fertile ground in the current process of ISDS reform, which is under way at the United Nations Commission on International Trade Law (UNCITRAL).¹⁹ Steinitz's proposal would

connect well with the approach taken by UNCITRAL Working Group III to consider procedural solutions, including potentially through the creation of a permanent international court, to the concerns investor-state arbitration has raised in terms of (1) consistency, coherence, predictability, and correctness of arbitral rulings; (2) independence, impartiality, and diversity of decision makers; and (3) costs and duration of proceedings.²⁰ While the UNCITRAL process so far exclusively deals with reforming the system of ISDS, the issue of investor obligations and possibilities for affected populations to seek redress against investors is a concern that looms large in the background, and many would like to see it addressed. If indeed a multilateral court is the result of the current UNCITRAL process, one could consider equipping that court with the competences necessary to hear the types of claims Steinitz is envisaging for a standalone ICCJ. Adding ICCJ-type proceedings as one further option to the ISDS reform debates would fit well with both the "open architecture" many actors envisage for the future of ISDS and concrete proposals that provide states with flexibility in dispute settlement under the umbrella of one single institutional framework for investment dispute settlement.²¹ Ultimately, the process at UNCITRAL for ISDS reform could quickly become the constitutional moment that Steinitz's ICCJ proposal is waiting for.

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¹⁹ For the relevant documents, see the website of UNCITRAL Working Group III, at https://uncitral.un.org/en/working_groups/3/investor-state.

²⁰ See UNCITRAL, Report of Working Group III (Investor-State Dispute Settlement Reform) on the Work of Its Thirty-Sixth Session, paras. 40, 53, 63, 83, 90, 98, 108, 123, 127, 133, UN Doc. A/CN.9/964 (Nov. 6, 2018).

²¹ See Anthea Roberts, *Incremental, Systemic, and Paradigmatic Reform of Investor-State Arbitration*, 112 AJIL 410 (2018); Stephan W. Schill & Geraldo Vidigal, *Designing Investment Dispute Settlement à la Carte: Insights from Comparative Institutional Design Analysis*, 18 L. & PRAC. INT'L CTS. & TRIBS. 314 (2019).

Geir Ulfstein & Michelle Q. Zang eds., 2018). See also Cesare P. R. Romano, Review Essay, *Legitimacy, Authority, and Performance: Contemporary Anxieties of International Courts and Tribunals*, 114 AJIL 149 (2020).