Recent Publications

Rough Justice: The International Criminal Court in a World of Power Politics. By David Bosco. New York, NY: Oxford University Press, 2014. Pp. ix, 312. Price: $29.95 (Hardcover). Reviewed by Alina B. Lindblom.

The International Criminal Court (ICC) aspires to institutionalize international criminal justice[1] and ensure the prosecution of the most serious crimes—genocide, crimes against humanity, war crimes, and aggression.[2] While the States Parties to the Rome Statute establishing the Court "affirm[] that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured,"[3] the ICC operates in—and is constrained by—a world dominated by powerful states.

An international criminal justice system began to emerge in the mid-twentieth century. Following World War II, the Allied Powers created two ad hoc tribunals for the prosecution of crimes committed by the Axis powers. Although aimed at "international legal accountability," these post-war tribunals were designed and enforced to ensure that "their interests and image would not be threatened" (p. 29). After a pause in the development of the international criminal justice system during the Cold War, the atrocities in the former Yugoslavia and Rwanda restarted the process in the early 1990s (p. 34). In that decade, the United Nations Security Council authorized the creation of two ad hoc tribunals for the investigation and prosecution of crimes committed in those conflicts.

In *Rough Justice: The International Criminal Court in a World of Power Politics*, David Bosco challenges the prevailing notion of the ICC as a natural progression of this historical development of the international criminal justice system. The basis for this explanation of the Court is clear: if states are willing to create special tribunals for specific crimes, then why not create a permanent institution? Bosco moves beyond this narrative by arguing that the ICC is an anomalous international institution (p. 2). Almost all international organizations have been created by powerful states to further their own interests, but the ICC was not. Major powers were skeptical of a permanent international criminal court; the impetus for its creation came from small (in

1. "An International Criminal Court ('the Court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute." Rome Statute of the International Criminal Court, July 17, 1988, UN Doc. A/CONF. 183/9, reprinted in 37 ILM 999, art. I (1998).

2. *Id.* art. V.

3. *Id*. prmbl.

size and power) states and non-governmental actors (pp. 38-44).[4] The structure of the ICC differs significantly from that of other international organizations and prior international tribunals in that the major powers are afforded no direct privileges in the operation of the Court and have only weak levers of control over the institution.[5]

Bosco situates the Court's development—from its creation through 2013—in a world of power politics. Relying on official documents, diplomatic histories, and interviews with dozens of court officials and diplomats from major powers, Bosco analyzes the behavior of major powers (specifically the United States) and the Court (specifically its Prosecutor). Bosco asserts two salient conclusions: (1) the major powers' attempts to marginalize the Court have failed (pp. 108-15) and (2) powerful states and the ICC have adopted a strategy of mutual accommodation (pp. 20-22). He argues that the ICC has avoided direct confrontation with the major powers (or their interests) (pp. 119-26), while the major powers have employed a number of mechanisms to exert indirect control over the Court and its docket (pp. 128-31, 162, 164).

Students and scholars interested in the future of the ICC will find only a tentative prediction in Bosco's book. While Bosco concedes that the equilibrium of mutual accommodation may be broken in the future, he suggests that it is more likely that the major powers' constraints on the ICC will persist (p. 189). *Rough Justice* succeeds as a descriptive account of the Court's first decade in operation, but would benefit from a discussion of how, if at all, the ICC can escape or—perhaps more realistically—limit the control of major powers.

In light of Bosco's analysis, a number of questions about both the Court and the international criminal justice system remain unanswered. Perhaps most poignantly, Bosco's conclusion that the ICC remains constrained by major-power politics despite its unique structure brings into question the legitimacy of the institution. While political realists would argue that the international system operates on power politics, one wonders whether this ought to apply to the international justice system. The realities that Bosco unearths in his book offend the stated goal that the Court be a just and impartial arbitrator of international crimes: "[T]o establish an *independent* permanent International Criminal Court . . . with jurisdiction over the most serious crimes of concern to the international community as a whole."[6] If the ICC—which was structured to circumvent power politics—cannot escape this reality, how can the

4. *See Our History*, COALITION FOR THE INTERNATIONAL CRIMINAL COURT, http://www.iccnow.org/?mod=cicchistory (last visited Dec. 4, 2014); *see also States Parties – Chronological List*, INT'L CRIM. COURT, http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronological%20list.aspx (last updated Mar. 15, 2013) (showing small countries among the earliest adopters of the Rome Statute).

5. The signing of the Rome Statute was viewed, at the time, as "the beginning of a new era in which humanitarian values and the protection of victims might finally become centre stage, and not the usual side show to the protection of sovereignty or even the exercise of raw power," (p. 51) (quoting Philippe Kirsch & John T. Holmes, *The Birth of the International Criminal Court: The 1998 Rome Conference*, *in* 36 CANADIAN Y.B. INT'L L. 36, 37 (1998)).

6. Rome Statute, *supra* note 1, pmbl. (emphasis added).

international community construct a more just system of international criminal justice?

Critics of the ICC argue that the Court's relationship with major power politics has negatively affected its operations. One critique of this reality arises from the Court's docket: to date, the ICC has opened twenty-one cases in response to nine situations, all of which have been in African countries.[7] In 2011, the Chairman of the African Union Commission, Jean Ping, accused the Prosecutor of applying a double standard to Africa, stating: "We are against [Prosecutor] Ocampo who is rendering justice with double standards . . . . Why not Argentina, why not Myanmar[,] . . . why not Iraq?"[8] In 2013, members of the African Union debated a mass withdrawal from the Court[9] and, in 2014, again voiced their concerns about the Court's involvement in Africa.[10] Bosco briefly discusses the African member-states' frustrations (p. 174), but stops short of offering advice on how to remedy the situation. Would it be preferable to establish a system of regional criminal courts? What are the benefits of the ICC if it can only effectively operate in one region of the world? The Court remains young: a decade of operations may turn out to be unrepresentative. The United Nations recently voted to recommend that the Court prosecute North Korean officials for crimes against humanity, a historic vote that may pressure the Security Council to refer North Korea to the ICC.[11] As a permanent international tribunal, the Court also possesses great normative value. Over time, it may come to shape and control international actors' behavior. An alternative system of regional courts—or the abolition of international courts—would defeat the lofty goal of ensuring that no actor escapes liability for the most serious crimes of genocide, crimes against humanity, war crimes, and aggression.

Given that the International Criminal Court is the first foray into supranational adjudication with no formal, structural ties to major-power states, it would be difficult at this early stage in its development to do more than Bosco has done: provide an engaging, highly-readable preliminary analysis of its creation and operation. As the Court continues to develop, it will fall to other researchers to explore the important questions regarding not only the Court, but also the system of international criminal justice that we are creating thereby.

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7. *Situations and Cases*, INT'L CRIM. COURT, http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx (last visited Dec. 4, 2014).

8. Richard Lough, *African Union Accuses ICC Prosecutor of Bias*, REUTERS (Jan. 30, 2011 3:59 AM), http://www.reuters.com/article/2011/01/30/ozatp-africa-icc-idAFJOE70T01R20110130.

9. Jacey Fortin, *African Union Countries Rally Around Kenyan President, but Won't Withdraw from the ICC*, INT'L BUS. TIMES (Oct. 12, 2014 1:54 PM), http://www.ibtimes.com/african-union-countries-rally-around-kenyan-president-wont-withdraw-icc-1423572.

10. *African Union Urges United Stand Against ICC*, AL JAZEERA (Feb. 21, 2014 3:24 PM), http://www.aljazeera.com/news/africa/2014/02/african-union-urges-united-stand-against-icc-20142111727645567.

11. Rick Gladstone, *United Nations Urges North Korea Prosecutions*, N.Y. TIMES, Nov. 18, 2014, http://www.nytimes.com/2014/11/19/world/asia/north-korea-united-nations-icc-human-rights-abuses.html.

Minilateralism: How Trade Alliances, Soft Law, and Financial Engineering Are Redefining Economic Statecraft. By Chris Brummer. New York, NY: Cambridge University Press, 2014. Pp. v, 219. Price: $80.00 (Hardcover). Reviewed by Y. Michael Chung.

When Robert Keohane, a preeminent scholar of international relations, proposed an agenda for researching multilateral institutions in 1990, he conceived of multilateralism as the "practice of co-ordinating national policies in groups of three or more states, through ad hoc arrangements or by means of institutions."[12] His agenda, which many scholars have adopted, was primarily driven by the question of whether international cooperation can persist after hegemony.[13] In 1971, the United States abandoned the dollar-gold standard, catalyzing the collapse of the Bretton Woods system. Two years later, the world was shocked by an oil embargo, which signaled a tremendous shift in the distribution of control over the world's petroleum resources. The dominance of the United States in the world economy already seemed to have eroded.

A quarter of a century later, multilateral institutions have not vanished, nor has the international order devolved into a state of anarchy. As Keohane presciently argued, "international regimes are easier to maintain than create."[14] Yet, recent events suggest that the decline of the United States is not over. After the 2008 financial crisis, it is uncertain whether the United States can continue to supply the world with market liquidity or play its long-standing role as the "consumer of the last resort." Multilateral institutions struggle to find their proper place amidst a sea of changes.

This trend set the stage for Chris Brummer, a professor of law at Georgetown University Law Center, who begins his book by observing that "[m]ultilateralism just isn't what it used to be" (p. 1). In *Minilateralism*, Brummer relies on his extensive knowledge of and previous scholarship on international economic law to provide an engaging narrative of this new world order.[15] His work is best situated in the ongoing dialogue about the declining economic power of the United States and its implications for international cooperation. Brummer's invocation of the Coase theorem is also reminiscent of Keohane's explanation of how international regimes can overcome political market failures.[16]

To be sure, minilateralism is not a novel word. As early as 1987, scholars observed that "in the absence of a hegemon, minilateral cooperation can arise . . . [which] can be argued to approximate the situation of recent

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12. Robert O. Keohane, *Multilateralism: An Agenda for Research*, 45 INT'L J. 731, 731 (1990).

13. ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION & DISCORD IN THE WORLD POLITICAL ECONOMY (1984); *see also* Beth V. Yarbrough & Robert M. Yarbrough, *Cooperation in the Liberalization of International Trade: After Hegemony, What?*, 41 INT'L ORG. 1 (1987).

14. KEOHANE, *supra* note 13, at 50.

15. *See, e.g.*, Chris Brummer, *The Ties That Bind? Regionalism, Commercial Treaties, and the Future of Global Economic Integration*, 60 VAND. L. REV. 1349 (2007).

16. *See* KEOHANE, *supra* note 13, at 85-109.

years."[17] As Brummer admits, various journalists, scholars, and practitioners have already touched upon different aspects of minilateralism, including trade, financial, and monetary regulations. Instead, the book's contribution to the literature lies in his attempt "to connect the dots" (p. 21). Rather than exploring uncharted territory, his work provides a geological map that shows profound changes in "how countries navigate the new global economy" (p. 21).

What, then, does Brummer mean by minilateralism? He does not rely on Keohane's formalistic conception, which leaves no room for minilateralism because Keohane's conception subsumes it under the umbrella of multilateralism. Instead, Brummer follows a more common approach, which defines minilateralism against the backdrop of "global multilateralism." Here, multilateralism refers to a range of international regimes that emerged after the Second World War with the support of the United States. In turn, these institutional arrangements are closely intertwined with a set of values and principles, such as universality, liberalism, and sovereign equality of states.[18] In this light, minilateralism is the practice of international cooperation that falls short of the global reach and aspirations of multilateralism.

Brummer shares this view and goes on to argue that there are three key features of minilateral strategies at work in today's economic statecraft. First, states are "turn[ing] away from global cooperation and toward strategic alliances . . . to find the smallest group necessary for achieving a particular aim" (p. 18). Second, states prefer "informal, explicitly nonbinding accords" to formal treaties (p. 18). Third, states are "resort[ing] to financial engineering as a critical component of their economic statecraft." (p. 19). Consequently, states that employ minilateral strategies are less likely to look for solutions within the multilateral setting.

What is troubling about this phenomenon is that states might also forego the values and principles associated with multilateralism. According to Brummer, minilateralism is just a "toolset for surviving in a complex world," a world in which economic power grows more diffuse (p. 194). Therefore, minilateralism does not offer an alternative set of values and principles that states can ascribe to. As more states decide to employ minilateral strategies, the promise of multilateralism—a world economy increasingly interconnected through shared norms and practices—moves further out of reach.

The book offers at least two possible responses to this concern. First, the idea that the "grand narrative of globalization" was nothing more than an illusion (p. 2). It is almost impossible to coordinate national policies of multiple states in "highly ritualized 'global' forums of cooperation" (p. 22). Only with active efforts by the United States could multilateral institutions emerge in the first place. Thus, "today's multilateralism is itself a kind of rare historical fluke" (p. 10). In the absence of hegemony, the global economic system will

17. Yarbrough & Yarbrough, *supra* note 13, at 4.

18. Miles Kahler, *Multilateralism with Small and Large Numbers*, 46 INT'L ORG. 681, 681 (1992).

increase in its complexity, leading to transaction costs that are too high to enable or sustain multilateral cooperation. Indeed, Brummer's sweeping overview of the history of economic statecraft—spanning from the regulation of coins in medieval Europe to the rise of the Chinese renminbi—corroborates this view.

Not all hope is lost, however, which points toward Brummer's second response to the concern about failure of multilateralism. In today's "post-American world," increasing multipolarity is actually "leading to more, not less, institution building and cross-border participation" (p. 3). In other words, it is unlikely that the world will cease to be interconnected, as states develop new strategies for economic cooperation.

Furthermore, that minilateralism does not aspire to multilateral values and principles should not be a cause for despair. In Brummer's view, minilateralism "provides a means to an end [and] can't (or at least shouldn't) be understood as inherently good or bad" (p. 165). This leads to the argument that minilateralism can and should be managed to serve legitimate ends. For instance, "minilateral techniques can be paired with multilateralism in ways that are mutually beneficial" (p. 168). After all, multilateral institutions are already working in conjunction with regional and soft-law institutions. In addition, while rejecting the idea of "unleashing judges as arbiters of legitimacy" (p. 191) Brummer argues that administrative checks, such as "notice-and-comment" procedures, can contribute to a more informed and legitimate process of decision-making (p. 179). In his words, this is "smart minilateralism," which requires decision makers to "constantly work on reconciling multilateral, democratic principles of governance with the imperatives of the global economy, and vice versa" (p. 197). In this way, states can employ minilateral strategies and still further the values and principles associated with multilateralism.

At this point, the reader could benefit from a deeper analysis of how minilateralism can go wrong. For instance, Brummer notes that "some of the most egregious cases" of trade alliances are those in which "regional clubs go so far as to require participants to raise tariffs to outsider countries in order to monopolize the gains of liberalization" (p. 59). In turn, this exclusiveness incentivizes states to "strike minilateral trade deals defensively" (p. 75). Thus, Asian trade accords in the 2000s spurred the United States to join talks on the Trans-Pacific Partnership, which, in turn, put economic pressure on Japan and the European Union to seek trade deals of their own.

For Brummer, this "trade bug" is almost a good thing, an opportunity for more institution building and cross-border participation in the post-American world (p. 76). Furthermore, he argues that these new arrangements can "prove to be an important stepping stone to broader multilateral cooperation" (p. 80). However, the reader cannot help but wonder whether this patchwork of minilateral arrangements, a product of exclusive and defensive trade accords, will actually be able to match the scope and aspirations of global multilateralism. Even Brummer concedes that certain minilateral arrangements, such as customs unions, "are highly imperfect organizations" (p. 61).

Understandably, the primary purpose of this book is to provide a comparative analysis of minilateral strategies in trade, financial, and monetary regulations. Even to this end, however, the author could have placed more emphasis on his novel contributions to the study of international financial law.[19] In particular, the use of financial technologies, such as currency swaps, is a relatively new phenomenon in economic statecraft and is deserving of more attention. While Brummer devotes a chapter to the topic of international financial law in general, the thrust of his analysis of states as hedge funds tends to get lost in his extended narrative.

Nevertheless, the book acts as a springboard from which other scholars can create a new agenda for researching minilateralism. In the post-American world, can minilateral strategies be managed to further a certain set of values and principles, including, but not limited to, those once associated with multilateralism? How can states avoid the pitfalls of exclusivity and democratic illegitimacy? More broadly, how can we think about the interaction between multilateral institutions and minilateral strategies? What role, if any, should judicial and quasi-judicial institutions, such as international investment arbitration, play in facilitating or legitimatizing minilateralism? Answering these questions will require a collective endeavor by future scholars.

In 1987, Keohane argued that "we should expect the lag between the decline of American hegemony and the disruption of international regimes to be quite long and the 'inertia' of the existing regimes relatively great."[20] While Brummer does not clarify whether such "inertia" is coming to an end, the post-American world will surely see a rise of minilateral arrangements and institutions. But then, in the grand scheme of international cooperation, multilateral institutions, not minilateral strategies, are the anomaly. If there is one important reason to pay attention to Brummer's work, it is this: minilateralism is—and has always been—here to stay.

Nomadic Peoples and Human Rights. By Jérémie Gilbert. New York, NY: Routledge, 2014. Pp. xi, 248. Price: $145.00 (Hardcover). Reviewed by Jacqueline Van De Velde.

"Law is not neutral," Jérémie Gilbert proclaims in *Nomadic Peoples and Human Rights*. Rather, Gilbert argues, law "plays a significant role in the sedentarisation of the nomads," because "law and justice are designed and created by and for the sedentary" and therefore, law "contributes to a push towards a more and more sedentarised world" (p. 214).

By questioning the ways in which law privileges sedentarist cultures while simultaneously identifying international law as a means of protecting

19. *See, e.g.*, Chris Brummer, *How International Financial Law Works (and How It Doesn't)*, 99 GEO. L. J. 257 (2011); Chris Brummer, *Why Soft Law Dominates International Finance—and Not Trade*, 13 J. INT'L ECON. L. 623 (2010).

20. KEOHANE, *supra* note 13, at 101.

nomads, Gilbert has created a complex work of scholarship that is equally critical and affirming of international law. Gilbert's book serves as a seminal text in its field, attempting to document and organize the international law that applies to nomads in the hopes of answering the eventual question of "whether human rights law could provide a platform to challenge the fundamentally sedentarist tone of law and international law by offering some form of protection for nomadic peoples to perpetuate their own way of life" (p. 215).

Key to Gilbert's understanding of the human rights of nomadic peoples is an awareness of the overarching discrimination that nomadic peoples face under the current system of international law, which was formulated without the representation of their voices or concerns. This issue of discrimination, Gilbert explains, "is the thread that links all the chapters" (p. 9). In explaining the extent to which systemic discrimination pervades the nomadic experience—and the consequences that this can have—Gilbert begins his study by carefully engaging in historical analysis of the genocides that have affected a number of nomadic peoples: the Bambuti of the Democratic Republic of the Congo (p. 42), the Batwa of Rwanda (p. 45), the Aché of Paraguay (p. 47), and the Roma in Europe (p. 50). To begin with the price that society pays when the human rights of nomadic peoples are not respected is a sobering move—one which grounds the analysis presented in the rest of the work, and makes clear the importance of crafting and implementing protections for nomadic peoples and nomadic culture.

While a tremendous issue facing nomadic peoples, genocide is far from the only issue that Gilbert identifies as threatening nomadic culture. He indicates that international law forces nomadic peoples to settle into a sedentary lifestyle, confined within state borders (p. 57); fails to protect nomadic peoples' right to water, sanitation, health, and education (p. 115); and fails to recognize nomadic peoples' right to land (p. 91). In asserting these claims, Gilbert simultaneously challenges their continuation, probing existing international law to identify instruments that can protect the rights of nomadic peoples.

Gilbert's most useful contribution is identifying the rights of nomadic peoples within existing international law. He identifies protections that could apply to nomadic peoples within the U.N. Convention on the Rights of the Child (the rights to education and birth registration) (p. 161), under Article 27 of the International Covenant on Civil and Political Rights (the right to access to water) (p. 151), the International Convention on the Elimination of All Forms of Discrimination Against Women (the right to health) (p. 139), the Universal Declaration on Human Rights (the rights to freedom of movement and property) (p. 103), and under Article 5 of the U.N. Declaration on the Rights of Indigenous Peoples (the right to maintain culture while fully participating in the political, economic, social, and cultural life of the state) (p. 170). He recognizes, however, that none of these covenants specifically encompass nomadic peoples; their protection is merely assumed. Gilbert notes that such omission creates a dangerous situation for nomadic peoples, and notes that in particular, nomadic peoples would benefit by being explicitly labeled as

indigenous peoples in order to retain and claim the protections under the U.N. Declaration on the Rights of Indigenous Peoples. The issue of not specifically naming nomadic peoples as protected applies not only to individual conventions, but also to organizations that have the ability to take on a greater role in protecting and promoting the human rights of nomadic peoples (p. 218). Gilbert names specific human rights instruments—including the International Court of Justice (p. 65), regional human rights conventions (p. 71), and the U.N. Human Rights Committee (p. 77)—as bodies that are capable of protecting the rights of nomadic peoples within the existing legal framework.

Gilbert's scholarship is largely informative and positive; however, *Nomadic Peoples and Human Rights* leaves its readers with several overarching concerns. First, while Gilbert's scholarship provides an excellent overview of the situation on the ground, it proceeds on the basis that nomadic peoples are entitled to protection under the state, without acknowledging or rebutting the arguments that could be—and frequently are—made concerning why a state may choose to balance the maintenance of security over the protection of a minority culture. For example, Gilbert notes that the "establishment of modern national boundaries with strong border surveillance often comes as a limitation to nomadism"(p. 79), but does not seriously engage with the rationale of *why* a state might implement strong border surveillance or with policy alternatives that might allow states to both maintain a secure border and allow freedom of movement for nomadic peoples. Rather, Gilbert simply asserts that a policy allowing nomadic peoples to freely cross borders should be implemented.

Gilbert's choice simply to identify, but not engage with, counterarguments to the widespread protection of nomadic peoples under the human rights regime seems problematic. There are serious philosophical arguments that surround the relationship between nomadic peoples and the state. In a Hobbesian state, a social contract exists between the state and its citizens; the citizens give up a portion of their autonomy in exchange for a measure of protection from the state as a whole. Nomads, by contrast, have chosen not to give up any of their autonomy, but Gilbert argues that nomadic peoples should still be entitled to protection under the state. Directly addressing arguments such as these, and providing compelling counterarguments against them, would add strength and credibility to Gilbert's policy recommendations at the conclusion of the book.

Another concern is Gilbert's focus on the Roma. Gilbert acknowledges early in his work that there is "extensive debate on whether the Roma . . . are nomadic" as the communities neither form a homogenous group nor are entirely itinerant (p. 4). Despite Gilbert's assertions that the book takes a "broad approach to nomadism," Gilbert's frequent reliance on the Roma to provide examples or prove points seems problematic, given their contested status as a nomadic group. Gilbert would have been well served by acknowledging that there are many more sources and a high level of credible reporting on the situation of the Roma than there are to other nomadic peoples. However, without such clarification, his arguments appear both strangely

Eurocentric and unpersuasive, given their contested status.

Finally, Gilbert's policy recommendations leave something to be desired. While his suggestion that nomadic peoples be formally classified as indigenous peoples is an excellent one (which would afford nomadic peoples considerable protections under human rights laws), his specific recommendations only span three pages of the over 230-page book and appear largely impractical. One such suggestion is creating a "nomadic treaty," affirming the "right to nomadism, or a right to a nomadic identity" (p. 228). Gilbert himself quickly dismisses the viability of this option, given the difficulty of creating a new treaty and the theoretical issue that could arise from fragmenting the existing human rights regime. Gilbert's other recommendation is to "ensure that the existing human rights instruments are interpreted to provide space for nomadism rather than to argue for a new specific instrument" (p. 229). Gilbert's use of the passive voice leaves the reader uncertain about the locus of potential reforms: who will ensure these rights are protected, and who will ensure the existing instruments are thus interpreted? Given that Gilbert's scholarship is otherwise compelling, readers may be disappointed that his recommendations for reform are not more robust.

Through chapters of detailed analysis, documentation of atrocities, and careful readings of international human rights protections, Gilbert crafts a compelling case that nomadic peoples should be free to retain and maintain their culture—and that international law may be a convenient vehicle for doing so. Less certain, however, are the questions of how international law should be implemented and enforced, what arguments should be advanced to states to protect the rights of nomadic peoples, and exactly who should begin this process. Gilbert's analysis provides a substantive starting point for the protection of nomadic peoples and serves as a useful handbook for reference of the rights of nomadic peoples under existing law. At times it raises more questions than it answers, but continues to make a valuable contribution by identifying clear areas for further scholarship, policy, and international negotiation to ensure adequate protection and recognition of nomadic peoples in the international community.

Negotiating in Civil Conflict: Constitutional Construction and Imperfect Bargaining in Iraq. By Haider Ala Hamoudi. Chicago, IL: University of Chicago Press, 2014. Pp. xiii, 328. Price: $35.00 (Paperback). Reviewed by Marissa Roy.

As a variety of nations embrace constitutionalism—the idea that government is founded in a central body of law—traditional understandings of this theory may not be sufficient to explain contemporary cases. Classic constitutional theories envision a constitution as the core of a nation's political identity, not only defining government, but limiting it as well.[21] When a

21. *See* Wil Waluchow, *Constitutionalism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Sept.

constitution is ratified, it becomes the supreme law of the land, the source of a government's legitimacy. Yet this conception rests on an assumption that drafting societies share a clear, common vision of government, which they aim to fix in the constitution.[22] Notable contemporary examples have lacked this common vision, instead drafting constitutions amid substantial disagreement about ideology and identity.[23] Scholars are beginning to argue that societies plagued with identitarian division do not draft their constitutions as traditional theories describe.[24] Can past understandings of constitutionalism explain these contemporary examples and predict like cases? Or should theories of constitutionalism be amended to encompass these distinct cases?

In his new book *Negotiating in Civil Conflict*, Haider Ala Hamoudi derives a supplemental theory from a case study of the "remarkably successful" Iraqi constitution-making process, which brought together Iraq's three main groups—the Shi'a, Sunnis, and Kurds—to reconstruct the war-torn nation's identity (p. 1). Referencing traditional constitutionalism's emphasis on inclusiveness, Hamoudi observes that "there has been insufficient scholarly attention to the consequences of inclusiveness in the context of societies riven by deep identitarian divisions" (p. 14). In these contexts—where centuries of violent division might prevent full reconciliation—Hamoudi notes that an emphasis on inclusiveness may yield a less developed constitution at the time of ratification (p. 15). Yet, he does not see this result as a setback. Rather, he embraces incrementalism, the notion that the constitution in this context will be a largely unfinished product to be continued gradually after ratification and enactment (p. 9). Throughout his book, Hamoudi traces the development of the Iraqi constitution from its inception in 2005 to its contemporary application, arguing that continued dialogue on contentious constitutional issues has fostered significant reconciliation within Iraq.

Weaving historical and cultural background throughout his account of the Iraqi constitutional process, Hamoudi highlights the tension between the ideal of a unifying body of law and identitarian divisions among Iraq's main groups. Federalism, in particular, brought to the fore a history of distrust and violence. The Sunnis, though a minority, had been the central ruling class in Iraq for centuries, often at the expense of the Shi'a and Kurds (pp. 33-34). A federal system with great deference to regional voices would serve as a potential threat to the status quo, and therefore Sunnis advocated for a nationalistic system that vested supremacy in a strong central government (p. 55). The Kurds and Shi'a generally favored regional power, with the former demanding a semi-autonomous Kurdistan region and the latter divided on the details of regional autonomy but supportive of limited central government (p.

11, 2012), http://plato.stanford.edu/entries/constitutionalism/#CriThe.

22. Hamoudi alludes to this assumption, noting that it does not necessarily apply to deeply divided societies (p. 8).

23. *See, e.g.*, HANNA LERNER, MAKING CONSTITUTIONS IN DEEPLY DIVIDED SOCIETIES (2013) (noting the examples of Ireland, India, and Israel).

24. *See e.g.*, *id.*

63). Ultimately, the Kurds were given a semi-autonomous region with little objection. Other disputes surrounding federalism, notably the balance between central and provincial governments, threatened to end the convention and therefore required a different approach (pp. 63-64). Compromising, the drafters intentionally incorporated contradictory articles. For example, Article 110, supporting a strong central government, enumerated a list of "exclusive" but not comprehensive[25] federal powers, leaving potential for federal powers beyond this article (pp. 68-69). However, Article 115, in favor of regional autonomy, noted that "[a]ll powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates."[26] (p. 69). This deliberate contradiction would defer resolution to the Iraqi Supreme Court after ratification.

The role of Islam elicited equally contentious debates founded in group identity. Islam represented a source of law as well as a symbol of power. Throughout centuries of marginalization, the Shi'a had relied on their religious leaders, the clerics of Najaf, as a source of true law and guidance (p. 35). The Shi'a, therefore, sought a role for the clerics to interpret law under the constitutional system (pp. 82-83). The Sunni, while envisioning some role for Islam, were firmly against the integration of the clerics of Najaf, whom they saw as a threat to central power (pp. 93-94). The Kurds, both religiously diverse and deeply distrustful of any authority that might challenge their autonomy, stood against constitutional inclusion of Islam altogether (p. 83). After much debate, the drafters included Islam by way of vague language that could allow either a symbolic or an authoritative reading: "Islam . . . is a foundation[al] source of legislation"[27] (p. 85). Related disputes, such as those regarding Islamic positions on the Supreme Court or the Court's power to review cases implicating Islamic law, were explicitly left to future legislation (p. 93-99).

From his thorough study of the Iraqi example, Hamoudi builds a theory of constitutionalism that stresses an incremental approach in conflict-ridden societies. His theory rests on the premise that, in these contexts, many fundamental questions of governance are highly divisive because they "[run] to the core of the respective identitarian communities' visions of themselves and the state" (p. 96). In such cases, Hamoudi claims, consensus may only be reached by deferral. The Iraqi Constitution defers both by its capacious text and its explicit invitation for further construction. The text of the Iraqi constitution is purposely ambiguous, flexible, and wrought with latent contradiction, necessitating further interpretation as Iraq builds consensus among identitarian factions that have been at odds for centuries. Additionally, the Constitution deliberately delays controversial decisions by deferring them to future legislation or amendment (pp. 16-20). In Hamoudi's framework, these

25. DOUSTOUR JOUMHOURIAT AL-IRAQ [THE CONSTITUTION OF THE REPUBLIC OF IRAQ] OF 2005, art. 110.

26. *Id.* art. 115.

27. *Id.* art. 2.

strategies allow opportunities for continued reconciliation, ultimately fostering a body of fundamental law that unifies rather than divides the population. Hamoudi concludes that Iraq's successful constitution "may provide a useful model" for similarly situated nations, particularly in the aftermath of the Arab Spring (p. 226).

Hamoudi's incremental theory provides a new way to understand constitution-making within the larger scope of post-conflict reconstruction. By incorporating identity and history in his analysis, Hamoudi introduces a culturally relative framework that acknowledges the inherent complexities of the Iraqi situation and others like it. Hamoudi's placement of the constitution within a larger incremental effort towards reconciliation marks a significant divergence from traditional constitutionalism theories, but one perhaps more suited to describe situations in post-conflict societies.

However, in introducing this new posture, Hamoudi does not address a significant assumption within his theory: that delaying decisions on contentious issues by a capacious framework and subsequent construction will actually result in reconciliation. In fact, Iraq's efforts to cope with federalism and the role of Islam after ratification suggest that this approach may have sustained and promulgated Iraq's divisions. Both issues were deferred to Iraq's post-ratification government, but neither has been resolved. The Iraqi legislature, for instance, has not passed the required legislation that would structure a permanent Federal Supreme Court that incorporates Islamic juristic elements (pp. 187-88). Therefore, the current Federal Supreme Court is only an interim court, which has generally "opted for strategic avoidance" regarding questions involving Islam (p. 190). This interim court has also been reluctant to resolve the conflicting constitutional articles addressing federalism, instead maintaining their ambiguity. For example, when assessing the central and regional powers to tax, the Federal Supreme Court declared "concurrent competency," preserving the conflict between Article 110 and Article 115, rather than proffering a solution (p. 155). These developments do not suggest reconciliation, but rather a prolonged stalemate.

Hamoudi argues that, despite the aforementioned standstills, the Constitution has fostered reconciliation and unity. His evidence, however, is not wholly convincing. Hamoudi relies primarily on rhetoric of Shi'a and Sunni leaders that invoke the Constitution to bolster their legitimacy, arguing that this proves commitment to the Constitution "as a 'constituent agent' of Iraqi identity" (p. 1).

While these speeches may shed light on the sentiments of the political elite, they do not reveal the status of reconciliation among the public. Ali Latif's 2008 report on Iraqi reconciliation revealed that the constitution's "top-down approach [to reconciliation] has failed to initiate reconciliation at the lower levels."[28] Though violence had decreased by 2008, the public still

28. Ali Latif, *Iraq: The Status of National Reconciliation*, CARNEGIE ENDOWMENT FOR INT'L PEACE ARAB REFORM BULLETIN (Mar. 2008), http://carnegieendowment.org/files/Latif-march2008.pdf.

remained wary of "sectarian biases"[29] of the army and police, which fueled continued resentment along identitarian lines. Tribal militias similarly distrusted the national government.[30] Hamoudi does not address these public sentiments, though they raise serious questions about the success of Iraqi reconciliation efforts.

Instead, Hamoudi highlights the lack of vocal public disagreement over the Constitution as proof of public acceptance and reconciliation (pp. 2-4). Hamoudi contends that the relative insignificance of the Constitution's mandatory amendment process shows that identity groups, particularly the Sunnis, "no longer viewed [the Constitution] as a foreign instrument imposed on them, thus rendering the formal amendments entirely unnecessary" (p. 4). However, in his arguments, Hamoudi does not acknowledge the prominent narrative of Sunni marginalization. He does not mention the widespread allegations that Iraqi president Nouri Al-Maliki had targeted Sunni leaders and ordered mass detention of young Sunni men,[31] nor does he recognize a militant Sunni group, now well known as the Islamic State in Iraq and Syria (ISIS).

Recent events show that many concerns Hamoudi did not address were, in fact, quite real. ISIS has been a force in Iraq since 2006,[32] during a period of fighting that Hamoudi addresses and dismisses in a single paragraph without mention of the group (p. 1). ISIS was fueled by the very Sunni discontentment that Hamoudi argues had disappeared by the 2010 amendment conference. The Constitution's tendency to prolong identitarian divides without strong progress towards reconciliation made Iraq vulnerable to groups like ISIS and unable to adequately confront them. While it is true that the Constitution itself did not cause civil conflict, is this to be the measure of its success? Though incrementalism could be constructive for constitution-making in a post-conflict society, it was ultimately not successful in this case. Had Hamoudi ventured to be critical of the Iraqi Constitution, he could have provided a more comprehensive constitution-building model with compelling suggestions as well as necessary warnings for deeply divided societies.

Crowded Orbits: Conflict and Cooperation in Space. By James Clay Moltz. New York: Columbia University Press, 2014. Pp. viii, 240. Price: $30.00 (Hardcover). Reviewed by John Ehrett.

In the wake of the Cold War and the space race between the United States and the USSR, the international policy landscape governing outer space activity has become increasingly complex. The number of stakeholders in global space participation has ballooned and space-derived information has

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29. *Id.*

30. *Id.*

31. Tim Arango, *Maliki Agrees to Relinquish Power in Iraq*, N.Y. TIMES, Aug. 14, 2014, http://www.nytimes.com/2014/08/15/world/middleeast/iraq-prime-minister-.html.

32. CNN Library, *ISIS Fast Facts*, CNN, Oct. 9, 2014, http://www.cnn.com/2014/08/08/world/isis-fast-facts/.

become crucial to both military and civilian activities. Few multi-party frameworks, however, presently exist to govern the behavior of either state or civilian actors—a deficit which may spawn serious problems, as dependence on space activity continues to grow.

James Clay Moltz's *Crowded Orbits: Conflict and Cooperation in Space* aims to provide a scholarly yet readable introduction to the current range of space policy issues. While its approach is more informational than argumentative, Moltz's book effectively summarizes the key concerns of international space policymaking in light of historical patterns of interaction.

Given its generalist slant, *Crowded Orbits* offers a broad topical overview that synthesizes a great deal of factual information. Chapter One provides a comprehensive survey of past space activities, exploring both the events of the Cold War and the technological innovations that emerged from U.S.-Soviet competition. Chapter Two offers a portrait of the leading contemporary actors in outer space: a diverse group, ranging from the United States and Russia to Pakistan and China. Chapters Three and Four go on to discuss the post-1989 flourishing of civil space activity, including recent cooperation on scientific facilities such as *Mir* and the International Space Station, before turning to the emerging commercialization of outer space. Chapters Five and Six explore the potential for future orbital weaponization and the current state of international space treaty law. Chapter Seven concludes by offering suggestions for possible extensions of this law.

In describing the progressive evolution of space science—a theme woven throughout Chapters One and Two—*Crowded Orbits* is at its best. Moltz is adept at explaining difficult technical concepts to audiences lacking prior scientific training. From there, Moltz's discussion draws on a robust repertoire of sources, from trade journals to international law scholarship, effectively distilling the current literature into a reader-friendly volume.

Notably, Moltz's book does not advance a central thesis. Rather, it seeks to lay a foundation for subsequent policy debates and offers loose contours for possible reforms. These potential reforms, outlined in Chapter Seven, largely emphasize collaboration around baseline interests shared by all space actors and integral to continuing developments in the domain. Especially important to Moltz is the need for a comprehensive system to manage orbital "traffic," a concept he defines broadly to include all human-introduced items circulating in the extraterrestrial realm (p. 178). According to Moltz, the proliferation of dead satellites and space debris poses an indiscriminate threat to all actors in outer space, warranting at least some degree of concerted international effort in order to avoid a tragedy-of-the-commons scenario (p. 83). A similar need exists with regard to commercial mining activities in outer space. Cooperative management, Moltz posits, is required to preempt conflicts over lunar- or asteroid-based resource gathering (p. 191).

In neorealist fashion, *Crowded Orbits* tends to stress the role of state power over activity by civilian entities, a perspective which effectively contextualizes Moltz's military/strategic analysis, but perhaps downplays the emerging relevance of non-state actors (p. 170). "What is needed," Moltz

stresses, "are judicious discussions among the leading spacefaring nations to determine how best to coordinate new activities without causing conflict" (p. 191). Not emphasized is the possibility that technological innovation will rapidly outpace domestic or international political developments.

While slightly restricted in its scope, Moltz's emphasis on activity by sovereign state actors is not without its advantages. One of the greatest strengths of *Crowded Orbits* is its ability to cast space activities into comparative perspective. The activities and relative motivations of emerging space powers, such as Pakistan, India, North Korea, and China, are discussed in detail throughout Chapter Two, offering a global outlook often neglected in space law literature (pp. 54-56). Accordingly, it is the likelihood of divergent national interests in space that underpins Moltz's power-based analysis: an understandable tendency, but one that downplays the role of economic, social, and cultural interconnectedness as potential mitigating factors. Indeed, Moltz admits his skepticism about the likelihood of game-changing developments emerging from private-sector activity in space—a skepticism perhaps warranted, given the tendency of past space entrepreneurs to over promise and under deliver (pp. 92-93). In light of the increasingly interconnected state of the global economy, however, Moltz's vision of state-versus-state clash may be premature: his predictions assume that future space activities will inevitably remain dominated by traditional military-driven patterns of interaction.

In keeping with this tendency towards force-based analysis, Moltz extensively discusses the potential for space-based warfare (pp. 130-32). Throughout Chapters Five and Six, he offers striking descriptions of how a "war in space" might realistically unfold, accompanied by assessments of potential multinational coalitions that could emerge under such circumstances. Pragmatic assessments of the political and economic feasibility of deploying space-based weapons systems, however, are absent. Perhaps Moltz is simply illustrating a worst-case outcome, but little analysis is offered as to its actual likelihood or the geopolitical conditions under which such a disaster might materialize. With global space-related spending experiencing a net decline,[33] Moltz's apocalyptic military scenario appears unlikely in the near-term; by the point at which orbital warfare becomes plausible, the composition of coalitions might well be dramatically different from that depicted in *Crowded Orbits.*

Moltz concludes *Crowded Orbits* with Chapter Seven, in which he evaluates three possible scenarios that might emerge as methods of managing outer space: unipolar military domination, piecemeal problem-solving, and robust international management (p. 179). He swiftly (and effectively) dispenses with any suggestion of single-party control (p. 181) and critiques ad hoc governance arrangements for their presumed inability to respond appropriately to space militarization (p. 183). Moltz's indictment of the latter scheme, consistent with the power-oriented perspective that undergirds

33. Peter Apps, *Global Spending on Space Falls, Emerging States Are Spending More*, REUTERS, Feb. 14, 2014, http://in.reuters.com/article/2014/02/13/space-spending-idINDEEA1C0I1 20140213.

Crowded Orbits, is arguably subject to a neofunctionalist critique: it may be that greater economic interdependence will progressively create strong de facto disincentives for space conflict. This potential counterargument is not systematically explored.

In lieu of single-state dominance or new patterns of ad hoc engagement, Moltz suggests an intergovernmental legal regime emerging out of initially voluntary accords between major space powers (pp. 187-89). The path to such an outcome is, assuredly, not without roadblocks: if the outer space landscape is indeed dominated by self-interested state actors, as Moltz's analysis of space militarization suggests, it may be too optimistic to assume that they will cohere around enforceable treaty frameworks. This paradox is not lost on Moltz. "In the space security field," he observes, "the major spacefaring nations have thus far been unable to identify areas of consensual agreement for new treaties." (p. 187). Clearly, it remains to be seen if areas of shared concern (e.g., the aforementioned problem of space debris) will lead to voluntary compliance, and whether collaboration on baseline matters will actually lead to a broader embrace of multilateralism in space.

Moltz's proposals do not align neatly with his vision of space as being dominated by traditional state-run programs. A perspective that recognizes the potentially diminished role of states as key players in space, however, is certainly reconcilable with Moltz's suggested goals. Prompt global dialogue could reduce the possibility of conflict between private actors in a realm outside the jurisdiction of traditional sovereigns, where the legality of certain behavior remains uncertain.[34] If civilian technology, fueled by private-sector demand, actually results in the revolutionary outcomes that Moltz dismisses (pp. 92-93), the risk of inter-entity conflict necessarily rises, particularly in a domain where law enforcement avenues are either impotent or absent entirely. Accordingly, international collaboration could conceivably help preempt infighting between private entities whose technological proficiency has outpaced that of their home regimes. This only holds, however, insofar as the private actors in question are more than mere political proxies: the state, in such a regulatory scenario, must be prepared to enforce legal norms against rule violators.

Ultimately, while characterized by a somewhat uncritical view of international power dynamics, Moltz's book offers a comprehensive perspective on the state of space law that will likely be valuable to both practitioners and lay audiences. *Crowded Orbits* serves as a useful introduction for researchers unfamiliar with the jargon of the field, as well as an intuitive starting point for those seeking to construct or analyze policy proposals.

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34. Debbie Siegelbaum, *The Companies Vying to Turn Asteroids Into Filling Stations*, BBC NEWS, Sept. 25, 2014, http://www.bbc.com/news/magazine-29334645.

Assessing the Effectiveness of International Courts. By Yuval Shany. Oxford, UK: Oxford University Press, 2014. Pp. viii, 322. Price: $112.86 (Hardcover). Reviewed by Katherine Munyan.

In *Assessing the Effectiveness of International Courts*, Yuval Shany aims for the "Achilles' heel" of international court scholarship: its "crude" definition of court effectiveness (p. 4). As Shany summarizes, academic literature traditionally defines an effective court as a busy court with a high rate of judgment compliance and a significant impact on state action (p. 5). Shany looks beyond this simple definition and raises a number of questions. Are the courts' dockets full because their prior judgments don't provide enough guidance to reduce repetitive disputes? Are their judgment compliance rates high because the courts never ask for meaningful concessions? Are their impact on state actions actually desirable?

Assessing the Effectiveness of International Courts offers a novel theoretical approach for evaluating courts according to their attainment of set goals. For Shany, effective international courts "attain, within a predefined amount of time, the goals set for them by their relevant constituencies" (p. 6). The book proceeds by first discussing the components of this definition individually, focusing on identifying who the relevant constituencies are (the people or institutions who decide the goals a court must attain in order to be effective), and how goal attainment should be measured. Shany then applies this goal-based approach to consider four judicial features related to effectiveness: jurisdictional powers, judicial independence, judgment compliance, and legitimacy. The book concludes by applying the goal-based approach to evaluate five different international courts.

Many international courts' goals are broad: deterrence, perpetuation of new norms, regime support, etc. Considering whether or not a court has achieved such expansive and amorphous goals proves challenging for any researcher. In many cases, it may be impossible to definitively conclude whether a court has successfully attained its goals. Shany views any "sweeping assertions . . . with some degree of suspicion," which helps to explain why his goal-based approach makes it difficult to draw unqualified conclusions. His framework emphasizes that judicial effectiveness is "complex" and "hard to identify in practice" (p. 98). His ultimate objective is to generate a more contextual understanding of court effectiveness that can be adapted to individual courts. He avoids forcing international courts into a uniform framework and attributing a single meaning to factors such as the number of cases in a court's docket. However, Shany's focus on "generic" goals—goals that many international courts share, such as international dispute resolution and regime change—over "idiosyncratic" goals particular to an individual court exerts a generalizing force that tends to contradict and negate his goals of contextualization (p. 48).

Shany argues that his insistence on complexity makes his method the responsible approach for evaluating courts. In his own words, "one of the significant contributions of a goal-based approach . . . is that [it] clarifies that

goal identification is necessarily a meticulous, institution-specific endeavor" (p. 37). The challenge for this type of approach lies in fostering complexity and contextualization without sacrificing clarity. Shany successfully navigates this challenge by carefully cabining his discussion's focus. For example, he declines to evaluate the advantages and disadvantages of pursuing these goals through a court system rather than some other forum or approach. Furthermore, he limits his analysis to the normative ramifications of how courts' goals are chosen, which constituency chooses the courts' goals, and how a constituency's chosen goals affect the court evaluation process. Since Shany's purpose is to provide a broad framework for future researchers to use, these omissions are rational. Nevertheless, one major potential hurdle for researchers seeking to adopt Shany's generally nuanced and flexible framework will be deciding how to select which constituency's goals are relevant to a court's effectiveness and fully addressing the implications of this choice.

As mentioned above, Shany's method requires researchers to select which constituency's goals international courts will be measured by—a choice with deeply normative implications that Shany only partially discusses. Shany provides a practical and normative argument for focusing on the goals set for the court by its mandate providers: namely, the international organizations and member states that wrote the court's legal mandate and that control its operations (p. 32). For example, the U.N. and its member states serve as the mandate providers for the International Court of Justice, and the states parties to the Rome Statute serve as mandate providers for the International Criminal Court since these constituencies established the courts' missions and the courts rely on their continued support. These mandate providers have also put their expectations (or at least a subset of them) into writing—a clear bonus for researchers. Normatively, mandate providers endow a court with democratic legitimacy, at least to the degree that their own governments are democratically elected. Their need to establish broad support amongst their own constituents may encourage them to formulate court goals consistent with the broader public's "generally accepted perceptions of what the goals of international courts should be" (p. 34).

Shany appears to use the general public's approval of goals as a proxy for the goals' normative acceptability—a debatable, albeit democratic, proposition. Even if public approval did translate into moral acceptability, it is unclear to what degree ordinary citizens express their opinions about court goals or hold their governments accountable for choices about the structure of international courts. Further, to the degree that mandate providers are not fully democratically chosen by their own constituents, evaluating international courts by mandate providers' standards exacerbates these democratic lapses and may result in a double disenfranchisement of marginalized groups. Shany notes that concentrating on mandate providers does not preclude consideration of other constituencies, but he leaves it unclear how constituencies who do not put their goals for a court into writing would be integrated into a model that recognizes unstated goals but relies heavily on stated ones. The problems of incorporating less politically powerful constituencies could indicate limitations

to Shany's model, or they could reflect the limitations of international courts themselves as elite institutions far removed from most people's daily lives.[35] By emphasizing that institutional goals come from specific constituencies, application of Shany's model could provide a thoughtful starting point for interrogating whether international courts meet the goals of some constituencies better than others. Applied without sufficient thought about constituency choice, Shany's model could reinforce other constituencies' invisibility.

Shany's discussion of specific courts shows his goal-based approach's potential to disrupt accepted narratives about international courts' effectiveness. Most scholars view the European Court of Human Rights (ECtHR) as the epitome of a successful court given its long history and high number of applications and judgments (p. 253). Shany unsettles this conclusion by disregarding the numbers on the docket and looking instead at "the extent to which the Court has been successful in terms of meeting the goals set for it by its mandate providers – the governments of the member states of the Council of Europe" (p. 254). Shany considers the ECtHR in light of two main goals: "securing compliance with regional human rights norms (norm support) and supporting the Council of Europe's mission of achieving greater unity among its member states (regime support)" (pp. 126-27). The ECtHR has near perfect judgment compliance rates, but Shany urges his reader to look beyond these rates and to look closely at which states are doing most of the complying, what decisions they choose to comply with, and how they demonstrate their compliance. Since compliance often requires only making a statement of wrongdoing and paying a nominal fee, the ECtHR's high rate of compliance is unsurprising and may not be a strong indicator of effectiveness (p. 125). Uneven state compliance is a problem for the court's legitimacy. Russia, Turkey, and Italy are repeat violators and consistently refuse to comply with the court's rulings. Other states that comply with individual judgments are effectively repeat violators in that they bring repetitive disputes to the court. Shany's scrutiny of whether compliance with judgments actually further the court's mandate demonstrates the way in which his goal-based approach both adds a needed nuance to analysis of the ECtHR and suggests broader questions about international courts. Are international courts truly international in their influence or only able to exercise power where member states are like-minded already? Are international courts most effective where they are needed the least? Shany leaves the larger structural questions for future researchers.

The goal-based method also provides a path to evaluating nascent courts that have not produced enough data to be assessed by traditional metrics of judgment compliance or productivity. For example, evaluating the International Criminal Court (ICC) poses difficulties because of its brief tenure; the Court

35. This section is largely indebted to James Silk's recent work. For a more detailed discussion of the normative concerns drawn from the international criminal prosecution model and its tendency to neglect "ordinary" rights, see James J. Silk, *International Criminal Justice and the Protection of Human Rights: The Rule of Law or the Hubris of Law?*, 39 YALE J. INT'L L. 94, 97 (2014).

began investigations in mid-2004 and conducted its first trial in 2009. The ICC also prioritizes deterrence, an extremely difficult goal to measure. Shany approaches this problem through a process of "reverse engineering," looking at the court's structure and judicial procedures to assess the likelihood that these elements will result in certain outcomes (p. 51). Shany notes the structural elements of the ICC that appear suited to promoting deterrence: its broad jurisdiction and ability to respond to ongoing conflicts. In the absence of a viable direct measure of efficiency, Shany's method appears to be a sophisticated means of analyzing the ICC's progress.

Shany rejects providing conclusions about courts in favor of influencing what questions are asked and how. His framework appears with careful qualifications and invites future researchers to alter or calibrate the relevant source of goals, prioritization of goals, and normative considerations. Shany's embrace of complexity and his disinterest in pursuing larger normative questions may frustrate some readers. But ultimately, Shany's method provides a strong structural foundation for a rejuvenated conversation about international courts: a conversation with the potential to unsettle complacent conclusions and generate a broader debate about the role of international courts.

Cold Peace: China-India Rivalry in the Twenty-First Century. By Jeff M. Smith. Plymouth: Lexington Books, 2014. Pp. xi, 276. Price: $95.00 (Hardcover). Reviewed by Youlin Yuan.

Jeff Smith's new book is a welcome addition to the literature on Sino-Indian relations, a topic which has received too little analytic attention in Washington (and even in Beijing), given the possibility that "the twentieth-century will witness China and India reclaim their positions atop the global hierarchy of nations" (p. ix). Drawing from his extensive field research and interview experiences in India, China, and the United States, the author provides a comprehensive, objective, and nuanced picture of the geopolitical rivalry between China and India. However, the book provides an excessively optimistic picture of China's strategic position vis-à-vis India and, at times, dramatizes the bilateral tension.

The book is based on the premise that despite the diplomatic comity and warmth between China and India in the twenty-first century, "the elements of rivalry . . . are largely intrinsic to the bilateral relationship" (p. 5). Working under a security studies paradigm, the author explores a comprehensive range of topics, including territorial dispute, Tibet, the Dalai Lama, the United States, Pakistan, the Indian Ocean, the Andaman Islands, the South China Sea, bilateral trade, and water resources. For a general audience, the book's Executive Summary gives a useful shortcut to comprehend Sino-Indian relations without overlooking any of their key aspects.

The first half of the book is devoted to the two countries' territorial disputes—the "core friction point" according to the author (p. 12). For those not acquainted with the history of Sino-Indian territorial disputes, Chapter Two

and Three give a well-structured historical narrative of the origin and development of the disputes along the Western Sector in Aksai Chin, the Middle Sector near Sikkim, and Eastern Sector of Arunachal Pradesh—the last having created by far the most contentious disputes.

The author argues that Sino-Indian border disputes are the only major kind of Chinese border dispute. This is due to Indian intransigence, but also because of the strategic connection Beijing draws between these border disputes and the situation in Tibet (p. 58). Between 1960 and 1980, China proposed a "package deal" to settle the border disputes and offered concessions to India for four times, all of which were rejected by New Delhi (p. 59). However, following the failure of the dialogue between Beijing and the Dalai Lama in 1984, and the Dalai Lama's increasing international presence in the late 1980s, China made it clear in 1985 that the "package deal" offer was no longer open and insisted on the return of Tawang to China.

Moving from history to present in Chapter Six, the author gives an insightful analysis of India's strategic considerations in hosting the Dalai Lama and the Tibetan Government in Exile (TGIE), despite repeated protests by Beijing. For India, the Dalai Lama provides "a great strategic asset" owing to his popular legitimacy in Tibet and his "control [over] the mind of the Tibetans" (p. 92). This asset is, however, a fragile one: as the author points out in Chapter Seven, the succession of the Dalai Lama will become a core point of friction for the coming decades. While Beijing insisted, on the basis of alleged historical evidence, that the reincarnation of the Dalai Lama had to be approved by the Chinese central government, the Dalai Lama insisted upon his authority of decision over the reincarnation process. But even if the Dalai Lama gains control over the process, whether the reincarnated Dalai Lama can retain the current Dalai Lama's popular legitimacy and provide as valuable a strategic asset to India is questionable.

The second half of the book presents a multi-faceted picture of the recent developments in Sino-Indian relations. Chapter Eight is devoted to the trilateral China-India-U.S. relations. Through a series of interviews with Chinese policy analysts and Indian politicians and strategists, the author argues that the India-U.S. rapprochement is largely due to India's fundamental security concerns, and until the two issues of "resolution of border dispute and degrading of China-Pakistan relationship" are achieved, the U.S.-India relationship is going to grow (p. 125).

Another core issue in the bilateral relationship between China and India involves the Indian Ocean. In Chapter Ten, the author illustrates the prominent role of the Indian Ocean in China's energy security roadmap, by examining China's soaring energy demand (p. 147) and the sources of Chinese imports of natural gas and oil (p. 149). Since eighty percent of China's oil imports pass through the Strait of Malacca (p. 148), and India controls the mouth of the Strait of Malacca—the Andaman and Nicobar Islands—India controls China's access to its most important energy supply (p. 165). The author, however, dismisses the possibility of an Indian maritime energy blockade of China through the Andaman Islands: India could not close off Malacca entirely

because Malaysia, Singapore, and Indonesia would object (pp. 171-74). India could not perform a near-in blockade of China, because the Indian Navy is in no position to engage China in a naval war on its own turf. The author remains optimistic that Indian geographical advantage will not translate into decisive strategic advantage that will encroach upon China's energy security.

The author largely achieves his goal of providing a general framework to conceptualize different issues in the Sino-Indian relationship. Based on the idea that the rivalry is "not a rivalry of equals," the author looks at different aspects of India's threat perceptions of China (for example, China's military advantage near the border area, the China-Pakistan relationship, growing Chinese engagement in the Indian Ocean and the South China Sea), and how India responds with strategic countermoves (for example, by hosting the TGIE, getting closer to the U.S., maintaining closer relations with Southeast Asian countries) (p. 5). The fundamental idea is, as the author states in the Executive Summary, that "China has always been the independent variable and the driver of events in contemporary Sino-Indian relations" (p. 219).

I suggest, however, that the author provides an excessively optimistic picture of China's strategic position vis-à-vis India. In Chapter One, the author justifies this "rivalry of non-equals" assumption by looking at China and India's GDP, defense budget, poverty rate, and other economic and social development indicators (pp. 3-18). The problem with this approach is that in the international relations arena, countries' respective strategic positions must be placed in a wider multilateral context.

In Sino-Indian relations specifically, the involvement of the United States, Japan, Australia, Singapore, Vietnam, and Thailand all shift the balance of relative strategic positions. A glaring omission from the author's discussion is the extent to which the U.S. military's rebalance to Asia will affect the strategic positions of China and India in their bilateral relationship. Since the rebalancing act started to take shape in 2012, the U.S. Department of Defense has had definitive plans to increase its military presence in Australia, South Korea, Japan, Singapore, Philippines, Vietnam, Malaysia, and other countries.[36] Along with the military cooperation initiatives between the United States and India, exemplified by the twelve Malabar military exercises between 2002 and 2013 (pp. 184-85), it is fair to say that China's strategic position has been severely curtailed by the so-called "arc of freedom" idea created by Japanese Prime Minister Shinzo Abe.[37]

The Southeast Asian countries also play a role in the power dynamics between China and India. In the last five to ten years, with China's growing assertiveness, whether actual or perceived, in the South China Sea, these countries have become increasingly wary of the supposedly "peaceful" rise of

36. COMM. ON FOREIGN REL., 113TH CONG., RE-BALANCING THE REBALANCE: RESOURCING U.S. DIPLOMATIC STRATEGY IN THE ASIA-PACIFIC REGION 2 (Comm. Print 2014).

37. *Abe Blows Japan's Trumpet, Cautiously*, ECONOMIST, May. 3, 2007, http://www.economist.com/node/9116791.

China.[38] For these countries, India is seen as a potential counterbalance to Chinese dominance in the region. This attitude tilts the power dynamics in favor of India. It will be helpful to incorporate interviews of government officials and scholars from these countries to put the China-India relationship into a broader multilateral context and to reveal the complexity of power dynamics in the Sino-Indian relations beyond a bilateral comparison.

In addition to neglecting these influences, the author at times dramatizes and exaggerates the tensions between China and India. While this does not detract from the author's overall conclusion that elements of rivalry are intrinsic to the bilateral relationship, it does overrepresent the belligerence in the Sino-Indian relations. For example, the Chinese newspaper, *Global Times*, is among the most frequently cited sources in the book. However, the *Global Times* is among the most controversially hawkish and nationalist newspapers in China and by no means represents the average public and party officials' attitudes towards India.[39] Similarly, the author frequently cites aggressive remarks from retired officials of China's People's Liberation Army (PLA). They, too, are among the most hawkish people in the Chinese public: many of them experienced the Korean War and Sino-Indian War in the 1950s and the Vietnam War in the 1960s. It is perhaps unsurprising that India's military modernization and military contacts with the United States raises their suspicion and anger. The frequent citations of the *Global Times* and retired PLA officials contribute to an overrepresentation of Chinese belligerence towards India.

Despite these shortcomings, *Cold Peace* presents a largely objective and well-rounded account of the Sino-Indian geopolitical relationship. Smith touches on an impressive breadth of topics and insightfully highlights the link between the territorial dispute and Tibet. Overall, Smith provides an excellent foundation for further examination of the Sino-Indian relationship and future works can take up the task of exploring this relationship within a broader multilateral context.

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38. *See, e.g.*, Indrani Bagchi, *Asean Countries Lap up Navy Chief's South China Sea Commitment*, THE TIMES OF INDIA (Dec. 18, 2012), http://timesofindia.indiatimes.com/india/Asean-nations-lap-up-Navy-chiefs-South-China-Sea-comment/articleshow/17668261.cms; Rishi Iyengar, *Risking China's Ire, India Signs Defense and Oil Deals with Viet Nam*, TIME (Oct. 29, 2014), http://time.com/3545383/risking-chinas-ire-india-signs-defense-and-oil-deals-with-vietnam; Simone Orendain, *Philippines Files Pleadings in Case Against China*, VOICE OF AMERICA (Mar. 30, 2014), http://www.voanews.com/content/philippines-files-pleadings-in-case-against-china/1882322.html.

39. *See, e.g.*, Christina Larson, *China's Fox News*, FOREIGN POLICY (Oct. 31, 2011), http://www.foreignpolicy.com/articles/2011/10/31/global_times_china_fox_news; Chengxian Li (李成贤), *Yige Laowai Yanzhong De Huanqiu Shibao* (一个老外眼中的《环球时报》), FTCHINESE (Mar. 1, 2012), http://www.ftchinese.com/story/001043413.