BOOK ANNOTATIONS

Achieving Access to Justice in a Business and Human Rights Context: An Assessment of Litigation and Regulatory Responses in European Civil-Law Countries. By Virginie Rouas. London, UK: University of London Press, 2022. Pp. xxx, 390. $60.99 (paperback).

Reviewed by Anna Agathis

The broad spectrum of human rights violations in the Global South is so quickly and unabashedly denounced and yet, the question inevitably arises: how complicit are we, as consumers, in enabling and encouraging the practices of corporations whose subsidiaries or suppliers are guilty of those very practices? While some conduct is revealed through the media or organizational investigations, countless unethical practices like child labor or modern slavery continue due to problems endemic to the system of multinational enterprises (MNEs) operating in a globalized economy. Virginie Rouas' book, *Achieving Access to Justice in a Human Rights Context: An Assessment of Litigation and Regulatory Responses in European Civil-Law Countries*, examines how access to justice and corporate accountability interact in the sphere of transnational regulation and litigation. In presenting the avenues available to victims seeking justice, Rouas argues that while substantive and procedural challenges pose barriers to holding MNEs accountable before domestic courts, there are domestic legal tools that plaintiffs may capitalize on. When combined with the European Union's most recent regulation, these tools present hope for victims in future litigation. What Rouas examines throughout is not necessarily *justice* for victims in the form of compensation, but rather the *pathways* that exist in seeking remuneration.

I argue that Rouas' analysis which focuses on the institutional pathways available lacks a comprehensive analysis of successful outcomes and overlooks the social and political influences at play. I examine the strengths and weaknesses of this approach through an analysis of the three overarching sections: corporate accountability in Europe broadly, a comparative look at civil law jurisdictions, and future pathways. Broadly speaking, Rouas' approach allows for a highly refined and legalistic understanding of the available mechanisms and their

shortcomings but could still benefit from greater synthesis of the material outcomes and potential policy considerations.

The book begins with the legal frameworks available to hold corporations accountable for human rights violations, providing the requisite background for the reader on which pathways are theoretically available, without looking deeply at their success rate. The discussion begins with the principal hurdle to corporate liability within public international law—legal personality. While many states recognize the legal personhood of corporations, allowing for domestic suits, public international law (PIL) is less clear on the issue. Given that the field is traditionally state-oriented, finding legal personhood for corporations is contentious. However, the increase of bilateral investment treaties governing relations between businesses and states, has allowed significant rights to accrue to MNEs, and many are criticizing the immunization of these parties from liability in public international law. In the UN context, there is further disagreement about corporate accountability: the International Covenant on Civil and Political Rights is against liability while the International Covenant on Economic, Social and Cultural Rights supports such findings. Rouas delineates the routes that may or do exist within PIL but fails to elaborate on the feasibility of achieving success through such a mechanism.

Rouas thoroughly presents the opportunities within public international law for victims but in doing so overshadows the de facto weaknesses of using PIL for the regulation of private entities. International law is a field that has developed through the consent of states to protect state sovereignty. The domain of customary international law arises not from the explicit agreement of states but from commonality of practice and legal recognition of that practice (opinio juris). Therefore, a finding of custom requires that other states either acquiesce (*i.e.*, fail to object), explicitly comply, or demonstrate widespread condemnation for a state whose position is inconsistent. As a result, fitting private entities like corporations within a system that already struggles to hold states accountable would be extremely difficult, putting aside those entities that are state controlled or those whose conduct may be attributed to the state.

In her discussion of the approaches to transnational litigation against MNEs in common law jurisdictions, Rouas introduces the causes of action available, while providing an overview of its evolution. This chapter succeeds in accomplishing what

many other chapters do not—a normative judgment on the overall success for victims' compensation. However, this judgment derives from the recent unwillingness of the U.S. Supreme Court to entertain such suits and, in turn, to bar any remedy. U.S. courts typically saw cases brought under the Alien Tort Statute (ATS), allowing foreign litigants to allege harm in U.S. courts, while English litigation took the form of tort claims against parent companies. Historically, ATS claims were nonexistent or unsuccessful, until the Court in *Doe v. Unocal* (1997) found jurisdiction based on a U.S.-based oil MNE's complicity in acts by the Burmese military during the construction of a gas pipeline. Despite this positive development, *Kiobel v. Royal Dutch Petroleum Co.* severely limited the application of ATS due to the presumption against extraterritoriality.

A secondary hurdle that plaintiffs have in suing parent companies for the practices of their subsidiaries is the corporate veil—a legal mechanism to protect the limited liability of shareholders. In many common law jurisdictions, plaintiffs suing in tort must prove that parent companies are subject to a duty of care that was violated through the practice of its subsidiary—a high burden of proof. In a 2021 case, the English Supreme Court found that there is no particular doctrine that governs the responsibility of parent companies vis-à-vis the harm caused to third parties by its subsidiary, perhaps leaving room for greater legal creativity within common law jurisdictions. The author's comparative analysis of avenues to "access" rather than outcomes is an effective approach here for two reasons. First, Rouas emphasizes the frequent outcome-determinative nature of common law procedural rules that bar litigants at the pleading stage. Second, she uses that fact to demonstrate the relative favorability for victims who, at the very least, can push their cases farther along.

The next chapter succeeds in drawing out how civil jurisdictions ostensibly present additional avenues while still falling short of offering victims open pathways to court; however, the lack of a quantitative analysis of successful outcomes prevents Rouas from elevating her analysis to one that could aid in the development of policy. In civil law countries, victims may access courts through civil or criminal law, but this comes with its own set of procedural obstacles. The Trafigura case is an excellent example of the strengths and pitfalls of charging parent companies with criminal violations. MNE Trafigura failed several times

to dispose of refined petroleum, and subsequently unloaded the shipment of toxic waste illegally off the Ivory Coast, causing one of the worst sanitary crises in the state. A group of Ivorian citizens filed a complaint against two French executives of Trafigura, but the prosecutor declined to investigate. Rouas demonstrates that, while this case may seem ripe for prosecution, institutional barriers such as persuading the prosecution to take up the case hinder that goal. Although no state has a legal framework that has allowed for much plaintiff success in transnational litigation against MNEs, Rouas' comparative discussion omits, where it had potential to answer, whether and to what extent the dual civil state mechanism offers more or less success to victims than its common law counterpart.

In a procedural analysis of civil litigation in the France and the Netherlands against MNEs, Rouas explores prescriptive and adjudicative jurisdictional challenges to accessing courts but does not explicitly acknowledge the bleak reality of litigant rates of success. While there are some mechanisms such as joinder that hint at favorable outcomes in the future, the domestic case law presents a discouraging record. Victims injured abroad will often bring suit in the parent company's home state: France may have jurisdiction if it constitutes the defendant's "residence" while the Netherlands requires the corporation to be "domiciled" in the state. Regarding prescriptive jurisdiction, Rouas notes the applicable substantive law and how the court arrived there, but she leaves out any judgment on how detrimental the application of foreign law may be for the case. In the Netherlands, the court applies the law of the state where the "act occurred," with a small carveout to apply the law of the state where the harmful impact occurred. In doing this, Rouas hints at the fact that home state laws are more favorable to plaintiffs but fails to detail how those laws may realize actual justice for victims, if at all.

While civil proceedings offer access to some plaintiffs, most litigation against MNEs is criminal in nature. Beyond a brief assessment of the relative frequency of criminal charges vis-à-vis civil lawsuits, the case law presented still suggests considerable difficulty for plaintiffs, making it unclear to the reader how successful criminal suits actually are. One of the reasons that France and the Netherlands occupy a fascinating role in the realm of MNE transnational litigation is that they have both instituted human rights due diligence laws and can more easily

pierce the corporate veil. France has enacted the Duty of Vigilance Law while the Netherlands promulgated the Dutch Child Labor Due Diligence Act. While in theory, these laws allow for parent companies to be held liable for the criminal acts of its subsidiaries, Rouas demonstrates that in practice, courts have remained resistant to piercing the corporate veil. As a result, the book provides a comprehensive review of how and why courts have decided to pierce under these laws but examines the legislation within a political vacuum. I believe that these laws and their success, or lack thereof, cannot be detached from its political dimension. The prevailing political economy suggests why judges, despite the availability of applicable legislative means, resist piercing: to subject corporations within a single state to heightened liability through piercing would require overcoming the hegemonic interests of corporate defendants, which are deeply entrenched in the current international order. The only way to counteract those interests is through a system that applies to defendants across the board rather than those in a single state or two. Therefore, greater widespread success for plaintiffs requires *regional* legislation that more widely governs corporations and increases liability across the board—the subject of Rouas' final chapter.

While much of the book functioned as a summary of available pathways, Rouas' final section is, in my opinion, the substantive peak of her work. Rouas draws from the mechanisms she defined in the earlier chapters to proffer valuable guidance for future regulatory efforts. First, Rouas acknowledges the numerous soft law mechanisms for regulating corporations—most prominently, the United Nations Guiding Principles on Business and Human Rights—but recognizes that the mechanisms never purported to impose legal obligations on corporations or states. On July 25, 2024, the European Union passed the Corporate Sustainability Due Diligence Directive (CSDDD), the first regional mandatory legal instrument to impose human rights due diligence on corporations. It broadens the scope of reporting and mandates the auditing of sustainability information and obligation to report—all of which are *requirements* for corporations. At the time of writing, the CSDDD was not yet promulgated, so Rouas' guidance was speculative in nature but, in an anticipatory fashion, uses the French Duty of Vigilance Law to extrapolate lessons for the future enforcement of the CSDDD. It is in this section where the reader will understand how the

French legislation has fallen short, in part due to a weak system of monitoring by the government, and accordingly will see the need for either regional or domestic bodies to devise a system for monitoring compliance. I believe Rouas has provided the comprehensive groundwork needed in the area and that legal academics should deploy her work on jurisdictional barriers to further assess how the CSDDD can accomplish what these domestic laws often could not—providing *actual* justice to victims.

Regulating Transnational Sustainability Regimes. By Enrico Partiti. Cambridge, United Kingdom: Cambridge University Press, 2022. Pp. xiii, 362. $110.00 (hardcover).

REVIEWED BY RICHMOND BRAUTIGAN

In *Regulating Transnational Sustainability Regimes*, Enrico Partiti explores how Voluntary Sustainability Standards (VSS)—non-mandatory guidelines designed to promote environmental, social, and economic sustainability across global value chains (GVCs)—interact with public regulatory frameworks. Adopted primarily by corporations, industry groups, and, in some cases, governments, these frameworks aim to address and mitigate negative externalities, such as pollution and labor exploitation, while simultaneously enhancing economic efficiency through streamlined compliance and increased transparency. However, as Partiti highlights, VSS regimes face significant criticisms: they are prone to greenwashing, inconsistently effective, and burdensome for developing countries to implement, revealing systemic issues that hinder their overall efficacy.

Partiti argues that these limitations underscore the need for public authority involvement, as relying solely on private regulation may prevent VSS from fully achieving their environmental, social, and governance goals. This paper builds on Partiti's analysis to posit that a delicate balance between private standards and public regulation is essential for fortifying VSS's credibility and effectiveness, as well as for aligning them with broader sustainability goals. The tension between voluntary standards and regulatory oversight prompts urgent questions about how to harmonize private and public strategies for global sustainability. Partiti's examination, particularly within the context of EU competition laws, the free movement

of goods, and international trade constraints under the World Trade Organization (WTO) and General Agreement on Tariffs and Trade (GATT), provides critical insights into these challenges. This annotation evaluates his arguments while identifying areas where further nuance or reevaluation could enhance the discussion.

Framework on VSS and Public Authority

Partiti's framework situates VSS as both invaluable and flawed instruments within global value chains, illuminating the urgent need for public regulatory support to enhance their efficacy and fairness. In the opening chapters, Partiti positions VSS as both trade facilitators and regulatory tools within GVCs. By reducing transaction costs, providing product information, and enhancing economic efficiency, VSS can theoretically increase competitiveness for compliant goods, allowing markets to reward sustainable practices. However, a core tension emerges: while rigorous standards can advance sustainability, they also elevate costs, particularly burdening producers in developing countries. This dynamic risks transforming VSS into trade barriers and igniting a "race to the bottom," where standards may be diluted to lessen compliance costs, leading to greenwashing and ultimately undermining sustainability.

To tackle these challenges, Partiti introduces the concept of horizontal and vertical complementarity, suggesting that public authorities can play an essential role in "hardening" VSS within a regulatory framework. Horizontal complementarity involves aligning VSS with international legal principles to lend enforceability to soft law provisions. By doing so, public and private frameworks could work in tandem, especially in transnational contexts where private standards may lack authority. Vertical complementarity, in contrast, suggests integrating VSS within national laws, establishing extraterritorial oversight that requires compliance with VSS across different jurisdictions. This dual approach, Partiti argues, could mitigate the risks of greenwashing and the fragmentation of standards, paving a pathway for VSS to more effectively meet social and environmental benchmarks globally.

While Partiti effectively presents public authority as a remedy to VSS's shortcomings, his analysis would benefit from a deeper consideration of the implementation challenges inherent in such regulatory integration. Indeed, the voluntary nature of VSS can be a double-edged sword. While it facilitates swift

adoption, it also leaves room for inconsistent application and selective compliance. Partiti's advocacy for public oversight is compelling, yet the exploration of how this involvement might realistically unfold across diverse regulatory landscapes, especially in resource-limited jurisdictions, is limited and should be explored more. Additionally, his argument could be strengthened by further examining how public intervention might alleviate the economic burdens that VSS impose on developing nations—perhaps through differentiated standards or subsidies for low-income producers.

Competition Law and VSS

Partiti's examination of competition law highlights the inherent tension between VSS's sustainability goals and their potential unintended effects on market competition. He points to evidence suggesting that at least some VSS have been ineffective and may even exacerbate market power imbalances, particularly benefiting large players at the expense of smaller producers. Such VSS initiatives have faced criticism for fostering conditions that disproportionately burden smaller producers, who struggle to bear the costs of compliance, potentially leading to monopolistic market dynamics. The financial and logistical demands of certification can erect barriers for smaller producers or those from developing countries, thus skewing the competitive landscape. Here, Partiti makes a compelling case for harnessing EU competition law to address potential market-access restrictions imposed by VSS, advocating for a regulatory mechanism that ensures VSS do not unduly favor entrenched market players over new entrants.

Partiti's reliance on competition law as a primary regulatory instrument for VSS raises pressing questions about its ability to address non-economic objectives, such as environmental or social impacts. His analysis primarily examines how competition law could evaluate VSS's influence on consumer welfare—a concept traditionally assessed through the narrow lenses of price and quality rather than broader sustainability metrics. He suggests that Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) might allow VSS to qualify for exemptions if they produce consumer benefits and efficiency gains by promoting sustainable practices. However, this interpretation may overlook the limitations of competition law, which lacks robust mechanisms to assess benefits like environmental preservation or social justice. While Partiti advocates

for adapting EU competition law to consider these broader impacts, such a proposal would likely require significant shifts in both policy and enforcement, indicating a need for a more targeted regulatory approach tailored specifically to VSS.

An alternative pathway could involve developing a parallel framework explicitly designed for VSS, enabling a more nuanced evaluation of sustainability goals without constraining competition law's narrower focus. Such a framework could draw inspiration from other areas of law, like environmental and human rights legislation, to create standards that assess VSS's social and ecological impact. This approach would allow competition law to retain its focus on market efficiency while recognizing that VSS have distinct goals that transcend traditional economics metrics and market outcomes. Partiti's discussion would benefit from entertaining such a framework, particularly in light of the increasing consumer demand for sustainability, which suggests that VSS might require regulatory mechanisms uniquely suited for their objectives.

Free Movement Law and VSS

Partiti's analysis of free movement law delves into the intricate dynamics of VSS as potential de facto trade barriers within the EU, challenging the delicate balance between sustainability and open-market principles. By examining Article 34 TFEU, which prohibits restrictions on the movement of goods within the EU, Partiti illustrates how VSS—even when voluntary—may, in effect, inadvertently limit market access. This occurs when VSS become a practical necessity due to consumer demand or endorsement by public bodies, as seen in cases like *Fra.bo*, where the Court of Justice of the European Union (CJEU) found that standard-setting organizations and private associations effectively imposed mandatory compliance—a precedent that could readily extend to VSS.

Partiti critiques free movement law for its limited integration of social and environmental objectives, arguing that it often neglects to account for the full impact of VSS on trade. While free movement law traditionally focuses on dismantling economic barriers, it does not adequately address the non-economic dimensions of VSS, such as their role in advancing sustainability. Although *Fra.bo* allowed private certification to be contested, Partiti contends that free movement law may inadequately capture the complexities inherent in VSS. However, one could argue that adapting free movement law to accommodate

the sustainability aspirations of VSS might dilute its original purpose. Instead, Partiti's analysis could benefit from exploring distinct regulatory mechanisms that assess VSS's trade and sustainability impacts without overburdening free movement law with these additional considerations.

Thus, the establishment of a specialized regulatory framework for VSS could more effectively address their dual roles as both trade facilitators and sustainability instruments, without stretching the aims of free movement law beyond its intended scope. Such a framework might involve collaboration with international bodies to forge VSS-specific guidelines, ensuring that VSS do not inadvertently restrict market access while simultaneously fulfilling their sustainability mission. This approach could offer a more holistic solution that acknowledges and adeptly navigates both the economic and non-economic dimensions of VSS.

WTO and VSS: Balancing Trade and Sustainability Objectives

Partiti's exploration of the WTO highlights the intricate balancing act between advancing sustainability through VSS and upholding the tenets of open trade under GATT and the Technical Barriers to Trade (TBT) Agreement. He contends that while VSS are typically voluntary, their ramifications on global value chains can unintentionally restrict market access, raising significant concerns related to WTO oversight. For instance, he examines EU regulations like the Renewable Energy Directive, which incorporates VSS, and suggests that when VSS are backed by public mandates, careful alignment with WTO norms is crucial to avoid creating disguised trade barriers.

The TBT Agreement's "necessity" requirement, as Partiti aptly notes, could serve as a critical lens for scrutinizing VSS's efficacy in achieving sustainability objectives without unnecessarily hampering trade. He argues that VSS must substantiate tangible environmental or social benefits to justify any trade restrictions they may impose—a standard demanding transparency and rigorous implementation. However, he acknowledges the challenges inherent in universally applying this standard, since the effectiveness of VSS can vary significantly across regions and regulatory landscapes. His analysis would be further fortified by addressing how the WTO could adapt its enforcement mechanisms to accommodate the nuanced impacts of VSS across diverse jurisdictions.

That said, Partiti does offer a proposal to harmonize VSS with international standards from bodies like the International

Labour Organization (ILO) or Food and Agriculture Organization (FAO), which presents a promising path toward enhancing credibility and minimizing trade conflicts. By aligning VSS with recognized international guidelines, public authorities could champion legitimate sustainability practices that honor WTO commitments—a solution that Partiti argues would mitigate the perils of both protectionism and greenwashing. However, Partiti could still delve deeper into the logistical challenges of such alignment, as VSS often reflect diverse regional priorities that may resist the imposistion of uniform international standards. His analysis might also benefit from considering how WTO could work with regional bodies to create adaptable standards that reflect both global trade interests and local sustainability needs.

Conclusion

Partiti's examination of VSS through the lenses of competition, free movement, and WTO law underscores the complex role of private standards within public regulatory frameworks. His insights on the limitations of purely voluntary standards emphasize the potential for public authorities to strengthen VSS by incorporating oversight and minimum benchmarks. While Partiti's arguments for regulatory integration are largely persuasive, some aspects would benefit from a more nuanced exploration. Rather than adapting existing laws to meet VSS's multi-dimensional goals, establishing dedicated guidelines could offer a more effective solution, preserving the distinct purposes of competition, trade, and free movement law. A coordinated effort across the EU, the WTO, and other bodies to create VSS-specific regulations may ultimately move beyond a Manichaean view that divides compliance into rigid categories towards a balanced framework that accommodates both sustainability and market access goals.

A Region among States: Law and Non-sovereignty in the Caribbean. By Lee Cabatingan. Chicago, IL: University of Chicago Press, 2023. Pp. cxciv, 194. $32.50 (paperback).

REVIEWED BY AIDEN CARDENAS

Lee Cabatingan's *A Region among States* explores the role of the Caribbean Court of Justice (CCJ) in the process of regional integration. Created in 2005 as the judicial institution of the Caribbean Community (CARICOM), the CCJ asserts

original jurisdiction over matters related to the Revised Treaty of Chaguaramas, which serves as the founding document of CARICOM. Additionally, the CCJ can exercise appellate authority over CARICOM states. Instead of appealing cases to the English Privy Council–which several anglophone Caribbean states continue to do–CARICOM states may choose to use the CCJ as an alternative forum closer to home. As a primarily anthropological work, the book focuses on the Court's role in constituting an identifiable region in an archipelago dominated by strong nation-state identities and legal systems dominated by a legacy of British colonialism. Against this backdrop, Cabatingan suggests that the CCJ employs five familiar nation-building tools in an ongoing process of forming what she calls a "non-sovereign region"—an organization that can address the circumstances of the Caribbean in a way that is familiar and legible enough to not be rejected outright, while retaining the freedom to diverge from the concept of a nation-state. These five tools are addressed on a chapter-by-chapter basis; chronologically, they include "myth," "territory," "people," "language," and "brand."

In analyzing each of these "region-building" tools, the book draws primarily on participant-observation, interviews, document review, and archival research from Cabatingan's time as an intern at the CCJ from 2012 to 2013. Given these sources, the thrust of the work is difficult to challenge as Cabatingan draws on her proximity to CCJ employees and judges involved with this project to effectively place the CCJ's day-to-day functions within the broader region-building context. Further, Cabatingan neatly categorizes the Court's use of nation-building tools, allowing for an interesting read accessible to an audience lacking a background in anthropology or familiarity with the Caribbean region. While Cabatingan's book represents a valuable means by which to understand a rarely discussed court, her work is undermined by her testimonial source base in certain aspects. By focusing on her experience as a visitor from outside the region, the book fails to consider how the Caribbean public interprets CCJ communications while simultaneously making generalizations about the region that come off as incomplete without further investigation.

As stated, the first "region-building" tool Cabatingan examines is that of "myth." Specifically, Cabatingan asserts that the CCJ identifies itself as the product of a "myth of origin" that stands independently of the region's colonial history and initial

post-colonial experience. Throughout the chapter, Cabatingan surveys a variety of materials that the CCJ includes in its presentations to visitors, all of which omit the region's history with failed integration attempts that emerged after independence. Most noticeably, the materials conveniently overlook the existence of the West Indies Federation, a federal state made up of ten former British possessions in the region. Furthermore, the chapter also makes no mention of the various regional integration efforts that emerged in the wake of the Federation's dissolution. Cabatingan's analysis in the chapter mainly focuses on the CCJ's decision to exclude this information from their mythmaking and the Court's use of alternative, less familiar historical imagery.

In the following section, Cabatingan examines the Court's efforts in asserting a regional identity via the use of a second tool: territory. The chapter is primarily an account of her experience during the *Myrie* trial. The case was the first use of the CCJ's original jurisdiction and involved the detention and rejection of a Jamaican woman entering Barbados. Cabatingan argues that, by deciding the case based on Myrie's rights as a CARICOM national, the CCJ posited the "existence and triumph of the region" in a novel way while demonstrating that the Caribbean is a region with a distinct set of laws that apply to those who call it home. This case, highly publicized throughout the region, saw the court take on an itinerant role throughout hearings held in Jamaica and Barbados. While the court ultimately found in favor of the Jamaican claimant, Cabatingan focuses on the *Myrie* matter to demonstrate the Court's willingness to assert its jurisdiction in CARICOM matters with respect to the free movement of citizens throughout the region. Her observations illustrate how the Court consciously sought to make its presence throughout the region felt throughout the course of the trial. Rather than resolve the case from its base in Trinidad & Tobago, the CCJ chose to resolve the matter by travelling between islands, and in doing so, issued a decision that supported the idea of the Caribbean as a distinct political space.

The fourth chapter examines the CCJ's attempts at "consitut[ing] a people" via interpellation. Cabatingan asserts that interpellation, defined loosely as the means through which social structures constitute individuals as subjects, is the CCJ's ultimate goal in its communication to the Caribbean public. Cabatingan analyzes a variety of materials demonstrating that the Court consciously seeks to constitute subjects throughout

the region, including the "CCJ Corner"–a newspaper periodical covering the Court's decisions for the region's public.

The fifth chapter focuses on the Court's careful decision making regarding its use of "language." Specifically, Cabatingan asserts that the Court's employees intuitively understand the constitutive potential of language, using it as a tool to showcase the region's national diversity while distinguishing it from its British colonizer. To this end, she points toward the Court's deliberate use of a variety of regional accents in its cell phone directory as well as the CCJ's education program, which is replete with regional terms that distinguish Caribbean English from that spoken in England itself. Cabatingan's reflection on the Court's use of language makes it clear that the CCJ is interested in leveraging one of the region's most internationally recognizable features–its distinctive use of the English language–as a region building tool.

The last tool that Cabatingan examines is "branding." Throughout this section, Cabatingan argues that the Court is involved in a marketing strategy that seeks to persuade both the public and the global community of the court's legitimacy and the quality of its jurisprudence. According to Cabatingan, this branding largely seeks to address the problem of the Court's presence in a region that, unfortunately, views its own products and institutions as subpar. By wearing neckerchiefs and waistcoats typically associated with British courtrooms while also opting for blue robes and gold bands, the Court simultaneously references the perceived quality of "British justice" while making its distinctly Caribbean identity clear. These examples, while not necessarily surprising, successfully demonstrate the Court's role in curating its own brand while tempering any assumptions from a North American audience that the CCJ would be a comparatively "laid back" institution.

Cabatingan's primary argument regarding the CCJ's "region-building" tools is especially convincing. Rather than analyze the Court's work based solely on secondary sources, Cabatingan bases her work on conversations with stakeholders, primary sources in the Court's possession, and her own experience as a CCJ intern. Through her reliance on this atypical source base, Cabatingan effectively identifies five region-building tools and convincingly places the Court's work within the context of regional integration. That said, Cabatingan's observations are exactly that: observations. Certain portions of her analysis reflect the experience of a North American observer who is ultimately

a guest within the organization and the region that her research focuses on. In certain instances, Cabatingan scrutinizes the CCJ's public-facing communications as a visitor rather than a member of the Caribbean public, and thus, mischaracterizes the goal of the Court in compiling them. Similarly, Cabatingan's work attempts to draw generalizations about Caribbean public opinion that her experience as a visitor fails to support.

Beginning with Cabatingan's analysis of myth as a region-building tool, it should be noted that her argument is mainly based on materials presented to her during her reception at the Court. Her assertion that the CCJ is attempting to "sidestep" part of the region's history is largely based on these presentations' failure to mention the region's colonial past or its immediate post-colonial history. However, Cabatingan fails to consider that the exclusion of such information may have more to do with her perspective as a visiting intern rather than a member of the Caribbean public. While visitors from outside the region may expect a primer on Caribbean history when learning about the CCJ, it is worth considering whether these visitors are the Court's intended audience. If, in fact, these presentation materials were crafted to inform citizens over whom the court has or may potentially have jurisdiction, there is reason to reconsider whether their failure to mention the region's past is a failure at all; after all, most CARICOM states were decolonized less than a century ago. Rather than omitting its colonial and post-colonial past from its mythmaking, the CCJ may simply be mapping the story of its own creation onto a series of historical events familiar to citizens of Caribbean nations. Thus, engagement with members of the public may have been useful for determining exactly what creation myth the CCJ is communicating. Without this data at hand, it is difficult to accept Cabatingan's account of the CCJ's "mythmaking" at face value.

Similarly, Cabatingan's work makes generalizations about the region that her experiential source base does not support. Within her chapter on "branding," she asserts that "being of and from the Caribbean is often not viewed as a positive quality for, at least, consumer products, courts, or judges to possess." This is an ambitious claim to make on behalf of an entire region, and Cabatingan relies on this apparent perception to account for the CCJ's need to pursue a marketing strategy. However, she bases this assertion on only two examples: a review of the public commentary that followed a *Trinidad* Express news

article; and a conversation with a local law student about an unnamed third person who prefers Florida orange juice to that produced in Trinidad. Beyond hinting at "numerous other instances [she] witnessed," she fails to back this generalization any further. While Cabatingan does not base this assertion on her own opinion per se, her source base in making this generalization is entirely influenced by her proximity to the CCJ, as she is exposed to the opinions of individuals who are either following the Court's work or involved with it themselves. Given the Caribbean public's lack of familiarity with the CCJ in general, it is unlikely that the views Cabatingan relies on in making that generalization are representative of the regional public at large. To the extent that such a generalization is key to Cabatingan's overall argument on branding, it may have been more appropriate to seek out survey data on the matter.

That said, such generalizations are not foundational to Cabatingan's main thesis. By drawing on her observations as an intern at the CCJ, Cabatingan's work ultimately succeeds in asserting that the Caribbean Court of Justice is involved in a broader regional integration project and effectively outlines the tools it uses to that end. While the work leaves room for readers to consider the extent to which these tools overlap, Cabatingan's source base makes it clear that, at this stage of its existence, the CCJ seeks to advance Caribbean regionality through myth, territory, people, language, and branding. Even though the limits of Cabatingan's own perspective become apparent at times, the breadth of her experience makes for a book that is more than effective at introducing the CCJ to a global audience while placing its work within the context of a region-building effort that has already broken ground.

Decolonizing Human Rights. By Abdullahi Ahmed An-Naim. Atlanta, GA: Cambridge. University Press, 2021. Pp. xiii, 140. $41.99 (paperback).

REVIEWED BY ANGELA JI

In *Decolonizing Human Rights*, Abdullahi Ahmed An-Naim examines the essence of human rights as defined by current international law, infrastructure and practice. With a critical eye towards the development of international law in the post-colonial era, An-Naim analyzes the failings of international

human rights interventions, such as the United States invasion of Iraq in 2003 and the Russian invasion of Georgia in 2008, and institutions, such as the United Nations (UN) and the International Court of Justice (ICJ), in achieving sustainable outcomes for human rights initiatives across the world. An-Naim proposes an interesting alternative, namely, withdrawing foreign military intervention and allowing local communities to decide their own definitions of human rights, but ultimately fails to synthesize a realistic solution from his abstract ideas.

An-Naim critiques two fundamental issues with the structure of current international law: the uniformity of universal rights in the face of non-uniform cultural, political, economic, and social values and the responsibility of states to self-regulate human rights violations. Regarding the former, An-Naim proposes that uniformity of international human rights can be reconciled with the assumption that human rights are culturally dependent. This can be achieved by applying the right to self-determination to everyone without prescribing a single definition of human rights. This uniformly allows diverse communities to reach an understanding of human rights unique to themselves. An-Naim's solution to state self-regulation is for state power to be contingent upon the ability to uphold human rights.

I agree that different communities may have varying definitions of human rights. Nevertheless, each community's right for self-determination can lead to a global consensus on a subset of uniform rights. Also, the global political system is founded on the absolute power of each state over its territory and citizens; requiring every state to adhere to a greater law of human rights would lead to institutional competency questions and overlook the cultural contextualization at play when states choose to incorporate international human rights treaties into their own legal systems.

Uniformity vs. Universality

Decolonizing Human Rights begins with a preface that clearly states the purpose of the book: "to expose the myth of legal enforcement and promote more effective and sustainable practice of human rights norms." The book argues that human rights in international law is neocolonial in nature, perpetuating the power imbalances between the Global North, i.e. "developed former colonial societies of Western Europe … and North America," and the Global South, i.e. "former colonized, developing societies of Africa, Asia, and Latin America." An-Naim states that the Global North imposes liberal relativism,

the idea that human rights are negative claims on the state to refrain from interfering with freedoms, on the Global South by restricting the power to define human rights in international forums to a select few countries deemed as "civilized nations."

Article 38.1c of the Statute of the International Court of Justice defines the source of human rights as "the general principles of law recognized by civilized nations." An-Naim argues that in defining a nation as civilized or uncivilized, the Global North, particularly the major Allied powers, the United States, United Kingdom, Soviet Union, and France, that helped establish the United Nations, is able to "gate-keep" entry into the international community and the power to decide what constitutes a human right. Thus, "civilized nations" impose Western ideologies of human rights upon every state. An-Naim highlights how colonial powers have passed off their domestic civil and political rights as human rights, effectively destroying the universality characteristic of human rights, which An-Naim defines as the "moral and political entitlements that are due to all human beings equally by virtue of their humanity." He emphasizes that human rights are subjective, and the universal aspect of human rights is in the equal ability for self-determination. The *concept* of universality does not imply uniformity of human rights, but rather the *contents*, the norms and standards of each community, are shaped by the *context* of each unique culture and society. Compared to the Global North's top-down approach where states impose a uniform definition of human rights, An-Naim proposes a bottom-up view in which individual communities determine their own definitions of human rights that are equally protected and enforced by the state. Through this lens, the Global North's current practice of imposing liberal relativism is a form of coercive enforcement that, according to An-Naim, will never successfully protect universal human rights.

While I mostly agree that western countries dominate the international human rights forum and impose a singular meaning of human rights upon other countries, I do believe that there can be a global consensus as to the most intrinsic human rights, such as the right to eat, work, and live. Furthermore, I do not believe the issue lies in the Global North imposing liberal relativism on the Global South; social, economic, human, and political rights can be both negative bars on government infringement and positive obligations for government protection. For example, the right to education can prevent the

government from prohibiting women from getting an education and require the government to protect kids from hostile communities attempting to prevent racial integration in schools.

Just because cultures and societies are nuanced does not mean that they do not share any values. Communities no doubt have their own definitions of rights that are intrinsic to each individual person, but when these definitions overlap, the collective agreement can become a recognized international human right. For instance, it is likely that most communities view the right to life as inherent to being human, but there may be greater debate on whether universal healthcare is a human right. The United Nations is, theoretically, an open forum where each country is given a voice to agree or disagree with these statements so that a universal consensus or majority may be reached. The issue lies in the unequal distribution of powers between different states in the United Nations. The United Nations Security Council not only gives fifteen states, with four of the five permanent members belonging to the Global North, greater decision-making authority compared to other UN-recognized states, but also it allows these select states, in conjunction with a supermajority vote by the General Assembly, to approve or deny membership in the United Nations. Furthermore, the five permanent members can single-handedly veto an application of membership to the United Nations. Similarly, the International Court of Justice limits the ability to determine human rights to only those states recognized as "civilized nations." By limiting the membership of states in international forums, the Global North is able to select for states that match or are willing to accept their liberal relativist ideology. Every state is not represented and given the same authority in the United Nations or by the International Court of Justice's definition of "civilized nation," so these forums are unable to arrive at a truly global consensus on the definition of human rights. The Global North currently dominates in international human rights forums as An-Naim claims. However, a more equal distribution of power among the states in defining international human rights can lead to global consensus on a few uniform human rights.

State- vs. People-Centric System

An-Naim explains how, in the current international human rights system, states are required to self-regulate human rights violations domestically and internationally. Many treaties are not self-enforcing, so each state party to the treaty must incorporate

the rules into its own domestic legal system in order to enforce human rights. An-Naim believes this structure reduces universal human rights to civil and political rights as human rights codified in a nation's legal system apply only within state territory and to people within state jurisdiction.

The state-centric approach to international human rights requires states to claim human rights violations on behalf of their citizens. However, states are not required to accept treaties or raise human rights violations, leaving the protection of human rights up to each state's discretion. In international conflicts, only states are entitled to legally justiciable human rights. Without an international forum under which individuals can bring human rights actions against other individuals or states, people are left without a private right to action when a state's economic, political, or social interests conflict with its duty to prosecute human rights violations against another state.

The issue with An-Naim's argument is threefold. First, it implies that states cannot be relied upon to promote the best interests of their citizens. While there are certainly instances in which state and constituency interests do not align, it is difficult to reconcile this skepticism towards institutional intent with the governments of today. In theory, democratic governments derive sovereign power from the people, and republics give voice to the people's intent through the election of representatives. An-Naim proposes that a government's legitimacy instead hinges on its ability to protect human rights regardless of its own domestic laws.

Second, codification of human rights in state law is necessary to incorporate international human rights into existing legal systems. An-Naim states that human rights are intrinsic to each person and cannot be infringed upon by the state. The problem is that if individuals were able to appeal to a human right guaranteed by an authority that is greater than state law, this would undermine the state's absolute governing powers. A greater human right implies a superseding authority that states must adhere to, but An-Naim also emphasizes that there is no global police force able to enforce human rights against all government powers. In the current political structure where the state holds the greatest power and is able to negotiate equally amongst other states, international human rights law can only be given effect by establishing human rights as civil rights common among each country's own legal system.

Third, the freedom for states to incorporate or adopt human rights terms set out in international treaties is a form of cultural contextualization for which An-Naim advocates. A state is a large community based on the geographic and political unification of many smaller communities. An-Naim harshly critiques the United States' selectivity and reservations in adopting human rights treaty terms, but the Congressional majority vote requirement when enacting federal statutes conforms to the culture of American democracy. Is adapting international treaty terms to the American political system not the right to self-determination acting on a state-wide scale?

Humanitarian Intervention

Lastly, the book discredits the ability of humanitarian intervention to bring about actual sustainable improvements in human rights. An-Naim describes humanitarian intervention as a "deadly mirage," an illusion that military intervention by states is a last resort to stop human rights violations abroad. In reality, An-Naim believes that humanitarian intervention is not a viable method of protecting human rights because it is subject to the discretion and self-interests of powerful states. Ultimately, An-Naim states that there is no independent international institution to monitor and enforce the fine line between humanitarian intervention and military oppression. He argues that the institutions that exist today, such as the United Nations Security Council and the International Court of Justice, are not truly independent because their primary funding sources stem from the Global North.

An-Naim characterizes humanitarian intervention as a "flash flood, sweeping away preexisting social and political networks and institutions, without replacing them with workable alternatives for redressing the very crisis used by intervening state(s) as a pretext for intervention." His proposed alternative is for people to rely on themselves to protect their own rights as an exercise of the right to self-determination. However, this trivializes the significance of human rights violations.

Human rights violations deprive people of the rights and resources to enact political and social change. Power imbalances between communities may render people unable to protect their own human rights. Humanitarian intervention is often the first step to protecting a community's right to self-determination by combating hostile forces oppressing a community's ability to politically mobilize. An-Naim even mentions

that military intervention may be necessary for short-term intervention in extreme circumstances like genocide, but he fails to expand on what those circumstances are. For instance, does humanitarian intervention require the International Court of Justice to officially declare that a conflict is a genocide before states are sanctioned to act? If so, what happens if it refuses to legally recognize a genocide, but the number of lives lost nevertheless rivals historic genocides? In order to limit the scope of humanitarian aid to fit An-Naim's alternative solution, his theory needed to distinguish conflicts of such extreme political urgency that they require humanitarian intervention from those where humanitarian aid would likely do more harm by rationalizing coercive enforcement of the Global North's concept of liberal relativism. An-Naim fails to reconcile his solution of cultural transformation and political mobilization with the inability of vulnerable societies to survive significant human rights violations, much less strive for cultural and political change. He states that there is a balance between no action and military intervention but fails to specify the defining characteristics of either.

Conclusion

Overall, *Decolonizing Human Rights* presents a high-level critique of international human rights law but fails to offer a realistic alternative. The book mainly focuses on the power imbalances between the Global North and South in defining, adhering to, and enforcing human rights. However, I believe that, contrary to An-Naim's opinion, universal human rights can be uniformly defined so long as every state has an equal opportunity to contribute to and freely accept such rights. Furthermore, I disagree with An-Naim's opinion that states are unable to adequately enforce human rights. Codification of international human rights in a state's legal system not only incorporates human rights into the existing political atmosphere of ultimate state authority but also allows each state to adapt uniform, universal human rights to the cultural context of the state. An-Naim's idea of cultural transformation and political mobilization is a unique perspective on an alternative approach to human rights, but the lack of specific criteria for how to determine the boundary between necessary and oppressive humanitarian aid leaves these ideas in the realm of abstract principles rather than realistic solutions. The idea of self-determination for all people is commendable but overly

idealistic. *Decolonizing Human Rights* would mainly benefit human rights scholars intimately familiar with the history and inner workings of international law who have not examined the material through the lens of colonialism and power dynamics.

Making Institutions Work: The Politics of Performance. By Ranjit Lall. Cambridge, United Kingdom: Cambridge University Press, 2023. Pp. vii, 378. $39.99 (paperback).

REVIEWED BY OLGA OBOLENETS

In *Making Institutions Work: The Politics of Performance*, Ranjit Lall provides a fresh and original argument about the challenges that international institutions face in delivering on their mandates. Rather than attributing institutional underperformance to inefficiency or bureaucratic overreach, Lall's thesis emphasizes that the main threat to international organizations comes from state interference. Lall argues that international institutions perform more effectively when they secure and maintain operational autonomy from the states that created them, allowing them to escape capture—a situation where powerful states or interest groups exert undue influence over an institution, redirecting its actions to serve their own agendas rather than the institution's original mandate. By blending rigorous quantitative analysis with qualitative case studies, Lall highlights the mechanisms by which institutions can safeguard their autonomy and why this autonomy is crucial for their performance.

While Lall's work provides a compelling argument about the importance of autonomy for institutional performance, his focus on quantitative methods overlooks critical internal factors such as leadership dynamics, organizational culture, and decision-making processes. Lall's portrayal of autonomy could also be expanded to better explore the complexities of fiduciary duties that representatives within these institutions owe to their appointing states. Lastly, his analysis could be enriched by investigating institutions that deal with particularly politicized issues such as national security or economic governance.

Lall argues that the phenomenon of capture undermines international institutions' ability to act independently and effectively. To address this, he emphasizes the importance of operational and policy autonomy for institutional success. He defines effective performance as the extent to which institutions

are perceived by public and private stakeholders to achieve sustained and cost-effective progress toward their stated, operative, and process objectives. Process objectives are the internal, procedural goals of an institution aimed at ensuring efficient, effective, and transparent operations that support progress toward its stated and operative objectives. This definition allows Lall to both preserve the essential meaning and integrity of the concept of effective performance and feasibly operationalize and measure it.

Lall explains that autonomy is not simply something that institutions are granted (*de jure*) but something they must develop and defend in practice (*de facto*). Institutions gain *de facto* policy autonomy by forming alliances with non-state actors, such as non-governmental organizations (NGOs), businesses, and other entities, and by performing tasks that are costly for states to monitor, such as field operations and complex policy interventions. These activities help the institutions retain independence from the particularistic interests of states, allowing them to maintain focus on their mandates.

Lall backs up his argument with a mixed-method approach, combining statistical analysis of a dataset of 54 international institutions with qualitative case studies of organizations such as the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). The dataset that Lall uses includes 54 major intergovernmental organizations (IGOs) across diverse sectors such as public health, food security, trade, and environmental protection, as well as public-private partnerships (PPPs) and international non-governmental organizations (INGOs). These institutions were selected to capture variation in formal structure, mandate, and performance, allowing for an examination of how different degrees of operational autonomy affect performance across sectors. The focus on institutions dealing with global public goods reflects Lall's interest in cooperation where state interference can undermine effectiveness. Lall ultimately shows that institutions with higher degrees of operational autonomy perform better, and he details how some institutions successfully safeguard this autonomy while others struggle.

Lall's exploration of autonomy—particularly the distinction between *de jure* and *de facto* autonomy—is valuable insight, shedding light on the nuanced ways in which institutional independence can be understood and maintained. While many

international institutions are formally granted autonomy in their founding charters (*de jur*e autonomy), Lall argues that this legal independence often falls short due to state interference in practice. The key to institutional success lies in the development of *de facto* autonomy—the practical independence that institutions exercise despite formal constraints. According to Lall, this autonomy is forged through two crucial mechanisms: forming strategic alliances with non-state actors and engaging in governance tasks that are difficult for states to monitor or control. Institutions that form robust operational alliances with non-state actors, such as NGOs, businesses, or other international organizations, gain resources, expertise, and political support. These alliances act as a "hand" of protection, helping to shield the institution from state interference by aligning interests and providing an external constituency for the institution's success.

Lall's case studies of the FAO and WHO provide compelling illustrations of how autonomy influences institutional performance. The FAO, despite being granted *de jure* autonomy, has struggled to achieve *de facto* autonomy due to weak alliances with non-state actors and strong state interference. States have frequently used the FAO to advance their national agricultural interests by advocating for policies such as subsidies, tariffs, and export restrictions that support their domestic farmers, undermining the FAO's effectiveness in promoting global food security. Subsidies, for example, allow farmers in wealthier countries to sell their products at artificially low prices, making it difficult for farmers in developing countries to compete. This can lead to reduced agricultural production in poorer regions, weakening local food systems and increasing dependency on imports. Tariffs and trade barriers further limit market access for producers in developing nations, undermining their economic stability and ability to invest in food production. Additionally, export restrictions—often imposed during times of scarcity to ensure domestic supply—can exacerbate food shortages in import-dependent countries. Together, these policies create obstacles to the FAO's goal of promoting global food security by prioritizing national interests over cooperative strategies for addressing food access and affordability worldwide. On the other hand, the WHO has been more successful in safeguarding its operational autonomy. The WHO's ability to form robust partnerships with NGOs and private sector actors has allowed

it to maintain greater *de facto* autonomy, even when powerful member states exert pressure. This autonomy has been crucial to the WHO's success in managing global health initiatives, including its leadership in the fight against HIV/AIDS and its response to the COVID-19 pandemic.

While Lall's case studies highlight the role of operational alliances in preserving institutional autonomy, his reliance on quantitative data raises some concerns. Regression analysis, which forms the backbone of his quantitative approach, allows Lall to measure the correlation between autonomy and performance by examining key variables, such as the depth of operational alliances and the nature of governance tasks. These variables are measurable because they can be quantified through metrics like the number of partnerships or the scope of delegated responsibilities. However, other crucial factors—such as internal leadership, decision-making processes, and organizational culture—are more qualitative in nature. These factors involve subjective and context-specific elements that resist straightforward quantification, making them challenging to incorporate into Lall's statistical framework. As a result, these complexities are not fully explored in his analysis.

Furthermore, while Lall emphasizes the importance of autonomy for institutional performance, he does not sufficiently address the fiduciary duties of representatives within these institutions. Representatives are accountable to the states that appoint them, and this fiduciary responsibility can constrain their ability to act autonomously. This tension is particularly relevant in institutions dealing with sensitive issues like national security or economic governance. For instance, organizations like the International Monetary Fund (IMF) and the United Nations Security Council (UNSC) often face immense pressure from powerful member states to advance national interests, making it difficult for them to act independently. Lall's framework would benefit from a more detailed exploration of how fiduciary duties complicate the notion of autonomy in these cases.

Lall also touches on the question of accountability, addressing the concern that institutions with high levels of autonomy might evade oversight. He argues that operational autonomy does not necessarily lead to a lack of accountability, and points to modern accountability mechanisms—such as independent evaluation offices, grievance redress systems, and

access-to-information policies—that have been implemented in many international institutions to ensure transparency.

Lall introduces the concept of second-wave accountability mechanisms, which include newer tools designed to enhance institutional accountability beyond traditional governmental oversight. These mechanisms involve greater stakeholder engagement and external scrutiny, aiming to foster transparency and ensure that institutions remain answerable to a broader range of actors. While these mechanisms represent a positive step toward balancing autonomy with accountability, Lall's treatment of them could have been more critical. The book is relatively silent on the enforcement of these mechanisms and whether they are effective in holding institutions accountable in practice. For instance, institutions with high *de facto* autonomy may still face challenges ensuring that second-wave mechanisms are properly implemented and genuinely improving accountability.

A deeper examination of how these mechanisms function—particularly in powerful institutions that enjoy significant autonomy—would have strengthened Lall's analysis. This is especially important in institutions with large operational mandates, where autonomy can sometimes come at the expense of transparency or responsiveness to stakeholders.

Lall's case studies primarily focus on institutions dealing with global public goods like health and food security, areas in which states may be more willing to delegate authority. However, institutions in areas like national security and economic governance face different challenges. For instance, the UNSC operates in a highly politicized environment where state interests dominate. The UNSC's decisions are heavily influenced by the political agendas of its permanent members, which limits its operational autonomy. Similarly, the IMF must navigate the interests of powerful economic players, such as the United States and the European Union, which exert significant influence over its policy decisions. Lall's analysis would benefit from a more nuanced exploration of operational autonomy in these highly politicized environments, where state interests are closely tied to the institution's operations.

Making Institutions Work is a significant and original contribution to the study of international institutions. Lall convincingly demonstrates that autonomy—especially *de facto* policy autonomy—is essential for institutional performance.

His mixed-method approach, combining rigorous quantitative analysis with qualitative case studies, provides strong evidence that operational autonomy allows institutions to resist state interference and fulfill their mandates more effectively. However, the book's focus on quantitative methods may oversimplify some of the internal dynamics that influence institutional performance, and the tension between autonomy and fiduciary duties remains underexplored. Additionally, institutions operating in areas like national security and economic governance face unique challenges that require a more nuanced understanding of how autonomy functions in highly politicized environments. Despite these limitations, *Making Institutions Work* offers valuable insights into the politics of institutional performance and serves as a foundation for future research on global governance.

The Russia Sanctions: The Economic Response to Russia's Invasion of Ukraine. By Christine Abely. Boston, MA: Cambridge University Press, 2023. Pp. vii, 216. $39.99 (paperback).

REVIEWED BY ALEJANDRO PLATE

In *The Russia Sanctions: The Economic Response to Russia's Invasion of Ukraine*, Christine Abely provides a masterful and detailed analysis the sanctions and international trade measures taken by the international community against Russia after its 2022 invasion of Ukraine. Abely begins by describing the normative and historical use of sanctions, giving readers essential background information to fully understand the significance of the 2022 international response. Abely emphasizes the importance of multilateral cooperation in deploying effective sanctions, while arguing that the extraterritorial application of sanctions may be largely responsible for their profound effect on the Russian economy. This book provides a comprehensive discussion of how sanctions can affect the global financial system and is a valuable contribution to the body of literature that seeks to explore the real effects of the international response to Russia's invasion of Ukraine.

Importantly, Abely provides valuable criticism of the effectiveness of the international measures taken against Russia, given Russia's efforts to sidestep sanctions and trade restrictions with help from its allies. Abely also notes how the European

Union's reluctance to impose energy-related sanctions on Russia diminishes their overall impact. Additionally, Abely details how the economic response resulted in food insecurity, hindered humanitarian aid, and faced enforcement problems. Ultimately, Abely argues that the effectiveness of the economic response can only be assessed with their proper goal in mind: to harm the Russian economy and limit its war machine, not to force Russia to cease its invasion of Ukraine. In my view, while the economic success of the Russia sanctions is hard to assess, the chosen international response illustrates the challenges that arise when taking action against a nation deeply integrated in the global economy. However, it should be noted that the European Union took extraordinary retaliatory measures that it does not typically take—signaling a sense of unity in the international community's condemnation of the Russian invasion of Ukraine.

As a general matter, economic sanctions are most effective when sanctioning nations work together. Abely notes that this is particularly true when the United States' and the European Union's actions are aligned, given the dominance of the dollar and the euro in the global financial system. After Russia invaded Ukraine, that is exactly what happened. The United States, European Union, United Kingdom, Japan, Australia, and many others swiftly sanctioned Russia. These sanctions were considered targeted in nature, barring certain Russian financial institutions from transacting using the currency of the sanctioning countries. While the initial rollout of sanctions may be described as cautious, predominantly targeting institutions with ties to the Russian government or the defense sector, the coordination to impose these sanctions was rapid and systematic—an essential element of an effective economic sanctions regime.

Over time, the extent of the economic sanctions imposed against Russia increased dramatically and eventually, many Russian financial institutions were sanctioned. As a result, outgoing Russian payments in dollars or euros could no longer be processed, and debtholders were left unpaid. Moreover, in practical terms, Abely describes how the economic sanctions led foreign payment processors, such as Visa, Mastercard, and American Express, to suspend processing Russian transactions outside of Russia. While these companies still allowed Russian cardholders to transact with Russian merchants, Russians were

suddenly unable to transact outside of Russia (and foreigners were barred from using their cards to transact inside Russia). Other major companies around the world acted in kind, ceasing operations in Russia.

Additionally, sanctioning nations around the world continued to work together to cut Russia out of the global financial markets. For example, Russia's largest financial institutions were sanctioned and blocked from using the Society for Worldwide Interbank Financial Telecommunication (SWIFT) network, which experts describe as the central hub in the global interbank messaging system connecting over 200 countries. However, as Abely importantly describes, Russia turned to its allies to evade many of these economic sanctions and saw some success in doing so. Perhaps most notably, China took many steps to help Russia process transactions, such as allowing Russia to utilize its payment system to settle and clear transactions. China even began building a larger payment network to transact with Russia. Similarly, Russia attempted to circumvent sanctions by opening accounts and buying stakes in businesses located in Turkey and the United Arab Emirates.

Nevertheless, international coordination with Russia is not common today. Many nations, entities, and individuals have ceased transacting with Russia out of fear of being secondarily sanctioned by the United States, the European Union, and others. Secondary sanctions penalize those who transact with sanctioned parties using the sanctioning country's currency, regardless of where that party is located. This means that a party located anywhere in the world could be cut off from using a major currency by engaging in dealings with sanctioned Russian entities. While this is a routine tool used by the United States, often to the dismay of its Western allies and typically critiqued for disregarding the international rule of law, secondary sanctions are not typically part of an E.U.-sanctioning package. Abely argues that the secondary sanctions were particularly harmful to Russia's elite, who hold a great deal of wealth and assets in foreign nations. These sanctions included travel bans and the loss of access to funds in sanctioning nations. They also indirectly led to Russian oligarchs being ousted from company boardrooms and falling stock prices. As a result, Russian oligarchs lost an estimated $95 billion in 2022, which the sanctioning nations hoped would incentivize oligarchs to condemn the invasion of Ukraine. However, many Russian oligarchs mysteriously died in

2022. While Abely acknowledges the causes of these deaths are largely unknown, she speculates that unexpected deaths could have influenced oligarchs to stay silent. It remains unclear how effective the sanctions against Russia's elite are today.

In addition to sanctions, import and export restrictions were widely enacted. For example, U.S. export restrictions were attached to all U.S.-made items, regardless of their destination. While the United States carefully monitored against the re-exportation of goods to Russia from other foreign countries and issued stark warnings to countries it found assisting Russia, Abely argues that many of these trade restrictions were not as effective as they could have been. This is because the trade restrictions did not restrict the import of Russian goods processed in other countries. For example, Russian seafood was not subject to an import ban when it was processed in another, non-sanctioned country and then exported to a country like the United States. I find Abely's argument quite convincing, given that China is consistently one of the top two global exporters of fish, and given that almost one-third of the fish that China processes come from Russia. This is just one example of how some major Russian industries were left largely untouched. The absence of more comprehensive export restrictions should be seen as an effort to condemn Russia's actions, while also seeking to preserve the stability of the global economy. Unfortunately, these goals are not entirely compatible with each other and limit the success of the restrictions.

Russia was also able to evade the effectiveness of the limited export restrictions by relying on key allies. Abely notes that India helped offset Russia's negative economic effects by increasing its bilateral trade with Russia. Similarly, Armenia aided Russia in importing key goods, like smartphones, by increasing their exports to Russia in spite of possibly being subject to secondary sanctions. As a result, while trade restrictions negatively impacted Russia in some capacity, Abely correctly explains that Russia was able to adapt and minimize the effects of trade restrictions.

Irrespective of how successful the economic response against Russia has been, the response does illustrate a condemnation of Russia's actions and symbolize international support for Ukraine and the rule of law—something that cannot be understated. Still, Abely explains that the targeted nature of the sanctions falls short of the actions taken against other nations

in the past, such as actions against Cuba, Iran, North Korea, and Syria, all of which faced comprehensive sanctions. Abely credits enforcement issues, notably the lack of a central enforcement authority in the European Union, as partially responsible for the limited, targeted sanctions regime. While this is true, I believe the sanctions were primarily limited because of Russia's deep integration in the global economy and less so because of the enforcement challenges. Failing to impose more comprehensive sanctions was likely done to avoid major disruptions across the globe: an entirely different set of considerations than those that went into sanctioning Cuba, Iran, North Korea, and Syria.

Finally, another key limitation on the economic response was the global reliance on Russian energy. The European Union, which receives a staggering 24% of its energy needs from Russia, declined to impose significant energy-related sanctions on Russia, while the United States had no problem doing so, given that it is less dependent on Russia for energy. Thus, the coordination that is so essential to successful sanctions was absent when it came to the energy sector, allowing Russia to continue to profit from its energy production and manipulate its prices to boost its economy. Given the strategic collaboration and collective enforcement needed to successfully impose sanctions, I agree with Abely that the European Union's apparent unwillingness to sanction Russia's energy sector is responsible for diminishing the effects of the sanctions. However, going even further, I believe that because the European Union relies so heavily on Russian energy, the possible goals of international sanctions were defined before they even began. Abely is correct in noting that the sanctions were never going to induce Russia to end the conflict. However, in my view, the fact that the European Union departed from its international norm by imposing secondary sanctions and practicing extraterritoriality is telling of how problematic the world sees the invasion of Ukraine, and it underscores the lengths that the international community may be willing to go to reprimand unprovoked and unjustified actions that threaten national sovereignty and result in the catastrophic loss of life and human suffering.