Laws is, in and of itself, a work that, on the terms Bartels treats it, could provide inspiration to generalist students of jurisprudence or philosophy.

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Provisional Measures before International Courts and Tribunals. By Cameron Miles. [Cambridge University Press, 2017. lxiii + 517 pp. Hardback £95.00. ISBN 978-1-107-12550-9.]

The law of provisional measures before international courts and tribunals has been the subject of intense academic scrutiny. Since 1932, when Edward Dumbauld published the first monograph on the topic, commentators have written numerous books on provisional measures in English, French, Italian and German and other languages. Nevertheless, the scope of such endeavours has been limited. While provisional measures are a feature of proceedings before most courts and tribunals created by states as a means peacefully to settle international disputes, academic writers have tended to focus on one jurisdiction, usually that of the International Court of Justice (ICJ), or on one international legal régime, such as human rights adjudication. Exceptionally, Shabtai Rosenne's 2005 monograph, *Provisional Measures in International Law*, analysed both the ICJ and the International Tribunal for the Law of the Sea.

Since international dispute settlement organs have proliferated at a sustained pace since 1945, a comparative study of the law of provisional measures is overdue. Cameron Miles's book *Provisional Measures before International Courts and Tribunals* is a welcome addition to the existing literature on this important aspect of international procedural law. Miles's self-avowed purpose is to "argue that not only is there a common and comparative body of principles with respect to the grant of interim relief in international law but that it has rapidly developed in scope and complexity". Miles's comparative study expands on the argument made in earlier monographs, such as Chester Brown's 2007 book, *A Common Law of International Adjudication*, according to which there exists a body of international law applicable to the procedure before international courts and tribunals. While Brown's study responded to concerns over the alleged fragmentation of international law, Miles's enquiry does not discuss such concerns. Through their jurisprudence, international courts and tribunals have shown that the purported threats of fragmentation are less problematic than had been foreshadowed.

Provisional Measures is the product of deep reflection on obvious parts of procedural law, but also on lesser-known historical developments of international law in this area. The book begins by describing the purpose of provisional measures and by detailing the author's scope of enquiry (ch. 1). Three parts follow the opening chapter. Part I, entitled "Preliminary Matters", centres on the historical evolution of the law of provisional measures (ch. 2) and on the constitutive instruments and procedural rules of the international courts and tribunals concerned (ch. 3). Part II, dedicated to "Provisional Measures in General", examines the substantive aspects of a request for provisional measures. Such aspects include prima facie jurisdiction and prima facie admissibility (ch. 4), the plausibility of the rights claimed on the merits and the link between such rights and the measures requested (ch. 5), and the existence of a real and imminent risk of irreparable prejudice to such rights (ch. 6). Part II also discusses the binding character of provisional measures, as

well as issues relating to compliance with provisional measures (ch. 7). Part III, entitled "Specific Aspects of Provisional Measures", examines two topics: first, questions of substance and procedure which may arise in the context of a request for provisional measures, such as the parallel seisin of different international judicial organs and the impact of non-appearing parties (ch. 8); secondly, questions concerning the potential of provisional measures as an instrument of a State's litigation strategy (ch. 9).

Miles's book has certain limitations, though these do not diminish the accomplishment of his work. For example, a feature of the monograph is its chosen coverage of international courts and tribunals. Miles lists four different categories of international judicial organs to be included in the scope of enquiry: the ICJ, international courts and tribunals having jurisdiction under Part XV of the 1982 United Nations Convention on the Law of the Sea, ad hoc inter-state arbitral tribunals, and investor-state arbitral tribunals. This selection excludes from the scope of the book certain important judicial organs, such as the Court of Justice of the European Union (CJEU), and regional human rights adjudicatory bodies including the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR) and the African Court of Human and Peoples' Rights (ACtHR). In respect of the former, Miles writes that "the CJEU may be said to have developed its own distinct character such that it does not necessarily interact … with other international bodies". In respect of the latter, he states that "these bodies have developed a slightly different tradition of interim relief".

One can agree with respect to the CJEU, which operates within the framework of the highly specialised law of the European Union. Secondly, that court hears disputes in which both the applicant and the defendant are private persons (as in the case of preliminary references). However, the exclusion of human rights adjudication from Miles's scope of enquiry is questionable. Similarly to investor-state arbitration, proceedings in the context of human rights adjudication are instituted between an individual and a state in order to establish whether a state is responsible for violating its substantive obligations arising under the treaty concerned. Further, both investor-state arbitration and human rights adjudication constitute special régimes under international law. Owing to the subject matter of their jurisdiction, human rights adjudicatory bodies are generally thought to have developed a different approach to some aspects of procedure. However, this need not be seen as a reason to exclude such bodies from the scope of a comparative work on provisional measures. The comparative perspective could be enriched by also considering the law of provisional measures developed by the ECtHR, the IACtHR and the ACtHR.

For instance, human rights adjudication would be a suitable sounding board for testing Miles's approach to the "link test", which requires that provisional measures be linked to the rights claimed on the merits. The only caveat is that while in inter-state disputes the rights to which the "link test" applies are rights of states, before human rights adjudicatory bodies such rights can also be rights of individuals. Miles considers the "link test" in the context of cases including which human rights issues, and concludes that such cases "seemingly advanc[e] towards incoherence" (p. 362). However, while this may be true with respect to the international judicial organs considered by Miles in his study, a higher degree of coherence could result from analysing the approach of human rights adjudicatory bodies to provisional measures relating to the human rights claimed by the applicants. In addition, regional human rights systems provide particular means to ensure compliance with provisional measures. Such systems entail the involvement, with varying degrees of intensity, of the political organs of the regional human rights organisation concerned, and are different from Article 94(2) of the UN Charter, from enforcement

under the ICSID Convention, and from the recognition and enforcement of arbitral awards under the 1958 New York Convention. Consequently, analysing compliance in the context of human rights adjudication could provide valuable insights by way of comparison, and could perhaps temper Miles's view, expressed later in the book, that there is a "less than encouraging record" of compliance with provisional measures (p. 445).

Miles's thorough analysis of the requirements which must be met for acceding to a request for provisional measures supports his argument for the existence of a common law of provisional measures. With respect to the ICJ's approach to prima facie jurisdiction, Miles writes that "the [court]'s internal practice may indicate that … *prima facie* jurisdiction is in most cases little more than a convenient rubric, with the Court already having determined whether jurisdiction exists" (p. 154). When further examined, the picture is more complex. In many cases, the jurisdictional aspects of a dispute are many, and raise difficult legal issues which the court is required to decide in order to uphold its jurisdiction or not. In its usual five- to seven-week time-frame for indicating provisional measures, the ICJ must deal with various legal issues aside from questions relating to its jurisdiction. Given the court's collegial decision-making, this time-frame could hardly be sufficient to determine conclusively whether jurisdiction exists (though the respondent state may concede jurisdiction). Moreover, while states are likely to make arguments concerning the court's prima facie jurisdiction at the provisional measures stage, it is also likely that they will make further arguments on the court's jurisdiction proper in the later stages of the proceedings. From this perspective, there is no reason for the court to satisfy itself conclusively that it has or lacks jurisdiction in the setting of a request for provisional measures. This could also be one of the reasons why, at the provisional measures stage, the court is concerned with examining jurisdiction only on a prima facie level.

Miles also adds that the ICJ's "more recent decisions [are] attended by a far greater degree of reasoning as to the existence of *prima facie* jurisdiction where preliminary objections have been raised" (p. 154). Indeed, all the ICJ's more recent decisions on provisional measures – including those where no preliminary objections were raised – are attended by a greater degree of reasoning on prima facie jurisdiction than in the past. In several cases, the court even split its analysis between different facets of prima facie jurisdiction, such as the prima facie existence of a dispute and prima facie jurisdiction *ratione materiae* (e.g. see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (Provisional Measures) [2008] ICJ Rep. 353, paras. 104–117). This development could be seen as an effect of the court's decision that provisional measures indicated under Article 41 of its Statute are binding (*LaGrand (Germany v USA)* (Judgment) [2001] ICJ Rep. 466, para. 109). It could also be seen to fit in the wider context of the court's adoption of the plausibility test in 2009 as a result of the *LaGrand* judgment (see *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Provisional Measures) [2009] ICJ Rep. 139, para. 57).

Miles should be commended for being the first to analyse the plausibility test from a comparative perspective. His analysis emphasises that plausibility, which scholars have started to examine since the ICJ adopted it in 2009, had been applied in some form by investor-state arbitral tribunals years before the ICJ did. Since Miles wrote, the ICJ has handed down three orders on provisional measures in which the court elaborated on the plausibility test (see *Immunities and Criminal Proceedings (Equatorial Guinea v France)*, Order of 7 December 2016, paras. 77–79; *Application of the International Convention for the Suppression of the*

Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation), Order of 19 April 2017, paras. 72–77, 80–83). One hopes the author will elaborate further on this topic in his future writings.

The concluding chapter of the book, which is dedicated to provisional measures as an instrument of litigation strategy, is of particular interest. Miles effectively brings together various writers' approaches to the use and abuse of provisional measures, the purposes of requests for provisional measures and issues of compliance. Unlike recent studies which downplay the use of provisional measures in the absence of compliance by respondent states, Miles convincingly concludes that "an application for interim relief may nevertheless be used to apply pressure to [the] respondent [state]" (p. 471). However, such an application comes at a risk of removing the "surprise effect" which the applicant state's argument can have, since "[a] fully argued application for interim relief will … give the respondent an appreciation of the applicant's case" (p. 446). Practitioners dealing with requests for provisional measures are likely to find Miles's discussion helpful and instructive.

Provisional Measures before International Courts and Tribunals is a work to feature prominently on the bookshelves of international legal academics, judges and practitioners. Miles has written a monograph which is likely to be regarded as a classic in its field, both because of its depth of analysis, and because of its valuable comparative perspective.

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One Another's Equals: The Basis of Human Equality. By Jeremy Waldron [Cambridge, MA: The Belknap Press of Harvard University Press, 2017. 280 pp. Hardback £23.95. ISBN 978-0-67-465976-6.]

We humans could hardly be any more different. We differ in age and acumen, in class and character, in ethnicity and education, and in size and shape. Despite these differences we consider ourselves to be fundamentally equal. Resolving how equality is possible without uniformity is the exacting task Jeremy Waldron has assigned himself in *One Another's Equals*. In essence, the principle of basic equality for which Waldron argues holds that there are no distinctions in kind between one human and another which would justify treating them differently in the way that humans and other animals are treated differently.

What makes such differential treatment inadmissible within the human realm? Waldron's answer is that basic equality can be grounded in a set of natural properties that are only part of humans' organic makeup. In contrast to other foundationalist approaches, Waldron's does not zero in on certain equality-grounding properties in a freeze-frame way. Instead, it conceives of the grounding set of properties in a more dynamic way. The relevant properties, Waldron argues, must be considered to be on a *trajectory*, which takes into account how these properties emerge, develop and founder over time. According to Waldron, the properties of all human beings are on such a trajectory: every human individual has a story as to how, in his or her case, these properties have (or have not) developed. The mere fact that the relevant properties are on a trajectory could not account for why only humans should be considered equals, however. After all, the properties of all living beings are on a trajectory. Waldron therefore adds *teleology* as the