RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY RICHARD B. BILDER

Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism. By Jean L. Cohen. Cambridge, New York: Cambridge University Press, 2012. Pp. xii, 442. Index. $99, cloth; $36.99, paper.

Jean L. Cohen, the Nell and Herbert M. Singer Professor of Political Thought in the Department of Political Science at Columbia University, is a synthesizer. In this book, she synthesizes her own prior works,[1] those by a remarkable set of scholars across a wide range of disciplines (from sociology to law), and diverse frameworks for understanding the concepts identified in her book's title. Her favored methodological approach is to demonstrate the dichotomous thinking of prior scholars, to provide vivid illustrations of the intellectual cul de sacs or politically unrealistic (dis)utopias that result from applying their theories, and to propose, as alternatives, middle paths that better respond to the contemporary "globalization"/"sovereignty" dilemmas facing the planet. The result is a densely argued work that, while daunting to readers not previously acquainted with the scholarship that undergoes critical scrutiny here, remains surprisingly accessible in explaining the continuing promise of and threats posed by the UN Charter system.

The book's introduction deftly outlines the author's complex argument. The prospect and reality of UN-sponsored humanitarian interventions, UN-authorized "transformative occupation" regimes, and Security Council counterterrorism "legislation" have led to radically different reactions. For some naïve utopians, all of these responses are hopeful signs of the emerging "constitutionalization" of international law, that is, the dawning of a global rule of law that "tames sovereignty" (p. 4). For critics, these responses are "neoimperial projects" in which true sovereignty remains the prerogative of only very powerful states (p. 3). For Cohen, the common ground between the two sets of views—the premise that sovereignty is dissolving, is withering away, or is useless—is as wrong as it is pernicious. While the content of sovereign powers is evolving, she argues, states remain the key players in the production of international law, and the principle of sovereign equality remains indispensable. The international legal system needs to be seen, instead, as something in between: a "*dualistic world order*" consisting of both "pluralistic segmentally differentiated . . . sovereign states creating consent-based international law . . . and [global governance institutions] of the functionally differentiated global subsystems of world society . . . [that] have acquired an impressive autonomy with respect to their member states and one another" (p. 5). Within this dualistic structure, Cohen sees that "a *new sovereignty regime* is emerging, redefining the legal prerogatives of sovereign states" (*id.*). At the same time, the expansion of the Security Council's prerogatives—its assumptions of intrusive legislative and quasi-judicial functions unforeseen by the Charter and immune from judicial oversight or legal restrictions—has engendered legitimacy concerns that can only be ameliorated by reforms that further the UN system's "constitutionalization . . . guided in part by cosmopolitan principles" (p. 6). Building effective bulwarks against purely symbolic constitutionalism or hegemonic law requires, according to Cohen, redefining *sovereignty*, *global constitutionalism*, and *federalism* to bring states and powerful

[1] As the author acknowledges in the preface, many portions of the book under review draw from her own prior works.

https://doi.org/10.5305/amerjintelaw.107.3.0697 Published online by Cambridge University Press

international institutions (like the Security Council) under the rule of law. Cohen describes her work as a "counter-project to empire," an exercise in "international political theory" (p. 7) that seeks to provide a better diagnosis of our current predicament and that prescribes "'low-intensity' constitutionalization" as the only politically viable way out (p. 20).

Chapter 1, entitled "Sovereignty in the Context of Globalization: A Constitutional Pluralist Approach," tackles the problem of properly defining sovereignty for the modern age. Here and elsewhere, Cohen is a sharp critic of the "end of sovereignty" thesis (p. 46). In this chapter, she surveys the leading theories of sovereignty, including those by Georg Jellinek, Hans Kelsen, and H. L. A. Hart. She does the same with theories of "monist" constitutionalism. She rejects the false dichotomous choices presented by those whom she categorizes as "global constitutionalists" (e.g., Mattias Kumm, Bardo Fassbender) and "legal pluralists" (e.g., Paul Schiff Berman, Nico Krisch). She disputes the key assumptions made by the former—namely, that sovereignty (including sovereign equality) is only a set of rights that is conditionally granted (and can be changed) by positive public international law; that an autonomous "international community" exists; and that the global constitutional legal order is characterized by unity, is privileged by universality, and enjoys supremacy over domestic legal orders. She finds this "monist" vision overdrawn, not representative of the actual self-understanding of the actors involved, and overly dismissive of the discourse of sovereignty "as if the only serious issue is the allocation of competences and jurisdictions within a single legal order rather than, additionally, issues of democratic legitimacy and political community" (p. 58). Cohen is also leery of the risks of a "global 'juristocracy' . . . in which judges and courts communicating with one another allegedly guided solely by justice instead of power-political considerations decide the allocation of competences and the general rules of the game" (*id.*).

Cohen is equally critical of the "legal pluralists" who give up on the need for a unitary, hierarchical concept of law in favor of overlapping legal and normative systems that resolve conflicts through political negotiation, compromise, mutual adjustment, or mere legal rules of thumb. She points out that "they offer no way to differentiate between legitimate and illegitimate normative diversity, no antidote to the upward drift of political authority to increasingly intrusive and disturbingly unaccountable global governance institutions . . . and no mechanisms to foster accountability other than conflict" (p. 63). For Cohen, legal pluralists throw the lawyer out with the bathwater since they offer no way "to distinguish 'law' from other forms of normative order" (p. 64, emphasis omitted). They err in focusing only on the "external" point of view—the objective effects of diverse forms of "soft" law—rather than understanding the "internal" point of view of participants, who need to rely on legal institutions that invoke impartiality, equality, fairness, and justice (*id.*).

The way out of this unhelpful dichotomy, she argues, is to rethink the concept of sovereignty through the lens of "constitutional pluralism" (p. 66), that is, to see that modern sovereigns delegate certain competences but avoid dividing, pooling, or sharing the underlying claim by a polity to "the supremacy of its legal order, the self-determination of its political system, and its status as the ultimate authority in its respective domain of jurisdiction and as an equal . . . " (*id.*). For Cohen the synthesizer, sovereignty needs to be seen as "a relational concept" involving mutual construction, porosity, non-closure, and political bargaining—as it is within the most sophisticated conceptions of the European Union (p. 67). While Cohen agrees with Abram Chayes and Antonia Handler Chayes that the new sovereignty is "status" (p. 77) or inclusion in global governance institutions,[2] she adds that such institutions have not displaced sovereign autonomy or eliminated its normative value. She argues that sovereignty protects moral values as well as "the special relationship between a citizenry and its government" (p. 78).

Chapter 2, "Constitutionalism and Political Form: Rethinking Federation," which will particularly interest EU and U.S. scholars of federalism,

[2] ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1998).

reconsiders the concept of federation. Cohen's targets are, once again, rival dichotomous frameworks, chiefly those that are statist (in which sovereignty remains central) versus those for which sovereignty is a problem to be resolved or ignored. After canvassing the reasons that states federate, Cohen surveys the diverging conceptions: theories that see federation as forms of decentralization (e.g., Kelsen), as distinctive political forms that center on sovereignty (e.g., D. J. Elazar), and as federal unions (Carl Schmitt). Cohen is drawn to the originality of Schmitt's conception, though not to his claim that a successful federation rests on substantive homogeneity along linguistic, ethnic, national, racial, or religious grounds. Schmitt, she points out, took the critical step of defining a distinctive political formation, the concept of a "bund"[3] (p. 116), imbued with principles of balance and equality and with nonhierarchical internal organizational structures permitting both shared powers and self-rule elements. Cohen recommends combining these key Schmittian insights with another key theoretical advance, namely, that the federal demos is a "compound" union of states and peoples with a distinctive claim to legitimacy (p. 146). Cohen argues that we need to see federal unions of states—from the European Union to potentially the United Nations—in this light. Once Schmittian conceptions of sovereignty are abandoned in favor of the definition of sovereignty advanced in chapter 1, she suggests that sovereignty can coexist within federal unions (as it does within the European Union) and protects constitutional integrity and political and/or democratic self-determination.

Cohen's remaining three chapters take up recent innovations of global governance institutions with respect to human rights, humanitarian intervention and transformative occupation, and counterterrorism. Chapter 3, "International Human Rights, Sovereignty, and Global Governance: Toward a New Political Conception," describes the underpinnings of human rights regimes. Here Cohen's rhetorical targets are the "anachronistic" Westphalian view that regards human rights and sovereignty as antithetical, mutually exclusive concepts versus the modern "cosmopolitan" view that assumes the same but sees the demise of sovereignty as key to advancing the rule of law (p. 163).[4] She sees human rights as part of the new sovereignty. Human rights signal changes in the prerogatives of sovereignty and set new limits on its legitimate exercise without suspending, as some of the advocates of the "responsibility to protect" (R2P) suggest, the sovereign equality of states or their rights against intervention. Cohen sees a need to distinguish certain human rights and forms for their enforcement. She accepts that "human security rights" (by which she means "'rights' against extermination, expulsion, ethnic cleansing, and enslavement") are a "rule of law baseline" (p. 208) against group-based persecution and oppression by states or their proxies that may warrant, exceptionally, humanitarian interventions and international criminal prosecutions by global institutions—provided these enforcement actions are subject to global rule-of-law constraints that protect both the sovereign equality of states and human security. Quoting Rainer Forst, Cohen pointedly articulates the purpose of human rights: "that persons have the basic right to live in a society where they themselves are the social and political agents who determine which rights they can claim and have to recognize" (p. 220). In this fashion, she sees human rights as inextricably linked (politically, legally, and morally) to sovereign self-determination.

Chapter 4, "Sovereignty and Human Rights in 'Post-conflict' Constitution-Making: Toward a *Jus Post Bellum* for 'Interim Occupations,'" takes up the arguable contradictions between traditional restrictions on occupying powers under international humanitarian law and Security Council Resolution 1483 on the occupation of Iraq.[5] Cohen defends the "spirit" of occupation law, namely the "conservation" principle of

[3] As Cohen explains, "bund" is Schmitt's word for "a federation of states that is distinct from a federal state" (p. 116).

[4] Louis Henkin, *That "S" Word: Sovereignty, and Globalization, and Human Rights, et Cetera*, 68 FORDHAM L. REV. 1 (1999).

[5] Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 UST 3114, 75 UNTS 31; Convention Respecting the Laws and Customs of War on Land,

https://doi.org/10.5305/amerjintelaw.107.3.0697 Published online by Cambridge University Press

"inalienability of sovereignty" (p. 224) that delimits the authority of occupying powers from making unnecessary changes to the occupied state's legal, political, economic, or social institutions, although she accepts the need for "updating" these rules in light of contemporary expectations and understandings (p. 245). Here, as elsewhere, Cohen's approach is to navigate between the Scylla of rigid adherence to outdated law and the Charybdis of "overly enabling reforms in the name of human rights or 'democratic regime change'" (p. 226). She tackles the odd bedfellows who have argued that the classic conservation principle is irrelevant or needs to make way for moral humanitarian reasons, including the arguments of John Yoo and Gregory Fox, as well as the contentions of realists like Schmitt, who arrive at the same place through a different route. Cohen argues instead for a "*jus post bellum*" that continues to respect the Charter principles of sovereign equality, self-determination, *and* human rights (p. 246) by, for example, leaving it to "the citizenry of an intact territorial state to authorize the new representative of popular sovereignty" (p. 249).

Chapter 5, "Security Council Activism in the 'War on Terror': Legality and Legitimacy Reconsidered," addresses the Security Council's counterterrorism agenda, particularly its "'smart' sanctions" programs (p. 273), beginning with Resolution 1267 and its "legislative" efforts through Resolutions 1373 and 1540 (p. 274).[6] She dissects the reaction of the European Court of Justice (ECJ) in the *Yusuf* and *Kadi* decisions[7] as well as shows how the legitimation debates concerning the Council's new "juris-generative" roles (p. 275) have played out against the broader literature praising the "constitutionalization" of international law (p. 283). Cohen is "not convinced that transnational terrorism poses the kind of existential threat to the world order that could justify instituting a general state of emergency rule or the self-ascription of plenary powers on the part of the Security Council to legislate and institute a new form of global law" (*id.*). She argues that the Council faces a triple legitimacy threat to the extent that (1) its rulings violate substantive human rights law, (2) it undertakes quasi-judicial tasks that violate "the rudimentary separation of powers and deficient system of checks and balances within the Charter structure," and (3) it usurps the constituent authority of states by informally amending the Charter by transforming the Council into a "hegemonic global law-maker" at odds with the principle of sovereign equality (*id.*). These legitimacy concerns, as well as Cohen's commitment to constitutional pluralism, lead her to recommend a long-term (and admittedly difficult) political project to engage in the further "constitutionalization" of the UN Charter (p. 311). She urges renewed consideration to abolishing the need for a P-5 veto in the Charter's rules for amendment, suggesting:

> The dramatic new legislative role of the Council should be scaled back . . . . In addition, the constitutionalization would have to involve creation of a global court(s) with jurisdiction to review rights-violating resolutions that are legislative in character and directly and adversely affect individuals—possibly through some sort of preliminary reference procedure. . . .
>
> . . . What matters is that all actors would be under law, and unlike in the current UN Charter system, that a legal response would be possible to any informal amendment, or violation of the rules, principles, and purposes of the Charter that the powerful might attempt to make. (Pp. 312–13)

Although Cohen's reform agenda is familiar to international lawyers, many of her corresponding rationales are not. Her bracing vision of porous, coexisting autonomous legal orders of constitutional quality amenable to contestation and to change over time should be of equal interest to scholars of EU law. While engaging in sustained critiques, in the end Cohen's book presents an optimist picture that a "positive-sum game" can emerge from dualistic sovereignty and reconceptualizations of the crucial concepts of *globalization*, *sovereignty*, *sovereign equality*, *self-determination*, and *constitutionalization* (p. 317). The result

Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631; SC Res. 1483 (May 22, 2003).

[6] SC Res. 1373 (Sept. 28, 2001); SC Res. 1540 (Apr. 28, 2004).

[7] Case T-306/01, Yusuf v. Council, 2005 ECR II-3533, para. 77 (Eur. Ct. First Instance); Case T-315/01, Kadi v. Council, 2005 ECR II-3649, para. 58 (Eur. Ct. First Instance).

is a distinctive piece of scholarship made all the rarer by several attributes. First, Cohen largely accomplishes the ambitious "rethinking" promised in its title. Second, unlike much of the work by political scientists who deal with legal topics, this book engages in a genuine two-way exchange between the two fields.[8] Third, the author's effort to mediate between contradictions serves an explicitly normative prescriptive agenda reminiscent of (and as ambitious as) those of eminent legal scholars who have passed from the scene, including Louis Sohn and Antonio Cassese.[9] Like them, Cohen envisions a "feasible utopia" (p. 78) that protects human and sovereign values—and straddles Martti Koskenniemi's apology-utopia axis with aplomb.[10]

Three critiques of Cohen's considerable accomplishment emerge for this reviewer. First, this situation may be the rare case in which, ironically enough, a political scientist takes international law, and the views of legal scholars, too seriously. Why must the Security Council's manifold legitimacy deficits be handled, as Cohen suggests, through *legal* means involving, for example, formal judicial review apparently by a UN-based court? The Council has responded to charges that it is producing (and is the product of) hegemonic law. It has resorted to ever more conscious forms of deliberative discourse, introduced some modest procedural changes, and, as Cohen acknowledges, established an ombudsperson in response to the *Kadi* case.[11] Given that not all rule-of-law states would accord the protections given to those charged with crimes to those on whom it imposes financial sanctions,[12] why is the Council's establishment of an ombudsperson (assuming that it would apply to all its sanctions committees) insufficient to satisfy the rule of law? Further, the "checks and balances" that exist within the United Nations, as well as other modes of global governance, have led some political scientists to the counterintuitive conclusion that once we consider the many diverse modes of accountability mechanisms—formal and informal—to which these institutions are subject, international organizations appear more constrained in their capacity to act than any of Cohen's sovereigns.[13] Moreover, why exactly are Cohen's politically difficult prescriptions for the further constitutionalization of the United Nations needed in a world where a real prospect exists that other courts—national and international (apart from the ECJ)—will engage in indirect judicial review over the Council, as well as possibly over other international organizations, including through reinterpretations of applicable organizational immunities?[14] Nor does Cohen provide an answer to those who would assert that the real Charter constraints on the Council's power are political rather than legal: namely, the possibility exists that, if the Council goes too far, its orders will simply be disregarded by member states.[15] Why is this form of "exit and voice" or

[8] *See, e.g.*, INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 10, 649 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013) (noting the "grossly unbalanced disciplinary terms of trade between political science and law" where lawyers use international relations theory far more than political scientists deploy international legal theory).

[9] *See* GRENVILLE CLARK & LOUIS B. SOHN, WORLD PEACE THROUGH WORLD LAW (2d ed. 1960); Symposium, *Realizing Utopia: Reflections on Antonio Cassese's Vision of International Law*, 23 EUR. J. INT'L L. 1031 (2012).

[10] MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (2005).

[11] *See, e.g.*, Eric Rosand, *The Security Council as "Global Legislator":* Ultra Vires *or Ultra Innovative?*, 28 FORDHAM INT'L L.J. 542 (2004); *see also* Ian Johnstone, *Legislation and Adjudication in the UN Security Council: Bringing Down the Deliberative Deficit*, 102 AJIL 275 (2008).

[12] *See generally* Carol S. Steiker, *Punishment and Procedure: Punishment Theory and the Criminal-Civil Procedural Divide*, 85 GEO. L. J. 775 (1997).

[13] *See* Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 29 (2005).

[14] *See, e.g.*, August Reinisch, *The Immunity of International Organizations and the Jurisdiction of Their Administrative Tribunals*, 7 CHINESE J. INT'L L. 285 (2008); ANTONIOS TZANAKOPOULOS, DISOBEYING THE SECURITY COUNCIL: COUNTERMEASURES AGAINST WRONGFUL SANCTIONS (2011).

[15] *See* Rosand, *supra* note 11, at 578–87 (noting that the Council gives states considerable autonomy in how to implement the Council's counterterrorism sanctions and that this flexibility might be regarded as another "safeguard" against the risk of abuse of power).

https://doi.org/10.5305/amerjintelaw.107.3.0697 Published online by Cambridge University Press

civil disobedience not a form of Cohen's constitutional pluralism? Finally, Cohen does not take into account the United Nations' questionable capacities to patrol and enforce its counterterrorism edicts or the prospect that Council sanctions are not reliably enforced, particularly in poorer states.[16] And if, as this last example suggests, the Council's sanctions have been taken far more seriously in the United States and its Western allies than in the global South, is the Council actually no more than a paper tiger even when it appears to undertake hegemonic international law?

Second, Cohen repeatedly justifies her decision to focus on the United Nations (and the Security Council) on the questionable premise that the United Nations is the world's premier global governance institution. She quickly dispenses with competing accounts of globalization, such as Michael Hardt and Antonio Negri's description of "empire,"[17] because their argument that the "'sovereignty' of capital" has displaced the role of states is simply "too totalizing" (pp. 81–82). But a book that avoids virtually any discussion of the prominent impact of financial institutions like the International Monetary Fund or the World Bank (or of hybrid public/private actors or of market actors like government risk evaluators) on the abilities of states to exercise their capacities for sovereign equality, autonomy, and self-determination should not be so quick to disparage the realities of macroeconomics or international economic law and its institutions. From the perspective of the effective exercise of economic self-determination, the United Nations may be a relatively unimportant institution. Cohen's chapters on human rights regimes and contemporary efforts to transform states through global governance institutions would have been far richer, for example, had these chapters considered either the "mission creep" (p. 157) of development institutions like the World Bank or the ways that the Security Council has itself deployed those institutions to pursue national transformations.[18] Cohen's look at the continuing power of sovereignty, and the potential for constitutional pluralism to address it, would have been more persuasive if she had mentioned, at least in passing, the possibility that global governance institutions intended to make the world safe for the "Washington Consensus" (or today's "post-Washington Consensus"),[19] along with international adjudicators at the World Trade Organization or International Centre for Settlement of Investment Disputes, are as worthy of "further constitutionalization" as the United Nations (p. 315).

Finally, a black hole exists at the heart of Cohen's book: the global rule of law. Cohen assumes, rather than delineates with any precision, what the "global rule of law" might be and how it might apply to the benefit of sovereigns. Cohen repeatedly invokes the global rule of law and the need to make the Security Council responsive to it, but, as Jeremy Waldron has pointed out, it is not clear how the rule of law should apply to sovereign states.[20] As he points out, while it is clear that *individuals* enjoy liberty and dignity interests, states as such do not, at least not in the same way.[21] A state's right to self-determination is not quite the same as a state's right to regulate, and neither is the same as an individual's (or a state's) right to associate. While it may make sense to argue that the rule of law requires courts to act consistently and not

[16] *See generally* ERIC ROSAND, ALISTAIR MILLAR & JASON IPE, THE UN SECURITY COUNCIL'S COUNTERTERRORISM PROGRAM: WHAT LIES AHEAD? 10 (2007), *available at* http://www.globalct.org/publications/the-un-security-councils-counterterrorism-program-what-lies-ahead (noting the difficulties related to assessing compliance with the Council's sanctions and stating that none of the relevant Council subcommittees had referred, at least by 2007, a single state to the Council for noncompliance).

[17] MICHAEL HARDT & ANTONIO NEGRI, EMPIRE (2000).

[18] *See, e.g.*, Kristen E. Boon, *Open for Business: International Financial Institutions, Post-conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT'L L. & POL. 513 (2007); GRAHAM HARRISON, THE WORLD BANK AND AFRICA: THE CONSTRUCTION OF GOVERNANCE STATES (2004).

[19] *See generally* Joseph Stiglitz, 1998 WIDER Annual Lecture: More Instruments and Broader Goals: Moving Toward the Post-Washington Consensus (Jan. 7, 1998), *available at* http://www.wider.unu.edu/publications/annual-lectures/en_GB/AL2.

[20] Jeremy Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law?*, 22 EUR. J. INT'L L. 315 (2011); *see also* Simon Chesterman, *An International Rule of Law?*, 56 AM. J. COMP. L. 331 (2008).

[21] Waldron, *supra* note 20, at 325–26.

https://doi.org/10.5305/amerjintelaw.107.3.0697 Published online by Cambridge University Press

selectively when it comes to protecting the liberty interests of persons before them, we do not generally suggest that the rule of law requires legislators or legislatures to act consistently with respect to all issues. We expect that those who legislate will make political choices and be selective (if only because of the limits on the public purse). Selective legislative choices may not be problematic under the rule of law so long as the rights of *individuals* are not violated. While there are many ways that the Council acts selectively, only some of these options may implicate concerns under the "global" rule of law. Putting aside whether the Council ought to be acting as a legislature, why exactly does the global rule of law (as opposed to our political preferences or other legitimacy concerns) require the Council to treat all terrorist threats the same way or, for that matter, to send all genocidaires to the International Criminal Court (ICC)?[22] The Council was, after all, envisioned as a collective enforcer of the peace but only when sufficient political will exists. While a legal legitimacy question is raised when the Council refers a situation to the ICC but blocks ICC jurisdiction over nationals from non-Rome party states without those states' consent,[23] that action raises distinct concerns as compared to its decisions to refer the situations in Libya and the Sudan to the ICC but not the case of Syria. And the legitimacy under the global rule of law of those choices by the Council might not be comparable to those raised by that body's choice to (re)interpret its Chapter VII powers to permit a finding that terrorism constitutes a "threat to peace" (p. 279) to justify taking action on states qua states (as it did in Resolutions 1373 and 1540), while not (yet) exercising the same options in response to the "threat" posed by global climate change. We should not presume that all these instances of Council selectivity are illegitimate under the global rule of law; that specific contention requires the same kind of careful analysis of the global rule of law that Cohen applies to concepts like "sovereignty."

These are, sadly, questions for another day (and possibly for other authors). For now, Cohen's manifold insights are, as she suggests of her proposals for UN reforms, good enough. They deserve the attention of scholars and policy makers.

JOSÉ E. ALVAREZ
Of the Board of Editors

The Rules, Practice, and Jurisprudence of International Courts and Tribunals. Edited by Chiara Giorgetti. Leiden, Boston: Martinus Nijhoff Publishers, 2012. Pp. xxxii, 611. Index. $245, cloth; $69, paper.

What is an "international court" or "international tribunal"? In her introduction to *The Rules, Practice, and Jurisprudence of International Courts and Tribunals*, the editor, Chiara Giorgetti, currently an assistant professor at the University of Richmond School of Law, argues that international courts and tribunals share at least five features: (1) they make legally binding decisions; (2) their constituent documents are governed by international law; (3) they principally apply international law; (4) their judges are independent; and (5) their secretariats are independent. In the nineteen chapters, each contributed by a different author or authors, many different institutions are covered, with some chapters covering multiple institutions. More than one-third of the chapters cover institutions that are not international courts or tribunals themselves but rather umbrella administrative institutions, regimes for individual ad hoc tribunals, institutions that do not have all the features Giorgetti specified, or, in one case, an institution that exists only as "aspirational." The chapters in the book provide a wealth of detailed information about the background, structure, organization, jurisdiction, and jurisprudence of the courts, tribunals, and other institutions they cover; each chapter provides a fairly detailed factual summary of the key instruments and rules of procedure of the institution or institutions considered and a précis of the case law. Some chapters'

[22] Indeed, Rosand argues that the Council should not undertake to "legislate" (as it did in Resolution 1373), except in "exceptional" circumstances; for him the Council's "selectivity" may enhance its legitimacy. Rosand, *supra* note 11, at 579–81.

[23] *See* SC Res. 1593, para. 6 (Mar. 31, 2005); SC Res. 1970, para. 6 (Feb. 26, 2011).