allowed the government to operate under a controversial war framework and has avoided review of decisions concerning both detention and the use of force.[28]

A rare exception to Justice Breyer's cautious treatment of the cases is his discussion of the *Kiobel* decision, which limited the extraterritorial reach of the ATS. In particular, Justice Breyer contends that, despite the Court's holding in *Kiobel* that the presumption against extraterritoriality applies to claims under the ATS, the decision preserves the ability of victims of human rights abuses abroad to sue under the ATS when the perpetrator is now residing in the United States (p. 161). This claim relies on an aggressive reading of the majority opinion. While the majority did state, as Justice Breyer notes, that the presumption against extraterritoriality could be overcome in some situations in which the plaintiff's "claims touch and concern the territory of the United States,"[29] the majority was specifically referring there to a connection between the plaintiff's *claims* and the United States, not between the defendant's current *residence* and the United States. Moreover, the majority made clear that dismissal of an ATS claim is proper if "all the relevant *conduct* took place outside the United States."[30]

What Justice Breyer now maintains is entailed by the majority opinion is what he seemed to suggest in his concurrence in *Kiobel* was *not* the majority's position. Justice Breyer concurred only in the judgment in *Kiobel* in order to express his disagreement with the majority's reasoning. He argued that, instead of limiting the ATS to situations in which relevant conduct occurs in the United States, which he understood to be the majority's approach, the statute should be applied whenever the defendant's conduct implicates "an important American national *interest*."[31] Justice Breyer further asserted in his concurrence that the United States has a "distinct interest in preventing the United States from becoming a safe harbor (free of civil as well as criminal liability) for a torturer or other common enemy of mankind."[32] In making this argument, he did not seem to believe that he was describing what was entailed by the majority opinion.[33]

However one construes it, *Kiobel* illustrates how the proposition that "the Supreme Court is not a World Court," something that Justice Breyer repeats throughout the book, can mean more than one thing. It could mean, as Justice Breyer tends to see it, that U.S. courts should pay more attention to international and foreign laws and practices when interpreting and applying U.S. law. But it could also imply judicial modesty in applying U.S. laws abroad, evaluating foreign conduct, and incorporating international law in the absence of political branch guidance, limitations that Justice Breyer has not always embraced.

CURTIS A. BRADLEY
Duke Law School

The Law of Global Governance. By Eyal Benvenisti. The Hague: Hague Academy of International Law, 2014. Pp. 331. $21, €15.

Eyal Benvenisti was just elected the Whewell Professor of International Law at Cambridge University, succeeding James Crawford, who, in 2014, became a judge of the International Court of Justice (ICJ). Most recently the Anny and Paul Yanowicz Professor of Human Rights at Tel Aviv University and earlier the Hersch Lauterpacht Professor of Law at the Hebrew University of Jerusalem, Benvenisti has also, since 2003, been a Global Visiting Professor at New York University School of Law, probably the epicenter of work on global administrative law. *The Law of Global Governance*, Benvenisti's slender but potent pocketbook, is adapted, with copious annotation, from a set of five lectures that he delivered on that topic at the Hague Academy of International Law in 2013.

[28] *See* Curtis A. Bradley, *Foreign Relations Law and the Purported Shift Away from "Exceptionalism,"* 128 HARV. L. REV. F. 294, 298–99 (2014).

[29] Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659, 1669 (2013).

[30] *Id.* (emphasis added).

[31] *See id.* at 1674 (Breyer, J., concurring) (emphasis added).

[32] *Id.* at 1671.

[33] Although the lower courts have differed to some extent in their interpretation of the "touch and concern" test from *Kiobel*, no court so far has held that the mere U.S. residence of a defendant is sufficient to meet that test.

Administrative law has been developing for centuries. But the notion of a distinct field of global administrative law is very new. The term can take on a variety of meanings. Different approaches to administrative law applied in different parts of the world create a global body of administrative law, much of it concerned with regulation of human activity and the economy. While at times in the industrialized world we have believed ourselves to be overregulated (with comical excess of trivial regulation much criticized within the European Union), the problem in the developing world is the reverse—not enough effective regulation, particularly as economies begin to take off there.

Because international organizations, such as the World Bank, long considered regulation as an avenue for rent-seeking by corrupt officials, it was not much encouraged for several decades. But as many poorer countries began to succeed on their development tracks, a dynamic that has accelerated within the last twenty years, the paucity of transparent, reliable, and enforceable regulation started to exact serious costs on emerging powers such as Brazil, India, Indonesia, and Turkey.

But what Benvenisti primarily addresses here, linking up to conceptions of global administrative law, is the need for more and better review of decision making in formal intergovernmental organizations (IGOs), informal global networks (IGNs), private institutions (PIs), such as the nonprofit Internet Corporation for Assigned Names and Numbers (ICANN), and other bodies taking on some of their characteristics, all of which have been multiplying to a dizzying extent. He also focuses on a more systematic approach to redress for those sideswiped by bad or self-interested decision making by international forums, of which, as he documents, there has been a great deal, as most recently exposed within the Fédération Internationale de Football Association (FIFA).

The book's introduction highlights the exponential growth of international decision making. Ostensibly, merely consultative groupings but in fact often vastly influential bodies, such as the self-selecting Group of Eight (G-8) and Group of Twenty (G-20), make recommendations and decisions that affect many lives around the globe, including in countries whose governments, parliaments, civil societies, and economic actors are not consulted. Less high-profile IGNs often also engage in aspects of regulation, such as the Basel Committee on Banking Supervision (created in 1974 by another informal grouping—the central bank governors of the Group of Ten (G-10) countries), affecting many countries unrepresented in those bodies. They operate more opaquely than the much maligned World Trade Organization does today, perhaps most sharply in public focus during the kinetic antiglobalization demonstrations in Seattle in 1999. And they have been much more influential in guiding key economies among the industrialized and emerging countries of the global South than have the essentially universal forums like the United Nations or the World Bank.

Benvenisti argues that while many of these bodies are formally accountable, often to a small minority of powerful governments, they are not answerable to the billions of individuals affected by their decisions, which may be reported in fairly technical terms drawing on catatonia-inducing communiqués, if at all, in the back pages of the international financial press in sometimes impenetrable finance-speak. He worries not only about democratic deficits, which are hard to challenge and overcome in a world characterized by globalization, but also about institutional fragmentation at the international level, which makes monitoring of myriad bodies extremely difficult. Many important decisions influencing national policy are made or managed by informal, indeed sometimes private, or privatized, bodies, in a process of "deformalization" of global governance, to use Benvenisti's apt phrase (p. 25). The parentage of those decisions, reached by these bodies and refracted through national channels of transmission, is often sufficiently diffuse as to make all but the hollowest of accountability impossible and, in some instances, amounts to a deliberate flight from responsibility.

After the introductory chapter, the volume unfolds through five highly substantive chapters, followed by a very brief conclusion. Chapter II provides a short but fascinating account of early

https://doi.org/10.5305/amerjintelaw.110.1.0135 Published online by Cambridge University Press

IGOs such as the Central Commission for Navigation of the Rhine (formally constituted in 1815) and the International Telegraph Union (formed in 1865). The first health-oriented IGO turns out to have been an inter-American one: the International Sanitary Bureau of 1902, whose direct descendant is today's Pan American Health Organization, affiliated with the World Health Organization (WHO). The chapter includes a succinct but skillful account of the League of Nations, which featured some important innovations later imported into the UN system—notably, a focus on economic matters.

At its core, chapter II addresses the emergence of global governance (much of it concerned with regulation) through a "spaghetti junction" of new, sometimes evanescent organizations, committees, and negotiating processes, several of them hospitable to the representations of civil society, but many entirely inaccessible to them. Much of this activity is occluded from public view and, in any event, too complex for all but the most expert analysts to follow. A pattern has emerged of a shift towards informal bodies and networks, in part designed to avoid scrutiny and even minimal levels of accountability, for example, the George W. Bush administration's establishment of "results-based management practices" and "results-oriented partnerships."[1]

Thus, formal military alliances, such as NATO, yield to "coalitions of the willing," pick-up groups of states prepared to contribute to the aims of one or more powerful states and provide them with the political cover that good company can confer, sometimes blessed by the UN Security Council (e.g., Iraq-Kuwait crisis (1990–91)), sometimes not (e.g., Iraq (2003)). The major difference between the interventions in 1990–91 and 2003 was that the first was authorized by the Security Council, encouraging the participation by many countries, including major Arab powers, while the Council declined to authorize the second, consequently resulting in only limited participation. At another, more legal level of endeavor, treaties, increasingly seen as too cumbersome—evoking "the fearsome formalities of diplomacy" in the wry take of Anthony Aust[2]—are replaced by memorandums of understanding of conveniently uncertain legal status, many of them never made public. The chapter successfully illustrates how powerful states actively seek to preserve their discretion by forum shopping and by seeking out modalities of negotiation and outcome requiring little or no accountability. Such approaches are a far cry from the negotiation and ratification by the relevant legislatures of a treaty text.

Hybrid public-private institutions have also taken on important roles, not least in the lucrative field of pharmaceuticals, with considerable risk of regulatory capture by private interests. The Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund), a public-private partnership, was seen at its launch in 2002 as a panacea to short-circuit the rigidities of the WHO, but with the consequence that the latter was, to a degree, defunded to finance the operations of the Global Fund, contributing to the WHO's poor response to the Ebola crisis of 2014–15. The Global Fund's governance structure involved a number of governments, several representatives of civil society organizations, and the private sector. Although a hybrid organization, it was able to secure immunity for its officials from the Swiss host authorities, thus shielding itself from the accountability that courts can exact. Ultimately, while the Global Fund, with available funding of over $20 billion, has proved useful in helping to combat AIDS, now in retreat in much of the world, it has had less success against tuberculosis and malaria.

Benvenisti also discusses the direct control over local lives exerted by the United Nations in territories where the Security Council in 1999 had established transitional "direct administration" (p. 70) or, in Simon Chesterman's words, "virtual trusteeships," vested in the United Nations itself and under staff appointed by the UN secretary-general.[3] While some efforts were made in Kosovo (more than in Timor-Leste) to establish avenues

[1] WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 16, 46 (Mar. 2006), *available at* https://www.comw.org/qdr/fulltext/nss2006.pdf.

[2] ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 29 (3d ed. 2013).

[3] Simon Chesterman, *Virtual Trusteeship*, *in* THE UN SECURITY COUNCIL: FROM THE COLD WAR TO

https://doi.org/10.5305/amerjintelaw.110.1.0135 Published online by Cambridge University Press

for review and contestation of UN decisions, they were feeble and came late in the mandate.

Elsewhere in chapter II, the author discusses attempts by some powerful nations to impose unilaterally on others some standards and restrictions that those targeted simply do not have the means to contest effectively through diplomacy or courts. Regulation can thus result in intensely anticompetitive outcomes, favoring certain actors (with voice enough to influence the decision makers) against the interests of others having little recourse in practice against the measures. Unilaterally imposed global standards notoriously range from the fields of taxation to those of health. Benvenisti argues that global administrative law may make valuable contributions in these and similar situations by leveling the playing field (or at least seeking to do so).

The current imbalance is particularly true in the transatlantic universe comprising the United States and the European Union, plus relative minnows, such as Australia and New Zealand, which, like Canada, have often been creative internationally in advocating legal approaches to policy dilemmas and in devising legal instruments to resolve them. These efforts sometimes result in the discomfort of great powers, reluctant to see their unimpeded freedom to maneuver constrained. However, even great powers require a minimum of legitimacy in pursuing their objectives internationally so as to induce compliance (where compliance is somewhat or largely optional, which is not always the case). So while riding roughshod over others when their vital interests may be at stake, great powers also go to considerable lengths to court potential partners where numbers on their side could help them prevail.

From chapter III onwards, Benvenisti focuses more narrowly on the law that may be applicable to global governance institutions rooted in the *ultra vires* (or *excès de pouvoir*) doctrine and in human rights law, citing, for the *ultra vires* doctrine, the often loosely limited powers of IGOs. He also questions how extensive their immunities should be. He recognizes that IGOs are often able to get away with decisions and actions that, while seeming *ultra vires* to some, may be backed up by their member states and by international courts. The ICJ, for example, has been remarkably deferential to the Security Council when it exercises its Chapter VII powers under the UN Charter. This deference could change, but the ICJ surely worries at times about its own credibility and about the risk that its own authority could erode, should it question the authority of others. The European Court of Justice, while frequently the toast of public international law practitioners, and while quite expansive of late in issuing sweeping judgments, will doubtless experience crises of confidence in the future and periods of greater reticence, as have a variety of national constitutional courts, particularly if some judgments today seem less wise several years from now.

Chapter IV advocates greater regulation of the decision-making processes of global governance institutions through procedural improvements, checks and balances, and more opportunities for challenge and review. Its discussion of the exercise of discretion is illuminating and sensible, and the chapter also explores a number of straw arguments (e.g., can power masquerade as law?).

In chapter V, the limits and potential regulation of sovereign discretion are discussed, stressing that one size does not fit all. Tribunals and courts will be the best avenue to challenge some decision-making processes, while alternative review mechanisms may work better for others. Global intervention in domestic decision making is difficult for all countries at times, but more so for some, particularly on certain issues. State consent to outside intervention is often grudging and sometimes refused. For example, China's position on the decision of the Philippines to seek an opinion from the Permanent Court of Arbitration (PCA) on maritime boundary issues in the South China Sea has been to not engage at all, even after the PCA found the complaint admissible, having established its own jurisdiction.[4] China might respond

THE 21ST CENTURY 219 (David M. Malone ed., 2004).

[4] Republic of the Philippines v. People's Republic of China, Award on Jurisdiction and Admissibility (Perm. Ct. Arb. Oct. 29, 2015), *available at* http://www.pcacases.com/web/sendAttach/1506; *see also* Ankit Panda, *Philippines v. China: Court Rules Favorably on Jurisdiction, Case Will Proceed*, DIPLOMAT, Oct. 30, 2015, *at*

https://doi.org/10.5305/amerjintelaw.110.1.0135 Published online by Cambridge University Press

in some way but, in the meantime, has been unmoved by recent developments. Sometimes, simply by agreeing that a complaint is admissible when its target has refused to recognize it, an international institution can significantly move the goalposts, affecting the balance of global or regional opinion.

Chapter V also addresses the important issue of how protection of minorities within societies can be promoted internationally. Minorities are particularly vulnerable in many countries, even where court systems generally function well, because judges tend to be selected from among the majority or the several majority communities, with the result that courts may be consciously or unconsciously biased against members of smaller communities (as complainants or defendants). In these situations, an outside opinion may be particularly valuable, as was the case in the late 1970s when Larry James Pinkney, an Afro-American convict in British Columbia, Canada, complained to the UN Human Rights Committee about discrimination in the prison system there, and the Committee was able, through its decision of 1981, to induce some reforms in British Columbia.[5]

Tensions between universality and subsidiarity, in terms of both ideas and operational activities, will always be with us. As Benvenisti notes, concerns exist that international courts and tribunals might run rampant in an untrammeled run of decisions against national authorities. Such fears may be greatly exaggerated. Virtually all international courts and tribunals, even the European Court of Human Rights (no shrinking violet, as these bodies go), either statutorily or simply as a matter of prudence, adopt a margin of appreciation, tending to defer to local legal and administrative processes and procedures. Societal preferences are relevant, and courts are wise to take them into account. But on matters of fundamental justice, perhaps particularly where minorities are concerned—notably, aboriginal communities and others traditionally marginalized—recourse to international review has meant great progress during the twentieth century and beyond.

Harder to chart are cases where an affected state's formal consent is not even sought following a decision. Rather, the weight of private actors, foreign governments, or even a civil-society initiative can be sufficient to secure a degree of cooperation from an affected state, which is generally a weaker, very often poor state. Where does concern for and activism in favor of actual and potential victims of injustice leave off and bullying of a weaker state take over? And, in such circumstances, what responsibility are outside intervenors (including IGOs, IGNs, PIs, and civil-society actors) prepared to assume for outcomes, good and bad? Experience suggests very little in most cases.

Benvenisti then tackles a difficult issue. Why and when should international and national judicial and regulatory processes trump legislative ones in countries where free and fair elections are the norm? A few examples are suggested above, but no clear and compelling guidelines exist. Risks and rewards—as well as societal preferences and levels of tolerance for different approaches—vary tremendously from country to country, as do historical factors that can greatly influence outcomes and others' perceptions.

The author several times raises the high-minded notion of "legislating for humanity," one Achilles heel of which may be a willful ignorance of what the rest of humanity (or at least parts thereof) might prefer. The intention may be to offer a "global public good" to the world at large, sometimes in the field of human rights and on occasion in environmental protection. But because the methods, when adopted by one or several powerful actors, are essentially coercive, the outcome may be resented, with unpredictable long-term consequences. Well-intentioned advocacy within the European Union, particularly by France, to contribute funding to environmental causes through a tax on airline travel, and efforts to operationalize this generous idea, which at times shaded into arm-twisting, elicited hostile reactions from several other continents. The idea has not yet much caught on. Benvenisti reminds us that if our

http://thediplomat.com/2015/10/philippines-v-china-court-rules-favorably-on-jurisdiction-case-will-proceed.

[5] Pinkney v. Canada, Comm. No. 27/1978 (Oct. 29, 1981), UN Doc. CCPR/C/OP/1, at 95 (1985).

decision making affects others, the interests and views of those stakeholders need to be considered actively, even when they are accommodated only in part or not at all.

Chapter VI focuses on processes of review. When excited, governments, like people, tend to ignore procedure and due process and to dismiss the usefulness of appeal on matters that they consider urgent. At these times, they are at their worst and most likely to make serious mistakes of judgment. Reactions to the events of 9/11 in the United States, while understandable at the emotional level, betrayed many of the country's finest traditions. Sadly, this infidelity was true even in areas touching on law. Luckily, many of the corrective impulses, actions, and appeals came from those with legal backgrounds. And, ultimately, but quite late, courts have brought a degree of due process to bear on individual cases.

For example, the actions of the United States were the genesis of a number of cases, such as *Kadi*, that slowly wound their way through the court system of the European Union soon after 2001, when Yassin Abdullah Kadi's U.S. assets were frozen.[6] The Security Council, driven by the United States after 9/11 and the earlier bombing of its embassies in Nairobi and Dar es Salaam, adopted very harsh sanctions decisions against individuals that the United States suspected of participating in planning or perpetrating acts of terrorism. To the shame of other Council members, the United States was not compelled to produce evidence against these individuals who were subjected to financially paralyzing measures that also deprived them of free movement.

After a circuitous path through legal thickets and other levels of European courts, the European Court of Justice ruled against the application by the European Union Commission of the sanctions decreed by the Security Council. The European Court of Justice thus avoided a head-on clash with the Security Council on jurisdictional issues on the ground that due process had been denied to those individuals on the Security Council Resolution 1267 sanctions list,[7] including the right to know and confront the evidence against them. The Security Council, which had been relying on its broad, indeed unique, powers under the UN Charter, was taken by surprise and, under pressure from European members, pedaled furiously to cover its tracks. It initiated a new approach to sanctions against individuals, creating a central role for an ombudsperson, Kimberly Prost, who had been a Canadian judge on the International Criminal Tribunal for the Former Yugoslavia, experience that provided her with significant influence (often the final word) over most of the sanctions cases involved. Prost's energetic approach rapidly moved many individuals off the sanctions list. But for Benvenisti, while these developments represented real progress, the original Security Council decisions—through its "1267 Sanctions Committee"—were evidence of a systemic problem that only systematic right to review by those potentially targeted by the Security Council could have prevented. He is right.

As a student of the Security Council over a period of twenty-five years and a former member of a Security Council sanctions committee,[8] am I confident this situation will never happen again? I am not. While the embarrassment to the United States, United Kingdom, and France of these episodes of reckless decision making has been intense, the sting will fade. The Council, with rapidly rotating staff on its delegations, has very little institutional memory, and while the UN Secretariat has somewhat more, and considerable research capacity into precedents, the "Permanent Five" delegations are all too dismissive of inconvenient Secretariat contributions to their deliberations, seeing the secretary-general as much more secretary than potentially helpful partner or coequal.

[6] Joined Cases C-402/05 P & C-415/05 P, Kadi v. Council, 2008 ECR 1-06351 (ECLI:EU:C:2008:461). The decisions of the Court of First Instance and the Court of Justice of the European Communities are available at http://curia.europa.eu.

[7] SC Res. 1267 (Oct. 15, 1999).

[8] [Editor's note: Earlier in his career, the reviewer was Canada's ambassador to the United Nations in 1992–94, following his work representing Canada at the UN Economic and Social Council in 1990–92.]

The Council tends, above all, towards "expediency" in the words of the past UN under-secretary-general for political affairs, Kieran Prendergast.[9] It reaches for whatever tactics prove convenient in the short-term, rarely looking far ahead or over its shoulder.

IGOs have been described as providing helpful opportunities for democratic deliberation, and, as Ian Johnstone has argued, states at the United Nations go to considerable lengths to justify their positions, often in legal terms, however disingenuously at times.[10] In the Security Council itself, the recorded explanations of the votes of delegations, prior to or following decisions, can be quite enlightening. However, decision making in the Council's sanctions committees has generally been opaque and mutually accommodative, rather than proceeding from an evidence-based and carefully argued approach. This contrast provides a useful illustration of Benvenisti's argument that decision making tends to migrate from forum to forum, depending on what is most convenient for the decision makers.

Sometimes, Benvenisti seems carried away by his own enthusiasm. To describe elected politicians as "unaccountable" (p. 246) is overly sweeping. In democracies, they are voted out with gusto as well as voted in with hope, a rather concrete form of accountability. A good number have been prosecuted. He contrasts their situation with that of judges, who are "more likely to withstand political and economic pressures and generate reliable information that has practical political benefits for diffuse constituencies" (p. 246–47). I quail somewhat at Benvenisti's broad brush, both on politicians and on judges (who need to justify their decisions, but have been known to resort to sophistry or worse and to make poor decisions, even on ultimate appeal, that are later consigned to the dustbin of history). And to regard reviewing bodies of IGO decision making as "trustees of humanity" (p. 285) may place an excessive burden on them.

[9] DAVID M. MALONE, THE INTERNATIONAL STRUGGLE OVER IRAQ: POLITICS IN THE UN SECURITY COUNCIL, 1980–2005, at 285 (2006) (quoting Kieran Prendergast).

[10] Ian Johnstone, *Legislation and Adjudication in the UN Security Council: Bringing Down the Deliberative Deficit*, 102 AJIL 275 (2008).

Yet Benvenisti invests a great deal of confidence in civil society. In general terms, I would mostly agree. But in pursuit of a just cause, civil society can adopt reprehensible tactics, and some of civil society, which can be quite uncivil, sometimes pursue reprehensible aims. In several countries, it is hard to distinguish at the margins between civil society and criminal enterprise.

On this issue as on others, complexity abounds. In his introduction, Benvenisti mentions several events that helped crystalize public opinion on the power of international organizations to affect citizens' lives around the world. One such incident was the planned partial World Bank funding of dams in the ambitious Narmada River valley irrigation and hydroelectric system in India that required the displacement of roughly seventy thousand local residents, who were very unhappy with the scheme. Mostly, we remember the World Bank withdrawing from this project in 1993 because it had some objective reasons but also, perhaps mainly, because it could not indefinitely withstand the criticism relentlessly lobbed at it by (tremendously committed) Indian and (perhaps more opportunistic) international critics. Satisfied that justice had been done, or at least that the World Bank had been suitably chastened, campaigners beyond India moved on.

The project aimed at irrigating a particularly parched and extensive stretch of central India that offered benefits to some as well as risks and displacement to others. India's public authorities at the state and federal levels had championed the dam system as a response to the unintended consequences of the country's very successful Green Revolution of the 1960s and 1970s, notably the accelerated exhaustion of the country's aquifers. In due course, the Supreme Court of India was seized of the matter. While tweaking the project somewhat, it allowed the largest and most controversial of the dams to be built, asserting that beneficiaries over a wide geographic area greatly outnumbered those to be displaced. For the Court and the Indian authorities, this decision was not a triumph. It was, in their eyes, the best of many imperfect options, or the least bad of a set of bad ones. Today, the Narmada Valley Development Project remains a rallying cause for India's diverse,

extensive, mostly admirable, and energetic civil society, but for the country at large, the Court's ruling proved authoritative. And it clearly provided and rested on due process.

But, despite that example, the sources and views discussed in this book are remarkably transatlantic. While the European Union model today operates under tremendous strain, it remains an attractive ideal, but its current stresses cannot be ignored. And while Latin American intellectual elites often cleave to European ideals, and Africans often pay tribute to them, Asia remains remarkably unmoved. And perceived bullying from abroad, often under domestic political pressure, to yield to European norms (for example, in the matter of death sentences carried out in recent years in Southeast Asia against European and Australian citizens) is resented and often ineffective. China is influenced by global trends (for example, on reining in its use of the death penalty), but it evinces little desire to adopt, more than superficially, European models of deliberation, review, and appeal, much less of governance. Asian citizens value their rights and want more of them, but they may want even more to grow prosperous faster, reflecting a different mix of overall preferences than would be the case in much of Europe or North America.[11] This situation is unlikely to change soon, as these differences of appreciation are deeply rooted in their respective societies. Confoundingly, the two fastest growing economies in the world over the past twenty-five years, China and India, are widely thought to host considerable corruption, each in their own way. Their populations hate corruption but love growth.

Benvenisti does not shy away from complexity—far from it. Throughout the book, he raises procedural and substantive quandaries, which those engaged in public policy constantly encounter. His pages offer a highly sophisticated account of a wide range of international activities that are very often discussed and settled in deliberately opaque circumstances.

His very thoughtful volume, written with great clarity and admirably accessible to all, raises several questions that he does not fully resolve. Benvenisti is very keen on more review and more law at every level in the global governance chain. But how much is too much? And how much can be afforded, in terms of expense and delay? On this topic, the reader is left to ponder, and opinions will vary. To a hammer, everything looks like a nail. To many lawyers, the preference, not surprisingly, is for more law. Overall, Benvenisti provides a rollicking account of fast-evolving global governance and evinces a generous, expansive view of the necessity of law therein. This volume, somewhat expanded and recast in more pedagogical and questioning form, could prove an excellent and much-needed classroom textbook on the law of global governance.

DAVID M. MALONE
United Nations[12]

The Assault on International Law. By Jens David Ohlin. Oxford, New York: Oxford University Press, 2015. Pp. xiii, 289. Index. $29.95.

Puzzling out the appropriate contours and weight of public international law for application in and by the United States is a never-ending challenge. During the last two decades, two interrelated revisionist initiatives have dominated the academic response to this undertaking. One of these initiatives, as a matter of constitutional or foreign relations law, has been to question expansive interpretations, especially by federal courts, of human rights and customary international law (CIL) (arguing, for example, that the latter cannot be federal common law). Another initiative, more squarely in the domain of public international law, has been to question whether CIL actually operates as an exogenous constraint on state behavior. Standing in the crosshairs of this second initiative

[11] The emergence recently of the Asian Society of International Law, a still small but admirable group of lawyers, some holding values which are not always those of the West, is a happy development. More dialogue with this group and more effort to understand its members would be desirable, even when we disagree.

[12] [Editor's note: The reviewer is currently rector of the United Nations University and under-secretary-general of the United Nations. He is a Senior Fellow of the Institute for International Law and Justice at New York University School of Law.]

https://doi.org/10.5305/amerjintelaw.110.1.0135 Published online by Cambridge University Press