

*Michał Kowalski**

**Lukasz Gruszczynski, Marcin Menkes, Veronika
Bílková and Paolo Davide Farah (eds.),
*The Crisis of Multilateral Legal Order.
Causes, Dynamics and Implications,*
Routledge, London and New York: 2023, pp. 327**

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Yet another publication on multilateralism in crisis – this could well be the first, spontaneous, reaction a potential reader may have to the volume under review. Indeed, one may risk saying that the academic literature on the topic testifies to it being nowadays one of trendiest approaches to the modern international legal order. But this fact should not in any way depreciate the volume edited by Lukasz Gruszczynski, Marcin Menkes, Veronika Bílková and Paolo Davide Farah and published in the *Transnational Law and Governance Series* by Routledge. The editors were fully aware of the richness of the pending academic debate (see, e.g., references in the Introduction, pp. 5-10) and clearly intended to contribute to it. The reasons for this were twofold. Firstly, both the editors and the contributors seemed unsatisfied with the state of the debate on the modern multilateralism and chose to go further, as the very subtitle of the book suggests: the research was aimed at unfolding the causes, dynamics, and implications of the crisis. Secondly, the book was written by a group of researchers who initially met during a conference organized in November 2019 in Warsaw, and then transformed into a common project that finally resulted in the collection of the essays under review. And after having read all the contributions, one can have no doubt that the group was very much united in its general approach to the international legal order. This is conspicuous in the very last words of the volume's conclusion, where the editors – and this is definitely valid for all the other contributors as well – pointed to international law

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as “the best instrument we know for working for the common good” (p. 310). And although the group is otherwise diversified on many levels, this common ground is obvious and reflected in the fact that the work includes both experienced and young researchers of different European origins (with a significant representation of Central and Eastern Europe), specializing in a variety of topics. Thus, *The Crisis of Multilateral Legal Order* offers refreshing, thought-provoking, and original insights written by authors with a sincere commitment to – if not a passion for – international law. And this is exactly where the strength of the book lies.

The book is well structured. It begins with the introduction by the editors, entitled *Mapping the crisis of multilateralism*, followed by fourteen concise contributions, divided into two parts. The first part, as its subtitle suggests, consists of four more general texts aimed at conceptualizing the crisis. All four texts – written by Oleksandr Vodiannikov (*The Crisis of Trust in Contemporary Multilateralism: International Order in Times of Perplexity*); Sean Butler (*Believing Is Seeing: Normative Consensus and the Crisis of Institutional Multilateralism*); Maria Varaki (*Revisiting the ‘Crisis’ of International Law*); and Mary Footer (*The Multilateral International Order – Reports of Its Death Are Greatly Exaggerated*) – reveal individualistic perspectives on exploring the nature of the crisis of multilateralism. As such, they offer different general approaches to the problem which, rather regrettably, resonate with each other only in a limited way.

Part two of the volume includes ten pieces on various specific issues. Their diversity may seem rather discouraging at first glance, but a reader is indeed offered contextualised and in-depth analyses of the questions: “How is the crisis manifested in the specific areas of public international law?; and What are its dynamics?” (p. 10). Hence the title of part two: *Dynamics and implications of the crisis*. These texts are authored by Christopher Lenz (*State Withdrawals of Jurisdiction from an International Adjudicative Body*); Malgosia Fitzmaurice (*Multilateralism, Community Interests, and Environmental Law*); Vassilis Pergantis (*The Advent and Fall of Trust as a Cornerstone of Judicial Cooperation in Multilateral Regimes in Europe: A Cautionary Tale*); Agnieszka Nimark (*The Nuclear Non-Proliferation Regime at 50: A Midlife Crisis and Its Consequences*); Patrycja Grzebyk and Karolina Wierczyńska (*The Crisis of Multilateralism Through the Prism of the Experience of the International Criminal Court*); Ernst-Ulrich Petersmann (*Global Governance Crises and Rule of Law: Lessons from Europe’s Multilevel Constitutionalism*); Jessica C. Lawrence (*We have Never Been ‘Multilateral’: Consensus Discourse in International Trade Law*); Ewa Żelazna (*The EU’s Reform of the Investor-State Dispute Resolution System: A Bilateral Path towards a Multilateral Solution*); Margherita Melillo (*Challenges to*

Multilateralism at the World Health Organization); and Szymon Zaręba (*The Council of Europe and Russia: Emerging from a Crisis or Heading towards a New One?*).

The book ends with a concise conclusion by the editors, where they eloquently comment on the individual contributions and deduce from them seven normative trends, which are referred to below.

The advantage of the editors' approach is the broad understanding of multilateralism as a dominant framework in international relations in the post-Second World War era. They address this phenomenon not only from a traditional, quantitative, perspective (coordination of States' policies in groups of three or more states), but also in a much broader and multifaceted qualitative dimension. The latter allows for considering the characteristics of States' cooperation based on a growing area of common values and interests, as well as on legal norms and institutions aimed to protect them. What's more, this approach takes into account the increasing role of non-state actors, in their vast varieties. Indeed the positive impact of non-state actors on multilateralism is one of the seven normative trends identified in the volume. Still, the editors left it to the contributors to make their own decisions concerning how they precisely understand multilateralism in their individual approaches. What is shared by the editors – as explicitly stated in the introduction (p. 9) – as well as by the contributors, is the general assessment that multilateralism is nowadays in crisis, understood as the erosion of common values and the growing prevalence of individual States' interests. While accepting this assertion as a justifiable starting point for the analysis to be conducted, one may nevertheless ask whether an approach that is not necessarily focused on the "crisis" as a distinct phenomenon, but rather on the constant (indeed turbulent!) evolution of a system of international relations based on international law (from the very beginning being characterised and governed by the competing interests of States and other actors) would not be equally useful. Such an approach is to some extent discussed in Maria Varaki's text. Indeed, as she pronounces in the very beginning: "International law seems to operate in an everlasting aura of crisis, presented either as a force of progress and just rectification, or alternatively as a driver of further inequality and injustice" (p. 62). It may be postulated that the concept of a permanent crisis inevitably loses its denomination as crisis.

Notwithstanding the above, the core of the problem addressed is the same: the changes in the international legal order under pressure. The editors formulated two sets of questions (p. 10). They aim, firstly, at identifying the nature of the crisis and the reasons behind it (which may be domestic political changes, international geopolitical reconfigurations, or some dysfunctionalities); and secondly at examining the dynamics and implications of the crisis (manifested in specific areas of international law and with consequences for both general international law on

the one hand, and its specialised legal regimes on the other). As can be adjudged from the very titles of the contributions listed above, the reader receives a variety of specific problems, answers, and assessments.

Yet one common characteristic of all the texts is that they are more about contributing to the debate than about offering solutions. Hence it should come as no surprise that the book finishes with rather open answers offered by the editors, such as “that the crisis is both present and absent, depending on the perspective of the inquirer and the social world to which one refers” and – as was already mentioned above – “that international law is the best instrument to address the contemporary challenges” (p. 310).

As a reviewer I feel exempted from individually presenting all fourteen contributions, especially as the editors eloquently do so in the introduction and sum them up in the book’s conclusion. Instead, I intend to offer here two more general comments inspired by the texts and the time context in which they were written.

It is striking that the project which has been eventually finalised in the volume under review started just before the COVID-19 pandemic; and that the book was published after the commencement of a full-scale aggression of the Russian Federation against Ukraine – both events being of crucial significance when addressing the crisis of multilateralism. Indeed, this scenario of events created an unexpected challenge for the editors, while at the same time offering a useful frame of reference for the views presented. The contributions directly refer only to a limited extent to the pandemic (except for an illuminating text by Margherita Melillo on the World Health Organization), and obviously the authors had no opportunity to refer to the Russian aggression that was unfolding in Ukraine as they were working on the volume. But the editors are fully correct when they state in the introduction that the pandemic highlighted some important aspects of the modern multilateralism. They mention four of them (pp. 4-5). Firstly, the pandemic was further proof that unilateralism has its obvious limits and is insufficient to address global public goods in cases where we are doomed to multilateralism. Secondly, according to the editors the international organisations remained heavily constrained in their activities by the competing Member States and, simultaneously, became easy targets for the Member States accusing them of ineffectiveness in the actions taken, thus highlighting the weaknesses of the existing arrangements. Thirdly, in such an extraordinary situation like the pandemic, States may – contrary to what was stated above on the indispensability of multilateralism – tend to prioritise their individual interests and thus diminish the trust, cooperation, and transparency which form the basis for multilateralism. Fourthly, the challenges inherent in such a scale as the pandemic may turn out to be a catalyst for changes aimed at reconfiguring the existing (im)balances of power in international relations. It seems that all these

mentioned aspects remain fully valid also in the context of the Russian aggression against Ukraine and the international community's responses vis-à-vis this blatant attack on the very basis of the modern international legal order. These responses prove that multilateral arrangements to address such extraordinary challenges – although imperfect – already do exist and may prove to be effective indeed, but rather in the more distant perspective. Yet whether multilateralism will be ultimately strengthened or weakened depends on the determination of both the international community as a whole and individual States and other non-state actors. The most sophisticated legal arrangements cannot replace this need for collaboration. Such determinations – both collective and individual – must be based on mutual trust. As the editors put it in the context of one of the identified normative trends: “Restoring trust is therefore a prerequisite for any successful multilateral reforms” (p. 307).

The other comment is of a more polemic character. I cannot resist an impression that even accepting the volume's broad approach to crisis, some issues discussed in the context of a crisis of multilateralism have not proved relevant. For example, are withdrawals of jurisdiction from international adjudicative bodies symptoms of the crisis, as Christopher Lentz and the editors suggest? I doubt it. Indeed, the examples are rare (especially when one considers the proliferation of international courts and tribunals) and – as Lentz himself points out – they have been rather followed by more States conferring jurisdiction. Is this really – as the editors put it – “the most serious expression of the crisis of multilateralism” (p. 12); or is it maybe an inevitable part of regular legal relations? Indeed, this process could be alarming if it were significantly increasing, but this is not the case. What's more, the problem could also be addressed from a completely different perspective. Is it possible that the adjudicative bodies themselves contribute to the skepticism of States and, in consequence, to potential withdrawals of jurisdiction? The most telling example here is the case of the European Court of Human Rights (ECtHR), which is constantly enlarging its jurisdiction and implicitly distancing itself from the subsidiarity principle and the margin of appreciation doctrine – despite the introduction of references to both of them in the Preamble of the European Convention on Human Rights (ECHR) by Protocol No. 15. And it is this process that is producing tensions among the ECtHR and the State-parties to the ECHR, which can ultimately lead to renunciations of the ECHR, although I do hope that this scenario will never materialize, as the law of the ECHR, based on the case-law of the ECtHR, should be perceived as one of the greatest achievements of the European legal culture after the Second World War. This is, of course, an issue that should be discussed in a manner exceeding the format of a book review, but I mention this example here to suggest that the causes of the crisis of multilateralism may also be rooted in multilateral institutions themselves. And not only in the sense that they

appear ineffective, or do not show a sufficient level of resilience (cf. normative trends 2 and 5 mentioned by the editors in the conclusion; pp. 306-307); but that they may turn out to be “too effective” and thus, in this way, disturb the necessary equilibrium, which also includes respect for States’ interests and approaches. In this sense – no matter whether one likes it or not – I find the application of such research approaches to be much closer to the reality of international relations and the process of the development of international law than calls for “rethinking and reconceptualization of the concept of sovereignty, which in turn will entail structural reform of the entire [international] legal system” (p. 307 with references to the texts by Maria Varaki, Ernst-Ulrich Petersmann and Jessica Lawrence). The development of multilateralism under international law is a process, and pushing it unduly and speeding it up may actually be a real hindrance. This important, to my mind, perspective is present in the volume only to a very limited scope (see, however, some criticism on the International Criminal Court and its internal dysfunction as presented by Patrycja Grzebyk and Karolina Wierczyńska). The approach of awaiting more effective institutionalization – accepted by most of the contributors – may be perceived as wishful thinking and as not necessarily productive for the development of an international legal order based on common interests.

Indeed, the book under review is another publication on multilateralism in crisis, albeit one that inspires and stimulates further debates, polemics, and research. Taking into account the variety of specific problems addressed and approached differently by the various contributors, one may say that the volume edited by Gruszczynski, Menkes, Bílková and Farah resembles a fancy box of chocolates in which everybody will be able to choose the one that fully meets their expectations, but also will have a chance to try another one which surprises and enlarges their taste experience.

*Bartłomiej Krzan**

Oktawian Kuc, *The International Court of Justice and Municipal Courts: An Inter-Judicial Dialogue*, Routledge, London, New York: 2022, pp. 304

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There have been many attempts to strengthen the role of national courts in the application of international law. The Routledge series *Research in International Law* has been recently enriched by a monograph *The International Court of Justice and Municipal Courts: An Inter-Judicial Dialogue* by Oktawian Kuc. The book is a revised doctoral thesis defended at the University of Warsaw.

The goal of the book has not been clearly defined. It is only after almost 4 pages of the introduction that the reader is informed (in a rather unsurprising fashion) that “the main purpose of this book is to examine whether inter-judicial dialogue between the International Court of Justice [ICJ] and municipal courts is in fact taking place”. According to the author, the World Court and its domestic counterparts are already engaged in intensifying specific discourses. In the monograph under review he aims at “scrutinising different aspects of this phenomenon and providing some basic data as a further point of reference for future studies”. Additionally, the author announces his intention “to address the problem of relationships between the Court and municipal judicial organs in a comprehensive and broad manner by identifying and analysing all aspects of the inter-judicial dialogue between these institutions”. Whether the latter task is attainable in the book under review is doubtful, especially given the lack of a theoretical framework on the relationship between the domestic adjudicators/courts and the principal judicial organ of the United Nations. Much more modestly, the author speaks of examining “the main aspects of the inter-judicial dialogue between domestic judicial organs and the ICJ”, and such restraint seems very warranted.

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The first chapter examines the problem from the perspective of the ICJ. It does not refrain from quoting a municipal court decision by name, and the author should be commended for examining all the rulings by the ICJ delivered between the years 1946 and 2020. Out of these almost one fifth referred at least once to a municipal judicial ruling.

In the first chapter the author also analyses how municipal courts deal with different sources of international law, following the classic sequence as enshrined in Art. 38 of the ICJ Statute. This is followed by a brief comment on how the World Court reacts to international wrongful acts arising out of municipal courts' decisions. Another important aspect tackled in the reviewed book is the influence of municipal courts' decisions on the ICJ's jurisdiction and the admissibility of cases.

It is of utmost importance to determine the extent to which the ICJ draws (or not) analogies from national procedural rules. To speak in this regard of the influence of municipal courts seems artificial or exaggerated, since the core of international procedural law, necessarily informal, is to leave it for the Court itself to decide. Therefore, the ICJ (as well as most other international judicial institutions) may simply find a decent solution in domestic law, and not in the rulings of the municipal courts themselves.

Firstly, both domestic law and domestic judicial rulings would be considered as facts by the ICJ. The growing importance of this can be seen with regard to provisional measures. Secondly, these rulings may as well manifest the exercise of sovereignty over a disputed territory, i.e. may be an element in proving the title to territory. Some important examples are provided by comparing the findings of fact first made by the domestic courts, and then determined by the ICJ.

Subsequently, the author explains, by means of several examples, the question of the (status of) municipal law before the World Court, which can perhaps serve as a kind of introduction of one of the general and fundamental questions, namely: the ICJ's position towards municipal courts and the latter's role in the ICJ jurisprudence. When examining whether the ICJ is competent to assess municipal judicial decisions in light of international law, the author considers the role of the Hague Court as an ultimate court of appeal for criminal issues, and correctly discards such a role. Instead he rightly asserts that the ICJ performs a merely supervisory function, i.e. to assess the accordance of national judicial decisions with international law and to pronounce on their legal effects on the international plane. The implementing role of municipal courts is also delineated and examined here, despite the matter being dealt with separately in the entire Chapter 2. Between them come some brief (3 pages) suggestions (directives) by the ICJ to municipal courts on how the latter should deal with questions of international law.

All those interactions, including the citation of the municipal rulings by the ICJ, confirm Lauterpacht's approach that international law is administered by both international and municipal courts. Unfortunately, the reader is merely presented with some case law illustrating this overview and is offered only modest comments here by the author.

The two chapters that follow concentrate on the post-adjudicative phase. In Chapter 2, the author scrutinizes the enforcement of ICJ decisions in municipal courts. At times, reference is also made to the respective position by the Iran-United States Claims Tribunal. When analyzing the legal framework of enforcement, the starting point is the binding force of the ICJ's decision. Naturally, reference is made here to Art. 94 of the United Nations Charter and the corresponding role of the Security Council. Yet for unknown reasons the author fails to refer to the Security Council's enforcement function here, and instead refers to it further under the heading "other methods of enforcement," where he rightly refers to the ICAO framework or to the corresponding mechanism enshrined in the Pact of Bogota.

The analysis of the respective practice of the municipal courts starts with a classification, which the author labels as "useful". In this regard, Kuc distinguishes between the domestic enforcement *sensu stricto* (defined at p. 99, where a State entitled under an ICJ decision initiates proceedings before a national court, so that the national system of justice and the coercive apparatus of the State are used to give effect to the ICJ's given decision); and *sensu largo* (where the respective action before a national court is initiated by a private party). Some further sub-categories have also been referred to, but the very distinctions and their respective manifestations are not given in an entirely consistent manner (and at times they intersect). In addition, Kuc also distinguishes "quasi enforcement", whereby judicial protection is sought before a domestic court by a natural or legal person with regard to an analogous or similar breach of international law to that declared by the ICJ.

A separate treatment is offered with respect to the implementation of advisory opinions. The main problem with Chapter 2 is its hidden (indirect) analytical part. The reader could have been presented with more in-depth comments, and instead needs to rely on descriptive parts before arriving at the general overview to find the very interesting, albeit a bit suspended, conclusions.

The third chapter is devoted to the reception of the ICJ jurisprudence by municipal courts. This particular form of inter-judicial dialogue may be translated into the involvement of domestic courts in the development of international law. The author describes, analyses, and then offers conclusions on this method of dialogue. The decisions of the ICJ may be considered as either evidence of international law, or as an authoritative treaty interpretation. The municipal courts may as well shed additional light on the rationale behind the relevant international norms. Thus,

the ICJ jurisprudence may provide assistance to municipal courts in defining the status of, and clarifying the interplay between, the different sources of international law. In this regard, the extent of conformity is crucial, but as rightly observed by the author of the reviewed book, the collision of arguments and attitudes may differ, thus contributing to the development of more comprehensive and widely-accepted answers to legal questions. The Chapter ends with some conclusions on the status of the decisions by the ICJ in the jurisprudence of municipal courts. These are certainly relevant for the entire book under review. Kuc is definitely right when he qualifies the rather infrequent involvement of national adjudicators as “a symptom of the willingness on the part of national courts to become more involved in the inter-judicial dialogue vis-à-vis the Court” (at p. 221).

The “Final Conclusions” deserve a separate comment, since the 23-pages-long text goes well beyond the problems analysed in the main body of the book. The highly interesting remarks introduce several entirely new aspects, no trace of which can be found in the preceding pages. At times, some of the conclusions seem to artificially include municipal courts. Therefore, they cannot be considered a traditional summary of the arguments espoused on the pages of the reviewed monograph, although they offer, *inter alia* a description of the general role to be played by the ICJ, and its role vis-à-vis other international courts and tribunals. This part has been written with great vigor and offers a high quality legal argumentation.

The author should be also congratulated for relying in his analysis on the rich literature and – more importantly – broad base of judicial rulings by different courts. Quite surprisingly however, Kuc does not refer to the seminal examination of the subject, i.e. *Regulating Jurisdictional Relations between National and International Courts* by Yuval Shany. The cursory (at best) reliance on the deliberations of the topic “The Activities of National Judges and the International Relations of their State” within the Institut de Droit International also comes as a surprise.

In sum, despite the (mainly structural) criticisms mentioned above, the book by Oktawian Kuc is certainly worth recommending, not only because of the highly interesting problem it tackles, but first and foremost for being a thought-provoking read which stimulates further consideration of the topic.