

# THE CASE FOR AN INTERNATIONAL COURT OF CIVIL JUSTICE

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## INTRODUCTION

We live in a world in which the victims of cross-border mass torts de facto (not de jure) have no court to turn to in order to pursue legal action against American multinational corporations when they are responsible for disasters.<sup>1</sup> The only way to provide a fair and legitimate process for both victims and corporations is to create an International Court of Civil Justice (ICCJ). This Essay seeks to start a conversation about this novel institutional solution. It lays out both a justice case, from the plaintiffs' viewpoint, and an efficiency case, from a corporate defendant's viewpoint, for why a world with an ICCJ would be a better place. The Essay also provides an initial blueprint for such an ICCJ. In so doing, it explains why an ICCJ is politically viable and may, specifically, appeal to rather than repel the least likely constituency: corporate America. The Essay concludes with a call for action and a research agenda.

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On April 20, 2010, BP's Deepwater Horizon oil rig caught fire and poured millions of barrels of oil into the Gulf of Mexico.<sup>2</sup> Within weeks BP, a foreign corporation, announced a \$20 billion trust that backed an uncapped commitment and an administrative program to fully compensate all victims as well as

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1. Formalistically, such cases can be heard both in U.S. courts and in foreign courts (usually at the place where the tort occurred) as long as applicable jurisdictional requirements are met. But as I explain below, de facto American courts are largely unavailable, and judgments from foreign courts can be difficult and even impossible to enforce.

2. See, e.g., Hari M. Osofsky et al., *Environmental Justice and the BP Deepwater Horizon Oil Spill*, 20 N.Y.U. ENVTL. L.J. 99, 110-11 (2012); *BP Oil Spill*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., <http://www.gulfspillrestoration.noaa.gov/oil-spill> (last visited Nov. 22, 2014).

the federal, state, and local governments and tribal trustees.<sup>3</sup> By its second month of operation the program had paid an average of more than \$27 million a day, for a total of \$840 million, in emergency advance payments. By the end of its one-and-a-half-year tenure, it had processed more than a million claims and paid more than \$6.2 billion to individuals and businesses.<sup>4</sup>

Conversely, an attempt by a class of Ecuadorians to obtain compensation from Chevron for the devastation its predecessor, Texaco, wreaked on the Ecuadorian rainforest has been ongoing for over twenty years, and compensation is nowhere in sight even though an Ecuadorian court issued a judgment in excess of \$8.6 billion (plus punitive damages) against Chevron in 2011.<sup>5</sup> Chevron has contested the enforcement of the Ecuadorian judgment in a New York court, contending that the judgment was obtained through a process that violates American standards of due process<sup>6</sup> even though, a decade earlier, it had represented to the very same court that Ecuador's judiciary was an adequate forum and specifically denied the suggestion that the Ecuadorian judiciary was corrupt.<sup>7</sup> Maria Aguinda, the original plaintiff in the class action against Texaco, was in her late teens when Texaco began its operations in the Oriente. She is now sixty-four years old.<sup>8</sup> Compensation in her lifetime is unlikely.

There are a number of causes for the disparity, including some we cannot fix in the real, nonideal world: the United States is powerful, Ecuador is not; the Ecuadorian government was to some extent complicit in the practices that led to the devastation, the U.S. government was not. But there is no theory of justice that can justify the discrepancy between the instant compensation of American victims of cross-border mass torts and the twenty-year losing battle to compensate the Ecuadorian victims of similar wrongdoings. And there is a key cause we can, and should, do something about. I call it *the problem of the*

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3. BDO CONSULTING, INDEPENDENT EVALUATION OF THE GULF COAST CLAIMS FACILITY: EXECUTIVE SUMMARY 3 (2012), available at [http://media.nola.com/2010\\_gulf\\_oil\\_spill/other/BDO%20Executive%20Summary.pdf](http://media.nola.com/2010_gulf_oil_spill/other/BDO%20Executive%20Summary.pdf).

4. *Id.* at 1.

5. See Corte Provincial de Justicia de Sucumbios [Provincial Court of Justice of Sucumbios], 14 febrero 2011, "Aguinda c. Chevron Corp.," Nicolas Zambrano Lozada, Juicio No. 2003-0002 (p. 179-85) (Ecuador), available at <http://chevrontoxico.com/assets/docs/2011-02-14-Aguinda-v-ChevronTexaco-judgement-Spanish.pdf>, *aff'd in part, rev'd in part*, Corte Nacional de Justicia [National Court of Justice], 12 noviembre 2013, Wilson Andino Reinoso, Juicio No. 174-2012, available at <http://chevrontoxico.com/assets/docs/2013-11-12-final-sentence-from-cnj-de-ecuador-spanish.pdf> (reversing the punitive damages but otherwise affirming the judgment). For an English translation of the Provincial Court's decision, see Exhibit 39, Chevron Corp. v. Donziger, No. 1:11-cv-00691-LAK (S.D.N.Y. Feb. 28, 2011), available at <http://chevrontoxico.com/assets/docs/2011-02-14-Aguinda-v-ChevronTexaco-judgement-English.pdf>.

6. Chevron Corp. v. Donziger, 296 F.R.D. 168, 178 (S.D.N.Y. 2013).

7. Aguinda v. Texaco, Inc., 303 F.3d 470, 478, 480 (2d Cir. 2002) (dismissing original class action on grounds of forum non conveniens).

8. See Valeria Pacheco, *Indigenous Ecuadorian Woman Humbles US Oil Giant*, CHEVRONTOXICO (Feb. 22, 2011), <http://chevrontoxico.com/news-and-multimedia/2011/0222-indigenous-ecuadorian-woman-humbles-us-oil-giant>.

*missing forum*, and it relates to the fact that in today's world, and especially after the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*,<sup>9</sup> there is no forum that can issue a de facto enforceable judgment in favor of the residents of the Ecuadorian Oriente. This Essay explains why that is and offers a solution: an ICCJ with jurisdiction over cross-border torts.

Part I explains the problem of the missing forum. Part II provides a general blueprint for an ICCJ. In so doing, Part II also explains why an ICCJ is politically viable.

## I. THE PROBLEM OF THE MISSING FORUM

### A. American Courts

In *Kiobel* the U.S. Supreme Court held that the presumption against extraterritoriality applies to claims under the Alien Tort Statute (ATS),<sup>10</sup> with the practical implication being that it dealt a final blow to cross-border mass human rights and environmental claims in U.S. courts.<sup>11</sup> The key reasoning given by a unanimous court was that there is no reason to make the United States a "uniquely hospitable forum for the enforcement of international norms."<sup>12</sup>

*Kiobel* is best understood as part of the fabric of long-standing American transnational civil procedure doctrine.<sup>13</sup> And while the demise of the ATS is a much-discussed topic, there is the lesser-known but growing problem of the doctrinal collision between the forum non conveniens doctrine<sup>14</sup> and foreign-judgment enforcement law.<sup>15</sup> As a threshold matter, it is important to note that

9. 133 S. Ct. 1659 (2013).

10. 28 U.S.C. § 1350 (2013).

11. See, e.g., Roger P. Alford, *The Future of Human Rights Litigation After Kiobel*, 89 NOTRE DAME L. REV. 1749, 1754 (2014); Paul Hoffman & Beth Stephens, *International Human Rights Cases Under State Law and in State Courts*, 3 U.C. IRVINE L. REV. 9, 10 (2013).

12. *Kiobel*, 133 S. Ct. at 1668.

13. Domestically, *Kiobel* belongs to an expanding pro-corporate-defendant jurisprudence that has characterized the Supreme Court in recent history. Other doctrinal developments in this vein include the tightening of class action certification requirements in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011); the loosening of the requirements for early dismissal at the summary judgment phase in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); and the permitting of arbitration and class action waiver clauses in retail, consumer, and employment contracts in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011).

14. The doctrine of forum non conveniens allows for discretionary dismissals based on convenience and comity as distinguished from nondiscretionary dismissals based on a lack of jurisdiction (forum non competens). For a fascinating and surprising account of the relatively recent development of the doctrine, see GARY B. BORN & PETER B. RUTLEDGE, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS* 366-72 (5th ed. 2011).

15. See generally Christopher A. Whytock & Cassandra Burke Robertson, *Forum Non Conveniens and the Enforcement of Foreign Judgments*, 111 COLUM. L. REV. 1444 (2011) (discussing the conflict between the forum non conveniens doctrine and the law governing

“[e]mpirical data available demonstrate that less than four percent of cases dismissed under the doctrine of forum non conveniens ever reach trial in a foreign court.”<sup>16</sup> In addition, American courts use two different standards to decide the adequacy of foreign courts. Early in the process, when corporate defendants bring forum non conveniens motions to dismiss, courts apply a lax standard. But at the end of the process, when litigants return to the United States to enforce a foreign judgment from the very same jurisdiction found “adequate” in the early dismissal, they are faced with a much stricter standard.<sup>17</sup> As little as general discussions in a State Department report may suffice to demonstrate that the judiciary of another country falls short of our standard of international due process.<sup>18</sup> This standard is used to deny enforcement of the judgment in the United States, where American corporations’ assets are usually found.

It is important to acknowledge that there are many reasonable rationales for why American courts are disinclined to hear cases brought by foreign plaintiffs. These include the notions that U.S. courts are funded by American taxpayers and that jury pools, too, are a limited resource to be preserved for American plaintiffs.<sup>19</sup> American judges recognize that another jurisdiction may have stronger ties to the facts of the case and a stronger public policy reason to adjudicate it. In “foreign cubed” cases, in particular—where the plaintiff, defendant, and locus of injury are all foreign—it is indeed difficult to see why the United States is the natural forum to try the case.<sup>20</sup> Arguments against enforcement include the desire to protect American defendants from judicial processes tainted by corruption or otherwise not conforming with our basic notions of minimal due process.<sup>21</sup> From a non-U.S.-centric perspective as well one can argue that

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enforcement of foreign judgments). (In)famous examples of the collision and its consequences include the Dole/Dow litigation that was subject to a recognition and enforcement action in the interrelated cases of *Franco v. Dow Chemical Co.*, No. CV 03-5094 NM (PJWX), 2003 WL 24288299 (C.D. Cal. Oct. 20, 2003), and *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307 (S.D. Fla. 2009), *aff’d sub nom. Osorio v. Dow Chem. Co.*, 635 F.3d 1277 (11th Cir. 2011), as well as *In re Union Carbide Corp. Gas Plant Disaster*, 809 F.2d 195 (2d Cir. 1987).

16. *Dow Chem. Co. v. Alfaro*, 786 S.W.2d 674, 683 (Tex. 1990) (Doggett, J., concurring), *superseded by statute on other grounds*, Act of Mar. 4, 1993, ch. 4, 1993 Tex. Gen. Laws 10.

17. See Whytock & Robertson, *supra* note 15, at 1450.

18. See, e.g., Montré D. Carodine, *Political Judging: When Due Process Goes International*, 48 WM. & MARY L. REV. 1159, 1171-72 (2007); see also *Soc’y of Lloyd’s v. Ashenden*, 233 F.3d 473, 476-77 (7th Cir. 2000) (describing the international due process standard and explaining that a court may consult “any relevant material or source” in determining whether that standard is met).

19. See *Alfaro*, 786 S.W.2d at 679.

20. See Stuart M. Grant & Diane Zilka, *The Role of Foreign Investors in Federal Securities Class Actions*, in SECURITIES LITIGATION & ENFORCEMENT INSTITUTE 2004, at 91, 96 (PLI Corp. Law & Practice, Course Handbook Ser. No. B-1442, 2004) (coining the term “foreign cubed”).

21. See *Ashenden*, 233 F.3d at 476.

there is no justification for a global governance regime in which the courts of a single country, the United States, serve as de facto world courts.

### B. *European Courts*

Foreign and existing international forums do not save the day. National and regional (European Union) courts generally meet American standards of due process. Such courts, however, are not available forums to hear the kinds of cases under consideration herein if for no other reason than that they often will not have jurisdiction over the (American) multinational corporation. They may also not be where assets against which enforcement can be sought are found. In addition, and in analogy to the normative argument above regarding who should police the world, it is unclear whether the courts of the former colonizers are appropriate “world courts.”

### C. *Courts in Other Regions*

As already hinted, the courts of many low-income countries are not viable forums for cross-border mass tort cases. Such courts are often beset by corruption and lack capacity and resources to prosecute even relatively simple civil cases.<sup>22</sup> Further, “[a]t present, the tort laws of many third world countries are not yet developed.”<sup>23</sup> Therefore, “[w]hen a court dismisses a case against a United States multinational corporation, it often removes the most effective restraint on corporate misconduct.”<sup>24</sup> The project of reforming domestic judiciaries overseas has eluded both domestic and international reformers for some half a century.<sup>25</sup> (Domestic mass tort litigation is a notoriously complex task even for U.S. courts, generally considered the vanguard of such litigation.) Language and other technical barriers only fan the fire of inefficient transnational litigation.

### D. *International Arbitration*

The system of international arbitration, which includes international investment arbitration—the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) and the Bilateral Investment Treaties (BIT) regime that supports it—and international commercial arbitration, does not and cannot provide a solution to the problem of the missing forum. The ICSID-BIT regime was set up to protect only foreign investors (usually multinational cor-

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22. See GARY BORN, *INTERNATIONAL COMMERCIAL ARBITRATION: COMMENTARY AND MATERIALS* 7 (2d ed. 2001).

23. *Alfaro*, 786 S.W.2d at 689 (Doggett, J., concurring).

24. *Id.*

25. See Jens Dammann & Henry Hansmann, *Globalizing Commercial Litigation*, 94 *CORNELL L. REV.* 1, 7-10 (2008).

porations) from the governments of host states.<sup>26</sup> It provides no rights of action against such foreign investors.

International commercial arbitration is similarly irrelevant, as a matter of law and practicality, to the kinds of disputes under consideration. International commercial arbitration is a private process between private parties regarding private law claims (not torts) and requires an agreement, usually entered into *ex ante*, to arbitrate from which to derive its jurisdiction.

The core reason the problem of the missing forum is deeply troubling is, of course, that it creates an access-to-justice deficit. In today's world, as the Chevron-Ecuador, Dole/Dow, and other cases illustrate, many disputes, including those that stem from catastrophic events and GDP-influencing economic activity, cannot see their day in court. In addition to injustice to individual tort victims, the lack of deterrence leads to a tremendous wealth transfer from the developing to the developed world; the world's most disempowered constituencies internalize the costs of the economic activities of the world's wealthiest corporations. But can we solve these problems? Specifically, is an ICCJ a politically viable solution?

## II. WHAT AN ICCJ MIGHT LOOK LIKE AND WHY CORPORATIONS SHOULD JOIN FORCES WITH SUPPORTERS OF HUMAN RIGHTS AND THE ENVIRONMENT IN SUPPORTING IT

An obvious reaction to the idea of an ICCJ is that this is merely an idealistic dream.<sup>27</sup> Corporations and the politicians who represent them, a Realist argument is likely to claim, will never support such an institution. Therefore, the United States will not join an ICCJ. This Part will set out an efficiency argument in favor of an ICCJ from a corporate perspective.

Transnational litigation is expensive. Its primary costs include, for example, the high cost of litigating *forum non conveniens* motions and nonenforcement actions and the costs of parallel proceedings (litigating the same case in

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26. RUDOLF DOLZER & CHRISTOPH SCHREUER, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW* 13-14 (2d ed. 2012).

27. This is often the reaction to a proposal for a new international court. Consider, for example, the 1905 Nobel Lecture given by Sir William Randal Cremer, the lead architect of the Permanent Court of Arbitration:

Thirty-four years ago, when . . . [we] formulated a plan for the establishment of a "High Court of Nations," we were laughed to scorn as mere theorists and utopians, the scoffers emphatically declaring that no two countries in the world would ever agree to take part in the establishment of such a court.

Today we proudly point to the fact that the Hague Tribunal *has* been established; and notwithstanding the unfortunate blow it received in the early stages of its existence by the Boer War, and the attempt on the part of some nations to boycott it, there is now a general consensus of opinion that it has come to stay . . . .

Randal Cremer, Nobel Lecture: The Progress and Advantages of International Arbitration (Jan. 15, 1905) (footnotes omitted), *available at* [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1903/cremer-lecture.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1903/cremer-lecture.html).

multiple forums). This cost is compounded by the absence of full preclusive effects (collateral estoppel and *res judicata*) of foreign courts' decisions.<sup>28</sup>

In addition to the primary costs, one must factor in the hidden costs of litigation—the costs of the restrictions on a corporation's ability to do business that are imposed because a large legal claim is on its books—that may exceed the primary costs by orders of magnitude. Such claims can, for example, present obstacles to mergers, acquisitions, and obtaining debt or equity. They have also been known to depress stock price.<sup>29</sup> The general hidden costs of litigation are compounded in the cross-border context by the barriers to or extra costs of international expansion created by the various tentacles of the problem of the missing forum. The refusal to enforce foreign judgments issued in cases that have been dismissed on *forum non conveniens* grounds and the actual and alleged torts committed that go unremedied create a host of backlash effects. These include the increasing adoption by foreign jurisdictions of American-style pro-plaintiff procedural features,<sup>30</sup> at times tailored to apply only to cases brought against American multinational corporations; the use of domestic criminal procedures against corporate executives in host states;<sup>31</sup> and expropriation and even regime change, from pro-foreign direct investment to populist regimes.<sup>32</sup>

Chevron's legal costs defending against the Ecuadorian claims have been estimated to exceed a billion dollars to date.<sup>33</sup> Judge Kaplan of the Southern District of New York held that attempts to enforce the Ecuadorian judgment, if not enjoined, would force Chevron to "litigate the enforceability of the Ecuadorian judgment in multiple proceedings. . . . [Its] assets would be seized . . . , thus disrupting Chevron's supply chain, . . . damaging 'Chevron's business reputation . . . and harm[ing] the valuable customer goodwill Chevron has developed over the past 130 years,' and causing injury to Chevron's 'business reputation and business relationships.'"<sup>34</sup> It is not farfetched to surmise that even an unfavorable judgment against Chevron from an efficient ICCJ litiga-

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28. See Peter P. Tomczak, *Potential Collateral Estoppel Effect of Foreign Judgments*, LITIGATION, Fall 2011, at 11.

29. See Maya Steinitz, *Incorporating Legal Claims*, 90 NOTRE DAME L. REV. (forthcoming Jan. 2015) (describing the hidden costs of litigation), available at <http://ssrn.com/abstract=2423541>; see also Jonathan T. Molot, *A Market in Litigation Risk*, 76 U. CHI. L. REV. 367, 374-75 (2009) (the "tertiary costs" that litigation imposes on corporate defendants).

30. Whytock & Robertson, *supra* note 15, at 1447.

31. See Joseph W. Yockey, *Solicitation, Extortion, and the FCPA*, 87 NOTRE DAME L. REV. 781, 806 (2011).

32. Maya Steinitz & Paul Gowder, *Corruption and the Transnational Litigation Prisoner's Dilemma* 7 & n.16 (Nov. 27, 2014) (unpublished manuscript) (on file with author).

33. *Id.* at 9.

34. *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 626-27 (S.D.N.Y. 2011) (quoting Declaration of Rex J. Mitchell in Support of Chevron Corp.'s Motion for Preliminary Injunction at 4, *Donziger*, 768 F. Supp. 2d 581 (No. 11-CV-0691)) (analyzing the "irreparable harm" faced by Chevron), *rev'd sub nom.* *Chevron Corp. v. Naranjo*, 667 F.3d 232 (2d Cir. 2012).

tion would have been less costly than the unwieldy transnational litigation and that the same would hold true more generally. Further, while multinational corporations are likely to lose some cases at the ICCJ, as repeat players they will likely, in the aggregate, gain from the vastly more efficient system of dispute resolution.

Substantial reduction of the direct and hidden costs alone should render an ICCJ appealing to corporations. These can be achieved through procedural features that ensure that nonmeritorious cases are dismissed relatively early, summary judgment-like, coupled with global preclusive effects that ensure global legal peace.<sup>35</sup> Other features can include limitations on American-style plaintiff procedural features in favor of a more continental design: no jury, less discovery, no punitive damages. An ICCJ will over time produce a coherent jurisprudence, thus enhancing predictability to foreign investors. Optional or mandatory evaluative mediation that facilitates early settlement is another design feature likely to appeal to potential defendants.

Critically, jurisdiction could be complementary as it is at the International Criminal Court.<sup>36</sup> Namely, if the home jurisdiction of the multinational corporation being sued is willing to hear the case and offer the plaintiffs their day in court, the ICCJ will not hear the case.

But the ICCJ can be designed to do more than increase efficiency. The ICCJ's subject matter jurisdiction can include claims that corporations wish to pursue but currently find difficult to enforce. Perhaps the best example of such subject matter is the law of anticorruption. American corporations are likely to be keen on seeing anticorruption measures enforced because corruption represents a major inefficiency and distorts market forces. Additionally, strict enforcement of the American Foreign Corrupt Practices Act,<sup>37</sup> coupled with little or no enforcement of anticorruption laws in other developed countries, puts American corporations at a competitive disadvantage. However, worldwide enforcement is likely to happen in a robust way outside the United States only if adjudication is internationalized.<sup>38</sup>

Indeed, while the focus herein has been on American corporations, of course corporations from all member states will be subject to the ICCJ's jurisdiction, benefiting American individuals and business as well as plaintiffs throughout the world seeking redress from non-American multinational corpo-

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35. See Samuel Issacharoff & D. Theodore Rave, *The BP Oil Spill Settlement and the Paradox of Public Litigation*, 74 LA. L. REV. 397, 413 (2014) (theorizing that costly class action litigation was preferable to the BP administrative program because it allowed BP to purchase legal peace).

36. See Rome Statute of the International Criminal Court art. 20, July 17, 1998, 2187 U.N.T.S. 90.

37. 15 U.S.C. § 78dd-1 to -3 (2013).

38. See MARK L. WOLF, BROOKINGS INST., *THE CASE FOR AN INTERNATIONAL ANTI-CORRUPTION COURT* 5-8 (2014), available at <http://www.brookings.edu/~media/research/files/papers/2014/07/international%20anti%20corruption%20court%20wolf/anticorruptioncourtwolf.pdf>.



rations. Imagine, for example, that a catastrophe like the BP oil spill had befallen Americans due to the negligence of a foreign corporation operating in a different industry—thus not triggering the unique Oil Pollution Act,<sup>39</sup> which requires the polluter to set up a procedure for expeditiously paying claims—and that the damage, while massive, was not enough to trigger presidential intervention. Instead of receiving massive payouts like the individuals and businesses affected by the BP oil spill,<sup>40</sup> they could be facing a fate more similar to the Ecuadorian residents of the Oriente.

#### CONCLUSION

An ICCJ is needed to resolve weighty problems of justice and inefficiency on a global scale. Indeed, an ICCJ with complementary jurisdiction, allowing defendants to be sued “at home,” is a moral imperative unless one actually believes mass torts require no compensation. An ICCJ is feasible since it can address the concerns of a wide range of global players including those—such as corporations, foreign governments, nongovernmental organizations, and indigenous peoples—who often find themselves on opposite sides of policy issues.<sup>41</sup>

For an ICCJ to become a reality, scholars and policymakers representative of the world’s regions and legal traditions would need to come together and work out the optimal institutional design for the court while also thinking through, among other things, the changes that might be necessary to domestic law in order to accommodate the new institution and its underlying legal regime. The post-*Kiobel* moment, in particular, seems apt for such a movement to take hold.

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39. See 33 U.S.C. §§ 2712-2713 (2013).

40. The BP claims facility “received claims from a broad range of claimants, from individuals who were living paycheck-to-paycheck to businesses with annual revenues in the billions of dollars.” BDO CONSULTING, *supra* note 3, at 6 (emphasis added).

41. Cf. KAREN J. ALTER, THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS 5 (2014) (describing how international courts come into being through social movements that allow broad “constituencies of support” to come together, “linking communities that care about the larger policy domain . . . with supporters of the rule of law . . . with self-interested litigants pursuing personal agendas and with the legal community of lawyers, judges, and scholars”).