of the UN Commission on International Trade Law's (UNCITRAL) Working Group III. The coda catches this parallel between the dual role of coherence and the two sides of possible ISDS reform: procedure and substance. Indeed, one persistent criticism of the ISDS reform process has been that it has been lopsided, ignoring to a very large extent the substantive issues that have been arguably just as important as, if not more important than, the procedural shortcomings perceived to exist in the system.

One thing that the coda emphasizes, which is surprisingly lacking in the book overall, is the role of treaty-making and, more broadly, systemic coherence in investor–state dispute settlement. The coda emphasizes that, from a substantive point of view, clearer principles might bolster systemic coherence. The book, on the other hand, focuses almost entirely on adjudicatory behaviour and processes – how arbitral tribunals interpret and apply the substantive principles rather than how these principles are designed and drafted. This directly relates to the express choice of focusing on a bottom-up approach on coherence at the expense of a top-down one. Coherence imminently manifests itself in overarching structural reform efforts. While UNCITRAL may not reflect a singular regulatory legislative will, it certainly serves as a stark example of how the so-called top-down and bottom-up perspectives are complementary.

Overall, *Manifestations of Coherence* is a brilliant piece of scholarship. By the end of the book, the reader will have learned a great deal about coherence and its role in international law, in general, and international investment law, in particular. Primarily through its reflexivity analysis, Giannakopoulos shows a plausible and practicable way of how coherence can be weaved into legal reasoning. It is exceptionally well researched, rife with relevant and accurate case studies that accurately make the points they are tasked to make. For this reason alone, this book is a sorely needed contribution to the scholarship on the theory of international investment law, as well as on coherence in general, as its conclusions are pervasive throughout international adjudication beyond investment arbitration. It will certainly provide valuable guidance to arbitrators, counsel as well as policy and treaty makers active in the field.

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Sophie Rigney. ***Fairness and Rights in International Criminal Procedure***. Edinburgh: Edinburgh University Press, 2022. Pp. 256. £24.99. ISBN: 9781474466318.

International criminal law has been subject to a plethora of publications over the last 20 years. These have ranged from euphoria to disillusionment and back, from granular detailed analysis to international criminal law's sense and sensibilities.[1] Within this context, Sophie Rigney's book on fairness and rights in international criminal procedure examines the concept of fairness in international criminal proceedings and

[1] See, e.g., Tallgren, 'The Sensibility and Sense of International Criminal Law', 13 *European Journal of International Law* (2002) 561.

the rights of the accused. The book offers a useful addition to the existing literature and combines discussion on detailed procedural problems with bigger-picture questions on the aims of international criminal law.

On its cover, the book is introduced as a call for the realignment of fairness and the rights of the accused in procedural decision-making in international criminal trials. Through an in-depth critical analysis of procedural issue decisions at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC) between 2008 and 2018 – a critical period for the development of contemporary international criminal law practice – Rigney aims to show that there is a clear separation between fairness and rights in practice. A core claim of the book is that it demonstrates the various ways in which fairness is invoked in international criminal law decisions – ways that are not always consistent and are frequently at odds with defendants' rights. To evidence this claim, the book examines disclosure issues, the use of adjudicated facts and the protection of witnesses. The analysis draws on insights from original interviews with international criminal judges and lawyers as well as on the existing legal frameworks, case law and scholarship.

Rigney's book reflects research undertaken for her doctoral degree and is informed by her experiences as a lawyer working at the ICTY initially as an intern with the Trial Chamber and subsequently as a case manager and legal assistant for a defence team. In the introduction, she shares some key moments in this clearly formative period of working at the ICTY in which she experienced the unglamorous, practical problems of work in international criminal law such as the time spent struggling with reticent photocopiers. Although digitalization has brought the benefit of making such photocopiers largely redundant, practical problems remain – an insight not only to the international criminal law field but also, much more broadly, to criminal law practice. She was also witness to the homecoming of the twice-acquitted Lahi Brahimaj as part of his ICTY defence team. The latter underpins the quest of this book to ensure robust procedures and strong protection for the rights of the accused. As much as international criminal law scholarship has journeyed from euphoria to soul-searching, this book seems to document a similar personal journey from arriving in The Hague 'with a desire to do good' (at 2) to the search for fairness in international criminal procedure.

As a starting point, this book locates international criminal trials in broader discourses around the aims of international criminal law. The key argument in this chapter is that international criminal trials should solely serve as a forensic determination of the establishment of the accused's guilt or innocence. Broader aims of the international criminal law system and its institutions ought to be distinguished from those that an individual trial can and ought to fulfil. To support this argument, the chapter dissects aims such as ending impunity, giving victims a voice and establishing the truth in this context. The author argues that, if aims such as ending impunity were projected onto individual criminal trials, this would bear the danger of a desire to convict. For Rigney, a recalibration of the aims of a trial, placing the accused at its heart, is pivotal as a building block for a new framework of interaction between rights, fairness and procedure.

Building on the centrality of the accused and their responsibility, Chapters 2 and 3 focus on the place of rights and fairness in trial procedures. For Rigney, the rights of

the accused have a central role considering the function of the trial to determine the accused's responsibility. In contrast, she contends that the prosecution and participating victims 'do not have rights in the same way the accused does'; instead, 'they have interests, competencies, some duties – and some limited rights' (at 49). Fairness, as a distinct concept regarding the specific rights that the accused holds, is densely woven into the fabric of international criminal law. Drawing on interviews with international judges, Rigney demonstrates that judges perceive fairness as an interpretative tool to negotiate procedural ambiguities. Yet Chapter 3 identifies areas in which fairness is incoherently applied in international criminal trials. The chapter advocates for a rights-based approach to fairness that is centred on the rights of the accused rather than on a shared-process understanding of fairness in which fairness is also a concept that takes into consideration the position of the prosecution or other participants in proceedings. Ultimately, Rigney posits that the concept of fairness is hollow if it has no agreed content or meaning in a *sui generis* system that contains elements of different legal cultures.

In the subsequent chapters, questions of fairness are examined through the prism of disclosure issues, the use of adjudicated facts and the protection of victims and witnesses. Although disclosure is without doubt at the heart of fair trial proceedings, Chapter 4 details the difficulties that occur in practice. The disclosure discussion complements existing scholarship on the matter with its focus on practitioner insights.[2] Electronic filing in its early and imperfect designs contributed to these difficulties, as did and do the large volumes of materials that are often disclosed late. The deep dive into the practicalities of procedure in the examined areas allows Rigney to demonstrate the separation of rights and fairness here. Overall, the second part of the book demonstrates how far apart theoretical ideas of fairness and practical problems can be in international criminal proceedings.

Procedural law ought to serve as protection against the arbitrary and to serve the rule of law. The enactment of criminal procedure hinges on the practitioners' understandings and interpretations. Therefore, one of the particular strengths of this book is the socio-legal approach that draws on practitioner interviews (including judges) in combination with the analysis of a considerable volume of case law. It is useful to uncover the disparities between different chambers within the same court or between different international tribunals to push the debate on the development of a more coherent law of international criminal procedure.

The book uncovers the disconnect between fairness and rights – specifically, the at times incoherent and conceptually unclear infringement on the rights of the accused. While the book is compelling in identifying this disconnect, the analysis could have benefited from a stronger engagement with the set of rights involved, specifically around victim and witness protection. Fairness can serve as the arbiter – or, as Rigney calls it, a mediating discourse (at 176) – of competing human rights: of status rights of the accused, whose liberty is at stake in a criminal trial, and the rights of victims and/or witnesses to protection. These are not simply interests and safety concerns. The rights to protection and respect may not be formally provided for in the Rome

[2] See, e.g., M. Fedorova, *The Principle of Equality of Arms in International Criminal Proceedings* (2012).

Statute or the statutes of the ad hoc tribunals – however, these rights have evolved in international law and are recognized.[3] For victims and witnesses in international criminal law, the stakes can be equally high as those for the accused. While Rigney acknowledges the need for protection and speaks of the right to safety, as a reader I would have liked to see a stronger acknowledgement of the witnesses' and victims' implicated human rights. The danger of being exposed to threats and intimidation is high, witness interference is rife[4] and the consequences can be bitter from the loss of life or – if protective measures must be taken to the full – from the loss of an old life through witness protection, losing family, friends and your hometown or country for the rest of your life.[5] Often, this is the hidden side of international criminal law, less visible and, yet, a competing set of human rights that illustrate the urgency of finding a concept of fairness that allows for the protection of these rights whenever they collide. A rights-based approach to fairness, as Rigney argues, is important but does require a better understanding of the rights that need to be brought into balance.

In conclusion, Rigney's study, with its passionate call for fairness and the rights of the accused, is an important contribution to the scholarship and, hopefully, another stepping stone towards developing more coherent procedural practices across jurisdictions in which international criminal law is practised. Rigney herself returns in her conclusion to the sense of international criminal law: '[I]nternational criminal law has shown itself to be too blunt an instrument to use to address a complicated world, and a complicated human nature that is capable of both good and evil' (at 204). International criminal law will not and cannot solve the problems that this world encounters, and criminal law as such is indeed a blunt instrument. The abolition movement that Rigney refers to is important, and penal institutions are full of the marginalized and excluded. But this cannot be said of the ICC's detention centre in The Hague. International criminal law can make an important contribution as a tool to hold the powerful to account. Procedures in international criminal law need to enable fair and rights-based fora for accountability, and, for this, Rigney has delivered some food for thought.

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[3] Rome Statute of the International Criminal Court 1998, 2187 UNTS 3. The right to protection has evolved in the fragmented landscape of international law, for example through Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34, 29 November 1985, paras 4, 6(d); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 60/147, 15 December 2005, para. 10; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85, Art. 13; Decision on victims' procedural rights during trial, *Prosecutor v. Mustafa* (KSC-BC-2020-05/F00152) Trial Chamber, 12 July 2021, para. 11.

[4] 'Witness Interference in Cases before the International Criminal Court', *Open Society Justice Initiative*, November 2016, available at www.justiceinitiative.org/uploads/8a5f5b90-7b75-44b6-ac31-2108a264fe97/factsheet-icc-witness-interference-20161116.pdf.

[5] As author, I should disclose that, at the time of writing, I am, in addition to my academic role, Victims Counsel at the Kosovo Specialist Chambers.