Stefan Talmon (ed.). ***German Practice in International Law*** (2019). Cambridge: Cambridge University Press, 2022. Pp. 480. £170. ISBN: 978-1-316-51461-0.

The issue of publicizing state practice in international law has a long history. It should be remembered that at its very first session in 1949 the International Law Commission (ILC) considered the topic entitled 'Ways and Means for Making the Evidence of Customary International Law More Readily Available', and its report in 1950 includes a call for governments to recognize the 'desirability of their publishing digests of their diplomatic correspondence and other materials relating to international law'.[1] More recently, the issue was of course also relevant to the ILC's topic of 'Identification of Customary International Law' and led to a useful paper from the United Nations (UN) Secretariat, describing the '[w]ays and means for making the evidence of customary international law more readily available'.[2] The UN General Assembly responded by 'acknowledge[ing] the utility of published digests and surveys of practice relating to international law, including those that make legislative, executive and judicial practice widely available, and encourag[ing] States to make every effort to support existing publications and libraries specialized in international law'.[3]

But, despite these encouragements, states have not been very forthcoming in publicizing their state practice. Sections on the state practice of France and the USA have long been included in the *Revue Générale de Droit International* and the *American Journal of International Law*, and the United Kingdom (UK) has since the 1970s published UK Materials in International Law (UKMIL) in the *British Yearbook of International Law*, under the excellent editorship first of the late Geoffrey Marston and then of Colin Warbrick. But with the exception of the German-language 'Völkerrechtliche Praxis der Bundesrepublik Deutschland' (published in the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*), there has until now been no similar compendium of German practice. The UN Secretariat's paper of February 2019 identified various relevant bibliographic entries; of these, not surprisingly, the largest numbers were in the six official languages of the UN, and although entries in Germany were the next largest (141 entries), they were still dwarfed by the numbers in English (1,703 entries). The result has been, as Stefan Talmon says in the preface to this volume, that even German authors on international law tend to quote from the practice of the USA and the UK (at xiii).

Thus, *German Practice in International Law*, covering 2019, produced under the editorship of Professor Stefan Talmon, with an impressive list of collaborators, nearly all of whom are affiliated with the Bonn Institute where he is based (testifying incidentally to the health of German scholarship on international law), is very much to be welcomed. What is more, the volume includes critical comments on each of the examples of practice – indeed, sometimes very critical comments – which thereby

1 2(2) *ILC Yearbook* (1950) 364, para. 93.
2 UN Doc. A/CN.4/710/Rev.1, 14 February 2019.
3 GA Res. 73/203, 20 December 2018.

takes it beyond the British and American publications of state practice just mentioned. The volume is divided into 11 chapters, covering different areas of German international practice, ranging from the 'Foundations and Functions of International Law', through 'Antarctica, Sea, Air and Space', to 'International Disputes and Their Settlement', each of which consists of a number of individual entries. Some chapters are relatively short, consisting of only two entries, whereas the one on 'Individuals, Their Human Rights and Their International Responsibility' comprises some 18 separate entries. Indeed, it is hard to think of any major area of international law that is not covered.

It is interesting to note that a number of the entries cover matters where the US administration under President Donald Trump exercised a disruptive influence. Thus, when the Trump administration presented its plans for a peace settlement in the Middle East (the alleged 'Deal of the Century') to the UN Security Council, it sought to argue that the relevant international law was 'inconclusive', that the UN resolutions on the subject were in effect to be disregarded and that there was no 'international consensus' on the status of Jerusalem (which seems to mean that the USA and Israel take a different view from everyone else). Rightly, it is submitted, Germany's response as a non-permanent member of the UN Security Council was to emphasize the importance of adherence to international law. In a move that, as far as this reviewer is aware, is unprecedented, the US representative then published an op-ed in the German newspaper *Die Zeit*, remonstrating with Germany's ambassador to the UN and, in particular, denying the ambassador's assertion that the USA seemed to 'believe in the law of the strongest'. The book usefully publishes the key documents, including the article in *Die Zeit*, and argues that Germany was quite right to take issue with the Trump administration's views.

As Talmon points out, this incident was one in which the Trump administration had broken with the consistent position of its predecessors. Another was over the recognition of Israeli claims to sovereignty over the Golan Heights, where, contrary to the position of the USA, Germany maintained its view that sovereignty over the Golan, which had been occupied by Israel forcibly, could not legitimately be acquired by Israel (at 31–37) – a position that, in the light of subsequent events in Ukraine, it seems all the more important to maintain. Finally, one of the ambitions of Germany for its term as a non-permanent member of the UN Security Council was to promote a new resolution on sexual violence in armed conflict; however, the Trump administration objected to any reference to 'sexual and reproductive health' – indeed, to any earlier Security Council resolution that used this phrase – because it regarded it as a euphemism for abortion! Faced with the threat of a US veto in the Security Council, Germany had to water down its resolution, to its obvious disappointment (at 299–305). As the German ambassador said, this phrase had been used in an earlier Security Council resolution, and 'the United States Administration [has] basically said that it is no longer sticking to commitments made by previous Governments. If that is a general practice, we will have a lot of problems in our international system' (at 302).

One of the pleasures of reading a volume such as this one is to see consideration of issues that are of considerable practical importance, but which do not feature prominently in the academic literature. One such issue concerns the parameters of the rules about non-interference in internal affairs, as far as non-military intervention is concerned. These questions were apparently comprehensively, albeit perhaps with some ambiguity, dealt with to general satisfaction in the Friendly Relations Declaration of the UN General Assembly in 1970,[4] but they were reopened in the 1981 UN General Assembly's Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, which all Western states voted against and which therefore can have limited, if any, value in establishing a rule of international law.[5] The result is that there remain ample grounds for differing views between Western and other states, as is frequently demonstrated in practice. In this volume, for example, there is an interesting illustration of this dichotomy, where China complained that Germany had interfered in its internal affairs because a Hong Kong activist had met the foreign minister, a charge that Germany denied (at 68–71).

Although, in general, it is striking the extent to which German practice is consonant with that of other Western countries, it is always a point of interest in such volumes to see where one's own institutions have taken a different view from that of the state whose practice is being described. Thus, the English courts in the *Bennett* and *Mullen* cases have in practice turned their faces against the principle *male captus, bene detentus* – that is to say, that an individual may still be prosecuted in the forum state even if their presence before the court was procured through means not in conformity with international law (although the use of Latin is not now regarded with favour in the English courts!).[6] However, the Wiesbaden Regional Court has recently taken the opposite view in a case where an Iraqi national convicted of rape in Germany was handed over to the German police by the authorities in the Kurdish autonomous region (at 59–62). The Court noted the lack of an extradition treaty but concluded that this did not make the arrest illegal, thereby seemingly aligning itself with the position of the US Supreme Court in the much-criticized case of *Alvarez-Machain*.[7] Rohan Sinha casts doubt upon whether the 'captus' was indeed 'male' because the Kurdish authorities can be regarded as 'organs of the State of Iraq'; it may be correct that an organ of an autonomous entity within a state can be regarded as an organ of the state for this purpose but, presumably, not any person in an official position (for example, a police officer at my local police station). Interestingly, in *Mullen*, the defendant's lack of access to a lawyer when being deported from Zimbabwe was regarded as crucial in the Court of Appeal concluding that his conviction was 'unsafe' (even though he did not dispute his guilt of the underlying, serious terrorist offences); in the Wiesbaden case, there does not seem to have been any consideration of this issue. In truth, the matter should perhaps not be seen as a binary one: Sinha refers in a footnote to the judgment

4 GA Res. 2625 (XXV), 24 October 1970.
5 GA Res. 36/103, 9 December 1981.
6 *R v. Horseferry Road Magistrates Court, ex p Bennett* [1994] 1 A C 42; *R v. Mullen* [1999] 2 Cr App Rep 143.
7 *United States v. Alvarez-Machain* (15 June 1992) 504 US 653.

of the International Criminal Tribunal for the former Yugoslavia in the *Nikolic* case,[8] which, when refusing to set aside jurisdiction in a case where the defendant had allegedly been abducted from Serbia and Montenegro, confined its decision to offences that are 'a matter of concern to the international community as a whole' whilst also noting the lack of protest from Serbia and Montenegro (at 61).

Another thorny question was addressed by the German Federal Constitutional Court – namely, whether self-defence against non-state actors is covered by Article 51 of the UN Charter (at 330–334). In its order in 2019 in *Die Linke v. Federal Government and Federal Parliament*, the Court placed two conditions upon the exercise of self-defence against non-state actors: first, that there be 'large-scale armed attacks' and, second, that the attacks be from a territory removed from the governmental authority of any state.[9] One wonders how far these conditions will help to clarify the law; rather, one might suspect that whether these conditions are fulfilled in a given situation will actually raise a number of difficult and contentious questions (for example, what is 'large-scale'?; what areas are outside governmental control?). Talmon concludes that the Court's contribution to this debate 'is fairly limited' (334), but it would have been interesting to hear his views on the wider question of whether it is satisfactory that on an issue of such importance in the modern world the law should be so unclear and disputable. For this, in the reviewer's opinion, the International Court of Justice must shoulder a large part of the blame; the wrong turn taken by the ICJ, dating back in fact to the *Nicaragua Case* in 1986, was concisely, but very lucidly, explained by Judge Higgins in her Separate Opinion in the *Wall Advisory Opinion* in 2004 (ICJ Reports 2004, 207, paragraph 33).

Finally, it is interesting to note that events in Ukraine, even in 2019, had begun to cast a shadow over the European continent. Thus, this volume includes an entry on the condemnation by Germany of President Vladimir Putin's executive order allowing a fast track for residents of Luhansk and Donetsk to apply for Russian citizenship, thereby infringing upon the sovereignty of Ukraine (at 38–45). But, on the other hand, it also includes the German protest against the sanctions imposed by the USA in response to the Russian annexation of Crimea, upon Rusal, the major Russian aluminium producer and an important actor in the German economy (at 138–144). Germany objected to the sanctions on the grounds that the sanctions had extraterritorial effect; however, as Sinha and Talmon point out, although the sanctions might have had serious economic effects in Germany, they were arguably sufficiently territorially linked to the USA not to be objectionable, thus demonstrating how difficult it can be to delimit the proper parameters of the jurisdictional reach of states. This volume also includes the German protest against the US sanctions imposed upon those involved in the construction of the pipeline in the Baltic Sea, Nord Stream 2 (at 145–153). Little, I

[8] *Prosecutor v. Nikolič*, Trial Chamber II (9 October 2002); https://ucr.irmct.org/scasedocs/case/IT-94-2#trialChamberDecisions.

[9] *Die Linke v. Federal Government and Federal Parliament* (17 September 2019); for an English text, see https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/2019/09/es20190917_2bve000216en.pdf?__blob=publicationFile&v=1.

am sure, did anyone suspect that by the time of writing this review the pipeline would have been the subject of an attack by persons unknown, rendering it inoperable.

But, of course, the last three years have involved even greater disruption to the fabric of international relations – first with the COVID pandemic and now with the Russian aggression against Ukraine – so it will be interesting to see in future volumes how Germany has responded to these challenges. Indeed, it is good to see that a volume covering 2020 has recently been published. Thus, Talmon and Cambridge University Press are very much to be congratulated on this initiative. It is always a step forward when state practice, particularly of a state like Germany, which is very active in international matters, is made more widely available. One might hope that other states, particularly in the developing world, might be able to follow suit. Of course, one question, on which only time will tell, is whether this publication will encourage authors, especially in the German-speaking world, to reference German practice, in preference to, or at least in addition to, the usual practice in English.

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Fulvia Staiano. ***Transnational Organized Crime: Challenging International Law Principles on State Jurisdiction***. Cheltenham: Edward Elgar, 2022. Pp. x + 182. £75. ISBN: 9781800888357.

The foundational subject of jurisdiction continues to spark debates among public international lawyers, as demonstrated by Fulvia Staiano's *Transnational Organized Crime: Challenging International Law Principles on State Jurisdiction*.[1] This book explores ways in which international law on jurisdiction is evolving to keep up with transnational organized crime, a phenomenon that not only crosses borders but also, in some cases, takes place beyond the jurisdiction of any state (that is, in cyberspace or on the high seas). The contemporary practice of both states and international courts shows that a consensus approach to the jurisdictional problems associated with this phenomenon is yet to emerge. Yet the book's engagement with this diverse practice is one of its great strengths. Staiano's findings are supported by a rich collection of domestic case law and legislation concerning transnational organized crime. Other scholars very much stand to benefit from the research reflected in this book.

The first chapter introduces transnational organized crime, with a particular focus on human trafficking, migrant smuggling, firearms trafficking, drug trafficking,

[1] See, e.g., Krisch, 'Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance', 33 *European Journal of International Law* (*EJIL*) (2022) 481; O'Keefe, 'Cooperative National Regulation to Secure Transnational Public Goods: A Reply to Nico Krisch', 33 *EJIL* (2022) 515.