C. ANTONOPOLOUS, *Counterclaims before the International Court of Justice*, T.M.C. Asser Press, The Hague 2011, xii + 177 pp. ISBN 978-90-6704-789-0. doi:10.1017/S0165070X12000071

Constantine Antonopolous's concise monograph on counterclaims before the International Court of Justice (the ICJ or the Court) is a welcome addition to the literature dealing with international legal practice before this important international judicial body. The book is divided into six chapters. After a brief introductory chapter the author turns to the concept of counterclaims in international litigation. In this second chapter, he looks at the place of counterclaims in the rules and legal practice of the Permanent Court of Arbitration, the UNCITRAL Arbitration Rules (1976), the Iran-US Claims Tribunal, the World Trade Organization Procedures Governing the Settlement of Disputes, the International Centre for Settlement of Investment Disputes, the International Chamber of Commerce Rules (1998), the International Law Commission's Model Rules on Arbitral Procedure (1958), and the International Tribunal for the Law of the Sea. The third chapter deals with the evolution and definition of counterclaims before the ICJ. The author traces the evolution of the rule on counterclaims from the Permanent Court of International Justice to the ICJ and also discusses the rationale or purpose of counterclaims before the ICJ. The fourth chapter deals with the admissibility of counterclaims. It discusses two related requirements for the admissibility of counterclaims, namely the jurisdiction of the Court and a 'direct connection'. Under the section on the jurisdiction of the Court, the issues of the extent of the subject-matter jurisdiction of the Court, jurisdiction concerning counterclaims from the point of view of the bases of expressing content, the position of third states, preliminary objections to jurisdiction and admissibility concerning counterclaims, and an evaluation of the jurisprudence of the Court are dealt with. In this chapter Antonopolous also evaluates the Court's jurisprudence with regard to a direct connection.

Chapter 5 of the book deals with a number of procedural issues, namely the presentation of counterclaims in the counter-memorial, the equality of the parties, oral hearings, undue delay, the position of third states, and the withdrawal or discontinuation of counterclaims. Chapter 6 provides some final conclusions. A useful table of cases, of treaties and of documents, besides the bibliography and the index, are included at the end of the book.

As the author explains, his motivation for writing this book has been threefold: first, that the subject-matter jurisdiction of the ICJ is not limited, which means that the requirements of jurisdiction and a direct connection are not immediately and directly established with respect to a counterclaim; second, the increasing readiness of respondent states to present counterclaims; and, third, the minor attention devoted to counterclaims at the ICJ in the literature (p. 3). Based on the *Bosnian Genocide* case and Article 80 of the ICJ's Rules, Antonopolous discerns the following indicia for the concept of counter-claims:

(1) It has a dual character, namely, (a) it is a new, separate, autonomous claim independent of the original claim of the applicant and (b) it simply 'reacts' to the principal claim.
(2) It widens the original subject-matter of the dispute because
(3) It does not exclusively pursue the rejection of the claim of the original applicant; in other words, a counterclaim is not a defence on the merits.
(4) By reason of the requirement of a direct connection with the subject-matter of the applicant's original claim, it is not an instance of 'cross-action'.
(5) The rationale of providing for counterclaims in the rules of Court is essentially the same as with domestic law.
(6) It is not a plea of *tu quoque*.
(7) It is immaterial whether it is a plea of set-off (p. 57).

Antonopolous argues that an institutionalized arbitral tribunal having as its object the settlement of commercial disputes or of monetary claims is more likely to adopt rules of procedure on counterclaims that contain regulations either identical or very similar to those of municipal law, while an international court such as the ICJ that has a broad jurisdiction may introduce rules on counterclaims that are premised on a broader analogy with municipal law, but are adjusted to the consensual nature of its jurisdiction (p. 56). The rationale for allowing counterclaims in domestic as well as in international legal proceedings is based on considerations of procedural economy and good administration of justice. While procedural economy has to do with more practical aspects concerning the time-consuming duplicate presentation of evidence, written and oral proceedings and judgments, the part of the rationale concerning the better administration of justice may exceed the strict confines of evaluating a specific principal claim against a specific counterclaim (p. 59). Based on the Court's case law Antonopolous concludes that a counterclaim is a procedural act which is completely different from a defence on the merits (p. 62).

Article 80(1) of the Rules includes two requirements for the admissibility of a counterclaim: firstly, that it falls within the jurisdiction of the Court; and secondly, that it is directly connected with the subject-matter of the claim of the other party. While discussing the *Application of the Genocide Convention* case, Antonopolous argues that a

counterclaim on the commission of genocide in the face of a principal claim having the same subject-matter is not in principle inadmissible as a matter of law (p. 69). That is so because, in his view, a counterclaim does not have the position or function of a defence on the merits, but is a proper and autonomous claim in its own right, raised by the respondent against the applicant. Indeed, the Court itself admitted as much with regard to a counterclaim in the *Application of the Genocide Convention* case in 1997,[1] although that counterclaim was eventually withdrawn in 2001.

The discussion of the issue of jurisdiction concerning counterclaims from the perspective of the bases of expressing consent includes the four grounds for establishing the jurisdiction of the Court, namely a special agreement or *compromis*, a compromissory clause in a treaty or agreement in force between the parties, the acceptance of the so-called compulsory jurisdiction clause under Article 36(2) of the ICJ Statute, and the principle of *forum prorogatum*. While by concluding a special agreement the states parties to a dispute exercise close control over the subject-matter of the dispute and, therefore, counterclaims might be unusual, they might still be brought before the Court unless explicitly prohibited under the agreement. A compromissory clause is a provision in a treaty or agreement in force by virtue of which any dispute arising between two contracting parties concerning the application or interpretation of the treaty shall be submitted to the ICJ (p. 84). Through a somewhat long, but well-placed citation of Judge Higgins's position in the *Oil Platforms* case (pp. 87-88), Antonopolous argues that the parameters of a basis of expressing consent to the jurisdiction of the Court may be wide or flexible enough to allow a counterclaimant state to have the possibility to bring a claim, on the same jurisdictional basis, that does not fall under exactly the same subject-matter (p. 88). The Optional Clause offers the requisite jurisdictional basis for both the principal claim and the counterclaim to the extent of the acceptance reflected in the respective declarations of the parties to the dispute (p. 92). Also the application of the principle of *forum prorogatum*, which provides an informal basis of consent to the jurisdiction of the Court, is of particular importance with regard to counterclaims. Antonopolous notes that a principal claimant that wishes to have a counterclaim overruled has more possibilities to succeed in its goal if it raises objections to the jurisdiction of the Court, since the Court approaches jurisdiction with much greater rigour than a 'direct connection' (p. 119).

The direct connection of the counterclaim with the subject-matter of the principal claim is the second requirement for admissibility which, while included in Article 80 of the Rules of the Court, is not defined therein. The Court has noted that, as a general rule, whether there is the necessary direct connection between the claims must be assessed both in fact and in law.[2] Antonopolous notes that the Court retains a margin of discretion with respect to the existence of a direct connection between the principal claim and the counterclaim, the starting point of the evaluation is that a direct connection must exist both in fact and in law. With respect to a 'connection in fact' the Court appears to adopt a broad approach and with regard to a 'connection in law' the Court has adopted the approach that this is established if the parties pursue the 'same legal aim' (pp. 132-133).

The procedural steps that a respondent state is required to take to present a counterclaim are detailed by Article 80, paragraphs 2 and 3 of the Rules of the Court. In chapter five, dealing with procedural issues, Antonopolous discusses the mandatory presentation of counterclaims in the counter-memorial, the issue of achieving equality between the parties to the proceedings, whether oral hearings are necessary, the possible delay caused to the main proceedings, the notification of counterclaims to third states, and the withdrawal or discontinuation of counterclaims. While the case law of the Court relating to counterclaims is admittedly small compared with other instances of incidental proceedings, such as provisional measures or preliminary objections to jurisdiction and admissibility, it allows the inference of certain conclusions on the right to make counterclaims at the ICJ (p. 158). Indeed, through this book Antonopolous has shed some light on an interesting part of incidental legal proceedings before the ICJ, whose use can potentially increase in the coming years as relations between states continue to grow in volume and complexity.

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1. *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Yugoslavia*), Counter-Claims, Order of 17 December 1997, *ICJ Rep.* (1997) p. 260, para. 43.

2. *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Uganda*), Order of 29 November 2001 (Admissibility of Counterclaims), *ICJ Rep.* (2001) p. 678, para. 36.