

Contents

<i>Acknowledgments</i>	<i>page xi</i>
<i>List of Abbreviations</i>	xiii
Introduction	1
I Adjudicating Cross-border Mass Torts: A Problem of Forum, Not Just of Law	3
II Incentives and Feasibility of a New Court	5
III The Proposal	10
1 How New International Courts Come into Being	14
I Theoretical Models	17
II The Case Histories	21
A The International Criminal Court	21
1 Legal and Institutional Precedents – Experimentation and Idea Contagion	22
2 Change Agents	25
3 Geopolitical Change and Constitutional Moments	26
B The World Trade Organization Dispute Settlement Understanding	27
C The Iran–United States Claims Tribunal	29
D The Jerusalem Arbitration Center	35
III Holdouts?	37
A The United States	37
B China	39
IV Gathering Winds	42

2	The Human Toll: The Bhopal Disaster, the Devastation of the Ecuadorian Amazon, and the Abuse and Murder of Dr. Kiobel	45
	I A Tragedy in Bhopal, India	47
	A The Disaster and Its Decades-Long Aftermath	47
	B The Inconvenient Forum	50
	C Enterprise Liability	59
	D Aftershocks	60
	II The Devastation of the Ecuadorian Rain Forest	62
	A Background	64
	B Round One: In the Courts of the United States	65
	C Round Two: In the Courts of Ecuador	67
	D No Clear Winner: Seeking and Defending Against Enforcement the World Over	67
	III Human Rights Abuses in Nigeria	70
	A Oil, Unrest, and Violence	70
	B A Clear Path to US Courts?	72
	C The Closing of the Courthouse Doors	73
	IV Systemic Flaws in Transnational Litigation	76
	A Boomerang, Parallel, and Sequential Litigation	77
	B The Effects of Corporate Structures on Transnational Litigation	78
	C Moral Hazards	79
3	The Problem of the Missing Forum	83
	I Multinational Corporations' Home Courts	84
	A US Courts and Foreign Plaintiffs	85
	1 Declining to Act as Global Courts	87
	2 The Overall Decline of Access to Justice in US Courts	89
	B The Courts of Europe	93
	II Litigating in Courts of the Jurisdiction Where the Mass Injury Occurred	99
	III International Arbitration	100
	IV Single-Issue International Courts, Alternative Dispute Resolution, and Corporate Social Responsibility	102
	V A Better Solution: The International Court of Civil Justice	104

4	The Business Case for the ICCJ	108
	I Rising Direct Litigation Costs	111
	A Forum Shopping, Parallel and Sequential Litigation	112
	II The Indirect Costs of Litigation	113
	A Uncertainty and the Restraint on Business Activities	114
	B Distracted Management and Criminal Prosecution	117
	C Harms to Reputation and Goodwill	118
	D Change in Investment Climate	119
	III The Cost of Corruption and the Value of the Rule of Law	120
	IV The Global Peace Premium	123
	V Backlash and the New Transnational Litigionscape	127
	A The Rise of Litigation Finance	127
	B The Rise of the Global Entrepreneurial Lawyer	128
	C Blocking Statutes and Other Pro-Plaintiff Legislation	130
	1 Blocking Statutes and Litigation-Enabling Legislation	131
	2 Class Action Goes Global	133
	VI Business Ethics	134
	VII Global Growth as the Tide That Lifts All Boats	137
5	Institutional and Procedural Features of an ICCJ	141
	I Institutional Relationships	145
	A With States Parties	145
	1 The Two-Tiered Structure of an ICCJ and Its Effect on Institutional Arrangements	145
	2 Dependent or Independent?	147
	3 Composition of the Court	147
	B With Other International Organizations	149
	II Jurisdiction and Admissibility	150
	A Temporal Jurisdiction	151
	B Subject Matter Jurisdiction	152
	1 Mass Claims and Mass Torts	152
	2 “Cross-Border” Claims and Enterprise Liability	153
	3 Applicable Law	154
	C Personal Jurisdiction	157
	D Admissibility – Relationship of the ICCJ to National Courts	158

III	Procedural Features	161
	A Civil Law–Common Law Hybrids	163
	B Claim Screening and Routing	164
	C Alternative Dispute Resolution	166
	D Nonrepresentative Collective Litigation	166
	E. Representative Actions	167
	F Supervision and Administration of Aggregate Settlement	174
	G Remedies	175
	H Appellate Review	176
IV	Financing the Operation of the Court	177
	Conclusion	179
	<i>Notes</i>	183
	<i>Index</i>	231