BOOK REVIEWS

The Cambridge Companion to International Law edited by James Crawford and Martti Koskenniemi [Cambridge University Press, Cambridge, 2012, 471pp, ISBN 978-0-521-143080, £29.99 (p/bk)]

The *Companion* is an ambitious introduction to international law: it encourages readers to engage with multiple aspects of the topic from different perspectives. It is a book to be consulted alongside other general texts, rather than serving as a textbook of public international law. One of the aims of this book is to put emphasis on the 'variety of the professional, practical and literary contexts in which international law appears, the many vocabularies in which it is spoken and the plurality of meanings it carries' (3). The *Companion* includes contributions from a range of disciplinary orientations: from positivism to post-modernism. It also covers non-exhaustively various subfields of international law, ranging from human rights to trade and investment.

The Companion is divided in four parts or 'windows', as the editors prefer to label them. The first explores the contexts of international law, including the worlds of diplomacy and ideas. The second inquires into the relationship between international law and the State. Within that context it examines the concept of sovereignty across the globe. The third window focuses on the techniques and arenas of international law. The final part surveys international law's most important projects, conceiving it as a vehicle through which States push their economic, political and ideological agendas. The final section reflects the ever expanding scope of international law, from international criminal law to international investment law.

The editors of the book consider that international law has multiple functions. Not only does it serve to regulate relations between States, but also as a language, a bundle of techniques and a framework within which several constructivist projects are articulated (2). A recurrent theme throughout the *Companion* is that the language of international law not only enables, but it also inhibits. International law has inherent contradictions and preferences, but it also has an immense potential (14). International law comes with a strong ideological pull, which has contributed to the proliferation of its projects (Part IV).

International law is intensely contextual. To understand the meaning of any given international legal rule, one takes into account the policy it supports, or against whom it is intended to operate. One such context is that of diplomacy, where international law is used as an instrument by States to regulate their relations and resolve their disputes. Gerry Simpson (Chapter 1) discusses the role that international law has played in the history of diplomacy. He explores the interplay of international law and State power, pointing out that at times international law curbs State power and at other times that very power shapes international legal rules. Martii Koskenniemi (Chapter 2) examines the role of international law in the world of ideas. International law offers a platform whereby philosophers and political scientists debate issues of morality or world politics. Human rights constitute an example where normative ideas have found their way in treaties and conventions. Frédéric Mégret (Chapter 3) asserts that public international law is law, having unique features, such as its courts not having compulsory jurisdiction over States or the fact that it is constantly transforming in response to international political developments.

The *Companion* then turns to the relationship between international law and the State. Karen Knop (Chapter 4) identifies the main ingredients of statehood: territory, people and government. Democratic legitimacy has not yet become a requirement of statehood and it therefore does not constitute a basis for concluding that an act by a non-democratic State is *ultra vires*. Although these are the main components of the State, Knop underlies the diversity of representational mandates of States, reflecting the presence of different national, ethnic, religious or cultural groups. While the idea of an 'international legal society' has become popular and the practice of non-governmental organizations is ongoing, Knop refocuses the reader's attention back to the State. James Crawford (Chapter 5) explores sovereignty as a legal value. International law

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presumes that States have full authority to act both on the internal and the international level. The formal equality of States is an emanation of the formal concept of sovereignty, which protects the autonomy of States, and it remains the constitutional doctrine of the law of nations. Bruno Simma and Andreas Müller (Chapter 6) detail how States exercise jurisdiction and its limitations. Jurisdiction is a matter for States, rather than individuals or corporations, its basic principles are those of territoriality, including flag State jurisdiction and jurisdiction based on the protective principle, and nationality, including the principle of universal jurisdiction. David Kennedy (Chapter 7) explores the topic of law and warfare. He argues that law and war are linked, rather than the former restraining the latter. Wars are ultimately embedded within the structure of the international legal system. He further argues that law is increasingly a weapon of war, rather than being its antithesis.

The third window of the *Companion* looks at the techniques and the arenas of international law. This section analyses how international law is made, identified, used and enforced. Hilary Charlesworth (Chapter 8) focuses on the sources of public international law: treaties, custom, general principles of law, as well as subsidiary means of interpretation including judicial decisions and doctrine. She argues that international law-making is not as straightforward a process as Article 38(1) of the ICJ Statute might indicate. It is a multi-layered process of interactions, principles and instruments. Furthermore, there is now a multiplicity of soft-law instruments, including memoranda and declarations from a series of public and private bodies. She moreover points out that specialized fields of international law, including trade law, human rights and environmental law, have developed their own concepts and techniques. Benedict Kingsbury (Chapter 9) deals with the issue of how the increasing number of international courts and tribunals have created an uneven 'juridification' of the international system. He argues that this phenomenon has led to the creation of a global legal order dominated by liberal interests. Jan Klabbers (Chapter 10) delves into the topic of international institutions. He argues that institutions have developed identities and a professional culture of their own and that international law, to a large extent, is being formulated and developed by international institutions—in other words, it has become institutionalized. Finally, Dino Kritsiotis (Chapter 11) explores the issue of enforcement of international law in modern times, including through external means of international obligations and decisions, rather than the traditional methods, including war, reprisals and diplomacy.

The fourth and final part of the *Companion* zooms in on specific projects of international law. Anne Orford (Chapter 12) examines the extent to which international law has contributed to the constitution of a global order. The lack of hierarchy is one of the characteristic features of this decentralized 'order' due to the principle of the sovereign equality of States. Decolonization, the rise of individual rights, a private-ownership based global economy have contributed to this feature. BS Chimni (Chapter 13) examines how international law legitimates the international rule of law. He draws a distinction between a formal and a substantive conception of the rule of law, arguing that in recent years the latter has come to stand for the protection of basic human rights. He contends that the basic principles of international law, including the sovereign equality of States and the prohibition of the use of force, protect States and peoples against hegemonic powers (306). Nevertheless, new forms of imperialism have found their way in international law and if it is to acquire greater legitimacy it should shed itself of hegemonic practices. Susan Marks (Chapter 14) discusses one of the most prominent projects of international law in the twentieth century: human rights. Adopting a critical standpoint, Marks points out that human rights institutions do not adequately tackle persistent structural problems and they frequently perpetuate injustices. Sarah Nouwen (Chapter 15) examines perhaps the most ambitious project of international law: international criminal justice. While international criminal law has brought to justice several war criminals, its consequences and reception among the concerned communities remain ambivalent. The justifications against the fight against impunity, Nouwen argues, are indeterminate and oftentimes contradictory. Hélène Ruiz Fabri (Chapter 16) demonstrates that trade, investment and money have developed as elements of an autonomous economic logic. Numerous bilateral

investment treaties and free trade agreements nowadays form a complex, but piecemeal, nexus of international legal obligations, which has created an uneven balance between States. Thomas Pogge (Chapter 17) deals with the structural inadequacies of the international human rights system in so far as global poverty alleviation is concerned. He argues that international institutions are directly responsible for maintaining the unequal distribution of the world's wealth. Sundhya Pahuja (Chapter 18) explores the topic of sustainable development and he argues that it has not dealt with the background conditions in which negotiations take place. Pahuja advocates for a concept of 'global commons' and proposes a platform of contesting how the world shares resources.

The *Companion* is a meticulously edited and poignant introduction to public international law. It includes a multiplicity of standpoints from which to view international law. It exposes both the potential and the contradictions of international law. The projects of international law are a very ambitious undertaking to exhaustively cover in a single book. Certain topics, such as human rights and international criminal law were included to the detriment of others, such as the law of the sea or environmental law. At the same time, the inclusion of topics such as sustainable development and global poverty indicate the progressive outlook of this book. The *Companion* is by no means a standard account of international law, with topics such as State responsibility or State immunity missing from its pages.

Alexia Solomou*

The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions by John D Jackson and Sarah J Summers [Cambridge University Press, Cambridge, 2012, 391pp, ISBN 978-0-521-68847-5, £ 44.99 (p/bk)]

This book, as the subtitle suggests, takes a critical look at whether the historical divide between the Common Law and the Civil Law traditions is still as real and relevant to the law of criminal evidence today as it may have been in the past. In order to answer this question, the authors look at the ways in which evidence is regulated across both systems. Their method is not primarily comparative. Rather, it is to 'consider what values the systems share and whether there are commonly accepted principles that can be drawn upon to build a system of evidence that commands consensus across the different legal traditions' (13). Significantly, the aim is not to come up with a one-size-fits-all model that could be adopted in all jurisdictions. Rather, the stated goal is to 'promote change and improvements' within existing systems.

The main argument of the book is that 'a common set of evidentiary principles' has developed, based on two fundamental 'traditions' that are said to bridge the Common/Civil Law divide. The first, so-called 'rationalist tradition', promotes truth-finding by way of ordinary cognitive processes, unfettered by any technical rules. The second is the individual rights (or 'social contract') tradition, which in recent times has mainly found expression in human rights.

There is some inevitable tension between the two traditions, as individual rights sometimes require limitations on the unconstrained search for evidence and truth. For example, a suspect's right to remain silent does not sit well with the search for all the relevant information that could lead to the truth. The authors argue that the 'common evidentiary framework', which they identify, helps to resolve the tensions between the rationalist and social contract traditions by 'translating' the rationalist tradition into a 'dialectic' theory of proof and the theory of individual rights into 'institutional' rights for the defence.' (28)

In order to substantiate the claim that Common and Civil Law systems do indeed have a common core which transcends their apparent differences, the book systematically discusses a wide range of

*Associate Legal Officer at the International Court of Justice. The views expressed in this book review are personal to the author and they cannot be attributed to her employer. All errors are the sole responsibility of the author. alexia.solomou@fulbrightmail.org.

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