Editorial

A common theme running through this volume is the complexity of interactions between international law and national legal orders across a spectrum of substantive areas. The two lead articles are concerned with compliance, cooperation and regulation in international law. **Ann Kent** presents a timely focus on China's multifaceted engagement with international law. Kent suggests that China has recently moved towards becoming a good international citizen, in general compliance with international law, yet its behaviour continues to give rise to international disputes or threaten the peace over issues such as Darfur or ballistic missile testing. Kent argues that China's lack of cooperation, rather than its legal non-compliance, better explains the challenges China presents to the international order. She therefore argues for drawing a finer analytical distinction between *compliance* with international law and international *cooperation*, with the latter being both under-studied and complementary to the more common scholarly emphasis on compliance.

In his article on regulatory multilateralism, **Donald Feaver** observes that the creation of multilateral institutions after the Second World War was designed precisely to encourage cooperation, communication and coordination among States. Feaver identifies, however, an evolution beyond the inter-governmental architecture of institutional diplomacy originally envisaged and towards a growing network of international regulatory arrangements. According to Feaver, the emergence of such regulatory multilateralism, exemplified by the World Trade Organization, has been systematically and instrumentally incoherent and is marked by structural and substantive weaknesses. Feaver accordingly charts some directions for reform.

Stepping back from issues of compliance and cooperation, it is useful to ask 'what are the standards with which States have to comply?' This question is answered in the next two articles on institutionalised standard setting in international law. **Jo En Low** focuses on the output of the various human rights monitoring bodies. She argues that the comments, recommendations and decisions of bodies like the Human Rights Committee and the Committee against Torture are fundamental normative standard setters: they establish treaty interpretation and, when they are referenced in national courts, facilitate subsequent State practice. The latter phenomenon draws Low's attention. In an empirical analysis of recent Australian decisions, she examines the use of such treaty output in the interpretation of statutes and the development of the common law. She concludes that although Australian courts are increasingly resorting to treaty body output, they still have a way to go before these bodies can really be seen as setting standards in Australian law, as well as in international law.

In a similar vein, **Allison Corkery** examines the 'conclusions' on international protection adopted annually by the Executive Committee of the United Nations High Commissioner for Refugees. Corkery begins by establishing that the changing character

of modern refugee situations has not been matched by treaty-based responses and that less formal 'soft law' standards are required. She then argues how the conclusions can fill this 'gap' by setting standards for States that complement their obligations under the 1951 Refugee Convention and 1967 Protocol. She acknowledges, however, that the normative significance of the Conclusions is limited by their method of creation and suggests a number of ways to address these shortfalls. Should these be implemented, Corkery is confident that the conclusions will play a significant standard-setting role.

Like the preceding two articles, the next pair of articles is equally concerned with the interface between international standard setting and domestic law reform, and similarly in crucial areas affecting human rights. While international law might not have yet caught up with the increasingly complex movements of a mobile global population, domestic legislation certainly has. **Merryl Dean** analyses the approach of the Japanese government to human trafficking in its 2005 reforms. He outlines relevant changes in international law, namely the *Convention against Transnational Organised Crime*, which emerged partly to confront human trafficking. Dean notes that the response of Japanese governments to new treaties is often to deny the need for new legislation and assert the adequacy of the existing domestic legal framework in fulfilling Japan's international obligations. That was initially Japan's position on human trafficking. However, as Dean explores, the impact of international law, together with adverse reports of Japan being a destination country for trafficked people, provided the impetus for Japan to address the issue in national law.

Angus Francis adopts a similar country-specific focus in his article on the response of the Australian legislature to the influx of asylum seekers. He argues that most literature in the area has focused on the ongoing conversation between the executive and the judiciary about the final determination of refugee status and refugee rights, and that there is room to further explore the under-considered role of the legislature. Through an analysis of asylum case studies, Francis establishes that the diversity of Parliament has a considerable impact on the attention paid to international law and the protection of human rights. He concludes that this partially demonstrates how treaty-based rights often transcend the traditional boundaries between international and national law to impose fundamental limitations on State actions.

Internalisation of, and resistance to, international norms is theme which persists in the following two articles. **Jackson Maogoto and James Stratford** argue for a nuanced view of the process of globalisation and how it affects sovereignty. Rejecting the view that globalisation is a one-way process of homogenisation (or 'McDonaldisation'), they argue that the local interacts with the global in complex ways. Using the disruption of democracy in Fiji as a case-study, they examine the experience of 'democratic experimentalism' in the Pacific Island region, and suggest that apparently universal norms such as democracy and good governance and socially constructed and historically contingent in specific local settings.

Like democracy, international justice is similarly confronted by hard questions in its engagement with national legal orders. **Tristan Garcia** asks whether national amnesties are, or ought to be, permitted as a bar to proceedings before the International Criminal

Court. While acknowledging the rationale for amnesties in trading justice for peace, Garcia argues that the Rome Statute itself requires a 'zero tolerance' approach to amnesties, an approach which also follows from the general trend in international against upholding amnesties for serious international crimes. Garcia outlines principles for dealing with amnesties, in the light of the limitations of the International Criminal Court in post-conflict settlements.

The final article by **Noel Cox** deals with an issue at the heart of international law – sovereignty. Cox explores the special position of the Sovereign Military Order of Malta as technique to illustrate the broader construction and conceptualisation of sovereignty in international law. The Sovereign Military Order of Malta is recognised by some States as possessing a degree of sovereignty and international legal personality, and the foundations of such claims are evaluated before Cox turns to consider more recent constructions (and challenges) to State and territorial sovereignty. Cox's article is a fitting bookend to this volume, because sovereignty underlies and links together concerns in many of the articles: compliance and cooperation, multilateral regulation, international standard setting and the domestic implementation of norms, refugees and people trafficking, and the global spread and limitations of notions of democracy and justice.

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