

Introduction

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‘DON’T BE AFRAID of the Performance Appraisal’, we wrote in the programme of the fourth biennial conference of the European Society of International Law that took place in Cambridge, UK, from 2 to 4 September 2010. There appeared to be little fear: our invited speakers jumped at the idea of assessing the performance of international law between 1989 and 2010. So did more than four hundred lawyers from across the globe who submitted abstracts in response to the questions of how international law, international institutions and international lawyers had fared in the 21 years since the fall of the Berlin Wall. This third volume of the Select Proceedings of the European Society of International Law contains a selection of the invited and selected speakers’ answers to these questions.

Representing a multitude of views, this book employs keynote speaker Andrew Hurrell’s ‘eyes of many people’ in order to guard against parochialism. Assessing the performance of the international system in the opening chapter, Hurrell observes how international society faces classical Westphalian challenges in a post-Westphalian context. In her response to Hurrell, Judge Xue Hanqin emphasises what has remained the same, while Daniel Bethlehem, FCO Legal Adviser, focuses on what must change. Bethlehem advocates a post-Westphalian discourse and warns against equating the performance of the international system with that of the international *legal* system. In their respective chapters, Tibor Varády and Randall Lesaffer take these issues further, Varády analysing changes in the discourse and Lesaffer assessing the importance of 1989 in international law. Jean d’Aspremont and Georg Nolte’s chapters on democracy and change conclude the book’s opening part on ‘The World and International Law’.

Part II is devoted to developments in Legalisation and Law-making between 1989 and 2010. Alain Pellet and André Nollkaemper assess the meaning of the increase in international law, in Pellet’s case an assessment notably pessimistic. Anne-Thida Norodom, Jörg Kammerhofer and Marjan Ajevski scrutinise the role of the Security Council, scholars and international criminal judges, respectively, in international law-making. George Galindo and Antonios Tzanakopoulos discuss the ever more important role of the domestic judge in applying international law.

Parts III, IV and V review post-Cold-War developments of specific international actors: the state, international institutions and regional organisations. In Part III, Anne Peters and Boldizsár Nagy shed new light on international law’s classic protagonist, the state; while international-relations scholar Tarak Barkawi comments acerbically on their chapters. Taken together, these chapters reveal fundamental disagreements on the use

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of history in law and underline Hurrell's point of the need for a discourse transcending disciplinary parishes.

Part IV turns to international institutions. Jan Klabbers discusses how to guard the guardians and Pierre Klein examines ways in which practice has answered this question. Yuval Shany measures the effectiveness of international courts from the perspective of compliance with their decisions. Stefan Talmon reveals how the Security Council has both dispensed, and dispensed with, international law in its burgeoning post-1989 practice. Edward Guntrip and Martins Papatrakis focus on international investment law.

In Part V, Lucie Delabie, Alberta Fabbriotti, Geert de Baere and Isabelle van Damme put legal regionalism at the centre of the discussion.

Part VI queries whether international law as it stands in 2010 is ready for the challenges we face. Matthew Gillett and Christine Larssen look at the relationship between law, individual citizens and the environment, Michael Waibel illuminates the dark area of international financial law and Sundhya Pahuja excoriates the 'poverty of development and the development of poverty' in international law.

In Part VII, five rapporteurs provide answers to the one conference question that appeared to have instilled some fear: how have we as international lawyers performed? With the conference as a case study, Guglielmo Verdirame, Jochen von Bernstorff, Anne Lagerwall, Thomas Skouteris and Amanda Perreau-Saussine point out the paradoxes, taboos and unquestioned agreements of our field. Joining the other contributors, they set the profession an agenda: clarity of language, engagement with policy, and development of ideas as to what a 'transformed' international law might actually entail.

Identifying the human heart as one more area in need of urgent attention, Roger O'Keefe's epilogue notes that whether or not there are silences in the law, international lawyers are never silent. At the conference, O'Keefe's observations remedied the observed problem: the audience was speechless with laughter. It was a brilliant and pointed coda to the proceedings.

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