Foreword

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In the late 1980s and early 1990s, Kenneth Abbott wrote some of the touchstone pieces for the renewed engagement between the disciplines of international law and international relations. As he notes in his contribution to this inaugural issue of the *Journal of International Law & International Relations* (*JILIR*), the 'joint discipline' that he thought fifteen years or so ago might emerge has not actually taken shape. But, undoubtedly, there has been an increasingly rich spectrum of engagement—debates, collaboration, mutual critiques—between the two disciplines. What is striking, however, is that the greatest efforts at engagement with the other discipline appear to have been made in the international law literature. In his piece, Ken Abbott refers to many of the central articles written in this vein, and highlights the many benefits that international law scholars, teachers, students and practitioners can derive from international relations theory. However, with notable exceptions, it is not clear that there is quite as much interest in international law on the international relations side, be it in scholarly writing or in teaching.[1] To be sure, international law does figure in the international relations literature. But, as Jan Klabbers and Gerry Simpson observe in their contributions, international law is often submerged in the broad realm of 'norms and regimes', even in the writings of scholars who are inclined to say that such norms and regimes 'matter' in shaping international affairs. It appears that Martha Finnemore's important question—'Are legal norms distinctive?'[2]—has not been of deep interest to the wider international relations community; nor does it seem to have been answered by international lawyers in a manner that would have caused broad segments of the international relations community to take note.

The *JILIR*, then, presents an opportunity. Its editors hope that it can provide a bridge between the two disciplines that will be crossed in both directions, and in a number of ways. As this inaugural issue

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1 This observation does not claim to be empirically grounded. Some studies have been conducted, however. For example, a recent study of American textbooks concludes that '[i]nternational law is marginalized in the books that introduce the majority of U.S. university and college students to International Relations as a field of study.' See B. Welling Hall, 'The Standing of International Law in Undergraduate IR Texts' (2003) 4 International Studies Perspectives 145.

2 Martha Finnemore, 'Are Legal Norms Distinctive?' (2000) 32 N.Y.U. J. Int'l L. & Pol. 699.

illustrates, the *JILIR* aims to offer a platform for articles that grapple with the strengths and weaknesses and, as some would have it, dangers of interdisciplinary engagement. It also hopes to provide a venue for pieces that practice interdisciplinarity, something that, as Jan Klabbers points out, is relatively harder to find than pieces *about* interdisciplinarity. Finally, and not least, the *JILIR* is intended by its editors as a forum for international law scholars who wish to expose their work to an international relations readership, and *vice versa*. The contributions to this inaugural issue cover the full spectrum of these approaches. Part One is focused on the theoretical background to the engagement between international law and international relations. The balance of the volume is organized around issue areas, focusing on environment, trade, human rights and security issues, respectively.

The authors in Part One of the issue were asked by the editors to comment on what has been achieved through the interdisciplinary dialogue of the last ten to fifteen years. Abbott, Klabbers and Simpson – three international lawyers—reflect on interdisciplinarity as such, from different theoretical vantage points and with varying degrees of enthusiasm. By contrast, the contribution by Shirley Scott, an international relations scholar, is an interdisciplinary inquiry. Her reflection on the relationship between international law and world politics leads her to posit that, aside from a legal obligation to comply with international law, there exists a political obligation to do so.

For Part Two, authors were asked whether, since the 1992 Rio Earth Summit, mega-conference diplomacy and multilateral environmental agreements had retained their central role in international environmental governance and law, or whether the tide had shifted to other approaches. Elizabeth DeSombre's contribution sketches out a number of reasons why, as she puts it, '[i]nternational environmental cooperation is hard and is getting harder.' Although she nonetheless believes that multilateral agreements will remain important to problem-solving, she also points to a growing array of alternative approaches. Both Christopher Joyner and Ken Conca explore such alternatives. For Joyner, while increasing emphasis has been placed upon various kinds of public-private partnerships, these entail their own array of problems. Thus, multilateral arrangements will remain central to addressing international environmental concerns. Conca sees two trends: fading enthusiasm for conference diplomacy and regime building, and a rise in efforts to frame global problems not as 'commons' issues to be resolved by states but as human rights issues pursued by individuals. Conca posits that this shifting frame of reference may provide new impetus for global environmental institution building. Finally, Steven Bernstein's focus is on the legitimacy challenge posed by global environmental governance. In exploring theoretical conceptions of legitimacy in international law and international relations and sociology, Bernstein finds a shift in the focus of writing on legitimacy.

Whereas earlier literature had been preoccupied with legitimacy as a potential source of compliance, the focus now appears to be on legitimacy as central to authority and governance—an important shift, as he explains.

Part Three offers different perspectives on international trade and economic governance, and globalization. Like environmental relations, international economic relations are an area of 'complex interdependence' and, according to many international relations scholars, particularly fertile ground for legal and institutional development.[3] Whereas the environmental field is governed through a large number of agreements and institutions, the economic realm has seen the emergence of a World Trade Organization (WTO) in 1995 and a significant focus on binding dispute settlement. Steve Charnovitz's article traces out the key features and trends marking the WTO upon its tenth anniversary. Against this backdrop, the article explores an 'optimistic' and a 'pessimistic' scenario for the future of the WTO. Charnovitz's concerns, and his suggestions for improvements, resonate with many of the observations offered in a recent WTO-commissioned report on the future of the organization.[4] Charnovitz concludes, however, that the WTO of 2020 is unlikely to be significantly different than it is today. Jeffrey Dunoff considers one facet of the debate about the evolution and reform of the WTO – the debate over constitutionalism. Dunoff reads the promotion of constitutionalism as driven by an impulse to minimize world trade politics. For Dunoff, a turn away from politics, and the transparency and participation that it entails, is 'precisely *not* what the WTO needs.' Michael Trebilcock's article also considers the role of the WTO, but his interest is in the larger debate about globalization. While public concern about international trade and international trade governance signal that the field has become a matter of 'high politics', Trebilcock argues that claims against globalization—six of which he examines in detail—are largely unfounded. Lastly, Sylvia Ostry's contribution reflects on the changing 'geography' of global trade and different modes of economic integration. As WTO membership has grown and developing countries have become more active players, the consensus-based negotiation process has become more complex. As a result, Ostry argues, large players, such as the United States and the European Union, have sought bilateral and regional channels for arrangements on matters such as investment or intellectual property rights.

Human rights issues, like environment, trade and security, are

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[3] Robert O. Keohane & Joseph S. Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977).

[4] Peter Sutherland *et al.*, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (World Trade Organization: Geneva, 2005).

among the mainstays of the international law and international relations literatures. However, in this volume, the editors sought to offer a slightly different perspective on the topic. The focus of Part Four is not on *inter*national processes but on *trans*national circulation of human rights norms and, specifically, those relating to same sex partnerships. Kenneth Norrie's essay traces the evolution of jurisprudence on same-sex partnerships and marriage in different jurisdictions. He highlights the cross-fertilization that has occurred over the last fifteen years or so between developments in different jurisdictions, including in European countries, North America, New Zealand, and South Africa. Courts and legislatures have taken notice of decisions in other jurisdictions and complainants have learned to weave developments in other jurisdictions into an increasingly strong web of arguments for equal treatment of same-sex couples. Jonathan Goldberg-Hiller explores some of the dynamics underlying these developments, focusing on the interplay between transnational judicial dialogue and concerns over national sovereignty in the United States. What is revealed is a process of international norm building and norm diffusion that is not the inter-state process upon which international lawyers and international relations scholars focus much of their attention. This process is driven by individuals, through legal challenges in national courts, and reinforced or even propelled forward through parallel developments in other jurisdictions. Goldberg-Hiller's article illustrates how non-state actors and social movements shape global legal developments through activities that crack open the 'billiard ball' image of the sovereign state. Evan Gerstmann too explores the tensions between these developments and state sovereignty. Courts in all countries have struggled to find a proper place for developments in international law or foreign law in domestic legal orders. A particularly charged debate has been underway in the United States. Gerstmann shows how especially the same sex partnership debate has galvanized the conservative resistance to international sources (and defense of American 'popular sovereignty') and to liberal openness to examining local practices in the light of international ones.

Finally, Part Five delves into one of the areas of 'high politics' in which international law is often said to be a bit player, or even outright irrelevant: international security and use of force. If security issues create a challenging environment for international law, in the cauldron that is the Middle East the challenge is relentlessly fuelled. Against this backdrop, the editors asked authors to reflect on the International Court of Justice's *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Michael Bell, a former Canadian Ambassador to Israel, canvasses the historical, political and factual background against which the Advisory Opinion must be appreciated. He paints a compelling picture of both the concerns that animated the Israeli decision to build the wall and its

disruptive impact on Palestinian lives. His contribution highlights the complexity of the issues in which the 'separation barrier' is entrenched. Frédéric Mégret analyzes the main legal issues around which the Advisory Opinion revolves: self-determination, self-defense and humanitarian law. He reflects on the Court's success in handling these issues against the backdrop of three interwoven 'stories.' These stories concern the ambition to see international relations governed by law, including the role of the World Court itself; the struggle of the Middle East to grapple with the legacy of colonialism and the 'shocks' of nationalism, modernization and globalization; and the continued meaning of 'walls, barriers and barricades' in a globalized world that is assumed by many to have done away with borders. For Mégret, the Court's analysis of the legal situation fails to grapple adequately with any of the three stories. Moshe Hirsch is somewhat more optimistic in his assessment. He too considers the legal ground covered by the Advisory Opinion. But his main interest is in examining the opinion's likely impact on Israel's future policy through the lenses of three broad streams of international relations theory: realism, liberal theory and constructivism. His article vividly illustrates how theoretical frameworks and their background assumptions shape an observer's image of international law, and of the role that an opinion of World Court can play in a given context. His analysis of the Advisory Opinion through the three sets of theoretical lenses leads Hirsch to conclude that 'the prospects for compliance … are modest for the short range and more significant over the medium and long ranges.' Finally, Ed Morgan's preoccupation is also with frameworks, lenses and stories. Using the Western movie *The Wild Bunch* as a lens, he focuses in on international law as a supplier of norms and narratives through which to read reality. For Morgan, international law carries the seeds of both destruction and reproduction in the many contradictory frames that it is attempting to reconcile. The pattern is one of betrayal: 'the principle of self-determination could always be betrayed for the sovereignty reasons, or statehood and self-defense could be betrayed for the cause of liberation.' Nonetheless, Morgan concludes: 'The ultimate betrayal, of course, would be the abandonment of both sets of ideals altogether. As with international law, it is society's complexities that give it momentum.'

As this overview of the contents of *JILIR*'s inaugural issue should have demonstrated, the reader will find a wide range of richly textured perspectives on issues of current interest. This first issue is a fitting start for a journal that promises to occupy an important place in the literature on international law and international relations.