Editors' Introduction: Continuity and Change

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The *Cambridge Journal of International and Comparative Law* (CJICL) was born in Cambridge on 1 August 2011, named by Professor James Crawford SC (now known as ‘The Godfather’) and ‘baptised’ by the Faculty of Law at its Board Meeting. The independent Journal naturally complements the renowned series of Cambridge monographs—currently edited by Professors Crawford and Bell—which were established in 1946 by Professors Lauterpacht, Gutteridge and McNair. Whereas the monographs are edited by accomplished academics in the fields of international and comparative law, the Journal is run by a young, up and coming team of doctoral candidates at the Law Faculty, and builds on the experience of its predecessor, the *Cambridge Student Law Review* (2003–2011).

It is this balance between preserving continuity with the past while fostering change for the future that the Journal seeks to capture. It focuses on public and private international law, while employing a comparative method to bridge gaps between legal orders and to assess the intersection between international, regional and national legal orders. Our vision is for the Journal to become an open platform for a constructive and critical dialogue between the junior and senior ends of the academic spectrum, as well as between international scholars and practitioners. The authors of our first issue reflect this vision—ranging from an unpublished piece of work by Sir Hersch Lauterpacht (he will therefore have featured prominently in establishing both the monograph and Journal series) to Ms Anna Cowan, who was recently awarded her LL.M. Our second issue is equally balanced: submissions by three eminent judges are published alongside the work of fifteen doctoral and masters’ candidates.

The first issue also contains a piece by HE Judge Greenwood CBE QC, who, after sketching a picture of the increase in international tribunals, focuses on some of the challenges of international litigation: work level, diversity, jurisdiction and compliance. Complementing this piece, but from a different

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perspective, is Sir Daniel Bethlehem's 'Secret Life of International Law', which examines international law from the perspective of one who must shape the approach and compliance of actors by 'giving advice'. We are very grateful to Professor Sir Elihu Lauterpacht CBE QC for allowing us to publish, for the first time, Sir Hersch Lauterpacht's Draft Nuremberg Speeches. These draft speeches formed a significant part of the final speeches delivered by the British prosecutor at Nuremberg, Sir Hartley Shawcross. In his article, Professor Philippe Sands QC puts the speeches in context, draws out key themes and discusses their significance.

Alongside the work of these established international and comparative lawyers, we also have contributions from younger members of the field. Dr Lorand Bartels assesses the intersection between general international law and the EU legal order, specifically with regard to the applicability of the law of treaties in the provisional application of the Economic Partnership Agreements between the European Union and several African, Caribbean and Pacific states. Dr Filippo Fontanelli also looks at the sources of international law, but from the perspective of 'private law analogies' and examines whether the contractual exception of non-performance has crystallised as a general principle of international law.

The case analysis articles cover the jurisprudence of general, specialised and regional courts and tribunals, exhibiting the opinions of both senior and junior academic minds. Professor Robin Churchill provides an in-depth analysis of the judgment in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*, the first maritime delimitation decision by the International Tribunal for the Law of the Sea. Drs Alex Mills and Kimberley Trapp offer a critical review of the long-awaited decision of the International Court of Justice in *Jurisdictional Immunities of the State (Germany v Italy; Greece Intervening)*, and Dr Francesco Messineo examines the decision of the ICJ in the *Application of the Interim Accord (the former Yugoslav Republic of Macedonia v Greece)* case and its impact on the 'Macedonia name dispute'. Thomas Liefländer looks at the first substantive judgment of the International Criminal Court—the *Lubanga* Judgment—and Anna Cowan provides a fresh perspective on the *Banković* judgment of the European Court of Human Rights in the light of *Al-Skeini*.

A word should be said about CJICL's second issue, published separately but alongside the first: the UK Supreme Court Review. It is the only dedicated annual publication that analyses the jurisprudence and approach of the UK Supreme Court. It is written by a selected team of CJICL Editors and contains an overview of cases from the legal year of 2010–11 as well as five thematic

articles that provide an in-depth examination of the Court's case law. Under the accomplished leadership of Lorne Neudorf, the issue also features sharp and engaging contributions from the Honourable Madam Justice Marie Deschamps, the Right Honourable Lord Phillips of Worth Matravers, and the Honourable Justice K. M. Hayne. This is the second issue of the UKSC series—the first was published by our predecessor, the *Cambridge Student Law Review*—and it introduces a specific focus on the international and comparative law aspects of the Court's jurisprudence, reflecting the late Lord Bingham's observation that "[j]udicial horizons have widened and are widening".¹

The CJICL embraces continuity and change not just in the work of our authors but also in how we operate and publish the Journal. All submissions undergo a rigorous double blind peer review process, with reviewers drawn from our distinguished Academic Review Board (consisting of young and established academics) and our Editorial team (consisting of Cambridge doctoral candidates). The Review Board is made up of over forty academics and lawyers in the fields of international and comparative law: well-established and senior academics alongside younger members. We are already deeply indebted to them for their selfless and enthusiastic commitment to providing carefully crafted reviews for our first issues. Our uncompromising approach to the peer review process is vital not only for the academic value of the CJICL, but also for maintaining the high standards of our discipline as a whole.

Continuity is also maintained in our adoption of established copy-editing procedures, benefiting from the knowledge of our experienced law journal editors. Equally, however, we are embracing change in our approach towards publishing: for the reader, the author and the editor. Central to this change is our decision to establish our primary 'open access' home online rather than in print: the Journal is made freely available via our website—<http://www.cjicl.org.uk>—and in established online databases such as Westlaw and HeinOnline. It can be read as a single PDF, separate article PDFs and through our custom website browsing system. Our editorial process—from submission to the final copy—is also managed online through a bespoke management system skillfully designed by Sidney Richards.

The second—and perhaps most important—change is the decision to make the Journal 'open access'. There are (as we quickly learnt) several variations on 'open access' with the key question being: open for whom? Some journals claim to be open access but limit access to specific institutions or require authors to pay to have their articles published. Others are open in the sense of being 'free'

¹ T. Bingham, *Widening Horizons* (CUP, 2010), at 3.

but cannot be reprinted and distributed in classrooms or lecture halls. The CJICL is open for readers and authors: there is no charge to publish and anyone can access and use the Journal in whatever way they want, so long as it is not for a commercial purpose or a direct re-print in another journal or book (for which express permission is required). For the reader, this means easy, free and unobstructed access to academic material and the ability to access our content via cross-journal searches. For the author, this means greater exposure at a time when funding bodies and universities are strongly encouraging authors to maximise their appeal and publish in open-access journals.

To complement the work of the Journal and to cultivate debate and ideas for future articles, we have established an online blog—available on our website: <http://www.cjicl.org.uk>—which regularly publishes short, cutting edge discussion pieces on topical issues of the day. Recent entries include a discussion on peremptory norms and the ICJ's judgment in *Jurisdictional Immunities of the State*, and an examination of the US Supreme Court's decision on patentable subject matter in *Mayo Collaborative Services v Prometheus Laboratories*. Readers can engage directly with the authors by posting their comments and reactions online. The Journal is hosting its first annual conference in May 2012 on 'Agents of Change: The Individual as a Participant in the Legal Process'; we hope that the conference presentations and debates will form the basis of a future thematic issue.

The Journal is the result of the hard work of a wide range of colleagues, friends and scholars. We owe a significant and heartfelt thank you to everyone who has helped us along the way: from advice and expertise to support and financial assistance. We are particularly indebted to the Faculty of Law at the University of Cambridge and the *Cambridge Law Journal* for financial support, to Daniel Wilkins for designing the website, to Julia Powles for her advice on the licence agreement, to Yin Harn Lee our skilled and always reliable Secretary and Treasurer, and to Finola O'Sullivan, Ella Colvin and Kirsten Purcell of Cambridge University Press for their friendship and support. We are also extremely grateful for the enthusiasm and assistance of our Academic Review Board, without whom the rigorous process of selecting articles could not have taken place. We would like to thank Bluepoint Cambridge, in particular Alex and Gordon, for accommodating our idiosyncratic and often last minute requests! To our wonderful team of Editors and Managing Editors—Fernando Lusa Bordin, Samuel Dahan, Lorne Neudorf, Sidney Richards (who demonstrated great skill in producing the final layout) and Claire Simmonds—we owe the greatest debt of all: thank you all for your tireless, dedicated and exemplary team work! Finally, we would like to express our special thanks to

our Senior Treasurer, Professor James Crawford SC and to Professor Sir Elihu Lauterpacht CBE QC—as The Godfather and Grand-Godfather respectively—for their guidance, expertise and unparalleled enthusiasm and support.