Editorial

1 REFLECTIONS ON THE CILJ ON THE OCCASION OF ITS TENTH ANNIVERSARY

The Cambridge International Law Journal (CILJ) is the peer-reviewed academic law journal of the postgraduate community at the Cambridge University Faculty of Law. Originally founded as the Cambridge Student Law Review in 2003, it was first renamed the Cambridge Journal of International and Comparative Law in 2011 and given the name under which it currently operates in 2017. The journal remains true to the original set-up of the CSLR: much like many US journals, the journal is run by LLM and PhD students. This represented at once an innovation for the European scholarly market as well as a return to early twentieth century roots: in 1921, the Cambridge Law Journal was also founded as a student publication.

In the words of Professor H D Hazeltine, in the Foreword of the first issue, the work of legal editorship and authorship ‘is a valuable training; and this work on the journal is already viewed at Cambridge as one of the highest goals of student-ambition’. Yet, within a few years, the direction of the journal was entirely taken over by the Law Faculty. The founding of the Cambridge Student Law Review, and its subsequent incarnations, therefore represents a significant development in the history of student-run journal publications. Currently published biannually by Edward Elgar, the journal is celebrating its anniversary with a special section that reflects on a decade of developments in international law.

Since its founding, the journal has published contributions of high quality by esteemed authors, including works by Sir Hersch and Sir Elihu Lauterpacht, Sir Christopher Greenwood and Philippe Sands. It has also contributed three issues to the UK Supreme Court Yearbook. The number of submissions that the CILJ receives from the broad international law community increases by the year, reaching nearly 350 in the last academic year. The editorial board has grown in response and now includes 46 members, of whom more than two-thirds work on the journal itself. Of the submissions received every year, about 14 are published. The longest volume to date is No 3, which included nearly 50 contributions across four issues.

The CILJ has also been hosting the annual Cambridge International Law Conference since 2011, to which the last issue of each volume is dedicated. Like the journal itself, the conference has attracted esteemed practitioners and scholars, including Dame Rosalyn Higgins, Dean Spielmann and Abdulqawi Yusuf. The conference has also grown in popularity and size and is now organised by a team of six to eight editorial board members. Owing to the COVID-19 pandemic, the 2020 edition was successfully moved online and did not have to be cancelled, unlike many other events that were scheduled for last spring. Although the journal today only publishes two issues every year, it steadily provides popular updates on developments in international law through its blog.

Finally and importantly, a word of gratitude is due to the more than 60 members of the academic review board, many of whom have supported the journal in various ways over many years, including by providing high-quality peer review. Without them, the journal could neither have achieved nor maintained its current high standard.

James Crawford
Inaugural Honorary Editor-in-Chief
INTRODUCTION TO VOLUME 10(1)

This celebratory issue of the Cambridge International Law Journal offers a critical examination of some important developments since the journal began, now over a decade ago. In the first issue of the Cambridge Journal of International and Comparative Law (as it was then known, born from the successful Cambridge Student Law Review before that), the guiding vision was one of ‘Continuity and Change’: acknowledgment of the debt that international law scholars inevitably owe to those who came before and of the role that history plays in shaping our present; but also recognition of a responsibility to continue pushing the field forward and to think critically about what kind of world we want to live in. The journal has continued this tradition, as is evident in this special issue. For example, the first volume printed Sir Hersch Lauterpacht’s draft (but highly influential) Nuremberg speeches for the first time, with an introduction by Philippe Sands; the current volume critically reflects on the past ten years of the International Criminal Court.

The journal was always envisaged as truly generalist in its scope and contribution. The first issue contained articles in the fields of international dispute settlement, the law of the sea and the law of treaties. The current issue has a general section and a special one including articles in the fields of human rights, World Trade Organization (WTO) law and environmental law. The journal has continued being a true reflection of the dynamics in the field of international law whilst staying true to its core topics.

It has been a pleasure and privilege to watch the journal grow into a well-established publication that offers international law scholars from all stages of their career a platform to engage in critical discussion of any issue of public and private international law. It began life in a flurry of enjoyable, but intense, activity. Getting a publication of this nature off the ground within a year meant racing to work out how to publish the journal without the backing of a publisher; establishing open-access protocols, which were quite rare if not radical for their time; developing an editorial board; designing the cover (based on a photo of the Cambridge Law Faculty that we took ourselves), the page layout (critical decisions on fonts, spacing and margins!); creating a website, submissions manager and article database; establishing an academic review board; and so on. This is to say nothing of curating and editing articles and creating and running the first Cambridge International Law conference. We are greatly indebted to the first team that undertook this work: Fernando Lusa Bordin, Samuel Dahan, Claire Fenton-Glynn (Simmonds), Yin Harn Lee, Lorne Neudorf, Sidney Richards; and an outstanding team of editors, as well as generous and insightful guiding hands: H E James Crawford SC and Sir Elihu Lauterpacht QC. The experience of working together provided us with life-long friendships and enduring memories. The journal is now driven forward each year by successive teams of dedicated and talented student editors, each cognisant of the need for continuity and change. It has become a true focal point of the intellectual life of the Law Faculty, bringing together the undergraduate, LLM and PhD students passionate about international law with academics from all over the world. In this way, the journal itself ensures continuity between the generations of international lawyers whilst allowing them to catalyse change in international law...

Andrew Sanger and Rumiana Yotova
Inaugural Editors-in-Chief
3 OVERVIEW OF VOLUME 10(1)

We are proud to celebrate the tenth anniversary of the journal with a special section that reflects on a decade of developments in international law. Since the first issue of the Cambridge Journal of International and Comparative Law was published in 2011, changes in this broad field have been numerous and extensive. Geopolitical and environmental changes have led to countless developments in a wide range of areas of international law and European law. For example, the field of international environmental law saw the adoption of the Paris Agreement. In international criminal law, the International Criminal Tribunal for Rwanda was dissolved in 2015 after operating for more than two decades, and, in 2012, the International Criminal Court (ICC) handed down its first conviction. We are also witnessing ongoing negotiation of the new implementing agreement to the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, which will hopefully fill the legal gaps of the law of the sea. International economic law has been confronted with the invocation of the national security exception in the WTO Agreements. A WTO Dispute Resolution Panel addressed the issue in 2019, which been invoked in other disputes. The International Bill of Human Rights celebrated its 50th anniversary in 2016. Human rights concerns relating to data privacy have been brought to the fore by the rise of ‘Big Tech’, and the COVID-19 pandemic has led to the most comprehensive restrictions of rights in decades. At the regional level, Venezuela’s membership of Mercosur was suspended in 2016 over concerns regarding democracy and human rights, and, after 47 years of membership, the United Kingdom became the first State to exit the European Union in 2020.

This exemplary list highlights the extent of changes that international law has undergone since 2011. In this special section, we offer three diverse analyses of such changes that keep with the generalist scope of the CILJ. It is opened by Professor Lavanya Rajamani and Professor Jacqueline Peel’s comprehensive ‘Reflections on a Decade of Change in International Environmental Law’, which impressively showcases the extensive developments that this field of law has undergone in the past decade. The article offers an analysis of the changing geopolitical context relating to international environmental law and examines how international environmental law has responded to these changes. Rajamani and Peel cover a wide range of environmental regulations in the areas of law of the sea, climate-change law, international human rights law, international investment law, and international economic law. Against this comprehensive overview, the authors examine whether international environmental law remains to be responsive to increasing complexities of environmental harms formed by current international law and politics.

Vineet Hegde, Professor Jan Wouters and Akhil Raina take a similarly comprehensive approach in their contribution on the WTO’s international economic order, focusing on the demise of the Appellate Body of the Organisation. By reviewing how powerful economies like the United States, China and the European Union are slowly avoiding multilateralism, the authors highlight the factors driving this trend. Based on a number of theories and practices regarding this trend, Hegde, Wouters

and Raina point to the relative decline of the rule of law and argue for urgent action ‘to remedy and strengthen the multilateral rules-based trade order’.³

The special section concludes with Florian Held’s analysis of the ICC’s decade-long Al Bashir saga that concerned the immunity of the heads of States that are not party to the ICC. Held reviews the judgments rendered by the various chambers of the ICC to highlight what they reveal about the ICC’s self-perception. While all chambers involved in the saga ultimately agreed that Al Bashir did not enjoy immunity from the ICC’s jurisdiction, their reasoning differed. Ultimately, the Appeals Chamber followed a universally applicable approach based on customary law which had originally been adopted by the Pre-Trial Chamber that first dealt with the question of Al Bashir’s immunity. Held concludes that this reasoning portrays the ICC as a truly international court that works on behalf of the entire international community, not just its States Parties.

The general section of this issue is opened by Professor Andrew Serdy’s discussion of ‘The 2018 Fisheries White Paper, the Fisheries Act 2020 and Their International Legal Dimension’. The article is based on the Joint Cambridge International Law Journal–Lauterpacht Centre of International Law Annual Lecture, delivered by Serdy on 20 November 2020. We are grateful for our continued cooperation with the Lauterpacht Centre of International Law, who have made this lecture possible.

In his lecture, Serdy discussed the timely topic of the United Kingdom’s fisheries management in the post-Brexit era, which was raised by the 2018 Fisheries White Paper and the Fisheries Act 2020. His article delves into various legal issues regarding fisheries that arise from Brexit, including potential interests and membership of the United Kingdom in the regional fisheries management organisations, issues of maximum sustainable yield and catch limits, the prevention of illegal, unreported and unregulated fishing, and navigational freedom of foreign fishing vessels in the exclusive economic zone of the United Kingdom.

Subsequently, Spyridoula Katsoni’s contribution on the ‘Impacts of the Interpretative Interaction Between International Human Rights Law and the Refugee Convention’ analyses the interplay between International Refugee Law (IRL) and International Human Rights Law (IHRL). By reference to personal scope, extraterritorial application, access to courts and the right to asylum, Katsoni demonstrates that similar patterns of interpretation can be observed on both sides of this interaction: the interplay between the two fields of law is mutual. It has led to an extended scope of protection and more restrictive interpretation of exclusionary provisions in both fields. IRL and IHRL do not appear to be in competition, but rather to mutually reinforce one another.

Next, Jefferi Hamzah Sendut sheds light on the discussions of the proportionality of provisional measures in International Centre for the Settlement of Investment Disputes (ICSID) arbitration. In addressing proposals to include proportionality as a requirement when deciding on provisional measures, the author argues that proportionality will adequately consider the effects of provisional measures to States’ sovereign prerogatives as well as being fair to the investors. Sendut’s analysis relies on a comparison of how the ICSID tribunals treat the treatment of provisional measures on two

sovereign prerogatives; the suspension of domestic tax enforcement and the suspension of criminal investigations or proceedings.

In the final contribution to this issue, Dr Kazuki Hagiwara reviews the suspension of the Intermediate-Range Nuclear Forces Treaty by the United States in 2019. Alleging that Russia had committed a material breach of the Treaty, the United States explicitly invoked customary international law when announcing that it suspended its obligations under the Treaty. Hagiwara addresses the uncertainty that exists regarding the existence and content of such a customary law rule and discerns its content. Hagiwara classifies the United States’ decision as an act of unilateral suspension that rests on customary law located ‘at the intersection of the law of treaties, the law of State responsibility, and general principles of law’.4

We hope that you will enjoy this celebratory issue of the Cambridge International Law Journal. In the words of former editors-in-chief Eirini Kikarea and Maayan Menashe, it ‘is the product of collective work and effort’.5 We are grateful to Edward Elgar Publishing, who have supported the journal since 2017. We value the support and guidance they have offered throughout the publication process and would like to thank, in particular, Ben Booth, Marina Bowgen, Phillip Thompson and Nick Wilson. This celebratory issue would not have been possible without the dedicated work of our editorial board. We are grateful for the tireless commitment of our managing editors, Christian Delev, Alexander Ferguson, Oliver Hailes, Ibrahim Hanif, Mohamed Moussa and Darren Peterson, and the meticulous work of our general editors. We are equally thankful for the invaluable expertise and advice offered by our academic review board, to which we have the pleasure of welcoming Professor James Harrison and Mr Christopher Johnson. Our gratitude extends to our ad hoc reviewers for their support during the review process as well. We would also like to thank Professor Eyal Benvenisti, our honorary editor-in-chief and the members of our faculty advisory board, Professor Catherine Barnard, Professor Jorge E Viñuales and Dr Kate Miles, as well as our senior treasurer, Dr Andrew Sanger, for their guidance throughout the year so far. Our thanks further extend to Yan Kai (Tony) Zhou, our junior treasurer, whose experience and expertise we have been able to rely on at all times.

Last, but certainly not least, we would like to thank our predecessors, former editors-in-chief Catherine Drummond and Patrick Perillo. Their continuing guidance and advice have been invaluable to us.

We invite our readers to reflect on a decade of developments in international law with us and hope that you find the contributions presented in this celebratory issue insightful and thought-provoking.

So Yeon Kim and Tom Boekestein
Editors-in-Chief