Editorial

1 INTRODUCTION

Welcome to Volume 7(1) of the Cambridge International Law Journal (CILJ). Since the transition from its predecessor, the Cambridge Journal of International and Comparative Law, the CILJ has continued to provide a platform for scholars, both young and well-established, to provide high-quality research in the field of international law. It was in this spirit that the Journal decided to partner with Edward Elgar Publishing whose similar commitment to innovative scholarship has allowed us to expand our readership. We are therefore grateful for the invaluable advice and support of Luke Adams, Ben Booth, Marina Bowgen, Katie Smith, Kate Pearce and Nicolas Wilson throughout the publication process. We also wish to thank our predecessor Editors-in-Chief, Niall O'Connor and Lan Nguyen, who laid the foundations for this blossoming partnership and whose steady guidance throughout the year has been indispensable.

As ever, the issue would not exist in its finalised form without the assistance and dedication of several people. First among these are the authors whose contributions appear in the following pages. It was a pleasure to engage with and be given responsibility over such insightful scholarship, and we are grateful for their timely cooperation at the review and copy-editing stages. Our Managing Editors, Maayan Menashe, Kim Willey, Trina Malone, Orfeas Chasapis Tassinis, Luíza Leão Soares Pereira, and their teams of editors have been tireless in their efforts and dedication to the Journal. We are also grateful for the continued support of the Lauterpacht Centre for International Law, its Director and our Honorary Editor-in-Chief, Professor Eyal Benvenisti, the Cambridge Centre for European Legal Studies, the Cambridge Law Faculty and the members of our Academic Review Board for their continued guidance.

2 OVERVIEW OF VOLUME 7(1)

International law and lawyers live in troubling times. It is therefore apt that this issue's flagship article would deal with the relationship between international law, history and time. We are delighted that Deborah Whitehall's article entitled 'A Time-Map for International Law' appears in this issue, after having been delivered as the Cambridge International Law Journal–Lauterpacht Centre for International Law Annual Lecture in November 2017. Drawing on political theorist Hannah Arendt and her work on historical time, Whitehall poses three 'time-maps' for international law which reconceptualise the connection between historical and legal time. Taking the 1945 Potsdam Conference as a fixed point, Whitehall uses the notions of 'time-gap', 'time-sequence' and 'historical cycle' to rethink the temporal undulations surrounding this seemingly disruptive and 'new' international legal moment. Whitehall reimagines the international lawyer's relationship to historical time and opens up the possibility for the international lawyer to become a 'legal cartographer' who can operate in the present, break with the past, and envisage alternative futures.

The second article, which is no less path-breaking for its innovative approach, comes from Clara Chapdelaine-Feliciati. Employing a deconstructive methodology, the author conducts a semiotic analysis of the UN Convention on the Rights of the

Child, particularly on the issue of gendercide. As the author acknowledges, international lawyers are already concerned with the meaning of words in their daily work. Chapdelaine-Feliciati thus deconstructs the ‘sense’ of the Convention terminology before revealing the ‘meaning-intention’ of the drafters in the *travaux préparatoires*. She then considers the ‘significance’ of the wording of certain rights in the Convention before advocating a ‘semioethic’ reading of certain provisions to amend the Convention and strengthen protections against female infanticide in international human rights law.

In unstable times, the need for clarity and certainty is no less (or perhaps even more) pressing than usual. In the next article, ‘Ordering Individual Criminal Responsibility: Proposing a Hierarchy of the Modes of Liability’, Melissa Conway offers a hierarchy of the modes of liability as a solution to the problem of inconsistency in international criminal law sentencing. Beginning with a telling example of the limitations of the present regime, Conway reconfigures the modes of liability as contained in Article 25 of the Rome Statute around the notion of blameworthiness, setting aside the distinction between principal and accessorial liability in the process. By providing this standardised framework through a close reading of International Criminal Court jurisprudence, Conway begins to place the fair trial principles of legal certainty and proportionality at the centre of legal analysis once again.

Continuing with the theme of certainty and clarity, Sacha Garben’s article, ‘The Problematic Interaction between EU and International Law in the Area of Social Rights’, explores the challenges to the international rule of law posed by the autonomous legal orders of the European Union (EU) and EU Member States in the area of fundamental social rights. Starting from the premise that fundamental rights are pivotal in defining the relationship between the international, EU and national legal orders because each claims some degree of final authority on the question of fundamental rights, Garben analyses the possible frictions that arise from this paradigm in the under-explored realm of fundamental social rights. Focusing on the European Court of Justice’s case law in the *Viking* and *Laval* cases, as well as the austerity measures taken during the eurozone crisis, Garben argues that it is not necessary for the EU to accede to the European Social Charter or the International Labour Organization Conventions to resolve the challenges to the international rule of law. Instead, Garben argues, most problems can be avoided by emphasising more strongly the collective and individual responsibility of Member States, and by reinforcing the democratic legislative process in determining the appropriate level of social rights protection – which, in turn, requires a reduction of the role of the judiciary in this determination.

The volume then turns to a new type of violence and threat that international law currently faces: cyberattacks. In ‘Stuxnet and International Law on the Use of Force: An Informational Approach’, Samuli Haataja and Afshin Akhtar-Khavari present a refreshing analysis of the prohibition on the use of force in Article 2(4) of the Charter of the United Nations in the context of the Stuxnet cyberattack, and through the lens of Luciano Floridi’s theory of information ethics. Haataja and Akhtar-Khavari argue that the anthropocentric and materialist view of violence that international law currently holds should be expanded to recognise the non-material harm posed by the likes of the Stuxnet cyberattack. Such an expansion is necessary because of states’ increasing reliance on information and communication technologies; and by failing to account for harm to such technologies, the law is unable to adequately account for the non-material harm that cyberattacks can cause to states.

The sixth article, ‘Retroactive State Criminal Jurisdiction under International Law’, revisits the theme of time in international law. Michail Vagias asks the intriguing

question of whether a state can exercise criminal jurisdiction *today* for crimes committed in World War II pursuant to a universal jurisdiction statute adopted in 1991. The question arises at the intersection between, on the one hand, a state's broad authority under international law to pass laws asserting jurisdiction over international crimes; and on the other hand, important rights for the accused proclaimed by international human rights norms. Paying particular attention to extraterritorial state jurisdiction, Vagias argues that a state has the right under international law to extend its jurisdiction retroactively in order to prosecute past international crimes domestically, primarily because jurisdictional rules are outside the scope of the international principle of legality, and because extradition law and practice point to this conclusion.

In the final long article, 'The Classification of Armed Conflicts between Occupying States and Non-State Armed Groups in Cases of Belligerent Occupation', Noam Zamir undertakes an in-depth analysis of how to classify armed conflicts between non-state groups and occupying states in cases of belligerent occupation. Examining Article 1(4) of Additional Protocol I and its customary status, Zamir analyses the argument that, where there is a belligerent occupation, non-state armed groups should be considered parties to an international armed conflict even when the occupying state is not a party to the Additional Protocols and/or refuses to acknowledge the non-state group as a party to an international armed conflict. Zamir concludes that non-state armed groups can be so considered by adopting an evolutive interpretation of common Article 2 of the Geneva Conventions.

In a short article entitled 'Understanding the Legal Status of Universal Period Review Recommendations', Frederick Cowell unpacks the nature and legal force of recommendations made under this peer-review human rights mechanism. Cowell begins by appraising the limits of formalist readings and the need to approach the question of UPR recommendations' legal status in terms of socialisation of states and increasing levels of compliance with human rights standards. Employing this constructivist lens, Cowell reflects on the peer-review process as a law-making one with the capacity to alter state behaviour, even if not through the traditional enforcement paradigm. He considers whether recommendations constitute *opinio juris* for the purposes of identifying customary law, and whether they operate as a 'collateral enforcement measure' to name and shame non-compliant states.

This issue concludes with an extended book review by Orfeas Chasapis Tassinis on Anthea Roberts' seminal work, *Is International Law International?* Although commenting on the recent 'turn to self-reflection' among international law scholars, Chasapis Tassinis focuses primarily on Roberts' methodology and the project of comparative international law to which the book contributes. Reflecting on this issue, we think it appropriate that it would end where it began, namely by appreciating the international lawyer's role in the formation of her discipline. We hope you enjoy the issue.

Richard Clements and Ya Lan Chang
Editors-in-Chief