Chapter 1

International law for international relations: foundations for interdisciplinary study

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CHAPTER CONTENTS

CHAPTER OVERVIEW

This chapter is about the relationship between international relations and international law—and aims to sketch out the most appropriate way to understand this relationship. The two disciplines are overlapping, but distinct, and this chapter will discuss the ways in which they converge and diverge in terms of disciplinary commitments and the types of knowledge they produce. The chapter will explain how international relations and international law can be interested in the same phenomena—sometimes for the same reasons and sometimes for different reasons. The chapter will then show how international law informs our understanding of single events in international affairs as well as change and continuity in the international system. The chapter will conclude by providing six important reasons to study international law for students of international relations.

Introduction

This textbook is intended primarily for the use of international relations and politics students. Its aim is to give an outline of the most important questions in international law and the significance of these questions for studying international relations. The textbook does not assume any background in law or international law. The book also does not pursue what may be termed a 'purely legal approach'. It aims to ground the study of international law within broader international political concerns and theoretical frameworks. It pays attention to the kinds of aims pursued by or through international law in international relations. It discusses the extent to which some international laws are foundations of international political interactions. It asks whether international law is in need of reform to meet the demands of current and future international politics.

Debates about the roles, functions, and purposes of international law in international relations are rich and complex. These debates require a clear approach in order to understand the relationship between international relations and international law. This introductory chapter aims to develop a methodology for approaching the relationship between these two disciplines and the focus of their inquiry.

The first question for a student of politics or international relations who sets out to study international law is 'What is international law and why study it?' Students

Box 1.1 The cynic and international law

The cynic regards international law as the enterprise of the naïve, the occupation of the wishful thinker, or the realm of the fool who does not understand international politics. For the cynic, all international law does, is offer some intricate language which politicians use to get their own way. This view cannot be correct. The cynic cannot account for the continuing existence of international law as an idea and as a practice. If everyone knows that international law is merely a means of manipulation, why was international law not abandoned some hundred years ago? Why, after each of the twentieth century's world wars, did we build institutions which have further entrenched international law? The problem with the cynic is that he or she grossly underestimates the intelligence of everyone who has worked for international institutions and their cooperation. This is not to say that international law is not used in a manipulative way in everyday politics. However, the survival of the idea and practice of international law after hundreds of years of manipulation shows us that there is something more to it than mere rhetoric. The real disagreement about international law, therefore, must be about how relevant it is in specific contexts and circumstances, not about whether it is relevant at all.

of international law, we can say, know what international law is—it is the law that regulates the relations between states—and study it because they see an intrinsic value in the subject. Students of politics and international relations may find this definition and motivation naïve. Are the relations between states *really* regulated? Why study rules, which are disputed and not regularly respected? So, a textbook on international law has to motivate the very keen international relations student as well as the very cynical. It has to clarify what international law is and the purpose of studying it.

What is international law?

The textbook definition that international law is the law that regulates relations between states gives us two important aspects of a definition of international law, namely that it is concerned with interstate regulation and that international law is different from other types of law. *Regulation* is an important general characteristic of all law. Law is *prescriptive* and it commands how all people ought to act in their relations with others. It also enables us to predict how actors may behave towards us. However, this definition is misleading in so far as international law can regulate other forms of relationships that states agree to regulate.

International law is different from other law such as *domestic law* and *conflict of laws* (or *private international law*). The former regulates relationships between natural and legal persons within a single country and the law that is applied is determined by the legislation of that country. The latter regulates relationships between natural and legal persons that happen to be in more than one country, such as relationships between companies in two different countries or between parents from two different countries over the custody of children. In such cases, courts have to decide the law of which country should be applied. It is for this reason that international law is sometimes also called *public international law*. This is to emphasize that its focus is interstate relations and not relations between private entities and domestic laws of any country cannot tell us what international laws are. Private entities, such as companies or individuals, however, can be *subjects* of international law. For example, international aviation is governed by international law because there are international treaties between states about it. Similarly, individuals can be prosecuted under international criminal law or claim rights against states under international human rights law because there are interstate treaties that make these possible. International law, therefore, regulates more than just interstate relations. It also regulates other

forms of relationships that states agree to regulate internationally. International law regulates the conduct of actors that make up contemporary international society. International society is primarily made up of states. It is also made up of international organizations and non-state actors—such as armed groups or business enterprises and individuals—but only in so far as their status, powers, and responsibilities are recognized by states through international law.

An essential element of the definition of international law, therefore, is not its subject matter or the type of entities it regulates, but that it is law that is made by states collectively. No single state acting unilaterally can make international law; neither can a collection of corporations or individuals. In other words, the authority to make

Box 1.2 Areas of contemporary international law

This list is not exhaustive, but gives us an idea about the diversity of areas that international law relates to:

- Airspace
- Development
- Bio-diversity
- Climate change
- Conduct of armed conflicts
- Diplomatic and consular relations
- Extradition
- Finance
- Fisheries
- Human rights
- Indigenous rights
- Intellectual property
- International crimes
- Minority rights
- Natural resources
- Outer space
- Ozone layer
- Postal matters
- Peace and security
- Science and security
- Sea
- Trade
- Use of force
- Weapons

international law rests with states acting together. International organizations, individuals, and corporations can all become subjects of international law and have limited powers and international personality recognized under international law. They can also help clarify what international law is by interpreting it or they can appear in international courts. But they cannot make international law. This means that there are no predetermined limits as to what areas international law does or should regulate. This can only be determined through collective agreement amongst states.

The relationship between international law and international relations

International relations is interested in much broader phenomena than just the legal regulation of international affairs. International relations is interested in understanding how and why states and other actors on the international plane behave in the ways that they do, the nature of the international system, and the role of international actors, processes and discourses (see Chapter 2). International relations is more interested in what does in fact happen under certain conditions and how we can explain interactions and behaviour in international relations (although some international scholars may also propose how international relations should be conducted and what international institutions we should have).

Given this difference in focus in approaching international affairs, three preliminary questions are helpful to think about the relationship between international law and international relations.

These are:

1. Are international relations and international law two separate disciplines or are they different approaches within a single discipline?
2. How does the knowledge produced in international relations and international law overlap, conflict, and co-depend?
3. At what point and in what way does international law enter into international relations research?

Are international relations and international law two separate disciplines?

International relations and international law are two separate, but overlapping disciplines. Disciplines are a collection of a number of ground rules on how a subject

matter is identified and there are invariably disagreements among the members of a discipline about what these ground rules are. How distinct the two disciplines are, therefore, depends on points of view within each discipline.

International law and international relations have common concerns as well as key differences. There is not, however, a straightforward answer or definitive list of differences and similarities. Students of both disciplines disagree about the proper boundaries between international law and international relations. More accurately, therefore, there are a number of lists (as we shall see in Chapters 2 and 3).

Let's start with the most basic similarity. International relations and international law are concerned with international phenomena. They share a curiosity about how we may identify international phenomena and how such phenomena relate to or affect domestic affairs and how domestic affairs inform international phenomena. Consider the following questions:

- How does a new state enter into the international system?
- What guides the behaviour of actors in the everyday life of international relations?
- Why do international organizations exist?
- Why have states created and signed up to international treaties in virtually every area of public policy?
- What is the significance of one or a collection of powerful states disregarding some established rule of international law?
- What are the differences between the powers and capacities of states and non-state actors in international law?

These questions are all about international phenomena. They focus on the significance, the role, the added value, and the future of international organizations, international cooperation and international regulation in international relations. It is easy to see why these questions are of interest to both disciplines. International relations seeks to understand and explain existing arrangements and institutions at the international level. It also aims to identify patterns or generalizations about behaviour in international relations. Normative branches of international relations aim to identify what duties, rights, and obligations states have towards each other and towards individuals or groups and what principles should govern international institutions and interactions. It is also necessary for international law to understand these because they raise important questions of appropriate boundaries of international regulation. That the two disciplines share an interest in the same phenomena does not necessarily mean, however, that the interest is shared for the same reasons.

Nor does it mean that the two disciplines attempt to address the phenomena in the same way (Ku et al. 2001).

International relations and international law can differ or overlap in their motivations for asking the questions above. They can also go about answering them in different, or overlapping ways. International relations and international law can be interested in the same phenomena for different reasons. They could also be interested in the same phenomena for the same reasons. Each of these reveals a different type of disciplinary relationship. The more divergent the reasons for interest in international phenomena, the more separate the two disciplines become. Conversely, the more similar the questions about the same phenomenon become, the more the disciplines overlap. Whether the two disciplines are distinct or not is dependent on how the research questions are framed.

There are two central independent variables that determine the nature of the relationship between international relations and international law.

1. Reasons motivating the asking of a question.
2. Reasons motivating the selection of procedures in order to answer a question.

The former indicates differences in terms of *approaches*. The latter indicates differences in *methodology*.

Differences in approach and methodology are key to understanding how different outcomes in terms of findings, views, and opinions are formulated with respect to the same subject matter. Approaches and methodologies, in this respect, are broader concepts than the concept of discipline. There will be, however, a core concentration of similar approaches and methodologies in every discipline, which will give the discipline its dominant colour. For example, realism (Chapter 2) in international relations and legal positivism (Chapter 4) in international law have been regarded as the most dominant approaches for a long time. International relations and international law contain a number of approaches and methodologies, which are discussed in greater detail in Chapters 2 and 4. Proponents of different approaches and methodologies in each discipline have strong disagreements about how the discipline should proceed to enhance its understanding of the subject matter. That is

Table 1.1 Approach, methodology, discipline

Approach	Methodology	Discipline
Ideas intended to deal with a subject	Justification of procedures to answer a question within a subject	A branch of knowledge that hosts a number of approaches and methodologies

Table 1.2 Interdisciplinary engagement

Scenario 1	Scenario 2	Scenario 3
Two separate approaches, some separate methodologies	Two separate approaches, but a single methodology	Two similar approaches with similar methodologies
Very different disciplines, hard to have anything common	Different disciplines, some common points	Full overlap between research agendas

why it is equally possible to have strong alliances between the disciplines of international relations and international law as well as a complete lack of interest in what goes on in the neighbouring discipline.

We can now start to understand what interdisciplinary disagreements are usually about. They can be between: any approach in international relations against another approach in international law or any methodology in international relations against another methodology in international law. This also tells us that it is not necessary that the relationship between two disciplines will always be about disagreements. Provided that the approaches or the methodologies overlap, the relationship can be one of mutual interest in the same type of questions for the same kind of reasons. For example, students of international relations who study the conditions of international cooperation may be thought as international lawyers in disguise or vice versa.

What is the most dominant disciplinary characteristic of international relations and international law? From what we have said so far, it is clear that not everyone will agree on a particular answer to this question. We may still find a distinction that most will agree on: international law is primarily interested in the *regulation* of international affairs. International relations is more interested in *understanding and explaining* them. The legal element has a more significant weight in international law, while in international relations it is the political element that takes centre stage. International lawyers ask when we have international law. International relations scholars ask how international actors behave.

These dominant characteristics guide which questions are viewed as worthy of higher or priority interest. For the international lawyer, for example, the central question is: what are the rules and principles that govern international relations and how do we identify such rules? For the international relations scholar, more

Table 1.3 Disciplinary differences

International relations	International law
Understanding and explaining international affairs	Regulation of international affairs

important is: what makes states support a particular norm in international relations and how do we know when support for that norm erodes or increases? We can see that these questions tackle the same type of issues, but have different concerns, approaches, and methodologies in mind. This may not, however, look as straightforward after further scrutiny. We can equally say that international relations students are interested in understanding international affairs and its politics because they are interested in how best to regulate it. They hope to propose prescriptions based on the general patterns of behaviour and structural generalizations. Conversely, international law cannot successfully regulate international affairs without understanding how a particular norm came to be accepted in the first place. Each discipline needs to inform the other in order to be successful. This shows us that international law and international relations can ask the same questions for different reasons.

In conclusion, it is possible to offer a qualified answer to the question of whether international law and international relations are two separate disciplines. Easy or simplistic answers will not do. The answer has more to do with identifying shared *attitudes* to international affairs in each discipline.

Final verdict: separate or the same?

1. International relations and international law are concerned with the same kind of phenomena: relationships, processes, institutions, events that take place in the international sphere.
2. Whether they are two separate disciplines or not is sensitive to the different approaches and methodologies that are hosted in these disciplines.
3. The two are not necessarily in fundamental conflict with each other in terms of positions they hold about international affairs. They may or may not be in conflict.
4. They are dependent on each other given that understanding or explaining international affairs may take its cue from the very regulation of these affairs and vice versa.

Table 1.4 Disciplinary convergences

International relations	International law
Understanding and explaining international affairs with the aim of its better regulation	Regulation of international affairs based on a grounded understanding of current international affairs

5. If there is an overlap in the approaches and methodologies, it is not possible to differentiate between the two.
6. The relationship between international relations and international law is generally understood in terms of the positions of the most dominant approach in both disciplines. This does not mean, however, that there is only one way of conceiving the relationship.

How does the knowledge produced in international relations and international law overlap, conflict, and co-depend?

This is a more concrete and practical kind of question. It can help us appreciate what use international law knowledge has when we are interested in a particular subject, such as use of force, nuclear weapons, war crimes tribunals, or international trade. We need to develop a similar kind of attitude here, as we did to the discipline question. The added value of international law knowledge in international relations depends on what kind of knowledge is generated in these disciplines.

Types of knowledge generated by international relations and international law

All forms of academic study concern knowledge generation. Knowledge generation is both an end in itself and a means of enhancing the practical world. Different types of knowledge are generated within disciplines. It would not be surprising to note that the different types of knowledge produced are sensitive to the approaches and methodologies one adopts.

It is possible to differentiate between four types of knowledge in the fields of international relations and international law. These are factual knowledge, empirical knowledge, conceptual knowledge, and normative knowledge. The emphasis placed on these types of knowledge, however, is different in international relations and international law.

Factual knowledge entails knowing something is the case. The current number of states, the number of international treaties, which states have signed up to a particular treaty are all factual types of knowledge. Given the interest of international law in the regulation of international affairs, accurate information about international treaties, the mandates and composition of international organizations, the relationship between different organizations at the international level, and the way in which international institutions operate matters to international law.

A factual statement such as 'The United Nations protects human rights' is not inaccurate for a student of international relations. For a student of international

law, however, it is not completely accurate as it lacks both detail and appropriate differentiation. For the international lawyer, a factual statement would be: 'The United Nations Charter in its Articles 1, 55, and 56 has provisions for the protection of human rights. All organs of the UN have the duty to give effect to these provisions, but the specialized protection mechanism is the Human Rights Council which reports to the Economic and Social Council.'

The difference between the two statements captures the sensitivity to detail and precision in international law when talking about institutional arrangements. This is because different types of arrangements have different kinds of legal significance and they may point to different types of responsibility. A great advantage of studying international law in this respect is to acquire detailed knowledge of the workings of international organizations and their practices. Chapters in Part 3: Topics in international law provide legal-factual presentations of the most important topics in international law.

Empirical knowledge comes in qualitative or in quantitative ways. The more qualitative the knowledge, the more contextual and particular it is about a social event. The more quantitative it gets the more the knowledge will be subject to generalization and it will be inferred from a large number of events (Landman 2006). International relations generates both qualitative and quantitative empirical knowledge. Qualitative approaches utilize techniques such as single case studies and small comparative case studies. They could focus on how a particular set of actors understand or perceive the practices they are engaged in. Quantitative approaches focus on larger sets of data and try to uncover causal relationships or patterns. There are disagreements between quantitative and qualitative knowledge producers across the whole spectrum of social sciences (Creswell 2003). Qualitative empiricists think that the aim of producing generalizations does not capture the deep complexities embedded in each case. Quantitative empiricists think that qualitative empirical knowledge is unable to capture the big picture.

International law is an outsider to the vocabulary of qualitative and quantitative research techniques. It does, however, use both techniques to generate international legal knowledge. Some international lawyers believe that international law should overlap with the practice of states as much as possible. In order to locate international law they carry out quantitative analysis of state practice with the aim of discerning patterns in state behaviour. Some international lawyers see this as futile. International law can also be a consumer of quantitative knowledge produced in international relations.

It is also possible to qualify some types of knowledge in international law as qualitative. International lawyers, for example, focus on single case studies in

terms of their significance in clarifying the status of international law (Rodley and Cali 2007). They also carry out comparative analysis (Crawford 1979). The key distinction between knowledge produced in international relations and international law in the empirical sense is *attitude* towards data collection and interpretation. International law is primarily interested in data that is defined as having legal significance (see Chapter 6). When international lawyers carry out case studies or comparative analyses, they filter the information they collect based on some criteria of legal significance and interpret the data in the light of its coherence with international law principles. This means that they are interested in empirical data in terms of its heuristic (interpretative) implications. International relations, however, has a much broader focus. It uses empirical data to test causal hypotheses as well as to understand social reality classified as practices, discourses, events, or processes.

Conceptual knowledge is about understanding the very concepts that are used to ground a systematic inquiry. It aims to identify the relevant concepts for inquiry as well as the hierarchy, categorization, and relationship between different concepts. The generation of conceptual knowledge extends to questioning the adequacy of existing concepts that ground the inquiry. It revises them and proposes new ones. Conceptual analysis is not about inquiring into what happens in practice. It is an inquiry into the *very idea* of the concepts as abstract categories. This form of knowledge may, of course, be sensitive to the practical meaning of concepts, but it nevertheless has to rise above practice for the concept to frame an inquiry. It, therefore, concerns itself with logical generalizations, distinctions, and categories that would help ground all types of queries. Conceptual knowledge is an indispensable component of any research design.

International relations and international law strongly overlap in the domain of production of conceptual knowledge. International relations borrows more from international law at this level of inquiry. Consider some of the central concepts for international relations such as state, consent, international society, war, peace, self-defence, self-determination, or humanitarian intervention. International law is an important resource in understanding the history and practical usage of these concepts in international affairs. It would be impossible, for example, to talk about international peace and security without reference to the collective security system of the United Nations Charter, which, after all, is a piece of international law. And we all know that Westphalia state system refers to two treaties signed in 1648—surprisingly neither in Westphalia—between the Holy Roman Emperor Ferdinand III of the Habsburg Dynasty, the Kingdoms of Spain, France, and Sweden, and the Dutch Republic (see Chapter 3).

An important reminder here is that international law is only one source of conceptual knowledge for international relations. International relations, for instance, also turns to political philosophy (Kratochwill 1989). At times, concepts grounded in international law will be different from those grounded in a particular strand of political philosophy (Meckled-Garcia and Cali 2006). Political philosophers and international lawyers will point to different definitions for the correct use of concepts (Buchanan 2004). But again, such issues are also the domain of conceptual knowledge to consider and debate.

Normative knowledge is the fourth category of knowledge that is produced in international relations and international law. It is concerned with what the state of affairs *ought to be*. This is generally opposed to factual or empirical knowledge which is concerned with what the state of affairs *is*. Normative research generates knowledge for 'ought' or 'should' type of questions. Consider, for example, the question 'How should we understand the legitimacy of international organizations?' This question does not aim to find out whether international organizations are regarded as legitimate. It instead aims to identify evaluative standards independent of any agent's perception that will ground the legitimacy of international organizations. Normative knowledge relies heavily on conceptual knowledge and less on empirical and factual knowledge.

In international relations, specialists in the domain of international ethics or international political theory generally define themselves as interested in normative knowledge. Some normative knowledge is purely idealist. It will only concern the ideal conditions of, for instance, legitimacy in international relations. Some normative knowledge can also incorporate what must be done to reach a certain state of desirable normative affairs (Buchanan and Keohane 2006). It will therefore be concerned not only with desirability, but also with feasibility. These types of normative projects will be more sensitive to factual and empirical knowledge.

One of the central modes of knowledge production in international law is normative. We could regard international law as producing legal normative knowledge about international affairs. The very idea of regulation is inevitably interested in what the content of the rules are and what reasons there are to follow them. International law is simultaneously interested in desirable and feasible forms of international conduct and organizational framework. This is because international lawyers are not concerned with the question of what norms *should* govern international affairs, but actually what norms *do* govern international affairs. International lawyers, therefore, assume that international law provides a distinct legal reason to act or to refrain from acting in particular ways for all states. For this reason, international law is a separate discipline from international morality. Most

Table 1.5 The knowledge production chart

International relations	Factual	Qualitative Quantitative	Conceptual	Normative (idealist/ realist)
International law	Factual/detailed in establishing legal facts	Qualitative Quantitative	Conceptual	Normative Realist

international law scholars think that international law is sandwiched between normative and factual-empirical type inquiries (Koskenniemi 1989). In other words, the question of what rules govern international affairs is at once normative, factual, and empirical.

In this light, it is possible to see why some normative international relations students may regard international law as disappointing, conservative and not progressive enough. They may be disappointed when they find out how international law addresses some of the most important contemporary challenges such as armed conflicts, climate change, nuclear proliferation, or human rights. But international law creates realistic normative knowledge. It would be pointless to have an international law that has no chance of being accepted or implemented by states or other actors. International law, therefore, thinks that it has to be grounded in the practice of states (the disagreements about what this means will be addressed in Chapters 4 and 6). Therefore, the student of international relations has to be as wary of the idealist as s/he has to be of the cynic.

At what point and in what way does international law enter into international relations research?

We have so far looked at what types of knowledge are generated by international law and international relations and the extent to which these types of knowledge overlap, differ and co-depend. There is one further element we need to consider: when does the knowledge produced in international law become relevant in international relations? There are at least two views. According to the practical view, international law can enter into international relations analysis with its ability to offer practical insight into assigning meanings to the events in everyday international affairs. Another view, the systemic view, is an argument about the value of international law knowledge to better understand the international system, how different parts of the system fit together and what the bigger picture of international affairs looks like.

The single event lens

The practical insight of international law comes when we are analysing a single event in international relations. One of the important aspects of international relations and international law is the training both disciplines give students on how to best produce informed commentary about ongoing political affairs. A very important reason for any student signing up to courses on international relations or international law is to learn how to better understand contemporary international affairs and particular problems within them. For example, how should we approach the declarations of independence by East Timor and Kosovo? What do these mean? Are they lawful? Are they desirable? What sorts of effects do they have for other groups? What role did international law have in facilitating support for the independence? When faced with a specific event, international law differs in approaching it because it selects and processes facts and evidence in a different way. It focuses on the legal significance or legal consequences of events. It provides reasons for explaining why states have acted in a certain way, for example, why they have recognized East Timor unanimously and why unanimous recognition was not forthcoming in the case of Kosovo. Through studying international law we are able to better understand the instances when international law is not followed and why.

In everyday life it is common to hear commentators referring to what is called the 'international law' perspective or the 'international relations' perspective. When a military intervention takes place or when a state refuses to extradite a terrorist suspect to another country it is common to ask 'what does international law say on the matter?' This question tells us that people in general assume that a regulatory view about international affairs exists. It also tells us that this view is valued as worth knowing. Experts on international relations are asked to comment on different aspects of issues. What would be the reactions of other states to a military intervention? What would the political consequences of this event be? Some common questions may also be asked of both experts: 'Would the international law

Table 1.6 Description and evaluation of single events

International relations	International law
Political qualification of events, acts, processes	Legal qualification of events, acts, processes
Assessment of consequences of events, acts, processes in terms of their broader political significance	Assessment of events, acts, processes in terms of their broader legal significance
Assessment of compliance with regulatory frameworks	Assessment of compliance with regulatory frameworks

framework be followed on this matter by states? What would happen if states act contrary to international law?'

International law enables the student of international relations to identify the normative rules and principles that are thought to govern a particular event in international affairs. Once this framework is identified, it is possible to analyse the extent to which states are complying or conforming. In a single event lens, international law gives states reasons to act or refrain from acting in a certain way. International relations is then able to analyse why these are strong or weak reasons in particular instances.

International law invites students to process empirical facts in a different way than international relations. International law enables us: (1) to process the facts in terms of their international legal significance and (2) to comment on the legal consequences of acts and events. International relations is able to show: (1) the political significance of the events or acts and (2) possible consequences of the events or acts for the future in terms of the actors that are concerned. Both disciplines use descriptive and evaluative schemes. The same event can be described and evaluated in different ways within each discipline. Depending on the approach one adopts, international law and international relations students may pay attention to how an event is classified in the other discipline. This is, however, not necessary and only approach-sensitive. It is perfectly possible for a student of international relations to hold that, neither (1) the legal qualification, nor (2) the legal consequences are relevant or that both are crucial to understanding the political qualification or consequences. The same holds for a student of international law.

International law, therefore:

1. sets out what the rules governing an event are;
2. gives reasons for actors to act in a certain ways; and
3. evaluates what the legal consequences of acting or refraining from acting in a certain way are.

Whilst international relations:

1. evaluates the relevance and importance of reasons provided by international law;
2. explains why they are or not followed in specific instances; and
3. evaluates the political consequences of acting or refraining from acting in a certain way.

The systemic lens

A common concern that runs through both disciplines is identifying the systemic characteristics of international affairs. This concern comes in many shapes. First,

who are the central actors in the international system? Is the emphasis on states as the main players and law-makers adequate? How should we understand the role of international organizations, global governance regimes, and non-state actors in international affairs? Focusing on actors beyond the state affects how research questions are formulated in both disciplines. For example, what is the role of private military companies in current conflicts? Do we need to regulate the activities of these companies in international law? Should we hold non-state actors accountable in international law?

A second concern is how we go about identifying and understanding the systemic values of the international system. What are the constitutive values upon which international relations are based? How do we identify what these values are? Which discipline is better equipped to understand and expose the value system of international affairs? In what ways do international relations and international law differ in their identification of systemic values?

Third, there is a concern about how we may evaluate the system-wide changes in the international system. What have been the greatest achievements of the international system? Has there been an increase in international cooperation? Should international relations be assessed in terms of the expansion of values such as justice, human rights, self-determination, or democracy? Is there an increase in cooperation and regulation in the international system over the years? Is it better regulated? What has been the contribution of international law to system-wide changes in international relations? These, as one would expect, are very important and contested grand debates, within and across the two disciplines.

If we leave aside the sceptic's objection that international law has nothing to contribute to understanding the systemic values in international relations, there are at least two ways in which international law enters into system-wide debates in international relations. First, international law may represent the ideals of the international system, such as peaceful coexistence and effective cooperation. Actors in international affairs may be viewed as under a duty to work towards these ideals, even though they may not always succeed in everyday politics.

Table 1.7 Common concerns

The central role of the state as an analytical category	Values that underlie the international system	System-wide changes in international relations
Institutional design	Compliance with international law	Providing solutions to common problems

This is an idealist approach to international law. A second view holds that international law may represent the background values of international politics. The basic political ideas of the international system, such as non-intervention, political equality of states, and state sovereignty are embedded in international law. International law contributes to international relations by hosting its basic and constitutive ideas. This is a constitutive approach to international law. On both accounts international law offers starting points and critical tools to the student of international relations to understand the change and continuity of system-wide values.

Why study international law?

It is now time to go back to the question we started with: Why study international law? We have emphasized two main claims in this chapter to lay the groundwork for this question. First, although international relations and international law appear to be separate disciplines, their degree of separation very much depends on how participants in these disciplines define their research interests and concerns. International law can be studied from any of the perspectives within international relations and different theoretical frameworks will assign different kinds of significance to international law. Second, we suggested that the types of knowledge production might overlap in international relations and international law. What we have found is that there are different ways in which a student of international relations may be motivated in studying international law. Here is a list of six reasons for crossing from international relations to international law.

1. International law can be appealed to when developing views within international relations

International law is an institutional practice with a long history and presence in the international system, as we shall see in Chapter 3. It has undergone a number of changes, and these changes have increased tremendously since 1945 with the emergence of international human rights law, international trade law, international criminal law, and international humanitarian law regimes. International law as a domain of institutional practice is important and exists as a matter of fact. Contemporary theories of international relations have to develop an account of what these networks and regimes mean for the state of the international system and its future and how dense they are.

2. International law can be studied in order to have an understanding of the operation of international organizations and institutions

All international organizations appeal to basic principles of international law in their operations. International organizations, in this respect, exist by virtue of international law. The workings of the United Nations (UN) General Assembly, the UN Security Council, the UN Peace-building Commission, the UN Human Rights Council only become clear after a study of the UN Charter and relevant decisions, declarations, resolutions of these bodies. There are also an increasing number of institutional arrangements that we cannot analyse without a clear understanding of their status and mandate in international law. Consider for example, peacekeeping or peace enforcement missions authorized by the Security Council or the refugee camps run by the UN High Commission for Refugees or the International Red Cross and Red Crescent, which is recognized to have a special mandate under international humanitarian law treaties and domestic laws.

3. International law can be studied to understand the history of interstate practice over the years

International law has a memory of state practice in a historical context. We can compare the amount and kinds of cooperation states had in previous centuries with the current situation by studying the international treaties in a historical perspective. International law gives us an idea about the acceptable basis of interstate cooperation and how states deal with the most pressing issues of their times through international law. A comparison, for example, between the League of Nations and the UN offer us an understanding of international affairs in terms of which ideas have been institutionalized and how effective such institutionalization has proved. This is also very important when we talk about the reform of the international system. International law enables us to have a historically informed attitude towards what may be feasible for the future of international law.

4. International law can be studied to find out what the distinct international law position is on any aspect of international affairs

There are a number of views that can be offered on a particular debate in international affairs. There could be the subjective view, i.e. an account of what any stakeholder thinks is the case. There could be the normative view, i.e. an account of what would be the best position to be adopted by anyone. Finally, there could be the international law view, i.e. an account of what would be the correct conduct or outcome in international law. For the student of international relations interested in understanding how international actors conduct themselves, the international law

perspective is indispensable as international law aims to offer established standards of conduct. For the future policy-maker or politician, it is imperative to be able to critically appraise whether the current rules of international law are worth following or supporting or whether they are in need of fundamental revision. International law, therefore, is particularly important for international relations students who wish to criticize the actual conduct of states or would like to propose changes to existing arrangements.

5. International law can be studied with the purpose of understanding the power of its norms and the rise and fall of international legal frameworks

A central reason to engage with international law is to assess the extent to which the norms embedded in international law guide and control state behaviour. There are a number of scenarios that may emerge in any area of international relations at any time. One scenario is that some new development may take place, for example, the possibility of exploitation of resources on the moon. It would then be necessary to assess whether there are already a number of norms that govern this area or whether different norms emerge that are able to address the concerns in a more specific way. Another scenario would be the case of states withdrawing their support from an international law rule. This would lead us to question what made the rule inadequate and what replaces it instead. Yet another scenario is the sphere of contested norms and how a student of international relations can distinguish between a norm with weak support and a contested norm. A final systematic issue would be the circumstances under which a fundamental international legal norm may undergo change or reform. International law not only provides indicators about where the most pressing problems lie with respect to the power of norms, it also offers perspectives to international relations students about how to assess the rise and demise of international law.

6. International law is worth studying because it is a site where we can engage with both ideas and practice about international affairs

The final answer to the *Why international law?* question is one about developing a certain kind of attitude to international affairs. International law contributes to how we think about international relations as a whole and the basic aims of international society. This is a different orientation of thinking, especially as opposed to thinking about the basic aims of states. More significantly, contemporary international law, with its focus stretching beyond interstate relations to areas such as the environment, human rights, trade, development, allows students of international relations to engage with questions about a fair

international system and the possibility of such a system under contemporary political conditions. International law with one foot in the practice of international affairs and another one in principles and norms is a perfect location to think about the future of international relations.

Conclusion

This chapter gave an account of how to approach the relationship between international relations and international law. It showed that there is no single answer in conceiving this relationship and that it all depends on the approaches and methodologies adopted in both disciplines. The ways to understand the relationship between these two disciplines are as many as the approaches and methodologies hosted in them. One way to distinguish the two is to suggest that international relations is concerned with explaining and describing international affairs as they stand whilst international law regulates these affairs by setting standards of conduct. But, we have also seen that even this simple distinction has to be accepted with caution.

A sound way of understanding how international relations and international law contribute to each other is to become aware of the type of knowledge provided in these disciplines. Again, we saw that saying that international relations is in the business of empirical knowledge and international law in normative knowledge is simplistic. Both disciplines produce factual, empirical, conceptual, and normative knowledge. They, however, are interested in facts and empirical knowledge in different ways. We saw that the disciplines come very close to each other in the production of conceptual knowledge. In the domain of normative knowledge, international law can be classified as a special branch of normative international relations theories, as it produces normative knowledge based on realistic and practically grounded premises.

International law makes a unique contribution to our understanding of day-to-day international affairs by offering standards of conduct to evaluate the behaviour of international actors. At the level of system-wide analysis, international law is an important resource for students of international relations. Studying international law is an important way to grasp the facts of international life, as well as the values underpinning it. More importantly, studying international law requires disciplinary awareness for a student of international relations. A systematic study of international law is a way to become a better student of international relations.

Questions

1. What is international law and how is it different from domestic law?
2. What are the areas regulated by international law?
3. What does the sceptic say about international law?
4. What do you think is the most significant difference between international relations and international law?
5. What is factual knowledge? Can you give an example?
6. What is empirical knowledge? Can you given an example?
7. What is conceptual knowledge? Can you give an example?
8. What is normative knowledge? Can you give an example?
9. How do international relations and international law differ in assessing a single event?
10. What can international law contribute to international relations in understanding system-wide changes?
11. Why should a student of international relations study international law?

Further reading

Abbott, K. W., Keohane, R. O., Moravscik, A., Slaughter, A.-M., and Snidal, D. (2000) 'The Concept of Legalisation', *International Organization* 54/3: 401–19 and compare it to Finnemore, M. and Toope, J. (2001) 'Alternatives to "Legalisation": Richer Views of Law and Politics' *International Organization* 55/3: 741–56. *A good example of two groups of international relations scholars disagreeing on the definition of international law and international legal frameworks and their significance in international law.*

Buchanan, A. and Keohane, R. (2006) 'The Legitimacy of Global Governance Institutions' *Ethics and International Affairs* 20/4: 405–37. *An example of a normative and reform-oriented analysis of legitimacy in international relations.*

Ku, C., Diehl, P. F., Simmons, B., Dallmeyer, D. G., and Jacobson, H.K. (2001) 'Exploring International Law: Opportunities and Challenges for Political Science Research: *A Roundtable' International Studies Review* 3/1: 3–23. *Acollection of essays on why international relations students have neglected international law and how they can increase the quality and quantity of research on international law.*

Simmons, B. and Steinberg, R. H. (2006) (eds.), *International Law and International Relations* (Cambridge: Cambridge University Press). *An excellent collection of essays on different permutations of the relationship between the disciplines of international law and international relations.*

Websites

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