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978-1-107-03589-8 - The Future of International Law: Global Government

Joel P. Trachtman

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THE FUTURE OF INTERNATIONAL LAW

The world is changing rapidly, and there are increasing calls for international legal responses. There is and will be increasing social change in areas such as globalization, development, demography, democratization, and technology. Because of this change, international relations does and will occupy an expanding proportion of the concerns of citizens and the responsibilities of states. This will drive greater production of international law and organizational structures. The resulting denser body of law and organizations will take on more prominent governmental functions. It is in this sense that the future of international law is global government. This book draws together the theoretical and practical aspects of international-cooperation needs and legal responses in critical areas of international concern. On this basis, the book predicts that a more extensive, powerful, and varied international legal system will be needed to cope with future opportunities and challenges.

Joel P. Trachtman is Professor of International Law at The Fletcher School of Law and Diplomacy at Tufts University. The author of more than eighty scholarly publications, Professor Trachtman has written books including *The International Law of Economic Migration: Toward the Fourth Freedom* (2009); *Ruling the World: Constitutionalism, International Law, and Global Governance* (2009); *Developing Countries in the WTO Legal System* (2009); *The Economic Structure of International Law* (2008); and *International Law and International Politics* (2008). He has consulted for the United Nations, the Organization for Economic Cooperation and Development, the Asia-Pacific Economic Cooperation organization, the World Bank, the Organization of American States, and the U.S. Agency for International Development. He has served as a member of the boards of the *American Journal of International Law*, the *European Journal of International Law*, the *Journal of International Economic Law*, the *Cambridge Review of International Affairs*, and the *Singapore Yearbook of International Law*.

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To my students – past, present, and future.

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Preface

As I finalize this book in the summer of 2012, it is not difficult to see some of its concerns raised in current newspaper headlines. The Euro zone will either collapse or be fortified by stronger centralization of fiscal and monetary authority. The recently discovered “Flame” virus has prompted calls by Russia for a cyberweapon ban. The financial crisis continues to reverberate with new banking scandals. The international community is unable to craft a meaningful response to Syrian despotism. Unusual weather patterns cause avalanches and other natural disasters.

The world is changing rapidly, and there are increasing calls for international legal responses. Although the world changes in diverse ways, occasioning diverse challenges, there are important commonalities among the changes, challenges, and responses available to us. Getting ahead of these challenges will require us to think about the future, and to use the international legal tools available to us more creatively and without the artificial constraints of sovereigntist biases. The challenges to society increasingly transcend national borders, and this book argues that governmental functions, too, will sometimes be required to transcend national borders. International law is the main formal mechanism by which governmental functions can transcend national borders.

This book is an attempt to draw together some of the theoretical and practical aspects of international-cooperation needs and legal responses in some of the critical areas of international public policy. International policy professionals, among them international lawyers, tend to examine only their particular functional areas, such as trade, human rights, finance, environment, or security. This specialization is perfectly appropriate and responsible, but occasionally it is useful for each of us to climb out of our individual silo and survey the similarities, differences, conflicts, and synergies among the different functional areas.

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This book has benefited greatly from its exposure to and responses from my graduate students at The Fletcher School of Law and Diplomacy. All of the chapters have formed the basis for lectures, and most have been imposed on students as readings at one time or another. I have also benefited from helpful suggestions from colleagues, both at The Fletcher School and elsewhere. I have presented portions of this book at the American Law Institute, the American Society of International Law, Case Western, Columbia, the European Society of International Law, European University Institute, George Mason, Georgia, Hamburg, Harvard, Hong Kong, Meiji, NYU, Temple, UCLA, Virginia, Warwick, and Yale, and have benefited from discussions with and received helpful comments on various portions of this work from many kind colleagues. These include Anne van Aaken, William Alford, Diane Marie Amann, Douglas Arner, Gabriella Blum, Anu Bradford, Rachel Brewster, Howard Chang, Antonia Chayes, Harlan Cohen, Juscelino Colares, Cosette Creamer, Lori FISLER Damrosch, Jeff Dunoff, Caroline Gideon, Michael Glennon, Gene Grossman, Hurst Hannum, Ian Johnstone, Neil Komesar, Nico Krisch, Matthias Kumm, Chin Leng Lim, Miguel Maduro, Petros Mavroidis, Timothy Meyer, Andrew Moravcsik, Junji Nakagawa, Gerard Neuman, Jide Nzelibe, Kal Raustiala, Peter Bowman Rutledge, Jeswald Salacuse, Greg Shaffer, Beth Simmons, Paul Stephan, Christian Turner, Joseph Weiler, and Peer Zumbansen. I could not have completed this work without research assistance from Sanhita Ambast, Anusha Jayatilake, Jeremy Leong, and Filippo Ravalico.