

## TABLE OF CONTENTS

|   |     |
|---|-----|
| Chapter I. The technology: principal theories of international relations . . .            | 21  |
| Introduction . . . . .  | 21  |
| (a) Realism versus idealism? . . . . .  | 23  |
| (b) Instrumentalist versus normative . . . . .  | 24  |
| (c) Logic versus science? . . . . .   | 25  |
| 1. What IR can offer IL . . . . .   | 26  |
| 2. Principal paradigms in international relations theory . . . . .                        | 30  |
| (a) Realism . . . . .   | 30  |
| (b) Institutionalism . . . . .  | 35  |
| (c) Liberalism . . . . .  | 39  |
| 3. Rationalism versus Constructivism . . . . .  | 43  |
| (a) Calculation and socialization . . . . .   | 43  |
| (b) The elements of Constructivism . . . . .  | 45  |
| (c) Marrying Constructivism with Realism, Institutionalism and<br>Liberalism . . . . .    | 49  |
| 4. The paradigms applied . . . . .  | 51  |
| 5. Conclusion . . . . .   | 53  |
| Chapter II. Humanitarian intervention . . . . .   | 55  |
| Introduction . . . . .  | 55  |
| 1. Setting the stage . . . . .  | 57  |
| 2. Doctrinal and jurisprudential debates . . . . .  | 61  |
| (a) The Kosovo crisis . . . . .   | 63  |
| (b) Finding the law . . . . .   | 68  |
| (c) Identifying relevant legal actors . . . . .   | 74  |
| 3. The policy question: mapping the debates . . . . .                                     | 77  |
| (a) Arguments for non-intervention . . . . .  | 78  |
| (b) Arguments for humanitarian intervention . . . . .                                     | 82  |
| (c) Intervention at what cost? Limits to the Liberal position . . . . .                   | 88  |
| 4. Reading the map: toward a common position on humanitarian inter-<br>vention? . . . . . | 89  |
| 5. Conclusion . . . . .   | 93  |
| Chapter III. The role of NGOs in international law-making . . . . .                       | 96  |
| Introduction . . . . .  | 96  |
| 1. Three models of NGO activity . . . . .   | 101 |
| (a) With the State: NGOs as institutionalist enablers . . . . .                           | 101 |
| (i) Policy research and development . . . . .   | 102 |
| (ii) Monitoring . . . . .   | 102 |
| (iii) Representing important domestic constituencies . . . . .                            | 103 |
| (iv) Providing information in the negotiation process . . . . .                           | 103 |
| (v) Stabilizing government policies . . . . .   | 104 |
| (vi) Enabling institutions . . . . .  | 104 |
| (b) Against the State: NGOs as adversarial activists . . . . .                            | 105 |
| (i) What they do . . . . .  | 106 |
| (ii) When they are most effective . . . . .   | 107 |

ACADÉMIE DE DROIT INTERNATIONAL  
FONDÉE EN 1923 AVEC LE CONCOURS DE LA  
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS  
COLLECTED COURSES OF THE HAGUE  
ACADEMY OF INTERNATIONAL LAW

2000

*Tome 285 de la collection*



2001

MARTINUS NIJHOFF PUBLISHERS  
The Hague/Boston/London

|  |     |
|--|-----|
| (iii) How they work . . . . .  | 107 |
| (iv) Liberal adversaries . . . . .   | 109 |
| (c) Forget the State: NGOs as mobilizers of market power and<br>autonomous law-makers . . . . .                  | 112 |
| (i) Mobilizing market actors . . . . .   | 113 |
| (ii) Regulation through "voluntary codes" . . . . .  | 113 |
| (iii) The role of international institutions . . . . .   | 114 |
| (iv) Consumer mobilizers versus adversarial activists? . . . . .   | 115 |
| (v) A new medievalism? . . . . .   | 117 |
| 2. The NGO models applied . . . . .  | 121 |
| (a) Making the picture more complicated . . . . .  | 121 |
| (b) Saving the elephant . . . . .  | 122 |
| (c) Modifying the models . . . . .   | 132 |
| 3. NGOs as subjects of international law . . . . .   | 135 |
| (a) Conditioning NGO activity on State consent . . . . .   | 136 |
| (b) Harnessing NGO activism at home . . . . .  | 142 |
| (c) Empowering actors in global civil society . . . . .  | 145 |
| 4. Causal templates and complex phenomena . . . . .  | 149 |
| Chapter IV. Reforming dispute resolution in the World Trade Organi-<br>zation . . . . .                          | 152 |
| 1. Shell's models of WTO legalism . . . . .  | 154 |
| (a) The Régime Management Model . . . . .  | 156 |
| (b) The Efficient Market Model . . . . .   | 161 |
| 2. The next round: proposed reforms . . . . .  | 165 |
| (a) Current reform proposals . . . . .   | 166 |
| (b) The Trade Stakeholders Model . . . . .   | 171 |
| (c) Picking and choosing . . . . .   | 173 |
| (i) Standing firm on exclusive government standing . . . . .   | 174 |
| (ii) The judicialization of global trade politics . . . . .  | 177 |
| (iii) From one court to many . . . . .   | 181 |
| 3. Conclusion . . . . .  | 186 |
| Chapter V. International law and international relations scholarship: the<br>state of the art . . . . .          | 189 |
| Introduction . . . . .   | 189 |
| 1. The uses and misuses of models . . . . .  | 191 |
| (a) Models as prisms: a rainbow of arguments . . . . .   | 192 |
| (b) Models as casual constructs: diagnosing problems and imple-<br>menting policy solutions . . . . .            | 193 |
| (c) Choosing worlds? Or making them? . . . . .   | 195 |
| 2. Moving forward . . . . .  | 198 |
| (a) International lawyers can profit from an analysis of power . . . . .   | 199 |
| (b) Legalized rules and institutions operate differently from non-<br>legalized rules and institutions . . . . . | 204 |
| (c) Soft law is as important as hard law in global governance but<br>plays a different role . . . . .            | 211 |
| (d) Régime design matters . . . . .  | 217 |
| (e) Domestic politics are as important for international lawyers as<br>international politics . . . . .          | 224 |
| 3. Conclusion: the visible college of international lawyers . . . . .  | 232 |
| Bibliography . . . . .   | 236 |