“We do not need to always look to Westphalia . . .”
A Conversation with Martti Koskenniemi
and Anne Orford

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There had been a long silence until the historians of international law finally spoke up. Back in 1952, the history of the discipline had been described as the ‘Cinderella of the doctrine of international law’ by Georg Schwarzenberger. The Cold War marked an ice age for the history and theory of international law. The real move towards historical reflection did not come until later, with the growing awareness of the inadequacies of the ‘New World Order’ that had evolved after 1989. In times of transformation, the history of international law emerged as a flourishing field in the last decade. The emergence of new international institutions, the rapid proliferation of international and supranational courts, new human rights regimes and the blossoming of international criminal law were all soon overshadowed by Srebrenica, 9/11, transnational terrorism and the global financial crisis. The ‘fragmentation’ of the international legal order, the collision and competition of various normative orders prompts questions also prompted by the very structures of international law. In order to understand the current state of international law, its possibilities and limits, its institutions and how to approach them, we should first examine how these have come to be. In a global perspective, the remnants of European imperialism are to be traced. Martti Koskenniemi, who has strongly influenced this recent ‘historiographical turn’ in international law with his ‘Gentle Civilizer of Nations’ sympathizes with the turn to contextual readings of international law,

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yet he is careful to draw some boundaries – not least because the reduction of a historical narrative to its context creates an artificial border between the past and the present and also conceals the fact that the reconstruction of the context, the choice of research topic and the frame of reference can themselves all be traced back to choice, to deliberate decisions on the part of the (international law) historian. Anne Orford goes one step further, subjecting British history of ideas scholar Quentin Skinner to a careful relecture and calling for radical anachronism which, as it turns out, is not so radical at all but in fact merely involves extending the concept of ‘context’ beyond the past and into the present. Our Skype conversation on a Monday in late August is literally global. Out of time and space, it spans three continents and starts, at the same moment, synchronically and non-synchronically: it is early morning in Ann Arbor, midday in Helsinki, evening in Melbourne.

The increase in scholarly production increases also the number of critical voices. Jacob Katz Cogan, an international law scholar who also holds a PhD in history, is rather dissatisfied with lawyers’ scholarly production on the history of international law. He argues that such efforts can be divided into two main groups. Many researchers, he says, engage in ‘intensely internalist’ navel-gazing (with a methodologically narrow approach that fails to go beyond established legal methods and materials). They focus only on the precursors to contemporary law, its institutions and actors, and seek merely to provide the law as it stands with an affirmative historical foundation. Either that, states Cogan, or they pursue critical agendas, setting out to deconstruct precisely the very same narratives of progress that the ‘internalists’ hold dear. But things are improving, he says. With increasing frequency professional historians are turning their attention to the history of international law. They offer meticulous historical contextualization, (re)placing their research subjects in their respective times and exploring international legal developments as ‘embedded in their specific places and moments’. But can international lawyers be historians, and should they be?

MK: I wonder if what international lawyers now are doing is so different from – to use your phrase – how historians understand what they are doing. I would especially contest the assumption that the historical profession has a more “objective” relationship to the world and a more “scientific” method than international lawyers. It is true that many of us lawyers have a project, and all