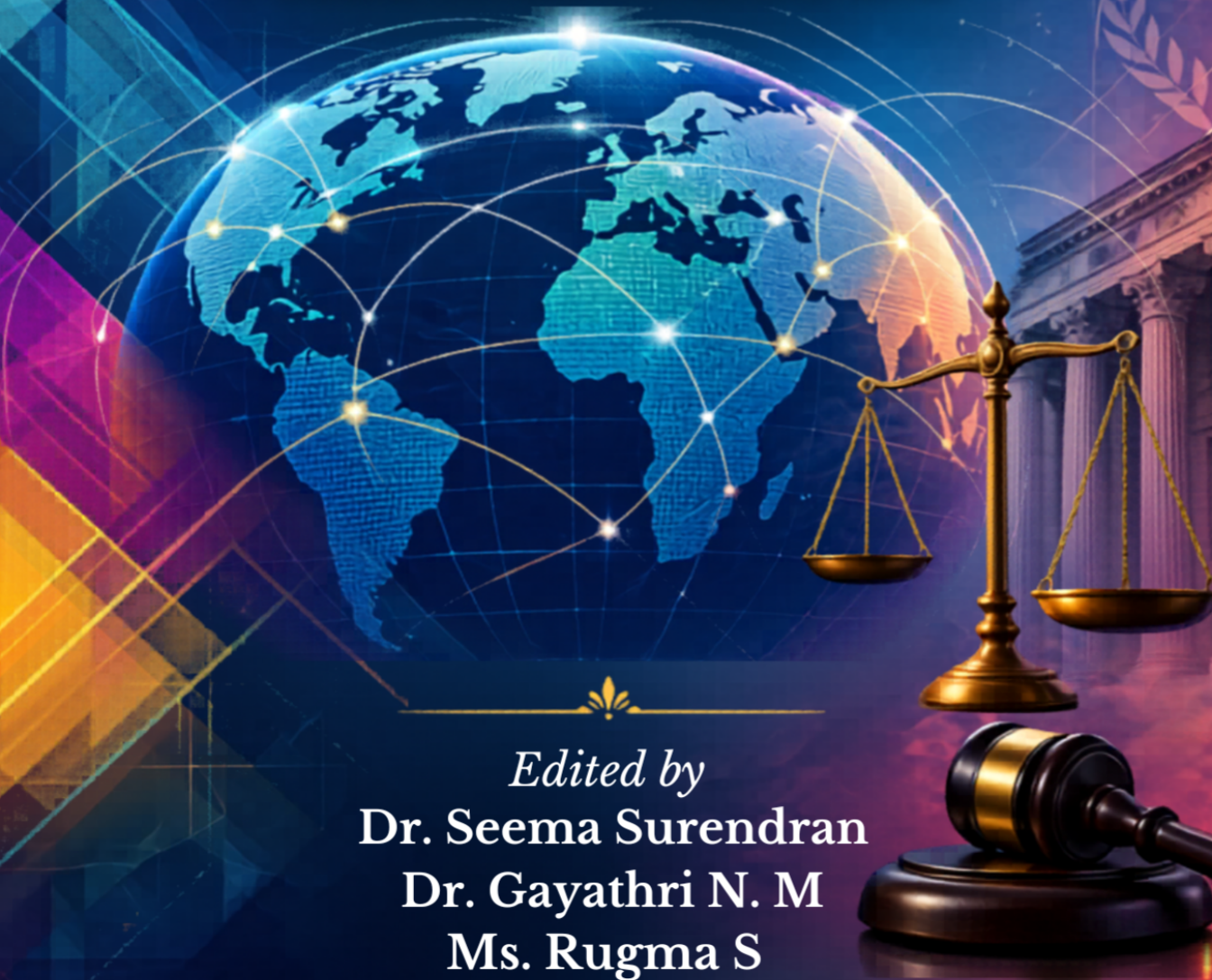
NAVIGATING THE NEW GLOBAL ORDER

THROUGH THE LENS OF PUBLIC INTERNATIONAL LAW



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NAVIGATING THE NEW GLOBAL ORDER: THROUGH THE LENS OF PUBLIC INTERNATIONAL LAW

Perspectives on Law, Institutions, and Emerging Geopolitics

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Preface

Navigating the New Global Order: Through the Lens of Public International Law brings together a wide-ranging set of reflections on some of the most urgent legal and institutional questions confronting the contemporary international system. At a time when the language of sovereignty, security, accountability, and human dignity is being tested by war, displacement, political fragmentation, and institutional paralysis, this volume seeks to revisit public international law not as a static body of rules, but as a living framework through which the world attempts to order itself. Across the forty chapters in this collection, the contributors examine both the enduring foundations and the emerging tensions of international legal thought, showing how doctrine, institutions, and State practice continue to shape one another in an increasingly unstable global landscape.

A striking strength of this volume lies in the breadth of its themes. Several chapters engage directly with the architecture of the international legal order: the role of the International Court of Justice in dispute settlement, the powers and limits of the United Nations Security Council, the legal consequences of the veto, and the doctrine of State responsibility. Others focus on treaty law and inter-State relations, exploring treaty interpretation, treaty-making, ratification, extradition, diplomatic privileges and immunities, and the continuing legal significance of State succession and State identity. In doing so, the volume demonstrates that the classical concerns of public international law remain deeply relevant, even as they are being reinterpreted under new pressures.

At the same time, the collection is equally attentive to the human face of international law. A number of chapters examine asylum, refugee protection, and non-refoulement, while others address statelessness and the right to nationality as central human rights concerns rather than mere technical issues of status. These contributions remind us that public international law is not concerned only with States and institutions; it is also a field through which the vulnerability, dignity, and protection of individuals are negotiated. The volume therefore keeps in view the continuing gap between legal principle and lived reality, asking whether the promises embedded in international law are being meaningfully realized for those most in need of protection.

The maritime and territorial dimensions of the global order are also richly represented in this volume. Chapters on territorial waters, maritime boundaries, the continental shelf, and ocean governance illustrate how questions of sovereignty, resource distribution, and strategic rivalry remain deeply intertwined with the law of the sea. Similarly, discussions on the use of force and self-defence show how the Charter system continues to be strained by evolving claims of security and unilateral action. Read together, these contributions highlight a recurring theme across the book: that the challenge of the new global order

is not the disappearance of law, but the difficulty of ensuring that law remains effective, credible, and just in a world shaped by unequal power and competing interests.

This volume does not claim to offer a single answer to the crises of the present international order. Instead, it offers something equally valuable: a collective intellectual engagement with the fault lines of contemporary public international law. The contributors write from different angles, but together they reveal a shared concern with legitimacy, accountability, cooperation, and reform. Whether examining diplomatic law, selective justice, institutional paralysis, maritime disputes, refugee protection, or the structural inequalities embedded within global governance, the chapters consistently return to one central insight: public international law remains indispensable, but it must be critically examined if it is to respond meaningfully to present and future challenges.

As editors, we hope that this book will encourage readers not only to understand the new global order through law, but also to question how law itself is being shaped by that order. We also hope that the volume contributes to a wider scholarly conversation on how international law may continue to serve as a language of responsibility, restraint, and justice in a world that is changing rapidly. If this collection succeeds in opening that conversation with greater clarity, seriousness, and imagination, it will have fulfilled its purpose.

Dr. Seema Surendran
Dr. Gayathri N. M
Ms. Rugma S.

Acknowledgement

This edited volume, *Navigating the New Global Order: Through the Lens of Public International Law*, is the outcome of the collective effort, commitment, and intellectual engagement of many individuals and institutions, and we record our sincere gratitude to all those who made this work possible.

We extend our heartfelt thanks to all the contributors to this volume. Their thoughtful research, careful analysis, and scholarly dedication have given this work its depth and richness. Each chapter reflects sustained academic effort and a genuine engagement with the evolving questions of public international law, and we are deeply appreciative of their contribution to this collective endeavour.

We express our sincere gratitude to the School of Legal Studies, CMR University, for providing the academic environment, encouragement, and institutional support necessary for the completion of this volume. We are especially grateful to the faculty members, mentors, and academic colleagues whose guidance and encouragement have helped shape this project from conception to completion.

We also acknowledge with appreciation all those who assisted in the editorial and organizational process of this book. The preparation of an edited volume requires patience, coordination, and attention to detail, and we are thankful to everyone who contributed to the reviewing, compiling, formatting, and finalization of the manuscript.

Our heartfelt thanks are also due to our families and well-wishers for their constant support, understanding, and encouragement throughout the course of this work. Their faith and patience have been a source of strength at every stage.

Finally, we place on record our gratitude to all readers, students, and scholars who continue to engage with public international law in a spirit of inquiry and responsibility. We hope this volume contributes meaningfully to that continuing conversation.

Dr. Seema Surendran
Dr. Gayathri N. M
Ms. Rugma S.

Glossary

Act of Aggression
The use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State in violation of the United Nations Charter.

Adjudicative Jurisdiction
The authority of a court or tribunal to hear, determine, and decide legal disputes.

Advisory Opinion
A formal legal opinion issued by an international court, especially the International Court of Justice, at the request of an authorized organ or agency, without binding force as between parties in the same way as a judgment in a contentious case.

Algorithmic Bias
Systematic unfairness or discrimination arising from the design, training data, or deployment of artificial intelligence systems.

Arbitration
A method of dispute settlement in which parties submit their dispute to an independent tribunal whose decision is binding.

Armed Attack
A grave form of the use of force that triggers the right of self-defence under Article 51 of the United Nations Charter.

Asylum
Protection granted by a State to an individual who has fled another country owing to persecution, violence, or serious human rights violations.

Aut dedere aut judicare
A principle meaning “either extradite or prosecute,” requiring a State to prosecute an alleged offender or extradite that person to another competent State.

Autonomous Weapons Systems
Weapons systems capable of selecting and engaging targets with limited or no direct human intervention.

Burden Sharing
The principle that responsibility for refugees, asylum seekers, and international peace and security should be more equitably distributed among States.

Casus Belli
An act or situation regarded as justifying war or the use of force.

Charter-Based Collective Security
The system under the United Nations Charter through which States act collectively, chiefly through the Security Council, to address threats to international peace and security.

Collective Self-Defence
The right of one or more States to assist a State that has been subjected to an armed attack, provided the victim State requests such assistance.

Commercial Activity Exception
A limitation on immunity where conduct concerns private commercial or professional activity outside official diplomatic functions.

Complementarity
The principle, especially under the Rome Statute system, that international criminal jurisdiction operates only where national legal systems are unwilling or unable genuinely to investigate or prosecute.

Concurring Votes
Under Article 27 of the United Nations Charter, the votes of the permanent members required for substantive Security Council decisions, subject to the accepted practice that abstention does not amount to a veto.

Consular Assistance
Help given by a State through its consular representatives to its nationals abroad in legal, administrative, or emergency matters.

Continental Shelf
The seabed and subsoil of the submarine areas extending beyond a coastal State's territorial sea, over which the coastal State exercises sovereign rights for the purpose of exploring and exploiting natural resources.

Customary International Law
Rules of international law derived from consistent State practice followed out of a sense of legal obligation (*opinio juris*).

Cyber Operations
Actions conducted through digital networks or systems that may affect infrastructure, security, data, or sovereignty.

De Facto Statelessness
A condition in which a person may formally possess a nationality but is unable in practice to obtain the protection of the State of nationality.

De Jure Statelessness
A condition in which a person is not considered a national by any State under the operation of its law.

Democratic Deficit
A structural lack of fair representation, accountability, or participation within an institution, often discussed in relation to the United Nations Security Council.

Diplomatic Agent
A person officially appointed by a sending State to represent it in the receiving State and to perform diplomatic functions.

Diplomatic Asylum
Protection granted within the premises of an embassy or consulate to a person sought by the territorial State; its acceptance under general international law remains limited and controversial.

Diplomatic Bag
A sealed package used for official diplomatic communications and materials, protected from search, seizure, or detention under diplomatic law.

Diplomatic Immunity
Legal protection granted to diplomatic agents from the jurisdiction of the receiving State in order to ensure the effective performance of diplomatic functions.

Diplomatic Inviolability
The rule that diplomatic agents, mission premises, archives, and official communications are to be protected from arrest, detention, entry, or interference.

Diplomatic Mission
The official office or establishment, such as an embassy, through which one State conducts diplomatic relations in another State.

Double Criminality
The rule that extradition should ordinarily be granted only if the alleged conduct constitutes an offence in both the requesting State and the requested State.

Double Veto
The practice by which a permanent member of the Security Council first blocks classification of an issue as procedural and then vetoes the substantive resolution itself.

Due Process
The requirement that legal proceedings be fair, impartial, and conducted according to law.

Enforcement Jurisdiction
The authority of a State to enforce its laws through executive or coercive measures.

Erga Omnes Obligations
Obligations owed by a State to the international community as a whole, such that all States have a legal interest in their observance.

Exclusive Economic Zone (EEZ)
A maritime zone extending up to 200 nautical miles from the baseline, within which a coastal State has sovereign rights over natural resources and certain related jurisdiction.

Extradition
The formal process by which one State surrenders a person accused or convicted of a crime to another State for trial or punishment.

Flags of Convenience
The practice of registering a ship in a State other than the owner's State, often to benefit from lighter regulation or lower costs.

Force Majeure
A ground in international law referring to an unforeseen and irresistible event beyond the control of a State that makes compliance with an obligation materially impossible.

Freedom of Navigation
The principle that ships of all States may navigate the high seas without unlawful interference, subject to international law.

Freedom of Overflight
The right of aircraft to pass over areas beyond national jurisdiction, subject to applicable international rules.

Freedom of the High Seas
The principle that areas of the sea beyond national jurisdiction are open to all States for lawful uses such as navigation, overflight, fishing, scientific research, and the laying of cables and pipelines.

Frontier/Boundary Treaty Stability
The principle that treaties establishing territorial boundaries generally survive succession or political change in order to preserve stability.

Functional Necessity
The theory that diplomatic privileges and immunities exist not for personal benefit, but because they are necessary for the effective performance of diplomatic functions.

Fundamental Change of Circumstances
A narrow doctrine (*rebus sic stantibus*) permitting termination or withdrawal from a treaty where unforeseen changes radically transform the extent of obligations still to be performed.

Good Faith
A foundational principle of international law requiring honesty, fairness, and sincerity in the performance of legal obligations.

Humanitarian Protection
Legal and practical measures aimed at safeguarding persons from persecution, violence, displacement, or other serious harm.

Immunity from Jurisdiction
Protection from being subjected to the criminal, civil, or administrative jurisdiction of the receiving State.

Internal Waters
Waters on the landward side of the baseline of the territorial sea, over which the coastal State exercises full sovereignty.

Interpretation of Treaties
The legal process of determining the meaning and effect of treaty provisions, primarily governed by the Vienna Convention on the Law of Treaties.

Inviolability of Premises
The rule that embassy or mission premises may not be entered by the authorities of the receiving State without consent.

Jus Cogens
A peremptory norm of international law from which no derogation is permitted, such as the prohibitions of genocide, torture, slavery, and aggression.

Jus Sanguinis
A principle of nationality law under which citizenship is acquired through descent from one or both parents.

Jus Soli
A principle of nationality law under which citizenship is acquired by birth within a State's territory.

Legislative Jurisdiction
The authority of a State to prescribe laws governing conduct, persons, or situations.

Marine Genetic Resources
Genetic material of marine origin with actual or potential value, especially relevant in debates over biodiversity beyond national jurisdiction.

Marine Protected Area
A designated area of the marine environment where legal measures are taken to conserve biodiversity and regulate human activities.

Material Breach
A serious violation of a treaty by one party that may justify suspension or termination by another party under the law of treaties.

Meaningful Human Control
A proposed legal and ethical standard requiring substantial human involvement in critical decisions made by weapons systems or high-risk automated systems.

Mutual Legal Assistance
Cooperation between States in gathering evidence, serving documents, or otherwise assisting criminal investigations and proceedings.

Nationality
The legal bond between an individual and a State, forming the basis for citizenship, protection, and many legal rights.

Necessity
A restrictive ground in international law permitting departure from an obligation only where it is the only way to safeguard an essential interest against grave and imminent peril.

Non-Interference
The principle that States and their representatives must not intervene in matters essentially within the domestic jurisdiction of another State.

Non-Refoulement
The principle prohibiting a State from returning a person to a country where there is a real risk of persecution, torture, or other serious harm.

Opinio Juris
The belief by States that a particular practice is carried out of a sense of legal obligation rather than convenience or courtesy.

Pacta Sunt Servanda
The principle that agreements must be kept and that treaties in force are binding upon the parties and must be performed in good faith.

Passive Personality Principle
A basis of jurisdiction whereby a State claims jurisdiction over offences committed abroad against its nationals.

Persona Non Grata
A declaration by the receiving State that a diplomat is no longer acceptable, requiring recall or termination of functions.

Personal Inviolability
The rule that a diplomatic agent may not be arrested, detained, or physically interfered with by the receiving State.

Political Offence Exception
A traditional rule in extradition law allowing refusal of extradition where the offence is regarded as political in nature, though its scope has narrowed over time.

Precautionary Principle
A principle under which preventive action may be justified where there is risk of serious or irreversible harm, even if scientific certainty is incomplete.

Prima Facie Evidence
Evidence sufficient, at first sight, to support an allegation or justify further proceedings, often relevant in extradition requests.

Privileges
Special advantages granted under international law, such as exemptions from certain taxes, customs duties, or administrative burdens.

Protective Principle
A basis of jurisdiction allowing a State to punish conduct abroad that threatens its security or essential governmental interests.

Ratification
The formal act by which a State confirms its consent to be legally bound by a treaty, usually after signature and completion of internal procedures.

Reciprocity
The mutual exchange of rights, obligations, or treatment between States, often underlying diplomatic and extradition relations.

Refugee
A person who, owing to a well-founded fear of persecution for specified reasons, is outside the country of nationality and unable or unwilling to avail themselves of its protection.

Rebus Sic Stantibus
The doctrine allowing treaty termination or withdrawal in the event of a fundamental and unforeseen change of circumstances, subject to strict limits.

Rule Against Double Jeopardy
The principle that a person should not be tried or punished twice for the same offence.

Self-Defence
The inherent right of a State to use force in response to an armed attack, subject to necessity and proportionality.

Signature of a Treaty
The formal act by which a State authenticates a treaty text and may indicate an intention to become bound, depending on the treaty and context.

Soft Law
Normative instruments such as declarations, codes of conduct, or guidelines that are not legally binding but may influence State behaviour and legal development.

Sovereign Equality
The foundational principle that all States are equal in legal status under international law, regardless of differences in size, power, or wealth.

Sovereignty
The supreme legal authority of a State over its territory, population, and internal affairs, together with its independence from external control.

Speciality
The rule in extradition law that a surrendered person may be tried only for the offence for which extradition was granted, unless further consent is obtained.

State Continuity
The idea that a State may continue as the same legal person despite changes in government, territory, or constitutional structure.

State Responsibility
The body of international law governing the legal consequences of internationally wrongful acts committed by States.

State Succession
The replacement of one State by another in responsibility for the international relations of territory, often raising questions of treaty continuity, nationality, and responsibility.

Stateless Person
A person who is not considered a national by any State under the operation of its law.

Territorial Asylum
Protection granted by a State within its own territory to a person fleeing persecution or serious harm from another State.

Territorial Integrity
The principle that the borders and territorial unity of a State are not to be violated by force or unlawful intervention.

Territorial Jurisdiction
The authority of a State to regulate conduct, persons, or events occurring within its territory.

Territorial Sea
The belt of sea adjacent to a coastal State's land territory, over which the State exercises sovereignty subject to the right of innocent passage.

Treaty
An international agreement between States or other subjects of international law, intended to create binding legal obligations.

Treaty Reservation
A unilateral statement made by a State when signing, ratifying, or acceding to a treaty, intending to exclude or modify the legal effect of certain treaty provisions in their application to that State.

Ultra Vires
An act performed beyond the legal authority of the institution or organ concerned.

Uniting for Peace
A General Assembly mechanism developed in 1950 allowing the Assembly to consider collective measures when the Security Council fails to act because of veto paralysis.

Universal Jurisdiction
A basis of jurisdiction permitting a State to prosecute certain grave offences, such as genocide or piracy, regardless of where they were committed or the nationality of the offender or victim.

Use of Force
The employment of armed force by one State against another, generally prohibited under Article 2(4) of the United Nations Charter except in limited circumstances.

Veto
The power of any permanent member of the United Nations Security Council to prevent adoption of a substantive resolution.

Waiver of Immunity
An express decision by the sending State to relinquish the immunity of its diplomatic agent, thereby permitting legal proceedings in the receiving State.

About the Editors

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Dr. Seema Surendran has over 25 years of teaching experience. She specializes in International Law, Environmental Law, Corporate Law, Intellectual Property Law, and Criminal Law. She has served as faculty at Karnataka Lingayat Education Society's Law College, Bangalore; as Assistant Professor at Amity Law School, Noida, Amity University Uttar Pradesh; as Associate Professor and Associate Dean (Academics) at Vivekananda Institute of Professional Studies, Delhi; and as Principal at Sri Kengal Hanumanthaiah Law College and BMS College of Law, Bangalore. She is presently working as Professor at the School of Legal Studies, CMR University, Bangalore. She has participated in numerous national and international seminars and has several publications to her credit.

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A committed scholar, Dr. Gayathri has authored books and contributed extensively to legal literature through her publications in several UGC-CARE listed and Scopus-indexed journals. Her research spans a diverse range of legal disciplines, demonstrating both depth and interdisciplinary engagement.

In addition to her academic contributions, Dr. Gayathri actively mentors and supervises master's students and Ph.D. scholars, guiding advanced research across multiple domains of law. Her dedication to quality teaching, research excellence and academic leadership has established her as a respected figure in contemporary legal academia.

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List of Abbreviations

ACT Accountability, Coherence and Transparency Group
AI Artificial Intelligence
ASEAN Association of Southeast Asian Nations
BBNJ Biodiversity Beyond National Jurisdiction
CAT Convention Against Torture
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women
CRC Convention on the Rights of the Child
DDR Disarmament, Demobilization and Reintegration
DPIIT Department for Promotion of Industry and Internal Trade
EAW European Arrest Warrant
ECtHR European Court of Human Rights
EEZ Exclusive Economic Zone
EU European Union
FAO Food and Agriculture Organization
GATT General Agreement on Tariffs and Trade
GA General Assembly
HRC Human Rights Council
ICC International Criminal Court
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ICJ International Court of Justice
ICL International Criminal Law
ICRC International Committee of the Red Cross
ICSID International Centre for Settlement of Investment Disputes
IHL International Humanitarian Law
ILC International Law Commission
IMO International Maritime Organization
ISA International Seabed Authority
ITLOS International Tribunal for the Law of the Sea
LL.M. Master of Laws
NGO Non-Governmental Organization
NATO North Atlantic Treaty Organization
OECD Organisation for Economic Co-operation and Development

OUP Oxford University Press
P5 Five Permanent Members of the United Nations Security Council
PCIJ Permanent Court of International Justice
PhD Doctor of Philosophy
RFMO Regional Fisheries Management Organization
R2P Responsibility to Protect
UDHR Universal Declaration of Human Rights
UK United Kingdom
UN United Nations
UNCLOS United Nations Convention on the Law of the Sea
UNGA United Nations General Assembly
UNHCR United Nations High Commissioner for Refugees
UNSC United Nations Security Council
USA United States of America
VCDR Vienna Convention on Diplomatic Relations
VCLT Vienna Convention on the Law of Treaties
WHO World Health Organization
WTO World Trade Organization

How to Use This Edited Book

This edited volume is designed to serve a wide range of readers, including students, researchers, teachers, legal practitioners, and all those interested in understanding the contemporary developments of public international law through multiple scholarly perspectives. Since the book brings together contributions on diverse themes, it may be approached in more than one way depending on the reader's purpose.

Readers who are new to the subject may begin with the front matter sections, especially the Preface, Glossary, List of Abbreviations, and About the Editors, in order to become familiar with the structure, key concepts, and academic orientation of the volume. These sections provide the conceptual background necessary for engaging with the chapters more effectively.

The chapters may be read in sequence for a broad and connected understanding of the changing contours of public international law. Read in this manner, the volume presents a collective narrative on sovereignty, treaty law, jurisdiction, diplomatic law, extradition, human rights, asylum, statelessness, the law of the sea, use of force, United Nations institutions, and contemporary global legal challenges.

At the same time, each chapter is also intended to function as an independent scholarly essay. Readers with a specific area of interest may therefore consult individual chapters directly without necessarily reading the entire book from beginning to end. This makes the volume useful both for thematic study and for focused academic reference.

Students may use this book as a supplementary academic resource alongside prescribed textbooks and primary legal materials. The references at the end of each chapter may be used for further reading, research projects, seminar preparation, mooting, and dissertation work. Teachers and researchers may also find the volume useful as a source of contemporary perspectives and classroom discussion.

Because this is an edited collection, readers may notice diversity in style, emphasis, and method across chapters. This variety is intentional and reflects the richness of legal scholarship. It also allows the reader to appreciate how similar international legal questions may be approached from different analytical angles.

For the best use of this book, readers are encouraged to read actively by noting recurring concepts, comparing arguments across chapters, and referring to treaties, judicial decisions, and legal principles mentioned throughout the volume. In doing so, the book may be used not only as a source of information, but also as a tool for critical engagement with the evolving global order.

It is hoped that this volume will assist readers in developing both a foundational and a critical understanding of public international law, and in appreciating its continuing relevance in shaping international relations, legal responsibility, and global justice.

Contents

1

The Role of the International Court of Justice in the Settlement of International Disputes

Aishwarya R
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Abstract

The peaceful settlement of international disputes is one of the fundamental objectives of Public International Law, and the International Court of Justice (ICJ) plays a central role in achieving this objective. Established under the Charter of the United Nations, the ICJ serves as the principal judicial organ responsible for resolving legal disputes between States through judicial settlement and by giving advisory opinions to authorized international bodies. This paper examines the role of the ICJ in maintaining international peace and security by providing a lawful and structured mechanism for dispute resolution, thereby preventing the use of force between States. The jurisdiction, functions, and limitations of the Court are analysed to understand how State consent remains central to its effectiveness. The study highlights landmark judgments such as *Corfu Channel Case* (1949), where the ICJ emphasized State responsibility and respect for sovereignty; *Nicaragua v. United States* (1986), which reaffirmed the principles of non-intervention and peaceful coexistence; and *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (2012), demonstrating the Court's role in resolving boundary disputes peacefully. Advisory opinions such as *Legality of the Threat or Use of Nuclear Weapons* (1996) further show the ICJ's contribution to the development of international legal norms.
Keywords: International Court of Justice; Peaceful Settlement of Disputes; State Sovereignty; International Law; United Nations

1.1 Introduction

International law has developed from an international system primarily based on power politics to an international system increasingly based on legal principles. This change is best exemplified by the creation of the United Nations, which espoused the peaceful settle-

ment of disputes and the rule of law. In this context, the International Court of Justice (ICJ) is the principal organ of the United Nations, responsible for interpreting international law. Despite the decentralized system it operates within, where sovereignty is the cornerstone, the International Court of Justice plays an integral role in the maintenance of international legal order. This paper argues that the International Court of Justice is the normative anchor that stabilizes legal interpretation, despite the structural barriers it faces.

1.2 Jurisdictional Architecture and the Consent Paradox

The jurisdictional architecture of the International Court of Justice is arguably the most distinctive and intricate part of the international legal system. Unlike domestic courts, which trace their jurisdiction from a centralized sovereign, the International Court of Justice operates within a decentralized system where sovereignty is the cornerstone. This means that, unlike domestic courts, the jurisdiction of the International Court of Justice is not automatic. In other words, it is entirely dependent on the consent of the parties. This is exemplified by the fundamental notion of sovereignty, which is at the heart of international law. International law has traditionally been regarded as a body of law predicated on consent rather than coercion, and its obligatory character is often seen as flowing from the voluntary agreement of States. The ICJ reflects this in its requirement of consent, implicit or explicit, before it assumes jurisdiction. This ensures that the ICJ does not coerce States into its jurisdiction while at the same time ensuring its own legitimacy in the international system.

This requirement of consent, however, also creates a structural tension in the ICJ's jurisdiction that significantly influences its working. States may agree to the ICJ's jurisdiction in cases where they feel they will be able to secure a favorable verdict but refuse it in cases where their vital interests are at stake. This not only reduces the authority and jurisdiction of the ICJ but also limits its ability to address all conflicts. This is sometimes referred to as the consent paradox in the ICJ's jurisdiction. The ICJ's power stems from its ability to compel States to agree to its jurisdiction over them, but also its weakness lies in its inability to do so in cases where it is most needed. This is a reflection of the tension inherent in international law between law and politics. Unlike other courts in the world where litigants cannot refuse to appear in court, the ICJ's jurisdiction depends on State consent to its jurisdiction over them.

Another way in which the expression of mechanisms for consent serves to highlight the above dynamic is through the most direct form of consent, which is the special agreement or *compromis*, wherein States jointly submit a dispute to the Court. This form of consent is indicative of a high degree of cooperation and is frequently linked to effective dispute resolution. This is because the States in question have submitted to the jurisdiction of the Court. Another important mechanism is the compromissory clauses in international treaties. These are clauses in treaties that provide that disputes arising from the interpretation and application of the treaty may be submitted to the ICJ. This has become an important mechanism in the invocation of the Court's jurisdiction, especially in the areas of human rights and environmental law. This mechanism allows States to provide in advance their consent to judicial settlement of disputes, thereby expanding the Court's jurisdiction.

A second and equally important mechanism of expressing consent to the ICJ's jurisdiction is the compromissory clauses in multilateral treaties. These have become increasingly important in the development of international law in recent times because they have

provided a mechanism of submitting disputes to the ICJ in the absence of a direct agreement between the parties at the time of the dispute. This mechanism has been of immense influence in the development of human rights and humanitarian law, where the Genocide Convention provides a basis for the Court's jurisdiction in the absence of direct agreements between the parties to the dispute. However, it is also true that the effectiveness of compromissory clauses depends on their interpretation. States can challenge the jurisdiction of the Court by arguing that the dispute does not fall under the scope of a particular treaty provision. This adds another layer of complexity, as the Court first has to establish that it has jurisdiction before it can hear the case. In this manner, the issue of jurisdiction has also become a part of ICJ cases, which can sometimes be a political statement by States against each other.

The third mode of establishing the Court's jurisdiction is through the Optional Clause provided for under Article 36(2) of the Court's Statute. Under this provision, States can declare that they accept as compulsory the Court's jurisdiction over disputes that they have with other States that have also made similar declarations. In this manner, this provision of the Court's Statute has the potential for establishing universal jurisdiction, as it allows for a wider scope of cases that can be brought before the Court without the consent of the States. However, this provision is limited by the reservations that States make when they accede to this provision. States can, for example, reserve disputes related to matters of national security, treaties, and domestic jurisdiction. This shows that even when States accede to compulsory jurisdiction, they can do so only for a limited scope of cases, and the consent of States remains a part of the Court's jurisdiction. The implications of the consent paradox can be seen clearly in the context of powerful States. One of the most significant instances is the *Nicaragua* case. In the *Nicaragua* case, the Court found that the United States had violated international law by supporting armed groups in Nicaragua. Yet, the United States did not accept the jurisdiction of the Court and later made a declaration withdrawing from the compulsory jurisdiction. This is where the power implications of the consent paradox can be seen clearly.

However, it would not be correct to argue that the consent-based model makes the Court ineffective. On the contrary, it has successfully adjudicated numerous disputes, thereby contributing to the development of international law. The crux of the matter is that the effectiveness of the Court is dependent on the good faith of the parties to adjudicate their disputes. If the parties are willing, the Court can prove to be an effective tool for the resolution of disputes. If not, the effectiveness of the Court is limited, though not irrelevant. The jurisdictional structure of the ICJ, therefore, is an outcome of the compromise between legal idealism and pragmatism. While it recognizes the need for sovereignty, it has provided an effective framework for the resolution of disputes. The consent paradox, therefore, is not just an outcome of the legal system; it is an integral part of it, which determines the manner in which law operates at the international level.

1.3 The Doctrine of Voluntas and its Discontents

The notion of *voluntas*, or the sovereign will, is not just an expression of legal positivism; it is an ontological imperative for the survival of the Court. In the absence of a global legislature, the ICJ's authority is dependent on the "contractual" nature of international law. When a State enters an Optional Clause (Article 36, Paragraph 2) treaty, it is engaging in an act of "sovereignty-sharing."

However, the extension of the consent paradox is most evident in the system of reservations. States often consent to jurisdiction while at the same time limiting its effect. One of the most common reservations is the multilateral treaty reservation, in which many Commonwealth nations reserve jurisdiction in cases where there is a multilateral treaty involved unless all parties to the treaty affected by the case are also parties to the case before the ICJ. This was one of the most common methods used by the United States in its opposition to jurisdiction in the *Military and Paramilitary Activities in and against Nicaragua* case.

1.4 Evolution of Contentious Cases – From Borders to Bodies

The evolution of ICJ contentious jurisdiction is an important case study in how international law is adapting to new realities. In its early history, ICJ cases were largely concerned with territorial sovereignty and sea boundary disputes. This is because in its early history, international law was largely concerned with borders and territorial disputes. In this sense, the ICJ was more like a "land surveyor," using law to determine borders and territorial jurisdiction. Territorial disputes often require a complex analysis of historical, legal, and factual elements. The Court is required to analyse treaties, maps, and State practice over many decades in order to make a determination on sovereignty. This was evident in the *Temple of Preah Vihear* case. In this case, the territorial dispute was over a temple located near the border between Cambodia and Thailand. The Court relied on historical maps and acquiescence in order to make a determination that the temple belonged to Cambodia. This case also highlights the importance that the Court places on consistency in determining territorial disputes and how legal analysis is used to resolve disputes that have significant political and cultural implications.

Maritime delimitations have also been an important part of the Court's case law on territorial disputes. Maritime disputes often involve significant natural resource allocations, including oil and gas. As a result, these types of cases are extremely sensitive economically and politically. In the *Somalia v. Kenya* case, the Court was required to address competing claims over maritime boundary disputes in the Indian Ocean. The Court relied on established principles in determining an equitable outcome in this case. This approach is consistent with the Court's approach to balancing legal certainty with fairness in determining territorial disputes.

The types of cases heard by the ICJ have changed dramatically since the Court's early years. In recent years, the ICJ has increasingly been asked to decide cases that go beyond traditional international law. This is part of a larger shift in international law, with human rights, humanitarian law, and environmental protection increasingly coming to the fore. As a result, the types of legal issues decided by the ICJ have become more varied and complex.

The shift in the ICJ's docket from territorial disputes to human rights and other interests represents a larger shift in international law. This shift is characterized as a move from "borders to bodies," reflecting a shift away from a focus on sovereignty and toward a focus on the interests of individuals. This shift is a result of the recognition of a new set of obligations that transcend traditional bilateral relationships and extend to the international community as a whole.

The *erga omnes* obligations have been at the heart of this change. These obligations, which were first raised in the *Barcelona Traction* case, are obligations that all States have

an interest in protecting, such as the prohibition of genocide, slavery, and racial discrimination. The *erga omnes* obligations are owed not to individual States but to the international community as a whole. This means that any State is free to invoke responsibility for their breach, even if it is not directly affected.

The case of *The Gambia v. Myanmar* is a good example of the application of this rule in practice. In this case, The Gambia initiated a case against Myanmar for the violation of the Genocide Convention in the treatment of the Rohingya population. It is important to note that The Gambia was not a direct victim of the violation, but the ICJ accepted the case. This is an important expansion of access to the ICJ and is in keeping with the notion that some issues are of universal concern.

The case of *South Africa v. Israel* is a good example of the ICJ dealing with issues of humanitarian importance in the modern era. In this case, the ICJ was called upon to decide issues of the violation of the Genocide Convention in the ongoing conflict. By ordering provisional measures, the ICJ demonstrated that it is willing to engage in the conflict early in order to prevent irreparable harm. Although not a final judgment, the provisional measures are important and carry weight in the world community.

Similarly, in the *Pulp Mills* case, environmental harm to a transboundary environment was at issue. The Court emphasized the responsibility of States to conduct environmental impact assessments and to cooperate in avoiding harm to a shared resource. This case reinforced the notion that environmental protection is a part of public international law.

This is all part of the larger move toward the "humanization" of the law. Traditional international law is based upon the rights and obligations of States, but the law that is evolving is more concerned with the rights and obligations of the individual. The environmentalization of public international law also has a wider impact on intergenerational justice and the rights of future generations.

However, there are limitations to the ICJ's role in environmental protection. Environmental protection involves complex scientific data, and specialized knowledge is necessary to adjudicate such cases. Although the ICJ has the authority to appoint experts to assist in adjudicating environmental cases, it must ensure that its decisions are based on sound evidence. Furthermore, environmental protection is a global issue, and global problems require global solutions.

1.5 Analysis

In order to assess the efficacy of the International Court of Justice, one has to analyze the international legal system as a whole. It is true that the ICJ has institutionalized the peaceful settlement of disputes. However, its authority is limited by the principles of State sovereignty and consent. This is the major problem in the ideal and reality dichotomy. One of the major issues facing the ICJ is the enforcement of its decisions. It is true that the ICJ has no power to enforce its decisions. It has to rely on State cooperation. The UN Charter does give it the power to enforce its decisions through the Security Council. However, in practice, its decisions are subject to political pressure, especially in the context of veto power. It is true that the efficacy of ICJ decisions depends on the State's willingness to comply.

The other issue is "lawfare," a situation where States use legal processes as a strategic tool for advancing their political goals. This is a reflection of the importance of legal processes in international relations, but there is a concern regarding possible abuse of

legal processes. The ICJ has to ensure that its processes are fair, impartial, and based on legal principles.

Despite the limitations, the ICJ has a crucial role to play in ensuring the integrity of international law. The decisions of the ICJ have considerable legal and moral weight, and they guide States in their behavior and development of legal principles. Although States may not comply fully with ICJ decisions, such decisions guide international discourse and emphasize the importance of the rule of law.

1.6 Conclusion

There are various reforms that can be undertaken to enhance the efficiency of the ICJ. First, there should be a reform to limit veto powers in the implementation of ICJ decisions in the Security Council. This would enhance the efficiency of the ICJ, as it would strengthen its role in international relations. The other reform is to enhance wider acceptability of the Optional Clause under Article 36(2) without any reservations. This would enhance the efficiency of the ICJ, as it would enable it to handle a wider range of cases.

The involvement of technical experts under Article 50 of the ICJ Statute could also enhance efficiency, particularly in environmental cases. This would enable the ICJ to make legally sound and correct decisions. The International Court of Justice plays an indispensable and unique role in the international legal order. This is despite the fact that it functions in a system that is normally marked by sovereignty and political limitations. The ICJ plays an important role in the peaceful resolution of conflicts and the development of law. With the ever-changing nature of international law, the ICJ plays a central role in this change. This is because it provides a normative anchor that promotes stability and justice in the ever-changing and complex world. The fact that it has managed to change and still hold on to some of its principles shows that it will remain relevant in the future.

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2

Use of Force as Defense Under International Law: Analysis of Contemporary Practice in Recent Armed Conflicts

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Abstract

The armed conflicts around the world have brought attention to the law on the use of force. Armed conflicts such as those between India and Pakistan, and Russia and Ukraine, where Russia's invasion has continued to be debated as an unlawful use of force in direct violation of Article 2(4) of the United Nations Charter, raise pressing legal questions. Similar questions have arisen regarding Israel's justification for its military operations in Gaza following the attacks of 7 October 2023. This paper analyses these contemporary situations and explores the scope and limits of self-defence under Article 51 of the United Nations Charter. Russia's justifications based on humanitarian necessity and protection of nationals have been questioned for lack of legal backing. On the contrary, Israel's justifications of self-defence also raise more complicated questions. This research focuses on whether the standards of necessity and proportionality conflict with the principle governing resort to force. The study shows that the expansive application of self-defence, when politically supported, threatens to weaken the foundational principles of international law.
Keywords: Use of force; armed conflict; self-defence; invasion; sanction

2.1 Introduction

When States resort to force against other States, they invoke Article 51. Even in situations that are widely condemned as clear aggression, including the debates about Russia's 2022 invasion of Ukraine, States rarely ignore the law altogether. Instead, they try to justify their conduct by any means possible. Sir Michael Wood has stated that "no principle of the Charter is more important than the principle of the non-use of force as embodied in Article

2." In that sense, this principle tests and defines the leaders and their legal advisers. This paper starts from the idea that self-defence is no longer merely a legal argument, but has become something States feel they need to rely on to preserve their credibility, keep their allies on side, and avoid being sidelined. The distinction between legitimacy and legality is often deliberately blurred by States.

Recent armed conflicts, such as Russia's use of collective self-defence to support groups that are not officially recognized and Israel's responses to attacks from non-State actors, clearly show the wide range of self-defence claims. These claims are also challenged in many different ways. This study explores these examples by analysing the UN Charter, identifying common argumentative strategies in State behaviour, and assessing the weakening of exceptions that has expanded through repeated use, as well as the limitations of the Responsibility to Protect principle.

2.2 Use of Force Framework under the UN Charter

Article 2(4) of the UN Charter lays down that all members must "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State." Two points about this prohibition are important to understand. First, not all uses of force violate Article 2(4) in the same way. In the *Nicaragua* case, the ICJ held that there is a distinction between "the most grave forms of the use of force, those contributing to armed attacks, and other less grave forms." This distinction is very important because only the gravest forms trigger the right of self-defence. A lesser use of force may still be unlawful under Article 2(4), but it does not entitle the victim State to respond with force under Article 51. Second, the prohibition is not merely a treaty rule. It is also part of customary international law and is widely regarded as a *jus cogens* norm. Under Article 53 of the Vienna Convention on the Law of Treaties, "a provision of a treaty that conflicts with a jus cogens rule is void." This means States cannot avoid this prohibition even by mutual agreement. Any treaty trying to authorize force outside the Charter's exceptions would be invalid.

The main exemption is laid down under Article 51 of the UN Charter, which provides that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs." The two main words in this article are "if an armed attack occurs." This shows that self-defence is to be carried out after the attack has happened. There is, however, debate about whether this includes a right of self-defence even if the attack has not yet happened, provided it is imminent. Three other requirements for self-defence are provided under customary international law, as follows:

a. **Necessity** – The force must be necessary, and no other option must exist.
b. **Proportionality** – The force must be proportionate to the attack.
c. **Imminence** – The attack must be "instant, overwhelming, leaving no choice of means and no moment for deliberation," as stated in the *Caroline* incident (1837).

These are not abstract concepts; they are tests that must be fulfilled by States. In the *Oil Platforms* case, the Court asked the United States to show that its actions were "necessary and proportional to the armed attack made on it."

There have been several questions about the interpretation of the right of self-defence. These may be summarized as follows:

1. **Non-State actors:** Whether it is possible to invoke self-defence against attacks by groups such as Hamas or Al-Qaeda that are not attributable to a State. Following the events of 11 September 2001, the Security Council adopted a resolution that broadened the traditional notion of self-defence by recognizing the right of self-defence against terrorist attacks. However, the question remains whether this is now settled law.
2. **Anticipation and pre-emption:** Does imminence encompass the right to strike first when a threat is emerging? Whether it is lawful to strike first when there are alarming military preparations but no reason to believe an attack is planned; whether it is lawful to strike when an attack is imminent even though it has not yet been made; and whether it is lawful to strike when an attack is already underway but has not yet occurred. The issue of what kind of self-defence was appropriate was not addressed by the Court in the *Oil Platforms* case because both parties agreed that an armed attack had occurred.
3. **Attribution:** When does support for non-State actors constitute an "armed attack" by the State? The *Nicaragua* case required "effective control." However, States are now arguing for lower tests such as "harboring" or "unable or unwilling." This remains an issue that is yet to be conclusively answered.
4. **Aim and purpose of self-defence:** Whether self-defence is only permitted to repel an attack that is already underway, or whether it can be invoked to prevent future attacks by the same source. Iran argued the former position, whereas the United States argued the latter. The Court did not take a definitive view on the issue.

The Charter assigns the role of enforcing the prohibition to the United Nations Security Council. It can also authorize the use of force to ensure international peace under Chapter VII. However, in practice, the Security Council is often unable to act due to political differences and the veto system. As a result, States are not always able to rely on collective security and are forced to advance unilateral justifications. The consequence is that self-defence arguments are now presented directly to the international community, other States, courts, and civil society, rather than indirectly through the collective mechanisms of the Charter. Therefore, when the Security Council is unable to act, States feel compelled to justify their actions in terms of Article 51, even when the circumstances are uncertain.

2.3 Contemporary Patterns of Justifications

States do not try to defend the use of force randomly. Their arguments show clear identifiable patterns, which are usually used together rather than in isolation. Contemporary practice from the Russia–Ukraine and Israel–Gaza wars demonstrates these patterns, which are treated here merely as patterns of argumentative structures rather than as exhaustive factual case studies.

In Israel's invocation following the attacks of 7 October 2023, the core argument is that an armed attack occurred and hence force is the response. This is the least likely to generate disagreement at the threshold stage; it shifts the burden to proportionality. The attribution argument in claims regarding Hamas and Gaza suggests that the non-State actor is effectively the State. This expands State responsibility and attempts to avoid questions of territorial sovereignty.

In Russia's invocation concerning Donetsk and Luhansk, the proxy-State argument suggested: "We are defending an entity that is a State (even if it is unrecognized)." This rea-

soning is circular; recognition is not statehood. A related attribution pattern argues that a non-State actor's attack should be treated as an attack by the State on whose territory the group operates. The State is considered responsible because it harbors, supports, or is unable or unwilling to control the actions of the non-State actor. This approach emerged strongly after 9/11.

However, the problem with this method is that Article 51 of the Charter was developed to address inter-State armed attacks. A State that is unable to control the actions of a non-State actor on its territory has not necessarily committed a qualifying armed attack. The "unable host State scenario" falls on the borderline between self-defence and a state of necessity. The issue here is whether the victim State can use force within another State's territory when that State is unable to control the actions of the non-State actor. This issue remains under debate.

In the conflict between Israel and Gaza, Hamas is a non-State actor. If a Palestinian State existed on 7 October 2023, the attack by Hamas would not automatically be attributed to that State because Hamas does not act on the instructions of the Palestinian Authority and does not act under its effective control. There is no straightforward basis for attributing the attack to the Palestinian State under the general rules of attribution. Even under the extended definition of aggression contained in United Nations General Assembly Resolution 3314, the relationship between the Palestinian Authority and Hamas does not qualify as substantial involvement.

Moreover, the pattern of the proxy-State model is more developed in Russia's claim of collective self-defence on behalf of the "People's Republics" of Donetsk and Luhansk. The model shows an intervening State recognizing a non-State entity as a "State" and claiming self-defence on its behalf under Article 51. However, recognition of a non-State entity does not automatically transform it into a State. The entity must still possess the characteristics of statehood under international law, including territory, population, government, and the capacity to enter into relations.

Once more, the requirement of statehood is shown to be a condition in the *Nicaragua* case. The Court affirmed the importance of statehood. Intervention on behalf of a State still requires the consent of a State, and non-State entities lack the power to trigger collective self-defence. Ali and Faouzi argued that "the preparatory committee for the draft definition of the crime of aggression has rejected the notion of a legitimate preventive defense."

When Russia asserted the proxy-State claim, the reliance on protective self-defence on behalf of Russian-speaking populations, and the claim of imminence regarding NATO expansion, it attempted to engage in what may be described as bootleg legality by using recognition to establish statehood and then relying on that supposed statehood to justify force.

The response claim is demonstrated by Israel's invocation after 7 October 2023: a State claims to have been subjected to an armed attack and retaliates in self-defence. The challenges are continuous. Requirements of necessity and proportionality must be assessed throughout the conflict, not merely once at its inception. A response proportionate initially may become disproportionate through duration or intensity. The proportionality rule ensures that even if force was necessary at the beginning, it must remain limited and appropriate throughout the operation.

The problem with Israel's invocation is, first, that the scale and duration of operations raise questions about whether the response remains necessary to achieve the legitimate

goal of self-defence, namely halting and repelling the attack. Secondly, the occupation paradox further complicates the analysis: if Gaza is considered occupied territory, then Israel's use of force might be subject to law-enforcement standards under the law of occupation rather than self-defence under Article 51.

The imminence claim expands the boundaries further. The *Caroline* test required that the threat be "instant, overwhelming, leaving no choice of means, and no moment for deliberation." Russia's claims regarding NATO expansion show a broader structure: a State invokes future threats to justify present force. The main issue with claiming this defence is evidence. Imminence requires factual demonstration, not speculative construction. Threats that are strategic, geopolitical, and non-imminent fall outside the *Caroline* framework. The preparatory committee for the draft definition of the crime of aggression rejected the notion of a legitimate preventive defence.

The issue of self-defence from or against occupied territory gives rise to a specific problem. This is especially relevant in the context of Gaza, which raises the question of the target of self-defence if a territory is considered occupied. South Africa has argued before the ICJ that Israel cannot rely on the right to self-defence because it does so "on territory under its own control." The ICJ's advisory opinion regarding *the Wall* discussed that the right of self-defence provided under Article 51 is not applicable when the source of the threat is in occupied territory rather than outside it. On 7 October 2023, however, the Gaza Strip was not even technically under Israeli military occupation. According to Article 42 of the Hague Regulations, occupation of territory implies that the territory has been "actually placed under the authority of the hostile army." The events of 7 October showed clearly that Israel was not able to exercise such authority over the Gaza Strip without overcoming armed resistance. Because of these events, the dictum in *the Wall* may not apply straightforwardly. Nevertheless, opponents of Israel continue to rely on the argument of occupation to contend that Article 51 is entirely inapplicable.

This example shows that the traditional interstate model of Article 51 does not work neatly in the face of contemporary realities involving non-State actors. There are no specific regulations on the issue.

States tend to use multiple justifications; hence they stack justifications, hoping that the cumulative effect of the arguments will make up for the weakness of each one individually. But the question remains whether the cumulative effect of Russia's justifications is effective.

Russia's totality of justifications includes the following:

- Collective self-defence for unidentified entities (Donetsk/Luhansk).
- Protection of nationals (Russian-speaking populations).
- Pre-empting imminent threats (NATO expansion).
- Other historical claims.

Each of these justifications is individually weak. Collectively, however, they are presented as a legitimate narrative. As argued by various authors, "Russia believes it has the complete right to use force if it perceives a threat to its security," and "Russia's interests are as legitimate as those of the West."

Israel's series of justifications is different. Israel's defence is primarily based on the response pattern. Nevertheless, its justifications also include:

- Attribution inquiries about the status of Hamas.

- The issue of occupation in relation to Gaza's legal status.
- Concerns about proportionality in relation to the scope and duration of operations.

These justifications show an important fact: Israel is trying to focus on narrative as much as on legal legitimacy. The justifications attempt to persuade multiple audiences at the same time.

The three pillars of R2P are defined by the 2005 World Summit, with Pillar 3 focusing on the role of the Security Council. Humanitarian intervention was deliberately left out. R2P has failed to take the form of a separate doctrine or direct defence of unilateral force, despite support from some scholars. Humanitarian justifications, like the one advanced by Russia concerning the defence of Russian speakers, have been invoked by States alongside other justifications such as self-defence, or as a means of seeking legitimacy rather than legality. The limits of justificatory discourse are evidenced by R2P's failure to become part of the toolkit of self-defence. While States cannot yet claim unilateral humanitarian force as self-defence, they can stretch the meanings of attribution, imminence, and even statehood.

This is an indicator of path dependency: the justifications must be able to trace their roots to the Charter. Humanitarian justifications are still doctrinally weak, unlike attribution, which gained attention after 9/11, or imminence, which was expanded by repetition. The limits of justificatory discourse in the contemporary period are evidenced by R2P.

2.4 Conclusion

States justify their use of force through recurring patterns such as response, attribution, imminence, and protective arguments. They attempt to justify force by creating a fabric of arguments. The occupation paradox shows that Article 51's framework and purpose are unstable when applied to modern armed conflicts involving non-State actors. Whether self-defence applies in occupied territory remains unresolved. Through these patterns, it is evident that there has been a gradual expansion of the exceptions through repetition: attribution expanded from "effective control" to "unable or unwilling," and imminence expanded from the *Caroline* formulation of "instant, overwhelming" to broader strategic threats. The prohibition exists because violators still feel compelled to justify themselves. But when these attempts at justification become too broad or elastic, the rule risks becoming merely something that exists on paper.

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3

Asylum as a General Principle of International Law: From Sovereign Tradition to Constitutional Rights

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Abstract

Asylum, defined as the protection a State grants on its territory or under its control to those seeking it, is a longstanding institution in international law with firm roots in State practice. Unlike refugee status, which denotes a specific beneficiary category and its protections, asylum provides the overarching framework for such safeguards. This paper investigates asylum's character as a general principle of international law. It first delineates the asylum–refugee distinction for context, then engages current debates, notably asylum as an individual right. Through historical State practice, with emphasis on constitutional traditions, the analysis leverages constitutions' normative authority. Asylum's embedding in numerous global constitutional texts signals its foundational status in domestic legal systems, shaping international norms. The paper reveals asylum's transformation: its sovereign heritage now merges with constitutional-rank individual rights, affirmed in regional human rights instruments. This persistent cross-civilizational presence, alongside its crystallization in constitutional and regional norms, confirms asylum as a general principle of international law, legally binding for interpreting States' duties toward protection seekers.

Keywords: Asylum; General principle of international law; Constitutional traditions; Refugee status

3.1 Introduction

The concept of asylum occupies an important place in international legal discourse. Traditionally, asylum referred to the protection granted by a State within its territory to individuals fleeing persecution or serious harm in another State. For centuries, the grant of asylum was considered an expression of sovereign authority, meaning that each State possessed

complete discretion to decide whether a foreign individual could remain within its territory for protection. However, the development of international human rights law has gradually influenced this traditional understanding, transforming asylum into a principle that reflects broader humanitarian obligations.

The twentieth century witnessed major political upheavals, wars, and displacement crises that reshaped international approaches to refugee protection. The aftermath of the Second World War led to the creation of international institutions and treaties that aimed to protect individuals who were forced to flee their countries. Among these developments, the establishment of international refugee law played a crucial role in defining the legal rights of displaced persons and the responsibilities of States.

Despite these developments, asylum remains conceptually different from refugee status. Refugee law provides a clearly defined legal framework under international treaties, while asylum represents the act of protection granted by a State. This difference has generated significant debate among scholars and policymakers regarding the legal status of asylum within international law. Some view asylum as a purely discretionary power of States, while others argue that it has evolved into a legal principle guiding the conduct of States toward individuals seeking protection.

3.2 Historical Foundations of Asylum

The idea of providing protection to individuals fleeing persecution is not a modern development. Historical evidence suggests that various civilizations recognized forms of sanctuary or refuge long before the emergence of modern international law. In ancient societies, religious institutions such as temples and sacred spaces were often regarded as places where individuals could seek safety from violence or punishment. Although these practices were largely based on moral or religious traditions, they demonstrate that the concept of offering protection to vulnerable individuals has deep historical roots.

During the medieval period, the institution of sanctuary developed further within European societies. Churches and religious authorities sometimes provided protection to individuals accused of crimes or political offences, preventing immediate punishment by secular authorities. While this form of protection was not identical to modern asylum, it reflected the broader humanitarian belief that individuals should have access to temporary protection from injustice or persecution.

With the emergence of modern nation-States in the early modern period, the concept of asylum gradually shifted from religious sanctuary to State authority. Governments began to regulate the admission and protection of foreigners within their territories. In the nineteenth century, the idea of political asylum gained particular importance as States occasionally provided protection to political dissidents fleeing authoritarian regimes. This practice reflected the growing influence of liberal political ideas and the recognition of individual freedoms within international relations.

3.3 Distinction Between Asylum and Refugee Status

Although the terms “asylum” and “refugee protection” are frequently used interchangeably in public discourse, they represent distinct legal concepts within international law. Refugee status is defined through specific international instruments that establish criteria for identifying individuals who qualify for protection. These instruments outline the rights

of refugees and the obligations of States that accept them. Asylum, on the other hand, refers to the act of granting protection by a State within its territory or jurisdiction.

The distinction between these concepts is important because asylum operates as a broader form of protection than refugee status. While refugee law focuses on individuals who meet particular legal definitions of persecution, asylum may also be granted in situations where humanitarian considerations justify protection even if the individual does not strictly qualify as a refugee. As a result, asylum often functions as a flexible mechanism that allows States to respond to various forms of displacement.

Another difference lies in the procedures associated with each concept. Refugee status is typically determined through formal legal processes conducted by national authorities or international organizations. These procedures involve assessing evidence, evaluating claims of persecution, and determining whether the individual meets the legal definition established under international law. Asylum decisions, however, may also involve broader political or humanitarian considerations beyond strict legal definitions.

Understanding the distinction between asylum and refugee status is essential for evaluating whether asylum can be considered a general principle of international law. While refugee protection is clearly codified through international treaties, asylum operates within a wider legal framework influenced by State practice, constitutional norms, and human rights principles.

3.4 Asylum in International Law

International law has progressively developed mechanisms to regulate the protection of individuals who are forced to flee their countries. One of the most important principles associated with asylum is the obligation not to return individuals to places where they may face persecution or serious harm. This principle has become a central element of international refugee law and human rights law, shaping how States respond to individuals seeking protection.

International institutions and legal instruments have played a significant role in strengthening the legal framework surrounding asylum. Through treaties, conventions, and customary international law, the international community has recognized the need to ensure that individuals fleeing persecution receive protection. These developments reflect a broader shift toward recognizing the rights of individuals within the international legal system.

At the same time, States continue to maintain significant authority over the regulation of entry and residence within their territories. Immigration control remains an important aspect of State sovereignty, and governments often balance humanitarian obligations with domestic policy considerations. This tension between sovereign authority and humanitarian protection has shaped contemporary debates on asylum law.

Despite these challenges, the growing recognition of asylum within international legal instruments and constitutional systems suggests that it is increasingly viewed as more than a purely discretionary practice. In Europe, regional human rights institutions have addressed cases involving the expulsion or return of individuals to countries where they might face persecution or inhuman treatment. Through their jurisprudence, these bodies have emphasized that States must consider the potential risks faced by individuals before removing them from their territories. Such interpretations have reinforced the principle that humanitarian protection must guide State actions in matters involving asylum seekers.

39.10 Conclusion

The legal status of diplomatic envoys is part of a carefully constructed system that plays a fundamental role in maintaining peaceful and stable relations among States. This system is largely based on the Vienna Convention on Diplomatic Relations, which provides a detailed framework defining the rights, protections, and duties of diplomats.

Although diplomatic immunity remains essential for the proper functioning of international diplomacy, it is not free from difficulty. Instances of misuse and the resulting concerns about justice reveal the need for a more balanced approach. Diplomatic law must continue to protect envoys in order to preserve independent communication among States, but it must also respond to the demands of fairness and accountability.

Ultimately, the effectiveness of this system depends heavily on the willingness of States to act in good faith, respect reciprocity, and uphold responsibility. If these values are maintained, the law of diplomatic relations can remain both stable and adaptable to the changing realities of the contemporary world.

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40

Veto Power and Democratic Deficit: A Critical Legal Analysis of UN Security Council Reform

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Abstract

Seventy-nine years after its creation, the United Nations Security Council remains trapped in a contradiction of its own making. The Council was designed to maintain international peace and security, yet it has often failed to act when collective action was most urgently required. The principal cause of this paralysis is the veto power. Granted to the five permanent members under Article 27(3) of the UN Charter, the veto allows any one of them to block a decision even where all other members agree. This paper examines the veto power, its historical origins, its contemporary operation, and the possible legal tools available to restrict or reform it. The conflicts in Ukraine and Gaza are used as illustrations of Council failure. The paper analyses the legal character of veto abuse, the barriers to Charter reform, and the growing but still imperfect role of soft-law instruments in changing perceptions about the use of the veto. It argues that the veto has evolved in a manner that is increasingly inconsistent with the Charter's purposes of collective security, sovereign equality, and protection of populations in armed conflict. Formal reform is unlikely in the near future, but the paper contends that reform is not merely a diplomatic aspiration. It is a genuine legal necessity.

Keywords: UN Security Council; Veto Power; Democratic Deficit; Charter Reform; Collective Security; Global Governance; *Jus Cogens*; Article 27

40.1 Introduction

The United Nations Security Council was, in a very deliberate sense, designed to fail in certain circumstances. When the drafters of the Charter embedded the veto mechanism into Article 27(3), they understood clearly that no major power would join an institution that could compel it, by majority vote, into military or political commitments against its

own interests. The veto was not an accidental defect in the design of the Organization. It was the price of persuading the most powerful States to participate in a collective security system. That logic made sense in 1945.

What was not fully anticipated was the extent to which later generations would continue to pay that price, often in situations wholly unrelated to the strategic calculations that produced the original compromise. Over time, the veto shifted from a safeguard against unfriendly majority action into a more troubling instrument of geopolitical insulation. The Soviet Union used it frequently in the Council's early decades. The United States established a regular pattern of veto use in relation to the Middle East. Russia and China later developed a practice of blocking resolutions concerning internal conflicts where Western-backed intervention might otherwise have been possible. None of this is formally unlawful under the Charter. Yet together these practices have created an institution that often appears unable to perform the very function the Charter assigns to it.

Two recent situations illustrate the problem especially clearly. Russia's invasion of Ukraine in 2022 was followed by Russian vetoes of resolutions that would have formally condemned its conduct. In the Gaza conflict, the United States repeatedly shielded Israel from binding Council action even as the International Court of Justice indicated a plausible risk of genocide in proceedings brought by South Africa. In each case, the veto prevented the Council from responding effectively to grave threats to peace and humanitarian protection. This paper argues that the veto is not merely a political inconvenience or governance difficulty. It is also a legal problem, and one that requires closer examination through the language of Charter law, State responsibility, and institutional legitimacy.

40.2 Where the Veto Came From

The failure of the League of Nations deeply influenced the design of the United Nations. At Dumbarton Oaks in 1944, the Allied powers were determined that the organization replacing the League should retain the participation of the major powers. The conclusion they reached was simple: participation required protection. The formula agreed at Yalta in February 1945 provided that substantive decisions of the Security Council would require the support of all five permanent members.

The arrangement was built on the assumption that institutionalizing great-power unanimity would reduce the likelihood of open conflict among them. That assumption proved fragile. Cold War rivalry quickly destroyed the expectation that the major powers would act together consistently, and the veto became a central instrument of political contestation.

At San Francisco, there were efforts to narrow the scope of the veto. The Australian delegation, led by Herbert Evatt, was particularly concerned by what later came to be known as the "double veto"—the practice by which a permanent member could first insist that a matter was substantive rather than procedural and then veto it on the merits. These attempts failed. The June 1945 Statement on voting procedure preserved the procedural-substantive distinction without resolving its uncertainties. The result was exactly the ambiguity the permanent members preferred.

The veto therefore entered the Charter not as an oversight but as a conscious structural privilege. It was justified as necessary for stability, yet from the very beginning it also embedded a permanent hierarchy within the Organization.

40.3 Article 27 and Its Interpretive Problems

Article 27 appears straightforward on its face. Each member of the Security Council has one vote; procedural matters require nine votes; substantive matters require nine votes including the concurring votes of the permanent members. In practice, however, the provision has generated persistent interpretive difficulty.

The first issue lies in the distinction between procedural and substantive questions. Because the Charter does not clearly define that boundary, permanent members have often been able to influence whether a matter falls within the veto domain at all. This has allowed the double veto to survive as a practical technique even without explicit textual endorsement.

The second issue concerns the meaning of "concurring votes." In the *Namibia* Advisory Opinion, the International Court of Justice accepted that a voluntary abstention by a permanent member does not prevent the adoption of a resolution. This was consistent with established practice and confirmed that the permanent members possess, in effect, an intermediate option between support and formal veto.

The deeper and more difficult question is whether any substantive legal limit constrains veto use. The Security Council is certainly powerful, but it is not generally understood to be above all law. Scholarship has increasingly argued that the Council must remain subject to *jus cogens* norms, including the prohibitions of genocide, aggression, torture, and crimes against humanity. If that is correct, then the use of the veto to block collective action against serious violations of peremptory norms raises more than political or ethical concerns. It may also implicate the broader obligation of States under the law of State responsibility to cooperate in ending serious breaches of obligations owed to the international community as a whole.

No court has yet directly decided whether veto use itself can violate such obligations. Even so, the doctrinal argument has grown stronger and has become central to contemporary debates about Security Council reform.

40.4 The Democratic Deficit in Numbers

The democratic deficit of the Security Council is visible in the most basic numerical terms. There are 193 Member States of the United Nations, all of which are legally bound by binding Chapter VII resolutions. Yet only five of them possess permanent membership and veto authority. The remaining 188 are represented through ten rotating elected seats, with no veto and no guarantee of presence at any particular moment.

A resolution supported by 14 of 15 members can fail entirely if the lone dissenter is a permanent member. That structural asymmetry is extraordinary in an institution that claims to act on behalf of the international community.

The record of veto use confirms the severity of the problem. Since 1946, the veto has been used hundreds of times. In relation to Syria alone, multiple draft resolutions were vetoed over the course of the conflict, preventing action on ceasefires, humanitarian access, ICC referral, and coercive measures in response to chemical weapons attacks. In Myanmar, despite findings by international bodies that the treatment of the Rohingya reached genocidal dimensions, the Council adopted no binding enforcement response. Similar patterns of paralysis appeared again in Ukraine and Gaza.

The representational deficit is equally obvious. The permanent membership still reflects the power distribution of 1945 rather than the political realities of the contemporary world.

Africa has no permanent seat. Latin America has none. South Asia, including India, has none. The Arab world has none. The Council thus binds the entire international community through a structure that does not meaningfully reflect that community.

40.5 Veto Power from the Ukraine and Gaza Perspective

40.5.1 Russia and the Structural Absurdity of the Aggressor-Member

The Russian invasion of Ukraine in February 2022 exposed a particularly sharp structural absurdity. Under the 1974 Definition of Aggression, the use of armed force across another State's recognized borders without lawful justification constitutes aggression. Russia's conduct fell squarely within that category. Yet Russia, as a permanent member of the Security Council, was also able to veto resolutions naming that conduct as aggression.

The result was a profound contradiction: the State accused of aggression was simultaneously in a position to control the institutional response of the body entrusted with maintaining international peace and security. The General Assembly, acting under the *Uniting for Peace* procedure, adopted strong resolutions condemning the invasion and suspending Russia from the Human Rights Council. But General Assembly resolutions do not carry the binding force of Security Council decisions and cannot substitute for Chapter VII enforcement measures.

Resolution 76/262, adopted in April 2022, created an automatic Assembly debate following veto use. This innovation did not remove the veto, but it did remove some of its invisibility by requiring justification before the wider membership of the Organization.

40.5.2 Gaza and the Protective Veto

The Gaza conflict raised a related but distinct legal issue. Here the problem was not self-protection by a permanent member but protective use of the veto by one permanent member on behalf of an ally. The United States repeatedly blocked draft resolutions calling for humanitarian ceasefires and stronger civilian protection.

This practice became more legally troubling after the International Court of Justice indicated provisional measures in the proceedings brought by South Africa against Israel under the Genocide Convention. Once the Court had acknowledged a plausible risk of genocide, the Council's continued inability to act appeared not merely politically controversial but institutionally contradictory. The judicial organ of the United Nations was indicating grave legal concern while the political organ, because of veto use, remained unable to take binding action.

This type of "protective veto" raises especially serious questions under the law of State responsibility. If all States are under an obligation to cooperate to bring serious violations of peremptory norms to an end, then the systematic shielding of an ally from collective action may itself be difficult to reconcile with international legal obligations.

40.6 Reform Pathways

40.6.1 The Article 108 Problem

Formal amendment of the UN Charter under Article 108 requires adoption by a two-thirds majority of the General Assembly and ratification by two-thirds of all Member States, including every permanent member of the Security Council. This means that any meaningful

reform of the veto depends on the consent of the very States whose power would be reduced by such reform.

That circularity has made formal reform extremely difficult. The limited institutional reforms that succeeded in the 1960s, such as the enlargement of the Security Council, were possible precisely because they did not alter the veto framework. Contemporary proposals remain deeply divided. The G4 proposes new permanent seats with a more gradual approach to veto powers. The Uniting for Consensus group opposes expansion of permanent membership. The African Union's Ezulwini Consensus demands greater representation together with equality of status. These proposals remain politically and legally irreconcilable under current conditions.

40.6.2 Soft Law as the Working Alternative

Because Article 108 reform is so difficult, much of the practical reform effort has shifted into the realm of soft law and political practice. The France-Mexico Political Declaration calling for voluntary restraint on veto use in situations of mass atrocity, and the ACT Group Code of Conduct concerning Security Council action in relation to genocide, crimes against humanity, and war crimes, are examples of such initiatives.

These instruments are not legally binding and have not prevented determined permanent members from vetoing action. Yet they have altered the normative environment. They contribute to the creation of public expectations and increase the reputational cost of veto use in atrocity situations.

Resolution 76/262 is particularly significant because it creates an institutionalized accountability mechanism by requiring debate in the General Assembly following veto use. Although it cannot reverse the veto, it reduces its insulation and strengthens the visibility of the broader membership.

40.7 Veto Power as a Legal and Political Issue

Article 2(1) of the Charter proclaims the sovereign equality of all Member States. The veto places five States in a categorically superior legal position with respect to decisions that bind the entire Organization. That inequality is often defended on the ground that the Security Council is a special organ with special functional responsibilities. But if the veto repeatedly frustrates rather than facilitates collective security, that functional defence becomes harder to sustain.

The *jus cogens* dimension sharpens the problem. The prohibitions of genocide, aggression, torture, and crimes against humanity bind all States without exception. Under Articles 40 and 41 of the Articles on State Responsibility, States are under obligations concerning serious breaches of such norms. If a permanent member systematically blocks collective action in relation to these breaches, that conduct may no longer be seen merely as political disagreement. It begins to take on a legal character.

In terms of reform, one possible direction would be expansion of permanent representation without immediate extension of veto rights, combined with a review mechanism. Another would be formalization of voluntary restraint initiatives as established Council working methods. Resolution 76/262 could also be deepened so that overwhelming General Assembly majorities generate stronger follow-up consequences. None of these measures would amount to structural amendment in the full sense, but each would reduce the current democratic and legal deficit.

40.8 Conclusion

The veto problem of the Security Council reveals the growing distance between institutional promise and institutional reality. The Charter speaks in the language of collective security, sovereign equality, and protection of populations. The actual operation of the veto has often undermined all three. It has shielded aggressors, protected allies from accountability, and excluded much of the world from meaningful participation in decisions that affect all.

Formal reform through Article 108 is unlikely in the near future. That fact, however, does not remove the legal and normative urgency of the problem. The development of soft-law restraint initiatives, the increasing willingness of the General Assembly to respond to veto paralysis, and the growing scholarly insistence that veto practice is not beyond legal scrutiny all indicate that the normative environment is changing.

Security Council reform should therefore be understood not merely as a political aspiration but as a legal necessity. The populations that suffer from Council paralysis do not do so because of abstract design flaws; they do so because institutional privilege repeatedly overrides the purposes of the Charter. Any serious commitment to international peace, equality, and human protection must therefore confront the veto not only as a diplomatic compromise of the past but as a continuing legal problem of the present.

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Closing Note from the Editors

As this volume comes to a close, we return to the central idea that inspired its conception: that public international law remains one of the most important intellectual and normative frameworks through which the contemporary global order may be understood, questioned, and reimagined. The chapters in this collection, though diverse in subject and method, are united by a common concern with how international law responds to a world marked by conflict, inequality, institutional strain, technological transformation, and persistent demands for justice.

This edited book has brought together discussions on sovereignty, treaty law, extradition, diplomatic relations, asylum, statelessness, the law of the sea, the use of force, institutional reform, and the continuing challenges faced by international legal systems and global governance structures. Taken together, these contributions reveal both the resilience and the limitations of international law. They show that while the legal order continues to provide a language of cooperation, accountability, and protection, it is also shaped by power, politics, and uneven implementation.

As editors, we believe that the value of this volume lies not only in the individual merit of its chapters but also in the collective conversation it generates. It reflects the importance of academic engagement with pressing international legal issues and the need to approach those issues with seriousness, clarity, and openness to multiple perspectives. In this sense, the book is intended not as a final statement, but as an invitation to continued reflection, dialogue, and scholarship.

We sincerely hope that this volume will be of value to students, teachers, researchers, and readers interested in understanding the changing nature of the international legal order. If it encourages critical thought, deeper inquiry, and a stronger appreciation of the role of law in global affairs, it will have fulfilled its purpose.

We conclude with gratitude to all contributors, readers, and well-wishers who have supported this work. It is our hope that *Navigating the New Global Order: Through the Lens of Public International Law* will remain a meaningful contribution to ongoing discussions in the field and a useful companion for those engaging with the complexities of public international law today.

Dr. Seema Surendran
Dr. Gayathri N. M
Ms. Rugma S.

Quotable Quotes

"To save succeeding generations from the scourge of war."

— Preamble, Charter of the United Nations

"The force of law must always prevail over the law of force."

— António Guterres

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

— Article 26, Vienna Convention on the Law of Treaties, 1969

"All Members shall refrain in their international relations from the threat or use of force."

— Article 2(4), Charter of the United Nations

"The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply international conventions, international custom, and general principles of law."

— Article 38, Statute of the International Court of Justice

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

— Preamble, Universal Declaration of Human Rights, 1948

"No nation can make itself secure by seeking supremacy over others."

— Kofi Annan

"The United Nations was not created in order to bring us to heaven, but in order to save us from hell."

— Dag Hammarskjöld

Dr. Seema Surendran has over 25 years of teaching experience. Her areas of specialization include International Law, Environmental Law, Corporate Law, Intellectual Property Law and Criminal Law. She has served at Karnataka Lingayat Education Society's Law College, Amity Law School Noida, Vivekananda Institute of Professional Studies, Sri Kengal Hanumanthiaha Law College and BMS College of Law. She is presently Professor at CMR School of Legal Studies, CMR University, Bengaluru. She has participated in numerous national and international seminars and has several publications to her credit.

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