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Book Review: Selected Writings on International Law, Adjudication and Arbitration (Volumes I & II) by Jamal Seifi

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ABSTRACT

The two-volume book *Selected Articles on International Law, Adjudication, and Arbitration* by Dr. Seyed Jamal Seifi, a distinguished international arbitrator and former judge at the Iran-United States Claims Tribunal, compiles articles published over three decades in Iranian legal journals. Volume 1, published in 2023, contains twelve articles divided into three sections: Arbitration (4 articles), the International Court of Justice (4 articles), and the Substance of International Law (4 articles). Volume 2, published in 2024, includes eight older articles from 1994 to 2011, organized into two sections: International Arbitration and Adjudication (4 articles) and the Substance of International Law (4 articles). The articles reflect Dr. Seifi's dual expertise in international arbitration and public international law, addressing topics such as the evolution of arbitration, the role of the International Court of Justice, and contemporary issues in international law, including state sovereignty, investment arbitration, and the legal regime of the Caspian Sea. The review highlights the enduring relevance of these articles, particularly in light of recent developments in international law, and underscores their contribution to enriching Iran's legal scholarship. The collection serves as a valuable resource for understanding the intersection of international arbitration, adjudication, and public international law.

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Introduction

The treatise *Selected Writings on International Law, Adjudication and Arbitration* (Volumes I & II), published in Persian by *Shahr-e Danesh* in 2023 and 2024, comprises a curated collection of articles authored by the distinguished jurist Jamal Seifi—*inter alia*, a member of the Iran-United States Claims Tribunal, Judge *ad hoc* for Iran before the International Court of Justice in the *Case Concerning Alleged Violations of State Immunities*,[1] and former professor at Tilburg University (Netherlands), the University of Hull (UK), and Shahid Beheshti University (Iran). These scholarly contributions were originally disseminated in Iranian legal periodicals over the course of three decades.

Given the author's dual engagement in the international arbitral and judicial fora, supplemented by his expertise in both public international law and international arbitration, the eclectic thematic range of his oeuvre is scarcely surprising.

Volume I (2023) encompasses twelve articles grouped into three rubrics: Arbitration (4 articles), the International Court of Justice (4 articles), and Substantive Issues in International Law (4 articles). This volume predominantly features the author's recent scholarship, published within the last decennium. Conversely, Volume II (2024) assembles earlier articles (circa 1994–2011), categorized under two headings: International Arbitration and Adjudication (4 articles) and Substantive Issues in International Law (4 articles).

To ensure thematic consistency, this review adopts a consolidated approach, analyzing the articles by subject matter rather than seriatim by volume. Within each rubric, articles from Volume I are addressed first, followed by those from Volume II. Thus:

Part I ("International Arbitration") subsumes seven articles.

Part II ("The International Court of Justice") examines five articles, primarily drawn from Volume I. A singular article from Volume II—*State Succession in the Dissolution of the Socialist Federal Republic of Yugoslavia in light of the European Community Arbitration Commission's Opinions and the ICJ's Provisional Measures Order of 8 April 1993 in the Bosnia-Herzegovina Case*—is included herein due to its thematic pertinence.

Part III ("Substantive Issues in International Law") discusses eight articles.

1 *Alleged Violations of State Immunities (Iran v Canada)* ICJ Case Concerning [2023].

1. International Arbitration

The first section of both volumes is devoted to *international arbitration*. The section on international arbitration in Volume I comprises four articles.

The first article in Volume I (*Essay One*), titled "Arbitration and the Peaceful Settlement of International Disputes," was published in 2013 in Issue 24 of the *Journal of Legal Research*. It is a translation of the author's address at the Ministerial Conference on the Peaceful Settlement of Disputes, delivered on 28 August 2013 at the *Peace Palace in The Hague* to commemorate the centenary of the Palace's inauguration. The lecture was structured in three parts: *i)* the Universality and Continuity of International Arbitration; *ii)* the 1899 and 1907 Hague Peace Conferences and the Institutionalization of International Arbitration; and *iii)* the Current State of Arbitration: Its Successes and Failures.

Notably, the author observes in the second section that the Hague Conferences were convened at a time when international law lacked any established prohibition on the use of force in inter-State relations. Consequently, their objective was to provide an effective alternative to armed conflict in international affairs. This is reflected in Article 1 of the 1899 Hague Convention for the Pacific Settlement of International Disputes (which also serves as the founding instrument of the Permanent Court of Arbitration), which stipulates:

> *"With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences."*

The author's emphasis on pacifism and the elimination of force as the cornerstone of international arbitration (addressed in Articles 15 et seq. of the Convention) is particularly significant. Over the past decade, many prominent scholars have evaluated arbitral institutions like the Iran-United States Claims Tribunal through the lens of the ideal of "arbitrating for peace."[1]

Moreover, the author highlights that Article 15 of the Convention defined international arbitration in a manner that reflects both its legal and consensual nature:

> *"International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law."*

At the same time, the author stresses that the rule of law presupposes the existence of clearly defined and stable legal principles. He notes that at the dawn of the 20th century, international law was in its infancy: treaty-based rules were scarce, and the content of customary international law remained nebulous. This ambiguity inevitably cast doubt on the objectivity implied by the phrase "on the basis of respect for law" in Article 1.

In this regard, the author cites Elihu Root, who, upon receiving the 1912 Nobel Peace Prize, remarked:

1 See Böckstiegel K-H, 'The Iran-United States Claims Tribunal: A Unique Example of Arbitrating for Peace' in Ulf Franke and Annette Magnusson (eds), *Arbitrating for Peace: How Arbitration Made a Difference* (Kluwer Law International 2016) ch 6; Simma B and Ortgies J, 'The Iran-United States Claims Tribunal' in Chiara Giorgetti (ed), *Research Handbook on International Claims Commissions* (Edward Elgar 2023) ch 4.

> *"Where there is no law, a submission to arbitration or to judicial decision is an appeal, not to the rule of law, but to the unknown opinions or predilections of the men who happen to be selected to decide."*[1]

The third section of the article evaluates the current state of international arbitration. The author notes that the Permanent Court of Arbitration (PCA), as the most significant institutional achievement of the First Hague Peace Conference, successfully established itself as a trusted forum in its early decades, administering twenty cases. However, after the establishment of the Permanent Court of International Justice (PCIJ), inter-State dispute resolution gradually shifted away from the PCA, leading to its decline until the 1990s.

The post-Cold War era and the proliferation of bilateral and multilateral investment treaties (BITs/MITs)—all featuring arbitration clauses—precipitated a dramatic resurgence in arbitral proceedings and revitalized the PCA. The author argues that much of modern arbitration's appeal lies in the principle of party autonomy, which introduces a pluralistic and democratic element absent in judicial dispute resolution. This flexibility also permits greater diversity in the legal and cultural backgrounds of arbitrators.

In sum, this article makes a substantive contribution to the literature by examining international arbitration from two distinct perspectives:

1. Its role in advancing "arbitrating for peace" and the prohibition of the use of force.
2. The democratic character of arbitration, emphasizing party autonomy and cultural diversity among arbitrators.

Essay Two, "Article 139 of the Iranian Constitution in Light of International Arbitral Awards and Iran's Investment Treaty Reservations," published in 2024, examines the unsuccessful attempts by Iranian State-owned entities to invoke Article 139 of the Iranian Constitution—which restricts arbitration referrals—to challenge the jurisdiction of international commercial arbitral tribunals. The author warns that similar failures may recur in investment arbitration unless addressed.

A notable innovation is the author's categorization of Iran's BITs based on how they interact with Article 139. The article's unique contribution lies in its dual focus on both commercial and investment arbitration, a departure from prior scholarship on the subject.

Essay Three, "The Clean Hands Doctrine in International Investment Arbitration", published in 2016 in the inaugural issue of the Iranian Yearbook of Arbitration, examines how the clean hands doctrine, long established in public international law within the framework of diplomatic protection, is transcending its traditional boundaries and entering the realm of international investment arbitration. The innovative aspect of the article lies in its examination of developments in investment arbitration from two distinct perspectives. In the first section, through case studies of *Inceysa*[2] and *Fraport*,[3] the author notes that fraudulent violations of host country laws in acquiring investments will remove such investments from the scope of

1 See Root E, *Nobel Lecture* (1912) https://www.nobelprize.org/prizes/peace/1912/root/lecture/ accessed 15 July 2024

2 *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, August 2, 2006.

3 *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/11/12, Award, December 10, 2014.

protection granted by investment treaties. In the second section, which focuses on the fraudulent acquisition of treaty coverage after or on the verge of a dispute arising, the discussion centers on the artificial transformation of pre-existing or imminent domestic disputes into disputes covered by investment treaties. In this section, through case studies of *Phoenix*[1] and *Levy*,[2] the author observes that in these cases, due to the artificial conversion of domestic disputes into international disputes to obtain treaty coverage, the arbitral tribunals, having established a violation of the *principle of good faith* by the claimants, declared themselves incompetent to hear the claims. In sum, while emphasizing the permissibility of acquiring treaty coverage "before" a dispute arises as affirmed by the arbitral tribunal in *Tokios Tokelės*,[3] the author's innovative analysis of investment arbitral tribunals' approaches to violations of the *clean hands doctrine* from two different perspectives undoubtedly enriches the legal literature on the subject.

Essay Four, "A Preface to the 2012 PCA Arbitration Rules," was published in 2014 in a collection commemorating the tenth anniversary of the establishment of the Iran Chamber of Commerce Arbitration Center, with the aim of conveying the author's experience as a member of the "Drafting Committee" for the 2012 PCA Rules. The article discusses the objectives and process of drafting the 2012 PCA Arbitration Rules, particularly the complexities arising from consolidating the four previous sets of arbitration rules into a single document, as well as the salient features of the 2012 Rules resulting from their updating in light of new developments. The author first notes that following the gradual revival of the PCA's activities in the 1990s, the Court adopted four optional arbitration rules as follows: *i)* the 1992 Optional Rules for Arbitrating Disputes between Two States; *ii)* the 1993 Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State; *iii)* the 1996 Optional Rules for Arbitration Between International Organizations and States; and *iv)* the 1996 Optional Rules for Arbitration Between International Organizations and Private Parties. As mentioned in the preamble to the 2012 Arbitration Rules, the four previous sets of arbitration rules remain valid, and the purpose of adopting the new rules, which were prepared based on the 2010 UNCITRAL Arbitration Rules, was merely to expand the range of arbitration rules available at the PCA. Additionally, the author's membership on the *Drafting Committee* for the 2012 Arbitration Rules enabled him to be closely involved in discussions concerning the updating and consolidation of the previous rules and to participate actively in drafting the 2012 Rules. Subsequently, the author explains the salient features of the 2012 Arbitration Rules manifested in four areas: *i)* provisions on immunity; *ii)* the discretionary rule regarding the composition of the arbitral tribunal; *iii)* the enhanced role of the PCA Secretary-General as appointing authority; and *iv)* the stipulation of the primacy of international law in disputes between States. Overall, through its detailed examination of issues related to the updating and consolidation of the PCA's Arbitration Rules, this article holds a unique position in the legal literature concerning the PCA.

Similarly, the first section of Volume II of the collection is also devoted to *International Arbitration and Adjudication*. This section contains four articles, the last of which relates to the ICJ and is therefore examined in the second section. The first article in Volume II ("Essay One"),

1 *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, April 15, 2009.
2 *Renee Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, January 9, 2015.
3 *Tokios Tekeles v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, April 29, 2004.

entitled "Iran's International Commercial Arbitration Act in Harmony with the UNCITRAL Model Law," is a translation of the original article published in English in Volume 15, Issue 2 (June 1998) of the *Journal of International Arbitration*. Published shortly after the adoption of Iran's Law on International Commercial Arbitration (LICA), this article aimed to introduce the innovations of this law, enumerate instances where it was influenced by or adopted from the UNCITRAL Model Law, and highlight its points of divergence from the Model Law. Prior to the adoption of the new law, the arbitration provisions in Chapter 8 of Iran's 1939 Code of Civil Procedure governed both domestic and international arbitrations. These provisions suffered from numerous deficiencies in terms of their conformity with modern international arbitration rules and standards. Therefore, the enumeration of flaws in the arbitration rules under the Code of Civil Procedure and the reforms introduced by the LICA to address them in international arbitrations are significant, and their detailed examination is essential for understanding various aspects of the modernization of Iran's arbitration laws to achieve greater conformity with modern international arbitration standards. For example, the Code of Civil Procedure contained no provision on the independence of arbitration clauses from the underlying contract. By contrast, Article 16(1) of the LICA, like Article 16(1) of the UNCITRAL Model Law, recognizes the principle of the independence of the arbitration clause and provides that for the purposes of this law, an arbitration clause shall be treated as an independent agreement, and a decision by the arbitrators that the contract is null and void shall not entail *ipso facto* the invalidity of the arbitration clause in the contract. Furthermore, through its detailed analysis of this law, the article seeks to demonstrate that the adoption of Iran's LICA was a major step in developing and modernizing Iran's arbitration regulations and harmonizing them with the requirements of commercial arbitration. This article remains one of the most important and comprehensive works by Iranian authors in explaining the innovations of Iran's LICA, and its English version in particular has been frequently cited by arbitration practitioners.

Essay Two, "Developments, Issues, and Prospects of International Arbitration in Iran," published in 2001 in Issue 172 of the *Journal of the Iranian Bar Association*, constitutes a translation of the author's address delivered at the 2000 Amsterdam Conference of the International Bar Association during the joint session of the Arbitration Committee and the Regional Arab Forum under the theme "Developments, Issues, and Prospects of Arbitration in the Middle East." It remains evident to scholars that despite the enactment of Iran's new Code of Civil Procedure (CCP) several months prior to the author's address (the *Code of Civil Procedure for General and Revolutionary Courts*, adopted in 2000), the arbitration provisions in Chapter Seven of the new law differ little in substance from those of the 1939 legislation. The author accordingly emphasizes that the Iranian legislature, in adopting the new CCP, took only minimal steps toward reforming the arbitration provisions of the 1939 law. While briefly examining the shortcomings of the arbitration rules under the CCP and the corresponding reforms introduced by the LICA to address them in international arbitrations, the article further notes that the arbitration provisions of the new CCP do not abrogate those of the LICA, as the latter constitutes *lex specialis* applicable solely to international commercial arbitration. The article further observes that Iran's accession to the *1958 New York Convention on the Recognition*

and Enforcement of Foreign Arbitral Awards should be considered the next essential step toward aligning with modern international arbitration standards. In other words, the adoption of the *LICA* without acceding to the New York Convention would remain an incomplete endeavor. Notably, this accession materialized shortly after the delivery of the address.

Essay Three, "The Significance of Institutional Arbitration in International Commercial Disputes," published in 2004 in the inaugural issue of *Arbitration Quarterly* by the Arbitration Center of Iran Chamber of Commerce (ACIC), reproduces the author's lecture at the conference on *Commercial Arbitration in National and International Contexts* held on 23 September 2003. At that time, with the establishment of the ACIC under the *Act on Statute of Arbitration Center of Iran Chamber* adopted on 3 February 2002, the evolution of arbitration rules in Iran had entered a new phase marked by the explicit recognition and institutionalization of administered arbitration. The article thus sought to provide a scholarly foundation for this institutionalization process. The discussion encompasses the legal nature of institutional arbitration, its characteristics and advantages, the standing of major international commercial arbitration institutions, and the prospects for institutional arbitration in Iran. In particular, the article examines the legal framework of the *International Chamber of Commerce (ICC) International Court of Arbitration* and its constituent organs as the preeminent model of institutional arbitration, highlighting the importance of the *Terms of Reference* in managing arbitral proceedings under the ICC system. These observations were intended to inform the subsequent drafting of the Arbitration Rules for the ACIC. Furthermore, given the distinction between the *lex arbitri* of the seat and the procedural rules of an arbitral institution, the article stresses the urgency of promptly finalizing the Arbitration Rules for the ACIC, as the operational standards of an arbitral institution are fundamentally defined by its own procedural framework. These deliberations ultimately contributed to the drafting process that culminated in the adoption of the *Arbitration Rules of the ACIC* in 2007, in which the author played an active role.

2. The International Court of Justice

The second section of Volume I is dedicated to the ICJ. While Volume II does not contain a separate section on the ICJ, it includes one relevant article at the conclusion of its first section under the comprehensive title "International Arbitration and Adjudication." To maintain thematic coherence, this article - entitled "State Succession in the Dissolution of the Socialist Federal Republic of Yugoslavia in Light of the European Community Arbitration Commission's Opinions and the ICJ's Provisional Measures Order of 8 April 1993 in the Bosnia-Herzegovina Case" - will be examined at the end of this section following the review of Volume I's articles.

Essay Five of Volume I, "The International Court of Justice as the Principal Judicial Organ of the United Nations," published in 2010 in the collected papers of the conference on "The Role of the International Court of Justice in the Development and Codification of International Law," examines the institutional and legal implications of the ICJ's unique status as the principal judicial organ of the UN, which distinguishes it from other international judicial bodies. The author first addresses the Court's position within the UN institutional framework, noting that its designation as a principal organ (unlike its predecessor, the PCIJ) implies that all principal UN

organs constitute components of a unified system sharing common objectives, though operating independently to achieve them. The author observes that the absence of compulsory jurisdiction places the Court in a distinct position relative to other executive and parliamentary UN organs. While Article 94(2) of the UN Charter provides for Security Council recourse to enforce ICJ judgments, the author cautions against overlooking the inherent limitations arising from the political considerations influencing Security Council actions. In discussing the powers and jurisdiction deriving from the Court's status, the author highlights its competence to interpret the Charter, noting this carries potential for informal oversight of other UN organs' decisions. The analysis references the *Lockerbie* case, where the Court adopted a conservative approach by avoiding implicit judicial review of Security Council resolutions 731 and 748.

Essay Six, "Cultural Diversity of Arbitrators and Judges in International Arbitration and Adjudication," published in 2023 in the *Journal of Comparative Research on Islamic and Western Law*, reflects the lived experience of a Global South jurist confronting the increasingly significant issue of cultural diversity in international arbitration and adjudication. The article's innovative approach lies in its distinct perspective on diversity, diverging from predominant Western discourse by focusing on the underrepresentation of Global South jurists rather than the current emphasis on gender diversity. The author makes the point that cultural diversity in international arbitration should be viewed as an opportunity to enhance the institution's legitimacy, given arbitration's inherently multicultural and multinational character. This perspective was further developed in the author's English-language publications aimed at international audiences, including a recent Oxford University Press volume advocating for greater participation of Global South arbitrators in investment disputes.[1] The analysis extends to ad hoc judges under ICJ Statute Article 31, where cultural diversity contributes to the Court's judicial legitimacy.

Essay Seven, "The ICJ's Oil Platforms Judgment: Judicial Diplomacy in International Adjudication," published in 2003 in the *Journal of Legal Research* following the ICJ's November 2003 merits judgment in Iran's case against the United States, examines the Court's jurisprudential innovation in navigating jurisdictional constraints (Iran having invoked the 1955 US-Iran Treaty of Amity as sole jurisdictional basis) while nonetheless incorporating significant findings regarding the US's breach of general international law and unlawful use of force against Iranian oil platforms. The analysis focuses on the Court's reasoning: while determining the attacks of 19 October 1987 and 18 April 1988 did not impede freedom of commerce under Article X(1) of the Treaty, the Court declined to justify them under Article XX(1)(d) (measures necessary to protect essential security interests) when examined against international law on the use of force. The author highlights the Court's judicial diplomacy in reversing the conventional analytical sequence - by addressing justifications before establishing violations - thereby permitting its significant finding that the attacks constituted unlawful use of force without meeting self-defense criteria under international law. This approach enabled the Court to emphasize the relationship between "essential security interests" and the general international law on the use of force. The Court thus found that the actions carried out by United

1 Seifi SJ, 'Legitimacy of Investor-State Arbitration: Addressing Development Bias Among International Arbitrators' in Freya Baetens (ed), *Identity and Diversity on the International Bench: Who is the Judge?* (Oxford University Press 2020) 164-178.

States forces against Iranian oil platforms constituted recourse to armed force not qualifying as acts of self-defense, and thus cannot be justified as measures necessary to protect the essential security interests of the United States under Article XX(1)(d) of the 1955 Treaty of Amity.

Essay Eight, "Reflections on Iran's Cases before the International Court of Justice," was published in 2003 in the *Journal of Legal Research*. At the time of writing, Iran had been the respondent in two cases brought by the governments of the United Kingdom and the United States, while also initiating two cases against the United States as the applicant. It should be noted that given the timing of the article's publication, it does not cover Iran's more recent cases against the United States filed in 2016 and 2018 concerning violations of Iran's jurisdictional and enforcement immunities by U.S. courts and the reimposition of economic sanctions following the U.S. withdrawal from the JCPOA agreement, which allegedly violated the 1955 Treaty of Amity between the two countries and are currently pending before the Court. However, this omission does not diminish the validity of the article's central argument, and indeed, these recent cases provide further evidence supporting the author's thesis regarding Iran's evolving approach to international law and institutions, resulting in resorting to the ICJ to protect the rule of law in international affairs. The article essentially traces Iran's shifting attitude toward international law and international political and judicial organizations, particularly in the post-1979 Revolution period. It describes how Iran moved beyond an initial phase of distrust and skepticism toward international law and institutions - as exemplified by the Hostage Crisis case - to develop a new approach that recognizes the rule of law in international society and actively pursues cases before the ICJ to uphold this principle, a trend that continues to the present day.

I now turn to the sole article in Volume II that addresses the ICJ. Essay Four of Volume II: "State Succession in the Dissolution of the Socialist Federal Republic of Yugoslavia in Light of the European Community Arbitration Commission's Opinions and the ICJ's Provisional Measures Order of 8 April 1993 in the Bosnia-Herzegovina Case" was published in 1994 in Issues 13-14 of the *Legal Research Journal* under the "International Judicial Practice" section. In the introduction, the author explains that the motivation for writing this article in the early 1990s was to examine the legal aspects surrounding the declarations of independence issued by most republics of the Socialist Federal Republic of Yugoslavia, as well as the violent events that occurred during the country's dissolution process, particularly in connection with Bosnia-Herzegovina's declaration of independence as one of the six constituent republics. These events led to interventions by the European Community, the Security Council, and the ICJ. The first part of the article analyzes both the Opinions of the European Community Arbitration Commission (the Badinter Commission) regarding the legitimacy of independence declarations issued by the republics of Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia, and their impact on the continued legal existence of the Socialist Federal Republic of Yugoslavia, along with relevant Security Council resolutions adopted during this period. The second part examines the simultaneous application by the Bosnian government to the ICJ to bring a case against the Federal Republic of Yugoslavia (comprising Serbia and Montenegro). At the beginning of this section, it is noted that despite the Security Council's inability to stop the war in Bosnia-Herzegovina, the Bosnian government on 20 March 1993, amid ongoing Security Council actions, instituted

proceedings at the ICJ concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide by the Federal Republic of Yugoslavia, requesting that the Court issue provisional measures ordering the cessation of all acts of genocide against the people of Bosnia-Herzegovina before considering the merits of the case. At the time of the article's publication, the only notable development had been the Court's provisional measures order of 8 April 1993 calling for an end to genocide and crimes in the territory of Bosnia-Herzegovina, and this development and its legal consequences are analyzed in the article. In this regard, considering that the Court based its preliminary jurisdiction determination on Article 35(2) rather than Article 35(1) of its Statute, the author concludes that this indicates the Court's serious doubts about the continued legal personality of the former Yugoslavia. Subsequent developments in later years in fact confirmed the doubts that the author, inferring from the Court's approach, had expressed in this article regarding the continuation of the former Yugoslavia's legal personality. This became clear when the Federal Republic of Yugoslavia (comprising Serbia and Montenegro) finally on 27 October 2000, by formally accepting the Security Council and General Assembly decisions declaring the dissolution of the Socialist Federal Republic of Yugoslavia, submitted its application to join the United Nations as a new member. Ultimately, the Federal Republic of Yugoslavia was admitted as a new member of the United Nations in 2001.

3. The Substantive Issues of International Law

The third and final section of Volume I is devoted to *the substance of international law*, comprising four articles.

The first two articles in this section (Essays Nine and Ten) examine developments concerning the legal regime of the Caspian Sea in two distinct periods—before and after the dissolution of the Soviet Union—with particular emphasis on post-dissolution developments. Both were published in 2022.

The first article, after briefly reviewing the legal regime of the Caspian Sea prior to the Soviet Union's collapse, focuses primarily on the issue of State succession. In contrast, the second article centers on matters related to the 2018 Aktau Convention on the legal status of the Caspian Sea. The author explains that both articles were initially conceived under the overarching title "The Legal Regime of the Caspian Sea: Past, Present, and Future," with intended subtitles of "The State Succession Framework" and "The Aktau Convention (2018)," respectively. Ultimately, however, a shared subtitle was adopted for both parts: "From State Succession to the Adoption of the Aktau Convention (2018)."

Thus, the first article evaluates the positions and analyses presented by Iranian authorities and scholars regarding the effects of State succession on the 1921 and 1940 treaties between Iran and the Soviet Union, particularly in terms of establishing a comprehensive and desirable legal regime for the Caspian Sea. The second article, meanwhile, examines the drafting process, provisions, and implications of the Aktau Convention from the perspective of general principles and norms of international law.

The author argues that three decades after the dissolution of the Soviet Union and the

emergence of new littoral States (or, more precisely, the recognition of the Russian Federation as the State continuing the international legal personality of the Soviet Union, and the appearance of Azerbaijan, Turkmenistan, and Kazakhstan as successor States), it is an opportune moment to reflect on the evolution of legal positions and realities over the past thirty years. Of particular significance are developments such as the bilateral delimitation agreements concerning the Caspian seabed and subsoil in the northern sector, which, by creating tangible facts on the ground, effectively accelerated the process leading to the 2018 Aktau Convention.

Like the preceding two essays, Essay Eleven, titled "Renvoi to Domestic Law in Public International Law: A Review in Light of Recent Judicial and Arbitral Decisions," was published in 2022. Approaching the issue from the perspective of public international law, this article not only revisits the traditional view of domestic law as a factual matter but also elucidates two more recent approaches adopted by international judicial and arbitral bodies when engaging with domestic legal systems.

The first approach involves referencing domestic law not for the direct application of a specific legal system's rules to the case at hand, but rather to identify the prevailing common rule among legal systems on matters where international law provides no clear guidance. In contrast, the second approach entails applying domestic law directly as the governing law for certain aspects of an international dispute. The significance of these two contemporary approaches, particularly in light of their application in numerous investment arbitration awards, is well recognized among scholars.

Finally, Essay Twelve, titled "Treaty Interpretation Over Time and the Doctrine of Intertemporal Law," was published in 2012 in a commemorative volume honoring Professor Mohammad Reza Ziaei Bigdeli. As is typical for such collections, this article is not as extensive as the previous three. Nevertheless, it engages with a highly technical discussion concerning the complexities of treaty interpretation over time—or the evolutive interpretation of the meaning of terms and phrases used in international treaties.

The concept of evolutive interpretation in international law has undergone significant developments since Max Huber's famous invocation of "intertemporal law" in the 1928 Island of Palmas arbitration. The article highlights contemporary applications of this doctrine, including instances where generic terms in international legal instruments are given dynamic meanings, drawing on recent examples from the jurisprudence of the WTO Appellate Body and international arbitral awards.

Similarly, the second section of Volume II is devoted to the substance of international law and likewise comprises four articles. The first article in this section, Essay Five, titled "The Unity of 'Contractual and Non-Contractual' International Responsibility and Its Effects on the Law of Treaties", was published in 1994 in Issues 13-14 of *Legal Research Journal*, in the research section. As explained at the outset, the article did not intend to delve into detailed discussions about the unity or duality of contractual and tortious responsibility, nor to examine arguments for and against these two perspectives in private law. Rather, its primary objective was to demonstrate that, contrary to what might initially be assumed by drawing

analogies from domestic legal classifications, international law maintains a unified system of responsibility encompassing both treaty-based and non-treaty-based obligations.

Given that the concept of State criminal responsibility had been introduced at the time of writing through Article 19 of the ILC's Draft Articles, the author included this discussion (to analyze the legal implications of this evolving concept) while clarifying that even if a dual regime of criminal and non-criminal State responsibility were to be established, this should not be conflated with the distinct question of unity in (civil) responsibility for treaty and non-treaty breaches. The exclusion of criminal responsibility from the article's main discussion stemmed from the fact that in criminal responsibility, the emphasis is on the significance of rules rather than on the formal source of violated rules, which was the focus of the unity of (civil) responsibility debate.

A portion of the article was dedicated to the special status of obligations under the UN Charter as articulated in Article 103, clarifying that this provision was not intended to create a special regime of responsibility. Finally, the article examined the consequences of this unified system of international contractual and non-contractual responsibility. This included analyzing the relationship between grounds for treaty non-performance recognized in the law of treaties and circumstances precluding wrongfulness in State responsibility. One key consideration was that self-contained treaty regimes like the EU legal order constitute exceptions to the general applicability of international responsibility rules for treaty breaches. Notably, nearly 25 years after the article's publication, the Court of Justice of the European Union (CJEU), in its Achmea judgment following a referral from the German Federal Court, essentially adopted this perspective regarding the EU's autonomous legal order. The CJEU ruled that since investment arbitration tribunals are not part of the EU judicial system and lack access to the CJEU for preliminary rulings, arbitration clauses in intra-EU investment treaties would be invalid.[1] This recent CJEU jurisprudence thus validates the article's earlier analysis regarding self-contained regimes and their implications for international responsibility.

Essay Six, titled "The Evolution of State Sovereignty in Light of the Principle of Self-Determination of Peoples," was first presented on 18 May 1994 at an international law seminar at Shahid Beheshti University before being published in Issue 15 of *Legal Research Journal*. The article focused particularly on the emergence of a new dimension of self-determination emphasizing its internal aspect in assessing governmental legitimacy, as illustrated by the early 1990s Haiti crisis. Following the UN Security Council's Chapter VII resolutions aimed at restoring Haiti's democratically elected President Jean-Bertrand Aristide to power after the 1991 military coup, the article sought to determine whether these actions represented a significant evolution in international law principles concerning the international assessment of governmental legitimacy and sovereign authority.

The author observed that while it was unsurprising that self-determination would develop a new dimension in the post-decolonization era, there were serious concerns that major powers might exploit the ostensibly noble goal of guaranteeing internal governmental legitimacy to violate fundamental principles of non-intervention and the prohibition of the use of force.

1 See *Achmea BV v Slovak Republic*, PCA Case No 2008-13 (Final Award, 7 December 2012); *Slovak Republic v Achmea BV* (Case C-284(16/2018]] EUECJ (6 March 2018).

While welcoming the Security Council's active role in addressing the Haitian coup, the article cautioned against expansive interpretations of self-determination by certain Western scholars (particularly certain American scholars such as Anthony D'Amato and Michael Reisman) who sought to justify unilateral interventions in Panama and Grenada under the guise of promoting democracy. The author warned that such interpretations, divorced from the binding nature of positive international law and blurring the line between *lex lata* and *lex ferenda*, created dangerous conceptual confusion that could lead to unrestrained interventionism in practice - a prescient observation given subsequent developments in international relations.

The position articulated in this article, while firmly grounded in the specific context of the Haiti case concerning the Security Council's response to the September 1991 military coup that overthrew the democratically elected president, represented a carefully calibrated stance. It embraced the Security Council's proactive engagement against coups while simultaneously articulating profound reservations about potential distortions of the internal dimension of self-determination and governmental legitimacy discourse by major powers. The article warned that such distortions could serve as pretexts for violating core principles of the UN Charter and customary international law, particularly the prohibitions on unilateral force and intervention, all under the rhetorical guise of democracy promotion.

This analytical caution stemmed from observing the doctrinal positions of certain American legal scholars, most prominently Professor Michael Reisman as the leading exponent of the New Haven School's radical approach to international law. These scholars essentially negated international law's normative constraints on State action, maintaining that unilateral interventions and the use of force in the absence of a prior authorization from the Security Council could be justified when framed as advancing democratic governance. Their reasoning extended even to defending the manifestly unlawful 1989 U.S. intervention in Panama, which constituted a flagrant violation of fundamental international legal prohibitions. The article therefore deemed it imperative to confront this dangerous jurisprudential trend directly, asserting that "such expansive reinterpretations of self-determination, notwithstanding their ostensibly progressive veneer, not only fail to substantively advance popular sovereignty but may ultimately subvert it through the normalization of unlawful intervention."

Essay Seven, "The Hemophiliac Case Judgment - Reconstructing Civil Liability of the Government in Iranian Jurisprudence," published in 2005 in the *Journal of Legal Research* originated from an unusual procedural context. Unlike standard academic works, it emerged from a public engagement initiated by Dr. Ali Saberi, lead counsel in the landmark HIV-contaminated blood transfusion litigation (commonly referenced as the Hemophiliac Case). A 22 October 2003 newspaper feature quoting Dr. Saberi had solicited expert commentary on the civil liability of the government, particularly regarding the restrictive clause in Article 11 of Iran's Civil Liability Act,[1] as this nationally significant case involving initially approximately 1,000 plaintiffs (later exceeding 2,000) approached judgment.

1 **Article 11 of the Iran's Civil Liability Act (1960)** provides: "Government employees, municipal officials, and personnel of affiliated institutions shall be personally liable for damages caused to individuals either intentionally or through negligence in the course of their duties. However, where such damages result not from their acts but from defective equipment or facilities of the relevant administration or institution, compensation shall be the responsibility of said administration or institution. Notwithstanding the foregoing, the Government shall incur no liability for damages arising from sovereign acts (*acta jure imperii*) performed pursuant to legal authority when such measures: (i) are

The article's substantive analysis engaged with both the trial court's innovative reasoning in Chamber 1060 of Tehran's General Court and its subsequent appellate affirmation. The judgment broke new ground by holding government entities liable for both material and moral damages to hemophiliac patients, notwithstanding the conventional interpretation of Article 11's limitation on liability for sovereign acts. The author's examination revealed how the court navigated the tension between domestic legal formalism and Iran's international human rights obligations under the ICCPR, which had been ratified in 1975 and theoretically incorporated through Article 9 of Iran's Civil Code.

While acknowledging the judiciary's understandable reluctance to base decisions directly on imperfectly integrated treaty norms (which under Iranian law merely "have the force of law"), the article highlighted how the judgment implicitly incorporated international standards through creative interpretation of domestic causes of action. The court's finding of liability based on "defective administration of public institutions" regarding blood product safety protocols, coupled with its subtle engagement with comparative jurisprudence and ICCPR principles (particularly Article 2(3) on remedies for moral harm), established an important precedent for progressive development of the civil liability of the government. The author positioned this as a watershed moment in the relevant case law - one that cautiously but significantly advanced the domestic reception of international human rights norms through pragmatic judicial innovation.

Essay Eight, "Iran's Buyback Contracts and the Permanent Sovereignty over Natural Resources," reproduces the author's address delivered at the First National Energy Law Conference, organized by the Faculty of Law and Political Science at the University of Tehran in May 2009. The conference proceedings, including this lecture, were subsequently published in 2011 in the book *Energy Law*. The author notes in the introduction to Volume II that since the original published version of the speech omitted footnotes, this republication provided a valuable opportunity to incorporate them, thereby enriching the analytical depth of the discussion.

The lecture first emphasized that the adoption of buyback contracts for exploration and production agreements was fundamentally linked to the *nationalization* of Iran's oil industry. Even prior to the Islamic Revolution, Article 19 of the 1974 Petroleum Act explicitly affirmed State ownership, stipulating:

"Petroleum extracted from Iranian oil resources shall be the property of the National Iranian Oil Company (NIOC). The Company may not transfer any portion of petroleum prior to its extraction."

Following the 1979 Revolution, additional constitutional restrictions solidified the buyback model as the only permissible contractual framework for oil and gas exploration and production in Iran, to the extent that international scholars commonly refer to these agreements as "Iranian buyback contracts."

However, as elaborated in the article, over time this model faced mounting criticism from foreign oil companies and legal experts. A central concern was the inherent risk allocation structure: under buyback agreements, the investor (foreign oil company) assumes full exploration risk, with no cost recovery if no commercially viable hydrocarbon reserves

necessitated by public interest considerations; and (ii) are conducted in accordance with statutory provisions."

are discovered. Moreover, even successful exploration did not guarantee the same contractor would be awarded the subsequent field development contract—NIOC retained discretion to negotiate with alternative parties if initial talks failed.

In the *first-generation buyback contracts*, where offered fields often had prior exploration data, risk exposure for foreign firms remained limited. However, as Iran introduced new exploratory blocks, the uncertainty and financial risk intensified, diminishing the model's appeal to international investors. The article systematically examines these criticisms, analyzing how shifting risk dynamics and contractual inflexibility gradually affected the buyback framework's appeal in competitive global energy markets.

Conclusion

The twenty articles in these volumes comprehensively reflect both the scholarly and professional dimensions of the author's work in *public international law* and *international arbitration* over the past three decades. Notably, the passage of time has not diminished the relevance of the earlier works; in some cases, their significance has grown in light of subsequent developments.

Particularly prescient was the author's warning in the 1990s article *The Evolution of State Sovereignty in Light of the Principle of Self-Determination of Peoples* about potential abuses of the internal dimension of self-determination and debates over governmental legitimacy. The article cautioned that major powers might exploit these concepts to justify violations of fundamental UN Charter principles and customary international law—particularly the *prohibition on the use of force* and *non-intervention*—through unilateral actions framed as promoting democracy.

These concerns have been validated by the subsequent trajectory of scholars like *Professor Michael Reisman* of the *New Haven School*, who in recent works has not only explicitly endorsed foreign military intervention to instigate regime change but has theorized five justificatory factors for such actions, including *i)* the feasibility of regime change; *ii)* the ability to complete the process within a relatively short timeframe; and *iii)* the intervening State's lack of intent to permanently expand its influence in the target country.[1]

Several articles also revisit their subjects through the lens of contemporary developments. The two articles on the *legal regime of the Caspian Sea*, for instance, gain new relevance following the 2018 Aktau Convention. The first article critiques the maximalist position prevalent among Iranian jurists in the 1990s—that the 1940 Iran-USSR Treaty's reference to the *Iranian and Soviet Sea* entitled Iran to claim 50% of the Caspian Sea. The author demonstrates how this view misapplied S*tate succession* principles by ignoring the foundational doctrine that *"the land dominates the sea"*—where coastal geography determines maritime rights.

The author explains that given the *USSR's extensive Caspian coastline*, State succession necessarily transferred equivalent maritime rights to its successor States. The 1921 and 1940 treaties contained minimal territorial provisions, and even the 1940 Treaty's 10-mile fishing zones—allocated according to coastal length—reflected this geographical determinism rather than mathematical equality.

1 Reisman WM, *The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment* (2nd edn, Brill Nijhoff 2022) 292.

Together with the author's seminal treatises "The Law of International Responsibility"[1] and "The Law of State Succession"[2]—products of thirty years of teaching and research—these collected articles (composed during the same period) offer invaluable insights for members of the legal community in Iran. Their enduring relevance lies in *i)* historical contextualization of evolving legal debates; *ii)* methodological rigor in applying international law principles; and *iii)* prescient analysis of such issues as State sovereignty, investment arbitration, commercial arbitration, and the function of the International Court of Justice in protecting the rule of law in international affairs. This body of work remains essential reading for understanding both the theoretical foundations and practical challenges of contemporary international law.

1 Seifi SJ, *International Responsibility Law: Issues on State Responsibility* (3rd edn, Shahr-e Danesh Publication 2023).

2 Seifi SJ, *State Succession Law: Issues on the Establishment and Succession of States in International Law* (2nd edn, Shahr-e Danesh Publication 2022).