



International Constitutionalism Under Stress: Constitutional Fragmentation and Authoritarian Resurgence in Global Governance

Alireza Dabirnia¹ | Mehrad Momen²

1 Associate Professor of Public Law, Faculty of Law, University of Qom, Islamic Republic of Iran | dr.dabirnia@qom.ac.ir

2 Corresponding Author, PhD in Public Law, Faculty of Law, University of Qom, Islamic Republic of Iran | m.momen@stu.qom.ac.ir

Article Info

Article type:
Research Article

Article history:
Received
2025-03-04

Revised
2026-05-18

Accepted
2026-05-18

Published online
2026-06-22



https://ijicl.qom.ac.ir/article_4009.html

Keywords:

International
Constitutionalism,
Global Governance,
Constitutional
Pluralism, Public
International Law,
Authoritarian
Resurgence.

Abstract

This article examines the contemporary viability of international constitutionalism within an increasingly fragmented global governance framework. Since 1945, Public International Law has undergone significant processes of constitutionalization, reflected in the development of normative hierarchies, institutionalized forms of governance, and universal human rights regimes. Recent geopolitical developments, however, have exposed growing tensions within the international legal order. The renewed influence of authoritarian governance models, the declining effectiveness of multilateral institutions, and the increasing dispersion of international authority raise fundamental questions concerning the coherence, legitimacy, and regulatory capacity of international constitutionalism in the twenty-first century. The article examines whether contemporary international law continues to operate as a constitutionalized legal order or whether it is increasingly characterized by normative fragmentation, institutional contestation, and pluralized forms of governance. It argues that, although constitutional elements remain embedded within international law, their practical effectiveness is increasingly constrained by geopolitical rivalry, selective enforcement practices, and competing conceptions of sovereignty, legitimacy, and international authority. Particular attention is given to developments in the Middle East, where armed conflict, humanitarian crises, and contested applications of international legal norms operate as significant stress tests for collective security mechanisms, humanitarian governance, and international accountability structures. Methodologically, the article adopts a doctrinal and descriptive-analytical approach grounded in Public International Law. It draws upon treaty law, international jurisprudence, institutional practice, and constitutionalist scholarship, while also engaging with theories of constitutional pluralism and global governance. The article concludes that international constitutionalism has neither collapsed nor consolidated into a fully autonomous global constitutional order. Rather, contemporary international law reflects an ongoing process of constitutional transformation, characterized by fragmented authority, contested legitimacy, and pluralized governance structures operating amid persistent geopolitical and normative contestation.

Cite this article: Dabirnia, A., & Momen, M., (2026). International Constitutionalism Under Stress: Constitutional Fragmentation and Authoritarian Resurgence in Global Governance, *Iranian Journal of International and Comparative Law*, 4(1), pp: 92-117. <https://doi.org/10.22091/ijicl.2026.12404.1142>



© Authors retain the copyright and full publishing rights.

[doi](https://doi.org/10.22091/ijicl.2026.12404.1142) 10.22091/ijicl.2026.12404.1142

Publisher: University of Qom

Table of Contents

Introduction

1. Theoretical Foundations of International Constitutionalism
 2. Global Governance and the Constitutionalization of International Authority
 3. Authoritarian Resurgence and the Crisis of Global Governance
 4. The Middle East as a Constitutional Stress Test for the International Legal Order
 5. The Future of International Constitutionalism: Fragmentation, Pluralism, and Institutional Adaptation
- Conclusion

Introduction

Since the conclusion of the Second World War, the evolution of the international legal order has frequently been associated with broader processes of constitutionalization within Public International Law.¹ The establishment of the United Nations, the emergence of universal human rights regimes, the institutionalization of collective security, and the increasing juridification of international dispute settlement contributed to perceptions that international law was developing beyond a purely consensual system grounded exclusively in state sovereignty.² Within this context, constitutionalist scholarship sought to conceptualize international law as a normative order characterized by hierarchy, institutional authority, universality, and the rule of law.³ Such approaches were particularly developed in the work of scholars including Bardo Fassbender, Anne Peters, and Ernst-Ulrich Petersmann, who identified constitutional characteristics within the structure and operation of the post-1945 international legal order.⁴

The constitutionalist understanding of international law was further reinforced through the consolidation of peremptory norms (*jus cogens*),⁵ the recognition of obligations *erga omnes*, particularly following the jurisprudence of the International Court of Justice in *Barcelona Traction*,⁶ and subsequent developments concerning community interests within international law.⁷ Simultaneously, the increasing density of global governance mechanisms appeared to reflect the emergence of a more integrated normative framework capable of regulating matters traditionally reserved to domestic jurisdiction.⁸ International law thus appeared progressively oriented toward a model of governance in which institutionalized cooperation, legal accountability, and universal normative commitments functioned as organizing principles of the international community.⁹

Nevertheless, the assumption that international law is evolving toward a coherent constitutional order has become increasingly contested in the twenty-first century.¹⁰ While the extent and nature of international constitutionalization remain subject to significant scholarly debate, contemporary developments reveal a growing disjunction between the normative aspirations of international constitutionalism and the political realities of global governance.¹¹ The growing influence of authoritarian and centralized governance models, the

1 Jan Klabbers, Anne Peters and Geir Ulfstein, *The Constitutionalization of International Law* (Oxford University Press 2009).

2 Bruno Simma, 'From Bilateralism to Community Interest in International Law' (1994) 250 *Recueil des Cours* 217.

3 Erika de Wet, 'The International Constitutional Order' (2006) 55 *International and Comparative Law Quarterly* 51.

4 Bardo Fassbender, 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 529; Anne Peters, 'Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures' (2006) 19 *Leiden Journal of International Law* 579; Ernst-Ulrich Petersmann, *Constitutional Functions and Constitutional Problems of International Economic Law* (Fribourg University Press 1991).

5 International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens)*, with Commentaries [2022] II (2) *Yearbook of the International Law Commission*.

6 *Barcelona Traction Case*, *Barcelona Traction, Light and Power Company Ltd (Belgium v Spain) (Second Phase)* [1970] ICJ Rep 3, [33]-[34].

7 Samantha Besson, 'Community Interests in International Law' in Samantha Besson and Jean d'Aspremont (eds), *The Oxford Handbook of the Sources of International Law* (Oxford University Press 2017).

8 Eyal Benvenisti, *The Law of Global Governance* (Hague Academy of International Law 2014).

9 Christian Tomuschat, *International Law: Ensuring the Survival of Mankind on the Eve of a New Century* (Martinus Nijhoff 2001).

10 Nico Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press 2010).

11 Martti Koskeniemi and Päivi Leino, 'Fragmentation of International Law? Postmodern Anxieties' (2002) 15 *Leiden Journal of International Law* 553.

reassertion of sovereign exceptionalism, the fragmentation of international legal authority, and the selective application of international legal norms have generated substantial pressure upon constitutionalist conceptions of the international legal order.¹ In parallel, multilateral institutions have faced persistent challenges regarding legitimacy and effectiveness, particularly in areas such as collective security, humanitarian protection, international accountability, and the enforcement of international obligations.

These tensions have become especially visible amid contemporary geopolitical crises and regional instability, particularly in the Middle East.² The region has increasingly functioned as a significant stress test for the operational coherence of international constitutionalism. Divergent international responses to armed conflict, humanitarian crises, democratic transitions, and questions of sovereignty have exposed structural limitations within existing global governance mechanisms.³ In particular, the operation of collective security structures, the implementation of humanitarian norms, and the practical functioning of international accountability mechanisms raise important questions about the viability of a constitutionalized international legal order amid geopolitical fragmentation and competing conceptions of legitimacy.⁴ The Middle East is therefore examined not as an exceptional legal space, but as a concentrated illustration of broader tensions affecting the contemporary international legal system.

At the same time, the contemporary rise of authoritarian governance presents a more complex challenge than the traditional opposition between constitutionalism and dictatorship.⁵ Many contemporary authoritarian systems continue to participate actively within international institutions, invoke legal discourse, and operate through constitutional or quasi-constitutional frameworks.⁶ Consequently, contemporary tensions within the international legal order frequently arise not from the outright rejection of legality but from competing interpretations of sovereignty, legality, intervention, and institutional authority.⁷ This development complicates classical constitutionalist assumptions concerning the relationship between globalization, liberal governance, and the progressive constitutionalization of international law.⁸

Against this background, this article examines the feasibility of international constitutionalism within an increasingly fragmented and contested system of global governance. It argues that although the contemporary international legal order retains important constitutional characteristics, including normative hierarchy, institutionalized governance structures, and universal legal frameworks, the practical coherence of international constitutionalism has become substantially weakened by geopolitical fragmentation, selective compliance, institutional asymmetries, and the growing influence of authoritarian governance models. The article further

1 International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* UN Doc A/CN.4/L.682 (13 April 2006); Ian Hurd, *How to Do Things with International Law* (Princeton University Press 2017).

2 United Nations Security Council, 'Maintenance of International Peace and Security' UN Doc S/PV.9539 (2024).

3 International Crisis Group, *The Middle East between Collective Security and Fragmented Governance* (Report No 256, 2024).

4 Benvenisti, *The Law of Global Governance*, 23-84.

5 Tom Ginsburg and Alberto Simpser (eds), *Constitutions in Authoritarian Regimes* (Cambridge University Press 2014).

6 David Landau and Rosalind Dixon, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford University Press 2021).

7 Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85 *University of Chicago Law Review* 545.

8 Neil Walker, 'The Idea of Constitutional Pluralism' (2002) 65 *Modern Law Review* 317.

argues that constitutional fragmentation should not necessarily be understood as the complete dissolution of international constitutionalism, but rather as a structural condition shaping its contemporary operation.¹ Consequently, rather than consolidating into a unified constitutional order, the international legal system increasingly reflects a pluralized and contested form of constitutional authority.

Methodologically, the article adopts a doctrinal and analytical approach grounded in Public International Law. It engages with treaty law, the jurisprudence of international courts and tribunals, institutional practice, and contemporary constitutionalist scholarship in order to assess both the normative foundations and operational limitations of international constitutionalism.² In addition, the article draws upon constitutional pluralism³ and critical international legal theory to evaluate whether contemporary transformations within global governance signify constitutional decline, institutional adaptation, or the emergence of a fragmented constitutional order.⁴

The article proceeds in six parts. The first section examines the theoretical foundations of international constitutionalism and identifies the principal constitutional characteristics attributed to the international legal order. The second section analyses the constitutionalization of global governance through international institutions, collective security mechanisms, and international adjudication. The third section evaluates the contemporary challenges facing international constitutionalism in light of authoritarian resurgence, multilateral fragmentation, and institutional contestation. The fourth section examines the Middle East as a constitutional stress test for the international legal order, focusing on questions of sovereignty, humanitarian protection, collective security, and legitimacy. The fifth section assesses competing theoretical approaches concerning the future of international constitutionalism, including constitutional pluralism and fragmented governance models. The final section considers whether international constitutionalism remains a viable framework for understanding the contemporary international legal order amid persistent geopolitical and normative contestation.

1. Theoretical Foundations of International Constitutionalism

The concept of international constitutionalism emerged primarily as an attempt to explain the increasing institutionalization, juridification, and normative expansion of the post-1945 international legal order.⁵ Classical international law traditionally conceived the international system as a decentralized and consensual structure grounded on sovereign equality and state consent.⁶ Constitutionalist approaches, however, argue that contemporary Public International Law increasingly exhibits characteristics commonly associated with constitutional orders,

1 Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (reissue edn, Cambridge University Press 2005).

2 Anne Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge University Press 2016).

3 Ratto Trabucco, F. (2023). 'A Comparative Overview on the European Microstates Constitutionalism', *Iranian Journal of International and Comparative Law*, 1(1), pp. 175-182. DOI: 10.22091/ijicl.2022.8008.1022.

4 *From Apology to Utopia: The Structure of International Legal Argument*, 33.; Miguel Poiars Maduro, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action' in Neil Walker (ed), *Sovereignty in Transition* (Hart 2003).

5 Klabbbers, Peters and Ulfstein, *The Constitutionalization of International Law*, Ch. II.

6 Lassa Oppenheim, *International Law: A Treatise* (Longmans Green 1905) vol 1.

including normative hierarchy, institutionalized governance, the universality of certain foundational norms, limitations on sovereign discretion, and the progressive development of international mechanisms of accountability. Constitutionalist scholarship therefore seeks to conceptualize international law not merely as a system of contractual obligations among sovereign states, but as an evolving normative framework organized around common legal principles and collective interests. Such constitutional analogies, however, remain primarily functional rather than institutional, given the absence of a centralized sovereign authority within the international legal order.

At its core, international constitutionalism rests on the proposition that certain foundational norms and institutional structures in international law perform constitutional functions analogous to those in domestic legal systems. This constitutionalizing tendency has been particularly associated with the development of the United Nations framework following the adoption of the UN Charter in 1945.¹ In this regard, Bardo Fassbender famously argued that the UN Charter constitutes the “constitution of the international community” insofar as it establishes foundational principles governing the use of force, collective security, institutional authority, and the maintenance of international peace and security.² Constitutionalist scholars further emphasize Article 103 of the UN Charter, which accords normative priority to Charter obligations over conflicting treaty obligations, as evidence of an emerging hierarchical structure within international law.³

The constitutionalist interpretation of international law was further strengthened through the recognition of peremptory norms (*jus cogens*) and obligations *erga omnes* within international jurisprudence and doctrine.⁴ The emergence of *jus cogens* norms challenged the classical voluntarist conception of international law by recognizing the existence of superior norms from which no derogation is permitted.⁵ Similarly, the ICJ’s recognition of obligations *erga omnes* in the *Barcelona Traction* case reflected a growing understanding that certain obligations are owed not merely bilaterally between states but to the international community as a whole.⁶ These developments contributed to the constitutionalist argument that international law increasingly protects collective values transcending traditional reciprocity-based interstate relations.

The expansion of international human rights law also played a central role in debates concerning constitutionalization. Unlike classical international law, which treated states as the exclusive subjects of legal rights and obligations, the post-war human rights framework increasingly recognized individuals as direct beneficiaries of international legal protection.⁷ The adoption of the Universal Declaration of Human Rights,⁸ followed by the International

1 United Nations, Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.

2 Fassbender, *The United Nations Charter as Constitution of the International Community*, 536.

3 UN Charter, art 103; Erika de Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart 2004).

4 International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens)*, with Commentaries, II (2).

5 Dire Tladi, *Peremptory Norms of General International Law (Jus Cogens): Disquisitions and Disputations* (Brill 2021).

6 *Barcelona Traction Case*, [34].

7 Thomas Buergenthal, ‘The Evolving International Human Rights System’ (2006) 100 *American Journal of International Law* 783.

8 United Nations General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III).

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,¹ reinforced the emergence of universal normative standards extending beyond domestic constitutional systems. Constitutionalist scholars consequently argued that international human rights law introduced substantive constitutional principles into the international legal order, particularly through the protection of human dignity, the limitation of state power, and the institutionalization of accountability mechanisms.² At the same time, the universality and implementation of human rights norms have remained politically and institutionally contested, particularly in contexts characterized by competing conceptions of sovereignty, legitimacy, and cultural particularity.³

In parallel with these normative developments, the expansion of international institutions and adjudicatory bodies contributed to what many scholars described as the judicialization and governance dimensions of constitutionalization.⁴ The growing authority exercised by institutions such as the World Trade Organization,⁵ the International Criminal Court,⁶ and regional human rights courts suggested an increasing shift from purely consensual interstate coordination toward more institutionalized forms of governance.⁷ International institutions increasingly exercised functions traditionally associated with constitutional authority, including norm production, adjudication, supervision, and regulatory coordination.⁸ In this sense, constitutionalism became closely connected to broader theories of global governance, which emphasized the emergence of complex transnational systems of legal and institutional regulation extending beyond the classical state-centric paradigm.

Notwithstanding these developments, international constitutionalism remains deeply contested both conceptually and doctrinally. One of the principal difficulties concerns the absence of structural features traditionally associated with domestic constitutional orders, including centralized legislative authority, compulsory jurisdiction, democratic legitimacy, and effective enforcement mechanisms.⁹ Critics therefore question whether constitutional terminology can coherently be applied to a decentralized international legal system lacking a unified sovereign authority.¹⁰ Moreover, the fragmentation of international law into specialized legal regimes, including trade, human rights, environmental, and investment law, has raised concerns about normative incoherence and institutional competition rather than constitutional unity.¹¹

1 United Nations General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

2 Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law*, 8-111.

3 Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013).

4 Alec Stone Sweet, *The Judicial Construction of Europe* (Oxford University Press 2004).

5 Deborah Z Cass, *The Constitutionalization of the World Trade Organization* (Oxford University Press 2005).

6 Antonio Cassese, *International Criminal Law* (3rd edn, Oxford University Press 2013).

7 Karen J Alter, *The New Terrain of International Law* (Princeton University Press 2014).

8 Armin von Bogdandy and Ingo Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford University Press 2014).

9 Walker, *The Idea of Constitutional Pluralism*, 317-326.

10 Jean d'Aspremont, *After Hegemony: Sources of Law in the Exercise of Public Authority* (Oxford University Press 2021).

11 International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 682.

These critiques are particularly evident in the work of Martti Koskenniemi, who cautioned against excessively formalized constitutional narratives that risk obscuring the political and indeterminate dimensions of international law.¹ Similarly, Nico Krisch rejects the possibility of a unified constitutional order at the global level and instead advances a theory of constitutional pluralism grounded in overlapping and competing sites of authority.² According to pluralist approaches, the contemporary international legal order is better understood as a fragmented and heterarchical system in which multiple institutional and normative frameworks coexist without a single constitutional center.³

Constitutional pluralism has consequently emerged as one of the most influential responses to the limitations of classical constitutionalist theory. Rather than presupposing hierarchical unity, pluralist scholarship recognizes the coexistence of multiple constitutional claims operating simultaneously at domestic, regional, and international levels. Such approaches seek to accommodate the realities of normative fragmentation, institutional overlap, and contested authority that characterize contemporary global governance. Constitutional pluralism therefore offers a more flexible framework for understanding the contemporary international legal order under conditions of geopolitical fragmentation and differentiated conceptions of legitimacy.⁴

At the same time, critical international legal scholarship has increasingly emphasized the inequalities and asymmetries embedded within global governance institutions.⁵ From this perspective, constitutionalist discourse may risk legitimizing unequal distributions of power under the appearance of universal legality.⁶ Questions concerning selective enforcement, hegemonic influence, institutional asymmetry, and differentiated access to legal accountability have therefore become central to contemporary critiques of international constitutionalism. Such concerns have acquired particular significance in the context of recent geopolitical crises, where the application and enforcement of international legal norms have frequently appeared inconsistent and politically contingent.⁷

Accordingly, the theoretical foundations of international constitutionalism reveal an enduring tension between normative aspiration and institutional reality. While important constitutional characteristics have emerged within the contemporary international legal order, the coherence, legitimacy, and feasibility of a genuinely constitutionalized system of global governance remain profoundly contested. This tension forms the conceptual basis for the present article and provides the analytical framework through which the subsequent sections examine the contemporary challenges facing international constitutionalism amid authoritarian resurgence, geopolitical fragmentation, and institutional contestation.

1 Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, 84.

2 Krisch, *Beyond Constitutionalism*, 84-98.

3 Nico Krisch, 'The Open Architecture of European Human Rights Law' (2008) 71 *Modern Law Review* 183.

4 Neil Walker, 'Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders' (2008) 6 *International Journal of Constitutional Law* 373.

5 Martti Koskenniemi, 'The Politics of International Law' (1990) 1 *European Journal of International Law* 4.

6 Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2000).

7 Jean d'Aspremont, *International Law as a Belief System* (Cambridge University Press 2017).

2. Global Governance and the Constitutionalization of International Authority

The progressive constitutionalization of international law has been closely connected to the expansion of global governance structures following the establishment of the post-war international legal order. Classical Public International Law traditionally conceived the international system as a decentralized framework of coexistence among formally equal sovereign states. Contemporary global governance, however, increasingly operates through institutionalized forms of authority extending beyond purely consensual interstate relations. The proliferation of international organizations, adjudicatory mechanisms, regulatory regimes, and transnational decision-making processes has significantly transformed both the structure and operation of international law. Within constitutionalist scholarship, these developments are frequently interpreted as evidence of an emerging constitutional dimension within global governance.

At the center of this transformation stands the United Nations system, which remains the principal institutional framework of the contemporary international legal order.¹ The UN Charter established not merely an international organization, but a normative structure governing the use of force, collective security, sovereign equality, and the maintenance of international peace and security.² In constitutionalist theory, the Charter is often regarded as possessing quasi-constitutional status due to its foundational role within the international legal system, its near-universal membership, and the normative priority accorded to Charter obligations under Article 103.³ The Charter framework therefore introduced important constitutional elements into international law by institutionalizing collective authority and limiting unilateral recourse to force.⁴

The constitutional dimension of the UN system is particularly evident in the authority exercised by the United Nations Security Council.⁵ Under Chapter VII of the Charter, the Security Council possesses extensive powers to determine threats to international peace and security and to adopt binding measures upon member states.⁶ Such authority departs significantly from the classical consensual model of international law by enabling institutional decision-making with legally binding consequences extending beyond individual state consent.⁷ Constitutional scholars therefore frequently characterize the Security Council as exercising functions analogous to executive authority within the international legal order.⁸

At the same time, the expanding authority of the Security Council has generated persistent debates concerning legitimacy, accountability, and constitutional limitation.⁹ The absence

1 UN Charter.

2 *ibid* arts 1-2.

3 Fassbender, *The United Nations Charter as Constitution of the International Community*, 547.; de Wet, *The Chapter VII Powers of the United Nations Security Council*, 26-87.

4 Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012).

5 de Wet, *The Chapter VII Powers of the United Nations Security Council*, 88-110.

6 UN Charter, Ch. VII.

7 José E Alvarez, *International Organizations as Law-Makers* (Oxford University Press 2005).

8 Bardo Fassbender, 'Quis iudicabit? The Security Council, Its Powers and Its Legal Control' (2000) 11 *European Journal of International Law* 219.

9 Nico Krisch, 'The Security Council and the Great Powers' in Antonio Cassese (ed), *The Oxford Companion to International Criminal Justice* (Oxford University Press 2009).

of effective judicial review of Security Council decisions, combined with the political asymmetry embedded in the permanent members' veto structure, raises important questions about the compatibility of concentrated institutional authority with principles of legality and constitutional governance.¹ These concerns became especially visible in the context of sanctions regimes, humanitarian crises, and the selective operation of collective security mechanisms.² Consequently, while the Security Council reflects important constitutionalizing tendencies within global governance, it simultaneously exposes structural tensions between institutional authority and the decentralized nature of international law.

Parallel developments may also be observed within the expansion of international adjudication. The growing role of the ICJ, international criminal tribunals, and specialized dispute settlement systems contributed significantly to the juridification of international relations.³ International adjudicatory bodies increasingly perform functions associated with constitutional courts, including interpreting foundational norms, clarifying institutional competences, and articulating community interests within the international legal order. Through its jurisprudence concerning the prohibition of force, obligations *erga omnes*, self-determination, and humanitarian law, the ICJ has contributed substantially to constitutional narratives within international law.⁴

Similarly, the establishment of the ICC represented an important development in the institutionalization of international accountability.⁵ The Rome Statute introduced mechanisms through which individuals, including state officials, may incur direct criminal responsibility under international law for genocide, crimes against humanity, war crimes, and aggression.⁶ The ICC framework challenged traditional doctrines of sovereign immunity and reinforced constitutionalist arguments that certain international norms protect fundamental interests of the international community as a whole.⁷ The expansion of international criminal accountability therefore reflected broader constitutionalizing tendencies that emphasized the rule of law and limited sovereign discretion.⁸ At the same time, the operation of international criminal justice has remained dependent on uneven political cooperation and selective enforcement, thereby exposing important limitations within the institutionalization of international accountability.⁹

The constitutionalization of international authority is also visible within the governance structures of the World Trade Organization.¹⁰ The WTO dispute settlement mechanism introduced a comparatively legalized and compulsory adjudicatory framework capable

1 de Wet, *The Chapter VII Powers of the United Nations Security Council*, 111-118.

2 Devika Hovell, *The Power of Process: The Value of Due Process in Security Council Sanctions Decision-Making* (Oxford University Press 2016).

3 Cesare PR Romano, Karen J Alter and Yuval Shany (eds), *The Oxford Handbook of International Adjudication* (Oxford University Press 2014).

4 International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16.

5 International Criminal Court, *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

6 *ibid* arts 5-8 bis.

7 Cassese, *International Criminal Law*, Ch. II.

8 Leila Nadya Sadat, *Transformative Justice* (Oxford University Press 2019).

9 Sarah MH Nouwen and Wouter G Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' (2010) 21 *European Journal of International Law* 941.

10 Cass, *The Constitutionalization of the World Trade Organization*, Ch. II-IV.

of producing binding decisions affecting domestic regulatory systems.¹ Scholars such as Deborah Z Cass have argued that the WTO exhibits important constitutional characteristics insofar as it establishes normative disciplines governing state conduct within the global economic order.² In this respect, global economic governance increasingly operates through institutionalized legal frameworks possessing constitutional implications for domestic sovereignty, regulatory autonomy, and international economic coordination.³ Recent tensions surrounding trade unilateralism and the paralysis of the WTO Appellate Body, however, have exposed the fragility of constitutionalist assumptions within global economic governance.⁴

Beyond formal institutions, constitutionalization has further developed through the emergence of global regulatory networks and transnational governance mechanisms.⁵ International environmental governance, financial regulation, migration management, and public health coordination increasingly involve complex interactions among international organizations, states, private actors, and expert bodies.⁶ Such developments contributed to what scholars of global administrative law describe as expanding forms of international regulatory authority operating beyond traditional interstate diplomacy.⁷ The exercise of regulatory functions by international institutions has consequently intensified debates concerning transparency, accountability, participation, and legitimacy within global governance structures.⁸

Nevertheless, the constitutionalization of international authority remains structurally incomplete and deeply contested. Unlike domestic constitutional systems, global governance lacks centralized democratic legitimacy, unified institutional hierarchy, and comprehensive enforcement mechanisms. International institutions frequently exercise significant regulatory and adjudicatory authority without corresponding systems of democratic accountability or constitutional limitation. Moreover, the fragmented nature of international governance produces overlapping and occasionally conflicting normative regimes, thereby complicating claims concerning constitutional coherence.⁹

These structural limitations have become increasingly visible amid contemporary geopolitical tensions. The operation of global governance institutions frequently reflects underlying asymmetries of political and economic power, particularly in matters involving collective security, sanctions, humanitarian intervention, and international accountability. The selective implementation of international legal norms and the inconsistent operation of institutional mechanisms have therefore generated growing skepticism concerning the neutrality and universality of constitutionalized global governance. Such concerns have been

1 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes* (adopted 15 April 1994, entered into force 1 January 1995).

2 Cass, *The Constitutionalization of the World Trade Organization*, Ch. II-IV.

3 Ernst-Ulrich Petersmann, *The GATT/WTO Dispute Settlement System* (Kluwer Law International 1997).

4 Robert McDougall, 'The Crisis in WTO Dispute Settlement: Fixing Birth Defects to Restore Balance' (2018) 52 *Journal of World Trade* 867.

5 Benedict Kingsbury, Nico Krisch and Richard B Stewart, 'The Emergence of Global Administrative Law' (2005) 68 *Law and Contemporary Problems* 15.

6 Sabino Cassese, *Global Administrative Law: Cases, Materials, Issues* (3rd edn, IRPA 2012).

7 Kingsbury, Krisch and Stewart, *The Emergence of Global Administrative Law*, 15.

8 Armin von Bogdandy and others, *The Exercise of Public Authority by International Institutions* (Springer 2010).

9 International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 682.

amplified by the resurgence of sovereign-centered approaches to international relations and by increasing contestation surrounding the legitimacy of multilateral institutions.

In response to these tensions, constitutional pluralist approaches reject the assumption that constitutionalization necessarily requires the emergence of a unified hierarchical order. Instead, pluralist theories emphasize the coexistence of multiple overlapping authorities operating simultaneously at domestic, regional, and international levels. According to this perspective, contemporary global governance is characterized less by constitutional unity than by negotiated interaction among competing legal and institutional frameworks. Constitutional authority therefore becomes dispersed, relational, and contingent rather than centralized and hierarchical. The present article accordingly treats constitutionalization as a dynamic and contested process rather than the consolidation of a unified constitutional order.

The constitutionalization of international authority must consequently be understood as both an institutional achievement and a continuing source of instability within the international legal order. While global governance has transformed the structure of international law through the expansion of institutional authority, adjudication, and normative regulation, these developments have simultaneously generated significant tensions concerning legitimacy, accountability, fragmentation, and sovereign equality. Such tensions become particularly acute under conditions of geopolitical rivalry and authoritarian resurgence, where the operational coherence of constitutionalized global governance is increasingly under political and institutional strain.

The following section examines how contemporary authoritarian resurgence, multilateral fragmentation, and geopolitical contestation have intensified these pressures and contributed to the broader challenges confronting international constitutionalism in the twenty-first century.

3. Authoritarian Resurgence and the Crisis of Global Governance

The constitutionalization of the international legal order developed largely within dominant post-Cold War liberal internationalist frameworks, during which multilateral cooperation, international institution-building, and the expansion of universal human rights norms appeared to reinforce the progressive juridification of international relations.¹ Within this context, many constitutionalist scholars assumed that the consolidation of global governance structures would gradually strengthen the coherence, legitimacy, and effectiveness of international law.² Contemporary developments, however, increasingly challenge these assumptions. The twenty-first century has witnessed the growing influence of authoritarian and non-liberal governance models, intensified geopolitical competition, and expanding contestation surrounding the legitimacy and authority of multilateral institutions.³ These developments have generated substantial pressures upon constitutionalist understandings of global governance and exposed important vulnerabilities within the contemporary international legal order.

One of the defining characteristics of the contemporary international order is the

¹ Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2004).

² Klabbers, Peters and Ulfstein, *The Constitutionalization of International Law*, Ch. III.

³ Tom Ginsburg and Aziz Z Huq, *How to Save a Constitutional Democracy* (3rd edn, University of Chicago Press 2024).

increasing reassertion of sovereignty-centered approaches to international relations.¹ While classical doctrines of sovereignty have always remained central to Public International Law, the post-Cold War period witnessed a partial shift toward concepts emphasizing collective responsibility, humanitarian protection, international accountability, and conditional limitations upon sovereign discretion. The development of the Responsibility to Protect (R2P), the expansion of international criminal justice, and the growing authority of international institutions reflected broader constitutionalizing tendencies concerning sovereignty and international responsibility.² In recent years, however, many states have increasingly emphasized non-intervention, territorial sovereignty, and domestic constitutional autonomy in response to perceived encroachments by international institutions and transnational governance mechanisms.

This development does not necessarily involve the outright rejection of international law. Rather, contemporary authoritarian governance frequently operates through legal and institutional frameworks while simultaneously contesting liberal constitutional interpretations of international norms. Many contemporary systems continue to maintain constitutional structures, participate actively in international organizations, and invoke legal discourse to support sovereign prerogatives and domestic political authority. Consequently, the contemporary challenge to international constitutionalism arises less from external opposition to legality than from competing conceptions of legality itself. Such dynamics complicate traditional constitutionalist assumptions that legal institutionalization necessarily promotes liberal or universalist forms of governance.

The rise of what some scholars describe as authoritarian legalism or illiberal constitutionalism has therefore introduced new tensions within global governance structures.³ These approaches frequently emphasize majoritarian sovereignty, executive centralization, domestic constitutional identity, and resistance to perceived external normative interference.⁴ Within the international sphere, such tendencies often manifest through skepticism toward supranational adjudication, selective engagement with human rights mechanisms, and increased reliance upon strategic interpretations of international legal obligations. As a result, constitutional authority within the international legal order becomes increasingly fragmented and contested.

At the institutional level, these developments have contributed to a broader crisis of multilateral governance. International organizations have faced increasing difficulties maintaining consensus-based decision-making amid intensifying geopolitical rivalry and divergent conceptions of the international order. The functioning of the United Nations Security Council has become particularly illustrative of these tensions. Persistent disagreements among Permanent Members concerning armed conflict, humanitarian intervention, sanctions regimes, and collective security responses have significantly constrained institutional effectiveness in situations involving major geopolitical interests.⁵ Such paralysis has reinforced criticisms

1 Stephen D Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press 1999).

2 United Nations General Assembly, *2005 World Summit Outcome* UN Doc A/RES/60/1 (24 October 2005) paras 138-139.

3 Scheppele, *Autocratic Legalism*, 545.

4 Ginsburg and Huq, *How to Save a Constitutional Democracy*, Ch. V.

5 UNSC, *Maintenance of International Peace and Security*, 2024.

that the existing collective security framework operates unevenly and remains structurally dependent upon great-power consensus rather than autonomous constitutional authority.

These institutional limitations have further exposed longstanding concerns regarding the selective application of international legal norms. Contemporary global governance is increasingly perceived as marked by differentiated enforcement, asymmetrical accountability, and inconsistent institutional responses to comparable crises. The implementation of international humanitarian law, the operation of sanctions mechanisms, and the exercise of international criminal jurisdiction have all generated debates concerning selectivity, political contingency, and institutional legitimacy. Such concerns are particularly significant for constitutionalist narratives because constitutional authority presupposes at least a minimum degree of normative consistency, procedural equality, and institutional impartiality.

Simultaneously, the fragmentation of international law has intensified amid expanding regulatory specialization and geopolitical pluralization. Rather than evolving toward a unified constitutional hierarchy, the international legal order increasingly consists of overlapping and occasionally conflicting normative regimes operating across diverse institutional contexts. Trade law, security law, human rights law, environmental governance, and regional integration frameworks frequently pursue distinct normative objectives through separate institutional mechanisms.¹ Fragmentation therefore functions not merely as a doctrinal phenomenon, but as a structural condition of contemporary geopolitical pluralization.

The International Law Commission study on fragmentation identified these developments as one of the principal structural challenges confronting contemporary international law.² Fragmentation not only generates doctrinal tensions among specialized legal regimes, but also reflects broader political contestation concerning authority, legitimacy, and normative priority within global governance.³ Under conditions of geopolitical competition, states increasingly engage selectively with international institutions and legal obligations according to strategic political, economic, and security considerations. Such selective multilateralism undermines constitutionalist aspirations toward an integrated and universally applicable legal order.

The contemporary crisis of global governance has also been reinforced by the declining effectiveness of universal institutional frameworks in addressing transnational crises. Armed conflicts, humanitarian emergencies, migration crises, global pandemics, and climate governance challenges have repeatedly demonstrated the limitations of existing multilateral mechanisms in securing coordinated and consistent international responses.⁴ Although international institutions continue to exercise important regulatory and normative functions, their operational capacity increasingly appears constrained by political fragmentation and competing conceptions of legitimacy.

Importantly, these developments should not necessarily be interpreted as signaling

1 Cassese, *Global Administrative Law: Cases, Materials, Issues*, Ch. I-IV.

2 International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 682.

3 *ibid.*

4 World Health Organization, *COVID-19 Strategic Preparedness and Response Plan* (2021); United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2024* (2025).

the complete collapse of international constitutionalism. Despite mounting pressures, constitutional elements remain deeply embedded within the contemporary international legal order. Peremptory norms, institutional governance structures, international adjudication, and universal human rights frameworks continue to shape state conduct and international legal discourse. International legality retains significant normative authority even where compliance remains uneven or contested. Moreover, contemporary geopolitical contestation frequently occurs through legal argumentation and institutional processes rather than entirely outside them, thereby demonstrating the continuing relevance of international legal frameworks within global governance.

Nevertheless, the operational coherence of international constitutionalism has become increasingly fragile. The contemporary international legal order appears characterized less by constitutional unity than by competing claims to authority operating across fragmented institutional and normative landscapes. This development has contributed to the growing influence of constitutional pluralist approaches, which reject the possibility of a centralized constitutional hierarchy and instead emphasize negotiated coexistence among overlapping legal orders. Constitutional pluralism arguably provides a more realistic account of contemporary global governance under conditions of geopolitical diversity and institutional fragmentation.

The crisis of international constitutionalism therefore reflects a broader tension between normative universality and political pluralization within the international legal order. While constitutionalist frameworks continue to provide important normative foundations for global governance, their practical implementation increasingly encounters structural limitations arising from sovereign contestation, geopolitical rivalry, institutional asymmetry, and differentiated conceptions of legitimacy. These tensions become especially visible in regions where international law, collective security, humanitarian protection, and geopolitical competition intersect most intensely.

The following section examines the Middle East as a particularly significant constitutional stress test for the contemporary international legal order. Through the analysis of armed conflict, humanitarian crises, democratic transitions, and competing sovereignty claims, the region illustrates many of the structural tensions currently confronting international constitutionalism and global governance.

4. The Middle East as a Constitutional Stress Test for the International Legal Order

The contemporary Middle East occupies a particularly significant position within debates concerning the feasibility and operational coherence of international constitutionalism.¹ In recent decades, the region has become a central site where questions of sovereignty, humanitarian protection, collective security, international accountability, and institutional legitimacy have converged with exceptional intensity.² As a consequence, the Middle East

¹ Richard Falk, *The Great Middle East Crisis* (Routledge 2016).

² Raja Shehadeh and Penny Johnson (eds), *Seeking Palestine* (Verso 2023).

provides an important analytical framework for examining the structural limitations and normative aspirations of the contemporary international legal order. The region illustrates not merely the existence of geopolitical instability but, more fundamentally, the persistent tension between constitutionalized legal norms and the political realities that govern their implementation within global governance structures.

From the perspective of international constitutionalism, the Middle East presents a complex interaction between universal normative commitments and differentiated geopolitical practices. Constitutional theories of international law generally presuppose a degree of institutional consistency in applying foundational legal principles, including the prohibition on the use of force, the protection of fundamental human rights, collective security obligations, and accountability for serious violations of international law.¹ Developments within the region, however, have repeatedly exposed significant asymmetries in the implementation and enforcement of these norms. Such inconsistencies have generated broader concerns regarding the legitimacy, impartiality, and constitutional coherence of global governance mechanisms.

One of the most significant developments in this regard was the series of political uprisings commonly associated with the Arab Spring beginning in 2010-2011.² These movements reflected, among other factors, demands for political participation, constitutional reform, accountability, and socio-economic justice across several states within the region, although with considerable variation across national contexts.³ From the perspective of constitutionalist theory, the Arab Spring initially appeared to reinforce assumptions concerning the universality of constitutional governance and the global diffusion of rights-based political legitimacy.⁴ The language of constitutionalism, democratic representation, and fundamental rights occupied a prominent position within both domestic political discourse and international responses to these developments.⁵

Nevertheless, the region's subsequent trajectory revealed the fragility of such assumptions.⁶ In several cases, democratic transitions encountered severe institutional instability, internal conflict, or renewed forms of centralized governance.⁷ International responses to these developments frequently appeared fragmented, inconsistent, and influenced by strategic geopolitical considerations.⁸ As a result, the Arab Spring exposed important limitations within prevailing constitutionalist narratives concerning the relationship between globalization, democratization, and international legal governance.⁹ Rather than demonstrating the linear constitutionalization of political authority, the regional experience illustrated the coexistence of competing constitutional models, differentiated sovereignty claims, and contested forms of legitimacy.

1 UN Charter, arts. 1-2.

2 Marc Lynch, *The Arab Uprising: The Unfinished Revolutions of the New Middle East* (2nd edn, PublicAffairs 2013).

3 Nathan J Brown, *Constitutions in a Nonconstitutional World* (SUNY Press 2002).

4 Slaughter, *A New World Order*, Ch. III.

5 Chibli Mallat, *Philosophy of Nonviolence* (Oxford University Press 2015).

6 Marc Lynch, *The New Arab Wars* (PublicAffairs 2016).

7 Steven Levitsky and Lucan A Way, *Revolution and Dictatorship* (Princeton University Press 2022).

8 International Crisis Group, *Ten Challenges for the UN in 2025* (2025).

9 David Kennedy, *A World of Struggle* (Princeton University Press 2016).

The Syrian conflict represents one of the most significant contemporary challenges to the operational coherence of international constitutionalism within the framework of collective security.¹ Since the outbreak of armed conflict in 2011, Syria has generated extensive debates concerning humanitarian intervention, the R2P, international criminal accountability, and the authority of the United Nations Security Council.² The conflict has simultaneously involved large-scale humanitarian suffering, allegations of serious violations of international humanitarian law, foreign military interventions, and prolonged diplomatic paralysis within multilateral institutions.³

From a constitutionalist perspective, the Syrian conflict exposed profound structural limitations within the collective security framework established under the United Nations Charter. Despite the existence of legal norms prohibiting mass atrocities and protecting civilian populations, the Security Council proved unable to generate sustained consensus concerning coercive collective action.⁴ The repeated use or threatened use of the veto by Permanent Members demonstrated the continuing centrality of geopolitical interests within the operation of institutional governance structures.⁵ Consequently, the Syrian conflict highlighted the extent to which the implementation of constitutionalized international norms remains contingent upon political consensus among major powers rather than autonomous institutional authority.⁶

The Syrian case further intensified debates regarding the relationship between sovereignty and humanitarian protection within contemporary international law.⁷ While the development of R2P reflected efforts to reconceptualize sovereignty as encompassing responsibilities toward civilian populations, the doctrine's practical application revealed significant political and institutional limitations.⁸ Concerns regarding selective intervention, regime change, external influence, and inconsistent enforcement contributed to growing skepticism among many states toward expansive interpretations of humanitarian intervention. The Syrian conflict therefore reinforced broader fragmentation within the international legal order concerning the legitimacy and scope of collective humanitarian action.

Parallel tensions have emerged in relation to the Israeli-Palestinian conflict and the broader legal questions surrounding the Occupied Palestinian Territory. The region has long represented one of the most enduring and legally complex issues confronting the international legal order, engaging questions of self-determination, occupation, use of force, humanitarian law, statehood, and international accountability.⁹ Contemporary developments have further intensified scrutiny concerning the consistency and effectiveness of international

1 Tom Ruys and Luca Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen' (2016) 65 *International and Comparative Law Quarterly* 61.

2 United Nations Security Council, 'The Situation in the Middle East' UN Doc S/PV.9151 (2022).

3 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (2024).

4 UNSC, *The Situation in the Middle East*, 2022.

5 Fassbender, *Quis judicabit? The Security Council, Its Powers and Its Legal Control*, 219.

6 Krisch, *Beyond Constitutionalism*, 89-99.

7 Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011).

8 UNGA, *Universal Declaration of Human Rights*.

9 John Dugard, *Confronting Apartheid* (Jacana Media 2018).

legal mechanisms in situations involving protracted geopolitical disputes and asymmetrical enforcement dynamics.¹

In this context, proceedings before the ICJ, including advisory proceedings and debates surrounding the implementation of international humanitarian law, have attracted considerable attention within constitutionalist scholarship.² Such developments illustrate both the continuing normative relevance of international legal institutions and the practical limitations confronting their enforcement capacities.³ The persistence of legal contestation through institutional mechanisms demonstrates the enduring authority of international legality within global governance. At the same time, the uneven implementation of legal obligations continues to reinforce concerns regarding differentiated accountability and institutional legitimacy.

The Persian Gulf region presents an additional dimension of constitutional stress within global governance.⁴ Several Persian Gulf states have become deeply integrated into international economic, financial, and diplomatic networks while simultaneously maintaining highly centralized domestic governance structures.⁵ This development complicates assumptions that participation in global governance necessarily produces liberal constitutional convergence or uniform models of political organization. Instead, contemporary global governance increasingly accommodates a plurality of governance models operating within shared international institutional frameworks.

Such developments are particularly significant because they illustrate that contemporary authoritarian governance frequently functions through institutional participation rather than international isolation. States may engage actively with international organizations, treaty regimes, and transnational regulatory systems while simultaneously advancing distinct conceptions of sovereignty, political legitimacy, and constitutional order. As a result, the Middle East demonstrates how global governance may coexist with divergent constitutional trajectories rather than producing normative uniformity.

Recent military confrontations involving Iran, Israel, and the United States have further reinforced many of the structural tensions examined throughout this article.⁶ The conflicts have intensified debates over anticipatory self-defense, proportionality, collective security, humanitarian protection, and the operational limitations of multilateral governance mechanisms amid geopolitical rivalry.⁷ International responses to these developments have reflected ongoing divisions over the interpretation and application of international legal norms, particularly regarding the use of force and institutional accountability.⁸ Such developments further illustrate the extent to which contemporary international constitutionalism operates within a fragmented legal environment characterized by competing claims to legitimacy, strategic legal interpretation, and uneven institutional effectiveness.

1 Victor Kattan, *The Palestine Question in International Law* (British Institute of International and Comparative Law 2008).

2 International Court of Justice, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Proceedings, pending 2024).

3 Yuval Shany, *Assessing the Effectiveness of International Courts* (Oxford University Press 2014).

4 Mehran Kamrava, *The Modern Middle East* (5th edn, University of California Press 2025).

5 Adam Hanieh, *Capitalism and Class in the Gulf Arab States* (Palgrave Macmillan 2011).

6 United Nations Security Council, 'Threats to International Peace and Security' UN Doc S/PV.9687 (2024).

7 Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press 2010).

8 Christian Henderson, *The Use of Force and International Law* (2nd edn, Cambridge University Press 2023).

Collectively, these developments reveal the extent to which the Middle East functions as a constitutional stress test for the contemporary international legal order. The region exposes structural tensions among universal legal norms, geopolitical asymmetry, collective security, and sovereign contestation, as well as between institutional legality and differentiated enforcement practices. Importantly, these tensions do not necessarily negate the existence of constitutional elements within international law. International legal discourse, institutional adjudication, humanitarian norms, and accountability mechanisms continue to shape both regional and international responses to conflict and governance crises. Nevertheless, the practical operation of these mechanisms increasingly reflects fragmentation, pluralization, and contested legitimacy rather than coherent constitutional hierarchy.

Accordingly, the Middle East illustrates a broader transformation occurring within contemporary global governance. The international legal order no longer appears to be evolving toward a unified constitutional structure grounded in universally shared interpretations of legality and authority. Instead, constitutional authority increasingly operates through fragmented institutional arrangements shaped by geopolitical competition, normative pluralism, and differentiated sovereignty claims. The region therefore provides a particularly important framework for critically assessing the contemporary feasibility of international constitutionalism.

The following section examines competing theoretical perspectives on the future trajectory of international constitutionalism and evaluates whether constitutional pluralism offers a more sustainable framework for understanding global governance amid persistent fragmentation and geopolitical contestation.

5. The Future of International Constitutionalism: Fragmentation, Pluralism, and Institutional Adaptation

The preceding analysis has demonstrated that contemporary international constitutionalism operates under conditions of significant geopolitical, institutional, and normative stress. The increasing fragmentation of global governance, the resurgence of sovereignty-centered approaches to international relations, and the growing contestation surrounding institutional legitimacy have all complicated earlier assumptions concerning the progressive constitutionalization of the international legal order. These developments, however, do not necessarily imply the disappearance of constitutional elements within international law. Rather, they raise more fundamental questions concerning the future trajectory of international constitutionalism and the extent to which constitutional frameworks remain capable of adapting to an increasingly pluralized international environment.

Within contemporary scholarship, three broad approaches may be identified regarding the future of international constitutionalism. The first anticipates a progressive decline of constitutionalized global governance and a corresponding renewed emphasis upon strategic interstate competition. The second argues that constitutionalism remains viable, but only in fragmented and pluralized form rather than as a unified constitutional order. The third suggests that international constitutionalism may continue to evolve through institutional

adaptation and differentiated forms of governance that accommodate geopolitical diversity while preserving core normative commitments.¹ These competing approaches reflect broader debates concerning the relationship between legality, authority, sovereignty, and legitimacy within the contemporary international system.

One influential line of scholarship argues that the present international order reflects an ongoing erosion of liberal constitutionalist assumptions that characterized much post-Cold War international legal discourse.² According to this perspective, the weakening effectiveness of multilateral institutions, the decline of consensus-based governance, and the resurgence of geopolitical rivalry collectively undermine the possibility of a coherent constitutionalized international order. The increasing reliance upon unilateral measures, strategic interpretations of international law, and selective engagement with institutional mechanisms is frequently viewed as evidence of a broader shift toward power-oriented international relations operating beneath formal legal structures.

From this perspective, constitutionalist theories may overestimate both the autonomy of international institutions and the capacity of international law to constrain geopolitical interests. Critics argue that the decentralized structure of international law, combined with the absence of centralized enforcement and democratic legitimacy, renders constitutional analogies inherently unstable at the international level. Contemporary crises involving collective security, humanitarian intervention, and international accountability are therefore interpreted as exposing structural limitations within constitutional governance beyond the state. Such critiques frequently emphasize that international legality remains deeply dependent upon political consensus among powerful states and cannot function independently as a fully autonomous constitutional order.³

At the same time, narratives of constitutional decline may underestimate the ongoing normative and institutional significance of international law in global governance. Despite increasing geopolitical fragmentation, states and international institutions continue to operate extensively through legal frameworks, treaty regimes, adjudicatory mechanisms, and institutionalized forms of cooperation. International legal argumentation remains central to diplomatic practice, institutional legitimacy, and the regulation of transnational relations. Even where compliance is inconsistent, legal norms continue to structure expectations, justify political action, and shape the permissible boundaries of international conduct. Contemporary tensions may therefore reflect not the disappearance of constitutionalism, but rather its transformation under altered geopolitical conditions.

It is within this context that constitutional pluralism has emerged as one of the most influential theoretical frameworks for understanding the contemporary international legal order. Rejecting the assumption that constitutionalization necessarily requires hierarchical unity, pluralist approaches emphasize the coexistence of multiple overlapping legal and institutional authorities operating simultaneously across domestic, regional, and international

1 Stephen M Walt, *The Hell of Good Intentions* (Farrar, Straus and Giroux 2018).

2 d'Aspremont, *International Law as a Belief System*, Ch. III.

3 Hurd, *How to Do Things with International Law*, Ch. IV.

levels. Constitutional authority is therefore understood as dispersed and relational rather than centralized within a single constitutional framework.

For pluralist scholars, fragmentation does not necessarily signify institutional failure. Instead, it reflects the structural reality of contemporary global governance, where diverse legal orders interact continuously without a universally accepted constitutional center. Under conditions of geopolitical diversity and differentiated conceptions of legitimacy, constitutional pluralism arguably provides a more realistic framework for understanding the operation of international law than classical hierarchical constitutionalism. Such approaches acknowledge that international governance increasingly functions through negotiated coordination among partially autonomous institutional and normative regimes rather than through integrated constitutional supremacy.

The pluralist framework also offers a means of accommodating divergent constitutional traditions and political systems within the international legal order. Contemporary global governance encompasses states with significantly different constitutional structures, political traditions, and understandings of sovereignty. The persistence of these differences complicates attempts to construct a singular universal constitutional model applicable across all institutional and geopolitical contexts. Constitutional pluralism therefore seeks to preserve the normative authority of international law while recognizing the practical limits of centralized constitutional integration.

Importantly, pluralist approaches do not necessarily reject the existence of foundational international norms. Principles such as the prohibition of aggression, basic humanitarian protections, peremptory norms, and core human rights obligations may continue to function as common normative reference points even within fragmented governance structures.¹ What changes under pluralist models is not the existence of shared norms, but rather the understanding of how authority is distributed, interpreted, and implemented across multiple institutional contexts.

Alongside constitutional pluralism, a further body of scholarship emphasizes the adaptive capacity of international institutions under conditions of systemic stress. According to this perspective, the international legal order has historically evolved through periods of crisis, contestation, and institutional transformation rather than through linear constitutional consolidation. Contemporary challenges may therefore stimulate new forms of institutional coordination, regional governance, and functional cooperation that can preserve elements of constitutionalized global governance despite broader geopolitical fragmentation. Regional governance frameworks have likewise assumed greater importance amid weakened universal multilateralism.²

Examples of such adaptation may already be observed in areas including climate governance, international public health coordination, transnational financial regulation, and digital governance frameworks.³ In many of these areas, governance increasingly operates

¹ UN Charter, arts 1-2.

² Karen J Alter and Laurence R Helfer, *Transplanting International Courts* (Oxford University Press 2017).

³ World Health Organization, *Pandemic Agreement Negotiations* (2024); United Nations Framework Convention on Climate Change, *Outcome of the First Global Stocktake* (2023).

through flexible networks involving international organizations, regional institutions, states, technical bodies, and non-state actors. Although such arrangements often lack centralized constitutional structure, they nevertheless perform important regulatory and normative functions within the contemporary international order.

However, adaptive governance models also raise ongoing concerns about accountability, transparency, and legitimacy. The diffusion of authority across complex transnational networks may weaken traditional mechanisms of democratic oversight and constitutional limitation. Moreover, institutional adaptation alone cannot fully resolve the underlying geopolitical tensions affecting collective security, humanitarian protection, and enforcement asymmetries within international law. Consequently, while adaptive governance may mitigate certain structural pressures, it does not eliminate the broader challenges confronting international constitutionalism.

The contemporary international legal order therefore appears increasingly characterized by coexistence among constitutional aspiration, institutional fragmentation, and geopolitical pluralization. International constitutionalism persists as an important normative framework shaping legal discourse, institutional practice, and global governance structures; however, its operational form has become substantially more fragmented and contested than earlier constitutionalist theories anticipated. Rather than evolving toward a unified constitutional hierarchy, contemporary international law increasingly reflects a pluralized legal order in which authority remains distributed across overlapping institutional and normative frameworks.

This transformation carries important implications for the future development of Public International Law. It suggests that the feasibility of international constitutionalism may no longer depend upon achieving comprehensive constitutional unity at the global level. Instead, constitutional stability may increasingly rest on the capacity of international institutions and legal regimes to manage fragmentation, accommodate normative diversity, and preserve the minimum conditions for legal coordination amid persistent geopolitical contestation.

Accordingly, the future of international constitutionalism likely lies neither in complete constitutional consolidation nor in the wholesale collapse of international legality. Rather, the contemporary international legal order appears to be evolving toward a fragmented constitutional structure characterized by pluralized authority, differentiated legitimacy, and uneven institutional effectiveness. Constitutional pluralism, despite its limitations, therefore provides one of the most persuasive frameworks for understanding how global governance operates under current international conditions.

The final section concludes the article by evaluating the broader implications of these developments for the future of international law and for the continuing viability of constitutional approaches to global governance.

Conclusion

This article has examined the contemporary feasibility of international constitutionalism within an increasingly fragmented and contested framework of global governance. It has argued that the constitutionalization of the international legal order, manifested through the

development of hierarchical norms, institutionalized governance structures, international adjudication, and universal human rights frameworks, represents one of the most significant transformations within Public International Law since the establishment of the post-war international system. The emergence of peremptory norms, obligations *erga omnes*, collective security mechanisms, and expanding forms of international accountability contributed to the perception that international law was evolving beyond a purely consensual system of interstate coordination toward a more integrated constitutional order organized around common normative principles and collective interests.

At the same time, the analysis has demonstrated that the operational coherence of international constitutionalism remains deeply constrained by structural features of the international system that continue to privilege sovereign autonomy, geopolitical asymmetry, and decentralized enforcement. Contemporary developments have exposed an increasing divergence between the normative aspirations of constitutionalized global governance and the political realities governing the implementation of international legal authority. In particular, the resurgence of authoritarian governance models, the fragmentation of multilateral institutions, and the growing contestation surrounding institutional legitimacy have intensified existing tensions within the international legal order.

The article has further shown that the contemporary challenge to international constitutionalism does not primarily arise through the rejection of legality itself. Rather, it emerges through competing interpretations of sovereignty, legitimacy, intervention, and institutional authority operating within international legal discourse. Contemporary authoritarian governance frequently functions through constitutional and legal frameworks while simultaneously resisting liberal constitutionalist understandings of international law. This development complicates earlier assumptions that increasing institutionalization and globalization would necessarily produce progressive constitutional convergence within global governance structures.

The Middle East was examined as a particularly significant constitutional stress test for the international legal order. Regional developments involving democratic transitions, armed conflict, humanitarian crises, paralysis in collective security, and competing sovereignty claims illustrated the extent to which constitutionalized international norms remain vulnerable to geopolitical fragmentation and selective implementation. The analysis demonstrated that while international legal institutions continue to exercise important normative and regulatory functions, their practical effectiveness often depends on political consensus and institutional asymmetries that limit the coherence of international constitutional governance.¹

Nevertheless, the article has also argued that contemporary fragmentation should not be interpreted as signifying the disappearance of international constitutionalism altogether. International legality continues to shape institutional practice, diplomatic discourse, adjudicatory processes, and normative expectations within global governance. Peremptory norms, human rights obligations, humanitarian protections, and institutional accountability mechanisms retain substantial legal and political significance even where implementation

¹ United Nations Security Council, *Repertoire of the Practice of the Security Council* (2024 edn).

remains uneven or contested. The persistence of legal argumentation within international disputes itself reflects the continuing authority of international law as a framework governing the legitimacy of state conduct and institutional action. Despite persistent contestation, international institutions continue to provide indispensable frameworks for legal coordination and normative regulation within global governance.

In this context, constitutional pluralism emerges as one of the most persuasive theoretical frameworks for understanding the contemporary international legal order. Rather than presupposing a unified constitutional hierarchy, pluralist approaches recognize the coexistence of multiple overlapping legal and institutional authorities operating at domestic, regional, and international levels. Such approaches more accurately reflect the heterarchical structure of contemporary global governance, where constitutional authority increasingly operates through negotiated interaction rather than centralized supremacy.

Accordingly, the article concludes that international constitutionalism remains viable only in qualified and pluralized form.¹ The contemporary international legal order does not appear to be evolving toward a unified global constitution characterized by centralized authority, universal legitimacy, and coherent institutional hierarchy. Instead, international constitutionalism increasingly manifests as a differentiated normative framework operating amid geopolitical contestation, competing sovereignty claims, and uneven institutional effectiveness. The future of global governance therefore likely depends less on the realization of comprehensive constitutional unity than on the capacity of international institutions and legal regimes to manage normative diversity while preserving the minimum conditions of legal coordination, accountability, and institutional legitimacy.

Ultimately, the contemporary crisis of international constitutionalism reflects a broader transformation in the structure of global governance itself. The international legal order remains constitutionalized in important respects, but its constitutional character has become increasingly contested, adaptive, and decentralized in response to shifting geopolitical realities. Public International Law consequently confronts not the disappearance of constitutionalism, but its reconfiguration within an international system increasingly characterized by pluralized authority, geopolitical contestation, and differentiated legitimacy.

¹ Anne Peters, 'Membership in the Global Constitutional Community' in Jan Klabbers, Anne Peters and Geir Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press 2009).

References

- Alter KJ, *The New Terrain of International Law* (Princeton University Press 2014).
- Alter KJ and Helfer LR, *Transplanting International Courts* (Oxford University Press 2017).
- Alvarez JE, *International Organizations as Law-Makers* (Oxford University Press 2005).
- Barcelona Traction, Light and Power Company Ltd (Belgium v Spain) (Second Phase) ICJ Rep 3.
- Benvenisti E, *The Law of Global Governance* (Hague Academy of International Law 2014).
- Besson S, 'Community Interests in International Law' in Samantha Besson and Jean d'Aspremont (eds), *The Oxford Handbook of the Sources of International Law* (Oxford University Press 2017).
- Bogdandy A von and others, *The Exercise of Public Authority by International Institutions* (Springer 2010).
- Bogdandy A von and Venzke I, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford University Press 2014).
- Brown NJ, *Constitutions in a Nonconstitutional World* (SUNY Press 2002).
- Buergerthal T, 'The Evolving International Human Rights System' (2006) 100 *American Journal of International Law* 783.
- Cass D, *The Constitutionalization of the World Trade Organization* (Oxford University Press 2005).
- Cassese A, *International Criminal Law* (3rd edn, Oxford University Press 2013).
- Cassese S, *Global Administrative Law: Cases, Materials, Issues* (3rd edn, IRPA 2012).
- Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.
- de Wet E, 'The International Constitutional Order' (2006) 55 *International and Comparative Law Quarterly* 51.
- Donnelly J, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013).
- Dugard J, *Confronting Apartheid* (Jacana Media 2018).
- d'Aspremont J, *After Hegemony: Sources of Law in the Exercise of Public Authority* (Oxford University Press 2021).
- d'Aspremont J, *International Law as a Belief System* (Cambridge University Press 2017).
- Falk R, *The Great Middle East Crisis* (Routledge 2016).
- Fassbender B, 'Quis judicabit? The Security Council, Its Powers and Its Legal Control' (2000) 11 *European Journal of International Law* 219.
- Fassbender B, 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 529.
- Ginsburg T and Huq AZ, *How to Save a Constitutional Democracy* (3rd edn, University of Chicago Press 2024).
- Ginsburg T and Simpser A (eds), *Constitutions in Authoritarian Regimes* (Cambridge University Press 2014).
- Hanieh A, *Capitalism and Class in the Gulf Arab States* (Palgrave Macmillan 2011).
- Henderson C, *The Use of Force and International Law* (2nd edn, Cambridge University Press 2023).
- Henkin L, *How Nations Behave* (2nd edn, Columbia University Press 1979).
- Hovell D, *The Power of Process: The Value of Due Process in Security Council Sanctions Decision-Making* (Oxford University Press 2016).
- Hurd I, *How to Do Things with International Law* (Princeton University Press 2017).
- International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (2024).
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
- International Crisis Group, *Ten Challenges for the UN in 2025* (2025).
- International Crisis Group, *The Middle East between Collective Security and Fragmented Governance* (Report No 256, 2024).
- International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens)*, with *Commentaries II(2) Yearbook of the International Law Commission*.
- International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law UN Doc A/CN.4/L.682* (13 April 2006).
- Kattan V, *The Palestine Question in International Law* (British Institute of International and Comparative Law 2008).
- Kennedy D, *A World of Struggle* (Princeton University Press 2016).
- Kingsbury B, Krisch N and Stewart RB, 'The Emergence of Global Administrative Law' (2005) 68 *Law and Contemporary Problems* 15.
- Klabbers J, Peters A and Ulfstein G, *The Constitutionalization of International Law* (Oxford University Press 2009).

- Koskenniemi M, *From Apology to Utopia: The Structure of International Legal Argument* (reissue edn, Cambridge University Press 2005).
- Koskenniemi M, 'The Politics of *International Law*' (1990) 1 *European Journal of International Law* 4.
- Koskenniemi M and Leino P, 'Fragmentation of International Law? Postmodern Anxieties' (2002) 15 *Leiden Journal of International Law* 553.
- Krasner SD, *Sovereignty: Organized Hypocrisy* (Princeton University Press 1999).
- Krisch N, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press 2010).
- Krisch N, 'The Open Architecture of European Human Rights Law' (2008) 71 *Modern Law Review* 183.
- Krisch N, 'The Security Council and the Great Powers' in Antonio Cassese (ed), *The Oxford Companion to International Criminal Justice* (Oxford University Press 2009).
- Landau D and Dixon R, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford University Press 2021).
- Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Proceedings, pending 2024).
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) ICJ Rep 16.
- Levitsky S and Way LA, *Revolution and Dictatorship* (Princeton University Press 2022).
- Lynch M, *The Arab Uprising: The Unfinished Revolutions of the New Middle East* (2nd edn, PublicAffairs 2013).
- Lynch M, *The New Arab Wars* (PublicAffairs 2016).
- Maduro MP, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action' in Neil Walker (ed), *Sovereignty*.
- Mallat C, *Philosophy of Nonviolence* (Oxford University Press 2015).
- Marks S, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2000).
- McDougall R, 'The Crisis in WTO Dispute Settlement: Fixing Birth Defects to Restore Balance' (2018) 52 *Journal of World Trade* 867.
- Nouwen SMH and Werner WG, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' (2010) 21 *European Journal of International Law* 941.
- Oppenheim L, *International Law: A Treatise* (vol 1, Longmans Green 1905).
- Orford A, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011).
- Peters A, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge University Press 2016).
- Peters A, 'Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures' (2006) 19 *Leiden Journal of International Law* 579.
- Peters A, 'Membership in the Global Constitutional Community' in Jan Klabbers, Anne Peters and Geir Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press 2009).
- Petersmann EU, *Constitutional Functions and Constitutional Problems of International Economic Law* (Fribourg University Press 1991).
- Petersmann EU, *The GATT/WTO Dispute Settlement System* (Kluwer Law International 1997).
- Romano CPR, Alter KJ and Shany Y (eds), *The Oxford Handbook of International Adjudication* (Oxford University Press 2014).
- Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.
- Ruys T, 'Armed Attack' and Article 51 of the UN Charter (Cambridge University Press 2010).
- Ruys T and Ferro L, 'Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen' (2016) 65 *International and Comparative Law Quarterly* 61.
- Sadat L, *Transformative Justice* (Oxford University Press 2019).
- Scheppele KL, 'Autocratic Legalism' (2018) 85 *University of Chicago Law Review* 545.
- Shany Y, *Assessing the Effectiveness of International Courts* (Oxford University Press 2014).
- Shehadeh R and Johnson P (eds), *Seeking Palestine* (Verso 2023).
- Simma B, 'From Bilateralism to Community Interest in International Law' (1994) 250 *Recueil des Cours* 217.
- Simma B and others (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012).
- Slaughter AM, *A New World Order* (Princeton University Press 2004).
- Stone Sweet A, *The Judicial Construction of Europe* (Oxford University Press 2004).
- Tladi D, *Peremptory Norms of General International Law (Jus Cogens): Disquisitions and Disputations* (Brill 2021).

- Tomuschat C, *International Law: Ensuring the Survival of Mankind on the Eve of a New Century* (Martinus Nijhoff 2001).
- Understanding on Rules and Procedures Governing the Settlement of Disputes (adopted 15 April 1994, entered into force 1 January 1995).
- United Nations Framework Convention on Climate Change, *Outcome of the First Global Stocktake* (2023).
- United Nations General Assembly, *2005 World Summit Outcome UN Doc A/RES/60/1* (24 October 2005) paras 138–139.
- United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2024* (2025).
- United Nations Security Council, *Repertoire of the Practice of the Security Council* (2024 edn).
- United Nations Security Council, ‘Maintenance of *International Peace and Security*’ UN Doc S/PV.9539 (2024).
- United Nations Security Council, ‘*The Situation in the Middle East*’ UN Doc S/PV.9151 (2022).
- United Nations Security Council, ‘*Threats to International Peace and Security*’ UN Doc S/PV.9687 (2024).
- Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).
- Walker N, ‘Beyond Boundary Disputes and Basic Grids: *Mapping the Global Disorder of Normative Orders*’ (2008) 6 *International Journal of Constitutional Law* 373.
- Walker N, ‘The Idea of Constitutional Pluralism’ (2002) 65 *Modern Law Review* 317.
- Walt SM, *The Hell of Good Intentions* (Farrar, Straus and Giroux 2018).
- World Health Organization, *COVID-19 Strategic Preparedness and Response Plan* (2021).
- World Health Organization, *Pandemic Agreement Negotiations* (2024).