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The Interwar Otherwise:
Rewriting Liberal Histories of International Law

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Abstract

This article critically examines the mainstream international legal narrative of the interwar period, arguing that it functions not as a neutral recounting of the past but as a strategic intervention that governs the present. The conventional story—centered on collective security, codification of restraints on war, the mandates system, and minority protection—is shown to be a distinctly liberal construction. It presumes a liberal concept of law and treats peace and security as law's natural horizon, thereby sidelining the era's competing legalities: economic ordering and technocracy, racialized governance and imperial extraction, social rights internationalism and labor constitutionalism, emergency as a legal technology, and administrative internationalism across finance, health, and trade. In this sense, the interwar as conventionally narrated is largely a self-description of liberal legalism, not a transparent periodization.The article advances two claims. First, that this narrative framing narrows what counts as international legality and naturalizes particular institutional forms. Second, that in 2025—amid fraying constitutional democratic orders, notably in parts of the Global North—we must reinvent our narratives. This means foregrounding legal architectures that structured social conflict and authority beyond the security frame: debt, trade, and resource governance; race and empire within international administration; emergency and technocratic expertise; and rival internationalisms. Rewriting the interwar is not antiquarian labor but a practical intervention to enable the strategic work of history in constituting the horizon of the possibl.

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Introduction

The period we call the interwar – those years bracketed, somewhat artificially, between the catastrophe of 1914–18 and the conflagration of 1939–45 – holds a privileged place in the international legal imagination. It is habitually portrayed as both laboratory and parable: the birth of collective security, the codification of restraints on war, the mandates system, minority protection, and a renewed faith in institutionalism; and simultaneously, the scene of failure whose denouement is taken to justify the post1945 settlement. My starting point in this article is deliberately simple: stories about the interwar do not merely recount the past but govern the present. The writing, production, organization, narration, periodization, whitewashing, and silencing of the interwar are techniques that fabricate necessities for the present under the guise of retrospection. Choices about which events to highlight, which actors to render visible, which causalities to trace, and which silences to preserve are strategic –not benign– and they are routinely pressed into the service of what we wish to achieve now. This is as true of the interwar as of any other period. There is no single interwar with a fixed meaning across space and time. There are many interwars, each the product of a narrative decision that aligns with an agenda, a paradigm, or a perceived necessity in the present. Whether cast around collective security, imperial administration, economic ordering, racial governance, or social internationalism, each narration about the interwar is a strategic intervention.

Against this backdrop, the article advances two claims. First, it argues that the mainstream interwar story told by international lawyers is a distinctly liberal construction. It presumes a liberal concept of law and, under that description, treats peace and security as law's natural horizon: the right to wage war and its renunciation, arms control, the prohibition on the use of force, and the administration of colonial territories under mandates become the period's defining legal problems. This is not a benign selection. It privileges juridified order – collective security, codification, institutionalism – and sidelines the era's competing legalities: economic ordering and technocracy, racialized governance and imperial extraction, social rights internationalism and labor constitutionalism, emergency as a legal technology, and administrative internationalism across finance, health, and trade. In this sense, the interwar, as conventionally narrated, is largely a self-description of liberal legalism and not a transparent periodization. One can glimpse both the aspiration and the limits of that selfdescription in contemporaneous and canonical texts that either naturalize law's civilizing vocation or rationalize institutional legality, as well as in critical accounts that reveal the intimate entanglement of interwar legality with imperial governance.

The second claim follows from the first and speaks directly to the present. In 2025, as constitutionaldemocratic orders fray – strikingly in parts of the Global North – we cannot afford to keep telling the interwar story only in the binary terms of peace versus war and innovation versus failure. Those binaries anesthetize critique precisely when it is most needed. To unlock the interwar's critical potential, we must reinvent our narratives. This means foregrounding legal architectures that structured social conflict and authority beyond the familiar security frame: the governance of debt, trade, and resources; the juridical life of race and empire within international administration; the legal forms of emergency and technocratic expertise; and the rival internationalisms that imagined solidaristic orders at odds with liberal institutionalism. Such reframing does not deny that security questions mattered; it insists that the period's legal imagination was wider, more conflicted, and more instructive for a time of authoritarian drift and institutional fatigue. On this view, rewriting the interwar is not antiquarian labor. It is a practical intervention meant to enable the strategic work of history in constituting the horizon of the possible.

The discussion proceeds as follows. It first reconstructs how a liberal concept of law organized the canonical interwar narrative around collective security, jus ad bellum, arms control, and the mandates system, showing how this framing narrowed the spectrum of what counted as international legality and naturalized particular institutional forms (1). It then develops alternative narrative repertoires – economic and administrative internationalism; imperial and racial governance; socialrights and labor internationalism; and emergency legality – and demonstrates their relevance for a present marked by democratic erosion, technocratic consolidation, and renewed geopolitics (2). The conclusion sheds light on the normative payoffs of narrative reinvention for international legal scholarship and practice, including its implications for method, institutional design, and the cultivation of a critical vocabulary adequate to the times (3).

1. The Dominant Liberal History of the Interwar Period

The interwar period can be narrated in many ways, yet international legal scholarship has long preferred a relatively narrow itinerary through which its meaning is stabilized: peace and security, war and peace, dispute settlement and preventive diplomacy, arms regulation, and the administrative management of mandates. This mainstream and very pervasive narration foregrounds the League of Nations, the prohibition on the use of force, the efficacy of nascent judicial and arbitral mechanisms, the arms trade and disarmament conferences, and the mandate system as the principal theaters of interwar legality. What recedes, almost by design, are the histories of non-state actors, informal normative orders that governed practice far from Geneva and The Hague, customary interactions among diverse peoples, labor and class movements, women's juridical and political interventions, indigenous and anticolonial modalities of authority, and actors from the Global South crafting legal vocabularies amid imperial constraint. In such a historiographical landscape, "peace and security all the way" functions less as a descriptive platitude than as an epistemic program. My claim is that this dominant way of writing the interwar period does not merely select a topic. It performs a liberal concept of international law that structures what counts as law, who counts as a legal subject, what counts as violence, and how progress is to be measured.

By liberal legalism I mean something at once ordinary and compelling: a modern, Enlightenment-inherited mode of thinking about law that has become so familiar as to be invisible. It is a style of reason that casts institutional orders along the lines of an original contract. It centers the autonomous subject and, by extension, anthropomorphizes the state as a consenting self. It articulates a strict distinction between law and politics. It opposes law to violence. It prefers institutional form over other political organizations. It gives discursive primacy to scientific vocabularies and to the aspiration that the study of law be rendered scientific; and it equates law and institution with progress. This ensemble has been compellingly contested by critical scholarship over the past decades[1] as well as repudiated by Soviet international legal thought.[2] Yet the style persists, surviving critique in the very place where critique expects to be most consequential: the writing of international legal history, where the liberal concept continues to supply the grammar through which the interwar remains legible.

Within history-writing, this liberal concept translates into a series of discursive postures. It trusts that history can be immunized from normative agendas, as if narration were a-strategic and the historian a neutral conduit; it prizes contextualism understood as a prophylaxis against presentism and anachronism; it sustains progress narratives; it privileges scientific and empirical modes of inquiry for establishing past facts; it affirms the possibility of tracing causalities objectively; and it is drawn, almost magnetically, to the state and to global institutions as the natural protagonists of the story.[3] The result is that both domestic and international histories become histories of public law, staged within a linear temporality punctuated by institutional events, i.e. treaties signed, organizations created, wars commenced or concluded. This discursive posture is hardly a trivial matter of style. It conditions what we can see of the interwar and what we cannot. Liberal legalism, in this sense, is not merely a set of propositions; it is an infrastructure of intelligibility.[4]

The interwar archive as usually curated exemplifies the point. Narratives are built around the League of Nations, its covenantal architecture, its collective security mechanism, its procedural experiments, and its institutional failures. They dwell on the legal status of the use of force, the right to wage war, the traction of dispute settlement, and the successes and disappointments of disarmament. Mandates appear as laboratories of international administration and as techniques for managing colonial territories. Occasionally, the literature casts a broader net and engages with treaty implementation, minority protection, codification efforts, the International Labour Organization as a site for regulating industrial conditions, etc. But these remain marginal footpaths beside the boulevard of peace and security. The historiographic pattern is replicated in today's scholarship as well as in the programming of workshops and conferences: the chief questions continue to be war, peace, and institutionality. This is not a random or common-sense selection. It is a liberal one.

In fact, if we peel back the surface of these familiar narratives, we find the conceptual architecture of liberal legalism at work. First, an interwar centered on Versailles and Geneva can be read as a social contract moment in international life. Much as Westphalia has been

1 Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument (Cambridge University Press 2005); D. Kennedy, The Dark Sides of Virtue: Reassessing International Humanitarianism (Princeton University Press 2004); Susan Marks, The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology (Oxford University Press 2000); China Miéville, Between Equal Rights: A Marxist Theory of International Law (Brill 2005).

2 Mälksoo, Russian Approaches to International Law (Oxford University Press, 2015), chapters 2–3; see also Mälksoo, "The History of International Legal Theory in Russia", in Orford and Hoffmann (eds), The Oxford Handbook of the Theory of International Law (Oxford University Press, 2016), pp 475–493.

3 On the centrality of international organizations in international legal thought, see J d'Aspremont, 'The Love for International Organizations' (2023) 20 International Organizations Law Review 111.

4 Koskenniemi, "Histories of International Law: Dealing with Eurocentrism", Rechtsgeschichte – Legal History, 19, 2011, pp. 152–176; Koskenniemi, To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870, Cambridge University Press, 2021, esp. Introduction.

retroactively cast as a founding compact. Versailles similarly functions as a juridical covenant in which sovereigns, modeled as consenting agents, institute an order designed to overcome the "state of nature" of interstate war.[1] In the same vein, the state is anthropomorphized as a subject capable of will and obligation; consent becomes the basis of obligation; institution-building appears as the rational implementation of a collective will for peace.[2] Second, the narrative rests on a strict distinction between law and politics. Law is imagined as the apolitical counter to the "return of power politics", and the professional discipline through which violence can be domesticated and managed. Third, the narrative requires a sharp opposition between law and violence. War appears as the negation of law, while law appears as the negation of war. Fourth, the narrative venerates institutions – councils, assemblies, secretariats, courts – as the privileged vehicles of rational governance, translating moral aspiration into procedural reason. And fifth, it treats law's discursivity as scientific: objective fact-finding, neutral expertise, technical correction. In all this, the interwar becomes a parable of modernity: more law, more institutions, more peace, more progress.

It is probably in its stories of failure and innovation that populate interwar historiography displays its liberal modernity with greatest clarity. As I have tried to show elsewhere, a efficacious discursive sequence structures much of the literature: a formally delimited past is established (the League as an episode with a beginning and an end), a failure is narrated as causal for the episode's demise (collective security does not work; institutional design is flawed), and formative merit is attributed to that very failure (the lessons learned become the foundation of a better present).[3] Experiment narratives thus reconcile discontinuity and continuity: an episode ends, yet its failure becomes productive, authorizing the present. In the specific case of the League, the story runs as follows: the League fails, its failure instructs, and the United Nations – especially the Security Council – emerges as the rational innovation that internalizes these lessons. The distinction between failure and innovation collapses into a single liberal progress narrative: failure is recoded as the laboratory for innovation; innovation is vindicated by its departure from failure.

The comfort of that circle depends, however, on sustaining a paradigmatic distinction at the heart of liberal thought – the distinction between law and violence. In interwar historiography, law and violence often appear as antitheses: law is the domain of normativity, reason, and institutional form; violence is the breakdown of normativity into force. But this antithesis is not descriptive; it is an articulation that organizes visibility. Critical and philosophical literatures have long taught that law does not oppose violence from the outside; it is entangled with it from within. From Walter Benjamin's discussion of law-making and law-preserving violence[4] to Michel Foucault's account of disciplinary and biopolitical power,[5] law is world-

1 On the contractarian imaginary see Duncan Kennedy, A Critique of Adjudication, Harvard University Press, 1997, pp. 3–35.

2 See J. d'Aspremont, "Consenting to International Law in Five Moves" in Samantha Besson (ed.), *Consent in International Law* (Cambridge University Press, 2023), 117-134

3 J. d'Aspremont, "The League of Nations and the Power of "Experiment Narratives" in International Institutional Law", 22 *International Community Law Review* (2020), 275-290.

4 Benjamin, "Critique of Violence", in Bullock and Jennings, eds., *Walter Benjamin: Selected Writings*, Harvard University Press, 1996, vol. 1, pp. 236–252.

5 M. Foucault, Society Must Be Defended (Picador, 1997), see esp. the lectures of 17 and 24 March 1976.

making, disciplinary, extractive; it shapes bodies and lands; it universalizes norms, determines the conditions of subjectivity, and orders the sensible. To say that law is also violence is not to collapse law into force, but to register that law's ordering dimension is historically mediated by coercion, exclusion, and material practices that are neither secondary nor accidental to legality. Once this is seen, the liberal antithesis of law and violence appears as a strategic forgetting, a decision about where to draw the line of intelligibility.[1]

The consequences for interwar historiography are immediate. If violence is identified primarily with inter-state war in Europe, and if peace is understood as the cessation of such war, then the permanence of colonial violence will not register as war and may not even register as violence. Peace in Europe and within imperial metropoles becomes the peace that enables imperial projects elsewhere. Violence in mandates and protectorates is juridified as administration, development, or guardianship; resistance is criminalized or pathologized; extraction is coded as economic cooperation. The liberal understanding of peace is thus an imperial peace.[2] It is the peace of the colonizers among themselves, a peace that maintains the conditions for the ongoing subjection of others. When interwar peace is narrated as the triumph of legal progress in Europe, these imperial grammars vanish into the background. [3]

To insist on this point is not to deny that the interwar period witnessed genuine experimentation in judicial forms, treaty-making, or social reform. It is to question the epistemic costs of allowing a liberal concept of law to police the boundary between law and violence and to shape our sense of what counted as "innovation". The International Labour Organization's interventions in labor standards, for instance, cannot be understood without the proletarian and syndicalist imaginaries that pressed from below, nor without the gendered economy of care and reproductive labor that remained invisible to public law.[4] Nor can the period's case law be grasped without the role of women jurists and activists who reworked the terms of publicity, authority, and rights beyond the state-centric lens.[5] In the same vein, indigenous legal orders and anticolonial claims articulated normative repertoires that are routinely excluded from narratives of peace and security but were central to the interwar's legal life.[6] To restore these trajectories is to provincialize liberal legalism and to diversify the archive of legality.

To foreground the liberal grammar at work is also to illuminate the philosophy of subjectivity that underwrites interwar historiography. The autonomous subject – transposed onto the state – permits a consent-based account of order: obligations are valid because they are consented to by entities modeled as free and equal. Critical traditions have long shown how this formal equality masks material hierarchies and exclusions. The social contract's

1 See also China Miéville, *Between Equal Rights: A Marxist Theory of International Law*. Leiden: Brill, 2005.

2 See J. d'Aspremont, "The Imperial Peacecraft of International Law", in Andrea Gattini (ed.), La pace: bene supremo del diritto internazionale e dell'unione europea (forthcoming, 2026). See also China Miéville, *Between Equal Rights: A Marxist Theory of International Law*. Leiden: Brill, 2005.

3 L. Benton, *A Search for Sovereignty*, Cambridge University Press, 2010, ch. 6; Orford, International Authority and the Responsibility to Protect, Cambridge University Press, 2011, ch. 1.

4 Silvia Federici, *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle* (PM Press, 2012)

5 Gina Heathcote, *Feminist Dialogues on International Law*, Oxford University Press, 2019, ch. 3; Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, ch. 5.

6 Siba Grovogui, Beyond Eurocentrism and Anarchy, Palgrave, 2006, ch. 2; Antony Anghie, "Time, Colonialism, and the Critique of International Law", in Fassbender and Peters, eds., The Oxford Handbook of the History of International Law, Oxford University Press, 2012, pp. 1035–1057.

"state of nature" and its move to civil society are not descriptive of a universal history; they are normative fictions that displace race, gender, and class into the background of legality. In the interwar context, the "family of nations" framework rendered some polities capable of consenting and others only capable of being administered for their own good. Consent thus becomes the signature of civilization: those who can consent belong; those who cannot must be prepared for eventual belonging. Liberal legalism's emphasis on consent, then, sustains the state-centricity of interwar histories while naturalizing the exclusion of subaltern subjects whose normativity did not take the form of state consent.

None of this implies that contextualism, empiricism, or the reconstruction of causality must be abandoned. Rather, it suggests that the belief that these methods immunize history from politics is itself political.[1] Contexts must be chosen; facts must be selected; causal sequences must be assembled; and the very decision to center peace and security as the master problem of the interwar is a normative commitment. The choice of master narratives – whether human rights, peace, or security – shapes which pasts are rendered salient.[2] To provincialize peace and security as the exclusive lens is to open the archive to other master problematizations: work and reproduction; land and dispossession; racial capitalism and its juridical forms; indigenous jurisdiction and its suppression; the violence of borders and the administration of mobility; the aesthetics of order and the politics of expertise. Such a reorientation would not discard the League; it would re-situate it among many other interwars.

It follows that the persistence of this historiography in the twenty-first century is not an anachronism but an index of how liberal legalism endures as a scholarly common sense. The discipline's renewed interest in global history, in contextualism done with greater archival reach, and in "decentering Europe" sometimes leaves untouched the deeper liberal dichotomies of law/politics and law/violence and the social-contract metaphysic of the state. To write the interwar otherwise is not to abandon rigor; it is to redirect it. It is to accept that the archive is not only a repository of facts but a field of forces, and such a move is never innocent.

In sum, there are indeed many ways to narrate the interwar period, but the dominant mode – organized around peace and security, around war and its prevention, around the institutions that promised to tame violence – embodies a liberal concept of international law. That concept centers on consent and the anthropomorphized state; it distinguishes law from politics and from violence; it venerates institutions and scientizes legal discourse; it ties law to progress; and it frames failure and innovation as parts of a single-experiment narrative that vindicates the present. The consequence has been a historiography that continues to thrive in the twenty-first century: state-centric, institutionally focused, confident in progress, and insufficiently attentive to the colonial and social violences that its own categories render peripheral. Recognizing this is the first step toward a different history of the interwar, one that does not deny peace and security but refuses to allow them to monopolize what counts as law, as subject, as violence, etc.

1 On the idea of methods as routine, see J. d'Aspremont, 'International Legal Methods: Working for a Tragic and Cynical Routine' in Rossana Deplano & Nicholas Tsagourias Eds., Handbook on Research Methods in International Law (Elgar, 2020). See also Jean d'Aspremont, "Law, Critique and the Believer's Experience" (2024) 47:1 Dalousie Law Journal 43.

2 S. Moyn, The Last Utopia, Harvard University Press, 2010, esp. Introduction.

2. Alternative Histories of the Interwar Period

If the dominant interwar historiography has been organized around peace and security, my second claim is that it need not be so, and that, in fact, it ought not remain so now. Of course, there is ongoing value in retelling those familiar stories from non-Western vantage points, expanding the geography of expertise and the archive of actors while complicating the supposed universality of Geneva's idioms.[1] Yet the lesson of those perspectives is not merely to diversify the protagonists of a peace-and-security script. It is, rather, to rethink the script itself. The claim made in this section amounts to a call for a historiographical reorientation namely for reinventing how international lawyers narrate the interwar period so that it can serve as a site of critical insight into the mechanisms through which liberal orders disclose their vulnerability to illiberal transformation. Such insights are not to be found where we have been trained to look – at the level of collective security regimes, prohibitions on force, or arms control – but in the quotidian infrastructures of legality through which subjects were made precarious, rights were withdrawn, and coercion was normalized as administrative reason.

This reorientation is motivated by the present and by the increasingly fragile condition of liberal democracies. In recent months, police have entered university campuses across major cities, not as singular events but as part of the repertoire of governance. Social justice projects and minority protections are curtailed in the idiom of safeguarding freedom of expression. Protests against mass atrocities and violations of international law by certain states are prohibited and even criminalized. New techniques of public silencing gather under elastic labels – terrorism, extremism, wokism – deployed to ostracize and disable dissent. Basic civil liberties appear to be thinning at their edges in settings long held up as constitutional exemplars. This is not a phenomenon of the global periphery. It is legible in Berlin and Paris, in London and Washington. If the present is one of shrinking civic space and securitized governance, then our narrations of the interwar ought to be repurposed to illuminate how liberal orders become illiberal from within. A historiography that remains centered on peace and security at the interstate level, however sophisticated its institutional readings, cannot deliver those insights with sufficient granularity. The point is not to instrumentalize the past to fight the present, but to acknowledge that our modes of narration already do so and to choose methods that clarify the pathways by which law participates in transformations that liberal self-understandings struggle to name.[2]

It is more particularly submitted that the interwar period can be retold as a story of the demise of liberal constitutionalism, a descent into global conflict preceded and made possible by the internal erosion of constitutional orders. Such an account places at the center not battles between states but the unraveling of the legal and political conditions under which subjects could claim protection. From Weimar's constitutional innovations and crises to the French

1 T. Akami, Institutionalizing the Asia-Pacific: Diplomatic Networks and the International Order, 1919–1941, Routledge, 2002, chs. 1–2; Akami, "The Emergence of International Public Opinion and Asia's Place in the Interwar World", in Glenda Sluga and Patricia Clavin, eds., Internationalisms: A Twentieth-Century History, Cambridge University Press, 2017, pp. 195–217; R. Mitchell, Recentering the World: China and the Transformation of International Law, Cambridge University Press, 2022, ch. 3.

2 Orford, "International Law and the Limits of History", in Orford and Hoffmann, eds., The Oxford Handbook of the Theory of International Law, Oxford University Press, 2016, pp. 297–324, at 310–321.

Third Republic's oscillations, the period reads as a sequence of juridical erosions: emergency decrees normalized, executive discretion expanded, and parliamentary authority hollowed out, all under the sign of stabilizing order.[1] Retold this way, the interwar is not merely a prelude to war; it is a case study in how constitutional self-understandings accommodate their undoing through legal form.

A second retelling foregrounds statelessness as a central juridical technology of the period. Large segments of Europe's population were rendered stateless, left outside the protections of minority treaties, denaturalized through administrative and legislative measures, and cast into zones of non-right. The mass cancellations of naturalizations in the 1930s – affecting Jews, political dissidents, and others – illustrate how the removal of status could function both as punishment and as a precondition for further coercion.[2] In this story, the stateless person is not an unfortunate exception but a structural figure: more vulnerable than the criminal, less protected than the wrongdoer, exposed precisely because law has withdrawn its promises of belonging.[3] Recent international legal scholarship has mapped the interwar techniques that produced and administered statelessness, showing how humanitarian devices stabilized rather than cured the condition.[4] The contemporary analogies are unavoidable: denationalization forces in Europe and North America; security-driven deprivation of citizenship; administrative architectures that decouple presence from protection. To learn from the interwar here is to learn how the grammar of status can be weaponized through law, not despite it.

A third retelling centers the camp as a dominant spatial form of interwar governance, linking enemy alien internment during World War I, the routinization of internment for displaced and stateless persons in the interwar, and the progressive normalization of exceptional confinement. The genealogy extends back to the South African War's concentration camps, forward to World War I's civilian detention, and then laterally across the interwar to the proliferation of holding sites where liberty was administratively suspended.[5] The camp condenses the logic of exception by which law withdraws to produce bare life, though historians have cautioned against flattening its diverse forms.[6] The interwar camp was not only a premonition of later exterminatory spaces; it was an administrative solution to problems that law defined as security. To narrate the interwar as a history of camps is to track how deprivation of liberty becomes ordinary and how the line between policing and punishment blurs behind the façade of temporary necessity. In the present, the form persists and evolves – offshore processing centers, extraterritorial detention, ad hoc facilities

1 Carl Schmitt, Legality and Legitimacy, Duke University Press, 2004 [orig. 1932], chs. 2–3; David Dyzenhaus, Legality and Legitimacy, Cambridge University Press, 1997, ch. 1.

2 Patrick Weil, How to Be French: Nationality in the Making since 1789, Duke University Press, 2008, ch. 5; Eric Lohr, Nationalizing the Russian Empire: The Campaign against Enemy Aliens during World War I, Harvard University Press, 2003, ch. 7.

3 Hannah Arendt famously registered this transformation as the loss of the "right to have rights", locating in denationalization a weapon of totalitarian politics (Arendt, The Origins of Totalitarianism, Harcourt, 1973, pp. 267–302).

4 Michael Marrus, The Unwanted: European Refugees in the Twentieth Century, Oxford University Press, 1985, chs. 3–4.

5 Aidan Forth, *Barbed-Wire Imperialism: Britain's Empire of Camps*, 1876–1903, University of California Press, 2017, ch. 7; Stefan Manz, Panikos Panayi, and Matthew Stibbe, eds., *Internment during the First World War: A Mass Global Phenomenon*, Routledge, 2019, Introduction.

6 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, 1998, pp. 166–180; Jens Meierhenrich and Oliver Simons, eds., *The Oxford Handbook of Carl Schmitt*, Oxford University Press, 2016, ch. 24.

for migrants and asylum-seekers, secure zones justified by exceptional threat – making the interwar not merely analogous but genealogically proximate.[1]

A fourth retelling follows the demise of the right of asylum across the interwar. It was among the first rights torn apart when crises deepened: admissions narrowed; categories of protection shrank; safe passage was bureaucratized into impossibility; and the aspirational universalism of asylum gave way to discretionary charity. Asylum's transformation from juridical right to diplomatic indulgence is a central thread in the period's legal life, especially in France and Germany, where administrative doctrines converted protection into a security calculus.[2] The subsequent codification of refugee law after World War II – while a monumental achievement – was shadowed by interwar lessons that protection could be staged as a problem of screening, suspicion, and containment. As the Refugee Convention is hollowed out in practice today, with safe-third-country schemes, extraterritorial processing, and pushbacks normalized, the interwar offers a precedent for how juridical ideals can be converted into administrative bottlenecks without overtly renouncing their language.[3]

A fifth retelling concerns the securitization of migration, citizenship, and minority questions. In interwar France and Germany, matters once handled by immigration administrations increasingly migrated to the police and interior ministries; citizenship policy became a site of security governance; statelessness and minority protection were reframed as threats to be managed.[4] The League's minority regime, celebrated in some quarters as a legal innovation, also mapped difference onto surveillance and control, encoding hierarchies of belonging into administrative practice.[5] This is not merely a matter of illiberal overreach; it is a mode of liberal order in which legality and police rationalities form a continuous field. The present echoes are unmistakable: intelligence-led border control, predictive analytics in migration management, administrative detention normalized as routine, and citizenship deprivation reconceived as counter-terrorism tools.[6] To narrate the interwar through securitization is to reveal how legal order furnishes the instruments by which fear becomes policy and policy becomes rule.

These alternative narratives do not reject the significance of peace and security but de-center them as the axis around which the interwar must be understood. They also shift the conceptual grammar through which the period is rendered intelligible. Rather than treating law and violence as antitheses, they register law's imbrication in coercive practices. Rather

1 Nisha Kapoor, *Deport, Deprive, Extradite, Verso*, 2018, ch. 1; Martina Tazzioli, *The Making of Migration: The Biopolitics of Mobility at Europe's Borders*, Sage, 2020, ch. 3.

2 Philippe Rygiel, Le droit d'asile en France (1793–1993), L'Harmattan, 1996, ch. 4; Louise Holborn, *The International Refugee Organization: A Specialized Agency of the United Nations, Its History and Work* (1946–1952), Oxford University Press, 1956, ch. 1.

3 Catherine Dauvergne, Making People Illegal, Cambridge University Press, 2008, ch. 5; Thomas Gammeltoft-Hansen and James Hathaway, "Non-Refoulement in a World of Cooperative Deterrence", Columbia Journal of Transnational Law 53 (2015): 235–284.

4 Gerald Neuman, Strangers to the Constitution, Princeton University Press, 1996, ch. 2; Michael Marrus and Robert Paxton, Vichy France and the Jews, Stanford University Press, 1995, ch. 2.

5 Natan Sznaider, Memory and Forgetting in the Post-Holocaust Era, Routledge, 2016, ch. 1; Carole Fink, Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1938, Cambridge University Press, 2004, ch. 8.

6 Didier Bigo, "Security and Immigration", Alternatives 27, 2002, pp. 63–92; Lucia Zedner, "Securing Liberty in the Face of Terror", Journal of Law and Society 32, 2005, pp. 507–533.

than uplifting institutional innovation as the telos of history, they examine how institutional forms can serve the normalization of exception. Rather than reading failure and innovation as a dialectic that culminates in progress, they follow how "failure" in one register authorizes "innovation" in another, often more repressive, register.[1] The "lessons learned" are not simply about improving collective security; they include the perfection of legal-administrative tools that shrink the domain of liberty while preserving liberal self-descriptions. The camp, the passport, the denaturalization decree, the police file – these too were experiments in ordering the world.

The foregoing should suffice to make clear, one more time, that calling for a reinvention of interwar narratives is always premised on the idea that narration is never a-strategic and that the choice of master problems go hand-in-hand with the past we recover. The liberal historiographical posture – contextualist, empiricist, causal – has its virtues, but its claim to immunize writing from political stakes collapses upon inspection. Contexts are selected; causal chains are assembled; archives are built around what the discipline recognizes as relevant; and relevance has long been defined by the state and its institutions. Expanding the archive to include the legal techniques of exclusion, the administrative infrastructures of confinement, the juridical stripping of status, and the securitization of social life does not abandon rigor; it redistributes it. It also aligns historiography with the demands of the present, where liberal orders in the Global North are traversed by trends – illiberal legislation, securitized administration, punitive welfare, criminalized dissent – that the interwar can help us understand not as aberrations but as possibilities internal to liberal legality. The goal is intellectual and political at once: to rearm the imagination with histories that furnish concepts and genealogies adequate to resisting the drift back into fascistic modes of governance.

The reorientation advocated here also refines the critique of liberal progress narratives that has animated critical international law for decades. In the mainstream story, the failures of the League allowed us to innovate and create a superior Security Council, a narrative that domesticated catastrophe by converting it into pedagogy. Rewriting the interwar along the lines I have sketched does not invert that story with a simple declension. It rather tracks the double movement by which progress in one register – the professionalization of administration, the refinement of legal instruments, the intensification of expertise – correlates with the contraction of liberty and the consolidation of coercion. It is not only that more law, more institution, more peace is naive. It is that more law, more institutions can enable more sophisticated techniques for the administration of vulnerability.

A historiography reoriented as suggested here would entail concrete scholarly choices. It would resituate the League's minority regime within the administrative history of surveillance and control, not only within the legal history of protection.[2] It would connect interwar citizenship law to contemporary deprivation forces, tracing the persistence of categories and techniques across doctrinal ruptures.[3] It would read the International Labour Organization's

1 J. d'Aspremont, "The League of Nations and the Power of "Experiment Narratives" in International Institutional Law", 22 International Community Law Review (2020), 275-290.

2 Carole Fink, Defending the Rights of Others, Cambridge University Press, 2004, ch. 8.

3 Weil, How to Be French, Duke University Press, 2008, ch. 5; Audrey Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien", Queen's Law Journal 40, 2014, pp. 1–54.

achievements alongside the invisibilized infrastructures of reproductive labor and the gendered economies that remained outside public law's gaze, thereby refusing to reproduce the state–institution bias of liberal historiography.[1] It would provincialize Europe not only by adding non-European actors to a European script but by centering transimperial circuits of coercion through which camps, passports, policing, and status traveled and were refined.[2] And it would treat experiment narratives with suspicion because their progressive sequencing misrecognizes what was learned and by whom.

There are, then, many interwars available to us – interwars not reducible to stories of peace and security. The ones I have sketched – a demise of liberal constitutionalism, a legal history of statelessness, a genealogy of the camp, an erosion of asylum, a securitization of migration and minority governance – resonate with the urgencies of our present in ways that state-centric and institution-focused narratives cannot. They do so without abandoning the archive of international law. They redraw its boundaries and reweave its internal connections. If international legal scholarship is to provide usable pasts for resisting the current drift of the Global North toward authoritarian modalities of rule, it must invest in these alternative histories. The interwar, retold thus, furnishes not only understanding but also a repertoire of counter-institutions and counter-concepts: status as a shield rather than a weapon, mobility as a right rather than a suspicion, asylum as institutionalized solidarity rather than administrative indulgence. The work of narrating is itself a work of resistance, and the interwar can be made to speak to the present not by rehearsing the triumphs and failures of collective security, but by tracing the legal techniques through which liberty narrows while legality remains.

Concluding Remarks

What has been attempted here is not an aesthetic detour but a deliberate rearrangement of visibility. Strategic rewriting aims to center actors, peoples, and communities that the dominant plot renders peripheral, and to foreground injustices that the canonical script treats as incidental. By reordering who appears and under what descriptions, narration reorganizes causality and scale at once: status withdrawal becomes a hinge rather than an exception, confinement and administrative suspicion emerge as ordinary infrastructures rather than temporary anomalies, welfare inspection, registration, and the file assume the status of decisive sites where power condenses. This labor of centering is not merely corrective but is constitutive. It refashions the very map of what counts as a matter and what is consigned beyond the threshold of concern, redrawing the border between the intelligible and the unregistered through which centers and peripheries are manufactured.

Such strategic rewriting operates through techniques that are at once simple and far-reaching. Selection determines who becomes legible: when peace and security anchor the plot, diplomats, doctrinal settlements, and summitry are installed as protagonists; when status loss anchors the plot, the refused asylum-seeker, the denationalized person, the detainee,

1 Blackett, Everyday Transgressions, Cornell University Press, 2019, ch. 1; Boris and Klein, Caring for America, Oxford University Press, 2012, ch. 2.

2 Benton, A Search for Sovereignty, Cambridge University Press, 2010, ch. 6; Susan Pedersen, The Guardians: The League of Nations and the Crisis of Empire, Oxford University Press, 2015, ch. 7.

and the surveilled clerk step onto the stage. Scale-setting fixes what counts as the relevant unit of analysis: grand diplomacy naturalizes the nation-state and the conference table; administrative practice recenters the dossier, the registry, the inspection, and the appeal file as the scales where abstractions crystallize into outcomes. Causality orders explanation: a law-of-institutions narrative treats texts and treaties as engines of order; a practice-of-technique narrative shows how administrative reason folds emergency into routine, proceduralizing coercion as ordinary. Spatialization distributes authority: the canonical cartography maps Europe and the international as centers while treating camps, checkpoints, welfare offices, and police stations as peripheral; a technique-centered cartography reveals these so-called peripheries as the infrastructures through which the center governs. These narrative moves do not merely describe but govern. The archive is not neutral ground but a grid of legibility in which inclusion and exclusion are enacted as epistemic facts that subsequently harden into legal and political possibilities.

None of this implies that the study of the interwar period should be reduced to a purely literary activity or an exercise of imagination. The claim cuts the other way. One primarily governs the present through stories about the past. Storytelling is a technology of rule, a mode of allocating attention, distributing justificatory authority, and fixing what is credible as a cause. It sets the coordinates of center and periphery, delineates which chains of events count as intelligible, and supplies exemplars through which futures are rendered thinkable and actionable. To take history-writing seriously is to acknowledge that it configures archives as instruments of governance. It licenses some interventions as solutions while relegating others to the category of noise. It naturalizes certain scales – the state, the treaty, the conference – while occluding the sites where governance is enacted – the camp, the checkpoint, the welfare office, the registry, the holding cell, the appeal hearing, the inspection visit.

There is nothing novel in recognizing the pull of historical narration in this way. Even traditional international lawyers have understood history-writing as a strategic mode of intervention in the present. The comprehensive, linear histories of international law that crystallized in the late nineteenth and early twentieth centuries – authored by figures such as Ernest Nys, François Laurent, James Brown Scott, and Wilhelm Grewe – did not merely recount a past; they produced a canonical itinerary – origins, progress, maturation – that organized professional identity and claimed jurisdiction over meaning. The effort invested in building continuous lineages confirmed the field's maturity, staging a saga of steady development rather than episodic improvisation. It created disciplinary identity by furnishing founding figures, consolidating a shared vocabulary, and establishing criteria for inclusion and exclusion. It gave the field a scientific character by translating moral and political projects into methodological sequence, rendering normative preferences as findings of developmental necessity. It facilitated the universalization of international law by projecting a center outward, making extension appear as completion rather than imposition, turning difference into stages on a single track of maturation. And it perpetuated Western-centrism through techniques of selection and exemplarity that placed certain archives at the center of intelligibility while relegating others to footnotes, thereby reproducing an unequal cartography of relevance.

In sum, the genre functioned as a device of governance: it allocated visibility, stabilized authority, and trained practitioners to see the world through specific artifacts and scenes – treaty, doctrine, summit – while blurring the dossier, the deportation convoy, the welfare queue, and the detention ledger.[1]

This article cannot end without emphasizing the great degree of irony which the two claims made here coalesce into. In fact, unmaking the liberal understanding of peace through which the interwar is narrated can be seen as a way to uphold and vindicate the liberal international legal order itself. It is submitted here, however, that such irony does not need to be engineered away, for it is a structural condition of any critique that treats narration as governance. Rewriting the plot does not abolish the field and its main paradigms. It reconditions its problem-space so that what was once peripheral can become a matter of concern without requiring an exit from international legal discourse. Living with the irony means recognizing that dismantling a dominant liberal peace-narrative may fortify a different liberal practice. The payoff simultaneously is explanatory integrity and institutional traction. By centering those who were made to disappear and by taking storytelling as a present-tense exercise, the field acquires a grammar capable of showing how legality narrows liberty from within; how visibility is allocated unevenly so that some lives become matters of order while others remain outside the horizon of concern; and how centers and peripheries are continually manufactured through the very histories we write. Strategic rewriting, far from being a literary indulgence, is a mode of governance-conscious scholarship.

1 Jean d'Aspremont, The Critical Attitude and the History of International Law (Brill, 2019); Jean d'Aspremont, "Critical histories of international law and the repression of disciplinary imagination", 7 London Review of International Law (2019), 89–115.

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Between Procedure and Substance: A Legal Analysis of the ICJ Judgment in Certain Iranian Assets (*Iran v United States*)

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Abstract

This article provides a legal analysis of the International Court of Justice's judgment in Certain Iranian Assets (Iran v. United States), a treaty-based dispute arising from legislative, executive, and judicial measures adopted by the United States. These measures, including amendments to the Foreign Sovereign Immunities Act, the Terrorism Risk Insurance Act, and Executive Order 13599, enabled enforcement of terrorism-related judgments against assets associated with Iranian state-connected entities. Iran argued that these measures breached the 1955 Treaty of Amity, exposing broader tensions between domestic enforcement mechanisms, sovereign control over state-linked assets, and international treaty obligations in contexts shaped by economic pressure and national security policy. A central theme of the article is the interaction between procedural and substantive dimensions of ICJ adjudication. It explains how the Court's preliminary objections phase, particularly the 2019 judgment, functioned as a decisive procedural filter, narrowing the dispute to claims falling within the Treaty's ratione materiae scope while excluding arguments framed as violations of customary international law concerning sovereign immunity. This delimitation significantly shaped the subsequent merits analysis and the remedies available. The article also clarifies a common misunderstanding regarding the outcome. Although the dispute was publicly associated with the attachment of approximately USD 1.75 billion in assets linked to Bank Markazi, the Court did not order their return. It held that claims advanced on behalf of Bank Markazi fell outside the Treaty's protections because Iran failed to demonstrate that the bank engaged in commercial activities capable of bringing it within the Treaty's concept of a protected "company." By contrast, other Iranian entities were found to fall within the Treaty framework, and certain United States measures were held to breach obligations relating to juridical status, treatment of companies, unlawful taking of property, and freedom of commerce. Finally, the article examines the Court's rejection of the United States' essential security defence and its approach to remedies, emphasizing compensation and the principle of full reparation following the Treaty's termination.

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Introduction

The judgment of the International Court of Justice (ICJ) in *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)* constitutes a significant decision at the intersection of international economic law, State responsibility, and treaty-based inter-State adjudication. Decided pursuant to the compromissory clause of the 1955 *Treaty of Amity, Economic Relations*[1] *and Consular Rights*, the dispute arose from a series of legislative, executive, and judicial measures adopted by the United States that enabled private claimants to enforce terrorism-related judgments against assets associated with Iranian State-linked entities.[2]

Iran challenged these measures before the Court on the basis that they violated obligations contained in the 1955 Treaty of Amity[3], in particular provisions relating to juridical status, the treatment of companies, and protection of property, financial transfers, and freedom of commerce. The case thereby raised complex questions concerning the relationship between domestic regulatory frameworks, the enforcement of claims against sovereign-linked assets, and binding international treaty commitments.[4]

Beyond its factual background, the dispute offers an important lens for analyzing the interaction between procedural architecture and substantive legal determinations in international adjudication. The litigation required the Court to address multiple doctrinal issues, including jurisdiction under bilateral treaties, admissibility and the doctrine of exhaustion of local remedies, the distinction between jurisdictional limitations and substantive defenses, treaty interpretation, and the principles governing remedies and reparation. Although the measures at issue originated from legislative, executive, and judicial action, attribution to the respondent State was not itself contentious; rather, the central legal questions concerned the scope and application of treaty obligations.[5]

The proceedings also involved significant jurisdictional filtering during the preliminary objections phase, particularly in the Court's 2019 judgment, which excluded claims framed as violations of customary international law concerning sovereign immunity from the Court's treaty-based jurisdiction.[6]

The purpose of this article is to provide a comprehensive legal analysis of the Court's judgment and its doctrinal implications for contemporary international law. In particular, the article addresses three principal research questions. First, how does the Court reconcile procedural doctrines, particularly jurisdiction, admissibility, and preliminary objections, with substantive determinations concerning treaty breaches and State responsibility? Second, what

1 Merits 41–45

2 ICJ, Certain *Iranian Assets* (n above) paras 39–63; Chester Brown SC, 'Certain Iranian Assets (Iran v United States): An Introduction to the Judgment' (2025) 39 *ICSID Review* 447, 448–450. The case concerned US government measures authorizing attachment of property of certain Iranian State-owned entities, including its central bank, to satisfy default judgments obtained in terrorism-related cases against Iran

3 Treaty of Amity, Economic Relations, and Consular Rights (Iran–United States) (signed 15 August 1955, entered into force 16 June 1957) 284 UNTS 93 art XXI(2); ICJ, *Certain Iranian Assets* (Merits) paras 15–18.

4 Jürgen Kurtz, 'The Use and Abuse of Investment Treaty Arbitration: Reconciling Foreign Investment Protection with Public Policy' (Cambridge University Press 2016) 36–38; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 584–586.

5 ICJ, *Certain Iranian Assets* (Merits) paras 80–101.

6 ICJ, *Certain Iranian Assets* (Merits) paras 80–101.

contributions does the judgment make to the development of international law concerning State-owned entities, treaty protections, and the invocation of essential security exceptions? Third, what implications does the decision hold for the relationship between unilateral economic measures, sanctions regimes, and international treaty obligations? By addressing these questions, the article situates the judgment within the broader evolution of international economic governance and international adjudicatory practice.

In its 2019 Preliminary Objections Judgment, the Court did not finally determine the status of *Bank Markazi* and deferred the issue to the merits stage. In its 2023 Judgment, the Court ultimately upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims predicated on the treatment accorded to *Bank Markazi*, concluding that the bank could not be characterized as a "company" within the meaning of the relevant Treaty provisions. The Court found that Iran had failed to demonstrate that *Bank Markazi* engaged, alongside its sovereign central-banking functions, in activities of a commercial character; the investment operations relied upon were considered inseparable from the exercise of sovereign reserve-management functions. As a consequence, the Court lacked jurisdiction over Treaty claims relating to *Bank Markazi* and did not order the release or restitution of the assets associated with the bank.

The judgment further reinforces the continuing relevance of treaty-based dispute settlement mechanisms even in politically sensitive contexts marked by deteriorating diplomatic relations. Although the United States notified termination of the Treaty of Amity during the proceedings, the Court confirmed that its jurisdiction remained intact because the Treaty was in force at the date of *seisin*[1] and that international responsibility could arise in relation to conduct occurring while the Treaty remained operative[2]. At the same time, the subsequent termination of the Treaty had implications for the availability of prospective remedies. The Court therefore held that cessation was not an appropriate remedy because the breached obligations were no longer in force. This illustrates how temporal considerations interact with substantive legal consequences in international adjudication. The Court's treatment of remedies, particularly its emphasis on compensation and the principle of full reparation, contributes to the consolidation of remedies jurisprudence in contemporary international law.

This article proceeds in several stages. It begins by examining the factual and legal background of the dispute, including the legislative and executive framework underlying the contested measures and the role of the Treaty of Amity as both a jurisdictional and substantive framework. It then analyses the procedural architecture of the case before the Court, with particular emphasis on the preliminary objections phase and jurisdictional filtering. The discussion subsequently turns to questions of jurisdiction and admissibility, including the distinction between jurisdictional limitations and substantive defenses, the treatment of sovereign immunity claims outside the Treaty framework, and the doctrine of exhaustion of local remedies.[3]

1 Merits 43–45; PO 2019 38–39. The date of seisin is the date on which proceedings are formally instituted before the Court.
2 ICJ, *Certain Iranian Assets* (Merits) paras 33–36; ICJ, *Nicaragua v United States* (Jurisdiction) ICJ Reports 1984, para 59.
3 ICJ, *Certain Iranian Assets* (Preliminary Objections) paras 36–44; Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, OUP 2015) 167–170

The article then evaluates the Court's substantive determinations on the merits, including the status of *Bank Markazi*, the identification of treaty breaches, attribution of State conduct, and the application of the essential security exception. This is followed by an examination of the remedies phase and the application of the principle of full reparation [1]. The analysis further explores the doctrinal contributions and legal significance of the judgment, including its implications for the treatment of State-owned entities, before considering the broader implications of the decision for international law, particularly in relation to international economic law and sanctions regimes. The article concludes with a critical evaluation of the judgment and its potential impact on future litigation and the development of international law.

Through this analysis, the article argues that *Certain Iranian Assets* represents an important precedent demonstrating how international adjudication mediates tensions between sovereign regulatory autonomy and binding treaty obligations, while simultaneously reinforcing the coherence of procedural and substantive doctrines within the international legal order[2]. The decision illustrates both the possibilities and the structural limits of treaty-based litigation in addressing disputes involving economic coercive measures, sovereign assets, and politically sensitive regulatory actions, thereby contributing to the progressive development of international law.[3]

1. Factual and Legal Background of the Dispute

1.1. Background and Origins of the Dispute

The dispute in *Certain Iranian Assets (Iran v United States)* arose from a series of legislative, executive, and judicial measures adopted by the United States, notably provisions of the Terrorism Risk Insurance Act of 2002 (TRIA), amendments to the Foreign Sovereign Immunities Act (FSIA), and related executive actions, which enabled private plaintiffs to obtain and enforce terrorism-related judgments against Iranian State entities and financial

1 Factory at Chorzów (Germany v Poland) (Merits) PCIJ Series A No 17 (1928) 47; ICJ, *Certain Iranian Assets* (Merits) paras 236–244.

2 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Preliminary Objections, Judgment) ICJ Reports 2019, paras 32–45; Hugh Thirlway, *ICJ* (2nd edn, OUP 2016) 149–156; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment, 30 March 2023, ICJ Reports 2023, paras 102–110.https://www.icj-cij.org/case/164

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Merits, Judgment) [2023] ICJ Rep — Judgment of 30 March 2023, available at: https://www.icj-cij.org/case/164/judgments accessed 19 February 2026; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Preliminary Objections, Judgment) [2019] ICJ Rep 7, paras 41–57, available at: https://www.icj-cij.org/case/164/judgments accessed 19 February 2026; ICJ, *Certain Iranian Assets* (Merits Judgment) (n 1) paras 36–44 and 222–252; Kentaro Nakajima, 'Sovereign Function Test Out of Thin Air? The Status of the Central Bank of Iran in Certain Iranian Assets' (2024) 15(3) *Journal of International Dispute Settlement* 474, available at: https://academic.oup.com/jids/article/15/3/474/7637709 accessed 19 February 2026; Chester Brown and Kate Parlett (eds), *The Law of International Courts and Tribunals* (2nd edn, OUP 2024) ch 12; Factory at Chorzów (Germany v Poland) (Merits) PCIJ Rep Series A No 17 (1928) 47; Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2015* (5th edn, Brill 2016) vol II, 575–580; David A. Wirth, 'Certain Iranian Assets: Treaty Litigation in a Sanctions Context' (2024) 118 *American Journal of International Law* 345; Sidley Austin LLP, 'Implications for Investor-State Disputes Arising From the ICJ's Judgment in Certain Iranian Assets' (26 April 2023) available at: https://www.sidley.com/en/insights/newsupdates/2023/04/implications-for-investor-state-disputes-arising-from-the-icjs-judgment accessed 19 February 2026

institutions.[1] Beginning in the late 1990s and continuing into the early 2010s, these measures established mechanisms through which assets associated with Iran could be attached and distributed to satisfy judgments rendered by United States courts. One of the most politically prominent aspects of the dispute concerned approximately USD 1.75 billion in bond proceeds linked to the Central Bank of Iran (*Bank Markazi*), which became subject to attachment and execution proceedings in the United States, although claims relating to that entity were subsequently found by the Court to fall outside its jurisdiction under the Treaty framework.[2]

Iran instituted proceedings before the International Court of Justice in June 2016, alleging that these measures violated obligations owed under the 1955 *Treaty of Amity, Economic Relations and Consular Rights*, including provisions relating to the juridical status and treatment of companies, protection of property, access to courts, financial transfers, and freedom of commerce. Iran contended that the United States had failed to respect the separate legal personality and property rights of Iranian companies and had impaired their commercial activities in a manner inconsistent with treaty guarantees. The United States contested both jurisdiction and the merits of Iran's claims, raising objections based on the scope of the Treaty, the doctrine of exhaustion of local remedies, and several substantive defenses, including reliance on the security exceptions contained in Article XX. The dispute therefore emerged at the intersection of international economic law, sovereign asset enforcement, and inter-State treaty obligations, ultimately culminating in the Court's merits judgment of 30 March 2023.[3]

Beyond the immediate legal issues, the case reflects broader geopolitical tensions between the parties following the deterioration of diplomatic relations after the 1979 Iranian Revolution and the subsequent rupture of bilateral relations. Nevertheless, the continued existence of the Treaty of Amity as a binding legal instrument, despite the absence of diplomatic relations, permitted the dispute to be adjudicated within the framework of international law. The proceedings therefore illustrate the enduring legal relevance of treaty commitments even in contexts of profound political hostility and strategic confrontation.[4]

The domestic legal framework underlying the dispute formed part of a broader United States policy response to State-sponsored terrorism. Legislative developments progressively curtailed sovereign immunity protections for designated State sponsors of terrorism and authorized the enforcement of judgments against assets of foreign States and their agencies or instrumentalities.

1 Merits 152–159, 172–189

2 Bank Markazi, Aka Central Bank of Iran, v. Peterson et al. Certiorari to the United States Court of Appeals for the Second Circuit No. 14–770. Argued January 13, 2016—Decided April 20, 2016; The ICJ's Judgment in Certain Iranian Assets: Consequences for Investment Disputes Arising Out of Economic Sanctions; Alexander Dünkelsbühler; European Investment Law and Arbitration Review; Volume 8, Issue 1 (2023) pp. 263 – 282; https://doi.org/10.54648/eila2024016; No. 24In the Supreme Court of the United States Clearstream Banking, S.A., V. Deborah D. Peterson, et al., Petitioner, Respondents. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit Petition for a Writ of Certiorari Benjamin S. Kaminetzky Counsel of Record David B. Toscano Corey M. Meyer Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 (212) 450-4000 ben.kaminetzky@davispolk.com Counsel for Petitioner Clearstream Banking S.A. May 7, 2025]; Case Note Investment Law at ICJ: Certain Iranian Assets (Islamic Republic of Iran V United States of America) Jarrod Hepburn, Melbourne Journal of International Law [Vol 24(2); Iran Initiates Suit Against the United States in ICJ, While Sanctions Take Effect. American Journal of International Law. 2019;113(1):173-182. doi:10.1017/ajil.2018.116

3 Case 164 - Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Number (Press Release, Order, etc.) 2023/3, Date 03/30/2023, Document Number 164-20230330-SUM-01-00-EN

4 Iran Initiates Suit Against the United States in ICJ, While Sanctions Take Effect. American Journal of International Law. 2019;113(1):173-182. doi:10.1017/ajil.2018.116

Although grounded in domestic policy objectives relating to victim compensation and national security, these measures generated significant tensions with international legal principles governing sovereign property and the treaty-based protections afforded to foreign companies.

1.2. U.S. Legislative and Executive Framework Leading to the Dispute

The legal framework underlying the dispute was shaped by a series of United States legislative and executive measures designed to facilitate compensation for victims of terrorism through enforcement against assets associated with designated State sponsors of terrorism, including Iran. Statutory developments, most notably Section 201(a) of the Terrorism Risk Insurance Act of 2002 (TRIA) and Section 1610(g)(1) of the Foreign Sovereign Immunities Act (FSIA), expanded the scope of property available for execution against foreign State assets and established mechanisms enabling plaintiffs holding terrorism-related judgments to attach assets belonging to foreign States and their agencies or instrumentalities. These legislative measures were complemented by executive action, in particular Executive Order 13599 issued in 2012, which comprehensively blocked Iranian government and financial assets within United States jurisdiction, although the purposes and legal basis of that executive measure differed from the statutory compensation framework.[1]

Within this legal environment, United States courts authorized attachment and execution against assets linked to Iranian entities through a series of enforcement proceedings, including the *Weinstein*, *Bennett*, *Heiser*, and *Levin* cases that the Court examined. These proceedings involved various categories of property, including real estate, funds representing contractual debts owed to Iranian companies, and proceeds of electronic fund transfers held through intermediary financial institutions. Among the most prominent were funds associated with *Bank Markazi* held through custodial arrangements involving intermediary financial institutions.[2]

Iran argued before the International Court of Justice that these measures, taken collectively, constituted a pattern of conduct incompatible with treaty obligations protecting the juridical status of companies, property rights, and commercial activities. The United States, by contrast, maintained that the measures fell outside the scope of the Treaty or were justified by permissible treaty exceptions, particularly the security provisions contained in Article XX, while also raising both procedural and substantive defenses. The legislative and executive framework therefore formed the factual foundation of the dispute and highlighted the tension between domestic legal mechanisms designed to advance foreign policy and victim-compensation objectives and international obligations arising under bilateral treaties.[3]

1 Foreign Sovereign Immunities Act 1976, 28 USC §§ 1602–1611 (as amended); Terrorism Risk Insurance Act of 2002, Pub L No 107-297, § 201, 116 Stat 2322; Executive Order No 13,599, 'Blocking Property of the Government of Iran and Iranian Financial Institutions' (5 February 2012) 77 Fed Reg 6659; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) [2023] ICJ Rep, paras 30–49.

2 *Bank Markazi v Peterson* 578 US 212 (2016)

3 CJ Judgment (2023) paras 51–70 (factual background of assets and litigation); Ingrid Wuerth, 'The Future of the Federal Common Law of Foreign Relations' (2017) 106 Georgetown Law Journal 1825; Chimène Keitner, 'Foreign Sovereign Immunity and the Enforcement of Terrorism Judgments' (2016) 110 AJIL Unbound 181; Vienna Convention on the Law of Treaties (opened for signature 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 27; *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466, para 90; Foreign Sovereign Immunities Act 1976, 28 USC §§ 1602–1611 (as amended); Terrorism Risk Insurance Act of 2002, Pub L No 107-297, § 201, 116 Stat 2322; *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) [2023] ICJ Rep paras 30–49;

The Court's findings that certain measures violated Treaty protections illustrate the established principle that the adoption and application of domestic legislation do not preclude the international responsibility of a State where those measures are inconsistent with its treaty obligations. In the present case, the Court concluded that the legislative provisions, together with their judicial enforcement, were unreasonable and resulted in compensable takings of property belonging to Iranian companies protected under the Treaty. More broadly, the case demonstrates how national regulatory regimes, even when adopted for legitimate public policy purposes, may give rise to international responsibility when they interfere with rights protected under binding international agreements.

In assessing these measures, the Court accepted that providing compensation to victims of terrorism could constitute a legitimate public purpose. However, it concluded that the legislative framework, as applied, failed to respect the separate juridical personality of the Iranian companies concerned and produced effects that were unreasonable and disproportionate within the meaning of the Treaty provisions invoked. The resulting impairment of rights was therefore considered incompatible with the standards established in Articles III and IV of the Treaty.

1.3. The Treaty of Amity as a Jurisdictional and Substantive Framework

The 1955 *Treaty of Amity, Economic Relations and Consular Rights* constituted the central legal framework governing the dispute and performed both jurisdictional and substantive functions in the proceedings. In particular, Article XXI, paragraph 2, of the Treaty provided the compromissory clause through which the Court's jurisdiction was invoked, while the substantive provisions of the Treaty supplied the legal standards against which the challenged measures were assessed.[1]

Concluded during a period of diplomatic cooperation between Iran and the United States, the Treaty established reciprocal protections concerning economic relations, the treatment of nationals and companies, property rights, access to courts, financial transfers, and freedom of commerce. It also contained a compromissory clause conferring jurisdiction on the International Court of Justice over disputes concerning its interpretation or application, thereby creating a direct pathway for treaty-based adjudication between the Parties.[2]

Despite the profound deterioration of bilateral relations following the Iranian Revolution of 1979, the Treaty remained in force during the relevant period. The United States gave notice of termination on 3 October 2018, and the Treaty ceased to have effect one year later pursuant to its termination clause. This development did not affect the Court's jurisdiction over a dispute instituted in June 2016, since jurisdiction is determined as of the date of seisin and international responsibility may arise in relation to conduct occurring while the treaty remained in force. However, the subsequent termination of the Treaty had implications for remedies, particularly the availability of cessation, because the breached obligations were no longer in force at the time of judgment.[3]

Executive Order No 13,599, 'Blocking Property of the Government of Iran and Iranian Financial Institutions' (5 February 2012) 77 Fed Reg 6659; ICJ Judgment (2023) paras 37–40; *Bank Markazi v Peterson* 578 US 212 (2016); ICJ Judgment (2023) paras 51–70; Vienna Convention on the Law of Treaties (1969) art 27; *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466 para 90; ICJ Judgment (2023) merits findings.

1 Treaty of Amity; ICJ 2023 Judgment paras 38–46.

2 Treaty of Amity art XXI(2).

3 The United States notified termination of the Treaty of Amity on 3 October 2018, and the Treaty is treated as ceasing to be in

The provisions invoked by Iran, particularly those relating to the recognition of juridical status (Article III), fair and equitable treatment and protection against unreasonable measures (Article IV), property rights (Article IV), financial transfers (Article VII), and freedom of commerce (Article X), illustrate the capacity of friendship, commerce, and navigation (FCN) treaties to regulate State conduct affecting foreign nationals and companies. The Treaty also contains exceptions relating to essential security interests in Article XX, which became a central issue in the litigation. [1] The Court clarified that these exceptions operate as substantive defenses on the merits rather than jurisdictional limitations, thereby requiring evidentiary substantiation and judicial assessment of their applicability in the circumstances of the case.

More broadly, the case illustrates the resilience of treaty commitments[2] within the international legal system. Even in the absence of diplomatic relations, treaty obligations continued to provide a legal basis for adjudication and dispute resolution until their formal termination in accordance with treaty procedures. The Treaty of Amity therefore served not only as a jurisdictional instrument enabling access to the Court but also as a substantive framework governing the legality of the measures in question. This dual function[3] highlights the enduring relevance of bilateral economic treaties as mechanisms for regulating inter-State conduct and resolving disputes in contemporary international law. [4]

The Court's approach is consistent with its earlier jurisprudence concerning the same Treaty, particularly in *Oil Platforms (Islamic Republic of Iran v United States of America)*, where the Treaty likewise operated as both the jurisdictional basis and the substantive legal framework.

1.3.1. Scope of the Dispute and Relief Sought vs Relief Granted

A recurrent misunderstanding in both public and academic commentary is that the Court "ordered" the United States to return or unfreeze the approximately USD 1.75 billion in assets associated with *Bank Markazi*. The judgment is more nuanced. Although the proceedings arose in the shadow of that asset-enforcement episode, the Court's determinations were structured around the Treaty-defined beneficiaries and the Treaty-defined obligations that fell within its jurisdiction. In its merits analysis, the Court concluded that claims predicated on the treatment accorded to *Bank Markazi* fell outside its jurisdiction under the relevant Treaty provisions. It reasoned that Iran had not demonstrated that *Bank Markazi* engaged, alongside its sovereign central-banking functions, in activities of a commercial character

force one year after that notice. ICJ 2023 Judgment paras 40–42; ICJ 2019 Judgment paras 35–41.

1 Treaty of Amity art XX; ICJ 2023 Judgment paras 173–186.

2 Brown (ICSID Review); Dupont article.

3 Rosenne, *Law and Practice of the ICJ*.

4 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023] ICJ Rep (30 March 2023); Jurisdiction basis in paras 38–46; Treaty provisions in paras 41–45; Termination effect in paras 40–42; Pierre-Emmanuel Dupont, 'The ICJ and the Treaty of Amity Litigation Between Iran and the United States' (2021).; Shabtai Rosenne, *The Law and Practice of the International Court* (4th edn, Nijhoff 2006); Treaty of Amity, Economic Relations and Consular Rights (Iran–United States) signed 15 August 1955, 284 UNTS 93; ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023] ICJ Rep (30 March 2023) paras 38–46; ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) [2019] ICJ Rep 7 paras 35–41; Treaty of Amity arts III, IV, V, X; ICJ 2023 Judgment paras 105–140; Treaty of Amity art XX; ICJ 2023 Judgment paras 173–186; Chester Brown, 'Certain Iranian Assets (Iran v United States): Introduction' (2025) 39 ICSID Review; Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2005* (4th edn, Martinus Nijhoff 2006).

capable of bringing it within the Treaty's concept of a protected "company." In its 2019 Preliminary Objections Judgment, the Court had deferred determination of this issue; in the 2023 Judgment, it upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims relating to *Bank Markazi*. Consequently, the Court did not grant relief directing the release or restitution of the assets linked to *Bank Markazi*.[1]

By contrast, the Court did find that other Iranian entities qualified as "companies" protected under the Treaty of Amity and that certain United States legislative and judicial measures affecting their assets breached Treaty obligations, including those relating to juridical status, fair and equitable treatment, protection against unreasonable measures, and freedom of commerce. The operative consequence of those established breaches was not an order of immediate restitution or legislative reversal, but rather a declaration of international responsibility accompanied by an obligation to provide compensation. The Court held that the amount of compensation should be determined either by agreement of the Parties within a specified period or, failing such agreement, in a subsequent phase of the proceedings before the Court. Requests for cessation were rejected because the Treaty had been terminated and was no longer in force at the time of judgment.[2]

This framing is important for both factual accuracy and doctrinal clarity. The case is best understood as a treaty-based inter-State responsibility dispute resulting in declaratory findings of breach and compensation-oriented reparation, rather than as a judicial mechanism for the direct recovery of specific assets such as the *Bank Markazi* funds. The judgment therefore illustrates the structural limits of treaty litigation, where jurisdiction is confined to treaty-defined rights and beneficiaries, and remedies follow the law of State responsibility rather than the logic of private asset recovery.[3]

The distinction drawn by the Court between *Bank Markazi* and other Iranian entities further underscores the functional approach adopted in determining treaty beneficiaries, focusing on the nature of the activities concerned rather than on formal State ownership alone.

2. Procedural Architecture of the Case before the ICJ

2.1. Procedural History of the Proceedings

The procedural development of *Certain Iranian Assets (Iran v United States)* reflects the multi-stage structure typical of complex inter-State litigation before the International Court of Justice. Proceedings were instituted by Iran in June 2016, invoking Article XXI, paragraph 2, of the 1955 Treaty of Amity as the jurisdictional basis. The case subsequently proceeded through a preliminary objections phase, culminating in the Court's judgment of 13 February

1 Merits 90, 256 operative clause

2 Certain Iranian Assets (Merits) [2023] ICJ Rep, paras 277–283.

3 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) [2023] ICJ Rep, paras 47–56, 103–121; André Ouellet, 'ICJ and the Protection of Foreign Property under Customary International Law: Reflections on Certain Iranian Assets' (2025) 16 Journal of International Dispute Settlement; ICJ, Certain Iranian Assets (Judgment of 30 March 2023) Press Release No 2023/16; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) [2023] ICJ Rep, paras 103–121; ; ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) [2023] ICJ Rep ___, paras 277–283; ICJ , Press Release No 2023/16 (30 March 2023); US Institute of Peace, 'UN Court Rejects Iran's Case to Unfreeze Assets' (2023); Factory at Chorzów (Germany v Poland) (Merits) PCIJ Rep Series A No 17 (1928) 47.

2019, followed by a merits phase that concluded with the final judgment delivered on 30 March 2023. [1] This procedural trajectory illustrates the Court's systematic approach to addressing jurisdictional and admissibility questions prior to the examination of the merits, while also demonstrating how certain issues, such as the status of particular entities, may require further clarification at the merits stage.[2]

Throughout the proceedings, the case engaged a number of procedural doctrines central to international adjudication. These included jurisdictional filtering concerning the *ratione materiae* scope of the Treaty and the status of specific entities such as *Bank Markazi*; admissibility challenges based on the doctrine of exhaustion of local remedies; and the treatment of arguments relating to abuse of process, clean hands, and abuse of rights. The litigation also involved evidentiary burdens associated with the invocation of treaty exceptions, particularly the essential security provisions contained in Article XX.[3]

The Court further addressed questions concerning the relationship between earlier procedural findings and subsequent merits analysis, clarifying the limits of the *res judicata* effect of its judgment in preliminary objections. It emphasized that arguments resembling previously rejected objections could nevertheless be raised as substantive defenses on the merits, provided they were examined within the appropriate legal framework and with due regard to the reasoning adopted in the earlier phase.[4]

An additional procedural dimension arose from the termination of the Treaty of Amity by the United States, which notified Iran of its denunciation on 3 October 2018, [5] after proceedings had been instituted but before the judgment on the merits was delivered. The Court held that this development did not affect its jurisdiction, which is determined as of the date of seisin, but it did affect the scope of available remedies.[6]

The Court's handling of this development, maintaining jurisdiction while recognizing the absence of continuing treaty obligations for purposes of cessation, demonstrates the interaction between procedural timing and substantive legal consequences. Because the Treaty was no longer in force at the time of judgment, the Court rejected Iran's request for cessation of wrongful acts while confirming that responsibility could still arise for past breaches. Finally, the Court structured the remedies phase to allow for a potential subsequent proceeding concerning the quantification of compensation if negotiations between the Parties failed within twenty-four months.[7]

Collectively, the procedural architecture of the case illustrates how ICJ proceedings integrate jurisdictional, admissibility, evidentiary, and remedial considerations within a

1 *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits)* Judgment of 30 March 2023

2 Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2015* (5th edn, Brill 2016) vol II, 831–845; Hugh Thirlway, ICJ (2nd edn, OUP 2016) 108–115.

3 ICJ, *Certain Iranian Assets (Preliminary Objections)* paras 101–123; Elettronica Sicula SpA (ELSI) (United States v Italy) (Judgment) [1989] ICJ Rep 15, paras 50–55; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 686–691.

4 Merits 106–113

5 ICJ, *Certain Iranian Assets (Merits)* paras 33–36; Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331, art 70.

6 ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Application Instituting Proceedings, 14 June 2016); Treaty of Amity, Economic Relations and Consular Rights (Iran–United States) (signed 15 August 1955, entered into force 16 June 1957) 284 UNTS 93, art XXI(2).

7 ICJ, *Certain Iranian Assets (Merits)* operative clause; paras 281–289.

coherent adjudicatory framework. The progression from preliminary objections to merits and remedies also demonstrates the interaction between procedural determinations and substantive outcomes, reinforcing the central analytical theme of this article concerning the relationship between procedure and substance in international adjudication. The case further illustrates that the distinction between jurisdiction and merits is not always rigid, as certain factual and legal questions, such as the characterization of entities, may require reconsideration at different procedural stages.

2.2. Preliminary Objections and the Role of Jurisdictional Filtering

The preliminary objections phase played a decisive role in shaping the scope of the dispute ultimately adjudicated on the merits. In its 2019 Judgment on Preliminary Objections, the Court undertook a detailed jurisdictional filtering exercise to determine which of Iran's claims fell within its jurisdiction under the Treaty of Amity and which did not. The Court examined objections concerning jurisdiction *ratione materiae*, admissibility, and the doctrine of exhaustion of local remedies, rejecting several objections while clarifying important limitations on the scope of the case. This stage illustrates the Court's methodological approach to treaty-based jurisdiction, whereby the applicability of treaty provisions is assessed at an early procedural stage in order to delimit the issues to be examined on the merits. The Court's reasoning confirmed that jurisdiction depends not only on the existence of a treaty conferring jurisdiction but also on whether the specific claims advanced fall within the material scope of the treaty obligations invoked.

A particularly significant aspect of this phase concerned the qualification of entities under the Treaty's definition of "companies." The Court acknowledged that such questions may possess both jurisdictional and substantive dimensions, depending on the context in which they arise. This dual character was especially evident in relation to *Bank Markazi*. In the preliminary objections judgment, the Court did not definitively resolve whether *Bank Markazi* qualified as a protected "company," considering that the issue required a fuller examination of the factual record and should therefore be addressed at the merits stage. The question nevertheless remained central, as the characterization of the entity would ultimately determine whether Treaty protections, and thus the Court's jurisdiction, were engaged. The preliminary objections judgment therefore illustrates how procedural determinations may shape substantive outcomes by narrowing the range of claims available for adjudication while leaving certain issues for later clarification.

The Court also clarified the relationship between preliminary objections and later stages of proceedings through its treatment of arguments resembling previously rejected objections. In particular, it emphasized that the rejection of an admissibility objection, such as the United States' earlier abuse of process argument, did not preclude the respondent from advancing related arguments as substantive defenses on the merits, provided they were examined within the appropriate legal framework. In doing so, the Court reaffirmed a nuanced approach to the *res judicata* effect of preliminary rulings in international litigation, ensuring procedural fairness while maintaining consistency with prior determinations.[1]

1 ICJ, *Certain Iranian Assets (Iran v United States),* Preliminary Objections Judgment (2019); Merits Judgment (2023); Treaty

Overall, the preliminary objections phase demonstrates the central role of jurisdictional filtering in ICJ practice and highlights the importance of procedural architecture in structuring complex inter-State disputes involving economic measures and treaty obligations. The case also illustrates how early jurisdictional determinations can influence the trajectory of substantive analysis, reinforcing the interdependence between procedural and merits phases in international adjudication. More broadly, the Court's approach reflects a wider trend in international adjudication toward treating jurisdictional questions in treaty-based cases as closely intertwined with the interpretation of substantive treaty provisions.

2.3. Res Judicata and Consistency Between Procedural and Merits Phases

An additional procedural dimension shaping the litigation concerns the Court's approach to the relationship between its 2019 Preliminary Objections Judgment and the subsequent merits phase. The Court reaffirmed that earlier determinations on jurisdiction and admissibility have res judicata effect only with respect to issues actually decided, while still permitting arguments to be reformulated and advanced at the merits stage, where they operate as substantive defenses rather than as renewed procedural objections. In particular, the Court explained that the rejection of the United States' earlier objection based on abuse of process did not preclude the respondent from advancing related arguments framed as abuse of rights on the merits. This approach reflects a functional understanding of *res judicata* in ICJ practice, and it prevents the relitigation of settled issues, yet does not artificially foreclose a respondent from raising defenses that are conceptually distinct from previously rejected procedural objections, provided they remain consistent with the Court's earlier reasoning.

In the present case, this approach was significant because the preliminary objections phase did not merely "delay" consideration of the merits; rather, it actively structured the litigation by defining the Treaty provisions within scope, delimiting which claims could proceed, and clarifying the proper characterization of certain arguments (jurisdictional limitations versus merits defenses). The resulting procedural framework provides a clear illustration of the central theme of this article that is the Court's procedural architecture did not operate independently from substance but instead shaped the substantive field within which responsibility, defenses, and remedies were subsequently assessed.[1]

This reasoning confirms that the ICJ adopts a pragmatic approach to procedural finality,

of Amity (1955); *Bank Markazi v Peterson* 578 US 212 (2016); Crawford – Brownlie's Principles of Public International Law Crawford, James. Brownlie's Principles of Public International Law. 9th ed. Oxford: Oxford University Press, 2019; Shaw – International Law Shaw, Malcolm N. International Law. 9th ed. Cambridge: Cambridge University Press, 2021; Zimmermann et al. – The Statute of ICJ: A Commentary Zimmermann, Andreas, Christian J. Tams, Karin Oellers-Frahm, and Christian Tomuschat (eds.). The Statute of the International Court of Justice: A Commentary. 3rd ed. Oxford: Oxford University Press, 2019; Pellet / Crawford / Olleson – State Responsibility (ILC Articles Commentary) Crawford, James. State Responsibility: The General Part. Cambridge: Cambridge University Press, 2013; Crawford, James, Alain Pellet, and Simon Olleson (eds.). The Law of International Responsibility. Oxford: Oxford University Press, 2010.

1 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections*, Judgment of 13 February 2019, ICJ Reports 2019, paras 37–41. https://www.icj-cij.org/sites/default/files/case-related/164/164-20190213-JUD-01-00-EN.pdfaccessed 19 February 2026;ICJ , *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment, ICJ Reports 2015, para 95. https://www.icj-cij.org/sites/default/files/case-related/118/118-20150203-JUD-01-00-EN.pdf; accessed 19 February 2026; Andrea Viterbo, 'Certain Iranian Assets (Islamic Republic of Iran v United States of America)' (2024) 118 *American Journal of International Law* 332. https://doi.org/10.1017/ajil.2023.66accessed 19 February 2026; Shabtai Rosenne, The Law and Practice of the International Court, 1920–2015 (5th edn, Brill 2016) vol II, 853–860.

balancing the requirements of legal certainty with the need to permit a full examination of substantive defenses.

3. Jurisdiction and Admissibility

3.1. Jurisdiction under the 1955 Treaty of Amity

The jurisdiction of the Court in *Certain Iranian Assets (Iran v United States)* was founded on Article XXI, paragraph 2, of the 1955 *Treaty of Amity, Economic Relations and Consular Rights*, [1] which confers jurisdiction over disputes concerning the interpretation or application of the Treaty. The Court confirmed that the Treaty was in force at the time proceedings were instituted in June 2016 and that the United States' subsequent notification of termination on 3 October 2018, [2] which took effect one year later, did not affect the Court's jurisdiction. This conclusion is consistent with the well-established principle that jurisdiction is determined at the date of *seisin*. The Court thereby reaffirmed that the unilateral termination of a treaty after proceedings have commenced cannot deprive it of jurisdiction over disputes arising while the treaty remained operative.

Building on its findings in the 2019 Preliminary Objections Judgment, the Court further determined that the dispute fell within the *ratione materiae* scope of the Treaty to the extent that it concerned alleged violations of provisions relating to the treatment of companies, protection of property, and access to courts, including Articles III, IV, V, and X. In reaching this conclusion, the Court interpreted the Treaty in light of its economic and commercial object and purpose, while emphasizing that jurisdiction depended on whether the claims could plausibly be characterized as arising under the Treaty rather than under general international law. These conclusions illustrate the continuity between the procedural and substantive phases of the litigation, as the jurisdictional framework established at the preliminary objections stage structured the subsequent merits analysis. More broadly, the Court's reasoning confirms the continuing relevance of treaty-based jurisdiction even in circumstances where diplomatic relations between the parties have significantly deteriorated. [3]

The Court's analysis also underscores that its jurisdiction remained strictly consent-based, confined to disputes capable of being characterized as involving the interpretation or application of the Treaty, rather than extending to broader allegations of illegality under customary international law.

1 Merits 41–45
2 Merits 100
3 ICJ , Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections, Judgment of 13 February 2019, ICJ Reports 2019, paras 35–40; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [2019] ICJ Rep 7, paras 35–; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [2019] ICJ Rep 7, paras 44–50; Shabtai Rosenne, The Law and Practice of the International Court 1920–2005 (4th edn, Martinus Nijhoff 2006) vol II, 848–850;Alleged Violations of the 1955 Treaty of Amity (Islamic Republic of Iran v United States of America) (Provisional Measures) Order [2018] ICJ Rep 623, para 39; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [2019] ICJ Rep 7, paras 54–60, 73–78; Jarrod Hepburn, 'The International Court of Justice and State Economic Measures: Certain Iranian Assets' (2024) University of Melbourne Law School Research Paper 1–5; United States Diplomatic and Consular Staff in Tehran (United States v Iran) Judgment [1980] ICJ Rep 3, para 37.

3.2. Jurisdictional Limits and the Status of *Bank Markazi*

A central issue concerned whether *Bank Markazi* could be treated as a "company" within the meaning of the Treaty. In its 2019 Preliminary Objections Judgment, the Court did not finally determine the status of *Bank Markazi* and deferred the issue to the merits stage, considering that it required a fuller examination of the factual record. [1]

In its 2023 Judgment, the Court upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims predicated on the treatment accorded to *Bank Markazi*. The Court concluded that Iran had not demonstrated that *Bank Markazi* engaged, alongside its sovereign central-banking functions, in activities of a commercial character capable of bringing it within the Treaty provisions protecting "companies." Consequently,"[2] claims relating to *Bank Markazi* fell outside the Court's jurisdiction under the relevant Treaty provisions.[3]

As a result, the Court did not order the release or restitution of the assets linked to *Bank Markazi*. This outcome illustrates the decisive role played by the characterization of entities in determining the scope of treaty protection and, consequently, the limits of the Court's jurisdiction.[4]

The Court's reasoning should not be understood as a general pronouncement that central banks are excluded from treaty protection, but rather as a context-specific determination grounded in the evidentiary record and the particular Treaty provisions invoked

3.3. The Distinction Between Jurisdictional Limitations and Substantive Defenses

An important doctrinal contribution of the judgment lies in the Court's clarification of the distinction between jurisdictional limitations and substantive treaty defenses, particularly in relation to the essential security exception contained in Article XX of the Treaty. [5] The United States argued that this provision operated as a limitation on the Court's jurisdiction, thereby precluding judicial review of measures adopted for national security reasons. The Court rejected this interpretation, [6] holding that Article XX does not restrict the scope of the Court's jurisdiction under the compromissory clause but instead constitutes a potential justification to be examined at the merits stage. [7]

1 "The Court considers that the question whether Bank Markazi qualifies as a 'company' within the meaning of the Treaty is closely linked to the merits and should therefore be examined at that stage." ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections*, Judgment of 13 February 2019, ICJ Reports 2019, para 89.

2 Merits 86–90

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment of 30 March 2023, ICJ Reports 2023, para 103 (see also paras 102–107);

4 *Certain Iranian Assets (Iran v United States)* (Judgment) (n above) dispositif para 1; see also paras 102–107; Federica Paddeu, 'Certain Iranian Assets (Iran v United States)' (2024) 118 *American Journal of International Law* 165, 168; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections*, Judgment of 13 February 2019, ICJ Reports 2019, para 89 ("The Court considers that the question whether Bank Markazi qualifies as a 'company'… should therefore be examined at [the merits] stage."); ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment of 30 March 2023, ICJ Reports 2023, paras 102–107 ("The Court concludes that Bank Markazi does not qualify as a 'company'…"); ibid dispositif para 1; Federica Paddeu, 'Certain Iranian Assets (Iran v United States)' (2024) 118 *American Journal of International Law* 165, 168.

5 James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 431.

6 PO 2019 121–123; Merits 208

7 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) ICJ Reports 2023, para 92,

This distinction is significant because it preserves the Court's authority to determine whether the conditions for invoking the exception are satisfied, rather than allowing a respondent State to exclude judicial scrutiny merely by asserting security interests. By treating Article XX as a merits defense rather than a jurisdictional bar, the Court reaffirmed the principle that treaty exceptions qualify substantive obligations without automatically depriving the Court of competence to interpret and apply the treaty. The Court's approach is consistent with its broader jurisprudence emphasizing that the characterization of treaty provisions depends on their function within the treaty framework and that jurisdictional consent remains governed by the compromissory clause unless explicitly limited. [1]

The case therefore provides a clear illustration of how procedural characterization, whether a treaty provision is treated as jurisdictional or substantive, can decisively influence the scope of judicial review in treaty litigation. By confirming that Article XX operates within the merits analysis, the Court preserved its authority to assess whether the factual and legal conditions for invoking the exception were satisfied in the circumstances of the case, rather than permitting a respondent State to exclude scrutiny through the mere assertion of security interests.

3.4. Admissibility and the Exhaustion of Local Remedies Doctrine

The Court rejected the United States' objection that Iran's claims were inadmissible for failure to exhaust local remedies. It first emphasized that the exhaustion of local remedies rule applies primarily in situations of diplomatic protection,[2] where a State espouses claims on behalf of its nationals. In the present case, however, Iran was invoking its own rights under the Treaty of Amity, which created direct inter-State obligations. Consequently, the Court concluded that the exhaustion requirement was not applicable as a matter of principle.[3]

The Court further observed that, even if the rule were applicable, the United States had not demonstrated the existence of effective and reasonably available domestic remedies capable of addressing the substance of the claims advanced under the Treaty. Requiring exhaustion would therefore not serve the underlying rationale of the rule. On that basis, the objection to admissibility was rejected.

This reasoning reflects the Court's consistent jurisprudence that the exhaustion requirement operates only where domestic remedies offer a genuine possibility of redressing the alleged injury and where the claim is properly characterized as one of diplomatic

https://www.icj-cij.org/case/164; Julian Arato, 'The ICJ's Merits Decision in Certain Iranian Assets' (2024) 28(3) ASIL Insights, https://www.asil.org/insights/volume/28/issue/3 ;Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) [1996] ICJ Rep 803, para 20;

1 ICJ, *Certain Iranian Assets (Iran v United States of America)* (Judgment) ICJ Reports 2023, para 92; Julian Arato, 'The ICJ's Merits Decision in Certain Iranian Assets' (2024) 28(3) *ASIL Insights*; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 431; *Oil Platforms (Iran v United States of America)* (Preliminary Objections) [1996] ICJ Rep 803, para 20; Richard Gardiner, *Treaty Interpretation* (2nd edn, OUP 2015) 303; Vienna Convention on the Law of Treaties 1969, arts 31–32.

2 Merits 106–113, esp 108

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) paras 188–195, available at: https://www.icj-cij.org/case/164/judgments

protection. The Court's approach therefore reinforces the functional and context-dependent nature of admissibility analysis in treaty-based inter-State litigation.[1]

More broadly, the Court's reasoning illustrates how the characterization of claims, whether as diplomatic protection or the invocation of direct treaty rights, operates as a procedural gateway capable of decisively influencing admissibility determinations.

3.4.1. Ratione materiae Exclusion: No Jurisdiction over Customary International Law Sovereign Immunity Claims

A central element of the Court's jurisdictional filtering, and one that merits particular emphasis given the prominence of sovereign immunity issues in the broader dispute, was the Court's conclusion that its jurisdiction did not extend to claims framed solely as violations of customary international law rules on State immunity, [2] including central bank immunity. The Court's jurisdiction in this case derived exclusively from Article XXI, paragraph 2, of the Treaty of Amity, which confines its competence to disputes concerning the interpretation or application of the Treaty. On that basis, the Court emphasized that it could not transform treaty-based jurisdiction into a general mandate to adjudicate alleged breaches of customary international law relating to immunity from jurisdiction or enforcement. Only claims capable of being characterized as violations of Treaty obligations fell within its competence. [3]

This *ratione materiae* limitation is doctrinally significant for at least two reasons. First, it reinforces the Court's consistent position that compromissory clauses in bilateral treaties do not operate as gateways to the adjudication of general international law unless the treaty itself incorporates the relevant customary rules or otherwise renders them applicable. Second, it explains why the judgment should not be read as a definitive pronouncement on the content or scope of customary central bank immunity. The Court deliberately refrained from addressing those issues because they lay beyond the Treaty-defined subject matter of the dispute.

In structural terms, this jurisdictional filtering illustrates how the procedural boundary created by consent decisively shaped what the Court could, and could not, address on the merits. Read together with the Preliminary Objections Judgment, the case demonstrates that jurisdictional consent expressed through a compromissory clause operates not merely as a procedural gateway but also as a substantive filter defining the permissible legal framework of judicial reasoning.[4]

1 *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (Preliminary Objections)* [2007] *ICJ Rep 582, paras 42–49; A A Cançado Trindade, The Application of the Rule of Exhaustion of Local Remedies in International Law (Cambridge University Press 1983); A R Tohidi and F Mirakhorli, 'ICJ's Approach to the Objection of the United States Regarding Compliance with the Exhaustion of Local Remedy Rule: A Focus on the Certain Iranian Assets Case' (2024) 41 International Law Review 101;* ELSI Case (*Elettronica Sicula SpA (United States v Italy)*) [1989] ICJ Rep 15, paras 50–59;

2 Merits 52–55; PO 2019 80–91

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections, Judgment* [2019] ICJ Rep 7, paras 37–42, 52–60.

4 *Certain Iranian Assets (Preliminary Objections)* (n 1) paras 61–72; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) paras 40–44; Andrea Viterbo, 'Certain Iranian Assets (Iran v United States)' (2024) 118 *American Journal of International Law* 339, 340–343; Robert Kolb, *The International Court of Justice* (Hart 2013) 560–565; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) [2019] ICJ Rep 7 paras 37–42, 52–60; ibid paras 61–72; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) (30 March 2023) paras 40–44; Andrea Viterbo, 'Certain Iranian Assets (Iran v United

The case therefore illustrates the limits of attempts to internationalize disputes concerning sovereign immunity through treaty litigation where the treaty itself does not regulate immunity questions explicitly.

3.4.2. Temporal Issues: Termination Notice, Effective Termination, and Legal Consequences

The temporal dimension of the dispute raises important questions concerning the relationship between jurisdiction, treaty termination, and remedies. On 3 October 2018, the United States notified Iran of its decision to terminate the Treaty of Amity pursuant to the Treaty's denunciation clause, thereby triggering the applicable notice period. The Treaty is generally regarded as having ceased to be in force on 3 October 2019, one year after that notification. [1]

This temporal sequence is significant for two reasons. First, it reinforces the Court's conclusion that jurisdiction remained intact because the Treaty was unquestionably in force in June 2016, when proceedings were instituted, consistent with the principle that jurisdiction is determined at the date of *seisin*. Termination of the Treaty after that date could not retroactively deprive the Court of jurisdiction over disputes arising while the Treaty remained operative. [2]

Second, the termination of the Treaty clarified the structure of the remedies analysis. The Court distinguished between (i) responsibility for breaches allegedly committed while the Treaty was in force and (ii) the availability of forward-looking remedies, such as cessation, which presuppose the existence of a continuing obligation at the time of judgment. Because the Treaty had ceased to be in force by the time the Court rendered its merits judgment, cessation was not considered an appropriate form of relief. Consequently, the Court emphasized compensation and declaratory findings as the principal legal consequences of any established breaches.

This temporal reasoning illustrates how the procedural principle governing jurisdiction at the date of *seisin* interacts with substantive rules on State responsibility and remedies. While termination could not retroactively defeat jurisdiction, it influenced the judgment's forward-looking remedial logic, helping to explain the Court's focus on compensation rather than on orders of prospective compliance with treaty obligations that were no longer in force. [3]

The case therefore demonstrates that the temporal status of a treaty may affect remedies without altering jurisdiction, highlighting the distinct legal functions of consent and responsibility within international adjudication.

States)' (2024) 118 American Journal of International Law 339, 340–343.

1 ICJ, *Certain Iranian Assets (Islam Republic of Iran v United States of America), Preliminary Objections, Judgment* [2019] ICJ Rep 7, paras 42–43.

2 ICJ ,Certain Iranian Assets) Islamic Republic of Iran v United States of America ,(Preliminary Objections ,Judgment [2019] ICJ Rep 7, para 44.

3 ICJ , *Nottebohm (Liechtenstein v Guatemala), Preliminary Objection, Judgment* [1953] ICJ Rep 111, 122; Tom Ruys and Cedric De Weerdt, 'Certain Iranian Assets: The ICJ's Merits Judgment' (Ghent Rolin-Jaequemyns International Law Institute Working Paper No 12, 2023) 5–6; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) paras 210–216; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections, Judgment* [2019] ICJ Rep 7, paras 42–44; *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) ; ; Jean d'Aspremont, 'The ICJ and the Treaty of Amity Cases' (2023) 117 AJIL Unbound 192.

4. Substantive Determinations on the Merits

4.1. Status of *Bank Markazi* and Qualification of Protected Entities

The status of *Bank Markazi* constituted a central issue in the merits phase, following the Court's decision in its 2019 Preliminary Objections Judgment to defer a final determination pending a fuller examination of the factual record.[1]

In its 2023 Judgment, the Court upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims predicated on the treatment accorded to *Bank Markazi*. The Court concluded that Iran had not demonstrated that *Bank Markazi* engaged, at the relevant time, in activities of a commercial nature capable of bringing it within the Treaty definition of a "company." The investment transactions relied upon by Iran were considered inseparable from the bank's sovereign functions as a central bank, particularly the management of foreign currency reserves. Consequently, *Bank Markazi* could not qualify as a protected entity under Articles III, IV, and V of the Treaty, and claims advanced on its behalf under those provisions fell outside the Court's jurisdiction. [2]

By contrast, the Court proceeded on the basis that other Iranian entities constituted "companies" within the meaning of the Treaty, thereby enabling an examination of whether measures directed against their assets engaged the international responsibility of the United States.[3]

In reaching its conclusions, the Court reaffirmed a functional approach centered on the nature of the activities performed by the entity concerned, rather than solely on its formal legal status or State ownership[4]. The Court emphasized that State ownership does not preclude qualification as a protected company, but that entities engaged exclusively in sovereign functions fall outside the Treaty's protective scope. This reasoning contributes to the jurisprudence concerning State-linked corporations by clarifying that treaty protection depends on whether an entity operates within the commercial sphere contemplated by the treaty framework.[5]

At the same time, the Court's analysis leaves certain uncertainties regarding entities engaged in mixed sovereign and commercial activities. While the Court accepted in principle that an entity may qualify as a protected company even if commercial activities are not its principal functions, the judgment provides limited guidance on how substantial such activities must be to satisfy the Treaty threshold. This issue is likely to arise in future disputes involving State-owned enterprises and sovereign financial institutions operating across regulatory and commercial domains.

1 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) [2019] ICJ Rep 7 paras 91–92.

2 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) [2023] ICJ Rep (Judgment of 30 March 2023) paras 83–90.

3 Certain Iranian Assets (Merits) [2023] ICJ Rep paras 115–120.

4 Merits 81–83

5 Certain Iranian Assets (Merits) [2023] ICJ Rep paras 85–87; Jennifer Hepburn, *'Certain Iranian Assets Case Note'* (University of Melbourne Law School Research Paper, 2023); Hazel Fox and Philippa Webb, The Law of State Immunity (3rd edn, OUP 2015) 129–135; Rudolf Dolzer and Christoph Schreuer, Principles of International Investment Law (2nd edn, OUP 2012) 44–47.

The *Bank Markazi* determination further illustrates how jurisdictional characterization may depend upon substantive factual evaluation, thereby demonstrating the interaction between procedural architecture and merits reasoning that runs throughout the case.

4.2. Breach of Treaty Obligations

Having identified the entities falling within the Treaty's protective scope, the Court proceeded to examine whether the legislative, executive, and judicial measures adopted by the United States concerning the attachment and distribution of Iranian assets were consistent with the substantive obligations of the Treaty of Amity. The Court concluded that the United States had failed to respect the juridical status of certain Iranian companies, in violation of Article III(1), and had adopted measures[1] that were unreasonable within the meaning of Article IV(1). [2] Having reached this conclusion, the Court considered it unnecessary to determine separately whether the measures were also discriminatory. In addition, the Court found that Section 201(a) of the Terrorism Risk Insurance Act (TRIA) and Section 1610(g)(1) of the Foreign Sovereign Immunities Act (FSIA), as applied, amounted to a taking of property contrary to Article IV(2),[3] because the impairment of rights they produced was manifestly excessive and could not be regarded as a lawful exercise of regulatory powers. By contrast, the Court did not consider that a taking had been established with respect to Executive Order 13599. The Court further determined that certain measures created concrete impediments to commerce between the territories of the Parties, [4] in violation of Article X(1). These findings reflect the Court's interpretation of treaty protections as encompassing both respect for the separate legal personality of protected companies and substantive protection against measures producing disproportionate or confiscatory effects.[5]

At the same time, the Court rejected several of Iran's claims. It found no violation of Article III(2), [6] concluding that Iranian companies retained access to United States courts notwithstanding the substantive limitations affecting their claims. The Court also rejected the contention that the obligation of most constant protection and security under Article IV(2) had been breached, explaining that this element of Article IV(2) was not intended to apply to situations already addressed under Article IV(1) in the circumstances of the case. The Court further rejected the United States' defenses based on the doctrines of clean hands[7] and abuse of rights, finding insufficient legal basis and factual connection to the claims presented. With respect to the essential security exception contained in Article XX, the Court held that the

1 Merits 152–159

2 Merits 160–171

3 Merits 172–189, esp 186–188

4 Merits 189, 190–198

5 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment (30 March 2023) ICJ Rep, paras 147–156, 185–186.Available at: https://www.icj-cij.org/case/164/judgments

Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment (30 March 2023) ICJ Rep, paras 185–187.https://www.icj-cij.org/case/164/judgments ; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment (30 March 2023) ICJ Rep, paras 188–189. https://www.icj-cij.org/case/164/judgments ; Certain Iranian Assets (Islam v United States) (Merits) Judgment (30 March 2023) ICJ Rep, paras 210–216.https://www.icj-cij.org/case/164/judgments

6 Merits 146–151, Merits 146–151

7 Merits 199–207

United States had not demonstrated that the measures fell within Article XX(1)(c), [1] nor that they were "necessary" to protect essential security interests under Article XX(1)(d). This aspect of the judgment is particularly significant because it clarifies that the invocation of security exceptions requires concrete justification and does not automatically shield State conduct from treaty scrutiny.

Collectively, the Court's analysis confirms that domestic legislative and judicial measures adopted for foreign policy or national security purposes remain attributable to the State and may engage international responsibility where they are inconsistent with applicable treaty obligations. The decision therefore illustrates the binding nature of treaty commitments and demonstrates the capacity of international adjudication to assess national measures affecting foreign property and commercial rights within the framework of State responsibility.

The Court's reasoning also illustrates the close relationship between Articles III(1) and IV(1), treating respect for juridical personality and protection against unreasonable interference as mutually reinforcing obligations within the Treaty's economic protection regime.

4.3. Attribution of Legislative and Judicial Conduct to the State

The judgment also reflects the well-established principles governing attribution under the law of State responsibility. The Court proceeded on the basis that the legislative enactments, executive measures, and judicial decisions forming the subject matter of the dispute were all attributable to the United States as acts of State organs[2]. In doing so, the Court implicitly reaffirmed the unity of State responsibility irrespective of internal constitutional divisions among governmental branches. This approach is consistent with customary international law and with the International Law Commission's Articles on State Responsibility, according to which the conduct of any State organ, whether legislative, executive, or judicial, is attributable to the State when acting in its official capacity. [3]

This aspect of the judgment is particularly relevant in disputes involving domestic court judgments or statutory frameworks designed to implement national policy objectives. Respondent States may seek to distinguish between different branches of government or to emphasize the autonomy of judicial decision-making; however, the Court's reasoning confirms that such internal distinctions are irrelevant for purposes of international responsibility. The conduct of courts applying national legislation, like that of legislatures and executives adopting such measures, remains attributable to the State under international law. The judgment therefore reinforces the principle that States cannot evade international obligations by invoking internal institutional arrangements or doctrines of separation of powers.

More broadly, the Court's approach contributes to doctrinal clarity concerning responsibility for economic measures implemented through domestic legal systems, including asset attachment procedures and enforcement mechanisms. By treating all branches of government as manifestations of State conduct under international law, the judgment underscores the comprehensive nature of

1 Merits 214–227
2 Merits 129–131
3 ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment (Merits) [2023] ICJ Reports, paras 155–156; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001) Yearbook of the International Law Commission, vol II (Part Two), art 4 and commentary.

State responsibility where multiple organs collectively produce internationally wrongful outcomes. This reasoning has potential implications for future disputes involving sanctions regimes, asset freezes, and enforcement actions against foreign State-linked entities.[1]

The attribution of judicial enforcement measures was particularly significant in establishing violations of Articles III, IV, and X, since the impugned interference resulted from the combined operation of legislation and judicial application.

4.3.1. Article XX Essential Security Exception: Evidentiary Burden and Standard of Assessment

Although Article XX was addressed earlier in relation to jurisdiction, its treatment at the merits stage constitutes one of the judgment's most practically significant contributions. The United States invoked Article XX, paragraphs 1(c) and 1(d), of the Treaty of Amity to justify the measures at issue on grounds linked to national security and foreign policy objectives. Consistent with its 2019 Preliminary Objections Judgment, the Court treated Article XX not as a jurisdictional limitation but as a substantive defense to be examined within the merits analysis. This characterization preserved the Court's authority to assess whether the factual and legal requirements of the exception were satisfied.

With respect to Article XX(1)(c), concerning measures regulating the production of or traffic in arms, the Court rejected the United States' broad interpretation and concluded that Executive Order 13599 did not fall within the provision's scope.[2] The Court interpreted the clause as covering measures regulating a State's own arms production or trade, rather than measures intended to exert indirect effects on another State's activities.

More significantly, in relation to Article XX(1)(d), which permits measures necessary to protect essential security interests, the Court clarified the applicable standard of assessment. Drawing on its prior jurisprudence, the Court emphasized that the requirement of necessity is not purely a matter for the subjective judgment of the invoking State and may be assessed judicially. While acknowledging that a State enjoys a certain margin of discretion in identifying its security interests, the Court held that it remained incumbent upon the respondent to demonstrate, on the basis of the evidentiary record, that the specific measures adopted were necessary for the protection of those interests. The United States failed to make such a demonstration, particularly in light of the financial regulatory rationale expressed in the Executive Order itself, which did not substantiate the claimed security necessity. The defense under Article XX(1)(d) was therefore rejected.

This reasoning is important for the architecture of treaty litigation before the Court. By treating Article XX as a merits defense requiring evidentiary substantiation, the Court reinforced the principle that security exceptions cannot operate as automatic escape clauses from treaty obligations. Instead, they function within a structured justificatory framework in which the respondent State bears the burden of demonstrating that the conditions of the exception are satisfied. The judgment therefore contributes to a more disciplined and

1 *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (Advisory Opinion) [1999] ICJ Rep 62, para 62; *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466, para 77; James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 113–118.

2 Merits 214–220

evidence-sensitive model of security reasoning in economic treaty disputes, particularly where domestic measures justified by counterterrorism or foreign policy concerns generate concrete interference with property and commercial rights protected by treaty. In this respect, Article XX illustrates the interaction between procedure and substance that forms the central theme of the present article that is the procedural characterization determines the analytical framework, while substantive standards govern the outcome.[1]

The Court's relatively limited engagement with proportionality analysis, despite its references to necessity, leaves open questions regarding the precise intensity of review applicable to essential security clauses in future treaty disputes.

5. Remedies and Reparation

5.1. Remedies Awarded by the Court

With respect to remedies, the Court applied the classical framework of State responsibility by examining the forms of reparation traditionally recognized under international law, namely cessation, compensation, and satisfaction. Iran sought, inter alia, declarations of wrongful conduct, cessation of the alleged violations, compensation for the injury suffered, and forms of satisfaction including a formal apology. The Court declined to order cessation on the ground that the Treaty of Amity was no longer in force at the time of the judgment.[2] Referring to the customary rule reflected in Article 30 of the International Law Commission's Articles on State Responsibility, the Court emphasized that an obligation of cessation arises only where the internationally wrongful act is continuing and the breached obligation remains operative. Because the Treaty had ceased to have effect in October 2019 following the United States' notice of termination, this condition was not met. This reasoning confirms that the termination of a treaty does not extinguish responsibility for breaches committed while it was in force, but it may affect the availability of prospective remedies premised on continuing obligations.[3]

Notwithstanding the absence of continuing obligations, the Court concluded that the United States had incurred international responsibility for violations of the Treaty in respect of protected Iranian entities and was therefore under an obligation to compensate Iran for the injury caused. [4] The Court did not determine the quantum of compensation at the merits stage. Instead, it granted the Parties a period of twenty-four months to reach agreement on the amount due, failing which either Party may request the Court to determine the quantum in a subsequent phase of the proceedings.[5] This approach is consistent with established ICJ

1 ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment, 30 March 2023, ICJ Reports 2023, paras 352–377; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment, 13 February 2019, ICJ Reports 2019, paras 91–97; Prabhash Ranjan,"Essential Security Interests in International Investment Law"(2024) ICSID Review; Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331, arts 31–32; WTO Appellate Body, *Russia — Traffic in Transit* (2019); ICJ, *Certain Iranian Assets (Iran v United States)* Judgment (30 March 2023) ; ICJ, *Certain Iranian Assets* Preliminary Objections (13 February 2019) ; Prabhash Ranjan, 'Essential Security Interests in International Investment Law' (2024) ICSID Review; .

2 Merits 233–238, esp 236

3 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment of 30 March 2023, ICJ , paras 229–238, available at: https://www.icj-cij.org/case/164/judgments

4 Merits 239–244

5 Merits 244, 256(7) operative clause

practice in cases involving complex financial injury, where the quantification of damages requires detailed evidentiary assessment beyond the scope of the principal judgment.[1]

In addition, the Court held that the declaratory findings of internationally wrongful conduct contained in the judgment constituted sufficient satisfaction and therefore declined to require further measures such as a formal apology.[2] This conclusion reflects the principle, recognized in Article 37 of the ILC Articles on State Responsibility, that a judicial declaration of breach may, in appropriate circumstances, constitute adequate satisfaction for the injured State.

Overall, the remedies awarded reaffirm the central role of compensation within the law of State responsibility while illustrating how temporal factors, particularly treaty termination, may limit the availability of forward-looking remedies without affecting responsibility for past violations.[3]

The Court's refusal to order cessation also illustrates a structural limitation of treaty-based litigation, i.e. where the underlying treaty framework has been terminated during the proceedings, judicial remedies may become predominantly retrospective, centered on compensation rather than behavioral compliance.

5.2. Compensation and the Principle of Full Reparation in Contemporary Practice

The Court's treatment of compensation illustrates the continued relevance of classical reparation principles within modern international adjudication. Although the Court did not expressly invoke the jurisprudence of the Permanent Court of International Justice in the *Chorzów Factory* case, its reasoning reflects the well-established principle that reparation must, as far as possible, eliminate the consequences of the internationally wrongful act. By emphasizing compensation as the appropriate form of reparation in circumstances where cessation was unavailable, the Court reaffirmed that financial compensation remains the principal mechanism for remedying economic injury arising from treaty breaches. The obligation to compensate was framed in inter-State terms, with the United States required to compensate Iran for injury resulting from violations affecting Iranian companies protected under the Treaty.[4]

The Court's decision to defer the quantification of compensation to a later phase reflects practical considerations frequently encountered in disputes involving large-scale financial claims, asset attachment, and complex economic losses. By separating the determination of liability from the assessment of quantum, the Court created procedural space for negotiation

1 Ibid paras 239–242; see also American Society of International Law, Julian Arato and others, *The ICJ's Merits Decision in Certain Iranian Assets (Iran v United States)* (ASIL Insights, Vol 28, Issue 3, 12 February 2024) https://www.asil.org/insights/volume/28/issue/3

2 Merits 245

3 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment of 30 March 2023, paras 243–246; see also Sidley Austin LLP, *Implications for Investor-State Disputes Arising From the ICJ's Judgment in Certain Iranian Assets* (26 April 2023) https://www.sidley.com/en/insights/newsupdates/2023/04/implications-for-investor-state-disputes-arising-from-the-icjs-judgment

4 ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment of 30 March 2023; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023] ICJ Rep (30 March 2023) paras 247–256, available at: https://www.icj-cij.org/case/164 accessed 19 February 2026; Factory at Chorzów (Germany v Poland) (Merits) PCIJ Rep Series A No 17 (1928) 47, available at: https://www.icj-cij.org/public/files/permanent-court-of-international justice/serie_A/A_17/54_Usine_de_Chorzow_Fond_Arret.pdf accessed 19 February 2026.

between the Parties while preserving its authority to determine compensation should agreement not be reached within the specified period. This approach aligns with established ICJ practice and illustrates how traditional doctrines of State responsibility can be applied flexibly in contemporary disputes involving sophisticated financial instruments and cross-border enforcement measures. The future determination of compensation will necessarily involve questions of causation, valuation, and proof of injury, even though those issues were not addressed at the merits stage.

More broadly, the remedies phase highlights an important structural feature of international responsibility, i.e. the obligation to make reparation arises at the moment of breach and is not extinguished by the subsequent termination of the treaty under which the obligation originated. By reaffirming the United States' obligation to compensate notwithstanding the termination of the Treaty of Amity, the Court confirmed the independence of responsibility from the continued existence of the treaty relationship once a breach has occurred. The judgment therefore reinforces the stability of remedies doctrine in international law and provides guidance for future disputes involving economic measures, asset seizure, or treaty-based financial claims, where compensation may remain the primary form of relief available to injured States.[1]

At the same time, the absence of detailed guidance on valuation methodology leaves open important questions concerning the assessment of damages in cases involving complex financial assets and indirect economic loss, particularly with respect to standards of proof, methods of valuation, and the treatment of consequential losses. These issues are likely to assume practical significance in any subsequent phase of the proceedings and in future treaty-based economic disputes before international courts and tribunals.

6. Doctrinal Contributions and Legal Significance

6.1. Doctrinal and Legal Significance of the Judgment

The judgment in *Certain Iranian Assets* engages a wide range of foundational doctrines of international law and provides clarification across both procedural and substantive dimensions of treaty adjudication. At the level of treaty interpretation, the Court applied methods consistent with the Vienna Convention on the Law of Treaties, interpreting the provisions of the 1955 Treaty of Amity in accordance with their ordinary meaning, context, and object and purpose. In doing so, the Court combined textual analysis with a functional understanding of treaty protections, particularly in relation to the definition of "companies" and the scope of the economic rights protected under the Treaty. This approach confirms that bilateral economic treaties may generate enforceable legal protections even in circumstances where political relations between the parties have deteriorated significantly.

The judgment also reflects established principles of State responsibility, particularly

1 James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 487–492; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (Reparations) [2022] ICJ Rep 13 paras 28–32, available at: https://www.icj-cij.org/case/116 accessed 19 February 2026; Chester Brown SC, 'Certain Iranian Assets (Iran v United States)' (2024) 39 ICSID Review – Foreign Investment Law Journal 447, available at: https://academic.oup.com/icsidreview/article/39/3/447/7918744 accessed 19 February 2026.

with respect to attribution. By proceeding on the basis that legislative enactments, executive measures, and judicial decisions were all attributable to the United States, the Court implicitly reaffirmed the principle that the conduct of all State organs engages international responsibility when inconsistent with international obligations. This aspect is especially relevant in disputes involving domestic court judgments or statutory frameworks, where respondent States may seek to differentiate between governmental branches. The Court's reasoning underscores the unity of State responsibility and confirms that internal constitutional arrangements cannot affect the attribution of internationally wrongful conduct.

Procedurally, the decision provides clarification concerning the distinction between jurisdiction, admissibility, and merits. In particular, the Court's treatment of the exhaustion of local remedies objection reaffirmed that the rule applies primarily in the context of diplomatic protection and does not operate where a State invokes its own treaty rights. This aspect of the judgment reinforces the functional and context-dependent nature of admissibility analysis in treaty-based inter-State litigation. Similarly, the Court's treatment of the essential security exception confirms that such clauses operate as substantive justifications to be assessed on the merits rather than as jurisdictional limitations, thereby preserving judicial authority to determine whether the conditions for invoking the exception are satisfied.

The judgment further illustrates the evidentiary discipline required in treaty litigation. By requiring the respondent State to substantiate its reliance on security justifications, and by rejecting arguments based on abuse of rights in the absence of sufficient legal and factual support, the Court reaffirmed that treaty defenses must be grounded in demonstrable facts rather than abstract assertions. At the substantive level, the Court applied principles of reasonableness, respect for juridical personality, protection of property, and freedom of commerce, thereby consolidating doctrinal links between international economic law and general international law.

Collectively, these elements demonstrate the Court's role in integrating procedural architecture with substantive legal analysis. The judgment does not radically transform existing doctrine, but it provides a coherent illustration of how established principles of jurisdiction, admissibility, treaty interpretation, State responsibility, and remedies operate together within a single treaty-based dispute. In this sense, the decision reinforces the jurisprudential continuity of ICJ practice while clarifying the structural interaction between procedure and substance that characterizes contemporary international adjudication.[1]

1 Vienna Convention on the Law of Treaties (opened for signature 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31; International Court of Justice, *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, ICJ Reports 1999, para 18; Sean D. Murphy, 'The ICJ's Merits Decision in Certain Iranian Assets' (2024) 28 ASIL Insights. https://www.asil.org/insights/volume/28/issue/3; International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) UN Doc A/56/10, art 4; International Court of Justice, *Difference Relating to Immunity from Legal Process of a Special Rapporteur* (Advisory Opinion) ICJ Reports 1999, para 62; James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 113–118; International Court of Justice, *Interhandel (Switzerland v United States)*, Preliminary Objections, ICJ Reports 1959, 27; Andrew Sanger, 'The Contemporary Law of the Exhaustion of Local Remedies' (2013) 26 Leiden Journal of International Law 533; International Court of Justice, *Oil Platforms (Islamic Republic of Iran v United States)*, Judgment, ICJ Reports 2003, paras 43–44; Kurtz, Jürgen, *The WTO and International Investment Law* (CUP 2016) 210–215; International Court of Justice, *Barcelona Traction* (Belgium v Spain) ICJ Reports 1970, para 38; Jarrod Hepburn, 'The ICJ Decides on the Content of International Protection Standards: A Lost Opportunity?' (2023) Investment Treaty News. https://www.iisd.org/itn/2023/07/01/the-icj-decides-on-the-content-of-international-protection-standards-a-lost-opportunity/

One of the most distinctive contributions of the judgment lies in its treatment of the status of *Bank Markazi*, where the Court resolved a jurisdictional question by reference to substantive factual analysis concerning the nature of the entity's activities. This illustrates how jurisdictional determinations in treaty litigation may depend upon merits-level factual evaluation, further blurring the boundary between procedural and substantive reasoning.

6.2. Sovereign Functions versus Commercial Activities: Implications for State-Owned Entities

The Court's analysis of *Bank Markazi* constitutes one of the most significant aspects of the judgment and raises broader questions concerning the legal treatment of State-owned entities operating at the intersection of sovereign authority and commercial activity. Although *Bank Markazi* possessed separate legal personality under Iranian law, the Court concluded that Iran had not demonstrated that the bank engaged, at the relevant time, in activities of a commercial nature capable of bringing it within the Treaty definition of a protected "company." The investment transactions relied upon by Iran were considered inseparable from the bank's sovereign functions as a central bank, particularly the management of foreign currency reserves. On this basis, the Court determined that *Bank Markazi* did not qualify as a protected entity under the relevant Treaty provisions. This reasoning reflects a functional approach that focuses on the nature of the activities performed rather than on formal legal status alone, thereby contributing to the broader body of international jurisprudence that distinguishes sovereign functions from commercial conduct.

The implications of this reasoning extend beyond the present dispute. The functional distinction between sovereign and commercial activities is central to multiple areas of international law, including sovereign immunity litigation, investment treaty arbitration, and disputes involving State-owned enterprises. While the judgment does not establish a general rule concerning the status of central banks, it underscores that the availability of treaty protection depends on whether an entity's activities fall within the commercial sphere contemplated by the treaty framework. By emphasizing the sovereign character of core central-banking functions, the Court's analysis may influence how central banks and sovereign financial institutions are assessed in future proceedings involving asset attachment, enforcement measures, or treaty protections.

At the same time, the judgment leaves important questions unresolved, particularly regarding entities engaged in mixed activities combining sovereign authority with commercial operations. Although the Court accepted in principle that an entity may qualify as a protected company even where commercial activities are not its principal functions, it provided limited guidance on the threshold required for such activities to suffice. The absence of a fully articulated test for hybrid entities introduces a degree of doctrinal uncertainty that may require clarification in future jurisprudence.

More broadly, the decision contributes to ongoing debates concerning the international legal treatment of State-controlled corporations and the extent to which treaty protections extend to entities closely linked to governmental functions. The Court's reasoning underscores the importance of functional analysis in determining treaty beneficiaries while simultaneously highlighting the challenges associated with categorizing modern State-owned entities operating within global financial markets. In addition, the *Bank Markazi* determination illustrates how jurisdictional questions in treaty litigation may depend on substantive factual evaluation concerning the nature of an entity's activities, further demonstrating the interaction between procedural characterization and substantive analysis that runs throughout the judgment. As such, the decision represents an important reference point for future disputes involving sovereign wealth funds, central banks, and State-owned enterprises, with potential implications for both international adjudication and domestic court practice concerning State-linked assets.

The judgment also suggests that the functional distinction applied in treaty interpretation may not perfectly coincide with the commercial–sovereign distinction developed in sovereign immunity jurisprudence, thereby raising questions about the potential fragmentation or convergence of legal standards across different areas of international law.

7. Broader Implications for International Law

7.1. Importance for the Development of International Law

Beyond its immediate bilateral context, the judgment in *Certain Iranian Assets* holds substantial importance for the development of international law, particularly at the intersection of international economic law, State responsibility, and inter-State treaty litigation. One of the most significant contributions of the decision lies in clarifying the relationship between the procedural and substantive dimensions of treaty adjudication. By distinguishing jurisdictional limitations from substantive defenses, most notably regarding the essential security exception under Article XX of the 1955 Treaty of Amity, the Court confirmed that the provision operates as a merits defense rather than a jurisdictional bar. As a result, the applicability of the exception had to be examined as part of the substantive analysis of treaty obligations, thereby preserving judicial scrutiny even when national security considerations were invoked. Although grounded in the interpretation of a specific treaty clause, this approach contributes to broader debates concerning the role of security exceptions in international adjudication and strengthens the capacity of judicial mechanisms to operate in politically sensitive disputes.

The judgment also reinforces doctrinal coherence in the law of State responsibility by reaffirming that legislative, executive, and judicial acts are equally attributable to the State under international law. In doing so, the Court confirmed the unity of State responsibility regardless of the internal constitutional allocation of powers, a principle particularly relevant in disputes involving domestic court judgments or statutory measures adopted by national legislatures. Furthermore, the Court's analysis of corporate protection under the Treaty of Amity provides guidance on the treatment of juridical entities linked to foreign States, clarifying that treaty protection depends on the functional nature of the entity's activities rather than solely on formal legal personality. Although the Court ultimately concluded that *Bank Markazi* did not qualify as a protected "company" because Iran had not demonstrated relevant commercial activity separable from its sovereign central-banking functions, the reasoning contributes to broader debates concerning the legal treatment of State-owned entities in international law.

The remedies phase of the judgment is equally significant. By emphasizing compensation as the principal consequence of internationally wrongful conduct where cessation was no longer applicable due to the termination of the Treaty, the Court reaffirmed the enduring authority of the *Chorzów Factory* principle of full reparation. At the same time, the Court held that its declarations of breach constituted appropriate satisfaction and deferred the quantification of compensation to a subsequent phase should negotiations between the Parties fail. This combination of declaratory relief, compensation, and procedural flexibility demonstrates how classical reparation principles may be adapted to complex financial disputes involving large-scale economic injury.

Collectively, the decision consolidates doctrinal coherence across multiple areas of international law, including treaty interpretation, attribution, remedies, and the evidentiary burden associated with invoking treaty exceptions. It therefore provides authoritative guidance for future inter-State litigation before the International Court of Justice and contributes to the progressive development of international adjudicatory practice. [1]

7.2. Implications for International Economic Law and Sanctions Regimes

The judgment also carries significant implications for the interaction between unilateral economic measures and international treaty obligations. Although the Court did not determine the legality of economic sanctions *per se*, its findings demonstrate that domestic legislative and executive measures, including those adopted in pursuit of foreign policy or national security objectives, remain subject to international legal constraints where applicable treaty commitments exist. In particular, the Court's determination that certain United States measures violated obligations relating to the protection of companies, property rights, and freedom of commerce underscores that a State cannot rely on internal legal mechanisms to justify noncompliance with its treaty obligations. This reflects the well-established principle that domestic law does not excuse the breach of international obligations. [2]

The case also illustrates structural tensions that may arise in contemporary regimes of

1Chester Brown, *A Common Law of International Adjudication* (OUP 2007) 226–227, https://global.oup.com/academic/product/a-common-law-of-international-adjudication-9780199206506 accessed 19 February 2026; International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) art 4,https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf accessed 19 February 2026; International Court of Justice, *United States Diplomatic and Consular Staff in Tehran (United States v Iran)* Judgment (24 May 1980) ICJ Reports 1980, para 56,https://www.icj-cij.org/case/64/judgments accessed 19 February 2026; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) paras 47–58,https://www.icj-cij.org/case/164/judgments accessed 19 February 2026; Factory at Chorzów (Germany v Poland) (Merits) PCIJ Series A No 17 (1928) 47,https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_17/54_Chorzow_Merits.pdf accessed 19 February 2026; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) para 221,https://www.icj-cij.org/case/164/judgments accessed 19 February 2026; International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo), Compensation, Judgment* ICJ Reports 2012; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 28–30,https://global.oup.com/academic/product/brownlies-principles-of-public-international-law-9780198737445 accessed 19 February 2026.

2 ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023] ICJ Rep 1, paras 1–25, https://www.icj-cij.org/case/164 accessed 19 February 2026; Annamaria Viterbo, 'Certain Iranian Assets (Iran v United States)' (2024) 118 American Journal of International Law 154.

economic measures, particularly where asset freezing or attachment affects foreign State-linked entities. By scrutinizing the compatibility of such measures with treaty protections, the Court confirmed that conduct undertaken for national policy objectives must still be assessed within the framework of applicable international commitments. This has broader implications for States increasingly relying on financial and economic instruments as tools of foreign policy, especially where such measures intersect with bilateral or multilateral treaty regimes governing trade, investment, or property protection.

Furthermore, the judgment may have indirect relevance for the treatment of central banks and sovereign financial institutions in international disputes. Although the Court did not address customary international law rules on sovereign or central bank immunity, its functional analysis distinguishing sovereign from commercial activities for treaty purposes may influence future litigation involving State-owned entities, asset freezes, or enforcement measures. The decision therefore resonates beyond the ICJ context, potentially informing debates in international investment arbitration, domestic sovereign immunity litigation, and disputes involving cross-border financial regulation. In an era marked by the growing use of financial restrictions and asset control mechanisms, the case underscores the necessity for States to reconcile national security policies with their international economic obligations where such obligations have been undertaken, thereby reinforcing the continued relevance of international law as a framework governing unilateral economic measures.[1]

Conclusion

The ICJ's judgment in *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* is best understood as a treaty-based State responsibility decision whose significance lies less in the headline figure of USD 1.75 billion than in the Court's management of the procedural–substantive interface. The Court did not operate as a mechanism for ordering the return or "unfreezing" of *Bank Markazi*'s assets; rather, it adjudicated the dispute within the conceptual boundaries of the Treaty of Amity, determining which claims and entities fell within the Treaty's protective framework and then applying that framework to the United States measures at issue. That jurisdictional filtering proved decisive in relation to *Bank Markazi*, as the Court concluded that claims advanced on its behalf did not fall within the relevant Treaty protections because Iran had not demonstrated commercial activity separable from the bank's sovereign central-banking functions, thereby foreclosing Treaty-based relief.

1 ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections, Judgment*, ICJ Reports 2019, p. 7, paras 80–81; Wang Jia, "Certain Iranian Assets: The Judgment on Preliminary Objections and the Terrorism Exception to State Immunity" (2021) 18(4) US-China Law Review 162, 165; ICJ , Certain Iranian Assets (Preliminary Objections) Judgment [2019] ICJ Rep 7, para 45; Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [1996] ICJ Rep 803, para 20; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment*, 30 March 2023, I.C.J. Reports 2023, paras 84–92, 228; ICJ , Certain Iranian Assets (Preliminary Objections) Judgment [2019] ICJ Rep 7, para 92; August Reinisch, "State-Owned Enterprises and International Investment Law" in Andrea Bjorklund (ed), *Yearbook on International Investment Law & Policy* (OUP 2011) 45; Oil Platforms (Islamic Republic of Iran v United States of America) Judgment [2003] ICJ Rep 161; Alleged Violations of the 1955 Treaty of Amity (Iran v United States) Provisional Measures Order [2018] ICJ Rep 623; Robert Kolb, *The International Court of Justice* (Hart 2013) 1080–1085; Vienna Convention on the Law of Treaties 1969, Article 27; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment*, I.C.J. Reports 2023, paras 242–244.

First, the judgment illustrates how procedural structure can shape substantive outcomes in treaty litigation before the ICJ. The Court's jurisdiction derived exclusively from the Treaty's compromissory clause, and this consent-based framework necessarily circumscribed the dispute. Claims formulated as violations of customary international law concerning sovereign immunity could not be entertained unless they could be characterized as disputes regarding the interpretation or application of the Treaty. This jurisdictional filtering explains why the decision should not be read as a general pronouncement by the Court on central bank immunity. Rather, the Court decided only what the Treaty permitted it to decide and then proceeded to the merits of the surviving treaty claims.

Second, the case consolidates several points of doctrinal coherence. On the merits, the Court's reasoning demonstrates how treaty protections for "companies" and "property" depend upon the functional characterization of both the entity and the activity concerned, most prominently reflected in its conclusion that Iran had not established that *Bank Markazi* engaged in commercial activities separable from its sovereign central-banking functions. Similarly, the Court's approach to Article XX (essential security) confirms that security clauses operate as substantive justifications to be examined on the merits rather than jurisdictional escape routes, and that reliance upon them requires evidentiary substantiation rather than broad assertion.

Third, the remedies analysis reinforces the Court's cautious yet orthodox remedial architecture. Because the relevant treaty obligations were no longer in force at the time of judgment, cessation was not considered an appropriate form of relief, while compensation remained the central form of reparation for breaches committed during the Treaty's operation, complemented by declaratory satisfaction. Temporal precision is central to this reasoning. The United States provided notice of termination in October 2018, and the Treaty ceased to operate following the expiry of the notice period, thereby enabling the Court to distinguish responsibility for past breaches from prospective relief tied to continuing obligations.

Looking forward, *Certain Iranian Assets* is likely to influence future litigation in at least four respects. It provides a template for how the Court may (i) police the boundary between treaty-based claims and free-standing customary law arguments, (ii) address State-linked entities operating at the sovereign–commercial interface, (iii) scrutinize security exceptions as evidentiary and merits-based justifications rather than jurisdictional bars, and (iv) structure compensation-oriented remedies in complex economic disputes where quantification may require a subsequent phase or negotiated settlement. In this sense, the case strengthens the ICJ's role as an adjudicator of economically and politically sensitive disputes while simultaneously illustrating the structural limits of treaty litigation where the claimant's most visible grievance falls outside the treaty's protective scope.

Ultimately, the judgment demonstrates that, in contemporary international adjudication, the relationship between procedure and substance is not merely sequential but constitutive and the procedural determinations define the substantive legal universe within which international responsibility can be established.

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The Role of the UN Secretary-General in Maintaining International Peace and Security: Focusing on António Guterres' Performance

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Abstract

The Secretary-General of the United Nations, as one of the principal organs of the Organization, plays an important role in maintaining international peace and security. This role is defined on the basis of the express and implied powers of the United Nations Charter, as well as the functions entrusted to the Secretary-General by the Security Council and the General Assembly. Accordingly, the performance of Secretaries-General in different periods has taken diverse forms, influenced by prevailing international conditions and their individual personal characteristics. This research, conducted through a descriptive–analytical approach, examines the action capacities of the Secretary-General in the field of international peace and security and, by reviewing the initiatives of previous Secretaries-General, analyses the performance of António Guterres. In this context, thirteen major crises during his term of office were identified and examined. The findings indicate that Guterres's approach has largely been confined to diplomatic measures and political statements. His positions have often been characterized by unjustified delays, a cautious, conservative posture, the absence of clear identification of the aggressor and the defending party, and mere calls for the parties to exercise restraint, which, in certain instances, have resulted in partial and inequitable responses. Overall, in light of the multiplicity of international crises during Guterres's tenure and the growing expectations of the international community for the United Nations to play an active and impartial role, his performance, in comparison with his predecessors, may be assessed as placing him among the weaker Secretaries-General.

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Introduction

The United Nations, as the most significant international institution entrusted with the maintenance of international peace and security, has established specific tools and mechanisms in its Charter for responding to international threats and crises. This responsibility is pursued through the Security Council, the General Assembly, and the Secretary-General. Owing to his unique position and presence in all meetings of the General Assembly, the Security Council, and other UN organs, the Secretary-General is able—personally and through mandates entrusted to him by the Council or the General Assembly—to assist States involved in crises and conflicts in finding equitable solutions through means such as good offices and mediation. The Secretary-General is not only the Head of the Secretariat of the Organization but also a symbol of impartiality and the voice of international law within the international system. According to Article 97 of the Charter, the Secretary-General is the chief administrative officer of the Organization, yet, beyond administrative duties, he possesses significant legal and political roles that enable him to act in international crises. Under Article 97, the Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council.

The role of the Secretary-General as a prominent peace-making actor has evolved through extensive activity. Article 99 of the Charter grants him special authority to bring to the attention of the Security Council any matter that, in his opinion, may threaten the maintenance of international peace and security. As is evident, Article 99 uses the broad term "any matter" rather than the narrower terms "situation" or "dispute." Accordingly, the Secretary-General may refer to the Security Council any matter he considers to endanger international peace and security—not merely an ongoing dispute.

This legal authority has underpinned many actions undertaken by successive Secretaries-General in global crises.

The Secretary-General plays a sensitive and dual role in the peaceful settlement of international disputes. On the one hand, he seeks to implement the recommendations, decisions, and views of the Security Council and the General Assembly in this regard; and on the other hand, as an independent and internationally trusted figure, he may, by virtue of his position, effectively contribute to the settlement of disputes—an effectiveness that largely depends on the cooperation of the disputing parties as well as the views of the permanent members of the Security Council[1].

António Guterres, a Portuguese statesman, assumed office as Secretary-General on 1 January 2017. His tenure has been among the most turbulent periods of contemporary history, spanning the civil war in Syria, the crisis in Yemen, the conflict in Ukraine, armed confrontations in Libya, the Rohingya crisis in Myanmar, the Tigray war in Ethiopia, escalations in Nagorno-Karabakh, the Gaza crisis (2023–2025), and the direct confrontation between Iran and Israel (2025). Given the responsibilities and authorities vested in the Secretary-General as one of the principal organs of the United Nations in ensuring international peace

1 Mohammadi, Ehsan, 'Evaluation of the Performance of the Special Representatives of the United Nations Secretary-General as International Mediators in the Yemeni Civil War (2011-2021) (2022), *Foreign Policy Quarterly*, 36(3): 122.

and security, an analysis of his performance allows for an assessment of the Organization's approaches, challenges, and orientations toward contemporary global crises through the lens of his actions and positions.

1. The Role of the UN Secretary-General in Maintaining International Peace and Security

The Secretary-General of the United Nations, as the Head of the Secretariat of the Organization, plays a central role in safeguarding international peace and security. This role is grounded in the UN Charter (particularly Articles 97 to 101) and in the practices developed over decades.

In effect, the Secretary-General's diverse responses to matters related to the Charter serve as the starting point for rational policy orientations adopted by States and international organizations in addressing challenges faced by the international community. Various studies indicate that the presence of a capable Secretary-General can significantly influence the effectiveness of this international institution, especially in maintaining international peace and security. [1]Javier Pérez de Cuéllar, former UN Secretary-General, reminds us that although peace may sometimes seem "a general enchantment devoid of practical meaning," in the face of continuous conflict and struggle, it remains the duty of the United Nations—and particularly its Secretary-General—to strive for the realization of peace for all[2].

As noted, in the context of safeguarding international peace and security, the Secretary-General is one of the most influential organs of the United Nations. His authority in this realm derives from both explicit and implicit powers under the Charter, as well as from responsibilities delegated to him by the Security Council and the General Assembly.

The present research first examines the powers of the UN Secretary-General in matters of international peace and security. In the second part of this article, the performance of the current Secretary-General, António Guterres, in crises related to international peace and security will be analyzed in order to determine the extent to which his actions and decisions align with the duties and authorities defined for the Secretary-General as one of the principal organs of the United Nations.

1.1. The Legal Framework of the Actions of the UN Secretary-General in Ensuring International Peace and Security

Paragraph 1 of Article 1 of the Charter, in setting out the purposes of the United Nations, enumerates the maintenance of international peace and security and, to this end, the taking of effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace; and the adjustment or settlement of international disputes or situations which might lead to a breach of the peace by peaceful means and in conformity with the principles of justice and international law. Paragraph 1 of Article 1 clearly identifies three categories of actions the United Nations must undertake to

1 Sezavar, Ahmad, 'Explanation of the Role of the United Nations Secretary-General in Consolidating World Peace' (2019), Third National Conference and Second International Conference on Law and Political Science. Tehran: 2.

2 Javier Perez de Cuellar, The Nobel Peace Prize 1988, accessed 3 June 2020, https://www.nobelprize.org/prizes/ peace/1988/ un/lecture/ (1988).

maintain international peace and security: first, it must engage in preventive measures aimed at eliminating factors of tension and preventing the emergence of disputes; second, it must assist the parties to a conflict in achieving a peaceful settlement consistent with the principles of justice and law; and finally, it must take enforcement measures to confront conflicts[1]. On this basis, given that the UN Secretary-General is one of the principal organs of the Organization, each Secretary-General, depending on the temporal conditions of the international community in which they have served, has acted in a particular manner to establish peace.

Regarding the preventive actions of the Secretary-General, Article 99 of the Charter provides that the "Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security." Successive UN Secretaries-General have rarely and only in exceptional circumstances invoked Article 99 to draw the Council's attention to situations constituting threats to or breaches of international peace and security. In this regard, one may refer to the 1979 seizure of the United States Embassy in Iran and the detention of diplomatic personnel by Iranian students, a situation which Waldheim, the Secretary-General at the time, determined—on the basis of Article 99—to constitute a threat to the peace and subsequently referred to the Security Council[2]. The Security Council convened a meeting to consider the matter; however, due to the Soviet veto, no binding resolution was adopted. Ultimately, the case was settled by the International Court of Justice. Another example is Guterres's action during the Operation Al-Aqsa Storm conflict, in which, invoking Article 99 of the UN Charter, he called upon the Security Council to act "to avert a humanitarian catastrophe" in Gaza and urged agreement on a full humanitarian ceasefire between Israel and Palestinian armed groups[3].

The second stage—assisting the parties to a dispute to achieve a peaceful solution in accordance with the principles of justice and law—can be observed in the Secretaries-General's mediatory efforts, in which they have urged the parties to negotiate and comply with the principles enshrined in the Charter. One of the most significant examples of mediation was U Thant's role during the Cuban Missile Crisis, in which he served as a neutral intermediary trusted by both superpowers. Acting as a conduit between the two sides, he proposed that the United States commit to non-aggression toward Cuba in exchange for the Soviet withdrawal of missiles from the island.

This mediation contributed to de-escalation and created space for negotiation[4].

The Secretary-General's involvement in UN peacekeeping operations is one of the most significant enforcement-related measures in response to conflicts. Since the establishment of the United Nations, and amid the constantly evolving circumstances of the international community, there have been persistent calls among UN Member States for strengthening the political role of the Secretary-General. The expansion of the scope and functions of

1 Nafaa Hassan 'The United Nations in Half a Century: A Study of the Evolution of International Organization Since 1945' (1995). *Kuwait: The National Council for Culture*,77: 78.

2 Rosenne, S. 'The Iran Hostage Crisis and the International Court of Justice' (1981) *American Journal of International Law*, 75(2): 421

3 UN News 'Gaza: Guterres invokes 'most powerful tool' Article 99, in bid for humanitarian ceasefire' (2023), <https://news.un.org/en/story/2023/12/1144447> accessed 30 September 2025.

4 Walter Dorn and Robert Pauk, 'Unsung Mediator: U Thant and the Cuban Missile Crisis' (2009) 33 *Diplomatic History* 261.

the Secretary-General's role over time—including his activities in peacekeeping missions, despite the Charter's limited reference to such operations—reflects this trend[1].

Although the UN Charter contains no explicit provisions on peacekeeping operations, their legal foundation derives from UN practice, as reflected in numerous Security Council and General Assembly resolutions, which have given rise to customary rules. Furthermore, a progressive interpretation of the Charter—particularly Chapter I (Articles 1 and 2), Chapter VI (especially Articles 33, 34, 36, and 37), and Chapter VII (notably Article 40)—clarifies the legal basis for peacekeeping operations.

According to Dag Hammarskjöld, former Secretary-General of the United Nations, peacekeeping operations fall under Chapter Six and a Half of the Charter. On this basis, the Security Council is the authority responsible for peacekeeping operations, since pursuant to Article 24(1) of the Charter, the primary responsibility for the maintenance of international peace and security rests with the Security Council. In this context, the role of the Secretary-General in peacekeeping operations is of particular importance, for, under Article 99 of the UN Charter, the Secretary-General may bring to the attention of the Security Council situations that threaten international peace and security. This becomes especially significant in circumstances requiring the urgent deployment of peacekeeping forces. If the Secretary-General remains proactive in this regard and identifies, in a timely and accurate manner, situations that necessitate the presence of peacekeepers, the Security Council may take effective action in due course. Various Secretaries-General have taken action in this field. For example, Kofi Annan facilitated the independence process of East Timor through the establishment of multiple UN missions.[2]

1.2. The Impact of Time as a Variable on the Role of Secretaries-General in Ensuring International Peace and Security

In the early years of the United Nations, an atmosphere of intense enthusiasm prevailed. Representatives were convinced they had adopted a system of collective security that would forever prohibit all wars—an outlook shared by Trygve Lie, who served as the first Secretary-General from 1946 to 1952. Mr. Hammarskjöld assumed office in 1953. By that time, the international situation had begun to deteriorate, and the earlier optimism had given way to severe East–West tensions. Because the Security Council was nearly paralyzed by the Soviet Union's frequent vetoes, Mr. Hammarskjöld often relied on quiet diplomacy and served as a cautious mediator.[3]

The next Secretary-General, U Thant, advanced the themes of decolonization, disarmament, and development. He frequently relied on quiet diplomacy to defuse deadly tensions during the difficult years of the Cold War. Mr. Pérez de Cuéllar made substantial contributions to resolving conflicts in Central America and to neutralizing the war between Iran and Iraq. During his ten-

1 Troy, Jodok 'The United Nations Secretary-General as an International Civil Servant' (2020). *The International History Review*, 42, 1: 14.

2 'unsw.edu.au' The Howard Library Case Study: Peacekeeping in Timor-Leste (2021) <https://www.howardlibrary.unsw.edu.au/sites/default/files/2021-01/Case%20Study%20Peacekeeping%20in%20Timor-Leste.pdf> accessed 30 September 2025.

3 Gazarian, Jean, 'The Role of the Secretary-General: A Personal History', (2007) <https://www.un.org/en/chronicle/article/role-secretary-general-personal-history> accessed 17 October 2024.

year term as Secretary-General, from 1982 to 1991, a number of Cold War–related tensions were gradually eased. Boutros Boutros-Ghali of Egypt served from 1992 to 1996. Prior to his appointment as Secretary-General, he had held several significant posts, including Minister of Foreign Affairs and negotiator of the 1979 Camp David Accords between Egypt and Israel[1]. In 2000, Kofi Annan of Ghana issued the report that served as the basis for the Millennium Declaration. Mr. Ban Ki-moon's policy focused on strengthening the three pillars of the United Nations—security, development, and human rights. According to him, "my first priority will be to restore trust in the United Nations[2]."

1.3. The Perception of Secretaries-General of Their Role in Ensuring International Peace and Security

The history of UN activity demonstrates that although the UN Charter emphasizes the political duties of the Secretary-General—referring explicitly only in Article 99 to his political responsibility to bring to the Security Council's attention any matter that may threaten or breach international peace and security—Secretaries-General have shown strong interest in undertaking initiatives to advance international peace and security. In practice, they have not operated merely in line with the interests of the major powers of the United Nations but have devoted significant attention to matters related to peace and development.[3]

Nevertheless, the differing social, political, and economic conditions, as well as the distinct personalities of each Secretary-General, have resulted in varied approaches and actions.

To understand Secretaries-General's perception of their role, one may refer to their inaugural speeches before the UN General Assembly. Taken together, these speeches show that their primary aim upon assuming office has been to serve the peoples of the world by acting for peace through the United Nations.[4]

Furthermore, a quantitative review of the key terms and word combinations employed in their inaugural addresses shows that among the 25 most frequent terms in their speeches, the five most common are "nation" (186 occurrences), "united" (176), "general" (129), "organization" (98), and "Secretary-General" (87). The study further revealed that once these explicit and neutral institutional terms are set aside, the words "world" (83 occurrences) and "peace" (81 occurrences) are the most frequently used. Additionally, the words associated with and combined alongside "world" include "people," "problems," "work," and "economic."

And the terms combined with "peace" include "security," "nations," "united," "development," and "justice." This directly reflects the objectives to which the Secretaries-General of the United Nations have, over time, considered themselves committed.[5]

In fact, in the post–Cold War era, changes in global policies and priorities—particularly the prioritization of human security and development—led to increased expectations of the United Nations. Accordingly, Javier Pérez de Cuéllar, as the first Secretary-General after the

1 Ibid.
2 Ibid.
3 Troy, Jodok (n 9) 14.
4 Weiss and Carayannis, 2017: 312.
5 Troy, Jodok (n 9) 6.

Cold War, was mandated to act with respect to UN peacekeeping operations, thereby paving the way for subsequent Secretaries-General to take further action in this field. Boutros-Ghali and Kofi Annan introduced substantial reforms to the functions of the Secretariat, particularly the role of the Secretary-General, in 1992, 1997, and 2002. Boutros-Ghali devoted much of his final years in office to countering the excessive ambitions of the United States in global affairs, and Kofi Annan, after the conclusion of his first term and the beginning of his second (which coincided with the fifty-fifth anniversary of the United Nations), implemented structural reforms to enhance the effectiveness of the UN's actions in maintaining international peace and security.

However, Ban Ki-moon's tenure is considered a missed opportunity to sustain this renewed approach within the United Nations, particularly within the Secretariat. In fact, he could have used the legacy established by his three predecessors to pursue new initiatives and reforms aimed at safeguarding international peace and security, but it appears that the Organization required a Secretary-General bolder than he was.[1] Nevertheless, the international community's environment during a Secretary-General's tenure is also crucial to his capacity to act, to the extent that it is often said that UN Secretaries-General are products of their time.

In continuation, considering that this article was written in the final years of António Guterres's tenure, and given that nine years have passed since he assumed office and his term is approaching its end, his performance in ensuring international peace and security during these nine years will be examined. By analyzing his conduct, it will be determined to what extent the international community between 2016 and 2025 was affected by his action or inaction.

The present study, therefore, proceeds by focusing on the nine-year tenure of António Guterres (2016–2025), which, at the time of drafting this article, is nearing completion, and seeks to examine his performance in ensuring international peace and security. The main objective is to analyze the extent to which his actions—or failures to act—have influenced international peace and security during this period.

2. António Guterres's Performance in Ensuring International Peace and Security

2.1. The Syrian Crisis

At the beginning of Guterres's tenure in 2017, the Syrian civil war entered a highly complex phase. At this stage, the involvement of external actors in the Syrian government—including the United States and Turkey in various parts of the country—transformed the nature of the conflict from an internal armed conflict into an internationalized one.

António Guterres issued warnings regarding violations of international obligations, including the repeated use of chemical weapons in various parts of Syria. In response to chemical attacks—including the attack on Khan Shaykhun in Idlib Province in 2017—he declared the use of such weapons unacceptable and called for an immediate and transparent

1 T.G. Weiss and Carayannis, 325_326.

investigation.[1] Despite these expressions of concern, no effective enforcement measures were adopted to address violations of international humanitarian law.[2]

Furthermore, the United States' extensive support for opposition groups and the transfer of assistance and weapons to them significantly complicated the crisis. An official report by the U.S. Department of State indicates that the United States provided nearly USD 260 million in assistance to Syrian opposition groups—an action that indirectly influenced the military and political dimensions of the crisis[3]. This may illustrate the logistical and financial role of the United States in supporting armed groups opposing the Syrian government—an issue in which Mr. Guterres did not intervene.

Regarding transitional justice, the Syrian National Transitional Justice Commission, established under the supervision of the Secretary-General in 2025, has focused exclusively on the crimes of the former regime and has not exercised effective oversight over the accountability of all parties to the conflict. According to a Human Rights Watch report dated 19 May 2025, limitations within the mandate of the Syrian National Transitional Justice Commission were noted. The report states that the Commission's mandate is worryingly narrow and fails to address a broad segment of victims.[4]

These limitations have posed significant challenges to the transitional justice process in Syria. Moreover, humanitarian access to the northwestern regions of Syria, which are under the control of opposition groups, has been unsuccessful on the part of the United Nations, and no effective mechanisms guaranteeing the delivery of assistance have been established.

2.2. The Yemen Crisis

With the attack on Yemen by the Saudi-led coalition in 2016, the political, social, and economic crises—particularly the most severe humanitarian crisis—began in the country. Accordingly, the United Nations undertook measures to peacefully resolve the disputes, mitigate the humanitarian catastrophe, and protect civilians[5].

Guterres repeatedly referred to the situation in Yemen as "the world's worst humanitarian crisis," urging the parties to cease hostilities, comply with international law, and ensure unimpeded humanitarian access. He criticized violations such as the complete blockade and the denial of food, medicine, and water to civilians in Yemen.[6]

On 16 February 2018, Guterres appointed Martin Griffiths of the United Kingdom as his Special Envoy for Yemen. The Special Envoy conducted four rounds of consultations between

1 UN News 'UN Security Council and the Syrian conflict' (2022) <https://news.un.org/en/story/2022/06/1112002> accessed 30 October 2024

2 Human Rights Watch 'Syria's transitional justice commission: A missed opportunity for victim-led justice' https://www.hrw.org/news/2025/05/19/syrias-transitional-justice-commission-missed-opportunity-victim-led-justice accessed 19 May 2025

3 U.S. Department of State. (2014), 'The Syrian crisis: U.S. assistance and support for the transition' <https://2009-2017.state.gov/r/pa/prs/ps/2014/01/220029.htm?utm> accessed 20 June 2025

4 Human Rights Watch 'HRW Syria's transitional justice commission undermined by narrow mandate' <https://npasyria.com/en/125869/> accessed 20 May 2025.

5 Gholami, Saba, Sadat Akhavi, Seyed Ali, "The Performance of the United Nations on the Humanitarian Crisis in Yemen" (2019), Nations Research, 57(7): 13.

6 United Nations (2018 November 2), 'Remarks of the Secretary General at the press encounter on Yemen: "We must do all we can now to end human suffering and avoid the worst humanitarian crisis in the world from getting even worse' <https://www.un.org/sg/en/content/sg/press-encounter/2018-11-02/secretary generals-remarks press encounter yemen> accessed 22 July 2025

the parties to the conflict. As a result of the efforts of the Secretary-General's Special Envoy in Stockholm, the parties reached agreements on several issues, including the Agreement on the City of Hodeidah and the Ports of Hodeidah, an implementation mechanism for the exchange of prisoners, and a Memorandum of Understanding regarding the city of Taiz.[1]

Moreover, in his annual report on children and armed conflict, Guterres added the Saudi-led coalition to the "list of shame" for violations against children; the report of the United Nations High Commissioner for Human Rights for 2016–2017 indicates that the coalition was responsible for killing or injuring at least 683 children and for 38 attacks on schools and hospitals[2].

However, one criticism directed at Guterres concerning the Yemen crisis is the "removal or delay in listing the Saudi-led coalition on the list of shame." Despite credible and documented evidence of child casualties caused by the coalition, the Secretary-General again removed the coalition from the list. This reflects passivity or excessive caution in dealing with major powers, undermining the credibility of the Secretary-General and the United Nations' ability to enforce international norms.

2.3. The Libya Crisis

In Libya, following the fall of Gaddafi in 2011, civil war continued between the Government of National Accord and the forces of Khalifa Haftar (the Libyan National Army). In 2019, Guterres personally traveled to Libya in an attempt to mediate and improve the situation.

To stabilize the situation, the Secretary-General, together with the United Nations Support Mission in Libya, led the peace mission and provided regular reports to the Security Council on developments (UNSMIL, 2024). During the escalation of military operations in April 2019, Guterres called on the parties to exercise restraint and emphasized the implementation of relevant resolutions concerning arms embargoes and monitoring mechanisms (United Nations, 2019).

However, despite the fact that conditions in Libya were highly influenced by external interventions—including the provision of weapons and foreign fighters—Guterres took no explicit position or practical measure in relation to these violations.[3]

2.4. The Myanmar (Rohingya) Crisis

The genocide of the Rohingya Muslims in Myanmar constitutes one of the most catastrophic humanitarian crises in recent decades, marked by systematic persecution, mass displacement, and severe human rights violations. In 2017, this crisis became one of the most pressing challenges facing Guterres. Through large-scale military operations and mass killings, the Myanmar army expelled hundreds of thousands of Rohingya Muslims to Bangladesh.

On 11 September 2017, the United Nations' top human rights official, Zeid Ra'ad Al Hussein, in a session of the Human Rights Council in Geneva, stated that the Myanmar

1 Gholami, Saba, Sadat Akhavi, Seyed Ali, "The Performance of the United Nations on the Humanitarian Crisis in Yemen" (2019), *Nations Research*, 57(7): 13.

2 United Nations 'Addressing Dire Humanitarian Crisis in Yemen, Secretary-General António Guterres says vital aid access must be maintained and strengthened' (2018) <https://press.un.org/en/2018/sgsm18869.doc.htm> accessed 30 September 2025.

3 Atlantic Council 'The UN should take a bolder stance in Libya' (2024) <https://www.atlanticcouncil.org/in-depth-research-reports/report/the-united-nations-in-libya-the-sisyphean-transition/> accessed 30 June 2025

military's operations against the Muslim Rohingya minority in Rakhine State constitute a "textbook example of ethnic cleansing." He reported that security forces and local militias burned Rohingya villages, carried out extrajudicial killings, and displaced civilians — forcing hundreds of thousands to flee to Bangladesh. These statements were based on multiple reports and satellite imagery documenting the violence against the Rohingya[1].

Following the military coup in Myanmar in February 2021, the Secretary-General adopted explicit legal positions. In his statement of 14 February 2021, he reaffirmed the United Nations' support for the restoration of the democratic process, the immediate release of elected leaders, and respect for human rights[2]. In March of the same year, the Secretary-General called on the Myanmar military to refrain from violence against civilians and to hold perpetrators of serious human rights violations accountable.[3]

However, the Secretary-General did not take effective steps to exert diplomatic pressure on States supporting Myanmar's military regime—such as China and Russia—and was unable to prevent the continued support of these permanent members of the Security Council for the junta[4]. Critics further argue that in the humanitarian dimension, the Secretary-General's general condemnations and statements did not sufficiently address the plight of minorities, particularly in Rakhine and Shan States, and therefore the ongoing human rights violations in these regions persisted.[5]

As a result, despite the Secretary-General's effective role in condemning the coup and violations of international humanitarian law, several factors—such as political pressures and the failure to activate leverage mechanisms, including Article 99 of the Charter—weakened the practical impact of these measures. This situation constitutes a clear example of the long-standing dilemma between the neutrality and effectiveness of the United Nations Secretary-General in addressing international crises.

2.5. The Tigray Crisis (Ethiopia)

The Ethiopian federal government's military operations against the Tigray People's Liberation Front (TPLF) began in early November 2020; the government declared that the operation was in response to the TPLF's attack on military bases. This marked the beginning of a large-scale conflict that resulted in extensive humanitarian consequences.[6] Throughout 2021 and 2022, the United Nations and the relevant international institutions stated that parts of Tigray were

1 Reuters 'U.N. brands Myanmar violence a "textbook" example of ethnic cleansing' (2017) <https://www.reuters.com/article/world/un-brands-myanmar-violence-a-textbook-example-of-ethnic-cleansing-idUSKCN1BM0Q6/> retrieved 5 may 2025

2 Zia Akhtar. "Rohingya Muslims and IHL: Expanding the Basis for Responsibility to Protect in a NIAC with a Proactive Mechanism". *Iranian Journal of International and Comparative Law*, 1, 2, 2023, 17-37. DOI: 10.22091/ijicl.2024.9945.1076.

3 United Nations. 'Statement attributable to the Spokesperson for the Secretary-General – Myanmar' (2021b, March 27) <https://www.un.org/sg/en/content/sg/statement/2021-03-27/statement%C2%A0attributable-the-spokesperson-for-the-secretary-general-myanmar> accessed 30 September 2025.

4 Centre for Strategic and International Studies (CSIS) (2023), 'Rethinking humanitarian assistance for Myanmar' <Retrieved from https://www.csis.org/analysis/rethinking-humanitarian-assistance-myanmar> accessed 12 July 2025: 3.

5 Centre for Strategic and International Studies (CSIS) (2023), 'Rethinking humanitarian assistance for Myanmar' <Retrieved from https://www.csis.org/analysis/rethinking-humanitarian-assistance-myanmar> accessed 12 July 2025: 5.

6 Human Rights Watch 'UN Security Council: End inaction on Ethiopia' (2021) <https://www.hrw.org/news/2021/07/02/un-security-council-end-inaction-ethiopia>

on the brink of famine or in famine-like conditions, issuing warnings regarding restrictions on access to food, medicine, and essential services.[1]

The Office of the Secretary-General made efforts during this crisis to facilitate humanitarian access and to encourage a ceasefire and dialogue[2] However, when the joint report of the Ethiopian Human Rights Commission and the Office of the United Nations High Commissioner for Human Rights in 2021 presented evidence of widespread killings, abuses, and a humanitarian blockade, legal observers and human rights bodies described the Secretary-General's response as "insufficient and delayed."[3]. Improper delays, or limiting action to merely declaratory steps when there is substantial evidence of the commission of war crimes and crimes against humanity, can undermine the guarantees of protection owed to victims of such crimes. Subsequent reports issued by the International Commission of Human Rights Experts on Ethiopia[4]and the Office of the High Commissioner for Human Rights likewise indicated continued violations and a risk of further atrocities[5], which required that, beyond mediation and verbal actions, the Secretary-General employ stronger legal and political instruments to exert pressure on the parties involved.

2.6. The Afghanistan Crisis

With the sudden and rapid advance of the Taliban in the summer of 2021, the Kabul government collapsed on 15 August and the regime change was effectively completed. This development immediately provoked widespread international concern and led to the convening of an emergency meeting of the Security Council (SC/14603). In response to this crisis in August 2021, António Guterres adopted several diplomatic and legal measures. In the 16 August 2021 emergency session of the Security Council, he called on all parties—particularly the Taliban—to refrain from violence and respect the fundamental principles of human rights. He emphasized the necessity of unhindered access to humanitarian assistance and urged the international community to speak with one voice in defending the rights of the Afghan people[6]

However, reports by the United Nations Assistance Mission in Afghanistan indicate that, following the Taliban's takeover, serious human rights violations—including extrajudicial executions, torture, arbitrary detentions, and severe restrictions on the rights of women and girls—have increased[7], demonstrating weaknesses in the monitoring and effective actions of the United Nations, including the Secretary-General.

1 UN PRESS 'At Least 400,000 'Living in Famine-Like Conditions' in Ethiopia's Tigray Region, Secretary-General Tells Security Council, Calling for End to Hostilities' (2021), <https://press.un.org/en/2021/sc14614.doc.htm>

2 United Nations 'UN chief welcomes Tigray humanitarian ceasefire. UN Sustainable Development Group' (2022) <https://unsdg.un.org/latest/stories/ethiopia-un-chief-welcomes-tigray-humanitarian-ceasefire> retrieved 12 March 2024

3 Ethiopian Human Rights Commission & Office of the United Nations High Commissioner for Human Rights. (2021). 'Report of the joint investigation into alleged violations of human rights in the Tigray region of Ethiopia' (2021) <https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf> accessed 18 May 2025

4 International Commission of Human Rights Experts on Ethiopia 'Comprehensive investigative findings and legal determinations' (2023) (A/HRC/54/CRP.3). <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2023/10/report/comprehensive-investigative-findings-and-legal-determinations-international-commission-of-human-rights-experts-on-ethiopia/a-hrc-54-crp-3.pdf>

5 Office of the United Nations High Commissioner for Human Rights (OHCHR). (2023) 'A/HRC/54/55 — Report on the human rights situation in Ethiopia'<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/chreetiopia/A_HRC_54_55_AUV.pdf> accessed 30 May 2025

6 United Nations. 'Secretary-General's remarks to the Security Council on Afghanistan' (2021 a) <https://www.un.org/sg/en/content/sg/statement/2021-08-16/secretary-generals-remarks-the-security-council-afghanistan-delivered> Retrieved 30 August 2024: 2

7 UNAMA 'Human Rights in Afghanistan: 15 August 2021 – 15 June 2022' (2022) <https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf> Retrieved 30 August 2024: 2

Regarding Afghanistan's economic crisis, on 11 October 2021 the Secretary-General called on the international community to provide financial resources to prevent Afghanistan's economic collapse.[1]

Nevertheless, the Secretary-General's efforts to compel UN Member States to provide adequate and immediate financial assistance did not produce effective results. Therefore, it may be concluded that the Secretary-General's performance in the Afghanistan crisis did not go beyond verbal actions and failed to yield tangible outcomes.

2.7. The Nagorno-Karabakh Crisis

The Nagorno-Karabakh conflict has historical roots dating back to the late 1980s (1991–1994). The conflict re-emerged in the autumn of 2020 between the Republic of Azerbaijan and Armenian/Artsakh forces, and ended with the 9 November 2020 ceasefire brokered by Russia. Under the terms of the ceasefire, Russian peacekeepers were deployed to the region, and parts of the surrounding areas were returned to Azerbaijan.[2]

In the post-war period (2022–2023), the prolonged blockade of the Lachin Corridor—the sole land route connecting Nagorno-Karabakh to Armenia—created a severe humanitarian crisis.[3]

International institutions described this situation as "severe" and "dangerous" and issued reports concerning shortages of food, medicine, and fuel in the region (Human Rights Watch, 2022). In September 2023, tensions escalated following Azerbaijan's large-scale military operation, which resulted in the displacement of many ethnic Armenian residents and led Armenia to file an application before the International Court of Justice.[4]

During this crisis, the United Nations Secretary-General, António Guterres, undertook several diplomatic and legal actions. On 27 September 2020, he expressed deep concern regarding the resumption of hostilities along the line of contact in the Nagorno-Karabakh region and called for an immediate cessation of fighting and a return to negotiations[5]. On 5 October 2020, the Secretary-General condemned the continued escalation of violence and emphasized the need to respect human rights and international humanitarian law[6] On 18 October 2020, the Secretary-General condemned attacks against civilian areas and demanded their immediate cessation [7] Subsequently, he welcomed the announcement of a ceasefire and urged both parties to uphold their commitments and resume negotiations[8]. He also expressed

1 United Nations. (2021c, October 11). Highlight 11 October 2021. Retrieved from https://www.un.org/sg/en/content/highlight/2021-10-11.html

2 Reuters 'Russian peacekeepers deploy to Nagorno-Karabakh after ceasefire deal' (2020) <https://www.reuters.com/article/world/russian-peacekeepers-deploy-to-nagorno-karabakh-after-ceasefire-deal-idUSKBN27Q06O/> accessed 30 October 2024

3 Human Rights Watch 'Azerbaijan: Nagorno-Karabakh lifeline road blocked' (2022) <https://www.hrw.org/news/2022/12/21/azerbaijan-nagorno-karabakh-lifeline-road-blocked> 30 October 2024

4 FPRI 'A Frozen Conflict Boils Over: Nagorno-Karabakh in 2023 and Future Implications' (2024). <https://www.fpri.org/article/2024/01/a-frozen-conflict-boils-over-nagorno-karabakh-in-2023-and-future-implications/> retrieved 4 may 2025

5 United Nations 'Statement attributable to the Spokesman for the Secretary-General on the Nagorno-Karabakh conflict' (2020a, September 27) <https://www.un.org/sg/en/content/sg/statement/2020-09-27/statement-attributable-the-spokesman-for-the-secretary-general-the-nagorno-karabakh-conflict> accessed 12 May 2025

6 United Nations 'UN Secretary-General's Spokesman on the Nagorno-Karabakh conflict' (2020b, October 5). <https://www.un.org/sg/en/content/sg/statement/2020-10-05/un-secretary-generals-spokesman-the-nagorno-karabakh-conflict> accessed 30 October 2024.

7 United Nations. 'Civilian deaths 'totally unacceptable', Secretary-General says' (2020c, October 18) <https://press.un.org/en/2020/sgsm20347.doc.htm> accessed 12 October 2024

8 United Nations. 'Welcoming Continuing Ceasefire in Nagorno-Karabakh, Secretary-General Urges Armenia and Azerbaijan to Resume Dialogue' (2020e, December 4). <https://press.un.org/en/2020/sgsm20473.doc.htm> accessed 17 October 2024

deep concern over the dire humanitarian situation in Nagorno-Karabakh following the closure of the Lachin Corridor and called for urgent measures to resolve the crisis[1].

As can be observed, the Secretary-General's performance in the Nagorno-Karabakh crisis was likewise limited to declaratory actions, which failed to prevent the continuation of the humanitarian crisis in the region.

2.8. The Sudan Crisis

Armed violence between the Sudanese Armed Forces and the Rapid Support Forces escalated suddenly on 15 April 2023, leading to large-scale fighting in Khartoum, Darfur, and other states. The conflict resulted in significant casualties, destruction of infrastructure, and a massive wave of internal displacement and refugee outflows[2]

António Guterres, the United Nations Secretary-General, repeatedly called for an immediate cessation of hostilities and a return to political negotiations in response to the Sudan crisis[3]. On 25 April 2023, the Secretary-General, in a letter addressed to the President of the Security Council (at that time the representative of the United Arab Emirates), urged the Council to take urgent actions to halt the violence and protect the people of Sudan[4]. Notably, Guterres did not invoke Article 99 of the Charter in this crisis, which may reflect his cautious approach. It was speculated that, should the Secretary-General trigger Article 99 and the Security Council fail to take decisive action due to internal divisions, the authority and credibility of his office could be undermined.

Despite the Secretary-General's limited efforts, widespread violations of human rights by the parties to the conflict in Sudan persisted. The report of the United Nations Fact-Finding Mission released in September 2024 demonstrates that the parties systematically violated international humanitarian law[5]. In October 2024, Guterres reported that conditions were not conducive to deploying a peacekeeping force in Sudan[6]. This assessment itself reflects the gravity of the situation in Sudan, a context in which the deployment of a peacekeeping operation appears necessary. Under such circumstances, the Secretary-General could have invoked Article 99 and requested the Security Council to take action.

2.9. The Mali Crisis

The insurgencies of extremist groups and armed movements (including jihadi elements) in northern Mali have intensified since 2012, following the collapse of the local government,

1 United Nations 'A/78/335-S/2023/642 General Assembly Security Council' (2023). <https://docs.un.org/en/A/78/335> accessed 2 October 2024

2 Human Rights Watch 'Fighting erupts between armed forces in Sudan' (2023). <https://www.hrw.org/breaking-news/2023/04/15/sudan-fighting-erupts-between-armed-forces> Retrieved 2 April 2025

3 United Nations 'Secretary-General's remarks on Sudan'(2023a) <https://www.un.org/sg/en/content/sg/speeches/2023-04-17/secretary-generals-remarks-sudan> Retrieved 1 March 2024

4 United Nations 'Secretary-General's remarks to the Security Council' (2023b) <https://www.un.org/sg/en/content/sg/statement/2023-04-25/secretary-generals-remarks-the-security-council-sudan-delivered> Retrieved 1 May 2024

5 UN Human Rights Office 'Sudan: UN Fact-Finding Mission outlines extensive human rights violations' (2024) <https://www.ohchr.org/en/press-releases/2024/09/sudan-un-fact-finding-mission-outlines-extensive-human-rights-violatio> accessed 12 February 2025

6 Reuters 'Sudanese need protection, but conditions not right for UN force, says Guterres' (2024) <https://www.reuters.com/world/africa/sudanese-need-protection-conditions-not-right-un-force-says-guterres-2024-10-28/> accessed 30 October 2024

rendering the central government vulnerable. This situation led to the United Nations' intervention and the establishment of a peacekeeping operation in Mali in 2013.

Despite the extension of the peacekeeping mandate and the periodic reports submitted by the Secretary-General, the continuation of hostilities and the realities on the ground demonstrate the ineffectiveness of his actions[1]. Critics identify political bias in the Secretary-General's engagement with the transitional government and external actors as a principal reason for the United Nations' limited effectiveness, arguing that it has undermined the United Nations' neutrality. Moreover, inadequate responses to misconduct by peacekeepers and delays in disciplinary procedures by the Secretariat have resulted in diminished legitimacy of the mission[2].

2.10. The Congo Crisis

The crisis in eastern Congo has deep and complex roots. A combination of ethnic rivalries, the presence of armed groups remaining from past conflicts, and intricate militia networks has led to ongoing violence against civilians, plundering of natural resources, and the intensification of regional tensions, thereby perpetuating the cycle of crisis[3].

In recent years, the renewed activity of armed rebel groups between 2022 and 2024 and their advances to seize territories have triggered waves of displacement and violence against civilians, expanding the scope of the conflict to the regional level[4].

In the Congo crisis, Guterres issued statements, conducted diplomatic contacts, and extended the peacekeeping operation[5]. However, field assessments and United Nations documentation indicate that his actions, despite the continued presence of peacekeepers in the Congo, suffered from shortcomings in terms of effectiveness[6]. The heavy human casualties in eastern Congo and the fall of cities such as Goma demonstrate that the warnings and mandate extensions of the peacekeeping operation produced no practical results, leading to widespread protests against the peacekeeping mission forces[7], revealing a deep rift between the population and the Organization.

Another issue of concern is the misconduct of peacekeeping personnel, particularly instances of sexual exploitation and abuse. In this respect, one criticism directed at Guterres is that he merely ordered internal administrative and oversight-based inquiries, measures

1 IFRI 'The UN mission in Mali: Presence without peace?' (2024) <https://www.ifri.org/en> accessed 16 May 2024

2 Office of Internal Oversight Services (OIOS) (2021), 'Internal audit division report 2021/055. United Nations. <https://oios.un.org> accessed 16 may 2025

3 Copeland, T. F. 'Civilian protection in the eastern RC: Evaluation of MONUSCO's effectiveness' (2024) (Master's thesis). Naval Postgraduate School / Calhoun repository. retrieved 16 may 2025

4 The Guardian, 'France seeks UN resolution naming Rwanda as backer of M23 rebels in DRC' (2025) <https://www.theguardian.com/world/2025/jan/27/france-seeks-un-resolution-naming-rwanda-as-backer-of-m23-rebels-in-drc> accessed 12 August 2025

5 United Nations 'Report of the Secretary-General on MONUSCO (S/2024/482). United Nations Security Council documents> (2024). <https://www.securitycouncilreport.org/un-documents/democratic-republic-of-the-congo/>

6 Global Observatory 'The effectiveness of the UN mission in the Democratic Republic of the Congo ' (2019) <https://theglobalobservatory.org/2019/12/effectiveness-un-mission-democratic-republic-of-the-congo/> 14 August 2025

7 Reuters 'UN chief speaks with DRC, Rwanda leaders over eastern Congo violence. Reuters' (2025) <https://www.reuters.com/world/africa/un-chief-speaks-with-drc-rwanda-leaders-over-eastern-congo-violence-2025-01-28/>

that were predominantly administrative and disciplinary in nature and lacked any judicial or international legal dimension.

Another criticism relates to his implicit political bias in dealing with the regional government, which undermined the principle of neutrality required of United Nations missions[1].

2.11. The Ukraine Crisis

On 24 February 2022, Russia launched a full-scale invasion of the territory of Ukraine. This action was justified by Russia on various grounds (including "protection of specific populations" or "security measures"), yet from the standpoint of international law, it constitutes an "unlawful use of force"[2]. In this crisis, despite the occurrence of an act of aggression and grave violations of international humanitarian law by both parties, Guterres refrained from acting under Article 99 for the purpose of drawing the attention of the Security Council, limiting himself instead to issuing statements and condemning attacks against civilians. Even these statements drew strong criticism due to his failure to condemn the occupation of the cities of Donetsk and Luhansk, leading to accusations of a lack of neutrality.

In this case, it may be stated that the Secretary-General cannot overlook acts of aggression by States in an attempt to maintain political balance; rather, he must reinforce the principles of the United Nations Charter through clear and decisive positions.

2.12. The Gaza Crisis

The "Al-Aqsa Flood" operation, launched by Hamas forces against the Israeli regime in response to the regime's atrocities, the killing of Palestinians, and violations of the sanctity of Al-Aqsa Mosque, began on 7 October 2023 along the border between Gaza and the occupied Palestinian territories and continued for several days. This event triggered Israel's extensive and widespread military attacks on the Gaza Strip and marked the beginning of a severe humanitarian crisis there. In the subsequent months, military operations, the crippling blockade, and the obstruction of fuel, food, and medicine supplies led to the destruction of vital infrastructure and the mass killing of civilians. Human rights bodies and the United Nations issued multiple reports on violations of international humanitarian law, forced displacement, the malnutrition crisis, and the use of starvation as a weapon during the hostilities[3].

On 7 December 2023, two months after the onset of Israel's war against Gaza, Guterres invoked Article 99 of the United Nations Charter to accelerate Security Council action. The Secretary-General's reliance on Article 99 reflected the urgent necessity to respond to escalating concerns regarding the catastrophic humanitarian situation in Gaza.

In his letter, the Secretary-General warned of the risk of the outbreak of epidemics, the

1 The New Humanitarian 'The changing face of peacekeeping: What's gone wrong' (2024) <https://www.thenewhumanitarian.org> accessed 18 February 2025

2 Asada, M. 'The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects' (2024), *International Community Law Review*, 26(1-2).

3 OHCHR 'Palestinians in Gaza continue to be killed by starvation or by bullets from the Israeli military while trying to access food'(2025a), <https://www.un.org/unispal/document/ohchr-palestinians-in-gaza-continue-to-be-killed-by-starvation-or-by-bullets-from-the-israeli-military/> accessed 16 August 2025

collapse of health facilities in Gaza, and the displacement of more than 80 percent of the population[1]

Throughout the conflict, Guterres repeatedly referred in his statements to the blockade of the Gaza Strip, underscoring the need to ensure humanitarian assistance to its population, and urged the international community to use its influence to de-escalate the situation.[2] Nevertheless, given the exceptional circumstances in Gaza, these actions produced limited impact. At the time of writing this article, repeated violations of ceasefire agreements by Israel and ongoing apocalyptic human suffering continue to be observed. It is therefore argued that invoking Article 99 was insufficient and that the Secretary-General should have undertaken greater efforts to invigorate United Nations action in this case, including pressing for the expulsion of Israel from the Organization.

3. Armed Conflict between Iran and the United States–Israel (First War)

In the early hours of 13 June 2025, the Israeli regime, with the assistance of the United States, initiated a war and committed an act of aggression against the territorial integrity of the Islamic Republic of Iran by assassinating senior Iranian military officials and carrying out military attacks against Iranian military and arms facilities. Subsequently, through actions conducted by internal and infiltrated agents, Israel committed war crimes; the intensity of operations and the scope of targets, including military bases and a significant number of civilian sites, caused serious regional and international concern.

During this conflict, the Office of the High Commissioner for Human Rights and independent international bodies issued reports indicating violations of fundamental principles of international humanitarian law, including the principle of distinction between civilians and combatants and the prohibition of attacks on residential areas, schools, relief centers, and critical facilities such as the Fordow nuclear site. The bombing of civilian facilities, including medical centers and residential areas, resulting in the deaths of hundreds of civilians, including women and children, constitutes a clear violation of Article 51 of the First Additional Protocol of 1977 to the Geneva Conventions and may be evaluated as a war crime[3]. Attacks by Israel and the United States on urban fuel depots and nuclear facilities, causing extensive environmental pollution and threats to public health, constitute an "environmental war crime."

Under these circumstances, Guterres' actions were limited solely to issuing public statements calling for "restraint by the parties."[4]. In such a situation, it would have been

1 UN News 'Gaza: Guterres invokes 'most powerful tool' Article 99, in bid for humanitarian ceasefire' (2023), <https://news.un.org/en/story/2023/12/1144447> accessed 30 September 2025

2 International Committee of the Red Cross (ICRC) 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)' (1977).

3 Human Rights Watch 'Israel: Airstrikes on Iranian civilians may constitute war crimes' (2025, June 25) <https://www.hrw.org/news/2025/06/25/israel-airstrikes-iranian-civilians-may-constitute-war-crimes> accessed 12 February 2025

4 Office of the United Nations High Commissioner for Human Rights (2025b, August 10), 'Statement by the UN Human Rights Office in the Occupied Palestinian Territory on the developments in Gaza' https://www.un.org/unispal/document/ohchr-press-release-15aug25/> accessed 16 August 2025

expected that the Secretary-General, instead of limiting his statements to calling for "restraint," would invoke his authority under Article 99 to formally bring the matter to the Security Council and request an investigation. Additionally, Guterres could have proposed, through the capacities of the Office of the High Commissioner for Human Rights and the Human Rights Council, the establishment of an international fact-finding commission to document the violations; however, the Secretary-General took no formal action in this regard.

The silence of Guterres in the face of the killing of Iranian women and children during missile attacks, while he had previously issued more explicit responses in similar humanitarian crises, has drawn criticism regarding a "duality in human sensitivity." Such negligence undermines the credibility of the international responsibility system, and the continuation of such stances compromises the neutrality of the most important international organization, reinforcing perceptions of political bias and weakening the principle of United Nations impartiality.

4. Armed Conflict between Iran and the United States–Israel (Second War)

The military crisis between Iran and the United States entered a new phase on 28 February 2026 with the commencement of large-scale aerial and missile attacks against Iranian territory. In addition to military and nuclear facilities, these attacks also targeted civilian infrastructure. According to Reuters, the first wave of the offensive occurred simultaneously with a meeting attended by Iran's Supreme Leader and senior state officials, resulting in the death of the Leader and a number of high-ranking officials[1]. The United Nations, referring to damage inflicted upon schools and healthcare facilities, also expressed concern regarding violations of the principles of international humanitarian law, particularly the principle of distinction between military and civilian objects[2]. Reports indicate that between 28 February and early April 2026, thousands of individuals lost their lives, while extensive portions of urban infrastructure, including residential areas and water and electricity networks, were destroyed .One of the most tragic incidents during this period was the attack on the Shajareh Tayyebeh Girls' School in Minab. According to Human Rights Watch, the attack resulted in the mass killing of schoolgirls, and based on Iran's allegations as well as preliminary investigations conducted by the United States military, responsibility for the incident was attributed to U.S. forces (Human Rights Watch, 2026). According to official statistics released by the Iranian government, 168 of the victims of this attack were predominantly children. The armed conflict continued until a ceasefire agreement was reached in April 2026.

At the time of writing, despite certain tensions and isolated incidents, the ceasefire remains in force .The first statement issued by António Guterres, Secretary-General of the United Nations, was released on 28 February 2026, concurrently with the Israeli and U.S. attacks against Iran. He declared: "I condemn today's military aggression in the Middle East.

1 Reuters. (2026, February 28). Israel and U.S. launch strikes on Iran. Reuters. <https://www.reuters.com> accessed 1 June 2026

2 Council on Foreign Relations. (2026, February 28). Gauging the impact of massive U.S.-Israeli strikes on Iran.< https://www.cfr.org/articles/gauging-the-impact-of-massive-u-s-israeli-strikes-on-iran/> accessed 1 June 2026

The use of force by the United States and Israel against Iran, and the subsequent retaliation by Iran in the region, undermine international peace and security. All States must respect their obligations under international law, including the Charter of the United Nations. In this statement, the Secretary-General, without expressly identifying the aggressor, also voiced concern regarding Iran's exercise of self-defense in a manner that appeared non-neutral.[1]

Three weeks after the outbreak of the war, Guterres stated: "My message to the United States and Israel is that the time has come to end this war, because the human suffering is deepening, civilian casualties are increasing, and the devastating global economic consequences are mounting. "He warned that the conflict carried the risk of triggering an uncontrollable chain reaction and had already exceeded foreseeable limits. He further stressed that the world was on the brink of a broader war, greater human suffering, and a deeper economic shock, and that the time had come to pursue the path of diplomacy. He also appointed Jean Arnault as Special Envoy to address the conflict. In these statements as well, the Secretary-General refrained from identifying the aggressor and the responsible party. With regard to the claims advanced by the United States and Israel concerning anticipatory self-defense or threats allegedly posed by Iran's nuclear programme, Guterres did not adopt a clear legal position. This is despite the fact that a substantial body of international legal scholarship considers the legality of anticipatory self-defense to be highly restricted and, to a certain extent, incompatible with the Charter of the United Nations.[2]

Overall, although Guterres condemned the attacks against Iran and emphasized the necessity of respecting the Charter, it may be argued from a legal perspective that his approach was focused primarily on the political management of the crisis and the prevention of further escalation, rather than on the active defense of the fundamental principles of international law, including the prohibition of the use of force, State responsibility, and accountability for violations of international humanitarian law. This situation reflects the enduring tension between the Secretary-General's political role as a mediator and his legal responsibility as the guardian of the Charter.[3]

Finally, with regard to the formulation of the Secretary-General's positions, it may be argued that placing the initiating actions of the United States and Israel alongside Iran's defensive response, without clearly distinguishing between the legal status of the initiating party and that of the target State, is inconsistent with the principles of justice and impartiality and constitutes a form of political balancing.

Conclusion

The Secretary-General of the United Nations is one of the Organization's most effective bodies in the field of maintaining international peace and security. His powers in this domain

1 United Nations. (2026, February 28). Secretary-General's remarks to the Security Council meeting on the situation in the Middle East [as delivered]. <https://www.un.org/sg/en/content/sg/statements/2026-02-28/secretary-generals-remarks-the-security-council-meeting-the-situation-the-middle-east-delivered> accessed 1 June 2026.

2 Geopolitical Brief. (2026, April 11). The 2026 Iran–United States–Israel confrontation: Objective analysis of causes, justifications, legal issues, likely endgames and economic consequences. https://geopoliticalbrief.org/2026/04/the-2026-iran-united-states-israel-confrontation-objective-analysis-of-causes-justifications-legal-issues-likely-endgames-and-economic-consequences.html accessed 1 June 2026

3 Ibid

derive from both explicit and implicit authorities under the Charter, as well as powers and duties delegated by the Security Council and the General Assembly. The most significant legal capacity of the Secretary-General within the Charter framework is articulated in Article 99, which permits the Secretary-General to bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security. The most important delegated responsibilities from the Security Council and the General Assembly include the deployment and direction of peacekeeping forces in such situations.

An examination of the performance of United Nations Secretaries-General in various international crises indicates that despite possessing significant legal capacities, the Secretariat faces multiple challenges in effectively maintaining international peace and security.

The approach of Secretaries-General throughout history has been shaped by the prevailing conditions within the international system and by their personal and diplomatic characteristics, resulting in varying levels of activism or caution.

An analysis of Antonio Guterres' nine-year tenure as Secretary-General demonstrates that he has predominantly relied on diplomatic tools, such as statements, ceasefire appeals, and mediation. His performance in major crises, including Syria, Yemen, Ukraine, and Gaza, shows that verbal actions alone, without substantive follow-up, have not produced tangible or sustainable results. A major weakness has been the failure to invoke Article 99 in a timely and decisive manner in many crises, coupled with caution in confronting the major permanent powers of the Security Council. This has not only weakened the authority of the Secretary-General's office but also cast doubt on the Organization's impartiality and effectiveness in the public perception.

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Sovereignty Over Islands in the light of the Jurisprudence of the International Court of Justice: A Case Study of the Iranian Three Islands in the Persian Gulf

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Abstract

Territorial issues are among the most sensitive issues in international law, where non-intervention and respect for territorial integrity are crucial. The International Court of Justice (ICJ) has developed consistent jurisprudence emphasizing treaties, effective and continuous exercise of sovereignty, and tacit acquiescence in determining territorial title. This study applies these principles to the sovereignty of Iran over the three Iranian islands of *Abu Musa*, *Greater Tunb*, and *Lesser Tunb*. Although not formally submitted to the ICJ, the question of sovereignty over islands can be analyzed in the light of the Court's precedents, highlighting the significance of tangible governmental acts -administrative, military, economic, and legal- in establishing ownership. Mere historical claims without effective control hold little weight in international law. The findings indicate that Iran's effective, manifest, and continuous sovereignty over the three islands consolidates its ownership, and the interruption caused by the British occupation does not impair this sovereignty and title. The UAE's historical claims predating its establishment cannot be relied upon before the Court because the acts occurred during occupation (not colonial rule) and are inconsistent with historical and formal documents confirming Iran's sovereign and ownership rights over the islands.

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Introduction

The settlement of territorial issues is closely linked to the maintenance of peace and stability in the international arena. It has therefore always been regarded as one of the most sensitive issues in international relations. The resolution of such issues involves political, historical, geographical, and legal dimensions, and various methods exist for their settlement, among the most important of which is recourse to international judicial bodies, foremost among them the International Court of Justice (ICJ).

Through numerous judgments, the Court has not only resolved individual disputes but also played a fundamental role in shaping customary international legal norms governing territorial issues. Given the importance of territorial integrity in securing the sovereignty and security of States at the international level—and considering the Court's increasingly prominent role as a fair and impartial authority in the determination of sovereign rights globally, as well as its function in establishing consistent judicial practice—analyzing the Court's decisions is of particular importance. This analysis enables a better understanding of how the Court rules in such cases, providing a guide for anticipating its judgments and facilitating the resolution of these kind of cases.

The Court has repeatedly referred, in its judgments on territorial disputes, to its prior decisions in similar cases. This indicates that the Court assigns significant evidentiary and persuasive value to its own precedents in analogous matters.

In the present article, a descriptive-analytical method is employed to examine and assess the Court's reasoning in territorial cases by reviewing its judicial precedents. In this regard, the Court's decisions in *Nicaragua v. Honduras* (2007), *Namibia v. Botswana* (1999), and *Nicaragua v. Colombia* (2012) provide a reliable basis for identifying legal criteria relevant to the determination of sovereignty over disputed territories. Given that, in the aforementioned cases, the Court emphasized principles such as effective exercise of sovereignty, acquiescence and implied consent by the opposing party, the principle of possessory title, and the interpretation of historical treaties, the study proceeds to evaluate the legal position of the Islamic Republic of Iran regarding the three islands, based on these principles and within the framework of the Court's judicial reasoning.

To this end, the legal status of the islands will be comparatively analyzed in the light of the Court's jurisprudence, thereby demonstrating the legitimacy and stability of Iran's position within the framework of international law.

The objective of this article is to assess the jurisprudence of the International Court of Justice in addressing territorial issues and to evaluate the applicability of the Court's approach in contestations on the sovereignty of the Iranian three islands in the Persian Gulf. Accordingly, this study seeks to answer the following questions: What approach has the Court adopted in territorial cases, and upon which principles has it relied? Does the Court follow a consistent methodology? In the light of the Court's precedent and their relevance to the status of the three Iranian islands, how might the Court approach the matter if such an issue were to be brought before it?

It appears that the Court has adopted a consistent approach to the settlement of territorial disputes, relying on principles such as the effective exercise of sovereignty, acquiescence and implied acceptance by the opposing party, the principle of possessory title, and the interpretation of historical treaties. On this basis, and considering the status of the three Iranian islands, it may be inferred that the Court's established jurisprudence in resolving territorial issues could serve as evidence supporting the sovereignty of the Islamic Republic of Iran over the three islands.

1. The Concept of Territorial Claims in International Law

States exhibit a high degree of territorial sensitivity. Naturally, political leaders and State officials are particularly vigilant regarding territorial ownership. Moreover, such issues often provoke public sentiment, leading to strong national reactions when the sovereignty of an independent State over its territory is challenged. It is therefore unsurprising that a significant portion of the claims referred to the International Court of Justice concern disagreements between States over territorial ownership.[1]

A dispute is defined as a disagreement over a legal or factual issue, a conflict, a divergence of legal opinions, or a clash of interests between two parties.[2] For a dispute to be considered international, its subject matter must fall within the scope of the international legal order and possess a legal character, even if its origin may be political in nature.[3] Accordingly, in international law, a territorial case arises when two or more States assert competing claims to sovereignty over a specific territory (such as land, a border, or a geographical area) in a manner that renders these claims mutually exclusive and the simultaneous exercise of sovereignty impossible.[4] These claims may arise from ambiguities in boundary treaties, territorial occupation, geographical changes, colonial history, or ethnic, religious, and cultural factors.

Disputed territories refer to areas over which sovereignty is the subject of an official dispute between two or more States. A territory may be considered "disputed" when two essential conditions are met simultaneously: first, the claimant State (through its official executive authorities) asserts ownership or sovereignty over a portion of land that is under the control of another State, or fundamentally challenges that State's sovereignty over the area; second, the respondent State explicitly rejects these claims and continues to regard itself as the legitimate sovereign over the territory in question.[5] This definition is fully consistent with the accepted frameworks of international law, as it emphasizes the existence of a formal opposition between the positions of two States concerning the legal status of a specific territory. Such claims may give rise to diplomatic negotiations, legal proceedings, or even a military conflict.

In cases where no agreement is reached between the parties, such allegation may be referred to the International Court of Justice. In its judgments, the Court typically relies on a

1 Ian Brownlie, *International Law in the Last Years of the Twentieth Century*, trans. Saleh Rezaei Pish (Tehran: Office of Political and International Studies, 2004) 191-195.

2 Permanent Court of International Justice, '*Case concerning the Mavrommatis Palestine Concessions (Greece v UK)* (Judgment of 30 August 1924)', Series A, no 11.

3 Beigzadeh Ebrahim, *International Law*, vol. 2, (Mizan 1401) 976.

4 Malcolm N. Shaw, *International Law* (8th edn, Cambridge University Press 2017) 485–500.

5 Huth, P. K., Croco, S. E. and Appel, B. J., 'Does international law promote the peaceful settlement of international disputes?' (2011) 105 *American Political Science Review* 415–36.

relatively consistent set of principles, including: the principle of effective sovereignty exercised by States over the alleged territory;[1] the principle of explicit or implicit consent of the parties; the frequently invoked principle of possessory title; as well as maps, historical treaties, and established international customs. In the following sections, by examining cases brought before the Court and the judgments rendered, we will explore how these commonly applied principles are used to determine sovereignty and resolve territorial disputes or contestative claims.

2. Jurisprudential Approach of the International Court of Justice in Landmark Cases

The International Court of Justice, as the highest judicial authority for the settlement of international disputes, has examined several significant cases concerning territorial disputes throughout its existence, thereby contributing to the development of consistent jurisprudence in this field. In this regard, the following section will analyze several prominent cases, including *Nicaragua v. Honduras* (1999*), Namibia v. Botswana* (1996), *and Nicaragua v. Colombia* (2012*)*. It will be demonstrated that the Court has adopted a relatively coherent approach across all these cases and has consistently adhered to well-established principles of international law such as effective sovereignty, respect for treaties, and possessory title. The subsequent discussion will focus on the conditions under which the Court applies these principles and how it determines sovereignty.

2.1. Case of Nicaragua v. Honduras (1999)[2]: From Legal Argumentation to the Establishment of Effective Sovereignty

The territorial and maritime dispute between Nicaragua and Honduras dates back to the time of their independence in 1821. Following their separation from Spain, both countries encountered difficulties defining their precise boundaries in the Caribbean. In 1894, the two States signed an agreement known as the *Gámez–Bonilla* Treaty, which delimited their land borders but left the maritime boundaries undetermined. Subsequent disputes arose regarding the maritime boundaries and sovereignty over certain islands. In 1906, a royal arbitration award by the King of Spain finalized the delimitation of the land border; however, this award still did not address maritime boundaries.[3] Ultimately, the dispute was brought before the international arena when, on 8 December 1999, Nicaragua filed an application before the International Court of Justice requesting the delimitation of the maritime boundary between the two States in the Caribbean Sea, and claimed sovereignty over islands such as islands Bobel Cay, South Cay, Savanna Cay, and Port Royal Cay.

Both parties submitted proposals to the International Court of Justice for resolving the dispute. Nicaragua, as the applicant, proposed that the maritime boundary be determined based on the “bisector method”, which corresponds to the natural configuration of the coastlines,

1 In cases such as the territorial dispute between Mali and Burkina Faso (1986), the Court emphasized that “the legal basis for the resolution of a territorial dispute is not mere history, but verifiable legal evidence of the exercise of sovereignty“.

2 *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras),* International Court of Justice. (2007).

3 Ibid, pp. 33-40

and that sovereignty over the disputed islands be established based on the adjacency principle. In Contrast, Honduras proposed that the maritime boundary should follow the 15th parallel north, which, according to Honduras, constitutes a "traditional boundary." Furthermore, Honduras asserted that the disputed islands have always been under its historical and effective sovereignty. On this basis, Honduras rejected any solution regarding the islands other than the continuation of its sovereignty.

In its judgment of 8 October 2007, the Court outlined the criteria for resolving territorial allegations and determining sovereignty. The first and most important point in the Court's ruling was the declaration of a "critical date." The Court designated the year 2001 as the critical date, holding that any actions taken after this date would be regarded merely as attempts to strengthen legal claims or fabricate evidence, and therefore would not be deemed valid.[1]

The effects of post-colonial conduct formed the first criterion considered by the Court. In line with its previous jurisprudence, the Court reaffirmed that sovereignty over small maritime geographical features may be established through limited demonstrations of State authority. Several State actions may be considered expressions of sovereignty, including the issuance of fishing licenses by Honduras in the disputed area, indicating the State's belief in its legal rights over the maritime zones surrounding the islands. Additionally, Honduras engaged in public construction activities such as authorizing the building of houses and fishing equipment storage facilities on the disputed islands.

Moreover, the enforcement of criminal and civil law—such as addressing criminal activities and cooperating with international institutions (e.g., the United States Drug Enforcement Administration)—as well as implementing immigration controls, including the inspection of foreign residents and issuance of work permits, and the establishment and operation of public infrastructure (such as the installation of a 10-meter antenna in 1975 to support oil exploration activities) were considered effective acts of sovereignty by Honduras over the contested areas.[2]

The next criterion employed by the Court to determine sovereignty was the principle of *uti possidetis juris*, which stipulates that newly independent States must retain the internal borders that their dependent territories had prior to independence. The Court examined whether the principle— "colonial borders shall remain intact unless lawfully changed"—could be applied in this case. However, the Court ultimately concluded that this principle could not assist in determining sovereignty over the disputed islands, as there was no clear evidence as to which colonial authority had previously exercised sovereignty over them.[3]

Thus, although the Court was unable to determine sovereignty in this case based on this principle—not due to the inapplicability of the principle itself, but rather due to the absence of necessary historical documentation—it seems that the Court's engagement with this criterion signals its significance in determining sovereignty.

Another factor the Court invoked in determining sovereignty was the intention and will

1 Any government action after this date was no longer considered valid (effectivité) because it might have been taken merely to strengthen legal claims in the course of litigation.
2 *Nicaragua v. Honduras*, pp. 168- 208.
3 Ibid., pp. 9-12.

to act as a sovereign. Honduras had undertaken consistent actions to exercise sovereignty over the islands and submitted relevant documentation to the Court, whereas Nicaragua failed to provide any indication of sovereign intent or action during the post-colonial period. Nicaragua's lack of objection against the sovereign acts carried out in the disputed areas over the years—such as authorizing economic activities—was also interpreted as an implicit acknowledgment of Honduras's sovereignty. This, in effect, contributed to the establishment of Honduras's sovereign title over time.

Moreover, in this case, maps and treaties involving third parties were submitted as evidence of sovereignty. However, the Court did not recognize third-party treaties as establishing sovereign rights and further found that the maps lacked probative value.[1]

The Court issued its final judgment and the legal consequences for the parties on 8 October 2007. The Court upheld Honduras's claim to sovereignty over the islands. It declared that Honduras has sovereignty over Bobel, Savanna, Port Royal, and the South islands, while Nicaragua's claim to ownership of the islands was rejected.[2] Regarding the delimitation of the maritime boundary, the Court accepted the equidistance method proposed by Nicaragua rather than Honduras's proposed 15th parallel north line. The Court emphasized that the judgment is binding on the parties and must be respected by both countries.

Among the legal consequences for Honduras, the recognition of its fishing licenses was seen as evidence of the country's exercise of sovereignty over the waters surrounding the islands. As a result of the ruling, Honduras acquired the right to exercise full sovereignty over the islands, including economic control, issuance of fishing permits, and the application of national laws. The judgment established a legal precedent for resolving maritime disputes in the Caribbean Sea and may be invoked in future cases involving Nicaragua and other States.[3] One of the most significant legal consequences of the ruling for the parties was the establishment of a mutually recognized boundary.

2.2. Namibia v. Botswana (1996)[4]: National Sovereignty and Treaty Interpretation

During the colonial era, Britain and Germany delineated their respective spheres of influence in Africa through the 1890 Anglo-German Treaty, one point of contention being the area around Kasikili/Sedudu Island and the Chobe River. After Namibia gained independence in 1990, disputes arose between Botswana and Namibia regarding the delimitation of their border in this region. In 1992, both parties agreed to refer the matter to a joint technical team to determine the border. After failing to reach an agreement, the case was submitted to the International Court of Justice under the title of "Sovereignty over Kasikili/Sedudu Island and the Surrounding River Area," located in the Zambezi River, which forms the natural boundary between Namibia and Botswana. The islands lie near the shared border between the two countries. Namibia claimed sovereignty over the islands, while Botswana asserted that they fall within its territory.[5]

1 Ibid., pp. 219-209.
2 Ibid., pp. 12-13.
3 Ibid., pp 9-12-15-25.
4 *Kasikili/Sedudu Island (Botswana/Namibia)*1996.
5 Ibid., pp. 11-16.

In its judgment of December 1999, the Court set out the criteria for determining sovereignty over Kasikili/Sedudu Island and the boundary between Botswana and Namibia. One of the key considerations was the 1890 Anglo-German[1] Treaty concluded during the colonial period. Article III of the Anglo-German Treaty[2] addressed the delimitation of boundaries and spheres of influence between Britain and Germany across various regions of Africa. The aforementioned article designated the “center of the main channel” (Thalweg des Hauptlaufes) as the boundary between Botswana and Namibia. The Court first focused on interpreting the term “ [t]he border is in the center of the main channel of the Chube River.” This treaty, which established the respective spheres of influence of Britain and Germany, provided no precise instructions for identifying the main channel of the river in that region. Consequently, the Court resorted to established rules of treaty interpretation, including the 1969 Vienna Convention on the Law of Treaties. Referring to Article 31 of the Vienna Convention[3], the Court emphasized that treaties must be interpreted in good faith, in accordance with the ordinary meaning of the terms used in the treaty, and in the light of its object and purpose. Moreover, based on Article 33 of the Vienna Convention[4] concerning interpretation of treaties authenticated in two or more languages, the Court held that the term ‘center of the main channel’ in the English and German versions of the treaty should be interpreted as equivalent and having the same meaning.[5]

The Court relied on principles of international law and international practice to determine sovereignty over the island. In this regard, it referred to the principle of *uti possidetis juris*, which holds that sovereignty is determined based on the territorial status at the time of independence.

1 This treaty is also known as the Agreement on the Boundaries of Influence in Africa

2 Article 3: In Southwest Africa the sphere in which the exercise of influence is reserved to Germany is bounded: 1. To the south by a line commencing at the mouth of the Orange River, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude. 2. To the east by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude; it runs eastward along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the river Chobe, and descends the centre of the main channel of that river to its junction with the Zambezi, where it terminates.

3 Article 31 of the 1969 Vienna Convention on the Law of Treaties: 1. A treaty shall be interpreted in good faith and in accordance with the ordinary meaning to be given to its terms in the context of the text and in the light of the object and purpose of the treaty. 2. For the purpose of interpreting a treaty, the context of the text includes, in addition to the text, including the preamble and annexes, the following: a. Any agreement relating to the treaty reached by all the parties to the treaty in connection with its conclusion; b. Any instrument drawn up by one or more of the parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument relating to the treaty. 3. In addition to the context of the text, the following shall also be taken into account: a. Any subsequent agreement between the parties to the treaty concerning the interpretation of the treaty or the application of its provisions; b. Any subsequent procedure in the application of the treaty which confirms the agreement of the parties to the treaty concerning its interpretation; c. Any relevant rule of international law applicable in the relations between the parties to the treaty. 4. If it is established that the parties to the treaty intended a particular meaning for a term, that meaning shall be given to that term.

4 Article 33 Interpretation of Treaties Authenticated in Two or More Languages 1. Where a treaty is authentic in two or more languages, the text in each of those languages shall be equally authentic unless the treaty provides, or the parties to the treaty agree, that in the event of a discrepancy, a particular text shall prevail. 2. A text of a treaty in a language other than the languages in which the treaty is authenticated shall be deemed authentic only if the treaty so provides, or the parties to the treaty so agree. 3. It is a principle that the terms of a treaty shall have a single meaning throughout. 4. Except where the text is the criterion under paragraph 1, if a comparison of the authentic texts of the treaty reveals a difference of meaning which cannot be resolved by the application of articles 31 and 32, the meaning to be chosen shall be that which best reconciles the subject-matter and purpose of the treaty.

5 *Kasikili/Sedudu Island (Botswana v. Namibia)*.

Another key criterion used by the Court was the existence of effective control (effectivités Occupation). The Court employed the concept of effective sovereignty to assess which country had historically exercised greater control over the island and its surrounding areas. In this respect, Botswana had maintained control over Kasikili/Sedudu Island from the outset, and historical evidence—including reports from British and German officials—demonstrated that Botswana had assumed sovereign responsibility over the island prior to Namibia's independence in 1990. Botswana had consistently used the island for conservation and national purposes, such as establishing national parks and protected areas. In contrast, Namibia failed to provide sufficient evidence of effective presence or continuous use of the island.[1]

The Court applied hydrological criteria—such as the depth, width, and water flow of the channels—to determine the boundary between Namibia and Botswana. Based on these hydrological factors, the northern channel, having greater depth, wider breadth, and better navigational conditions, was recognized as the main channel. In addition to hydrological criteria, the Court also considered the river's functional use, including navigability, transportation, and other economic activities. The Court examined which channel was more suitable for shipping and factored this into its decision. These criteria played a significant role in delineating the boundary between the two countries.

The Court issued its final judgment for the parties in December 1999. Accordingly, the Court declared that the islands of Kasikili and Sedudu are part of Botswana's territory, and Botswana holds sovereignty over these islands. This means that all rights and responsibilities related to the islands, including the protection of natural resources and the control and management of the area, must be carried out by Botswana. Conversely, Namibia's claim to sovereignty over these islands was rejected, and Namibia is obliged to recognize Botswana's sovereignty. Furthermore, the parties are required to establish the border between Botswana and Namibia around Kasikili and Sedudu islands along the line of the deepest waters in the northern channel of the Chobe River. The Court emphasized that the judgment is binding on both parties and must be respected by both countries. The Court also underscored that the nationals and vessels of both Botswana and Namibia shall have equal rights to use the shared waterways. This decision reflects the principles of equitable and reasonable use of shared resources. Both Botswana and Namibia must comply with the ICJ ruling on sovereignty and border demarcation and cooperate to implement it. Such cooperation includes respecting sovereign rights and equitable use of water resources in the Chobe River.

2.3. Case Nicaragua vs. Colombia 2012[2]: Validity of Colonial Treaties

The Caribbean Sea has always been one of the most contentious regions in terms of territorial allegations. Among these, the land and maritime dispute between Nicaragua and Colombia is one of the most challenging conflicts in the region. Its roots date back to the 1928 treaty[3] between the two countries and the 1930 additional protocol. In this treaty, Colombia's

1 Ibid., pp. 29-42 and 1045.
2 *Territorial and Maritime Dispute (Nicaragua v Colombia)* 2012.
3 Treaty between Nicaragua and Colombia, 1928.

sovereignty over certain islands, such as San Andrés, Providencia, and Santa Catalina, was recognized. However, ambiguities remained concerning the geographic scope of the term "San Andrés Archipelago" and the ownership of other smaller islands and surrounding waters.[1] These disputes intensified in subsequent decades, especially after 1969, with Nicaragua's official protests against Colombia's actions in the region. Eventually, on December 6, 2001, Nicaragua filed a lawsuit against Colombia before the International Court of Justice (ICJ), citing the American Treaty on Pacific Settlement of Disputes (known as the Bogotá Pact 1948).[2] Nicaragua claimed sovereignty over the alleged islands and sought delimitation of the maritime boundaries between the two countries. Additionally, Nicaragua accused Colombia of interventionist actions.[3] In contrast, Colombia asserted sovereignty over all the islands and argued for the delimitation of the maritime boundary based on the median line principle.[4]

The Court, in its preliminary judgment in December 2007, set out criteria for establishing sovereignty and resolving disputes regarding the maritime features claimed by the parties and the delimitation of boundaries in the Caribbean Sea. One of the criteria that received particular attention from the Court was the validity and binding nature of the 1928 Treaty and the 1930 Protocol. This treaty specifically addressed the status of the main disputed islands (San Andrés, Providencia, and Santa Catalina). Regarding the validity of the 1928 Treaty, Nicaragua initially claimed that the treaty was concluded "in clear violation of Nicaragua's 1911 Constitution, which was in force in 1928," and secondly, that at the time of the treaty's conclusion, Nicaragua was under U.S. military occupation and was prohibited from concluding treaties contrary to U.S. interests or rejecting treaties desired by the United States. Therefore, Nicaragua effectively had no sovereignty during the colonial period. On the other hand, Colombia was aware of this situation, and it can be inferred that Colombia exploited Nicaragua's occupation by the United States to conclude the 1928 Treaty.[5] The Court also referred to the principle of Nicaragua's long silence and implicit acceptance (acquiescence): since the treaty was officially ratified by the Nicaraguan Congress in 1930 and registered with the League of Nations, no formal claim regarding the invalidity or nullity of the 1928 Treaty was made until 1980. Furthermore, when the Bogotá Pact was concluded in 1948, Nicaragua made no reservation regarding the 1928 Treaty. Consequently, Nicaragua's over 50 years of silence were regarded as a practical and implicit acceptance.[6] Accordingly, the Court found it lacked jurisdiction to adjudicate over the three main islands, as this matter

1 International Court of Justice. (2007). *Territorial and Maritime Dispute (Nicaragua v. Colombia),* Preliminary Objections, Judgment of 13 December 2007, p. 5.

2 On 25 February 2010 and 10 June 2010, the Republic of Costa Rica and the Republic of Honduras each filed with the Registry of the Court applications for leave to intervene in the case, invoking Article 62 of the Statute of the Court. In separate judgments issued on 4 May 2011, the Court found these applications inadmissible.

3 In addition to claiming sovereignty over the islands of San Andres, Providencia, and Santa Catalina, and their associated islands and cavities, Nicaragua also claims sovereignty over the islands of Cayos de Albuquerque; Cayos del Este Sudeste; Rancador Island; North Island, Southwest Island, and any other island off the coast of East Serrana Island; Beacon Island and any other island off the coast of Serranilla Island; and Lo Island and any other island off the coast of New Baja California.

4 International Court of Justice. (2012). *Territorial and Maritime Dispute (Nicaragua v. Colombia*), Judgment of 19 November 2012, pp. 11-12

5 Ibid, p. 7.

6 International Court of Justice. (2007) *Territorial and Maritime Dispute (Nicaragua v. Colombia),* Preliminary Objections, Judgment of 13 December 2007, pp. 8-10

had been resolved by the 1928 Treaty between the two countries, and sovereignty over these islands belongs to Colombia.[1]

One of the most frequently applied principles by the Court in such cases is the principle of uti possidetis juris. According to this principle, colonial-era borders are established as international boundaries after independence. However, in this case, the principle does not provide sufficient assistance. In fact, there is no clear evidence indicating whether these features were attributed to the colonial provinces of Nicaragua or Colombia. Therefore, the Court set aside this principle.[2]

Among the most important principles relied upon by the Court is the principle of effective exercise of sovereignty. When the Court has no decisive treaty document or the documents are ambiguous, it examines which state has continuously, openly, publicly, and without opposition from the other party exercised governmental authority in the disputed area. Regarding effective sovereignty, it should be noted that acts occurring after the date the dispute arose cannot be taken into account unless such acts are a normal continuation of previous acts and were not performed to improve the legal position of the party relying on them. The Court found that Colombia has effectively and continuously undertaken actions such as naval and military patrols, the issuance of fishing licenses, the enforcement of administrative regulations and laws, and the construction of public facilities on the islands. The practice of third countries and maps somewhat supports Colombia's claim. Conversely, Nicaragua has no proven executive, administrative, or security activities in the area, and this lack of action indicates the absence of sovereignty.[3]

The Court issued its final judgment in the territorial and maritime dispute case between Nicaragua and Colombia in November 2012. The Court, relying on the 1928 Treaty and the 1930 Protocol, recognized them as valid and binding. Accordingly, it affirmed Colombia's sovereignty over the main islands of San Andrés, Providencia, and Santa Catalina. Regarding the other disputed islands, the Court accepted Colombia's sovereignty based on the principle of effective exercise of sovereignty and Colombia's demonstrated control, coupled with Nicaragua's long-term silence.

Finally, while rejecting Nicaragua's claim to the continental shelf beyond 200 nautical miles, the Court delineated a new maritime boundary, observing proportionality between the lengths of the two countries' coastlines. The Court emphasized that the ruling is binding on both parties and must be complied with by both countries.

1 International Court of Justice. (2012b). Summary of the Judgment in the Territorial and Maritime Dispute (Nicaragua v. Colombia), 19 November 2012, p. 18.

2 *International Court of Justice. (n.d.). Territorial and Maritime Dispute (Nicaragua v. Colombia).* ICJ. Retrieved May 12, 2025.

3 *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras),* Judgment, I.C.J. Reports 2007 (II), pp. 697-698, para. 117

3. The Three Iranian Islands in the light of the jurisprudence of the International Court of Justice

With regard to the previous analysis on how the International Court of Justice (ICJ) handles issues related to contested territories between states, this section aims to examine and assess the sovereignty of Iran over three islands of Abu Musa, Greater Tunb, and Lesser Tunb within the framework of the general principles governing the Court's practice. Although the matter between the Islamic Republic of Iran and the United Arab Emirates has not been formally brought before the Court, an examination of its various aspects in the light of the Court's jurisprudence in comprable cases can provide a clearer picture of the legal status of the UAE's claims and how they might be evaluated if presented before international judicial bodies.

The newly emerged country, the United Arab Emirates, for the first time in October 1992—twenty-one years after its establishment—made a claim of sovereignty over the Iranian islands (Abu Musa and the Tunb islands). Since then, the UAE has consistently raised such claims in both reputable and less reputable international forums, yet it has not achieved any success. Over these years, traces of the sovereignty claim over the islands can be seen in documents submitted by the UAE to the United Nations Security Council and the UN General Assembly. Moreover, the issue of the Iranian islands is not only a recurring topic within the Persian Gulf Cooperation Council but also receives support from Arab League member states.[1] Meanwhile, the Islamic Republic of Iran has repeatedly emphasized the non-negotiable nature of its territorial integrity and regards the UAE's actions as interference in Iran's internal affairs.[2]

According to the International Court of Justice's established jurisprudence, the Court first examines any existing boundary treaties between the parties. If a valid treaty confirming sovereignty exists, the Court does not give weight to other evidence or reasons and prioritizes the prior agreement between the parties. As explicitly stated in Nicaragua v. Colombia, the Court emphasized the 1928 treaty and rejected arguments seeking to invalidate it. In the Namibia v. Botswana case, the Court stressed the necessity of interpreting treaties in accordance with Articles 31 and 33 of the 1969 Vienna Convention on the Law of Treaties, declaring that treaties must be interpreted in good faith, in the light of their object and purpose, and based on the ordinary meaning of the terms.

Regarding the Three Iranian Islands, the 1971 Memorandum of Understanding is highly relevant. Although this document does not explicitly affirm Iran's sovereignty, it allocates parts of Abu Musa to an Iranian military presence and accepts limited participation by Sharjah in local internal affairs[3] It demonstrates a practical division of governmental authority with predominance of Iran's role. This can be considered a form of de facto boundary agreement.

1 General Assembly Security Council: Letter dated 15 September 1992 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General (A/47/449, S/24566). Retrieved from https://undocs.org/Home/Mobile?FinalSymbol=A%2F47%2F449&Language=E&DeviceType=Desktop&LangRequested=False, pp. 4-5

2 United Nations Security Council. Letter dated 9 February 2016 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (No. S/2016/131). Retrieved from http://undocs.org/S/2015/954. p. 1

3 Heard-Bey, Frauke, *From Trucial States to United Arab Emirates* (Motivate 2004) p. 370.

Iran's non-violation of this memorandum over several decades, coupled with the absence of any serious countermeasures by the UAE, indicates the continuity of the agreed legal status.

The Court resorts to the principle of uti possidetis juris (stability of colonial boundaries after independence) as a secondary step in resolving disputes. In all three previous cases, the Court recognized this principle as legally effective only where clear and conclusive evidence of colonial boundaries existed. However, in Nicaragua v. Colombia, the Court explicitly stated that, due to the absence of reliable colonial documentation, the principle was not applicable.

In relation to the Three Iranian Islands, the United Arab Emirates' reliance on this principle lacks a legal foundation. These islands were under Iranian influence prior to the establishment of the UAE in 1971 and, at times, were subject to temporary British occupation. Nevertheless, there exists no definitive document from Britain or other colonial authorities attributing the islands to Sharjah or Ras Al Khaimah.[1] Moreover, no formal colonial administrative structure comparable to that of Latin America or Africa ever existed in the Persian Gulf. Consequently, in the absence of clearly defined colonial boundaries, invocation of this principle would, according to the Court's own logic, be untenable.

The principle of effective control (effectivités) is one of the most frequently invoked criteria in the Court's jurisprudence for the determination of sovereignty. In the cases of Nicaragua v. Honduras and Nicaragua v. Colombia, the International Court of Justice explicitly held that in the absence of conclusive treaties or where existing documents were ambiguous[2]. Effective control would serve as the primary basis for determining sovereignty—provided that such acts were continuous, public, manifest, and uncontested.

These acts include, but are not limited to, military patrols, the issuance of administrative licenses, the enforcement of national legislation, the construction of public facilities, and the management of natural resources. It should also be noted that the exercise of sovereignty must have occurred before the critical date[3] determined by the Court. *Prima facie*, this is the date on which the dispute concerning sovereignty "crystallizes": that is, "the date at which the party not in possession of the territory makes a formal claim to it." The critical date thus marks, *prima facie*, the point after which all subsequent "acts and events" are excluded from consideration.[4]

When applied to the case of the Three Iranian Islands, it must be acknowledged that the Government of the Islamic Republic of Iran, particularly since 1971, has consistently exercised authority over the islands. This has been demonstrated through the establishment of

1 On May 24, 1904, the British Minister reported that the Iranian government, while reserving its right to negotiate with the British government regarding its sovereignty over the islands of Abu Musa and Greater Tunb, had ordered Bushehr to temporarily raise Iranian flags in order to prevent tension in the region. Al-Naqbi, Yousif Ebraheem Ahmed (1998) The Sovereignty dispute over The Gulf Islands: Abu Musa, Greater and Lesser Tunbs (glathesis:1998-2534) PhD thesis, University of Glasgow, Retrieved from https://theses.gla.ac.uk/2534/, 43-44

2 When we come to look more closely at the various modes which international law recognizes as creating a title to territorial sovereignty, we shall find that all have one common feature: the importance, both in the creation of title and of its maintenance, of actual effective control. Every mode, like the Roman Law counterparts, requires the presence of corpus as well as animus. Jennings, Robert Y. *The Acquisition of Territory in International Law*. Manchester: Manchester University Press, 1963, pp. 4- 5

3 Any sovereignty dispute can have more than one critical history

4 Charles L. O. Buderi and Luciana T. Ricart, *The Iran-UAE Gulf Islands Dispute: A Journey Through International Law, History and Politics* (Brill Nijhoff, 2018) 464.

military bases, the development of public infrastructure, the enforcement of port and maritime regulations, and the exercise of full administrative control.

All such actions fall squarely within the parameters of effective control as recognized by the Court. In contrast, the United Arab Emirates has not engaged in any documented governmental acts on the islands during this period. Its oral or written protests have not been sufficient to disrupt Iran's sovereignty in practice, nor to prevent its continuation.

This is particularly evident in the case of Abu Musa, where—following the 1971 Memorandum of Understanding—the exercise of governmental authority and administration of the island has remained in Iranian hands, with ample evidence of Iran's effective sovereignty.

In the jurisprudence of the International Court of Justice (ICJ), the principle of silence and tacit acceptance (acquiescence) has repeatedly been invoked as a reinforcing element in support of existing sovereign rights. Notably, in the Nicaragua v. Colombia case, one of the Court's central considerations was Nicaragua's conduct in the decades following the conclusion of the 1928 Treaty. The Court interpreted Nicaragua's prolonged silence, lack of formal objections, and even consistent conduct acknowledging the validity of the treaty as indicative of acquiescence.

Similarly, in the Nicaragua v. Honduras case, Nicaragua's failure to object to Honduras's sovereign activities over an extended period was a key factor in the Court's inference regarding the legitimacy of Honduras's sovereignty.

In relation to the Three Islands, particularly following the 1971 Memorandum of Understanding concluded between Iran and the Emirate of Sharjah (with the knowledge and involvement of the United Kingdom), the United Arab Emirates refrained for a significant period from any serious legal or practical actions to assert or exercise sovereignty over the islands.

While certain statements were made in international forums at various times, the UAE took no effective or tangible legal or factual measures to challenge Iran's sovereignty. In accordance with the Court's jurisprudence, such prolonged silence and inaction may be construed as a practical acknowledgment or acquiescence to the existing legal status.

allegations primarily rest on factual realities on the ground, the continuity of sovereign acts, and the absence of effective objection. From this perspective, the position of the Islamic Republic of Iran regarding the Three Islands—particularly in the light of the 1971 Memorandum of Understanding and the longstanding and effective exercise of authority over the islands—is fully consistent with the established jurisprudence of the Court.

Even in the hypothetical scenario where this assertions is submitted to the Court, a reasonable projection based on prior ICJ rulings would suggest that, provided the Court affirms its jurisdiction and the parties' consent is properly established, the Court would likely uphold Iran's sovereignty over the islands. This outcome would be especially foreseeable in view of the patterns observed in the Honduras and Colombia cases, where similar criteria were determinative.

Iran's continuous protest and opposition to the British occupation of its islands during the Qajar and Pahlavi eras (prior to the establishment of the Islamic Republic)[1] demonstrate the absence of any waiver or abandonment of sovereignty and affirm the ongoing exercise of Iranian sovereignty over the islands. Furthermore, the existence of numerous maps indicating Iran's entitlement to the islands,[2] The inapplicability of the doctrines of terra nullius and acquisitive prescription in the case of the three islands, and the availability of various legal documents—including legal correspondences, official and unofficial maps, and formal reports by British officials as the occupying power[3]—All serve as substantial legal evidence that reinforces Iran's position against the United Arab Emirates' claims.

The International Court of Justice, in the cases of *Nicaragua v. Honduras*, *Nicaragua v. Colombia*, and *Namibia v. Botswana*, has adopted a common pattern for the settlement of disputes. Accordingly, if there exists a definitive treaty or boundary instrument, such an instrument constitutes the primary criterion; however, if no such instrument exists or if it is ambiguous, the effective exercise of sovereignty serves as the principal basis for determining title.[4] On this basis, the most important and influential criterion of the Court in establishing sovereignty and settling territorial issues is the effective exercise of sovereignty. It should be noted that the mere fact that a State has made a claim in the past, or has advanced such a claim earlier than the opposing party, lacks decisive effect unless such a claim is accompanied by actual and continuous governmental acts in the territory concerned.

From the Court's perspective, the effective exercise of sovereignty in the cases under consideration is understood as the actual and continuous presence of the State in the concerned territory, the performance of manifest governmental acts (administrative, military, economic, and legal), carried out either without objection or in the face of ineffective objections by the opposing party, over a prolonged period of time and prior to the "critical date" determined by the Court. Accordingly, the Court has emphasized that the mere date of the first claim, or even historical references to ownership, does not create or consolidate title unless accompanied by such actual and continuous acts[5]. In this manner, it may be considered that the Court regards the effective exercise of sovereignty, rather than the date, as the primary criterion for determining title to the concerned territory.

Fundamentally, the Court, in order to ascertain the existence of the date of a sovereignty claim, resorts to establishing the effective exercise of sovereignty. In fact, to confer evidentiary value upon the date of a claim, the Court refers to the effective exercise of sovereignty and indications of sovereignty throughout history. Accordingly, effective sovereignty takes precedence over the date of the claim, as the tangible and observable exercise of sovereignty

1 Wolf of Marquis of Salisbury, 27 August 1888. Enclosing Instructions to Mr. Churchill, 14 August 1888, and his Report, 26 August 1888. R/15/1/196.

2 F. O. to H. Wolff, No. 49, 22 May 1988

3 Tabrasa N, The Three Islands of the Persian Gulf: A Historical-Legal Study (Abrar Moaser Cultural Institute for International Studies and Research 2011).

4 International Court of Justice. (2012b). Summary of the Judgment in the Territorial and Maritime Dispute (Nicaragua v. Colombia), 19 November 2012. https://www.icj-cij.org/case/124, p. 2

5 International Court of Justice. (2007). *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*: judgment of 8 October 2007; pp. 168-208. International Court of Justice. https://www.icj-cij.org/en/case/133.

can, if necessary, be subject to assessment. For this reason, it reflects the actual implementation of the title in the international arena. Under international law, territory belongs to those States that actually administer and control it, not merely to those that assert a claim to it.[1]. In similar cases, the Court, to properly establish effective sovereignty and to prevent *self-serving evidence* (fabrication of evidence after the assertions), usually determines a date referred to as the "critical date" and recognizes only those acts of sovereignty performed prior to that date as valid, thereby identifying the rightful title. The date of the first claim, without the support of actual acts, is insufficient under international law and the Court's jurisprudence. The Court prefers to determine title on the basis of objective evidence of effective and continuous sovereignty.

The three Iranian islands, both before and after 30 November 1971, the date of the United Kingdom's Occupation and the restoration of Iran's presence, have been under Iran's extensive exercise of sovereignty to the present day[2]. Prior to the British occupation, Iran exercised sovereignty over matters such as the appointment of governors, the collection of taxes, and the establishment of maritime regulations in these islands. Following the British occupation, the first manifestation of the exercise of sovereignty was the deployment of Iranian armed forces on Abu Musa, Greater Tunb, and Lesser Tunb. In addition, the enforcement of Iranian port and maritime regulations, the application of national laws, the issuance of licenses, and maritime patrols are among the measures evidencing Iran's administrative and legal control over these islands. Other sovereign acts undertaken by Iran in the islands include infrastructural management, exemplified by the construction of ports, airports, schools, water and electricity facilities, and similar projects.

This is while individuals appointed by the United Kingdom, both before and after the occupation, undertook no effective acts on the islands. Moreover, should the United Arab Emirates claim to have engaged in sovereign activities prior to 1971, it must be recalled that, at that time, there was in fact no entity by the name of the United Arab Emirates existing as an independent State in the international arena. Moreover, these islands, according to official maps and official reports, have belonged to Iran, and not to the Emirati claimants. In fact, under the 1971 Agreement concluded between Iran and the United Kingdom, Abu Musa Island, which had been under British occupation, was returned to Iran[3]. Furthermore, the two islands of Greater Tunb and Lesser Tunb were returned to Iran without a written agreement. This agreement was concluded two days prior to the issuance of the official declaration of independence of the newly established State of the United Arab Emirates; thus, there was, in essence, no sovereignty in existence that could have affected the islands. The United Arab Emirates began to raise objections nearly twenty-one years after the agreement, and such objections were merely in the form of statements or diplomatic correspondence, which, it

1 Lotfi, F., 'The concept of recognition of states and governments in the international legal system', *Ghanoon Yar International Journal*, no. 12, 2019, p. 15.

2 United Nations Security Council. 2014. Letter dated 23 October 2014 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary-General. S/2014/759, pp. 3-8

3 Heard-Bey, Frauke, *From Trucial States to United Arab Emirate* (Motivate 2004) 370.

should be noted, are regarded in the Court's jurisprudence as "ineffective protests."[1] Notably, the twenty-year silence of the United Arab Emirates indicates that it was fully aware that these territories belonged to Iran and had no claim in this regard.

Furthermore, the United Arab Emirates claims that, at certain periods of history, these islands were, in practice, within the territory or under the influence of the Emirates' sheikhdoms or offices under British protection[2]. This claim is made to reinforce the historical basis of UAE sovereignty and to consolidate its legal position. As previously noted, the Court places significant emphasis on the effective exercise of sovereignty in order to corroborate or substantiate the date of a claim. Accordingly, the historical claim for the period 1907 gains validity only if it is accompanied by effective sovereignty; therefore, it appears that this short period would be insufficient before the Court. In contrast, Iran has continuously and openly exercised its sovereignty before, during, and after the occupation, up to the present.

The United Arab Emirates could have invoked the matter of the earlier date only if Iran had relinquished its prior title and sovereignty. In the case of the three Iranian islands, Iran has never abandoned its ownership or sovereignty; rather, the presence of the United Kingdom on these islands constitutes, from a legal perspective, a foreign occupation. Consequently, the United Arab Emirates cannot rely on rules governing colonial treaties in this context, especially given that none of the quasi-sovereign acts by the United Kingdom or its Emirati affiliates were undertaken without opposition. In practice, the earlier date claimed by the United Arab Emirates lacks any legal justification

Therefore, based on the Court's jurisprudence, Iran's effective exercise of sovereignty, both before and after the British occupation, is far stronger than the UAE's reliance on the dates it claims. History alone does not confer title or establish rights; rather, it is the effective and continuous exercise of sovereignty that consolidates ownership. The interruption caused by occupation does not impair Iran's title and sovereignty. In other words, the preference for "title derived from the effective exercise of sovereignty" over the mere "date of the first claim" is based on the fact that, under international law and the Court's practice, territorial ownership is established through actual and continuous control, not through historical claims lacking operative backing. Even if a State had previously asserted an older claim, this alone does not create or consolidate title. Consequently, effective acts of sovereignty carry far greater evidentiary weight in the Court's jurisprudence, and to substantiate a historical title, reference must be made to the effective exercise of sovereignty.

Conclusion

Based on the foregoing analysis, it can be concluded that the International Court of Justice (ICJ), in adjudicating territorial issues, adheres to a set of relatively consistent principles. The most prominent among these are the effective exercise of sovereignty, tacit acceptance

1 United Nations Security Council. Letter dated 10 December 2015 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the President of the Security Council (No. S/2015/954). Retrieved from http://undocs.org/S/2015/954, pp. 7-8

2 United Nations Security Council. 2014. Letter dated 23 October 2014 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary-General. S/2014/759, p. 2

or silence by the opposing party, the principle of *uti possidetis juris*, and the interpretation of historical treaties. The Court's recent jurisprudence in three key territorial cases demonstrates that the primary basis for establishing sovereignty lies not in ambiguous historical documents, but in concrete and continuous acts of sovereign authority.

In addition, factors such as the lack of effective protest, the parties' consistent conduct, and the good-faith interpretation of agreements are essential components of the Court's reasoning. Nevertheless, the Court has shown contextual flexibility, adapting its application of these principles to the specific features of each case.

When applied to the case of the Three Iranian Islands, it is evident that many of the key elements recognized in previous ICJ judgments support Iran's legal position. The 1971 Memorandum of Understanding between Iran and the United Kingdom concerning Abu Musa, the numerous instances of Iran's effective administration over the islands, and the conduct of the United Arab Emirates, which—under international law—amounts to practical acquiescence in the existing situation, all serve as strong legal grounds in favor of Iranian sovereignty. Based on the International Court of Justice's jurisprudence, mere historical claims or earlier dates do not establish territorial title; rather, it is the effective and continuous exercise of sovereignty that consolidates ownership. Iran's uninterrupted and manifest sovereignty over the three islands, both before and after the British occupation, outweighs the UAE's unsupported historical assertions. Moreover, the Court has previously recognized artificial evidentiary constructions by claimant parties and has countered such attempts by establishing a critical date to prevent retroactive efforts to bolster claims.

While the case of the Three Islands has not yet been formally brought before the ICJ, the Court's jurisprudence demonstrates that international law provides reliable tools for asserting and defending territorial rights. Accordingly, a well-structured legal strategy grounded in the Court's precedents can serve as a powerful diplomatic asset for the Islamic Republic of Iran in the international arena. Given the documented legal foundations of Iran's position, it can be argued that Iran holds the upper hand and that any claim by the UAE constitutes a violation of Iran's territorial integrity.

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

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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

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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 Koskenniemi 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 pluralism[3] 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 Koskenniemi, 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 Poiares Maduro, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action' in Neil Walker (ed), Sovereignty in Transition (Hart 2003).
5 Klabbers, 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 judicabit? 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).

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A Legal Study of Kidnapping of the President of Venezuela: Interventionist Policy of the United States during the Trump Administration

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Abstract

State sovereignty constitutes one of the foundational principles of public international law, safeguarding political independence and prohibiting external interference in the internal affairs of states. The disclosure of an alleged plan by the United States, during the Trump administration, to kidnap the President of Venezuela represents a contemporary manifestation of coercive conduct carried out through ostensibly non-military means. Situated within the broader context of escalating tensions between the United States and Venezuela and closely connected to U.S. energy, economic, and security interests in Latin America, this case raises significant legal questions concerning the scope of the principle of non-intervention and the applicability of international legal norms to covert and extraterritorial operations.The central objective of this study is to examine the legal nature of the alleged non-military kidnapping plot and assess whether such conduct constitutes a violation of state sovereignty and political independence. Adopting a descriptive–analytical methodology, the article evaluates the legality of the alleged action in light of the United Nations Charter, relevant rules of customary international law, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, and the principles governing international state responsibility. The findings indicate that the kidnapping or attempted kidnapping of political leaders, even outside the context of armed conflict and in the absence of overt military force, entails an inherently coercive and interventionist character. Such conduct constitutes a serious breach of state sovereignty, political independence, and the international legal protections afforded to heads of state, thereby triggering the acting state's international responsibility. The article concludes that the normalization of covert non-military coercive measures poses a substantial threat to the integrity of the international legal order and highlights the urgent need to strengthen legal accountability mechanisms to safeguard the principle of state sovereignty in contemporary international relations.

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Introduction

State sovereignty stands as one of the most fundamental principles of public international law, constituting the cornerstone of the legal order governing relations among states[1] . Rooted in customary international law and codified in foundational instruments such as the Charter of the United Nations, sovereignty encompasses respect for political independence, territorial integrity, and the prohibition of external intervention in the internal affairs of states. Within this normative framework, any form of coercive or interventionist conduct by one state against another is subject to strict legal limitations. While classical doctrines of international law have traditionally focused on military intervention and the use of armed force, contemporary international practice reveals a notable transformation in the modalities of interference, marked by an increasing reliance on covert, non-military, and plausibly deniable measures. The legal status of such practices remains contested and insufficiently clarified[2].

In this evolving context, relations between the United States and Venezuela provide a particularly salient case study for examining modern forms of interventionist policy. Throughout much of the twentieth century, bilateral relations were shaped by oil-based cooperation and strategic alignment. However, this relationship deteriorated significantly following the emergence of Hugo Chávez's Bolivarian project and further intensified during the presidency of Nicolás Maduro. The imposition of extensive economic sanctions, diplomatic isolation, and mounting security pressures reflected a broader recalibration of U.S. policy toward Venezuela. These developments were closely linked to Venezuela's strategic significance within U.S. regional policy in Latin America, influenced by energy considerations, geopolitical rivalry with external powers, and the enduring legacy of the Monroe Doctrine as a framework for hemispheric influence.

It is against this broader political and strategic backdrop that the alleged plan to kidnap the President of Venezuela during the Trump administration must be situated. Unlike traditional forms of intervention involving overt military force, the reported plan was conceived as a non-military and covert operation, designed outside the context of armed conflict. As such, it raises fundamental legal questions regarding the scope and content of the principle of non-intervention, the prohibition of coercive interference, the protection of state sovereignty, and the international legal safeguards afforded to high-ranking state officials. The central issue addressed in this article is whether the planning, support, or endorsement of a non-military kidnapping operation targeting a sitting head of state can be reconciled with international law or must instead be classified as a violation of state sovereignty and an internationally wrongful act.

Proceeding from the premise that the abduction of senior state officials constitutes an inherently coercive and interventionist act, this study seeks to assess the legality of the alleged kidnapping plot under the core principles of international law. In particular, it examines the relevance of the principles of non-intervention and the prohibition on the use of force, as well as the rules governing international state responsibility, while also considering the

1 Hanjani, Ali, "Constancy of the principle of The Stability of Sovereignty and Non-Intervention," *Legal Research Journal*, Vol. 16, No. 64, March 2014, p. 106.

2 Ghasemi, Gholamali, "Challenges to the Principle of Non-Intervention and Its Position in International Law," *Afaq-e Amniat Quarterly*, Vol. 9, No. 33, Winter 2017, pp. 143-172.

implications of applicable treaty regimes protecting internationally protected persons. The article argues that the absence of overt military force does not preclude the existence of an internationally wrongful act and that covert non-military operations may equally entail serious breaches of international legal obligations.

The significance of this research lies in the growing prevalence of covert and non-military forms of intervention in contemporary international relations, including clandestine operations and extraterritorial coercive measures. Failure to subject such practices to rigorous legal scrutiny risks the gradual erosion of state sovereignty and the normalization of unlawful interference in the internal affairs of states. Focusing on the U.S.–Venezuela case during the Trump administration, this article seeks not only to analyze a specific instance of alleged intervention but also to illuminate a broader and concerning trend in international practice. Its contribution involves shifting analytical emphasis from traditional military intervention to non-military coercive conduct and contextualizing the abduction of political leaders within the doctrinal framework of international state responsibility.

1. Historical and Political Context of U.S.–Venezuela Relations

A proper legal assessment of alleged interventionist conduct by the United States during the Trump administration necessitates a careful examination of the historical and political evolution of U.S.–Venezuela relations. These relations have not merely fluctuated in response to episodic diplomatic disputes, but rather have been shaped by enduring structural factors, including economic interdependence, ideological divergence, and competing geopolitical visions for Latin America. Understanding this trajectory is essential for contextualizing the emergence of non-military and covert forms of coercion that challenge the established boundaries of lawful conduct under international law.

Throughout the twentieth century, Venezuela occupied a distinctive position in U.S. foreign policy as both a strategic energy supplier and a politically aligned regional partner. However, the gradual erosion of this relationship—accelerated by ideological transformation within Venezuela and shifting U.S. regional priorities—laid the groundwork for increasingly confrontational and interventionist approaches. This historical evolution illuminates how contemporary non-military strategies, including covert operations and indirect coercive measures, came to be viewed as viable instruments of policy, notwithstanding their questionable compatibility with the principle of state sovereignty.

1.1. From Oil-Based Cooperation to Political Confrontation

For much of the twentieth century, U.S.–Venezuela relations were characterized by close cooperation rooted in the petroleum sector. Following the discovery and large-scale exploitation of oil in the early twentieth century, Venezuela emerged as one of the principal suppliers of crude oil to the United States. American oil corporations, including Standard Oil and Gulf Oil, played a decisive role in the development of Venezuela's petroleum industry, fostering deep economic interdependence and political alignment between the two states.

This relationship was further reinforced during the Cold War, as Venezuela was perceived as a stable democratic ally in a region marked by political volatility[1].

This cooperative framework began to erode as the Venezuelan state gradually asserted resource sovereignty, culminating in the nationalization of the oil industry in 1976. While nationalization did not immediately dismantle U.S.–Venezuela relations, it signaled a growing tension between Venezuelan claims to economic self-determination and U.S. corporate and strategic interests. These tensions intensified dramatically following the election of Hugo Chávez in 1998 and the launch of the Bolivarian Revolution, which explicitly rejected neoliberal economic models and U.S. hemispheric influence[2].

Chávez's foreign policy emphasized resource nationalism, social redistribution, and the construction of alternative regional alliances to counter U.S. dominance. Measures such as the renegotiation of contracts with foreign oil companies, increased state control over Petróleos de Venezuela (PDVSA), and the expulsion of certain foreign corporate actors were perceived in Washington as direct challenges to U.S. economic and political interests[3].

Following Chávez's death, relations deteriorated further under the presidency of Nicolás Maduro. Disputed electoral processes, allegations of democratic erosion, and widespread human rights concerns provided the formal justification for a broad sanctions regime imposed by the United States. These measures, particularly those targeting Venezuela's oil exports and financial sector, significantly exacerbated economic collapse and deepened political confrontation. Importantly, U.S. policy during this period increasingly reflected a willingness to employ unconventional and indirect forms of pressure alongside formal diplomatic and economic tools[4].

1.2. Venezuela in U.S. Regional Strategy: Latin America and the Legacy of the Monroe Doctrine

James Monroe, the then President of the United States, issued the famous declaration known as the Monroe Doctrine in 1823 and presented it before the United States Congress, asserting that "America belongs to the Americans" and that European powers had no right to intervene in the internal affairs of the American continent[5]. Venezuela's role in U.S. regional strategy cannot be understood in isolation from the broader historical framework governing U.S.–Latin American relations. Since the articulation of the Monroe Doctrine in 1823, Latin America has been conceptualized by U.S. policymakers as a sphere of privileged influence, within which external interference by rival powers would not be tolerated. Although the doctrine's formal language emphasized protection against European colonialism, its subsequent

1 Tugwell, Maurice. *The Politics of Oil in Venezuela*. London: Macmillan, 1975. pp. 42–45.

2 Ellner, Steve. *Rethinking Venezuelan Politics: Class, Conflict, and the Chávez Phenomenon*. Boulder, CO: Lynne Rienner Publishers, 2008. pp. 98–101.

3 Corrales, Javier, and Michael Penfold. *Dragon in the Tropics: Hugo Chávez and the Political Economy of Revolution in Venezuela*. Washington, DC: Brookings Institution Press, 2011. pp. 87–92

4 U.S. Congressional Research Service (CRS). Venezuela: Background and U.S. Relations. Washington, DC: CRS Report for Congress, 2020. pp. 12–15.

5 Soleymani Nezhad, Nasim, Mojtahedi, Mohammadreza, and Bandehali, Farshid, "Semantics of the Principle of Non-Intervention from the Perspective of This Concept's Interactions with Other Fundamental Principles of International Law," *Comparative Law Research Quarterly of Justice and Fairness*, Vol. 6, No. 22, Autumn 2024, p. 46

reinterpretations increasingly served to legitimize U.S. intervention in the political affairs of Latin American states[1]

In the post–Cold War era, this interventionist logic has not disappeared but has instead been adapted to new geopolitical realities. Venezuela, particularly under Chávez and Maduro, came to be viewed as a focal point of resistance to U.S. regional hegemony. Its expanding political, military, and economic ties with Russia, China, and Iran were perceived as undermining U.S. strategic dominance in the Western Hemisphere and as part of a broader pattern of multipolar contestation[2].

As a result, U.S. policy toward Venezuela increasingly reflected a hybrid strategy combining diplomatic isolation, economic coercion, and indirect interventionist measures. While such practices were often framed as promoting democracy and regional stability, they simultaneously blurred the line between lawful political pressure and unlawful interference in the internal affairs of a sovereign state. This tension becomes particularly acute when such measures involve covert operations or actions targeting the highest organs of the state, including the head of government. From a legal perspective, these practices must be assessed against the principle of sovereign equality enshrined in Article 2(1) of the United Nations Charter and the prohibition of intervention affirmed in international jurisprudence. The International Court of Justice, in its landmark Nicaragua v. United States judgment, clarified that intervention is unlawful when it employs coercive methods intended to influence the political choices of another state, even in the absence of armed force[3]. In this light, the persistence of interventionist logic—translated into non-military and covert forms of coercion—raises serious legal concerns. When such practices extend to the planning or support of operations aimed at abducting a sitting head of state, they represent not merely a continuation of regional power politics, but a potential escalation that directly implicates the core norms of sovereignty, non-intervention, and international state responsibility.

2. U.S. Interests in Venezuela and Their Link to Interventionist Behavior

U.S. policy toward Venezuela over the past decades has been shaped by a complex interplay of energy, economic, geopolitical, and security interests. These interests are embedded within the broader framework of U.S. hemispheric strategy and help explain Washington's interventionist behavior—from economic sanctions and diplomatic pressure to covert operations that go beyond conventional statecraft. Understanding these motivations is essential to contextualize actions such as the alleged non-military plot to abduct the Venezuelan president. Interventionist behavior is therefore not merely a product of ideological preference but is also rooted in strategic calculations designed to safeguard U.S. national interests.

1 Grandin, Greg. *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism*. New York: Metropolitan Books, 2006. pp. 5–9.
2 Forsythe, David P. *Human Rights in International Relations*. 4th ed. Cambridge: Cambridge University Press, 2018. p. 287.
3 International Court of Justice (ICJ). *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. ICJ Reports 1986. pp. 106–108.

2.1. Energy and Economic Interests

Venezuela possesses some of the largest proven oil reserves globally. According to the U.S. Energy Information Administration (EIA), Venezuela's reserves exceeded 303 billion barrels in 2024, surpassing even Saudi Arabia [1]. For the United States, these reserves hold dual strategic significance:

Energy Security: As the world's largest economy, the U.S. considers access to reliable hydrocarbon sources critical for national security. Stable supplies within the Western Hemisphere reduce dependence on volatile regions such as the Middle East.

Economic Influence: Control or influence over key energy resources enables the U.S. to exert considerable leverage in global energy markets, shaping pricing, supply, and geopolitical dynamics. From the 1950s to 1970s, American oil companies invested heavily in Venezuela's petroleum sector, securing a substantial share of crude output and developing technological and financial cooperation with the state[2].

The nationalization of the oil industry in 1976 and the establishment of PDVSA (Petróleos de Venezuela, S.A.) fundamentally altered commercial relations. However, the strategic significance of Venezuelan energy resources remained central to U.S. policy[3].

Following the rise of Nicolás Maduro and escalating political tensions after 2013, the U.S. implemented economic sanctions targeting Venezuela's oil sector. These sanctions prohibited U.S. firms from purchasing Venezuelan oil and imposed financial restrictions on PDVSA, aiming to reduce government revenues and weaken its economic base [4].

Simultaneously, most major foreign oil companies curtailed or terminated their operations in Venezuela due to U.S. sanctions; however, Chevron has continued limited operations under special licenses issued by the U.S. government. This continued presence reflects not only persistent U.S. economic interests in Venezuelan energy resources, but also a calibrated sanctions-management strategy, whereby selective licensing is used as an instrument to exert political and economic pressure on the government in Caracas [5]. According to official disclosures, Chevron's activities are strictly constrained, permitting participation in joint ventures with Venezuela's state-owned oil company (PDVSA) while restricting revenue flows to the Venezuelan government, thereby aligning energy engagement with broader U.S. foreign policy objectives[6] .

These considerations demonstrate that U.S. energy and economic interests extend far beyond mere trade, constituting a central factor shaping interventionist behavior toward Venezuela.

1 Energy Information Administration (EIA), U.S. Department of Energy. Country Analysis Brief: Venezuela. Washington, DC, 2024, p. 4.

2 Karl, Terry Lynn. *Petroleum and Politics in Venezuela*: 1914–1975. Cambridge: Cambridge University Press, 1987. pp. 62–85.

3 Coronil, Fernando. *The Magical State: Nature, Money, and Modernity in Venezuela*. Chicago: University of Chicago Press, 1997. pp. 129–130.

4 Hufbauer, Gary Clyde, Jeffrey J. Schott, and Kimberly Ann Elliott. *Economic Sanctions Reconsidered*. 3rd ed. Washington, DC: Peterson Institute for International Economics, 2007. pp. 312–315

5 U.S. Energy Information Administration (EIA). Country Analysis Brief: Venezuela. Washington, DC: U.S. Department of Energy, 2024.

6 Chevron Corporation. Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. U.S. Securities and Exchange Commission, 2023.

2.2. Geopolitical and Security Interests

U.S. policy toward Venezuela must also be understood within the context of geopolitical competition with global powers. Since the early 2000s, Venezuela cultivated extensive political and economic ties with actors often viewed by Washington as strategic rivals:

Russia has significantly strengthened its influence in Venezuela through expanding energy cooperation, financial arrangements, and enhanced political and defense ties. Moscow and Caracas signed a strategic partnership agreement in May 2025 that focuses on deepening cooperation within the energy sector and coordinating positions in international forums, including joint efforts to stabilize energy markets and counter unilateral sanctions [1]. Russia also supports Venezuela diplomatically and has maintained strong political backing for the Maduro government amid regional tensions with the United States[2] . In the energy sector, Venezuela's National Assembly approved a 15-year extension of joint oil ventures with a Russian state energy unit, allowing continued investment and production cooperation well into the 2040s[3] (Reuters, Nov 20, 2025). These developments underscore Russia's multifaceted engagement with Venezuela, encompassing economic, military-technical, and high-level political cooperation.

China: Beijing advanced its presence via oil-for-loan agreements and large-scale infrastructure investments, consolidating both economic and political influence[4] (Shambaugh, China's Foreign Policy, Oxford University Press, 2020, pp. 117–118).

Iran: Tehran-Caracas cooperation in energy, industrial, and limited military sectors was perceived as a geopolitical challenge to U.S. hegemony[5].

From Washington's perspective, these relationships were not merely bilateral partnerships but manifestations of rival powers encroaching on the U.S. strategic sphere in the Western Hemisphere, potentially threatening regional stability. U.S. policymakers have historically regarded regional stability in Latin America as integral to national security. From the Monroe Doctrine (1823) to contemporary reinterpretations, U.S. doctrine has emphasized that no external power should exercise extensive strategic influence within the Western Hemisphere[6].

Venezuela's geographic location, vast energy resources, and relations with rival powers make it a strategically sensitive node in Washington's regional security calculations. Analysts argue that any geopolitical realignment in Venezuela could produce ripple effects throughout Latin America, impacting regional security arrangements and prompting U.S. policymakers to consider both overt and covert measures to maintain influence[7] (Brown & Ainley, Understanding International Relations, 7th ed., Palgrave Macmillan, 2018, pp. 383–385).

U.S. interventionist behavior is multifactorial, rooted in both energy/economic interests and

1 Reuters. Putin and Venezuela's Maduro sign strategic partnership agreement in Moscow. May 7, 2025
2 Reuters. Russia denounces 'excessive' US military force in Caribbean, backs Venezuela. Nov 1, 2025
3 Reuters. Venezuela approves 15-year extension of Russia-linked oil joint ventures. Nov 20, 2025.
4 Shambaugh, David. China's Foreign Policy. Oxford: Oxford University Press, 2020, pp. 117–118.
5 Katzman, Kenneth. *Iran–Venezuela Relations*. Congressional Research Service, 2022, pp. 5–7.
6 Smith, Peter H. *The United States and Latin America: A History of American Diplomacy*. 4th ed. London: Routledge, 2014. pp. 45–47.
7 Brown, Chris, and Kirsten Ainley. *Understanding International Relations*. 7th ed. London: Palgrave Macmillan, 2018. pp. 383–385.

geopolitical/security imperatives.[1] These interlinked motivations help explain the emergence of non-military coercive measures, including economic sanctions, political pressure, and covert operations targeting high-ranking officials, situating the alleged kidnapping plot within a broader pattern of strategic intervention.

3. The Alleged Kidnapping Plot against the President of Venezuela as a Coercive Non-Military Action

The alleged plan to abduct the sitting President of Venezuela provides a significant case for examining how covert or ostensibly nonmilitary operations intersect with fundamental norms of public international law, particularly state sovereignty, nonintervention, and coercion. While the UN Charter traditionally focuses on the use of armed force, international legal doctrine has increasingly analyzed whether covert actions that are nonmilitary in character but intended to influence the political leadership of another state can constitute unlawful interference.

3.1. Legal Characterization of the Alleged Kidnapping Plot and Its Operational Dimensions

A distinguishing feature of the alleged operation against the Venezuelan president is its nonmilitary and covert nature. Unlike conventional military interventions recognized under jus ad bellum, covert operations lack overt troop deployments or declared hostilities. However, they can involve clandestine measures intended to influence or coerce another state's political direction, which, under contemporary international law, is considered a prohibited intervention. This is because covert action that aims to influence the internal affairs of a foreign state — even absent direct use of armed force — interferes with sovereign decisionmaking and is generally forbidden under the principles of nonintervention and sovereign equality[2].

In international law, covert actions that effectively coerce another state, such as by attempting to remove or detain its political leadership, may constitute unlawful interference because they deprive the target state of autonomous decision-making over its domestic political affairs. The extraterritorial dimension of such operations—conducting them in the territory of another sovereign state without consent—further underscores the legal ramifications. Prohibition of extraterritorial interference is a corollary of state sovereignty and territorial integrity, protected under customary international law and reflected in Article 2(4) of the UN Charter, which prohibits the threat or use of force against the political independence or territorial integrity of any state [3].

Importantly, the absence of declared hostilities or ongoing armed conflict does not exempt such operations from international legal scrutiny. Use of force under Article 2(4) of the UN Charter is not strictly limited to situations of war or conventional armed conflict; rather, international law broadly prohibits coercive actions that undermine a state's political

1 Mohammad Saleh Taskhiri. "Book Review, "The Legal Implications of The United States' Strike on General Soleimani, His Associates, And Iran's Response" Edited by Mostafa Fazaeli". *Iranian Journal of International and Comparative Law*, 1, 2, 2023, 253-258. doi: 10.22091/ijicl.2024.10444.1093

2 Damrosch, Lori Fisler. "Covert Operations." *American Journal of International Law* Vol. 83, No. 4 (October 1989): 795–805

3 United Nations Charter,1945, Article 2(4).

independence, except in permissible exceptions such as Security Council authorization or self-defense. Even operations framed as law enforcement or counter-criminal activities, when targeting a foreign head of state, constitute a coercive entry into another sovereign territory, prohibited under international law.[1]

3.2. Analysis of the Coercive Character of the Operation

Forcibly removing or detaining a state's highest political official—regardless of the method used (military, intelligence, or covert action)—directly aims to alter the political structure or leadership of the target state. Under customary international law, such acts, characterized by deliberate extraterritorial coercion, fall within the core scope of prohibited intervention.

The International Court of Justice (ICJ) in Nicaragua v. United States emphasized that intervening in the political processes of another state through coercion constitutes a direct violation of the principle of non-intervention, stating that "the element of coercion … forms the very essence of prohibited intervention."[2]Although classic formulations of the prohibition on the use of force (Article 2(4) of the UN Charter) refer to the use of armed force, the broader principle of non-intervention covers coercive measures that undermine political independence, even if non-military in method. Therefore, an operation aiming to abduct political leaders via intelligence services or secret agents can still be considered unlawful if it deprives a sovereign government of its decision-making authority, constituting political coercion incompatible with international law[3] .

International law recognizes that certain actions—while not constituting formal use of armed force—can be coercive and unlawful if they involve deliberate interference in the internal political affairs of another state. The International Law Commission and scholarly analyses emphasize that conduct aimed at pressuring a state to change its leadership or policies through extraterritorial coercion contravenes states' autonomous sovereignty. This includes actions intended to install or support an alternative government, undermine legitimate authority, or compel regime change[4] .

In the Venezuelan case, attempts to detain or remove the sitting president with the intention of influencing political arrangements constitute coercive intervention, violating the fundamental norms of sovereign equality and political independence. Even in a non-military context, such conduct constitutes an internationally wrongful act prohibited under both customary international law and the principles reflected in the UN Charter.

4. Legal Assessment of the Alleged Action under the Principle of State Sovereignty

The legal assessment of the alleged kidnapping operation against the President of Venezuela requires grounding in the core principles of international law, particularly state sovereignty,

1 United Nations Charter, Article 2(4).
2 International Court of Justice (ICJ), *Nicaragua v. United States*, ICJ Reports 1986, p. 108.
3 Wu, Cecilia Yue. 'Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World'. *Harvard International Law Journal*, Vol. 65, No. 1, Winter 2023, pp. 254–282.
4 Helal, Mohamed S. "On Coercion in International Law." *New York University Journal of International Law and Politics* 52 (2019–2020): 1–80.

non-intervention, and respect for political independence. These principles are enshrined in the United Nations Charter, customary international law, and judicial interpretations, forming the *Lex Fundamentalis* that governs inter-state conduct under international law.

4.1. Principle of Sovereignty and Prohibition of Intervention in International Law

State sovereignty constitutes one of the foundational pillars of the contemporary international legal system. Enshrined in Article 2(1) of the United Nations Charter, the principle affirms the sovereign equality of all states, irrespective of their political, economic, or military power, and guarantees their entitlement to exercise exclusive authority over internal and external affairs without external interference[1] .

The doctrinal origins of sovereignty are commonly traced to the Peace of Westphalia (1648), which crystallized the notion of territorial authority and the exclusion of external powers from domestic governance. While modern scholarship has nuanced the so-called "Westphalian myth," it remains widely accepted that sovereignty functions as a legal presumption of non-interference and exclusive domestic jurisdiction in international law.[2] Beyond its historical roots, sovereignty today operates as a normative constraint on state conduct. As Akindele persuasively notes, the principles of sovereign equality and respect for territorial integrity are not merely abstract ideals but legal safeguards whose violation directly threatens international peace and security[3].

This understanding is reinforced by Article 2(7) of the UN Charter, which explicitly prohibits intervention "in matters which are essentially within the domestic jurisdiction of any state," thereby shielding political leadership, constitutional order, and governance structures from external manipulation [4].

Sovereignty in international law entails both internal supremacy and external independence. Internally, it denotes the state's exclusive authority over its population and political institutions; externally, it reflects independence from the control or coercion of other states. On this basis, foreign states are legally barred from intervening in another state's internal political affairs, including leadership selection and executive authority. This normative framework is explicitly articulated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (1970), which affirms that:

"Any action aimed at the partial or total disruption of the national unity and territorial integrity of a State is incompatible with the purposes and principles of the Charter of the United Nations."[5]

The Declaration further clarifies that respect for sovereignty and territorial integrity forms

1 United Nations Charter, 1945, Art. 2(1)).

2 Osiander, Andreas, *Sovereignty, International Relations, and the Westphalian Myth*, International Organization, Vol. 55, No. 2, 2001, pp. 251–287.

3 Akindele, R. A. (1976), The Concept of Sovereignty in International Law, *Indian Journal of International Law*, Vol. 16, No. 1–2, pp. 101–113

4 United Nations Charter, 1945, Art. 2(7)

5 United Nations General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. Resolution 2625 (XXV), 24 October 1970.

an inseparable component of peaceful coexistence and good-neighborly relations among states, elevating non-intervention to the status of a customary international law obligation[1] .

While not all forms of influence amount to unlawful intervention, international law draws a clear distinction between permissible diplomatic persuasion and coercive interference. The latter constitutes the core element of prohibited intervention.

In its landmark judgment in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), the International Court of Justice unequivocally held that:

"The element of coercion … forms the very essence of prohibited intervention".[2]The Court emphasized that intervention becomes unlawful when it seeks to compel a state to adopt or abandon specific political, economic, or foreign policy choices—particularly through clandestine or indirect means.

Scholarly analysis supports this interpretation. Christian argues that contemporary international law recognizes non-intervention as a binding norm whose breach does not require the use of armed force; rather, coercive actions targeting a state's political autonomy suffice to trigger responsibility.[3]Similarly, the UN General Assembly has repeatedly condemned both overt and covert interference. Resolution 31/91 expressly denounces any form of intervention intended to influence the political system or leadership of another state, reaffirming that sovereign equality presupposes freedom of political choice [4].

When assessed against this legal framework, a non-military kidnapping plot targeting the sitting President of Venezuela constitutes a particularly grave form of unlawful intervention. Although lacking the hallmarks of conventional armed force, such an operation directly interferes with the core sovereign functions of the Venezuelan state—namely, its executive authority and constitutional governance. The forced removal or attempted abduction of a head of state represents a coercive act par excellence, as it seeks to alter a state's political leadership through extraterritorial means. Under international law, political independence includes the right of a state to determine its leadership without external compulsion. Consequently, any foreign involvement—whether through planning, financing, intelligence support, or acquiescence—in such a plot would amount to a violation of the principles of sovereignty and non-intervention.

From this perspective, the alleged kidnapping scheme cannot be characterized as a mere political operation or law enforcement matter. Rather, it constitutes an internationally wrongful act, engaging the responsibility of the intervening state under customary international law, even in the absence of direct military engagement[5].

1 Cassese, Antonio, *International Law* (2nd ed.), Oxford: Oxford University Press, 2005, pp. 55–58.

2 International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 108

3 Christian, Tomuschat, *The Principle of Non-Intervention in Contemporary International Law*. Berlin & Heidelberg: Springer.2019, pp. 3–25

4 United Nations General Assembly, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, Resolution 31/91, 14 December 1976

5 Crawford, James, *State Responsibility: The General Part,* Cambridge: Cambridge University Press, 2013, pp. 301- 305

4.2. Kidnapping High-Level Officials and the Violation of Political Independence and Internationally Protected Immunities

The kidnapping or forcible removal of high-ranking state officials—particularly a sitting head of state—constitutes one of the gravest forms of interference with a state's political independence. Political independence, as a core attribute of sovereignty, presupposes that a state is able to exercise governmental authority and determine its leadership without external coercion or manipulation. Any external act that targets the physical liberty of a head of state directly undermines that head of state's autonomy and destabilizes the constitutional order of the affected state.

International legal doctrine recognizes that political independence extends beyond abstract self-determination to include the effective functioning and security of state leadership. As Wood explains, coercive conduct directed at a state's highest political authorities strikes at the institutional heart of sovereignty, even where such conduct falls short of traditional armed force[1].

The international community has expressly recognized the gravity of crimes against senior state officials through the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973). This Convention codifies a specific protective regime for individuals whose safety is essential to the maintenance of international relations and political stability.

Article 1 of the Convention defines internationally protected persons to include heads of state, heads of government, and ministers for foreign affairs whenever they are present in a foreign state, as well as members of their families. Article 2 obliges States Parties to criminalize acts such as murder, kidnapping, or other attacks upon the person or liberty of such individuals, as well as attempts, participation, and complicity in these acts.

The Convention thus transforms what might otherwise be viewed as domestic criminal acts into international crimes triggering treaty-based obligations, including prosecution or extradition (*aut dedere aut judicare*)[2].

Scholars emphasize that the rationale of the Convention lies not only in the personal protection of officials but also in safeguarding state sovereignty and political independence, which are indirectly endangered by attacks on state representatives[3] .

From the perspective of general international law, any attempt by a foreign state—or actors attributable to it—to abduct a sitting president without the consent of the territorial state constitutes a dual violation: first, of the personal immunity and international protection afforded to the head of state; and second, of the political independence and territorial integrity of the affected state.

While Article 2(4) of the UN Charter primarily addresses the threat or use of armed force,

1 Wood, Michael, *The Principle of Non-Intervention in Contemporary International Law*. Berlin & Heidelberg: Springer, 2019, pp. 12–15.

2 United Nations, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. New York,1973, Arts. 1–7.

3 Bassiouni, M. Cherif. (1996). *International Crimes: Jus cogens and obligatio erga omnes*. *Law and Contemporary Problems*, Vol. 59, No. 4, pp. 63–74.

authoritative interpretations confirm that coercive actions short of classical armed force may nonetheless violate political independence when they are designed to compel changes in governance or leadership. The International Court of Justice has clarified that coercion, rather than the method employed, is the decisive criterion for determining unlawfulness[1].

In this sense, kidnapping schemes targeting heads of state represent a paradigmatic form of prohibited interference. They are inherently coercive, aimed at incapacitating or removing the central organ of executive authority, thereby depriving the state of effective sovereign control [2].

When assessed in light of the 1973 Convention, the alleged plot to kidnap the sitting President of Venezuela falls squarely within the category of conduct that the Convention seeks to prevent and punish. As a head of state, the Venezuelan president qualifies as an internationally protected person, and any act aimed at unlawfully seizing or detaining him—whether carried out directly by state agents or indirectly through non-state actors—engages the international responsibility of the sponsoring or acquiescing state.

Even if the operation were executed outside a traditional armed conflict, the Convention makes clear that kidnapping and related acts constitute autonomous international crimes. Moreover, under the law of state responsibility, the involvement, direction, or substantial support of a foreign state in such a plot would render the conduct attributable to that state, thereby constituting an internationally wrongful act[3].

Accordingly, the alleged kidnapping operation against the President of Venezuela cannot be legally characterized as a mere covert political maneuver. Rather, it constitutes a serious breach of treaty obligations under the 1973 Convention, as well as a violation of principles of customary international law protecting political independence, sovereign equality, and the inviolability of state leadership.

4.3. Attribution of the Conduct to the United States under International Law

Under the law of international responsibility, the existence of an internationally wrongful act does not by itself establish state responsibility unless the conduct is legally attributable to the state concerned. Accordingly, the central legal issue in the Venezuelan case is not merely whether discussions or plans concerning the removal or abduction of Nicolás Maduro existed, but whether such conduct can be attributed to the United States under the rules of customary international law[4].

The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) provide that a state incurs responsibility when conduct attributable to it constitutes a breach of an international obligation[5]. Conduct

1 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, ICJ Reports 1986, p. 108.
2 Cassese, Antonio, *International Law*, 2nd ed., Oxford University Press, 2005, pp. 57–60
3 Crawford, James, *State Responsibility*: The General Part, Cambridge University Press, 2013, pp. 301–305
4 Crawford J, *State Responsibility: The General Part* (Cambridge University Press 2013) 113.
5 ILC Draft Articles, 2001, Art. 2

performed by state organs is directly attributable to the state under Article 4, while Article 8 extends attribution to persons or groups acting under the direction or control of the state[1] .

The International Court of Justice has repeatedly emphasized that attribution depends upon the existence of a sufficient nexus between the state and the impugned conduct. In Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), the Court held that financing, organizing, equipping, or supporting irregular forces is not alone sufficient for attribution unless the state exercised "effective control" over the specific operation concerned[2]. Likewise, in the Bosnian Genocide judgment, the Court reaffirmed that attribution requires proof that the state directed, controlled, or substantially coordinated the conduct giving rise to the wrongful act[3] .

However, attribution under international law is not confined solely to situations of operational control. International jurisprudence also recognizes that a state may incur responsibility where it subsequently acknowledges and adopts conduct as its own. This principle was clearly articulated by the International Court of Justice in the United States Diplomatic and Consular Staff in Tehran case. The Court observed that although the initial seizure of the United States Embassy in Tehran had been carried out by private militants, the subsequent approval and endorsement of the occupation by Iranian authorities transformed the conduct into an act attributable to the Iranian state [4].

This principle is codified in Article 11 of ARSIWA, which provides that conduct not initially attributable to a state nevertheless becomes attributable where the state "acknowledges and adopts the conduct in question as its own"[5].

In the Venezuelan context, repeated statements by senior United States officials during the Trump administration concerning regime change, the removal of Nicolás Maduro, or support for coercive measures against the Venezuelan leadership possess legal significance beyond ordinary political rhetoric. Statements made by the President of the United States and other senior executive officials may constitute evidence of state policy, authorization, acquiescence, or endorsement, particularly where they coincide with broader operational, intelligence, or political support mechanisms[6].

Accordingly, even if elements of the alleged operation involved private actors or covert mechanisms, subsequent approval, political endorsement, or operational support by senior state authorities may contribute to establishing attribution under customary international law. Therefore, the combination of official statements, governmental policy, and possible operational coordination may satisfy the legal threshold required for attribution of the conduct to the United States.

1 ILC Draft Articles, 2001, Arts. 4, 8
2 ICJ Reports 1986, pp. 62–65
3 ICJ Reports 2007, paras. 398–406
4 ICJ Reports 1980, pp. 35–36
5 ILC Draft Articles, 2001, Art. 11
6 Damrosch, Lori Fisler. (1989). "Covert Operations." *American Journal of International Law*, Vol. 83, No. 4, p795

4.4. Possible Justifications and Counterarguments under International Law

A balanced legal assessment also requires consideration of potential justifications that the United States might invoke in defense of its conduct, assuming *arguendo* the existence of involvement in the alleged operation.

One possible argument concerns the characterization of the Maduro government. Since several states, including the United States during portions of the Trump administration, questioned the legitimacy of Nicolás Maduro's presidency and recognized Juan Guaidó as interim president, it could be argued that actions directed against Maduro did not constitute interference against a legitimately recognized government.[1] From this perspective, measures aimed at supporting democratic restoration might be framed as politically justified.

However, under international law, disputes regarding governmental legitimacy do not generally authorize unilateral coercive intervention. The principle of sovereign equality and the prohibition of intervention continue to apply irrespective of political disagreements concerning internal governance[2] . The International Court of Justice has consistently emphasized that states are not entitled to impose political change through coercive means[3].

A second possible justification may rely on counterterrorism or transnational criminal enforcement rationales. U.S. authorities accused Maduro and senior Venezuelan officials of narcotics trafficking and organized criminal conduct. Consequently, it could be argued that efforts to apprehend such individuals constituted forms of extraterritorial law enforcement.

Nevertheless, international law imposes strict limitations on extraterritorial enforcement jurisdiction. Abducting or forcibly transferring a sitting head of state without the consent of the territorial state would violate principles of sovereignty, immunities of state officials, and the prohibition of intervention [4].Even where criminal allegations exist, lawful mechanisms such as extradition, mutual legal assistance, or international judicial cooperation must be employed [5].

Finally, some scholars have argued that humanitarian concerns or democratic protection may justify exceptional forms of intervention. Yet contemporary international law remains highly restrictive regarding unilateral intervention absent Security Council authorization or a valid claim of self-defense under Article 51 of the UN Charter[6] . As such, these arguments remain legally controversial and insufficient to justify coercive operations targeting foreign political leadership.

Accordingly, while political and strategic arguments may be advanced in defense of interventionist conduct, they do not substantially alter the legal assessment that coercive abduction operations against a sitting head of state remain incompatible with the foundational principles of international law.

1 Fox, Gregory H. (2020). *Democracy, Rightful Government, and International Law*. Cambridge: Cambridge University Press, p. 214.
2 Shaw, Malcolm N. (2008). *International Law*. 6th ed. Cambridge: Cambridge University Press, p. 1132.
3 ICJ, Nicaragua Case, 1986: 108
4 Akindele, R. A. p. 830.
5 Cassese, A., p. 56.
6 Ruys, Tom, p. 487.

4.5. Kidnapping a Head of State as a Potential International Crime and Violation of *Jus Cogens*

Beyond constituting a violation of sovereignty and political independence, the kidnapping or attempted abduction of a sitting head of state may also raise questions concerning the breach of peremptory norms of international law (jus cogens) and the existence of an international crime.

Jus cogens norms occupy the highest hierarchical position within international law and permit no derogation[1] . These norms include the prohibitions of aggression, genocide, torture, crimes against humanity, slavery, and other fundamental principles essential to the international legal order[2] . Although no universal treaty expressly classifies the kidnapping of a head of state as a standalone jus cogens violation, the coercive removal of a foreign political leader may implicate several peremptory norms simultaneously.

First, where such conduct involves unlawful deprivation of liberty, torture, enforced disappearance, or extrajudicial transfer, it may intersect with internationally prohibited practices recognized as jus cogens norms[3] . Second, forcible interference with the constitutional and political independence of a sovereign state may amount to a particularly grave breach of the principle of non-intervention, especially when undertaken through coercive extraterritorial means[4].

Some scholars further argue that systematic or politically motivated attacks against state leadership can amount to international crimes where they form part of a broader policy of coercive destabilization [5]. In this context, the International Law Commission's earlier discussions regarding "international crimes of states" and obligations erga omnes remain conceptually relevant, even though the final ARSIWA framework abandoned formal categorization of state crimes [6].

Moreover, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973) reflects the international community's recognition that attacks against heads of state possess an international dimension transcending ordinary domestic criminality. The Convention criminalizes kidnapping and violent attacks against internationally protected persons and imposes obligations of prosecution or extradition upon states parties[7] .

Accordingly, while the precise classification of kidnapping a head of state as a jus cogens violation remains debated, there is substantial legal basis for considering such conduct an aggravated internationally wrongful act with potentially international criminal dimensions. At minimum, the operation constitutes a serious breach of obligations owed to the international community as a whole, particularly those protecting sovereign equality, political independence, and the security of internationally protected persons.

1 Orakhelashvili, Alexander, p. 50.
2 Bassiouni, M. Cherif, p. 68.
3 Cassese, A., p. 203.
4 Ruys, Tom, p. 14.
5 Bassiouni, M. Cherif, p. 63.
6 Crawford, J., p. 589.
7 Convention on Internationally Protected Persons, 1973, Arts. 1–7.

5. Structural and Normative Disruption of the International Legal Order Resulting from Coercive Non-Military Intervention

Unlawful interference with the political leadership of a sovereign state—particularly through covert, non-military coercive measures—does not merely generate bilateral disputes or isolated breaches of international obligations. Rather, such conduct produces systemic consequences that destabilize the normative architecture of the international legal order itself. By targeting the political independence of a state through indirect yet coercive means, the intervening state undermines core principles upon which international law is constructed, including sovereign equality, non-intervention, and the rule-based limitation of power[1].

From a structural perspective, international law relies on the presumption that states refrain from unilateral coercion in matters falling within the *domaine réservé* of other states. When this presumption is eroded—particularly by powerful states—the credibility and coherence of international legal norms are fundamentally compromised[2].

Under customary international law, as reflected in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA, 2001), a state incurs international responsibility when conduct attributable to it constitutes a breach of an international obligation. Article 2 of the Draft Articles clearly establishes this dual requirement of attribution and breach[3].

Attempts to abduct, detain, or otherwise coerce the political leadership of another state—whether through intelligence operations, proxy actors, or clandestine arrangements—constitute a direct violation of the principles of sovereignty and non-intervention, irrespective of whether military force is employed. Such conduct is attributable to the state when carried out by state organs or actors acting under its direction or control[4].

The legal consequences of such responsibility are not limited to remedial obligations toward the injured state. They also serve a system-stabilizing function by reaffirming the binding force of international norms. These consequences include:

The obligation of cessation of the wrongful act;

Guarantees of non-repetition;

Full reparation in the form of restitution, compensation, or satisfaction[5].

The International Court of Justice has consistently emphasized that reparation is aimed not only at remedying material injury but also at restoring the normative equilibrium disturbed by unlawful conduct. In Corfu Channel, the Court affirmed that responsibility entails an obligation to “make good” the consequences of the breach, thereby reinforcing the authority of international law itself[6].

1 Crawford, pp. 109–116.
2 Koskenniemi, M, *From Apology to Utopia*. Cambridge: Cambridge University Press, 2005, pp. 381–385.
3 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 2
4 Crawford, pp. 127–130.
5 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 30-31
6 International Court of Justice. *Corfu Channel (United Kingdom v. Albania),* Judgment, ICJ Reports 1949, p. 22

5.1. Normalization of Covert Coercion and the Erosion of the Non-Intervention Principle

One of the gravest implications of tolerating non-military coercive practices is the gradual normalization of unlawful intervention within international relations. When states increasingly resort to covert operations—such as political abduction plots, clandestine regime manipulation, or indirect coercion—as substitutes for overt force, the normative boundary established by the principle of non-intervention becomes blurred.

The International Court of Justice, in Nicaragua v. United States, unequivocally affirmed that the principle of non-intervention prohibits all forms of coercion aimed at influencing a state's political choices, regardless of the means employed. The Court stressed that coercion is unlawful even in the absence of armed force[1].

If such covert coercive measures are tacitly accepted or inadequately sanctioned, international law risks evolving into a dual normative system:

Powerful states operate with de facto immunity through informal or deniable practices;

Weaker states face systematic vulnerability and reduced legal protection.

This asymmetry directly contradicts the principle of sovereign equality enshrined in Article 2(1) of the UN Charter and undermines the universality of international legal obligations[2].

5.2. Implications for International Peace, Security, and Legal Predictability

Beyond normative erosion, coercive interference with a state's political leadership poses tangible risks to international peace and security. Such actions foster mistrust, provoke retaliatory measures, and contribute to escalating cycles of hostility, particularly in politically volatile regions[3].

The UN Charter situates the maintenance of international peace and friendly relations among nations as foundational objectives of the international community. Covert coercive actions, by their very nature, undermine these objectives by encouraging unilateralism and destabilizing diplomatic relations[4].

At the domestic level, attempts to forcibly interfere with political leadership often generate internal instability, weaken institutional legitimacy, and incite social unrest. These internal disruptions frequently produce cross-border consequences—such as refugee movements, economic instability, and regional insecurity—thereby transforming a legal violation into a broader threat to international order[5].

From a systemic viewpoint, such practices erode legal predictability, a cornerstone of international law, by signaling that compliance with fundamental norms is contingent upon power rather than legality[6].

1 International Court of Justice. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Judgment, ICJ Reports 1986, p. 108.

2 UN Charter, 1945, Art. 2(1), Shaw, pp. 487–490.

3 Gray, C, *International Law and the Use of Force*. 4th ed. Oxford: Oxford University Press, pp. 230–236

4 UN Charter, Preamble;1945, Art. 1(1)

5 Chesterman, S. *You, the People: The United Nations, Transitional Administration, and State-Building*. Oxford: Oxford University Press, 2004, pp. 102–107.

6 Franck, pp. 24–27.

Conclusion

The alleged non-military kidnapping plot against the President of Venezuela during the Trump administration reflects the transformation of interventionist practices in contemporary international relations. Unlike traditional military interventions, modern coercive operations increasingly rely on covert, extraterritorial, and politically deniable mechanisms that operate below the threshold of armed conflict yet produce serious consequences for state sovereignty, political independence, and international stability. As demonstrated throughout this study, such operations challenge classical legal frameworks by circumventing conventional forms of military force and exploiting legal and political ambiguities within the international system.

This study has shown that the forcible targeting or attempted abduction of a sitting head of state constitutes a grave form of coercive intervention incompatible with the foundational principles of international law. Even in the absence of overt military action, coercive operations directed against foreign political leadership violate the principles of sovereign equality, non-intervention, territorial integrity, and political independence enshrined in the United Nations Charter and customary international law. Such conduct further undermines the legal protections and immunities traditionally afforded to high-ranking state officials and threatens the stability of inter-state relations.

The Venezuelan case further demonstrates the close relationship between geopolitical interests and contemporary interventionist practices. Strategic considerations relating to energy security, regional influence, economic interests, and geopolitical competition appear to have shaped the broader political context surrounding the alleged operation. At the same time, the case illustrates how interventionist policies may increasingly adopt covert and indirect modalities that evade immediate international scrutiny while pursuing political objectives through non-traditional means.

A central issue examined in this study concerns the attribution of responsibility under international law. The analysis demonstrates that international responsibility is not established solely by the occurrence of an internationally wrongful act, but also by the existence of a sufficient legal nexus between the conduct and the state concerned. In light of the jurisprudence of the International Court of Justice and the International Law Commission's Draft Articles on State Responsibility, attribution may arise not only through effective operational control, but also through subsequent acknowledgment, endorsement, authorization, or adoption of conduct by state authorities. In this regard, repeated statements by senior United States officials concerning regime change, coercive measures, and the removal of Nicolás Maduro may have legal significance that extends beyond ordinary political rhetoric and may contribute to establishing attribution under customary international law.

The study also considered potential counterarguments and legal justifications that may be invoked in defense of interventionist conduct, including claims relating to democratic legitimacy, counterterrorism, transnational criminal enforcement, and humanitarian considerations. Nevertheless, contemporary international law continues to impose strict limitations upon unilateral coercive intervention and extraterritorial enforcement measures targeting foreign political leadership. Absent Security Council authorization or a valid claim of self-defense under Article 51 of the UN Charter, such actions remain legally controversial and fundamentally inconsistent with the prohibition of intervention and the principle of sovereign equality.

Furthermore, the analysis suggests that the kidnapping or attempted abduction of a sitting head of state may extend beyond the framework of an ordinary internationally wrongful act and potentially implicate peremptory norms of international law (*jus cogens*) as well as obligations owed *erga omnes* to the international community as a whole. In circumstances involving unlawful deprivation of liberty, enforced disappearance, extrajudicial transfer, or systematic coercive destabilization, such conduct may acquire an aggravated international character. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973) further reinforces the international community's recognition that attacks against heads of state transcend ordinary domestic criminality and engage broader international legal concerns.

From a broader perspective, the normalization of covert non-military interventions poses significant systemic risks to the international legal order. Repeated tolerance of clandestine operations directed against foreign governments undermines sovereign equality, weakens confidence in the prohibition of intervention, destabilizes regional security, and erodes the normative structure upon which contemporary international law is Moreover, the domestic consequences within targeted states—including political instability, weakened governance, public unrest, and economic disruption—may generate broader regional and transnational repercussions, including refugee flows, economic contagion, and intensified geopolitical tensions.

In conclusion, the Venezuelan case represents an important contemporary example of covert intervention conducted through non-traditional and non-military means. The legal analysis undertaken in this study demonstrates that such operations remain subject to the core principles of international law regardless of their covert nature or political justification. Preserving the integrity of the principles of sovereignty, non-intervention, political independence, and the protection of internationally protected persons remains essential for maintaining the predictability of interstate relations, safeguarding the stability of the international legal order, and preventing the gradual erosion of fundamental norms governing relations among states.

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Surveying the Rule of the Exclusion of Evidence in the Legal Systems of Iran and China

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Abstract

A fair trial that guarantees defendants' defense rights requires that the reasons cited in the criminal trial process be legal and in accordance with the standards of the trial. The necessity of the principle of obtaining evidence through legitimate and legal means in Chinese law, as a rule, and in Iranian law, in certain cases, to guarantee the principle of legality of obtaining evidence, in addition to other law enforcement guarantees, the invalidity of investigations and extracting the evidence in case of non-compliance with the regulations is mentioned. The principle, titled "the Principle of Invalidity of Evidence," holds that evidence obtained illegally by law enforcement or judicial authorities is invalid and excluded from evidence against the accused. Due to the nature of the subject, the present study is applied in terms of purpose and in terms of data collection by documentary method and by studying valid laws and sources, and the obtained information is analyzed descriptively-analytically. The comparison of the two penal systems confirms that the laws of both systems are ambiguous and inconsistent, and that the strategies they present are inadequate and, in some cases, have been criticized by lawyers, leading to conflicts of opinion and procedures and a lack of due process. For example, the lack of definition and determination of the system of evidence refutation in the Iranian Criminal Procedure Code, and the lack of necessary seriousness in implementing the rule of evidence rejection in China.

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Introduction

The issue of evidence arises in the earliest stages of the criminal process, namely the preliminary investigation stage, where one of the most important tasks of the investigating authority is to collect evidence to prove the accused's guilt or innocence. In practice, the main evidence is presented during the preliminary investigation, and the case is finally evaluated in court to determine the fate of the accused and issue a verdict. The principle of the legitimacy of obtaining evidence means respecting the law when resorting to all methods aimed at obtaining evidence to discover and announce the truth. Law enforcement officers obtaining evidence against the accused must adhere to the principles and regulations, because the most important evidence in proving a criminal fact will be invalid if the legal rules and conditions are ignored in the evidence-gathering process.[1]

"Invalidation case" due to non-compliance of obtained evidence with rules and regulations is a case in which the legislator and the judicial procedure seek to establish a balance between the interests of the interested parties and the interests of society. In fact, on the one hand, it is necessary to ensure the observance of the rules of proceedings to protect the interests of litigants, as a result, they should be allowed to apply for the annulment of proceeding actions during which the rules and principles of proceedings have not been observed, and on the other hand, through referring to the "Theory of Nullity", we can prevent non-compliance with the norms and rules of procedure and force the justice enforcers to comply with the rules and regulations, as the violation of them may expose their performance to invalidity.

The nullity of evidence is used in the common sense in Iranian legal literature; However, according to the authors of this article, there is confusion between the concepts of "invalidity", "exclusionary", "unreliability", and concepts like this, or at least there is no specific difference between them. For example, some have mentioned unacceptable confessions caused by torture under the title of the exclusion of evidence [2]and some have rejected this opinion, calling it unreliable evidence.[3] Therefore, our opinion is that there is a difference between exclusion and invalidity, but in this article, we have used them interchangeably.

Both Iranian and Chinese legal systems have defined certain rules and regulations regarding the actions of the judicial officers in protecting and safeguarding the defendants' defense rights. In Iranian law, Article 38 of the Iranian Constitution stipulates:

> *"All forms of torture for the purpose of extracting confession or acquiring information are forbidden. The compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law."*

For the first time in Iranian law, Article 38 of the Constitution stipulates that evidence

1 M Ashuri, *Criminal Procedure Law* (13th edn, Samat 2019) 45–47.

2 Goldouzian, 'Invalid Reason and Its Effects in Different Legal Systems' (1991) 26 Journal of Law and Political Science (University of Tehran) 63 <https://ensani.ir/fa/article/15721>.

3 M Sabouripour, 'The Exclusionary Rule (The Principle of Rejecting Evidence) in Law of the United States and Comparing with the Similar Sanctions in the Law of Iran' (2015) 12 *Journal of Criminal Law Doctrines* 129 <https://cld.razavi.ac.ir/article_677.html>

obtained through illegal means is inadmissible. The principle stipulates: "Any torture to obtain a confession or obtain information is prohibited, forcing a person to testify, confession, or oath is not allowed, and such testimony, confession, and oath lack validity and credibility. Violators of this principle will be punished according to the law". Also, in the Code of Criminal Procedure, the invalidity of the obtained evidence is mentioned in various Articles on a case-by-case basis; In this regard, Article 30 of the same Code stipulates:

> *"Obtaining the title of bailiff, in addition to being trustworthy, depends on learning the necessary skills by passing training courses under the supervision of the relevant judicial authority and obtaining a special card for bailiffs. The investigations and actions taken by people who do not have this card are prohibited and legally invalid."*

It requiring judicial officers to have a special identity cards to fulfill their duties as officers, and Article 60 stipulates: "During interrogations, coercion or reluctance of the accused, the use of derogatory words, suggestive or deceptive questions, and questions outside the subject of the accusation are prohibited, and the statements made by the defendant in response to such questions, as well as statements made by coercion or reluctance, are not valid. The date, time, and duration of the interrogation must be stated in the minutes of the parliament and signed or fingerprinted by the accused." It refers to the prohibition of coercion and reluctance in interrogations in the Criminal Procedure Law, as well as Article 115 that stipulates: "It is forbidden to write between the lines, to write and to carve out words in interrogation and interrogation papers." In case of non-compliance of obtained evidence with the provisions governing the writing of interrogations and investigations, it will be considered invalid. And according to the aforementioned Articles, it is understood that the invalidity of evidence is not recognized as a "rule" in Iranian law; rather, it is considered only a guarantee for the enforcement of the law and for avoiding non-compliance with regulations in certain cases. In contrast, the Chinese legal system has recognized "The Rule of Nullity of Evidence" and included examples of it in the Criminal Procedure Law of 2012, as amended in 2018. Iran's legal system, by specifying the invalidity of investigations and actions resulting from non-compliance with laws and regulations, has implicitly taken effective steps toward establishing the rule of nullity of evidence. Still, it is silent on explaining the nullity procedure and the exceptions to the rule. Comparative studies in this field can help us develop a fair model for recognizing the invalidity and illegality of evidence, which is the most important safeguard for obtaining evidence legally. In this article, we will first discuss the legislative policies of Iran and China regarding the application of the rule, and then examine related concepts and the most important challenges to its proper implementation.

1. Legislative Policy and Practice

The collection of evidence is one of the most fundamental elements in proving the truth and discovering reality; therefore, evidence is especially important and has distinctive features in criminal cases. In many countries, a special chapter of the criminal procedure law is not dedicated to issues related to obtaining evidence. Iran is also one of these countries, the examples of obtaining evidence in the Islamic Penal Code under Article 160 that stipulates: “The evidence to prove the crime consists of confession, testimony, oath, and the knowledge of the judge in the cases prescribed by law.”, and the subsequent Articles have explained the subjectivity and procedure of obtaining evidence. At the same time, Articles 318 to 334 of the Code of Criminal Procedure deal with the procedures for examining evidence. On the other hand, the Chinese legal system has also paid attention to this issue; one of the chapters of the Chinese Criminal Procedure Law dedicates several articles, such as Articles 50 to 65, to independently discuss the issue of obtaining evidence and explicitly defines evidence that lacks evidentiary value or validity. Article 50 stipulates:

> *“All materials that prove the facts of a case shall be evidence. Evidence shall include:(1) physical evidence; (2) documentary evidence; (3) testimony of witnesses; (4) statements of victims; (5) statements and exculpations of criminal suspects or defendants; (6) expert opinions; (7) records of crime scene investigation, examination, identification and investigative experiments; and (8) audio-visual materials, and electronic data. The authenticity of evidence shall be confirmed before it can be admitted as the basis for deciding on a verdict.”*

Among the guarantees of legal performance that are considered to comply with the law in obtaining evidence in some legal systems is that evidence collected through the illegal actions of judicial officers cannot be presented or cited in court as valid evidence. It is known as “The Rule of Exclusion of Evidence” in some legal systems. In accordance with Article 52 of the Chinese Criminal Procedure Law, which stipulates:

> *“Judges, procuratorial personnel, and investigators shall adhere to statutory procedures when gathering and obtaining evidence that may prove whether criminal suspects or defendants are guilty or innocent, or whether cases involve serious criminal offenses or not. They are strictly prohibited from extorting confessions by torture, collecting evidence through threats, enticement, deception, or other unlawful means, or forcing anyone to provide evidence proving their own guilt. They shall ensure that all citizens who are involved in a case or who have information about the circumstances of a case can furnish all available evidence in an objective manner and, except under special circumstances, may ask such citizens to aid in the investigation.”*

So, the right to remain silent as the defense rights of the accused, and to provide it in writing, with a receipt attached to the file, are mentioned as the duty of the judicial officers. Now, if the judicial officer does not observe any of the mentioned rights of the accused, is the evidence obtained from this illegal act accepted or cited by the court? Is evidence obtained without respect for the defendant’s defense rights worth and does it hold validity? To answer these questions, it is necessary to discuss the concepts relevant to this subject and warrant more detailed investigation.

2. The Main Concepts

2.1. The Concept of Evidence

According to Article 194 of the Iranian Civil Procedure Code: "The evidence is what the parties of the lawsuit invoke for proof or litigation". The definition is more relevant to legal disputes than to criminal disputes; in legal cases, the judge essentially plays the role of the ruler, and, aside from exceptional cases, his duty is to express his opinion based on the arguments presented by the parties to the dispute. Also, judges in legal cases decide based on "formal truth"; therefore, it is natural that the evidence in the above article is defined as what the claimants present to prove their claim. However, in criminal cases, since committing a crime is to disrupt public order and public security, and the purpose of a criminal case is to discover the truth and to obtain the real criminal to impose a legal punishment, in addition to the prosecutor or plaintiff, the criminal judge himself, if necessary, must complete and even obtain new evidence that can affect the fate of the trial.[1]

2.2. The Concept of Invalidation of Evidence

Criminal jurists express differing opinions in this regard: some are concerned with safeguarding the rights of litigants and the community, and therefore consider evidence that does not comply with the rules of trial procedure invalid. And any evidence obtained by violating the defendant's rights and by non-compliance with legal rules is condemned to invalidity. They believe that if judicial officers enter and search the accused's house without the judicial authority's permission and obtain positive evidence of the crime, such evidence is invalid. In contrast, others believe that invalidation of evidence means exclusion of the obtained evidence due to the effective influence of authorities and judicial officers in the process of obtaining the evidence[2]. Some state that the real meaning of invalidation is more concerned with the effectiveness and nature of the evidence than with the method of obtaining it. The method used by the authorities may lack legal justification. Still, this issue cannot form the concept of invalidation of the evidence until it causes damage to the nature of the evidences[3]. Also, based on Article 56 of the Criminal Procedure Law of China, which stipulates:

> *"Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses, and statements of victims collected by violent means, threat, or other unlawful means shall be excluded. Physical evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to damage judicial justice materially shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made. Evidence that shall be excluded as found during investigation, examination before prosecution, and trial shall be excluded in accordance with the law and shall not serve as the*

1 Ashuri (n 1) 45–47.

2 MS Soheil and H Moazenzadegan, 'The Rule of Invalidation of Evidence in Criminal Procedure with an Emphasis on American Law' (2016) 2 *Journal of Criminal Law and Criminology Studies* 243 <https://jqclcs.ut.ac.ir/article_62432.html>

3 MB Moghadasi and J Yazdani, 'Credibility of Evidence Compiled by Justice Officers in Iran's Penal System' (2017) 23 *Journal of Security Protective Research* 132 <https://journals.ihu.ac.ir/article_201066.html>.

basis for making prosecution opinions, prosecution decisions, and judgments. The physical evidence or documentary evidence that is not collected according to statutory procedures and is likely to damage judicial justice materially shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made."

2.3. The Concept of The Exclusionary Rule

According to the exclusionary rule, if the agents of the criminal justice system, including the police forces do not comply with the legal standards and violate the rights of the accused in obtaining evidences, the judge should remove the mentioned evidences from the number of obtained evidences, and if the responsible prosecution institutions do not present other evidences for proving the defendant's guilt, the judge issues a verdict on the innocence of the accused[1]. The argument for exclusion of evidence because of its illegitimate method of obtaining is like the court action in a case where the defendant confesses to a crime, but the court rejects the confession because the evidence is contrary to the confession provisions. Such evidence is correct based on the existence of its elements (reason, maturity, intention, and discretion), but it is rejected according to the court's judgment.[2]

According to the Iranian judicial procedure and legal system, there are differing opinions among jurists on whether to comply with the "rule of exclusion of evidence". Some believe that, under Iranian law, due to the tradition of legislation and judicial procedure, obtaining evidence, even through illegitimate methods, has never been directly prohibited or guaranteed by law.[3] And before amending Paragraph 1, Article 190 of the Iranian Code of Criminal Procedure in 2014, which stipulated that: "Denying the right to have an attorney or not understanding this right to the defendant will discredit the investigation." It is an example of accepting the rule in Iranian law, but it never had the opportunity to implement and before the amendment implementation, the legal system of Iran was practically void of the rule.[4] In contrast, some believe that Article 38 of the Constitution is an example of the rule of exclusionary of evidence.[5] Therefore, considering the defendant's mental and psychological state in detention, especially in cases of accidental crimes or unprecedented criminals, the defendant's lack of the right to silence can lead to the defendant's reluctance to respond unintentionally, which can be detrimental to the defendant. Therefore, it is possible to use the unity of Article 60 of the Code of Criminal Procedure and the effect of the situation; a kind of reluctance of the situation is considerable, so the discredit of the investigation in this situation, without observing the right of the accused to remain silent, is not unlikely.[6] Therefore, some believe that the legislator, although implicitly, has accepted the exclusionary

1 M Farajiha and MB Moghadasi, 'A Comparative Approach to the Valid Rule of Ignorance of Evidence in the Criminal Justice System of Common Law and Iran' (2008) 3 *Modares Humanities Journal* 113 <https://ensani.ir/fa/article/8397>.

2 Moghadasi and Yazdani (n 7) 132.

3 HA Moazenzadegan and MH Kourehpaz, 'Guarantees of Enforcement of Violation of Citizenship Rights in the Police Investigation Process' (2016) 11 *Journal of Criminal Law Doctrines* 53 <https://cld.razavi.ac.ir/article_642.html>.

4 Sabouripour (n 3) 129..

5 Goldouzian (n 2) 63.

6 AH Shakeri and GR Shirazi, 'The Right to Silence and the Duty of Prosecution Authorities in the Criminal Procedure Code of 2014' (2015) 7 *Journal of Police Knowledge* 101 <https://civilica.com/doc/1850797>.

rule to some extent under the Code of Criminal Procedure. It can result from the context of Articles 1, 2, 4, 7, 28, 36, 42, 61, and 63 of the Code of Criminal Procedure, which somehow accepts the principle of necessity of compliance of judicial officers in detecting crimes and identifying the accused. Even the lack of compliance with the law results in the guarantee of the legal implementation of Article 63.[1]

However, it should be noted that the system of evidence in Iran is in accordance with Islamic teachings and is based on the judge's conscience. In other words, in the system of spiritual evidence, the judicial persuasion of the judge, which is called the knowledge of the judge, is independent evidence in criminal cases.[2] The importance of a judge's knowledge cannot be denied, and it can be acquired in various ways. Given that science is one of the mental states of the human being, and that it is obtained through measuring and evaluating the sum of evidence and the conditions governing an external phenomenon, it determines whether a phenomenon has occurred.[3] As a result, if the judge reaches a decision based on the evidence obtained (even if the method of obtaining the evidence is illegal), he must issue a verdict against the defendant. It should be noted that there are certain regulations regarding the knowledge of the judge, and the judge cannot issue a verdict in any way that he acquired the knowledge. Because accepting such a claim would require crediting the judges' personal knowledge, which is not accepted in the Iranian legal system, citing the judges' personal knowledge has been considered invalid. This issue can also be extended to the evidence obtained by the illegal actions of bailiffs; in this regard, the legislature in Article 211 of the Islamic Penal Code stipulates:

> *"Knowledge of the judge is defined as a certainty resulting from manifest evidence in a matter brought before him. In cases where a judgment is based on the knowledge of the judge [as the proof of the offense], he is obliged to stipulate in the judgment the manifest circumstantial and hearsay evidence that has been the source of his knowledge."*

The knowledge of the judge is the certainty of the judge resulting from the documentation and his knowledge, so the judge is obliged to explicitly state that the evidence was obtained from the documentation or from his knowledge. According to the matters mentioned in the second paragraph of the above-mentioned Article as examples of cases that can be documented in the judge's knowledge, it shows that the judge cannot document all evidence to his knowledge, except that which complies with legal regulations. In addition, Article 36 of the above law provides that judicial officers' reports that are not prepared in accordance with applicable legal rules and regulations are invalid. Therefore, the judicial authorities cannot document their knowledge based on reports obtained as a result of legal violations.

However, according to Article 38 of the Constitution and the Law of Criminal Procedure in various articles, in a case-by-case manner, the invalidity of the obtained evidence is mentioned; For example, Article 30, which deals with the requirement of the judicial officers

1 Moghadasi and Yazdani (n 7) 132.

2 K Kalantari and A Salmanpour, 'The Status of Judge Science in Proof of Criminal Practice in Iranian Law' (2019) 2 *Journal of Criminal Law Research* 165 <https://doi.org/10.22124/jol.2019.5424.1225>.

3 E Heydari, 'The Validity of Judge Science in Issuing Criminal Verdicts in the Islamic Penal Code Approved in 2013' (2014) 2 *Journal of Criminal Law Scientific Studies* 89 <https://jol.guilan.ac.ir/article_50.html>.

to have the necessary skills and to pass training courses for obtaining the officer card, Article 60, on the prohibition of coercion and compulsion in interrogation, as well as the provisions of Article 115, which refers to incredibility of the obtained evidences due to lack of observing the rules governing the writing of interrogation and investigation. Therefore, under the Iranian legal system, invalidation of evidence is considered a legal safeguard against non-compliance with certain provisions, but the title "the Rule of Exclusionary of Evidence" has not been recognized in legal rules. And the evidence obtained through the actions that violate the law is not valid and cannot be documented in the process of issuing the verdict; however, it is necessary to define and explain the system of invalidation of evidence in the Iranian criminal procedure to ensure the proper implementation of the rules and principles of the proceedings.

In contrast, China's legal system has recognized "the Rule of Exclusionary of Evidence" and included examples of it in its own procedural code. Although the use of torture and other illegal means of collecting evidence was banned in China in 1979, the legislator did not pass the rule of exclusionary rule until the beginning of the 21st century. The legislator's promise was effectively fulfilled when several defendants sought the exclusion of illegally obtained evidence, and several judges granted their requests. The discovery of many criminal convictions resulting from forced confessions led to the formulation of the rule of exclusionary evidence in this regard. In recent years, China has significantly amended the exclusionary rule, increasing the requirements for exclusion and the rejection of illegal evidence. These provisions are mainly set out in the Criminal Procedure Code of 2012 and its 2018 amendment, the Evidence Rules of 2010, the interpretations of the Supreme People's Court, the Public Security Institution Working Rules in criminal cases, and other relevant administrative and departmental regulations. In 2010, one of the evidence rules, namely, the Rules Concerning Questions about Excluding Illegally Obtained Evidence in Handling Criminal Cases, was stipulated by the Supreme People's Court, the Supreme People's Prosecutor, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Public Justice. The first principle of these regulations stipulates that forced confessions should be excluded from use at criminal trials. In 2017, five high-ranking officials also drafted the Regulation on Some Issues of Strictly Excluding Illegally Obtained Evidence in Handling Criminal Cases. The Criminal Procedure Code of 2012 (Amendment 2018), as a part of the legal framework that oversees the exclusion of forced confessions, prohibits the use of torture by any means.[1]

According to the principle of non-criminalization, anyone who, directly or indirectly, in a criminal trial compels a defendant to make statements against himself, or provides physical evidence, is considered to have committed an unlawful act, and the evidence obtained in this way shall be considered unlawful evidence under the law. Article 56 of the Criminal Procedure Law of China about the rule of exclusionary of evidence states:

> *"Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses, and statements of victims collected by violent means, threat, or other unlawful means shall be excluded. Physical*

1 Jiang Na, 'Excluding Tortured Confessions in the People's Republic of China: A Long March Towards the Eventual Abolition of Torture?' (2018) 54 *International Journal of Crime and Justice* 1: 1–10.

evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to damage judicial justice shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made. Evidence that shall be excluded as found during investigation, examination before prosecution and trial shall be excluded in accordance with the law and shall not serve as the basis for making prosecution opinions, prosecution decisions and judgments."

Therefore, in accordance with the law, if the People's Prosecutor's Office receives reports, charges, or misconduct based on the unlawful action of the interrogators in collecting evidence, or if it is found that the interrogators are involved in such actions, the People's Prosecution Office shall investigate in this regard. Article 58 also states that during the court hearing, if the judge believes that the evidence was obtained by illegal means and does not comply with the provisions of Article 56 of this Act, the court shall investigate to determine the legality of the evidence. Each party to the case, their defender, and their criminal representative have the right to request that the People's Court remove evidence collected by illegal means. Those who request the removal of evidence collected by illegal means must provide clues and relevant information. During the investigation, the court may ask the People's Tribunal to establish the legality of the evidence-collection process. If it is unable to prove the legality of the evidence collection, the People's Prosecutor may request that the People's Court call the relevant investigators or other personnel to appear in court for explanations. Relevant investigators or other personnel may also request to appear in court to provide an explanation. Article 59 of the Criminal Procedure Law of China stipulates:

" A people's procuratorate shall bear the burden of proof as to the legality of the evidence gathering means during the court investigation thereof. Where there exists no evidentiary support for the legality of the evidence-gathering means, the people's procuratorate may request the people's court concerned to notify relevant investigators or other personnel to appear before the courtroom to make explanations. The people's court may, at its own discretion, notify relevant investigators or other personnel to appear before the courtroom to give explanations. Relevant investigators or other personnel may also take the initiative to request an appearance before the courtroom for an explanation. Relevant personnel shall also appear before the courtroom if so notified by the people's court."

About the cases that have been dealt with in court, and the court investigation is unable to confirm or prove the cases where the evidence is collected by illegal means, as provided in Article 56 of this Act, shall be removed from the case.

2.4. Exclusionary Rule in Practice

In practice, cases in which evidence is collected without violating the principle of non-criminalization can be divided into four categories: obtaining confessions through direct coercion; obtaining physical evidence through direct coercion; obtaining confessions through indirect coercion; and obtaining physical evidence through indirect coercion. Of these four categories, "Direct coercion" means that the prosecuting entity forces the accused, through physical compulsion, to actively contribute to the presentation of evidence; "Indirect coercion" means that the prosecuting entity exerts no physical compulsion, and the accused refuses to assist actively. If so, restricting the defendant's freedom to decide whether to actively cooperate in providing evidence is indeed forcing the accused to forgo and lose the right to non-criminalization.[1] According to Article 60 of the Chinese Criminal Procedure Code, which stipulates:

> "*Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses, and statements of victims collected by violent means, threat, or other unlawful means shall be excluded. Physical evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to damage judicial justice shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made. Evidence that shall be excluded as found during investigation, examination before prosecution and trial shall be excluded in accordance with the law and shall not serve as the basis for making prosecution opinions, prosecution decisions and judgments.*"

The criminal consequences of the four cases mentioned above regarding the removal of unlawful evidence can vary.

A confession obtained through direct coercion is a confession obtained from the accused or suspected by illegal means, such as acts of torture, as described in Article 56 of the Criminal Procedure Law. According to the interpretations of the Supreme People's Court in 2013 regarding the establishment and improvement of mechanisms of actions to prevent making judicial mistakes in the elimination of criminal cases of forced confessions, including cases of torture, such as the lack of food and water, the provision of bedding and comfort. Therefore, the courts should not convict the defendant based on his confession, because confessions obtained through acts of torture, such as increasing the body temperature of the defendant, starving or thirsting, or conditions that expose him to extreme heat, or violent interrogation. Therefore, the confession obtained through the aforementioned illegal actions should be excluded from the proceedings. Also, according to another commentary by the People's Court, "illegal methods such as obtaining confessions through torture" means "the use of physical and mental torture or other means that result in the defendant suffering severe physical or mental pain that compels him to make a voluntary confession". In certain circumstances, direct coercion includes the actual implementation of "illegal methods such as obtaining confessions through torture" and threats to carry out "illegal methods such as obtaining confessions through torture" to obtain confessions.

Obtaining physical evidence through direct coercion refers to the condition in which a defendant is compelled to present physical, documentary, biological, or other evidence against his will. Whether this type of evidence will be excluded from the collected evidence

1 SF Wang, The Principle of Non-Self-Incrimination (Master's thesis, National Chengchi University 2007) <http://thesis.lib.nccu.edu.tw/record/#G0896510281>.

is not clearly stated in the law. There are different opinions in this regard. Some believe that the practices taken to obtain evidence are the same in terms of illegality, but it does not necessarily mean that the obtained evidence is the same in terms of removal; there may be differences in the types of specific considerations for the removal of evidence.[1] In contrast, some argue that the discovery of the truth should not be the theoretical basis for China's regulations on the elimination of unlawful evidence, meaning that physical evidence obtained through direct coercion, because of its illegality, should be treated the same as confessions obtained through illegal means such as torture. Article 56 refers to the absolute elimination of this type of evidence.[2]

Finally, confession and physical evidence obtained through indirect coercion means that defendants voluntarily confess or provide physical evidence that may have unintended or undesirable consequences for them. The problems caused by such a phenomenon are complex, and there is no direct relationship between them and the elimination of illegal evidence. Therefore, there will be no issue with the removal of evidence obtained through indirect coercion, and this action will lead to punishment and the legality of mandatory security measures. Only if the prosecution entity forces the accused to confess and give evidence will the issue of the removal of evidence be raised. Therefore, by law, assuming that there is a violation of non-criminalization, it must first be determined whether this evidence is "modifiable" or if there is a "reasonable explanation" for it, and then a decision will be made on its removal. In practice, confessions and evidence obtained through indirect coercion are subject to arbitrary elimination.[3]

However, numerous empirical studies conducted in recent years by Chinese researchers reveal a significant gap between the law and the practice of removing illegal evidence. The legislator has a preoccupation with eliminating illegal evidence in legislation, but judges are much slower to be affected, especially before criminal court reforms. The lawyers are very enthusiastic about using the Rule of Elimination of Evidence to defend their client. At the same time, the judges are reluctant to reject the prosecution's evidence to dismiss the charge. In general, although such conditions are clearly stated by the legislature, scientific assemblies, and legal advisors, examples of the removal of illegally obtained evidence are virtually nonexistent, and there are no signs of significant progress in this regard. In other words, the gap between the legislature's promises and judicial processing will remain in the long term, possibly longer than expected. Some believe that the rule of Elimination of evidence is strictly verbal and slow to apply; others even criticized that these laws in practice have become the law of the non-elimination of unlawful evidence. According to the feedback of the empirical review, the lack of practical and transparent instructions is the most important factor in the weak implementation of the rule of elimination of the evidence. Judges are reluctant to remove illegally obtained evidence for fear of affecting their relationship with the prosecution or the police. But in many of these cases, several factors contribute to the

1 Yu-Hsiung Lin, Review of the Criminal Judgment of Supreme Court Division (1st edn, Wuzhao 2013).
2 Yuan Sun, 'The Outline of Substantial Interpretation on the Privilege Against Self-Incrimination' (2016) 2 Tribune of Political Science and Law 59 <http://iolaw.cssn.cn/fxyjdt/201608/t20160811_4643470.shtml>.
3 Sun (n 20) 59.

phenomenon, including cultural factors and differing legal interpretations.[1] Some researchers have analyzed these reasons from the offending viewpoints, but the explanation and analysis of these cases are outside the scope of the present text.

3. A Challenge in Interrogations: Video and Audio Recording

Interrogation is considered one of the preliminary stages of investigation. It is one of the most important measures of the police force or the investigator, because all the evidence of the case and the efforts made to detect the crime are provided to the interrogator so that they can investigate and analyze them to ask the appropriate questions from the potential criminal or the accused to obtain a confession and discover the truth.[2] At the same time, maintaining the accused's right to remain silent and exercising control over how judicial officers and interrogators operate are the main motivations for documenting interrogations. One of the main reasons for the interrogator's resort to torture during interrogation is the impossibility of proving the crime by the victim of the torture, because torture and other inhumane treatment occur in detention centers and away from people's view and judgment, and in most cases, the victims face a lack of sufficient evidence to prove it. One of the most important ways to prevent the instances mentioned is to record audio and video of interrogations. Through recorded interrogations, the court can examine the psychological conditions of the accused while confessing to committing a crime and make a more successful decision in determining whether the confession is voluntary or not.[3] Therefore, granting the judicial officers broad power and freedom to conduct interrogations of suspects and defendants behind closed doors, and the invisibility of many of their decisions and actions during interrogation, and at the same time exerting pressure to increase the conclusion of the case, puts the prosecution institution at risk of abuse of power and violation of the right to silence of the suspect and the accused.[4] In this regard, recording the audio and video of the interrogation process and appending them to the case is considered one of the most important and effective mechanisms for preventing violations of the right to silence of the suspect and the accused, thus guaranteeing a fair trial.

However, there is no special provision in the Iranian legal system regarding recording audio and video interrogation procedures, only about recording the statements of the accused in Article 12 of the Act of Respecting Legitimate Freedoms and Protecting Citizens' Rights, which stipulates:

> *"Responses must be recorded as they are stated without any changes or amendments, and then must be read back to the accused. Those who are literate may write their own responses if they wish, so that no doubts about distortion or misrepresentation may be created."*

and Article 197 of the Code of Criminal Procedure that stipulates: "The defendant can

1 F Fallahnezhad, A Fair Trial in the Process of Criminal Procedure in the Penal System of the People's Republic of China with an Attitude to International Documents (PhD diss, Tehran Azad University 2020).

2 T. A. E. Rajabi, Mechanisms of Observing the Right to Silence and Access to Lawyers During the Interrogation of Justice Officers (PhD diss., Tehran Tarbiat Modares University, 2016).

3 M Saber and M Naghdinejad, 'Investigating the Criteria for Interrogation of the Accused in Initial Preliminary Investigation' (2011) 4 *Journal of Police Knowledge* 143 <https://www.sid.ir/paper/100527>..

4 Rajabi (n 23).

remain silent. In this case, the refusal to give a reply or sign the statements will be stated in the minutes of the meeting." According to Article 400 and Note 1 to Article 353 of the same law, under the legal conditions, audio and video recording is permitted during court hearings. The failure to predict the audio-visual recording during interrogation can leave open the way for any violation of the rights of the defendant and, as it has reported in many cases, the bailiffs interrogate at times when the accused is unable to stay awake, or sometimes even record the statements of the accused incompletely or report the date of the interrogation informally, or the interrogation papers are filled out by the bailiffs and pass to the accused to sign.[1] Therefore, to prevent the potential abuse in the mentioned cases and to be careful in the way of dealing with the accused and preventing possible torture, legislation and the prediction of audio and video recordings during interrogations is necessary.

In contrast, the People's Republic of China prohibits the legal system of practice of torture by any means to meet the conditions set out by the Convention against Torture, which has been a member party for three decades; the issue of prohibition of the practice of torture is mainly mentioned in the Chinese Penal Code and Criminal Code of Procedure, which has been partially consistent with international standards. Therefore, audio and video recordings of interrogations, which are very effective in preventing the application of torture or ill-treatment, are mentioned in the law. The country launched a pilot project in mid-2000 to explore the use of such recordings during interrogation, and the proliferation of activities soon became the target of many reforms.[2] In 2007, new regulations were introduced that allowed interrogators to record interrogations in death penalty cases as needed.[3] The importance of audio-visual recording in recognizing the legality of a confession was first recognized in 2010 with the "Law on Issues of the Excluding Illegally Obtained Evidence in Handling Criminal Cases".

In addition, the Supreme People's Prosecution, in its Declaration, has set out special procedures for issuing guiding principles for the examination of evidence in death-sentence cases. Article 7 strictly stipulates that a simultaneous system for recording the entire interrogation process of the criminal accused shall be applied. Also, according to the Provisions of the Supreme People's Court 2012, para. 19, the recording of the interrogation process must be displayed as necessary addenda to the transcripts of the interrogation, the interrogator must have an audio or video recording of the interrogation, and the existence of this recording must be mentioned in the transcript of the interrogation. Without the interrogation recording, the transcripts cannot be considered the only evidence of the defendant's conviction.[4]

Finally, in the amendments to the Criminal Procedure Law (amendment of 2018), Article 123 stipulates: "Investigators, when interrogating a criminal suspect, may record or videotape the interrogation process, and shall do so where the criminal suspect is involved

1 Seyed Alireza Mousavi and Masoud Ghasemi, 'Investigating the Moral Challenges of the Right to Silence of the Accused in the Iranian Legal System' (2020) 4(10) *Ethical Research* 235 <https://doi.org/20.1001.1.23833279.1399.10.40.14.8>.

2 Rajabi (n 23).

3 *'Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases', art 11 <http://news.xinhuanet.com/legal/2007-03/12/content_5833204.htm> accessed 29 October 2015.*

4 Jiang Na (n 17) 1.

in a crime punishable by life imprisonment or capital punishment or in an otherwise major criminal case. Recording or videotaping shall run throughout the interrogation process for the purpose of completeness." It is noted that the investigators, when interrogating a criminal suspect, may record or videotape the interrogation process and shall do so where the criminal suspect is involved in a crime punishable by life imprisonment or capital punishment, or in an otherwise major criminal case. Recording or videotaping shall be conducted throughout the interrogation process for completeness. Also, in the Ministry of Public Security's Public Security Regulation on Procedures for Handling of Criminal Cases 2020 Amendment that covers the implementation of criminal procedure, other important criminal cases are defined as: "Serious cases that endanger public security or violate the individual rights of citizens resulting in death or serious injury, as well as organized crime or drug-related crimes."

In China's reply to CAT's List of Issues 2015, para 32, in response to a list published by the International Committee on Torture in 2015, China announced that all public security agencies in all areas that investigate cases must install electronic monitoring equipment that is connected to the monitoring center, so that law enforcement activity by police is directly monitored electronically. After the above-mentioned report, most of the areas that had completed the required renovations were to be in case management for the installation of electronic surveillance equipment. The law on Excluding Illegally Obtained Evidence 2017 stipulated for the first time that: "Another copy of confessions of suspects and accused that were extracted under the influence of previous acts of torture must be excluded". Because, given the uncertainty over whether confessions were made voluntarily, it is better to remove them along with forced confessions and any confessions obtained through torture to reduce or prevent the acts of torture.

However, based on objective evidence and Chinese judicial practice, implementing audio-visual recordings of interrogations appears challenging. One of the challenges in defining an illegal confession concerns confessions obtained in violation of procedural laws. Many jurists believe that it is not necessary to remove all confessions that violate the formal laws and regulations.[1] In contrast, confessions made in violation of the law and related to human rights should be removed. For example, the Supreme People's Court's view on preventing unlawful convictions should be excluded, except in emergency cases, where interrogation should take place at the place of detention, and confessions made outside the specified location without audio or video recording, or made by illegal means, should also be excluded.[2] The measure is to protect the accused against being subjected to illegal torture during interrogations without video recording.

Another challenge in this case is the lack of full interrogation recordings, especially those that capture the entire process. One of the reasons is the lack of necessary resources to make all interrogation recordings possible, including recordings of interrogations involving forced

1 MK Lewis, 'Controlling Abuse to Maintain Control: The Exclusionary Rule in China' (2011) 43 *International Journal of Politics* 632 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1674509>.

2 YG Zhi, 'Torture and Exclusion of Evidence in China' (2019) 1 *China Perspectives* 45 <https://doi.org/10.4000/chinaperspectives.8742>.

confessions. A 2014 survey found that 61% of the 96 prosecution agencies in a Chinese state have only part-time employees who record only parts of the interrogation process, meaning these employees are not always present to record the entire interrogation. Such conditions question the fairness of the interrogation process. And according to researchers, the government's investment in audio-visual recording equipment is inadequate.

Conclusion

A fair trial requires respect for the defendant's defense rights, such that any violation of these rights would prejudice the basis of a fair trial. Comparing the two penal systems of Iran and the People's Republic of China, as outlined in the text, reveals both convergence and divergence in the limits and consequences of their actions. With careful consideration of the right to silence in Iran and the prohibition of self-criminalization in China, it became clear that despite the different policies, justifications, and actions in the two countries, these rights are of great importance. However, the comparison of the two penal systems confirms that the laws of both systems are ambiguous and inconsistent, and the strategies they present are inadequate and, in some cases, have been criticized by lawyers, which can lead to conflicts of opinion and procedures and a lack of due process. Due to the newness of these rights in both countries, ambiguity still exists in some cases, so amendments to the laws and regulations are necessary. In this regard, some practical strategies are suggested:

1- Amendment of the laws on the exclusion of the illegal evidence (the rule of exclusion of the evidence): Discovering the truth requires that legislators determines valid and legitimate evidences on the one hand, or if necessary determines them through judicial procedure, and on the other hand, the correct methods of obtaining valid legal evidence and the rules governing them should be determined, so that the parties of the lawsuit refuse to obtain and provide evidence without judicial value. Therefore, compliance with the legal rules is required by both the detection and prosecution officers and the judicial authorities. The rule of exclusion of evidence is a complex legal principle and, in both substantive and formal law, is the most controversial among criminal law rules. Therefore, in the current Iranian regulations, it can be accepted to some extent that the evidence obtained from the actions that violate the laws is not valid and cannot be documented; however, to ensure the proper implementation of the rules and principles of justice, defining and determining the system of invalidation of evidence in the Iranian criminal procedure seems necessary. It is also not easy to stipulate laws, especially in countries like China, which have no history of the exclusionary rule of evidence. The enforcement of the rule of exclusion of evidence is even harder because of the resistance of traditional culture and thought, practical barriers, and inadequate laws. It seems that Iran's criminal system, unlike China's, has not clearly accepted the rule of exclusion of evidence, which has not yet been recognized and has even received little attention. Evidence obtained through illegal means clearly infringes on the right to silence, so the illegal evidence must be excluded and cannot be used as a basis for trial. In order to ensure the proper implementation of the rules and principles of litigation, it is necessary to define and determine the system of invalidation of evidence in the Iranian criminal procedure law. China has recognized the exclusionary rule, incorporated its provisions into the Criminal Procedure Code, and made efforts to implement the law since 2010. Although it is necessary for the country to improve the rules governing exclusionary laws and regulations, the more important task is to strictly enforce the exclusionary rule. For example, the Prosecutor must use all relevant means to prove the legitimacy of the obtained evidence beyond “reasonable doubt”. Courts must also exclude illegally obtained evidence, even if it leads to an acquittal. Therefore, until all the aforementioned purposes are met, the rule of exclusion of evidence cannot play its part in preventing illegal convictions and protecting the defendant’s defense rights, including the right to silence and the right to non-self-incrimination.

2- Audio-visual recordings of interrogation procedures: Recording audio and video of interrogation can have a significant impact on the reduction of torture and other inhuman treatment by interrogating authorities, as well as providing permanent information on how the suspect or accused is treated during interrogation. Interrogators will no longer be subject to unwarranted allegations of mistreatment. Nowadays, due to advances in social production, any interrogation room has favorable conditions for being equipped with audiovisual equipment. A comprehensive audiovisual recording of the interrogation process can help ensure the enforceability of the right to silence. When the suspect or accused is not tortured by the interrogator, the court and the police may play audio or video recordings in court to prove the legality of the interrogation evidence. If necessary, these videos and tapes can be shown to the public, and this process can increase interrogation transparency and community confidence in police actions, which can effectively reduce and prevent the phenomenon of access to evidence through illegal means such as torture. According to Iran’s criminal justice system, there is no special regulation on audio-visual recordings of interrogation, while China already has recognized it in its legal system. The lack of rules and regulations cannot ignore the significant privileges of this mechanism in interrogation for the accused and criminal justice system, so the need for the legislature’s support to ensure the requirement of audio-visual recordings during interrogation will be met, and to anticipate the preparation of its mechanisms in Iran seems necessary.

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The Constitutional Dimension of Interregional Cooperation in Europe with Reference to Italy

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Abstract

This essay is an introductory comparative study about the facts and available norms of interregional cooperation in Europe with the focus on Italy legal system. Cross-border cooperation is a concerted process of building neighborly relationships between local stakeholders and authorities on either side of a border, with a view to overcoming such problems and fostering harmonious development of neighboring communities. Its success should be built on clear concrete objectives and the willingness to cooperate. Cross-border co-operation does not entail conveying additional powers to border communities or authorities. Rather it is an efficient way for exercising local authority powers. Through cross- border co-operation, communities located in border areas may seek to promote the socio- economic development of the border area, develop economies of scale to provide better services and widen cultural perspectives. Therefore, the capacities of Europe legal documents and programs in recent twenty years and last version of Italy constitutional law will be analysed .The main findings could be abstracted in 1.Interregional cooperation and European integration; 2.The normative and jurisprudential context for the international cooperation of the Italian Regions; 3. (Italian) Regions and Euro-Mediterranean partnership;4. Requirements of Italy Constitutional Law for Interregional Cooperation.

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Introduction

It is essential for non-European readers of this article to understand the main principles, values, and purposes of the European Union, as well as Italy's constitutional law as a member state. For people from the Middle East, Africa, South America, or even a lawyer from Iran, China, or Russia, it might be ambiguous to understand the relationship between "independence and integrity of a nation-state" and "interregional cooperation". In the context of non-European countries, there are national governments without local states or independent regional bodies, with all national and cross-border policies determined by a central government. But in the EU, the situation is different.

In accordance with EU treaties, while member states maintain their national identity, they also confer part of their independence to the united Europe as a recognized entity. Therefore, EU members are required to interact with each other. One of these interactions is interregional cooperation**.** The twofold national and international character of this present essay results in the consideration of both mentioned requirements of the subject. On the one hand, the requirements of EU treaties on interregional deals in the Italian legal system; on the other hand, Italy's national legal capacities for interregional cooperation with respect for integrity will be considered.

1. The Nature and Role of Regions in EU Member States

This essay examines the involvement of self-governing sub-national and regional actors in the law and policy-making of the European Union. State power is exercised today within the complex institutional environment of the EU. But what are regions and sub-national actors? Are their interests adequately represented? Can they advance their interests, or can they at least protect them from unwitting or calculated damage? This essay surveys the broad questions of law and political science and investigates the contribution of the EU's Committee of the Regions and also 'bottom-up' initiatives launched by the regions themselves. Given that much regional autonomy has been hard-won, one would suppose that the centralizing influence stemming from the EU's intrusion into the domestic settlement would be treated with extreme caution by the regions. Moreover, among the member states there is great diversity in the patterns of political organization adopted to cope with the tension between the centralization of power and respect for local autonomy[1]. There are programs for the promotion of interregional cooperation in the EU, as follows:

1.1. Interreg Spain-Portugal (POCTEP)

There are EU funding programs that support interregional cooperation by bringing together organizations from across Europe and beyond to boost economic growth, strengthen regional cohesion, and promote environmental protection and sustainable development.[2] One of these programs is named POCTEP, the Spain-Portugal cross-border cooperation program. This

1 See: Stephen Weatherill and Ulf Bernitz (eds), *The Role of Regions and Sub-National Actors in Europe* (Hart Publishing 2005).

2 Interreg, 'Interreg' <https://interreg.eu> accessed 11 June 2026.

border is the oldest and longest in the EU and contains the EU's largest cross-border initiative, supporting sustainable development across areas such as innovation, energy, biodiversity, employment, education, healthcare, tourism, and culture.[1]

1.2. Cross-Border Cooperation (CBC)

Cross-border cooperation is a concerted process of building neighborly relationships between local stakeholders and authorities on either side of a border, with a view to overcoming such problems and fostering harmonious development of neighboring communities. Its success should be built on clear, concrete objectives and the willingness to cooperate.

Cross-border co-operation does not entail conveying additional powers to border communities or authorities. Rather, it is an efficient way of exercising local authority powers. Through cross-border co-operation, communities in border areas may seek to promote socio-economic development of the border area, develop economies of scale to provide better services, and broaden cultural perspectives.[2]

1.3. European Destinations of Excellence (EDEN)

It is with Europe's citizens in mind that the ministers responsible for local and regional government of the 47 member States of the Council of Europe launched in 2009 a major survey of difficulties and obstacles that hamper cooperation across the borders and agreed in 2011 to further develop their cooperation with a view to reducing or removing those obstacles.

With the help of ISIG of Gorizia (Italy), the data collected through a series of data collection tools (in 2009 and in 2014 and yearly since 2017) have been systematized and organized in such a way as to enable all actors of cross-border cooperation to find examples that correspond to their situation and solutions that may help them to adopt a response to their needs[3].

1.4. Inter-Municipal Cooperation (IMC)

Inter-Municipal Cooperation occurs when two or more Municipalities agree to work together on assigned tasks to achieve mutual benefits. IMC implies a relationship between two or several local authorities (i.e., entities in the first level of territorial administration) having a status of legal persons, endowed with competences, powers and resources in accordance with the European Charter of Local Self-Government. IMC is the result of a deliberate decision and not just the mechanical implementation of a legal provision. Agreement is voluntary rather than imposed by law, although the law may sometimes strongly encourage or even require municipalities to seek co-operative solutions.[4]

1 Interreg, 'Spain–Portugal (POCTEP)', <https://interreg.eu/programs/spain-portugal-pocep/> accessed 11 June 2026.
2 E-DEN Platform, 'Cross-Border Cooperation (CBC)' <https://edenplatform.org/cross-border-cooperation-cbc/> accessed 11 June 2026.
3 E-DEN Platform, 'E-DEN – From E-Database Empowering Networks to Good Governance Platform'.
4 E-DEN Platform, 'Inter-Municipal Cooperation (IMC)' <https://edenplatform.org/inter-municipal-cooperation-imc/> accessed 11 June 2026.

2. Interregional Cooperation and European Integration

Within the research carried out on the development of across-the-border interregional cooperation, particularly that regarding the relationships between the Countries lying along the Mediterranean basin, we will focus our attention on the theme of the possible consequences, from an internal constitutional point of view, of the creation and consolidation of a new space of political autonomy for territorial bodies on the whole. We must, above all, start from the context in which interregional cooperation is developing at the European and internal levels. The European political system, since its birth, has been substantially indifferent to the internal territorial aggregations within the member States, so that it has been said to be affected by the so-called regional blindness (*landesblindheit*), also defined as marginalization, estrangement, indifference. These expressions are based on the same assumption that the European government builds its own bodies and procedures, taking into consideration solely the central levels of government, which are surely better suited to manage security levels. Territorial bodies have more and more claimed their right to intervene in the European *decision – making*; at the same time, they have tried to develop those ways of trans-national collaboration which would have allowed them to take the utmost advantage of the development opportunities offered by structural Funds and the European Community projects promoted within the cohesion policy. From this point of view, being already of a bi-dimensional kind, the doctrine has sought to study in greater depth any possible emerging interference between sub-state groupings, the central powers, and the consequent internal constitutional issues.[1]

The question of local communities has been gaining increasing importance, up to the age of the Europe of Regions, initiated by the Maastricht Treaty. Thanks to it, an acknowledgment by agreement of the internal territorial groupings within member States is achieved through the establishment of the European Committee of the Regions (COR) in 1994. It is located in Brussels (Belgium). It is an advisory body composed of locally and regionally elected representatives coming from all 27 member states. Through the COR, they are able to share their opinions on EU legislation that directly affects regions and cities.[2] This research is motivated by the principles of subsidiarity, partnership, and complementarity, examining both within individual States and at the European level the various ways local authorities are involved in the decision-making processes of the European Community, as well as the strengthening of cross-border interregional cooperation.[3]

The doctrine unanimously agrees that the geometry of the common European house has been strengthened: an *à la carte* Community, characterized by an institutional model no longer ordered by the traditional administrative criteria of direction and hierarchy, but by those of flexibility and agreement. Bureaucratic structures interact more and more freely,

1 On the juridical aspects of this question see F. Pizzetti, *Le Autonomie locali e l'Europa*, in *Le Regioni*, 2002 (vl. 3), p. 935 ss; G. ROLLA, *Il principio unitario nei sistemi costituzionali a più livelli,* in *Le Regioni,* 2003, p. 703 and the following; COMITATO DELLE REGIONI, *Procedure per la partecipazione delle autorità regionali e locali al processo europeo di policy making nei vari Stati membri*, Lussemburgo : Ufficio delle pubblicazioni ufficiali delle Comunità Europee, 2005.

2 See: Committee of the Regions <https://cor.europa.eu> accessed 11 June 2026.

3 MR Allegri, 'Cooperazione transnazionale fra enti sub statali: dalla Convenzione di Madrid al GECT' (2009) 2 Le Regioni 5.

and their competences become more and more fragmented and are differently assigned: national and European Community offices function as distribution centers of a wide trans-national network, expression of a European Community polyarchy[1], which seems to manifest even at the level of security. Interregional collaboration has the function of helping regions to overcome common questions together, excluding any top-managed and authoritarian interventions, in favour of decision-making processes based on reciprocity and agreement. Territorial groupings within member States tend then to break loose from national States, acting as *partners* within the European panorama of security.

What specifically interests this segment of research are possible developments in interregional cooperation; the relationships between macro- and micro-regional areas, whether or not included in the European Union, are also to be considered. In this way, elements of homogeneity or reciprocal interest are emphasized, and, being part of a network, not only function as potential drivers of social and economic growth, but also as possible means of managing internal and international security. Starting from the European framework Convention on the across-the-border cooperation of territorial communities or authorities, signed in Madrid on May 21st 1980, the Council of Europe has committed itself to fostering and promoting across-the-border cooperation between territorial communities or authorities and to helping, to such an end, the execution of agreements and understandings, in conformity with the constitutional norms of each single Country.

To the Convention of Madrid, two protocols have been added over time; they both offer a wide range of models which allow the different territorial entities within different countries to give cross-the-border cooperation the character they think is most conforming with their own internal law. In particular, the second additional protocol to the Convention of Madrid, dated May 5th 1998, defines the reference framework for “inter-territorial cooperation”, which consists of agreements between territorial bodies that are not contiguous and belong to different States. Among the documents issued by the Council of Europe, we must also remember the European Charter of local autonomy, signed in Strasbourg on October 15th 1985, which, within the wider context of a *multilevel protection* of local bodies, has greatly influenced the whole system of territorial bodies. At last, we should remember the adoption of the (EC) Regulation No. 1082/2006 concerning the European Group of Territorial Cooperation (EGTC), as complementary and not alternative instrument to the framework of measures and opportunities, already defined by the Convention of Madrid, in order to help territorial cooperation in the different forms of across-the-border, trans-national and interregional cooperation and to overcome the difficulties found by regional and local authorities in carrying out and managing actions of territorial cooperation. The European Parliament, in its resolution on the role of Euro-regions, approved on October 6th 2005, underlines the necessity for the EGTC to be also useful for the promotion and management of European programs of neighbourhood and partnership, with special reference, on the one side with the countries being candidates to join the group, and on the other side with the sensitive areas of the Middle

1 FM Lazzaro, ‘La cooperazione fra regioni comunitarie alla luce della riforma costituzionale italiana’ (2003) 2 Le istituzioni del federalismo 326.

East. The instruments of interregional cooperation can then be synthetically distinguished as follows: 1) the twinning, to be intended as an agreement aiming at creating a well rooted and permanent collaboration, in which different administrative *dossiers* are shared; 2) the partnership, as cooperation form of limited size, since it is based on a well defined project , of a technical or economic kind; 3) the across-the-border cooperation, between Countries, bordering with each other but separated by a political border; 4) trans-national or trans-European cooperation, between Regions belonging to more than one member State, sharing specific political, geographic, economic characteristics.

There are some valuable case-study research studies, for example: The Relationship Between European Community Law and the National Laws of the Member States, which contains 90 Decisions Given Between 1962 and 1994 By Both the Community's Court of Justice (20 Cases) and the Courts of the 12 Members.[1]

3. The Normative and Jurisprudential Framework for the International Cooperation of the Italian Regions

For many years the silence of the Constitution about the possibilities for the Regions to come to the execution of agreements with homologous foreign territorial bodies (but also to carry out any activity having importance at an international level) has prevented them from recognizing the foreign power: to the state was assigned the sole competence of the executive power in international relationships.[2] In this way, international law was paradoxically transformed into an instrument by which the Regions were, to varying degrees, and sometimes even completely, deprived of the competences assigned to them by the Constitution (sovereignty vs. autonomy). At a normative level, the first reference rule has long been the Decree of the Pres. Of the Rep. Nr. 616, dated back to 1977, issued after the delegation law dated July 22nd 1975, nr. 382, in which a wider sensitivity to regional needs of participation in foreign powers can be observed. By the Decree of the Pres. of the Republic dated March 31st 1994, under the heading "Action directing and coordinating the activities carried out by autonomous Regional and Provincial Administrations abroad", the whole system of relationships between Regions and Communities is regulated, according to the categories already identified by the Constitutional Court, which provides them with a suitable definition. From the point of view of normative development, the following step is represented by the law dated March 15th 1997, nr.59, which has abrogated the second paragraph of art.4 of the Decree of the Pres. of the Rep.616/1977, stopping the application of the previous understanding procedure for the promotional activities carried out by Regions abroad. The subsequent legislative decree dated March 1998, nr. 112, concerning the assignment of administrative functions and tasks of the State to Regions and local bodies, becomes particularly important in the formulation of art.2. The juridical basis of trans-national cooperation between Regions, is now included in art.117,

1 Andrew Oppenheimer, 'The Relationship between European Community Law and National Law: The Cases' (University of Cambridge, Lauterpacht Research Centre for International Law 1994) 7–30.

2 Thomas F O'Higgins, Deirdre Curtin and David O'Keeffe, *Constitutional Adjudication in European Community and National Law* (1992) 11–46.

U.C., Cost., as it has been reformulated by constitutional law, dated October 18th 2001, nr.3, which assigns to Regions, as regards the subjects falling within its competence, the power of "signing agreements with States" and "understandings with territorial bodies existing within another State", in the cases and according to procedures regulated by laws of the State. That has happened by the law dated June 5th 2003, nr.131 (the so called "La Loggia"), which substantially limits the kinds of agreements that Regions are allowed to sign, and imposes procedure limits, in order that the State is not excluded by Regions, from exerting a foreign power.[1]

4. Italian Regions and Euro-Mediterranean Partnership

Italy as a sample country among EU members, contains 20 regions. Some regions, for example Sicily and Sardinia, have greater independence. EU provisions offer them opportunities to interact with other foreign regions, especially Mediterranean neighbors, based on security necessities and the promotion of Cultural, economic, and political cooperation.

There are some challenging questions: What is the approach of Italian constitutional law regarding this cooperation? How does Italian constitutional law offer innovative solutions when national, interregional and international requirements paradoxically intersect? To answer these questions, Italian constitutional law must inevitably be considered.

As a conclusion of our investigation, we discuss here the foreign competences of the Italian Regions, which can be operational in many cases, within the context of the European neighbourhood policies and in the same Euro-Mediterranean partnership, born from the Declaration of Barcelona, issued on the 28th of November 1995 by the Heads of State and Government of the European Union and of the Mediterranean Countries not belonging to the European Community (PPM) and culminated into the Declaration of Paris dated July 13th 2008, instituting the Union for the Mediterranean.

The Euro-Mediterranean partnership was born to overcome the classic bilateralism of Euro-Mediterranean relations and to create a multilateral framework based on a spirit of partnership.

The Barcelona process is characterized by a multi-dimensional approach, based on three different fields of intervention and cooperation:

a) a political and security field, aiming at creating a common space of stability. By it, they commit themselves to fighting terrorism and organized crime, to promoting regional security, etc.;

b) an economic and financial field, the purpose of which is the creation of an area of shared prosperity and of an area of free trade, based on the principle of the market economy and integration of one's own economies, by strengthening financial cooperation;

c) a social and cultural field, aiming at developing human resources, promoting culture, mutual understanding between the peoples of the Region, exchanges between civil societies and enhancing the common Euro-Mediterranean roots.

1 For a deeper analysis of the interpretation problems coming from the application of the normative of art.117, u.c., see Allegri (n 9), 5.

The ultimate purpose is to strengthen cooperation with third countries to create a common space of peace, prosperity, stability, and security within the framework of global, joint cooperation in the Mediterranean basin. To such an end, from one side bilateral actions are provided, which are based on agreements signed with the European Commission and the single countries, which define, according to guidelines, the priority sectors of the European Community support, on the other side, there are the actions promoted by the Regions, aiming at fostering the development of homologous bodies belonging to foreign Countries, consisting of meetings, conferences and thematic programs, involving Mediterranean partners and the European Countries. From this, the definition of the Euro-Mediterranean partnership as the most important regional forum for dialogue emerges[1], an expression which shows that the regional and local dimension can offer added value to European neighbourhood policies[2]. As regards the potential contribution of Italian Regions, they find a number of operational opportunities, within the European neighbourhood policies and within the Euro-Mediterranean partnership itself.

Starting from the DPR 616/77 in the Italian legal system, following the European institutional development, a new category of activities which can be carried out by Regions, is introduced: those being Community relevant. Regions and autonomous Provincial Administrations can then have relationships with the European Community offices, bodies and institutions, the Committee of Regions included, without any necessary communication to the Government or consent from it. Such relationships have the specific task of making it easier to plan and carry out the European Community projects concerning Regions, as well as the application in regional territories, of the European Community regulations and directives on subjects falling within the competence of Regions, of helping Regional administrations to use at best, the funds granted by the European Community, for regional projects, of encouraging regional cooperation on working out and implementing development measures concerning the single Regions and of preparing interregional European Community programs with Countries not belonging to the Union.

Then a kind of foreign regional power is emerging, which, since it is instrumental to the application of European Community law, is outside the state's foreign policy reserve. Much

1 C Napoli, 'Mezzogiorno e partenariato euro mediterraneo: sviluppo storico-istituzionale e cooperazione decentrata' (2006) *Rivista giuridica del Mezzogiorno* 150..

2 In the White book on the multilevel governance, adopted by the Committee of Regions, within the 80th plenary session on June 17th-18th 2009, we read that an example of the relevance of the multilevel *governance* is the regional dimension of the European policy of neighbourhood (Mediterranean dimension, eastern partnership, synergy of the Black Sea, northern dimension) and of the European policy of big neighbourhood (ultra-peripheral dimension), which, by its definition, must be supported by a successful cooperation at a regional and local level. For this reason, bodies such as the Regional and local Euro-Mediterranean Assembly (RLEMA), integrated in the *governance* of the Union for the Mediterranean, the local and regional Assembly for Eastern Europe and southern Caucasus, suggested by the European Commission and the territorial permanent Forum of the northern dimension, referred to by the Committee of Regions, can give an operational and integrated impulse to the neighbourhood policy. Traditional multilateralism, characterized by collaboration between national governments and the United Nations, develops and is enriched through systematic collaboration with territorial bodies. As a consequence of this statement of fact, the United Nations Development Program (UNDP) has set up "a platform for innovative partnerships". The multilevel *governance* provides for a territorial and not a sectoral approach to development strategies, in order to pursue the development goals of the millennium, compared with the limits of too centralized, sectoral and vertical approaches, which have for too much time prevailed in the support to development.

wider and less binding possibilities are coming to the fore in the sector of across-the-border cooperation, so that the regional and local dimension itself, anyway being used, can offer that added value to the European policies, just to quote the statements of the Committee of Regions, ranging between the issues of extension of cooperation and those of neighbourhood, supported by a successful cooperation at a regional and local level.

Not only as a member of the European Union then, but Italy is also bound to recognize and promote ways of cooperation between Italian and foreign territorial bodies which, apart from territorial contiguity, include the participation of sub-regional autonomous administrations, as regards security too, as is the case within the Euro-Mediterranean area.

5. Requirements of Italy's Constitutional Law for Interregional Cooperation

Since this article seeks to consider capacities of Italy's national law especially constitutional law, it will be inevitable to review Italy's legal system and become familiar with regions' positions from the viewpoint of geography and short history.

5.1. Italy From the Viewpoint of History and Geography

Italy, the famous territory of south-central Europe, occupies a peninsula that juts deep into the Mediterranean Sea. At its broad top stand the Alps, which are among the world's most rugged mountains. Italy's highest points are along Monte Rosa, which peaks in Switzerland, and along Mont Blanc, which peaks in France.[1]

Though its archaeological record stretches back tens of thousands of years, Italian history begins with the Etruscans, an ancient civilization that rose between the Arno and Tiber rivers. The Etruscans were supplanted in the 3rd century BCE by the Romans, who soon became the chief power in the Mediterranean world and whose empire stretched from India to Scotland by the 2nd century CE. That empire was rarely secure, not only because conquered peoples were unwilling to remain conquered but also because of power struggles among competing Roman political factions, military leaders, families, ethnic groups, and religions. The Roman Empire fell in the 5th century CE after a succession of barbarian invasions. Through which Huns, Lombards, Ostrogoths, and Franks—mostly previous subjects of Rome—seized portions of Italy. Rule devolved to the level of the city-state, although the Normans succeeded in establishing a modest empire in southern Italy and Sicily in the 11th century. Many of those city-states flourished during the Renaissance era, a time marked by significant intellectual, artistic, and technological advances but also by savage warfare between states loyal to the pope and those loyal to the Holy Roman Empire.[2]

1 Encyclopedia Britannica, 'Italy' <https://www.britannica.com/place/Italy> accessed 11 June 2026.
2 For more reading see: Bruno Aguilera-Barchet, *A History of Western Public Law: Between Nation and State* (Springer 2015); Harold J Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press 1983).

5.2. Structure of Powers in Italy

5.2.1. Legislature

The legislative body is bicameral and comprises the Chamber of Deputies and the Senate. All members of the Chamber of Deputies (the lower house) are popularly elected by proportional representation, which benefits minor parties. The higher chamber is the Senate; most members are elected in the same manner, but the Senate also includes several members appointed by the president and former presidents, all of whom serve life terms.

In theory, the Senate should represent the regions and, in this way, differ from the lower chamber, but in practice the only real difference between them lies in the minimum ages required for the electorate and the candidates: 18 and 25 years, respectively, for deputies and 25 and 40 years, respectively, for senators. Deputies and senators alike are elected for a term of five years, which may be extended only in the event of war. Parliamentarians cannot be penalized for opinions expressed or votes cast, and deputies or senators are not obligated to vote in accordance with the wishes of their constituents. Unless removed by parliamentary action, deputies and senators enjoy immunity from arrest, criminal trial, and search. Their salary is established by law, and they qualify for a pension.

The most important function of parliament is ordinary legislation. Bills may be presented in parliament by the government, by individual members, or by bodies such as the National Council for Economy and Labour, various regional councils, or communes, as well as by petition of 50,000 citizens of the electorate or through a referendum. Bills are passed either by the standing committees or by parliament as a whole. In either case, the basic procedure is the same. First, there is a general debate followed by a vote; then, each of the bill's separate articles is discussed and voted on; finally, a last vote is taken on the entire bill. All bills must be approved by both houses before they become law; thus, whenever one house introduces an amendment to the draft approved by the other house, the latter must approve the amended draft.

5.2.2. The Presidential Office

The president of the republic is the head of state and serves a term of seven years. The prosecutorial immunity that applies to members of the legislature does not extend to the chief executive, and the president can be impeached for high treason or offenses against the constitution, even while in office. The president is elected by a college comprising both chambers of parliament, together with three representatives from every region. The two-thirds majority required guarantees that the president is acceptable to a sufficient proportion of the populace and the political partners. The minimum age for presidential candidates is 50 years. If the president is temporarily unable to carry out his functions, the president of the Senate acts as the deputy. If the impediment is permanent or due to death or resignation, a presidential election must be held within 15 days.

Special powers and responsibilities are vested in the president of the republic, who promulgates laws and decrees having the force of law, calls special sessions of parliament, delays legislation, authorizes the presentation of government bills in parliament, and, with parliamentary authorization, ratifies treaties and declares war. However, some of these acts are duties that must be performed by the president, whereas others are invalid unless countersigned by the government. The president commands the armed forces and presides over the Supreme Council of Defense and the Superior Council of the Magistrate.

5.2.3. The Government

The government comprises the president of the Council of Ministers and the various other ministers responsible for particular departments. Ministerial appointments are negotiated by the parties constituting the government majority. Each new government must receive a vote of confidence in both houses of parliament within 10 days of its appointment. If at any time the government fails to maintain the confidence of either house, it must resign. Splits in coalitions of two or more parties that had united to form a government have caused most government resignations.

According to the constitution, the president of the Council of Ministers is solely responsible for directing government policies and coordinating administrative policy and activity. In reality, the president tends to function as a negotiator between government parties and factions. The government can issue emergency decree laws signed by the president of the republic, provided such laws are presented to parliament for authorization the day they are issued and receive its approval within 60 days. Without such approval, they automatically lapse. The government and, in certain cases, individual Ministers issue administrative regulations and provisions, which are then promulgated by presidential decree.

5.2.4. Regional and Local Government

The republic is divided into regions (regioni), provinces (province), and communes (comuni). There are 15 ordinary regions and an additional 5 to which special autonomy has been granted. The regions with ordinary powers are Piedmont, Lombardy, Veneto, Liguria, Emilia-Romagna, Tuscany, Umbria, Marche, Lazio, Abruzzo, Molise, Campania, Puglia, Basilicata, and Calabria. Italy can thus be considered a regional state. The modern regions correspond to the traditional territorial divisions. The powers of the five special regions—which are Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venezia Giulia, and Valle d'Aosta—derive from special statutes adopted through constitutional laws.

The organs of regional government are the regional council, a popularly elected deliberative body with power to pass laws and issue administrative regulations; the regional committee, an executive body elected by the council from among its own members; and the president of the regional committee. The regional committee and its president are required to resign if they fail to retain the confidence of the Council.

Participation in national government is a principal function of the regions: regional councils may initiate parliamentary legislation, propose referenda, and appoint three delegates to assist in presidential elections, except for the Valle d'Aosta region, which has only one delegate. With regard to regional legislation, the five special regions have exclusive competence in certain fields—such as agriculture, forestry, and town planning—while the ordinary regions have competence over them within the limits of fundamental principles established by state laws.

The legislative powers of both special and ordinary regions are subject to certain constitutional limitations, the most important of which is that regional acts may not conflict with national interests. The regions can also enact legislation necessary to enforce state laws when those laws contain the necessary provisions. The regions have administrative competence in all fields in which they have legislative competence. Additional administrative functions can be delegated by state laws. The regions have the right to acquire property and the right to collect certain revenues and taxes.

The state has powers of control over the regions. The validity of regional laws alleged to be illegal can be tested in the Constitutional Court, while those deemed inexpedient can be challenged in parliament. State supervisory committees presided over by government-appointed commissioners exercise control over administrative acts. The government has power to dissolve regional councils that have acted contrary to the constitution or have violated the law. In such an event, elections must be held within three months.

The organs of the commune, the smallest local government unit, are the popularly elected communal council, the communal committee (the executive body), and the mayor. The communes have the power to levy and collect limited local taxes, and they have their own police, although their powers are much inferior to those exercised by the national police. The communes issue ordinances and run certain public health services, and they are responsible for such services as public transportation, garbage collection, and street lighting. Regions have some control over the activity of the communes. Communal councils may be dissolved for reasons of public order or for continued neglect of their duties.

The organization of the provinces, which are midway in size between regions and communes, is analogous to that of the communes; they each have councils, committees, and presidents. Since 1990, several laws that modify the organization of these local autonomies have been introduced in a trend toward greater decentralization.

There are certain central government officials whose duties lie in the sphere of local government. These include the government commissioner of each region, who supervises the administrative functions performed by the state and coordinates them with those performed by the region; the perfect, resident in each province, who is responsible for enforcing the orders of the central government and has powers of control over the organs of the province and communes; and the *questore*, who is the provincial chief of the state-run police.

Particular local government officials also have central government duties: among them are the president of the regional committee who, in directing the administrative functions that the state delegates to the region, performs a specific state duty; and the mayor of a commune who, in his capacity as an agent of the central government, registers births, deaths, marriages, and migrations, maintains public order (though in practice this is dealt with by the national police), and can, in cases of emergency, issue ordinances concerning public health, town planning, and the local police.

Each of those cities, and countless smaller cities and towns, has retained its differences against the leveling effect of the mass media and standardized education. Thus, many Italians, particularly older ones, are inclined to think of themselves as belonging to families, then neighborhoods, then towns or cities, then regions, and then, last, as members of a nation.

5.2.5. The Constitutional Court

The constitution is upheld by the Constitutional Court, which is composed of 15 judges, of whom 5 are nominated by the president of the republic, 5 are elected by parliament, and 5 are elected by judges from other courts. Members must have certain legal qualifications and experience. The term of office is nine years, and Constitutional Court judges are not eligible for reappointment.

The court performs four major functions. First, it judges the constitutionality of state and regional laws and of acts having the force of law. Second, the court resolves jurisdictional conflicts between ministries or administrative offices of the central government, between the state and a particular region, or between two regions. Third, it judges indictments instituted by parliament. When acting as a court of indictment, the 15 Constitutional Court judges are joined by 16 additional lay judges chosen by parliament. Fourth, the court determines whether or not it is permissible to hold referenda on particular topics. The constitution specifically excludes from the field of referenda financial decisions, the granting of amnesties and pardons, and the ratification of treaties.

Here, as the last point, the related part of Italy's constitutional law will be examined:

Article 5 under the title of (Local Autonomy) states: The Republic, one and indivisible, acknowledges and promotes local self-governments, and shall implement the greatest degree of administrative decentralization in services which depend on the State; it shall adapt the principles and methods of law-making to the requirements of autonomy and decentralization.

Article 131 lists regions. The following regions shall be instituted: Piedmont; Valle d'Aosta; Lombardy; Trentino-Alto Adige; Veneto; Friuli-Venezia Giulia; Liguria; Emilia Romagna; Tuscany; Umbria; The Marches; Latium; Abruzzi; Molise; Campania; Apulia; Basilicata; Calabria; Sicily; Sardinia.

Article 114: The Republic is composed of Municipalities, Provinces, Metropolitan Cities, Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities with their own statutes, powers and functions in accordance with the principles set forth in the Constitution.

Article 117 provides that legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.

The State has exclusive legislative powers in the following subject matters:

a) foreign policy and international relations of the State; relations between the State and the European Union; right of asylum and legal status of non-EU citizens;

b) immigration;

c) relations between the Republic and religious denominations;

d) defense and Armed forces; State security; armaments, ammunition and explosives;

e) the currency, safeguarding savings and financial markets; competition protection;

foreign exchange system; State taxation and accounting systems; harmonization of final public balances; equalization of financial resources;

f) State bodies and relevant electoral laws; State referendum; elections to the European Parliament;

g) legal and administrative organization of the State and of national public agencies;

h) public order and security, save for local administrative police;

i) citizenship, civil status and register offices;

j) jurisdiction and procedural law; civil and criminal law; administrative justice

k) determining of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory;

l) general provisions on education;

m) social security;

n) electoral legislation, governing bodies and fundamental functions of Municipalities, Provinces and Metropolitan Cities;

o) customs, protection of national borders and international preventative measures;

p) weights and measures; standard time; statistical and computerized coordination of data in state, regional and local administrations; intellectual property;

q) protection of the environment, the ecosystem and cultural heritage.

Concurrent legislation applies to the following subject matters:

international and EU relations with the Regions. The regions shall have legislative powers in all subject matters that do not expressly pertain to legislative powers.

Article 134 holds that the Constitutional Court shall pass judgment on:

disputes concerning the constitutional legitimacy of laws and enactments having the force of law issued by the State and the Regions; conflicts arising over the allocation of powers of the State and between the State and the Regions, and between Regions; accusations made against the President of the Republic, according to the provisions of the Constitution[1] .

Conclusion

Italy's legal system regarding interregional cooperation is shaped by both national and international law, particularly EU Law. We should understand whether these two dimensions are antonymous or act as supplement for each other. It seems the recent sense is more logical, but pay attention: this is not a nonsensical selection or artificial project, rather a factual process meaning in the context of Italy's legal history[2].

Italy is an ancient country with islands and scattered territories in addition to its main territory. In accordance with constitutional law, there are twenty regions which have relative independence and self-governing statutes. The constitution confers regulatory, administrative, and financial powers on these local units, and they have been equipped with powers for inter-regional cooperation. This consists not only of interactions among Italian regions but

1 Constitutional Law 16 January 1989, No 1 (Italy), Gazzetta Ufficiale No 13 (17 January 1989) art 2(1).
2 For a study about the historical and geographical context of legal affairs see:
Martin Loughlin, Foundations of Public Law (OUP 2010).

also of relations with foreign regions. The cooperation may include cultural, economic, environmental, and security aspects. Therefore, interregional cooperation in Italy has both international (EU Law) and national (Constitutional Law) requirements.

we discuss here the foreign competences of the Italian Regions, which can be operational in many cases, within the context of the European neighbourhood policies and in the same Euro-Mediterranean partnership, born from the Declaration of Barcelona, issued on the 28th of November 1995 by the Heads of State and Government of the European Union and of the Mediterranean Countries not belonging to the European Community (PPM) and culminated into the Declaration of Paris dated July 13th 2008, instituting the Union for the Mediterranean.

Starting from the DPR 616/77 in the Italian legal system. Regions and autonomous Provincial Administrations can then have relationships with the European Community offices, bodies and institutions, including the Committee of the Regions, without any need to communicate with or obtain consent from the Government. Such relationships have the specific task of making it easier to plan and carry out the European Community projects concerning Regions, as well as the application in regional territories, of the European Community regulations and directives on subjects falling within the competence of Regions, of helping Regional administrations to use at best, the funds granted by the European Community, for regional projects, of encouraging regional cooperation on working out and implementing development measures concerning the single Regions and of preparing interregional European Community programs with Countries not belonging to the Union. Then a kind of foreign regional power is emerging, which, since it is instrumental for the application of the European Community law, is outside the reserve of the foreign policy in favour of the State. Much wider and less binding possibilities are coming to the fore in the sector of across-the-border cooperation, so that the regional and local dimension itself, anyway being used, can offer that added value to the European policies, just to quote the statements of the Committee of Regions, ranging between the issues of extension of cooperation and those of neighbourhood, supported by a successful cooperation at a regional and local level.

Not only as a member of the European Union, then, but Italy is also bound to recognize and promote ways of cooperation between Italian and foreign territorial bodies which, apart from territorial contiguity, include the participation of sub-regional autonomous administrations, as regards security too, as it happens within the Euro-Mediterranean area.

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Rethinking Human Rights and Global Governance: Inherent Rights of Nature, Ecosystems, Climate Migration, and Resource Exploitation

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Abstract

Biological life has been in a state of perpetual crisis since its emergence; the crisis is a historical phenomenon related to human activity (shaped by industrialisation, urbanisation, and unsustainable consumption patterns). However, the concept of the rights of Nature is central to the cultures of many Indigenous peoples (for whom Nature is a living relative, not a mere resource). The concept of Nature and its relationship to culture and history constitutes a vital nexus for appreciating the rights of Nature and its ecosystems (since how a society defines Nature determines how it treats rivers, forests, and species). This article addresses various issues related to the reassessment of the inherent rights of Nature (IRoN). It addresses individual issues involved in the IRoN trajectory to do justice to Nature (ranging from philosophical foundations to procedural enforcement mechanisms). The primary argument is the "inherent rights of IRoN-driven principle of global governance" (meaning that Nature's inherent rights should guide international decision-making, not merely supplement it). It is an unorthodox attempt to cover the diversity of global issues having a cascading impact on the IRoN (i.e., how each crisis amplifies others), along with population growth, climate change, war, and natural resource exploitation, as well as legal matters, including constitutional personality (granting legal personhood to natural entities like rivers or forests), human rights (and their intersection with ecosystem rights), and global governance leadership (the role of states, international organisations, and civil society in championing ecocentric policies), and new legal structures fostering fundamental rights of Nature (such as environmental tribunals, ecocentric constitutions, and transnational accountability mechanisms).

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Introduction

Space agencies have hypothetically been dreaming of terraforming the planet Mars, like planet Earth, for human habitation while imperiling Earth to the verge of extinction, as if Planet Nature had become a place only for temporary refuge. Nature has been in crisis on an unprecedented scale since the beginning of its evolutionary journey on planet Earth. Humanity, since its inception, has emasculated and enslaved Nature and its Ecosystems beyond their natural capacity for renewability and ruthlessly legitimized its enslavement in the name of culture, custom and law. Its inherent capability of spontaneously repairing itself has been unprecedentedly diminishing daily, and its appalling symptoms are more conspicuous today than ever. The rights of Nature[1] are the commencement of a new constitutional, legal, cultural, and climatic paradigm in all jurisdictions worldwide without any exception. Nature and its rights have emerged as a new category of rights that cannot be ignored anymore, and humanity cannot afford to ignore them if it wants to survive and defend its existence. The rights of Nature, in all their manifestations, constitute the constitutional rights-holder personality (CRHP) before the Court of law with all antecedents of legal standing to protect it.

The concept of the rights of Nature was first published in 1972 by Professor Christopher Stone[2] in his article "*Should Trees Have Standing- Towards Legal Rights for Natural Objects*." The concept has recognized the centrality of indigenous cultures in the lives of people in America and beyond, as well as the role of the environment in sustaining their lives. The rights of Nature must be juxtaposed with human rights in law[3], as both complement each other. However, the rights of Nature and its healthy ecosystems fuel the existential survival of human rights, and the precise logistics and justifications of human rights are needed in ethics and law to uphold the rights of Nature. Nature is like a human body, and it behaves like human beings. As Bruno Latour[4] points out, for the past thirty years, the current ecological mutation has reshaped the entire political landscape. This could account for the lethal concoction of rapidly growing disparities, extensive deregulation, and the transformation of the Globalization dream into a nightmare for the majority of people.

For this reason, it is imperative to change course and define politics as leading to the Earth rather than the national or global level. The phenomenon that needs the most rethinking and thorough redescription is the concept of belonging to a territory; our most significant problem is discovering new ways to live on Earth. Today, politicians' job is to bring us down to Earth. Thus, Nature uses symptomatic body language to convey its health, just as humans share their concerns.[5] Smoking, alcohol, drugs, and other intoxicants harm human health. Similarly, Nature and its ecosystems are disrupted by anthropogenic interventions such as industrial emissions, deforestation for infrastructure, and the construction of large dams for energy generation, leading to floods, droughts, earthquakes, and global warming. These

1 David R. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World*, (ECW Press 2017).

2 Christopher D. Stone, *Should Trees Have Standing? And Other Essays on Law, Morals, and the Environment* (rev. ed. 2010), Oxford Univ. Press (1996).

3 Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (2d ed.), (Chelsea Green Publ›g 2011).

4 Bruno Latour, *Down to Earth: Politics in the New Climatic Regime* (Polity Press 2018).

5 John Dupré, Daniel J Nicholson, *A manifesto for a processual philosophy of biology*, Everything flows: Towards a processual philosophy of biology (2018) 1-45

activities convey the symptomatic realities of the poor health of Nature and its Ecosystems, caused by anthropocentric interference and intrusion.

Therefore, human existence and Nature go together from primitiveness to the present and would continue to be central, integral, and vital for its sustenance, deviant to any contemplation of human hierarchies, class divisions, socio-economic disparities, politico-cultural distinctions, legal-institutional dichotomies, and discourses of all Nature. The rights extend from the personal to the local and from the individual to the global in terms of enjoyment and protection. The last two centuries in the post-industrial revolution[1] have exposed a rise in the magnitude of economic mobility, in the form of rapid advances in science and technology and improved modes of socialization, that have crossed the Rubicon at an unprecedented pace. Earth is a giant transforming planet where environmental priorities[2] are not adequately accounted for in development models; intra-structural expansion and governance institutions are swayed by fallible, fallacious, and fatal politics for the Environment and its health. Today, environmental change or climate change has become a shibboleth in leadership speeches, human rights discourses, *pro bono* engagements, print, electronic and digital media, and civil society institutions that are ostensibly espousing the cause of ecological balance, clean and green energy, and inclusive growth but, unfortunately, it does not include environmental concerns, and that is not a positive change instead it is dangerous, obnoxious and hazardous to the very idea of the rights of Nature and its sustainability.

However, the last quarter of the 20th century has seen an increasing recognition that the limits of the Earth's carrying capacity, tectonic tolerance, and the extension of human activity are being stretched to the limit, precluding all exceptions to the rights of Nature. Environmental sovereignty[3] is destined to blur national boundaries and foster consolidated, collective, and concerted action to create a new relationship among Nature, human beings, and development that promotes growth while mitigating elevated levels of noxious gaseous emissions. Coordination is essential between the rights of nature and those of human beings, as Earth's life-support systems cannot be entirely replaced by technology alone. Any uncompensated anthropogenic environmental risk to posterity is immensely invidious in environmental ecology. The same must be open to intellectual and judicial scrutiny at the anvil of constitutional environmentalism[4] of metaphysical[5] and practical[6] orders.

This research article sets out the premise for the re-assertion of the Rights of Nature based on five strands: re-devising the strategy for controlling the population explosion resulting in the development-induced climate change migration and disaster displacement,

1 Benedict Macon-Cooney, *The Industrial Revolution, Politics and Public Policy* (Dec. 16, 2019), https://institute.global/policy/industrial-revolution-politics-and-public-policy (last visited Apr. 27, 2025).

2 Kavish Rai, *Nature Should Have Rights Just as Much as Human Beings Do*, The Asian Age (Jan. 8, 2020), https://web.archive.org/web/20200407075530/https://www.asianage.com/india/all-india/080120/nature-should-have-rights-just-as-much-as-human-beings-do.html (last visited Mar. 10, 2025).

3 Linda Sheehan, *Realizing Nature's Rule of Law through Rights of Waterways*, in *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* 240 (Christina Voigt ed., Cambridge Univ. Press 2013).

4 B. Lewis, *Constitutional Environmental Rights*, in *Environmental Human Rights and Climate Change* (Springer, Singapore 2018), https://doi.org/10.1007/978-981-13-1960-0_3 (last visited May 11, 2025).

5 Christopher D. Stone, *Should Trees Have Standing?—Towards Legal Rights for Natural Objects*, 45 S. Cal. L. Rev. 450 (1972).

6 *Ramesh Agarwal v. Union of India*, order (Mar. 9, 2022) (India), (last visited May 10, 2025).

ending the war-driven devastation of the Ecosystems, de-escalating the geostrategic abuse of natural resources to forestall jeopardizing and degrading the existence of the Nature, making development sustainable for ensuring the success of the COPs and restraining unaccountable carbon emissions, and revitalizing the constitutional, structural and logistical, response to the rights of the Nature by the private entities and governance leadership. These dynamics have stripped the Inherent Rights of Nature (IRoN) of its ecological virginity, rendering it a victim and vulnerable to human avarice. The IroN are legal and juridical concepts that illustrate innate rights concomitant with ecosystems and are analogous to fundamental human rights. Much like in criminal matters, the State prosecutes and defends the rights of the State and its citizens in the name of its constitutional and statutory bodies, which serve as the rights-holder agencies. Therefore, is there a need to enact a new body of law, the Inherent Rights of Nature Law (IRNL), to provide cross-board treatment of Nature and its ecosystems? In this research article, I examine these strands pertinent to the reassertions of the rights of Nature. I try to rummage through the responses to the invocation of HRBA to secure the inherent rights of Nature and its ecosystems. How do we recognize Nature as the constitutional rights-holder personality (CRHP) while defending the rights of Nature in the name of its Ecosystems? Can human rights protect the rights of Nature and its Ecosystems? How do we ferret out the challenges to the rights of Nature based on the fallacious framework of laws that construe Nature as a commodity or resource to be possessed, consumed, and exploited? Can ideals of the universality of human rights be applied to the rights of Nature? I aim to develop the concept of the IRoN-driven principle of global governance shifting from an object of law to a subject of law, in line with the trajectory of sustainable constitutional environmentalism and new legal structures that foster the fundamental rights of nature.

Contemporary international environmental law and global governance regimes have been designed to address the pejorative ecological crisis. However, evidence suggests that the regimes are far from achieving their goals, are struggling under their own weight, and are unable to resolve the international environmental problems that people perceive as pervasive.[1] There are no two opinions that present regimes demand urgent reformulation, re-drafting, and re-situated-ness in a different paradigm, which proposes that constitutional environmentalism, while no panacea, could contribute to these paradigmatic shifting reforms by providing new perspectives through which to view the existing inadequate and inefficient international environmental law and global governance regimes in the context of alleviating some of the deficiencies of the regimes through a normative process of Constitutionalization within the vortex of research, policy, and execution in the hierarchy of constitutional environmentalism.

1. The Re-Emergence of the Rights of Nature Law

The rights of nature law (RONL) has come to complement environmental justice by claiming the existential rights of nature, with its Ecosystems, that are inherent and intrinsic to its being. The inherent rights of Nature come from the existence of Nature itself. Nature and its ecosystems are the sources of rights and law, just as an individual is the source of human

1 Vandana Shiva, *Earth Democracy: Justice, Sustainability, and Peace* (reprint ed. 2015), North Atlantic Books (2011).

rights[1] and law. Thus, the UDHR[2] formally recognized the normative understanding of the non-derogable human rights arising from the existence of humanity. Similarly, the rights of Nature emanate from the existence of Nature; therefore, the legal systems designed and developed for human rights must be expanded[3], reformed, or replicated to address the rights of Nature. At the beginning of the year 2000, there was a remarkable re-emergence of the IRNL expressed in international treaties, national legislations, subnational statutes, and judicial pronouncements. The initial phase of the second decade of the 21st century registered a metastasizing[4] IRNL in the constitutional schematization of as many as 17 nation-states,[5] including Canada and the US and their tribal communities and a few dozen nation-states and cities in the US. As of 2019, the aggregate number of nation-states with the IRNL architecture is 28 or more[6] who have become privy to international treaty instruments, municipal legal arrangements, or local statutes.

1.1. The Inherent Rights of Nature and its Ecosystems

The Inherent Rights of Nature[7] (IRoN) acknowledges, identifies, and venerates that Nature has rights. IRoN establishes what I call the "Republic[8] of Nature," providing the differentiation that Nature and its ecosystem encapsulates a range of subjects of Nature such as vegetation to verdancy, saplings to shrubs, barren to bushes, gravel to grasses, plantlets to plants, trees to twigs, seedlings to springs, hillocks to hills, meadows to mountains, massifs to mounds, crags to cliffs, wells to weeds, lakes to lagoons, pools to ponds, creeks to rivers, drenches to trenches, rainwaters to seawaters, seas to oceans, brines to bushels, animals to mammals, and wildlife to human life are impregnated with the rights that are substantive, normative, and non-derogable. The Republic of Nature is based on the Federalism of Nature, entailing that in every part of the planet, Earth has multiple kinds of weather, altitudes, latitudes, various vegetation, diverse breeds of animals and birds, and different minerals beneath the Earth. Therefore, Nature has inherent, inalienable, and inviolable rights that establish the dignity of Nature and its Ecosystems *at par* with human rights. The existence, governance, and Survival of Nature depend on nature. The sovereignty of Nature vests in Nature. Nature First must be the argument for the sanctity and integrity of Nature. In this way, Nature is the commonwealth of Nature that sustains human existence without any encumbrances for itself.

Unfortunately, humanity is at loggerheads with Nature and its Ecosystems. The viable understanding of the planet Earth as the world comes from maintaining the delicate perennial balance between Nature and humanity. It is the universal recognition of all Ecosystems

1 Aldo Leopold, *A Sand County Almanac, with Essays on Conservation from Round River* (Oxford Univ. Press 1949).

2 Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217 A (III), U.N. Doc. A/810 at 71 (1948).

3 Thomas Berry, *The Great Work: Our Way into the Future* (Crown Publishing Group 1999)

4 Craig M. Kauffman, Mapping Transnational Rights of Nature Networks & Laws: New Global Governance Structures for More Sustainable Development, Paper presented at the International Studies Association Annual Conference (Toronto, Mar. 29, 2020).

5 Linda Sheehan, Earth Day›s 50th Sees Explosion in Rights of Nature Movement Worldwide, 21 Vermont J. Envtl. L. (2020).

6 Andrea Thompson, How the Environment Has Changed Since the First Earth Day 50 Years Ago, *Scientific American* (Apr. 22, 2020), https://www.scientificamerican.com/article/how-the-environment-has-changed-since-the-first-earth-day-50-years-ago/ (last visited Apr. 20, 2022).

7 Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73.

8 Guillaume Chapron, Yaffa Epstein & José Vicente López-Bao, A Rights Revolution for Nature, 363 Science 1392 (2019).

of Nature, wildlife, and human life that are entirely interwoven. Thus, the IRoN must be regarded as a *jus cogens* norm of international law and treated as an inalienable element of Customary International Law (CIL) because of its universal[1] exceptionalism, precluding all derogations. The constitutional environmentalism narrative envisages the explicitly dedicated and well-defined provisions of IRoN to be incorporated in all the national constitutions[2] worldwide. By recognizing the IRoN in the national Constitution,[3] many communities in the US have been grounding their environmental protection systems on the argument that I call "IRoN are sovereign, sustainable, inalienable, federal, autochthonic, indivisible rights (SSIFAIR)," just as human rights. My initial argument might be revolutionary; however, any spontaneous deviation from the postulation that Nature is an object of property under the law is a fallacious and flawed premise. I perceive Nature as a "Republic of Nature" that requires a Global Framework for Nature Governance[4] (GFNG) based on SSIFAIR.

Furthermore, it justifies the current climate change crisis by highlighting the need for a legally binding United Nations Framework Convention on the Inherent Rights of Nature (UNFCIRoN). Such an international treaty on IRoN with complementary restrictions under the auspices of the United Nations (UN) may be concluded in earnest and in a manner consistent with the following rights. The current canvas of climate change has exacerbated many political, social, and economic inequalities in most countries and has posed innovative challenges[5] in the face of the rights of Nature and its Ecosystems. Therefore, climate change presents a remarkable opportunity for transformative change and for responding to structural violence against the Rights of Nature in relation to human rights violations worldwide. Thus, I perceive the Rights of Nature and its Ecosystems as the Preamble to all core international human rights treaties and normative obligations under the UDHR, which will guide the entire IRoN Framework without any interpretation based on geopolitical cleavages. Thus, in the context of IRoN, I construct, conceptualize, and recognize that Nature in all its life manifestations has the following rights, but are not limited to:

- The Right to Dignity of Nature and its Ecosystems
- The Right to Existence of Nature and its Ecosystem
- The Right to Legal Personality[6] of Nature and its Ecosystems
- The Right to *Jus Cogens* Recognition of Nature and Its Ecosystems
- The Right to Environmental Flows of Nature and its Ecosystems
- The Right to Natural Resources of Nature and its Ecosystems
- The Right to Natural Development of Nature and its Ecosystems

1 Universal Declaration of Rights of Mother Earth, adopted Apr. 22, 2010, World People's Conference on Climate Change and the Rights of Mother Earth (Cochabamba, Bolivia), https://www.garn.org/universal-declaration/ (last visited June 13, 2022).

2 The Constitutions of Switzerland, Portugal, France, Columbia and Brazil have dedicated set of obligations to the government regarding the protection of Nature and its Ecosystems.

3 Constitution of Ecuador arts. 71-74 (2008).

4 I propose a United Nations Framework Convention on the Rights of Nature and its Ecosystems (UNFCRE) to be adopted at the earliest.

5 S. Nazrul Islam & John Winkel, Climate Change and Social Inequality, DESA Working Paper No. 152 ST/ESA/2017/DWP/152 (2017).

6 Lieselotte Viaene, Can Rights of Nature Save Us from the Anthropocene Catastrophe? Some Critical Reflections from the Field, 9 *Asian J. L. & Soc.* 187 (2022).

- The Right to Privacy of Nature[1] and its Ecosystems
- The Right to Integral Respect of Nature for its Existence
- The Right to Climate Democracy of Nature and its Ecosystems
- The Right to Culture of Nature and its Ecosystems
- The Right to Virginity of Nature and Its Ecosystems
- The Right to Originality of Nature and its Ecosystems
- The Right to Regenerative Cycles of Nature and Its Ecosystems
- The Right to Harmony of Nature and Its Ecosystems with Humanity
- The Right to Restoration of Nature and Its Ecosystems
- The Right to Compensation of Nature and its Ecosystems
- The Right to Sustainable Marine Biodiversity with Universal Jurisdiction
- The Right to Global Ocean Reciprocity Interests[2]
- The Right to Reparation for Collateral Damage to Nature and its Ecosystems
- The Right to Redress Transnational Harm to Nature and its Ecosystems
- The Right to Responsibility to Protect (R2P) Nature and its Ecosystems
- The Right to Prevent Human Actions for the Extinction of, Alteration of, or Destruction of Populations, Cycles, and Processes of Livelihoods, respectively
- The Right to Litigation of Nature and its Ecosystems

The above rights are the Invisible Frames for understanding the Rights of Nature and its Ecosystems in pre-geopolitical and pre-socio-cultural contexts, providing a critical lens to clarify the interdependence among the Rights of Nature, its Ecosystems, and human rights. The impugned rights reflect the life-fullness status of Nature and its Ecosystems, necessitating and preserving them on *par* with human rights. The above-adumbrated rights establish the inalienability, indivisibility, and universality of the Rights of Nature and its Ecosystems. These rights bring out the structural discrimination[3] built into the legal systems of Global North and Global South jurisdictions and other institutional frameworks[4], and further the risks of identity-based violence[5] against Nature and its Ecosystems.

1.2. The Enforcement of the Rights of Nature and Its Ecosystems

The Global North's legal thinking and systems are inclined to perceive Nature as an object of law and as a commodity and property to be exploited, misappropriated, and abused to amass wealth beyond human benefits. However, Aboriginal populations and societies regarded Nature as integral to their existence. Nature and its Ecosystems have been tottering under the weights of multiple factors like anthropological climate change[6] (ACC), progress & development-induced deforestation (PDD), and

1 Harden-Davies et al., Rights of Nature: Perspectives for Global Ocean Stewardship, 122 *Marine Policy* 104059 (2020).

2 M. Bender, The Earth Law Framework for Marine Protected Areas: Adopting a Holistic, Systems, and Rights-Based Approach to Ocean Governance (Earth Law Centre 2019).

3 Céline Guivarch et al., "Influence of Climate Change Impacts and Mitigation Costs on Inequality between Countries", 162 *Climatic Change* 15 (2020).

4 François Bourguignon & Christian Morrisson, Inequality Among World Citizens: 1820-1992, 92 *Am. Econ. Rev.* 727 (2002).

5 P. Villavicencio Calzadilla & L.J. Kotzé, Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia, 7 *Transnational Envtl. L.* 397 (2018).

6 V. De Lucia, Towards an Ecological Philosophy of Law: A Comparative Discussion, 4 *J. Hum. Rights & Envtl.* 167 (2013).

nuclearized industrialization-driven desertification[1] (NID), excavation-driven tectonic shifts[2] (ETS), disaster-driven human displacement[3] (DHD), and mining-induced seismic earthquakes (MISE) and inadequate traditional laws for addressing environmental degradation, regions, countries, nation-states, communities, societies, and cities worldwide have been embracing new legal orientation called the IRoN and its reception and enforcement in countries such as Ecuador, New Zealand and the voters in Toledo, Ohio, endorsed the Lake Erie Bill of Rights[4] ballot proposal recognized "the first rights-based law for protecting the entire US ecosystem, including the lake, its tributaries, and the multiple species that reside there in the US. Constitutional environmentalism[5] and reforms in Ecuador[6] and Bolivia[7] have been instrumental in recognizing Nature as a legal entity. Collaborations between Māori and the Government of New Zealand have coaxed legal personhood for forests, lakes, and rivers, re-galvanizing a sense of equilibrium between nature and human beings.

The concept of IRoN has traveled a *terra incognita* from being an object of law to becoming the subject of law. Epistemologically, treating Nature as property under the law and legal systems worldwide has done a great disservice to Nature and its Ecosystems. Contracts and deeds are written for corporations, societies, legal personalities, trusts, and individuals to protect property rights. In matters of environmental protection, laws and legal norms legitimize ecological harm by setting pollution thresholds and allowing the devastation of nature. Under these laws, Nature and its non-human components have no legal status. Fundamentally, IRoN has been sustaining human existence on planet Earth.[8] Therefore, human beings with a sense of perpetual responsibility must protect (R2P) Nature and maintain the inviolability of its Ecosystems. The enforcement of the rights of Nature rests with human beings in their constitutional, administrative, adjudicatory, legal, ethical, and moral capacities on behalf of Ecosystems, ecologies, and environments. The people of all geopolitical entities can litigate as legal representatives for the violation of IRoN and its Ecosystems, while designating Nature and its Ecosystems as aggrieved and injured parties, exercising their constitutional, legal, and structural rights. Recognition of IRoN is consistent with the indigenous cultures, traditions, customs, ethnicities, and civilizations that live in harmony worldwide. All varieties of life, including flora and fauna, wildlife, and human life, are profoundly and inextricably intertwined. Their fundamental principles, ethical tenets, and normative standards must have the force of constitutional environmentalism.

1 Monica Exner, Desertification and Drought Day: The Role of Nuclear Techniques in Combating Desertification and Supporting Recovery, *IAEA* (June 17, 2021), https://www.iaea.org/newscenter/news/desertification-and-drought-day-the-role-of-nuclear-techniques-in-combatting-desertification-and-supporting-recovery (last visited May 16, 2022).

2 Gevorg Kocharyan et al., Initiation of Tectonic Earthquakes During Underground Mining, 54 *J. Mining Sci.* 561 (2018).

3 Thematic Report, Disaster Displacement: A Global Review (2008-2018), *iDMC* (2020).

4 E.L. O›Donnell & J. Talbot-Jones, Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India, 23 *Ecol. Soc.* 7 (2018).

5 C.M. Kauffman & P.L. Martin, Constructing Rights of Nature Norms in the U.S., Ecuador, and New Zealand, 18 *Global Envtl. Polit.* 43 (2018).

6 S. Knauß, Conceptualizing Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador, New Zealand, and India, 31 *J. Agric. & Envtl. Ethics* 703 (2018).

7 *Ibid*.

8 Harmony with Nature Resolution Adopted by the General Assembly, G.A. Res. 73/235, U.N. Doc. A/RES/73/235 (Dec. 20, 2018).

1.3. The Rights of Nature Litigation

Around the world, legal processes are progressively including the rights of Nature. Climate change litigation has become a powerful tool for restoring, preserving, and reinstating the Rights of Nature and its Ecosystems. Several Rights of Nature litigations[1] have emerged from climate change dimensions and have been contested in many jurisdictions worldwide before the Courts. In the *Colorado River Ecosystem v. the State of Colorado,*[2] a lawsuit was filed in 2017 by an environmental organization called "Next Friends" and guardians on behalf of the Colorado River Ecosystem against the State of Colorado. They sought a declaration from the Court designating the river as a "person" with "rights to exist, flourish, regenerate, and the rights of the river be restored, and naturally evolve," as the actions of the State of Colorado transgressed the rights of Nature. They contended and contested based on a 1972 complaint in *Sierra Club v. Morton,*[3] wherein the dissenting opinion claimed that "environmental objects" should have legal status to prosecute and are qualified to take somebody to Court to preserve the rights of Nature. The complaint alleged that climate change is the primary factor contributing to the river's destruction. However, the Federal Court of the District of Colorado quashed the case.

In 2018, the Supreme Court of Colombia received an extraordinary constitutional claim called *Tutela* in the case of *Future Generations v. Ministry of the Environment*[4] filed by a group of plaintiffs contending that their fundamental human rights, such as the Right to life, the Right to Food, the water right, the Right to healthcare, and the Right to the healthy Environment were threatened by climate change and the Colombian government failed to prevent deforestation in the Amazon. The Supreme Court observed that "fundamental rights of life, health, the minimum sustenance, fundamental freedoms, and human dignity are substantially connected and determined by the environment and the ecosystem". It directed the government to formulate strategies, plan actions, and execute them to stop deforestation. Further, the Supreme Court expressly recognized the Colombian Amazon as the "Subject of Rights of Nature", similar to the Constitutional Court's recognition of the *Atrato River* in Choco, Colombia. Thus, the Supreme Court pronounced that the Colombian Amazon was eligible for conservation, preservation, protection, and restoration. It was the turning point in Colombia's legal thinking to discard the Rights of Nature as merely the object of the law.

A group of youth petitioners filed a case, *Alvarez et al. v. Peru*,[5] against the Peruvian government in 2019, alleging that adequate and appropriate actions have not been initiated to address the consequences of climate change. They implored the Court to direct the President and the Ministries of Irrigation, Environment, Agriculture, and Finance, as well as provincial governments, to develop action strategies to reduce further deforestation in the Peruvian Part of the Amazon to zero by 2025. The petitioners also sought recognition of the Peruvian Amazon as a subject of law with the rights of conservation, restoration, protection,

1 The Global Climate Litigation Report: 2020 Status Review, U.N. Environment Programme (2020), with support from Columbia Univ.'s Sabin Ctr. for Climate Change Law and Arnold & Porter Kaye Scholer LLP.
2 Colorado River Ecosystem v. Colorado, No. 17-cv-02316-NYW (D. Colo. Nov. 6, 2017).
3 Sierra Club v. Morton, 405 U.S. 727 (1972).
4 STC 4360 (2018)
5 2019 (*Sub judice*)

and maintenance, along the lines of the Rights of Nature litigation in other geopolitical entities, such as Ecuador, New Zealand, and Colombia. The petitioners also contended that a declaration should be made regarding the current state of environmental degradation in the Peruvian Amazon region as unconstitutional; however, the case is *sub judice*.

On March 15, 2024, a Peruvian court heard arguments for the first time about a river's rights and the role of indigenous people in exercising them. The Peruvian Amazon region is home to speakers of approximately 50 distinct indigenous languages, which are now collectively referred to as "indigenous peoples." However, Peru's legal system does not recognize indigenous peoples as political entities or over historic "ethnic" regions. Instead, they are identified as "Native Communities"[1] in the area, which are granted collective ownership rights over forestry land but only use agreements over land appropriate for forestry use. Up to 2,700 Native Communities are thought to exist in the Peruvian Amazon, with over 700 lacking officially recognized titles. The Peruvian Constitution[2], which went into effect on January 1, 1994, mentions the rights of indigenous groups and environmental policy goals. However, the country's legal and constitutional framework is insufficient to categorize it as belonging to the "New Latin American Constitutionalism"[3], which focuses on creating a plurinational state, documenting its creation through participation, and asserting an ecocentric foundation for the legal system. Unlike other governments such as Ecuador or Bolivia, Peru does not have evidence of the intrinsic rights of Nature or a unique role for indigenous peoples in protecting them, making the requirements for recognizing these rights different.

Finally, the Court's ruling[4] was made public on March 15, 2024. It adopted significant arguments from the lawsuit regarding the requested legal recognition of the Marañón River and its tributaries, highlighting the importance of recognizing Nature's intrinsic value as a dimension to be considered when interpreting the Constitutional Right to a Clean Environment.[5] The Court ruled that although the Marañón River is not a formal entity, it is responsible for acknowledging the river's inherent worth and applying the precautionary principle[6] when preserving, preventing, and protecting the river and its tributaries. The implication is that the Marañón River and its tributaries have rights that must be "protected." The Loreto Regional Authority oversees the "Interregional Council for the Marañón River Basin" requirement.[7] The Court notes that the State and indigenous organizations are recognized and appointed as guardians, protectors, and spokespeople of the Marañón River. This is the first time a Peruvian court has dealt with the rights of Nature, acknowledging but also outlining a river's rights but not limited to:

1 https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/0D41EC1170BDE30A052578F70059D913/$FILE/(1)leydecomunidadesnativasley22175.pdf

2 The Constitution of Peru, https://pdba.georgetown.edu/Constitutions/Peru/peru.html

3 Pedro Salazar Ugarte, New Latin American Constitutionalism, https://archivos.juridicas.unam.mx/www/bjv/libros/7/3271/22.pdf

4 https://iuslatin.pe/historica-sentencia-rio-maranon-y-sus-afluentes-son-declarados-sujetos-derechos-expediente-00010-2022-0-1901/

5 Ibid.

6 Ibid.

7 Ibid.

1. The Right to flow (naturally);
2. The Right to constitute a healthy ecosystem;
3. The Right to flow free from pollution.
4. The Right to be fed by tributaries;
5. The Right to authentic biological diversity;
6. The Right to restoration;
7. The Right to regeneration of natural cycles;
8. The Right to the maintenance of its ecological structure and cycles;
9. The Right to protection, preservation, and recreation; and
10. The Right to be represented before the law

The Court expressly did not acknowledge the river's "legal subjectivity"; instead, it protected it as a "holder of rights." This is a significant point that has not been adequately emphasized in the public response. It is debatable whether the Court accurately represented the doctrinal differences or whether the conceptual step of attributing legal personality status to the river should be avoided in light of Peru's lax environmental laws. According to the inference, the river has rights but does not have the entire legal capacity of a legal person. Instead, it is acknowledged as a "protected object" whose rights the Court must "protect"—as the ruling expressly puts it. The decision's weak point is the absence of specific third-party duties that could be established concurrently with the acknowledgment of the river's rights. To prominent theorists ranging from HLA Hart to Leopold Pospišil, every legal idea inherently carries a responsibility. However, this does not seem to be the case in the current ruling. Consequently, the rights of, without the creation of specific responsibilities to accompany them, require further legitimacy.

The Supreme Court of Argentina ceased with prayers made by the groups of individuals called *Asociación Civil por la Justicia Ambiental and Foto Ecologista de Paraná* and the class of children in the case of *Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos, et al.*,[1] against the governments of the Province of Entre Ríos and the Municipality of Victoria City regarding their alleged failure to protect the environmentally delicate wetlands. The petitioners requested the Court, on the grounds of the Rights of Nature Laws enacted in Bolivia, Colombia, Ecuador, New Zealand, and India, to proclaim the Paraná Delta a "subject of rights" and an indispensable ecosystem for extenuating and adapting to climate change, and assigning a "guardian" to protect the "rights of the Paraná Delta" who will be entrusted with the responsibility for the supervision of the conservation, restoration and sustainable utilization of the wetlands. However, the impugned case is *sub judice*.

In the case of *G. Khan Cement Company v. Government of Pakistan*,[2] the Supreme Court of Pakistan upheld a judgment of the Provincial Government of Punjab that proscribed the construction of new or additional cement plants in ecologically fragile zones. The Supreme Court ruled that the impugned cement plants could cause comprehensive groundwater

1 Annalisa Savaresi & Joana Setzer, Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers, *J. Hum. Rights & Envtl.* (2021).

2 PTD 1179 (2004)

depletion in the years ahead, among other serious environmental implications and impacts. Furthermore, the Supreme Court emphasized the need for the government to apply the precautionary principle for the protection of the Rights to life, human dignity, and climate sustainability of communities living near project locations. Simultaneously, the Supreme Court recognized the necessity to protect "the Rights of Nature," asserting that environmental requirements are to be secured in their own Right and expressed that human beings and their Environment each require cooperation and conciliation for the betterment of each other. Therefore, for peaceful co-existence, the Supreme Court emphasized that the law must construe environmental objects as bearers and proprietors of legal rights.

2. The Constitutional Environmentalism on the Rights of Nature

Initially, the Right to a healthy environment (RAHE) was not explicitly recognized in the constitutions of many jurisdictions as a fundamental human right. Subsequently, the RAHE was incorporated into the Right to Life through judicial interpretation and adjudication. Thus, the RAHE has been constitutionally, judicially, and internationally recognized as part of the Right to Life and human dignity in many countries. In more than 90 countries, it has been identified and incorporated into their municipal legal systems. For example, governments recognized the Right to a healthy and pollution-free environment in the eight Constitutions of the South Asian Association for Regional Cooperation (SAARC). For example, Article 21 provides an inherent guarantee to a person for the Right to live with human dignity. Articles 21, 48A, and 51A (g) of the Constitution of the Republic of India recognized and determined the human Right to a healthy environment[1] as an inalienable part of the Right to life. The Supreme Court of Pakistan[2] held in *Ms Shehla Zia* v. *WAPDA*[3] that the Right to a healthy and clean environment is internal to the fundamental Right to life under Article 9 of the Constitution of the Islamic Republic of Pakistan. In *Maria Khan et al. v. Federation of Pakistan et al.*, vital questions were raised relating to human rights and the rights of Nature.[4]

Recently, the Right to a healthy environment has gained prominence as the international community confronts the intersecting and interconnected global environmental disasters and emergencies, including peroxiding and perishing coral reefs, escalating death rates of species, and the ever-increasing threat of climate change. However, the RAHE is challenging to accomplish if the Environment *per se* remains harmful and in poor shape. The rights of Nature and human rights cannot be secured in a polluted and worsened Environment.[5] In reality, soil degradation, reckless deforestation, and exposure to poisonous chemicals, dangerous wastes, and polluted drinking water have jeopardized the existence of the fundamental human Right

1 Rural Litigation & Entitlement Kendra v. State of U.P., AIR 1988 SC 2187 (1988). (Popularly known as Dehradun Quarrying Case)

2 Article 184(3) of the Constitution of the Islamic Republic of Pakistan empowers the superior judiciary to directly address matters involving the enforcement of fundamental rights if it considers that such enforcement involves a question of public importance.

3 PLD 1994 SC 693

4 (2018) Whether the government of Pakistan›s inaction on climate change violated the constitutional rights of women and future generations including the right to a healthy environment and a climate capable of supporting human life

5 Klaus Töpfer, former director of the United Nations Environment Program

to life. Therefore, the quality of climate conditions helps determine the scope for enjoying various fundamental human rights[1] relating to life, livelihood, health, food, housing, culture, education, etc. Consequently, the realization of the RAHE exclusively depends on a healthy environment, and the RAHE itself does not have an independent existence.

The Constitution of Ecuador is the first constitution to include provisions for the constitutional and legal rights of the Environment. Article 71 stipulates that Nature, or *Pacha Mama*, where life is procreated and happens, has the Right to inalienable respect for its existence and for the maintenance and rebirth of its life cycles, structure, purposes, and development processes. Article 14 of the Ecuadorian Constitution stipulates that the people's Right to live in a healthy, environmentally balanced atmosphere that guarantees sustainability and healthy, well-disciplined living is recognized.[2] The constitutional provisions on the rights of Nature transform Nature from being an object of law to a subject of law. In Ecuador, Nature is not regarded as an item without legal rights. Nature has been recognized as a constitutional rights-holding personality (CRHP).

The existing body of IEL is based on the notion of the "nature as property framework," which has proven inadequate to the mounting challenges and is increasingly regarded as part of the problem in the wake of growing environmental threats. Such a flawed perception gives rise to a fundamental change in how to treat Nature under the law. The IEL provisions have been premised on the concept of Nature as an object, item, or whatnot to be regulated and managed for human consumption. It was like slave trades and slave codes to handle the maximum exploitation of enslaved people in the US and elsewhere. Thus, the IEL body of provisions fundamentally legitimizes the exploitation and misappropriation of Nature that has — even today — endangered human existence. This means that the IEL and other environmental laws legalize activities such as pollution, mining, and fracking that deliberately harm Nature. Amid soaring temperatures, ever-rising sea levels, the northward migration of tropical diseases, and other mounting environmental threats, these issues present unprecedented challenges. Thus, communities, civil societies, NGOs, and governance leaders have started considering, reviewing, and reforming the existing manner of treating nature, which is flagrantly flawed and brazenly fallacious. It has awakened people to mobilize a mass movement to transform perceptions of the potential contours of treating nature under the law and ultimately make humanity aware of how human rights can protect the rights of nature.

In the US, in 2006, the first set of laws on the rights of Nature was enacted at the community level, and there are currently more than 30 local laws in effect across 10 states. Similarly, Ecuador promulgated a new constitution in 2008, followed by an enactment of the IRNL in Bolivia in 2010. Moreover, the Courts in India and Colombia, and the Parliament of New Zealand, have recognized rivers and other Ecosystems of Nature as CRHP in recent years. In these circumstances, many scholars, scientists, and experts of IEL have been branding the impact of anthropocentric activities on biodiversity and the Environment as the cynosure of human existentialism as the "Sixth Great Extinction"[3] episode. Thus, the emerging movement

1 Maria Khan et al. v. Federation of Pakistan et al., No. 8960 of 2019, Lahore High Court (2018).
2 Article 14, The Constitution of Ecuador, 2008. (Sumak Kawsay)
3 Gerry Canavan & Eric Carl Link, The Cambridge History of Science Fiction 479 (Cambridge Univ. Press 2019).

for the rights of Nature is pushed and propelled by urgency, necessity, and inevitability. The IRNL postulates for execution by both people and their respective governance structures. For instance, under the 2008 Constitution in Ecuador, the first case[1] was contested by two residents of Ecuador for the restoration, preservation, and maintenance of the Vilcabamba River. They contended that the government road construction project violated the river's rights and obstructed its natural flow. In 2011, the Provincial Court of Loja conceded for the first time about the CRHP formulation. In the US, local laws have safeguarded the rights of ecosystems, and indigenous communities have recognized them as part of the CRHP principle. The past movements[2] for recognizing the rights of Nature offer vast opportunities for learning and advocacy for enacting the IRNL. Since antiquity, the law and customs have been invoked to legitimize the subjugation of women and girl children and the dehumanization of enslaved people and indigenous communities. Unfortunately, the same treatment is being meted out to Nature and its Ecosystems. The Constitutional Court of Colombia (CCC) has justified the destiny of the CRHP formulation and the purpose of the IRNL while discussing the kind of societal change brought about by past movements that is needed today. In 2016, the CCC delivered a decision[3] recognizing the rights of the *Atrato River* and observed that humanity depends on the world of Nature and not the other way round---and humanity must embrace the consequences of its acts of commission and omissions with Nature. The CCC believes such a transformation is possible, as it has happened before, culminating in the International Bill of Human Rights.

3. The Premise for the Re-Assertion of the Rights of Nature

he Rights of Nature and its Ecosystems are now part of legal education and span all disciplines. Today, the Rights of Nature constitute a crosscutting central theme in the knowledge hierarchies of curricula worldwide. Stockholm's agenda[4] testify to the paramountcy of the Rights of Nature Plan of Action that stresses the need to develop strategies for infusing the Rights of Nature as a crosscutting issue into all disciplines of human cognizance that includes not only law but also social studies, history, anthropology, scientific fields like neuroscience, neurotechnology, or technological domains such as artificial intelligence (AI), etc. As the discipline of human rights has attained a non-negotiable maturity, critical voices advocating for the Rights of Nature and its Ecosystems are becoming increasingly prominent. With the emergence of the human rights movement[5] in the 1970s, human rights education (HRE) was put on the international community's agenda as a global policy program. Subsequently, HRE has been defined through several general and programmatic statements. In classical United Nations (UN) language, "[e] *ducation should promote understanding, tolerance, peace and friendly relations between the*

1 Lidia Cano Pecharroman, Rights of Nature: Rivers That Can Stand in Court, 7 *Resources* 13 (2018).

2 Katie Surma, Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests and Wildlife Have Standing, Too, *Inside Climate News* (Sept. 19, 2021), https://insideclimatenews.org/news/19092021/rights-of-nature-legal-movement/ (last visited June 12, 2022).

3 Philipp Wesche, Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision, 33 *J. Envtl. Law* 531 (2021).

4 S. Díaz et al., Pervasive Human-Driven Decline of Life on Earth Points to the Need for Transformative Change, 366 *Science* eaax3100 (2019).

5 Samuel P. Hays, The Environmental Movement, 25 *J. Forest Hist.* 219 (1981).

nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives."[1] Recognizing the Rights of Nature and its Ecosystems merely as a human rights issue would be an injustice to the vast arena of the Rights of Nature, which has emerged as an independent discipline and laid the groundwork for reasserting its rights alongside those of its ecosystems. Therefore, the Rights of Nature movement concept has also developed a set of obligations that apply to planet Earth. Let's consider the trajectory of the Rights of Nature with its ecosystems, vis-à-vis the role that human rights play (and might come to play) in our world. Different people currently perceive the Rights of Nature in various ways. For some, invoking the Rights of Nature is a heartfelt, morally justified demand to rectify all sorts of injustice to Nature and its Ecosystems; for others, it is not more than a catchphrase to be regarded with skepticism or even antagonism.

Strand 1: Re-devising the strategy for controlling the population explosion resulting in the development-induced climate change migration and disaster displacement

The human population explosion,[2] vertical development-induced climate change migration[3] , and disaster-driven human displacement (DHD) have become challenges to the load-bearing[4] capacity of the planet Earth. The increasing human population has been mounting overwhelming pressure on the Environment. Developed economies have been polluting Nature and its ecosystems, degrading natural resources, while developing economies face immense pressure to meet competitive challenges. Their industrial signs of progress are also counterproductive and damaging to the Environment. These developments have increased the burden on Nature and its Ecosystems and threatened the future of Earth's sustainable life. One of the most prominent environmental effects of human population growth is global warming. Some scientists[5] fear global warming will lead to rising sea levels and extreme weather conditions. Deforestation has been happening at an alarmingly disproportionate scale to sustain the increasing population. Human beings also continue to significantly exploit nature and the natural resources of the planet Earth. No one has stopped the exploitation of energy and fuel; several non-renewable resources have been depleted in many regions, and people in many parts of the world have been enduring shortages of water and food. Thus, the growing population places greater demands on already limited natural resources, and the Environment on Earth has been suffering as the global population grows. The depletion of resources and biodiversity, waste production, and the destruction of natural habitats are profound challenges that must be addressed to ensure that life on Earth remains sustainable throughout the next century.

Strand 2: ending the war-driven devastation of the Rights of Nature and its Ecosystems

War has made the landscapes and Ecosystems of Nature scary and inhospitable to human

1 Vienna Declaration and Programme of Action, World Conference on Human Rights, U.N. Doc. A/CONF.157/23 (June 25, 1993).

2 J. Van Bavel, The World Population Explosion: Causes, Backgrounds and Projections for the Future, 5 Facts Views Vis. Obgyn 281 (2013).

3 Michael Berlemann & Max Friedrich Steinhardt, Climate Change, Natural Disasters, and Migration—A Survey of the Empirical Evidence, 63 *CESifo Econ. Stud.* 353 (2017).

4 Roberta Cohen & Megan Bradley, Disasters and Displacement: Gaps in Protection, 1 *J. Int'l Humanitarian Legal Studies* 1 (2010).

5 IPCC, Climate Change Widespread, Rapid, and Intensifying (Aug. 9, 2021), https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/ (last visited July 14, 2025).

beings. Waging War is a crime against Nature and its Ecosystems. Generally, human beings and their conflicts are disruptive[1] during War and peace. War and conflict have been altering the biosphere[2] since the inception of modern civilization on planet Earth. The detrimental consequences and adverse impacts of modern warfare and military hostilities on Nature have devastated the structure and function of Ecosystems. The outcomes of direct military engagements, military training-related emissions, military transport movements (MTMs), military-generated contaminants (MGCs), and nuclear, biological, and chemical weapons (NBCs) have been found to have significantly impacted the Rights of Nature and its Ecosystems. "*Warfare is inherently destructive of sustainable development. States shall, therefore, respect international law protecting the Environment in times of armed conflict and cooperate in its further development, as necessary*."[3] Thus, due to these war activities, there is the destruction of structures, fires in the oil fields, and chemical spraying, all instances of annihilating war impacts on Nature and its Ecosystems. Therefore, I try to rummage through the frames of understanding about war-driven devastation of the Rights of Nature and its Ecosystems as under:

Pre-Conflict Environmental Damage:

The war-driven devastation of the Rights of Nature and its environmental Ecosystems starts with military build-up before the military engagement that demands ample land and sea areas. Military buildups require colossal amounts of natural resources and rare Earth elements, such as water and hydrocarbons. Military preparedness requires energy, such as oil, to maintain military vehicles, vessels, and aircraft, as well as the maintenance & modernization of military equipment, buildings, and infrastructure, which have environmental repercussions. However, the CO_2 emissions by the largest militaries worldwide are more deleterious than the total emissions of most countries.

*Damage by Cyclical Military Pollution***:**

In addition to detonation and disposal of conventional military weaponry (CMW) by open incineration, dangerous NBCs also pose perennial ecological troubles throughout their stages of existence and dumping. Military pollution leaves many countries with large volumes of toxic waste and explosives due to a weak-willed institutional response to climate impact management & administration (CIMA). Cyclical military pollution (CMP) has posed challenges for overseas military bases in host States.

*Damage by Ordoliberal Military Expenditure Policies***:**

Fiscal profligacy has become the norm of military expenditure worldwide without any commitment to sustainable Rights of Nature and its Ecosystems. Tensions in international relations,[4] transformations in global geostrategic visions[5], and transitions in the geopolitical

1 Roger Mac Ginty, *Conflict Disruption: Reassessing the Peace and Conflict System*, 16 *J. Intervention & State Building* 40 (2022).

2 M. Leitenberg, *Deaths in Wars and Conflicts in the 20th Century* 3rd ed. (Cornell Univ. Peace Studies Program 2006).

3 *Rio Declaration on Environment and Development* (June 14, 1992), U.N. Doc. A/CONF.151/26 (vol. I), 31 I.L.M. 874 (1992).

4 Alexander Clackson, *Conflict and Cooperation in International Relations* (Feb. 1, 2011), E-International Relations, https://www.e-ir.info/2011/02/01/conflict-and-cooperation-in-international-relations/ (last visited June 22, 2025).

5 Thomas F. Lynch III & Phillip C. Saunders, *Contemporary Great Power Geostrategic Dynamics: Relations and Strategies* (2020), Nat›l Defense Univ. Press, https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2404308/3a-contemporary-great-power-geostrategic-dynamics-relations-and-strategies/ (last visited July 10, 2025).

structures[1] have pandered to reckless demand for high military expenses that have been diverting welfare resources away from the worldwide understanding of the Right to a healthy environment and addressing the environmental threats emanating from the multiple dimensions of climate emergency, CMP, and anthropocentrism.

Environmental Damage through Conflicts:

Wars may be short[2] and long[3] with varying intensity and environmental impact. However, current conflicts have blurred the borders and obscured the combatants, leaving an indelible environmental impact. The wars of high-pitched intensity consume massive amounts of energy and fuel, resulting in colossal CO2 emissions that exacerbate climate change.

Damage by Geodiversity Erosion:

Large-scale use of explosive armaments and massive movement of military vehicles cause erosion to geodiversity[4] and delicate natural landscapes. Environmentally sensitive utility structures such as water treatment plants, water pumping stations, and energy generation facilities all contribute to air and soil pollution and to damage to geodiversity.

*Damage by Agro-Industrial Contamination***:**

The military destruction of agro-industrial infrastructure is a critical form of pollution. In several cases, targeted attacks on oil or various industrial installations are used as part of military strategy and war weapons, leading to large-scale pollution and trepidation. The devastation of agro-infrastructural utilities such as wells, pumps, canals, and culverts, and the burning of crops by resorting to scorched Earth[5] techniques jeopardize livelihoods, imperil food security, and increase the people's vulnerabilities. These war methods lead to transboundary climate impacts, such as air pollution, contamination of aquifers, and pollution of seas and rivers, which in turn affect overall weather patterns.

*Damage by War Vestiges***:**

Military weapons used during War leave remnants hazardous to environmental stability. Land and sea mines, cluster munitions, and many kinds of explosive remnants of War hamper mobility to arable land and contaminate soils and water resources with toxic metals and active noxious military constituents. Large amounts of military debris, including shards, slivers, splinters, and other war residues, are produced and left behind during significant conflicts. Such war fragments pollute soils and groundwater and expose farmers and other people working on such war-ravaged lands to critical and chronic health hazards. Further, damaged submarines, war-wrecked ships, and offshore oil infrastructures[6] also cause marine pollution.

1 Mathieu Blondeel et al., *The Geopolitics of Energy System Transformation: A Review*, 15 *Geography Compass* e12580 (2021).

2 Michael J. Lawrence, *The Effects of Modern War and Military Activities on Biodiversity and the Environment*, 23 *Envtl. Rev.* 4 (2015).

3 *Ibid*.

4 Doug Weir, *How Does War Damage the Environment?* (June 4, 2020), Conflict and Environment Observatory, https://ceobs.org/how-does-war-damage-the-environment/ (last visited July 23, 2025).

5 The term "scorched earth" is employed by militaries during armed conflicts and troops would destroy valuable goods – crops, buildings, routes in and out of towns – in order to make them unusable by enemy troops

6 Zwijnenburg, *Iranian Oil Spills on Syria's Shores: A Brief OSINT Overview of an Environmental Incident* (July 31, 2019), Bellingcat, https://www.bellingcat.com/news/mena/2019/07/31/iranian-oil-spills-on-syrias-shores-a-brief-osint-overview-of-an-environmental-incident/ (last visited Sept. 10, 2022);C.M. Anderson, M. Mayes & R.P. LaBelle, *Oil Spill Occurrence Rates for Offshore Spills* (2012) (Herndon, DC: Bureau of Ocean Energy Management).

Damage by Conventional Armaments:

Several conventional armaments and their components are impregnated with toxic materials[1] like depleted uranium, which is radioactive, and incendiary arsenals with white phosphorus are unhealthy and prone to causing deadly fires to habitats. The extensive application of chemical defoliants[2] as a "tactical use" of Rainbow Herbicides by the US military as part of its herbicidal warfare program destroyed public and environmental health in the Vietnam War from 1961 to 1971.

Damage by Armed Hunting and Poaching:

The informal and comfortable access to small arms and light weapons has harmed wildlife, fauna, and flora by enabling[3] intensified hunting and poaching. The unregulated areas created by the conflicts have become ideal opportunities for committing crimes against wildlife. Conflict-affected countries are the source of weapons used for such crimes. Due to security considerations and deleterious impact on conservation programs, researchers and scientists cannot access such spaces. It has become challenging to provide continued protection to national parks and reserved areas when hunters and poachers are armed with weapons. Such conditions will likely foster further militarized conservation[4] that might adversely impact relationships between Nature and local communities.

Damage by Military Deforestation:

Local communities often rely on wood and charcoal for heating and fuel, leading to overharvesting. Further, the conflicts increase deforestation through the involvement of armed criminal gangs, the absence of administrative machinery, and the over-exploitation of natural resources, driven by flawed civilian coping strategies and environmentally damaging practices such as artisanal oil refining, which, in several cases, disrupt community systems of sustainable resource management. In many conflicts, armed groups vie for control of mineral resources, timber, and oil and indulge in their over-extraction to finance conflicts that lead to ecological disturbance and environmental degradation. Treatment methods, such as mercury used in gold mining, contaminate water bodies and many other Ecosystems. Further, armed groups, artisanal workers, and private companies are active in conflict-affected areas with negligible CIMA.

*Damage by RAMS, DHD, CDM & IDP Movements***:**

Armed conflicts have been causing massive human displacements of refugees, asylum-seekers, migrants, and the stateless (RAMS[5]), disaster-driven displacement (DHD[6]) people, climatically displaced migrants (CDMs), and internally displaced persons (IDPs). These

1 H. Bem & F. Bou-Rabee, *Environmental and Health Consequences of Depleted Uranium Use in the 1991 Gulf War*, 30 *Envtl. Int.* 123 (2004).

2 K.R. Olson & Larry Cihacek, *Agent Blue Spraying in the Mekong Delta during the Vietnam War: Fate of the Arsenic-Based Herbicide Weapon Used to Destroy Rice Crop and Mangrove Forests*, 12 *Open J. Soil Sci.* 253 (2022).

3 Cathy Haenlein & M.L.R. Smith, eds., *Poaching, Wildlife Trafficking and Security in Africa: Myths and Realities* (2016), RUSI Whitehall Paper 86 (2016).

4 Ruth Duffy et al., *Why We Must Question the Militarisation of Conservation*, 232 *Biol. Conserv.* 66 (2019).

5 Nafees Ahmad, Afghan Refugees: Asylum Restrictionism and Future of Non-Refoulement in Europe, *Refugee Law Initiative* (Dec. 15, 2021), https://rli.blogs.sas.ac.uk/2021/12/15/afghan-refugees-asylum-restrictionism-and-future-of-non-refoulement-in-europe/ (accessed Sept. 18, 2025).

6 Stellina Jolly & Nafees Ahmad, Conceptualizing the Climate Change Migration in South Asia, in *Climate Refugees in South Asia* (Springer Singapore 2019).

population classes live in camps, leaving an indelible imprint on local Nature and its Ecosystems. Massive human displacements impact local resources, sanitation, firewood availability, waste management, and water bodies. Conflict-affected people flock to urban spaces, putting pressure on urban environmental services. These affected people move with their livestock to urban centers, and massive RAMS mobility causes transboundary environmental impacts, and transnational resources totter under the weight of such an influx of people.

Damage by Waste Dumping and Burning:

Conflict-affected areas confront the increased challenges of waste management[1], jeopardizing public health and the Environment, waste dumping, burning, waste mismanagement at military bases, and poor waste segregation. Environmental governance institutions, such as CIMA, come to a standstill during these challenges. Furthermore, local laws, regulations, and administrative machinery are often unable to effectively assess, monitor, and respond to environmental problems. Institutions like CIMA must emerge in areas controlled by non-state actors with a different governance model. However, there is an emerging pattern of arming with environmental information[2] for enhanced politicization of environmental threats during armed conflicts.

Damage by Technological Risks:

National governments worldwide are not sincere[3] in meeting their Global Climate Obligations.[4] They are prone to technological risks from industrial infrastructure, particularly programs and projects sponsored by international organizations and nations. In this context, Nature and its Ecosystems are impacted by a locally limited conflict that might be harmful nationally and obstruct international cooperation.

Damage by Military Occupations:

Military occupations might be ephemeral or perennial; nation-states are under an international human rights obligation[5] to protect the occupied people and their rights consistent with their environmental commitments.[6] Military occupations hinder sustainable development, impede access to technologies, and affect natural landscapes through military mobility. The construction of fences and walls disrupts wildlife movements, obstructs upfront investments, and derails pre-planned, environmentally viable development programs. On the other hand, the occupied Nature and its ecosystems, as well as the occupied populations, are deprived of the Rights of Nature and environmental human rights, and are forced to live with

1 Sintana E. Vergara & George Tchobanoglous, Municipal Solid Waste and the Environment: A Global Perspective, 37 *Annu. Rev. Envtl. & Res.* 277, 309 (2012).

2 Int'l Comm. of the Red Cross, Climate Change and Conflict Are a Cruel Combo That Stalk the World's Most Vulnerable (July 9, 2020), https://www.icrc.org/en/document/icrc-report-climate-change-and-conflict-are-cruel-combo-stalk-worlds-most-vulnerable (accessed Sept. 8, 2025).

3 Stéphane Willems & Kevin Baumert, Institutional Capacity and Climate Actions, OECD/IEA COM/ENV/EPOC/IEA/SLT(2003)5 (2003).

4 J. Setzer & C. Higham, Global Trends in Climate Change Litigation: 2021 Snapshot (2021) (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, London).

5 C. Jeffords, On the Temporal Effects of Static Constitutional Environmental Rights Provisions on Access to Improved Sanitation Facilities and Water Sources, 7 J. Hum. Rts. & the Env›t 74 (2016).

6 D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver: Univ. of British Columbia Press 2012).

scarce resources, increased pollution, and pitiful environmental services. The steps taken by occupied people in opposing the occupying force also led to environmental degradation. Security concerns also cause profound environmental harm through militarised responses to the rights of Nature and its ecosystems, as well as to human rights.

Post-Conflict Environmental Damage:

In post-conflict situations (PCS), transitions to peace, truth, and reconciliation are multi-dimensional exercises.[1] Even sporadic skirmishes may continue during PCS for extended periods. However, the forms of harm that occurred during the armed conflicts are equally applicable in the PCS stage as follows:

Damage by Pathetic Institutional Governance (PIG) Syndrome:

In the State of PCS, transitional peace and justice suffer from PIG syndrome[2], which entails poor environmental governance, a lack of CIMA framework, and weak response capacity. The competing socio-economic priorities[3] and truncated political types of machinery[4] require re-focussing on environmental concerns as the PCS scenarios have impeded peace and governance devolution agreements. In the wake of PCS, nation-states and international actors confront war remnants like debris, fragments, rubble, and wreckages. The same is poorly managed and disposed of by casual dumping, creating dangers to ecological stability and continuity. The looting of industrial waste is another problem that exposes local communities to contaminants and multiple environmentally hazardous coping practices[5] adopted by the local people during conflicts. The same might continue indefinitely. Further, conflicts damage environmental governance with prolonged ramifications[6] for environmental protection. It can adversely impact progress in industrial emission pollution control, climate change adaptation, RAMS & DHD security, biodiversity protection, geodiversity safety, and natural resources management, as well as preserving the Rights of Nature and its Ecosystems. Ultimately, recovering environmental expenses might be substantial, but large-scale urban reconstruction projects can require immense wealth.

*Damage by Returnees, Environmental Pressures & Deforestation***:**

The problems related to land rights and land ownership titles[7] are common when returnees[8] get back to their roots in the PCS stages, particularly in areas with high levels of human displacement. Returnees increase environmental pressures[9] in spaces from which they were absent for a significant period by expanding their agricultural activities. Such

1 David Mendeloff, Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?, 6 Int›l Stud. Rev. 355 (2004).

2 Maria Carmen Lemos & Arun Agrawal, Environmental Governance, 31 Annu. Rev. Envtl. & Res. 297 (2006).

3 Katrina Kosec et al., Political Competition and Rural Welfare: Evidence from Pakistan, 70 Oxford Econ. Papers 1036 (2018).

4 J. Knight & J. Johnson, The Priority of Democracy: A Pragmatist Approach to Political-Economic Institutions and the Burden of Justification, 101 Am. Pol. Sci. Rev. 47 (2007).

5 V.K. Gaur et al., Assessing the Impact of Industrial Waste on Environment and Mitigation Strategies: A Comprehensive Review, 398 J. Hazardous Materials 123019 (2020).

6 Jan Corfee-Morlot et al., Cities, Climate Change and Multilevel Governance, OECD Env't Working Papers No. 14 (2009).

7 Scott Leckie, *Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return: Key Considerations for UNHCR Policy and Practice*, 19 *Refugee Surv. Q.* 5 (2000).

8 W. Courtland Robinson, *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement* (Brookings Inst.-SAIS Project on Internal Displacement 2003).

9 N. Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, 357 *Phil. Transactions Royal Soc'y B: Biological Scis.* 609 (2002).

engagements result in high incidences of deforestation in the PCS in several countries that cannot manage or regulate these activities.

Damage by Military Forces & War Explosive Remnants:

In a state of PCS, military presence goes beyond the stipulated time frame for various reasons.[1] The transfer of military bases[2] is impregnated with pollution concerns, specifically in cases of the host states' inability to address environmental obligations. The use of burn pits exposes military personnel and local communities to harmful pollutants, and senior citizens face health issues. Further, removing landmines and explosive remnants[3] of War in PCS is prone to soil degradation[4] and increased local pollution. Land use is also affected by the presence of landmines and war remnants when people begin cultivating such land again.

Military engagements and armed conflicts can cause multiple forms of environmental hazards. However, responding to environmental harms during conflicts and PCS can create opportunities to rebuild infrastructure, craft sustainable peace, and re-transform societies by achieving sustainable recovery targets. In the PCS stages, common and transnational natural resources can facilitate negotiations between the belligerent factions to address environmental hazards that exceed human limitations. During armed conflicts, unstable power supplies can facilitate a transition to solar energy while reconstructing greener options in post-conflict stages and re-enacting municipal legal frameworks to regulate, manage, and monitor sustainable Rights of Nature and Ecosystems. However, these possibilities depend on the individual and institutional focus on pre-conflict, through-conflict, and post-conflict stages to ensure more effective protection; otherwise, the environmental loss will be perceived as usual. To avoid future conflicts over natural resources, all opportunities presented in the PCS stages must be tapped to achieve a sustainable recovery of the Environment. Ending the war-driven devastation of the Rights of Nature and its Ecosystems is tremendously harmful. The impacts of MTMs, MGCs, NBCs, War, military training, tactical operations, and biochemical contamination all contribute to the decline of local flora and fauna and the diminishing of species diversity in the adversely altered Ecosystems. Furthermore, ill impacts were recorded in various climates with distinct pigeon-holed clusters, indicating war outcomes that simultaneously had critical and compounding effects on the Rights of Nature and its Ecosystems.

Strand 3: De-escalating the geostrategic abuse of natural resources to forestall jeopardizing and degrading the existence of Nature

The supremacy of the few nation-states has been the hallmark of the world's geopolitics. It got impetus with the dawn of Globalization[5] as a TINA[6] (There Is No Alternative) factor that

1 Astri Suhrke, *Pressure Points: Environmental Degradation, Migration and Conflict* (1993), https://www.cmi.no/publications/file/1374-pressure-points-environmental-degradation.pdf (last visited Sept. 22, 2022).

2 Martha Mendoza, Juliet Linderman & Jason Dearen, *What Lies Beneath: Vets Worry Polluted Base Made Them Ill*, Associated Press (Feb. 23, 2022), https://apnews.com/article/us-army-fort-ord-chemical-exposure-cancer-c1078dd520322f2a4130e2f7077b7892 (last visited Sept. 24, 2025).

3 Henrique Garbino, *The Impact of Landmines and Explosive Remnants of War on Food Security: The Lebanese Case*, 23 *J. Conventions Weapons Destruction* (2019).

4 Asmeret Asefaw Berhe, *The Contribution of Landmines to Land Degradation*, 18 *Land Degradation & Dev.* 1 (2007).

5 Jorge Heine & Ramesh Thakur, eds., *The Dark Side of Globalization* (United Nations Univ. Press 2011).

6 . Ronaldo Munck, Neoliberalism, Necessitarianism and Alternatives in Latin America: There Is No Alternative (TINA)?, 24 Third World Q. 495 (2003).

worked for the Global North power structures to gain a geostrategic edge by treading *terra-incognita* (unexplored field of knowledge) overtly and covertly to access natural resources in the Global South planet Earth (GSPE) at the minimum cost of production. Geopolitical supremacy is fundamentally abused to transform the struggle for capturing natural resources and resource-abundant regions by pro-US and Eurocentric transnational corporations and companies, in the name of a fallacious Global Common Good trajectory. The geopolitical clout has given rise to competition and collaboration, identifying the terrain of geostrategic abuse of the natural resources of GSPE while generating malleable far-right political discourse surrounding it. Therefore, in the first quarter of the 21st century, sustainable geostrategic security[1] of nation-states shall depend on the safety and integrity of natural resources. Nature also provides natural protection to its natural resources in many geostrategic settings. World economies, in both Global North and Global South jurisdictions, depend on the availability and accessibility of essential needs of life such as cultivable land, potable water, livestock, minerals, energy, geodiversity, biodiversity, and many other renewable and non-renewable resources for meeting the increasing demands of the growing global population. However, the availability and accessibility of natural resources are not guaranteed. The Rights of Nature and its Ecosystems are for the dignity and sanctity of natural resources that are being subjected to geostrategic abuse[2], degrading the existence of Nature and jeopardizing their preservation and conservation. Geostrategic importance and implications for natural resources have been formidable for geopolitical power permutations[3] in the resource-consuming capitalist Global North and its pursuit of globalizing[4] the space of the Rights of Nature and its Ecosystems in the resource-rich decolonized[5] Global South. The geostrategic developments conceptualize a relationship with socio-politico-economic and environmental trends to address several strategic concerns related to the de-escalation of the geostrategic abuse of natural resources.

Currently, the concept of civilized nation-states is crumbling without any future resurrection. The centrality of multilateralism and multi-alignment in the international geopolitical order[6] and geostrategic vision has shifted to the Globalization of occidental capitalism, consumerism, and neo-imperialism orientations[7], undermining the universality of sovereign equality[8] consistent with the mandate of the UN Charter. Globalization is an economic *coup de grace* (a decisive finishing blow) that colonizes developing economies and their natural resources for the consumption of the developed economies. Therefore,

1 Feng Zhongping et al., *Global Security in a Multipolar World* (Inst. for Sec. Studies, European Union, Paris 2009).

2 smini Tsakiri, Defending the Undefended: The Rights of Nature During the Age of Humans, Northern Univ. Pol. Rev. (Feb. 14, 2019), https://www.nupoliticalreview.com/2019/02/14/defending-the-undefended-the-rights-of-nature-during-the-age-of-humans/ (accessed Sept. 28, 2022).

3 Bob Scher, The Potential Impacts on the Geostrategic Environment of the Transition to a Low-Carbon Economy, in *Transatlantic Disruption: Challenges and Opportunities* (Spring 2021).

4 Anja Nygren, Markus Kröger & Barry Gills, *Global Extractivisms and Transformative Alternatives*, 49 *J. Peasant Stud.* 734 (2022).

5 B. Rodríguez-Labajos et al., *Not So Natural an Alliance? Degrowth and Environmental Justice Movements in the Global South*, 157 *Ecol. Econ.* 175 (2019).

6 Monish Tourangbam, *The UN and the Future of Multilateralism in a Multipolar World*, 14 *Indian Foreign Aff. J.* 301 (2019).

7 Elena Lazarou, *The Future of Multilateralism and Strategic Partnerships*, EPRS Ideas Paper, European Parliamentary Research Service (2020).

8 Article 2(1)–(5), United Nations Charter, 1945

capitalism has been politically orchestrated and economically engineered into Globalization that has been perceived to have embedded neo-imperialism and entrenched the sustainability of human life in the Global South region with its tentacles. Globalization is a cocktail of capitalism, consumerism, and imperialism designed to colonize non-white economies, the Global South, planet Earth, and the Eastern way of life. The planet, nature, has become like a kindergarten of bratty adolescents, stripped of its identity. The pro-US and Eurocentric multinational corporations worldwide have colonized and lobotomized the planet Earth to the maximum levels of exploitation of natural resources to the disadvantage of Global South economies. The allegorical American dream-driven mass consumerism, crass materialism, unilateral recantations[1] from international commitments on environmental treaties, and US-NATO-triggered militarism have crippled the Rights of Nature and its Ecosystems, pandering to neo-liberal disaster for the planet, making nature beyond repair.

Nevertheless, the Global South world still awaits sustainable decolonization of its survival, which remains to be accomplished socially, economically, and politically. Ever since the natural resource-guzzling Global North acquired military hegemony and technological superiority, the natural resource-opulent Global South or Afro-Asian countries and their natural resources have become the thorn[2] in the eyes of the Western world. These powerful Global North States have been capturing the natural resources of the Global South countries by creating unrest[3] in the name of democracy, the rule of law, human rights, liberalism, and good governance, and pursuing the policy of forced regime change[4] (FRC) in Afghanistan, Iraq, Syria, Iran, Libya, Lebanon, DR Congo, and many other countries. The War on Terror (WoT) project turned out to be an instrument of serving the US interests[5], including exploiting the natural resources of the developing economies. The US-sponsored WoT project has created more terror organizations[6], crafted more pro-US geostrategic goal posts[7] worldwide, and calibrated a unilateral pro-US geopolitical world order[8] based on the Everything First narrative to meet the interests of the US and its collaborators and allies, which exacerbated the Rights of Nature and its Ecosystems. Fundamentally, the Everything First narrative is the far-right[9] political discourse shaping the contours and contents of the Global North jurisdictions' international relations and foreign policies. Such a far-right political discourse positions the national interests of the Global North

1 Nafees Ahmad, *G20 at Hamburg: America Jilted, World Wilted* (July 17, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3008598 (last visited Aug. 26, 2022).

2 Michael Wines, *The Earth Summit; Bush Leaves Rio With Shots at Foreign and U.S. Critics*, *N.Y. Times*, June 14, 1992, https://www.nytimes.com/1992/06/14/world/the-earth-summit-bush-leaves-rio-with-shots-at-foreign-and-us-critics.html (last visited Sept. 22, 2022).

3 Ding Gang, *Regime Change Is Old, Dangerous Trick of US*, *Global Times*, Mar. 30, 2022, https://www.globaltimes.cn/page/202203/1257219.shtml (last visited Aug. 15, 2025).

4 Alexander B. Downes & Jonathan Monten, *Forced to Be Free? Why Foreign-Imposed Regime Change Rarely Leads to Democratization*, 37 *Security Stud.* 90 (2013).

5 Greg Simons, *The Evolution of Regime Change and Information Warfare in the 21st Century*, 11 *J. Int'l Analytics* 4 (2020).

6 ISIS, Guantanamabey

7 NATO+ and its expansion

8 Will Moreland, *The Purpose of Multilateralism: A Framework for Democracies in a Geopolitically Competitive World* (Brookings Inst. 2019).

9 Michael Leonardi, *Introducing Giorgia Meloni: How the US Opened the Door for Fascism's Return to Italy*, *Counter Punch*, Sept. 27, 2022, https://www.counterpunch.org/2022/09/27/introducing-giorgia-meloni-how-the-us-opened-the-door-for-fascisms-return-to-italy/ (last visited Sept. 30, 2022).

countries at the top, at the cost of the rest of the nation-states, and it does not shy away from exploiting the natural resources of the Afro-Asian countries. Thus, the US asserts its province of geopolitical influence in the name of anti-communist ideology to maintain its grip over geostrategically located critical natural resources.

The evidence establishes that societies' disappearance is due to the geostrategic abuse of natural resources without sustainable environmental security. The globalized world's contemporary geopolitical permutations and priorities are likely to necessitate more complex adaptation, mitigation, and resilience strategies to sustain natural security. Environmental and natural resource patterns may pose an existential threat to 21st-century society. Global climate change trends affect geopolitical security and impede the natural resource prosperity of nation-states. Furthermore, radical climate change has been prognosticated to jeopardize human existence and pose a threat to the mass extinction of the Rights of Nature and its Ecosystems. However, the scope, scale, and speed of environmental degradation and loss of global natural resources lack expert consensus. History testifies[1] that human civilization depends on a high degree of climate continuity and environmental stability. Forecasting the impact of climate change on demographic composition at different thresholds of progress and its associated paradoxes is impossible. It is now inevitable that the concept of natural resource security must be integral to national security while de-escalating the geostrategic abuse of natural resources that has been jeopardizing and degrading the existence of Nature *per se*, the Rights of Nature, and its Ecosystems.

Strand 4: making development sustainable for ensuring the success of the COPs and restraining unaccountable carbon emissions

Development has become the gospel truth for all nation-states without recognizing the Rights of Nature and its Ecosystems, including bypassing the CIMA models, decimating the rights of indigenous people[2], treating "the Rights of Nature and its Ecosystems as the rights of indigenous people,"[3] and stretching the same to encapsulate the entire population, deconstructing the geostrategic abuse of natural resources, and devastating the global logistical infrastructure. Moreover, crudely crafted development mappings[4] and models result in invasive development that consumes and undermines the sustainability of development and misappropriates[5] natural resources. These apprehensions have been highlighted by an environmental referendum[6] that a significant population was likely to be affected but refused to allow development detrimental to the Rights of Nature and its Ecosystems in the State of Odisha, India. Similarly, in the State of Uttarakhand, the Rights of Nature and its Ecosystems

1 Hiroshi Fukurai & Richard Krooth, *Earth Jurisprudence, the Rights of Nature, and International Rights of Nature Tribunals*, in *Original Nation Approaches to Inter-National Law* (2021).

2 Arunima Mishra, *Tribals in Orissa's Niyamgiri Hills Reject Vedanta's Bauxite Mining Project*, https://businesstoday.intoday.in/story/orissa-niyamgiri-rejects-vedanta-entry-impact-reasons/1/197972.html (last visited July 10, 2025).

3 Int'l Law Ass'n, *The Hague Conference on Rights of Indigenous Peoples* 43–49 (2010), http://www.ila-hq.org/en/committees/index.cfm/cid/1024 (last visited July 10, 2022).

4 V. Asara et al., *Socially Sustainable Degrowth as a Social–Ecological Transformation: Repoliticizing Sustainability*, 10 *Sustainability Sci.* 375 (2015).

5 . Á. López Latorre, *In Defence of Direct Obligations for Businesses Under International Human Rights Law*, 5 *Bus. & Hum. Rts. J.* 56 (2020).

6 Ekaterina Aristova and Justin Lim (eds), *Climate Litigation in Europe Unleashed: Catalysing Action against States and Corporations* (Bonavero Institute for Human Rights 2024)

have created particular jurisprudence[1] and discourse[2] in the public domain. Therefore, the Rights of Nature and its Ecosystems must be construed as the Common Heritage of Naturekind[3] for sustainable Nature.

In this context, the Conference of the Parties (COPs) is an important initiative that has been institutionalized as the supreme decision-making body of the United Nations Framework Convention on Climate Change[4] (UNFCCC). The landmark UNFCCC accord, adopted in 1992 and ratified by 197 countries, has been the first international treaty to expressly address climate change and its adverse impacts. COPs, as an alliance of member states, meet annually for two weeks to address the climate change problems confronted by the planet Earth by reviewing the implementation of the UNFCCC and other legal instruments and incidental obligations that the COPs adopt and take required decisions for promoting the pragmatic enforcement of the mandate of the UNFCCC, including institutional and administrative arrangements. The member states have debated extensively at every COPs on how to deal with climate change since the 1990s. These COPs have produced several legal instruments, including the Kyoto Protocol of 1997, the first climate change treaty that required developed countries to reduce emissions by 5% below 1990 levels and included a mechanism for progress-monitoring. However, the impugned treaty did not require developing countries to take any measures to reduce emissions, and major emitters such as China and India did not take any action.

The Paris Agreement of 2015 was a global milestone on climate change that required all countries to set targets for emissions-reduction commitments. National governments decided their targets, called Nationally Determined Contributions[5] (NDCs) to prevent an average global temperature from rising 2°C (3.6°F) above the levels of the pre-industrial era. It further requires keeping global warming below 1.5°C (2.7°F) to achieve net-zero global emissions, where the amount of greenhouse gases emitted equals the amount removed from the atmosphere, ensuring carbon neutrality and climate stability in the seco[nd] half of the century. Under the Global Stocktake[6] process scheduled for 2023, countries are assumed to assess their progress every five years in enforcing the Paris Agreement and in determining whether they meet their goals without enforcement systems. The US is the second biggest emitter[7] in the world and was the only country to withdraw unilaterally from the Paris Agreement under the Donald Trump administration from November 2020. However, the US rejoined the Paris Agreement under Joe Biden's administration immediately after his inauguration. The Global

1 Narayan Dutt Bhatt v. Union of India & Others, Writ Pet. (PIL) No. 43 of 2014 (Uttarakhand HC 2018);Karnail Singh & Others v. State of Haryana, CRR-533-2013 (Punjab & Haryana HC 2019).

2 Mauro Barelli, *The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples*, 58 *Int'l & Comp. L.Q.* 957 (2009).

3 Synneva Geithus Laastad, *Nature as a Subject of Rights? National Discourses on Ecuador's Constitutional Rights of Nature*, 47 *Forum Dev. Stud.* 2020 (2020).

4 John W. Zillman, *A History of Climate Activities*, 58 *Bull.* (2009); Bertil Bolin, *A History of the Science and Politics of Climate Change* (Cambridge Univ. Press 2007).

5 Janet Arlene Amponin & James Warren Evans, *Assessing the Intended Nationally Determined Contributions of ADB Developing Members*, ADB Sustainable Development Working Paper Series No. 44 (2016).

6 UNFCCC, *What Is the Global Stocktake?*, Climate Champions (May 16, 2022), https://climatechampions.unfccc.int/what-is-the-global-stocktake/ (last visited Oct. 2, 2022).

7 Johannes Friedrich et al., *This Interactive Chart Shows Changes in the World's Top 10 Emitters*, World Resource Institute (Dec. 10, 2020), https://www.wri.org/insights/interactive-chart-shows-changes-worlds-top-10-emitters (last visited Sept. 26, 2022).

North countries, led by the US, are adamant about imposing environmental slavery on the Global South countries while destroying external engagements and multilateral management to achieve the universality of the Rights of Nature and its Ecosystems.

In addition, several countries, such as Eritrea, Iran, Iraq, Libya, and Yemen, have not officially signed the agreement.[1] However, there is a broader consensus among scientific experts that climate change is a high-magnitude problem. At the climate talks, negotiating delegations show minimal skepticism about the science of climate change but worry about determining priorities and goals. The data indicate that anthropogenic activities and interventions such as using fossil fuels (coal, oil, and natural gas) are the fundamental causes of the Earth's rapid warming.[2] It has increased Earth's average temperature to an unprecedented level over the last 800,000 years, causing climate change. These trends continue global warming and are bound to harm the Rights of Nature and its Ecosystems worldwide. Scientists consider it essentially the outcome of anthropogenic interventions over the last 150 years, attributable to deforestation and the use of fossil fuels, which have dramatically increased the concentration of heat-trapping greenhouse gases, primarily carbon dioxide, in the atmosphere, leading to the warming of the planet Earth. A UN body called the Intergovernmental Panel on Climate Change (IPCC) was established in 1988 to regularly assess the latest climate change impacts and produce reports based on a broad consensus for nation-states.

However, member states of the COPs engage in blame-shifting over who is exceeding set carbon-emission limits, rather than ensuring the holistic and honest implementation of emission-reduction goals to protect the Rights of Nature and its Ecosystems. Climate change experts opine that the Paris Agreement is insufficient to prevent the Global Average Temperature from increasing by 1.5 Celsius. When that occurs, the world will face dreadful consequences, such as droughts, floods, and heatwaves. Governments have collectively pledged to mitigate global warming for several years. Unfortunately, the cataclysmic impacts of climate change are pervasive, while proactive diplomacy fails to mitigate them. Nevertheless, through the Kyoto Protocol and the Paris Agreement, nations have agreed to reduce greenhouse gas emissions. Still, the quantity of carbon dioxide in the Environment has been rising to dangerous levels, alarmingly warming the planet and its ecosystems. The scientific community of experts warns of the relentless pace of global warming, which may result in environmental disasters worldwide, including unprecedented droughts, devastating floods, alarming sea-level rise, and widespread loss of wildlife and species. Most member states made new commitments at COP26 in 2021, but experts and the public remain anxious about their adequacy.

However, there are several significant international arrangements on climate change; if they had been implemented in letter and spirit, the environmental face of the planet Earth, the Rights of Nature, and its Ecosystems would have been improved. For example, the Montreal Protocol[3]of 1987 was a historic accord on the Environment, but it was not designed to address climate change per se. However, it became a model for future environmental diplomacy. Eventually, the world ratified a treaty requiring an end to the production of substances that destroy the ozone layer, such as chlorofluorocarbons (CFCs). Consequently,

1 Kate Fowler, *Which Countries Have Not Signed Paris Agreement? Climate Change Accord Explained!*, https://www.hitc.com/en-gb/2021/01/21/paris-agreement-countries-not-signed/ (last visited Sept. 30, 2025).

2 J. Lelieveld et al., *Effects of Fossil Fuel and Total Anthropogenic Emission Removal on Public Health and Climate*, 116 *Proc. Nat'l Acad. Sci. U.S.A.* 7192 (2019).

3 Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 1522 U.N.T.S. 3.

the Montreal Protocol successfully eliminated almost 99% of ozone-depleting substances. Further, the Parties to the Protocol conceded through the Kigali Amendment[1] in 2016 to reduce the production of powerful greenhouse gases, hydrofluorocarbons (HFCs), that cause climate change. Therefore, it is time to establish the Right of Nature's permanent sovereignty over natural resources (PSNR) to save the Rights of Nature and its Ecosystems. I aim to establish the principle of PSNR as no more than an entitlement of nation-states. Still, instead of the Right of Nature and its Ecosystems' permanent sovereignty over natural resources to accomplish transcendental justice to Nature and its Ecosystems, I call it the Principle of Reverse Ecological PSNR (PRE-PSNR), empowering decolonized Nature as a subject of International Law and recognizing its legal personhood status under the Rights of Nature Law.

Having applied the Global South Approach to International Law (GSAIL) and the PRE-PSNR, the RNL is a fundamental principle that recognizes and establishes the province of sovereign rights of Nature and its Ecosystems over natural resources. Therefore, the UN General Assembly must adopt the United Nations Framework Convention on the Rights of Nature and its Ecosystems (UNFCRNE), while recognizing the sovereign rights of nature over natural resources. The current premise of the PSNR must be recalibrated, recrafted, and re-created to incorporate the Principle of Reverse PSNR for protecting the Rights of Nature and its Ecosystems. The PRE-PSNR must have the broadest scope to legitimize the entitlements of nature, as it is a legal personality possessing rights on par with human rights. The PRE-PSNR has a coterminous nexus of rights with indigenous people, forest communities, and non-state actors. Still, it overrides their rights of ownership, possession, and appropriation. It propounds the absolute sustainability of the Rights of Nature and its Ecosystems over the natural resources in all geopolitical entities.

Therefore, IRNL must evolve, develop, and recognize normative, substantive, and procedural Rights of Nature and its Ecosystems that include Nature's ownership based on the PRE-PSNR premise, the Right of Nature as a legal personality to participate in the decision-making process, the Right of Nature to have informed-consent about extraction projects, benefit sharing stemming from the environmental assessment, industrial exploitation, and commercial consumption at every stage of the PRE-PSNR as a subject of international law as a requirement of the modern world in all indigenous lands. The PRE-PSNR protects people's Right to self-determination under the IHRL regime while holding holders of property rights in natural resources accountable under the IRNL and limiting their usage rights to human survival. Even human rights at the cost of the Rights of Nature and its Ecosystems cannot be made available to indigenous people, and their natural resource rights are not unfettered. Indigenous people must complement their substantive and procedural usage rights with the Rights of Nature and its Ecosystems to enjoy their natural resource rights. Furthermore, the time has come for nation-states to share their rights on PSNR to PRE-PSNR, aiming to achieve sustainable constitutional environmentalism.

The contemplation of development in all its manifestations, within the context of the Rights of Nature and its Ecosystems, must be based on Green Equality and Equity

1 Government of India's Cabinet, Ratification of Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer for Phase Down of Hydrofluorocarbons (Aug. 18, 2021), https://pib.gov.in/PressReleasePage.aspx?PRID=1746946;SDG Knowledge Hub-A Project by IISD, Kigali Amendment Enters into Force, Bringing Promise of Reduced Global Warming (Jan. 8, 2019), https://sdg.iisd.org/news/kigali-amendment-enters-into-force-bringing-promise-of-reduced-global-warming/ (last visited Oct. 5, 2025).

(GEE) and its incorporation into national constitutions and institutionalization within the implementing machinery. The principle of GEE must be an inalienable and non-derogable part of the constitutional environmentalism framework (CEF) in all geopolitical entities and their respective constitutions, without exception. The institution of CEF is evolutionary, and its dynamics have embraced novel developments in IRoN. I, therefore, contemplate the juxtaposition of the Rights of Nature and its Ecosystems Framework mentioned above as IRoN with the Global Human Rights Framework (GHRF) as their counterparts, complementing the following elements of the basic structure of CEF for substantive and normative consolidation, reinforcement, and crystallization of the IRNL, but not limited to:

- That the Right to Equality must include *the Right to Green Equality and Equity*,
- That the Right to Life must include *the Right to Life of Nature and its Ecosystems*,
- That the Right to Procreate Children must include *the Right to the Carrying Capacity of Nature*,
- That the Right to the Environment must include *the Right to the Environment of Nature*,
- That the Right to Development must include *the Right to Natural Integrity of Nature*,
- That the Right to Sustainable Development must include *the Right to Sustainable Nature*,
- That the Right to Artificial Environment must include *the Right to a Natural Environment*,
- That the Right to Climate Adjustment must include *the Right to Pristine Climate Continuity*,
- That the Right to Human Survival must include *the Right to Safeguard Fresh Water*,
- That the Right to Water must include *the Right to Harvest Rainwater*,
- That the Right to Underground Water must consist of *the Right to the Natural Balance of Water*,
- That the Right to Lay Infrastructure must consist of *the Right to Forestation*,
- That the Right to Access Beneath Earth Resources must consist of *the Right to Repair Nature and its Ecosystems*,
- That the Right to Natural Resources must consist of *the Right to Permanent Sovereignty over the Natural Resources of Nature*,
- That the Right to be Accountable for Carbon Emissions must consist of *the Right to Decarbonized Emissions*
- That the Right to Marine Research & Development must consist of *the Right to Marine Virginity of Nature*,
- That the Right to Diversified Development must consist of *the Right to a Balanced Ecology of Nature*,
- That the Right to Use Underground Natural Resources must consist of *the Right to the Sanctity of Underground Natural Resources and their Incidental and Collateral Reserves & Deposits*,

I am not convinced and contest the argument[1] that the Rights of Nature and its Ecosystems are non-human aspects of Nature[2]; I argue that Nature has life with a symptomatic language whose interpretation is in the hands of the community of naturalists, environmentalists, scientists, geologists, wildlife experts, seismologists, entomologists, biologists, botanists, zoologists, ornithologists, and natural historians. This community of experts is bound to offer an independent, unbiased, and well-informed opinion about climate change, environmental degradation & disasters, ozone depletion, hazardous carbon emissions, and the status of the Rights of Nature and its Ecosystems globally, regionally, and locally. Unfortunately, the Global North's orientation toward Globalization has demonstrated the sustainable colonization of the Rights of Nature and its Ecosystems of the Global South planet Earth. However, there is an unprecedented need for sustainable decolonization of natural resources to save planet Nature from audacious human greed. The environmental problems of the US and Europe are presented as the problems of the world, but, ironically, the problems---environmental or otherwise---of the rest of the world are not recognized as the problems of the international community. Now is the time to adopt a GSAIL to achieve the Rights of Nature and its Ecosystems in Collaboration with the CEF.

Global North scholarship and expertise alone are insufficient to argue for and decide on the non-human traits of nature. For the existential survival of humanity, Nature is like a Deep State[3] controlling, monitoring, and managing human life on the planet Earth. The Rights of Nature and its Ecosystems serve as a firewall for sustainable development, and it also draws a red line for accessing and enjoying human rights. Therefore, every moment of life is the right time to Build Our Common Home and Honour the Dignity and Resilience of Nature and its Ecosystems unless it is too late. In this context, an international institutional framework for international human rights law (IHRL) must be established to protect the Rights of Nature and its Ecosystems under the auspices of the UN. All core international environmental law (IEL) treaties[4] and international climate change law (ICCL) regimes must be brought under a single umbrella to implement the mandate of emerging jurisprudence and the institutionalization of the Rights of Nature and its Ecosystems for maintaining the transcendental equilibrium between Human Rights and the Rights of Nature. In addition to the existing core IEL treaties, the international community must adopt a legally binding UNFCRNE that reflects, incorporates, and crystallizes the Rights of Nature and its Ecosystems mentioned above, taking into account their different dynamics and dimensions. I also advocate that before concluding the UNFCRNE, a soft international law arrangement may be contemplated as a minimum substantive and normative understanding of the Rights of Nature and its Ecosystems. It may be adopted as a non-binding Universal Declaration of the Rights of Nature and its Ecosystems (UDRN) in collaboration with the UN and all stakeholders, thereby transcending the CEF and institutionalizing justice for nature.

1 Tilo Wesche, *Who Owns Nature? About the Rights of Nature*, 65 *Estudios de Filosofía* 49 (2022).

2 J.C. Gellers, *Earth System Law and the Legal Status of Non-Humans in the Anthropocene*, 1 *Earth Sys. Governance* 1 (2020).

3 I perceive the concept of Deep State as controlling, monitoring and dictating super-structures of unelected authority beyond the orbit of constitutional framework of accountability for sustaining the governance of a specific kind and formulating its policies, and programmes to maintain stability, integrity and continuity of state away from the democratically elected governments. For example, Zionist Lobbies in the US, UK, Europe, and many other countries worldwide, Military Establishment in Pakistan, Military Junta in Myanmar, Family Fiefdoms in South Asia, etc.

4 L.J. Kotzé, *Rethinking Global Environmental Law and Governance in the Anthropocene*, 32 *J. Energy & Nat. Resources L.* 121 (2014).

Thus, in conserving and preserving the Rights of Nature and its Ecosystems, the role of non-governmental organizations (NGOs), civil society organizations (CSOs), and other non-state actors (ONSAs) and the presentation of their report at the proposed RNPR (Rights of Nature Periodic Review) proceedings before the proposed UN-RNC must be of vital importance for the dispensation of justice to Nature. Therefore, it is imperative in the contemporary Global Nature Order (GNO) that the Rights of Nature and its Ecosystems must be regarded as the peremptory norms[1] of international law, from which no preclusion or derogation should be a possibility, and recognizing Nature with legal personhood status as a subject of international law while creating New Legal Structures and discarding the Rights of Nature and its Ecosystems merely as an Object of Law for empowering the CEF based on the proposed institutional framework as under:

At the United Nations Level

International Court of Justice for Nature

The idea of establishing the International Court of Justice for Nature (ICJN) or International Court of Climate Justice (ICCJ) The idea of establishing the International Court of Justice for Nature (ICJN) or International Court of Climate Justice (ICCJ) parallel to the current International Court of Justice (ICJ), which has issued a landmark advisory opinion on state obligations regarding climate change in July 2025, the International Court of Climate Justice (ICCJ) is a proposed international tribunal intended to address the legal, ethical, and reparative aspects of climate change. It is frequently framed as a mechanism for "climate justice." In contrast to what supporters regard as the shortcomings of existing international frameworks, such as the Paris Agreement, it would prioritize responsibility for high-emitting countries and businesses, restitution for disadvantaged populations, and enforcement of legally binding climate pledges. Amid discontent with international climate discussions in the early 2010s, state-led and grassroots activities in Latin America, especially Bolivia, gave rise to the idea of the ICCJ. It became popular at the April 2010 World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia. An ICCJ should be established to "judge and sanction the climatic debt" that developed countries owe the Global South, according to the conference's final declaration. Allies, such as Ecuador, which introduced the notion in 2013 along with a UN proclamation on the Rights of Nature, reiterated it and included it in negotiating materials, including the "Shared Vision" paper. The ICCJ emerged in reaction to "voluntary" carbon market mechanisms (such as emissions trading) that LDC countries criticized as insufficient and unfair. Its origins may be traced back to larger calls for climate justice in the 2000s.

UN Rights of Nature Council (UNRNC)

A proposed international organization, the UNRNC, is intended to serve as a special forum within the United Nations system to support and formalize the IRoN movement globally. Inspired by Indigenous worldviews and the growing legal recognition of nature's inherent rights in many nations, this concept is the result of lobbying by groups such as the United Nations of Nature. Fundamentally, the UN-RNC aims to transform nature—ecosystems, rivers, forests, and species—from resources or property into legally recognized

1 Louis Jacobus Kotzé, *Constitutional Conversations in the Anthropocene: In Search of Environmental Jus Cogens Norms*, 46 *Neth. Y.B. Int'l L.* 105 (2016).

entities with rights. An Earth-centered perspective, in which nature has basic rights to exist, flourish, regenerate, and be restored, supplants anthropocentric (human-centered) rules. For instance, a river may be entitled to unrestricted flow and ecological well-being. To safeguard its biodiversity, a forest may be protected from destruction.

The Harmony with Nature project of the UN, which encourages moral and biocentric interactions with the environment, is linked to the UN-RNC. The concept aligns with previous achievements, such as the UN General Assembly's 2022 declaration of a clean, healthy environment as a human right. However, it is not yet an official UN resolution. Proponents argue that utilizing RoN as a tool for environmental conservation could accelerate the achievement of the UN Sustainable Development Goals. In the face of growing ecological issues, this vision places the UN-RNC as a "State of Nature" champion, protecting the planet's health for future generations.

The Rights of Nature Periodic Review (RNPR)

IRoN movement, which acknowledges ecosystems, rivers, forests, and other natural phenomena as rights-holders with inherent legal safeguards, is gaining traction as a revolutionary legal paradigm. As of November 2025, more than 40 countries have enacted over 400 IRoN legislation, resolutions, and court rulings. With an emphasis on developments in 2025, this RNPR overview will highlight significant breakthroughs, challenges, and emerging trends. The movement's expansion is indicative of a transition away from anthropocentric environmental legislation and towards ecocentrism, driven by pressing climatic imperatives and Indigenous knowledge systems.

At the Regional or Continental Level

Regional Courts of Justice for Nature may be envisioned in accordance with UN level:

Regional Rights of Nature Council (RRCC)

Regional Rights of Nature Periodic Review (RRNPR)

At the National or Federal Level

National/Federal Justice Tribunals for Nature (NJTN)

National/Federal Commissions on Justice for Nature (NCJN)

National/Federal Supreme Courts of Justice for Nature

High Courts of Justice for Nature (HCJN)

District Courts of Justice for Nature (DCJN)

Judicial Magistrate Courts of Justice for Nature (MCJN)

The above hierarchy of proposed administrative and judicial bodies, having further vetted through more comprehensive consultations, may be pragmatic in addressing the most significant concerns of climate change and its repercussions and transgressions of the Rights of Nature and its Ecosystems at the most extensive scale ever recorded in the annals of human history. Cases relating to the claims and entitlements of , as well as compensation for the restoration of Nature and its Ecosystems, must be the exclusive jurisdiction of these proposed bodies.

Strand 5: resuscitating the constitutional, structural and logistical response to the rights of Nature by the private entities and governance leadership

The history of human mobility demonstrates that the frame of legal rights is not determinate as refugees, asylum-seekers, migrants, the stateless, women, children, and indigenous and enslaved peoples have been divested of their rights and property under the law. It started mass movements to restore and preserve fundamental human rights, including the Right to a healthy environment. The protagonists[1] contend that there is a perennially inalienable relationship between the worlds of humanity and Nature. The laws justified in the rights of Nature command human beings to perform correctly and in harmony with the CEF. Therefore, constitutional environmentalism[2] requires the structural and logistical Rights of Nature-based Approach[3] (RNBA) response to the Rights of Nature by private entities and governance leadership. The philosophy of the RNBA recognizes the Rights of Nature rooted in the existentialism of Nature *per se*. Human beings themselves are the source of their rights and laws. Likewise, in the natural world, every creature is a source of its own existence, rights, and laws, including those of nature. Thus, I can argue that rights come before human rights, as the survival, accessibility, and affordability of human rights depend on the existence of Nature and its healthy Ecosystems. Therefore, protecting the rights of Nature is a prerequisite for the availability and enjoyment of human rights.

In the 20th century, the principal legal protection of the rights-of-nature dimensions grounded in IEL was based on an antediluvian framework. Under such a framework, the Rights of Nature are perceived as self-possessed by distinct, individual segments. Moreover, the IEL and its framework lean towards economic priorities and do not fully mitigate money-driven degradation; instead, they position the rights of nature as the principal subject of the IEL, rather than merely confining it to the role of the object of the EIL. The assessment of the contemporary EIL constitutes a binding framework for maneuvers such as climate change litigation, which seek to intensify social action to alleviate the adverse consequences of climate change. By June 2021, laws relating to the rights of nature exist in 39 countries, as well as in their cities and municipalities, at both the local and national levels. These laws have evolved into constitutional provisions, local ordinances, treaty instruments, and court verdicts. The CEF and the sovereignty of the Rights of Nature and its Ecosystems are prevailing narratives that now govern the world in all respects. Currently, militaries and multinational corporations are the final materialization of obvious, straight, structural, and cultural violence that requires nipping and extirpating from planet Earth.

Conclusion

Empowering Nature and its ecosystems with legal personhood bound to protect it against all sorts of injuries under the law. Emancipating Nature and its Ecosystems from the tentacles of human greed might envision a balance between economics and ecology for the survival of the present and future generations. However, the attribution of legal personality status to Ecosystems has been ornamental and rhetorical. It is unclear how successful these litigations have been in achieving durable solutions, complementary pathways, and sufficient protection for the Rights of Nature and its Ecosystems. But the question is how to achieve it. The

1 Per Ariansen, "*Anthropocentrism with a human face*" (1998) Ecological Economics 24(2-3):153-162 DOI: 10.1016/S0921-8009(97)00139-0

2 Caleb Hall, "*A Right Most Dear*" (2016) Tulane Environmental Law Journal Vol. 30, No. 1 85-109

3 Krystyna Swiderska, "*The Governance of Nature and the Nature of Governance: Policy that works for biodiversity and livelihoods*" https://www.iied.org/sites/default/files/pdfs/migrate/14564IIED.pdf?

aftermath may vary depending on the formulation of a lawsuit and the litigants' contentions. Therefore, many complex questions arise from the potential implications of the upward trend, such as precisely what the claimant is pursuing as the representative of the injured entity? Does the party ask for authority or agency to pay reparations for the injuries sustained? How are these reparations calculated? Who can be accountable for such reparations? Will the designated authority or officer be responsible if damages are caused due to the river floods? For example, who would decide the case arising out of a transboundary river in India, where the Ganges and Yamuna rivers cross the boundaries of Uttarakhand? If a litigant contends that climate change is intimidation, how much compensation does a particular industry's activities causing injuries pay for the redressal? Nevertheless, increasing litigation involving the Rights of Nature and its Ecosystems is likely to establish sustainable constitutional environmentalism stemming from these litigations, which may serve as precedents.

In the context of the climate change catastrophe, advocacy for the "Rights of Nature and its Ecosystems" concept can prioritize protecting biodiversity. It is an opportune time for nation-states to broker an international treaty, called the UNFRNE, under the auspices of the UNO, that includes legal protection for Biological Diversity. A coalition called the High Ambition Coalition for Nature and People[1] (HAC) of more than 50 nation-states had dedicated themselves to protecting 1/3 of the planet's Ecosystems by 2030. Additionally, it aimed to achieve the 30X30 target to mitigate biodiversity loss and greenhouse gas emissions. The accomplishment of such targets depends on re-conceiving novel tools, re-casting strategies, and formulating new best practices for conserving the Rights of Nature and its most biodiverse Ecosystems. The HAC must be based on the *One Planet, One Nature, One People* vision for sustainable constitutional environmentalism and healthy functionalism of the Rights of Nature and its life-sustaining Ecosystems essential to human civilization.

Moreover, to safeguard biodiversity, national governments and local bodies can take decisive action against projects that exploit natural resources from a specific ecosystem without replenishment. These litigations also advocate for climate justice and address other ecological concerns faced by indigenous populations, marginalized and vulnerable communities, and, increasingly, the entire populations of all geopolitical entities in various ways. These peoples depend on Nature and its Ecosystems for their livelihoods, spiritual survival, and cultural traditions. Undoubtedly, there are victories and vulnerabilities inherent in creating New Legal Structures from an *object of law to a subject of law* that might have the capability to address the challenges in restoring, maintaining, and safeguarding the Rights of Nature and its Ecosystems and balancing the two sets of rights in the more significant interest of planet Earth and its inhabitants.

1 Fiona Harvey, "*US rejoins coalition to achieve 1.5C goal at UN climate talks*" November 02, 2021 The Guardian https://www.theguardian.com/environment/2021/nov/02/us-rejoins-coalition-to-achieve-15c-goal-at-un-climate-talks <accessed on 10 October 2025>

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The Relationship between Criminalization and Liberty in Islamic and Western Criminal Law

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Abstract

This study is organized to explain the relationship between liberty and criminalization in the two criminal law systems of Islam and the West, and seeks to examine, in a systematic manner, the fundamental question of the legitimate scope of criminal intervention in the domain of individual liberties. The central issue is under what conditions the legislator may remove human conduct from the sphere of permissibility and place it within a binding criminal rule, and to what extent such intervention must be governed by foundational principles, criteria, and constraints that limit penal authority. The findings indicate that in the Western system, liberty constitutes the primary normative foundation and the principal criterion for restricting criminalization, and principles such as legality, proportionality, and necessity play a regulatory role; whereas in the Islamic system, liberty is intertwined with duty and collective welfare (masalih naw'iyya), and rules such as "no-harm" (la zarar) and "removal of hardship" (rafʿ al-haraj), as well as the protection of the five essentials (daruriyyat khams), determine the legitimate limits of intervention. The conclusion is that although both systems avoid penal expansionism, their normative foundations and justificatory logic differ, and this divergence is reflected in the level of criminalization criteria. Accordingly, the present study emphasizes the need to develop a measurable framework for criminal legislation and to strengthen the standing of liberty within criminal policy.

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Introduction

Criminalization, as one of the fundamental manifestations of criminal authority, is the process of identifying and penalizing behaviors that the legislator deems contrary to public order or to society's fundamental values. This process is directly linked to the limitation of individual liberties and the expansion of state coercion. From the perspective of criminal law, criminalization is not merely a legislative act but a normative act with profound effects on individuals' rights and fundamental liberties. The primary principle in contemporary legal systems is the liberty of human conduct, and criminal intervention, as an exception, requires further justification. Uncontrolled expansion of criminalization leads to criminal inflation and undermines the principle of liberty. Rostami, emphasizing the criteria of necessity and proportionality, believes that criminalization without a valid normative basis is incompatible with the logic of criminal law.[1] Therefore, criminal law should not be regarded as the primary tool for regulating social behavior. The distinction between moral disapproval and the need for a criminal response is an essential requirement of rational criminal policy. Criminal intervention is justifiable only in the presence of actual harm or serious risk; otherwise, legitimate liberties are unnecessarily restricted. Thus, criminalization always requires limiting criteria. The examination of these criteria constitutes the central focus of the present research.

This research adopts a Western criminal law analysis framework based on the Roman-Germanic legal tradition. This tradition, which has formed the foundation of modern criminal law in most continental European legal systems, emphasizes written and systematic legislation. The legal systems of Germany, France, and Italy are prominent representations of this legal model. Focusing on this tradition allows for a coherent analysis of the normative foundations of criminalization. The models derived from common law are excluded from this study due to the fundamental differences in the logic of criminal law sources. Additionally, the legal order of the European Union, as a supranational and independent structure, is not the subject of this research. The main analytical focus is on the theoretical foundations of criminalization within the civil law system. In this system, the theory of "legal benefit" plays a crucial role in justifying criminal intervention. According to this theory, the mere violation of a social norm is not sufficient for criminalization. The principle of minimal criminal law, as a tool to control criminal authority, plays a central role. The principle of legality and the predictability of crimes and punishments guarantee individual security and liberty. This conceptual framework forms the basis for the analysis of the Western section of the research.

The analysis of Islamic criminal law in this study is based on the foundations of Shia Islamic jurisprudence. This approach aims to establish a coherent and analyzable framework for the normative foundations of criminalization. The focus on Shia jurisprudence prevents confusion between different Islamic legal systems and general interpretations of Islamic law. In this jurisprudential tradition, the default assumption is that actions are permissible unless a valid legal prohibition is established. Therefore, criminalization requires the presence of real or predominant harm. Jurisprudential rules play a fundamental role in limiting the scope of

1 H Rostami, 'Criminalization and Penalization in Liberal Theory' (2012) 5(1) *Pazhuheshnāmeh-ye Hoqūq-e Keyfari* 55, 57–60.

criminal authority. The principle of "no harm" (La Dharar) prevents the imposition of unjust harm through criminal coercion. The principle of "no difficulty" (La 'Usr wa La Haraj) prevents the expansion of burdensome criminal obligations.[1] Public interest (maslahah), as a rationally accepted criterion in Shia jurisprudence, influences the legislative process in criminal law. The ultimate goal of criminal intervention is the preservation of the five essentials (khums). These mechanisms demonstrate the capacity of Shia jurisprudence to control the expansion of criminalization. Therefore, Islamic criminal law within this framework is not inherently expansive in its approach to criminalization.

The main objective of this research is to provide a comparative explanation of the relationship between criminalization and liberty in the civil law system and Shia Islamic jurisprudence. The research aims to compare and analyze the logic of limiting criminal authority in these two legal systems at a normative level. Accordingly, the main research question is: What similarities and differences exist between the legitimacy criteria for criminalization in the civil law system and Shia Islamic jurisprudence? The second research question focuses on the theoretical and normative foundations of these criteria in each system. The main hypothesis of the research is that although both legal systems seek to limit criminal authority and protect individual liberties, the logic and origins of limiting criminalization differ. The second hypothesis suggests that civil-law criminal justice limits criminalization on rational and institutional grounds, whereas Shia Islamic jurisprudence applies this limitation through jurisprudential rules and religious foundations. The research method is analytical-comparative, with analyses grounded in conceptual study and normative reasoning. The aim is not merely to describe the differences but to explain the legal logic governing them. The results of the research could provide a foundation for evaluating criminal legislative decisions. This evaluation aims to prevent the uncontrolled expansion of criminalization.

1. The Concept and Status of Liberty in Criminal Law

Liberty, in its general sense, is a fundamental concept denoting the human ability to determine one's will and organize one's behavior without external domination. At the primary level, it is defined as the ability to freely choose and perform actions based on independent will. In some theories, liberty is based on the idea of an individual's release from external coercion and imposition, a concept known as negative liberty, which is defined by several thinkers as "the absence of external obstacles and hindrances in human action" and considered a condition for the flourishing of individual will.[2] In contrast, liberty in another sense refers to the actual ability of an individual to achieve goals, desires, and self-realization, and this sense is regarded as positive liberty. Positive liberty is based on an individual's capacity to shape their own destiny and play an active role in social life. Liberty is also divided into "individual liberty" and "social liberty," with both levels serving different functions in human life. Some perspectives have explained liberty through the duality of "liberty from domination" and

1 A Sharafi-Masouleh, A Ghorbani and P Zekaeyan, 'Order and Public Interest in Criminalization' (2023) 3(5) *Comparative Criminal Jurisprudence* 151, 155.

2 RM Rosenberg, 'Two Concepts of Liberty in Criminal Jurisprudence' (2018) 6(2) *British Journal of American Legal Studies* 14.

"liberty for the realization of rational will," considering these dualities as essential for a comprehensive understanding of liberty.[1] More recent social analyses describe liberty not only as liberation from restrictions but as a condition for the flourishing of human personality and the possibility of active participation in collective life. Philosophical ideas also consider liberty as the foundation of moral agency and human responsibility. In theoretical foundations, liberty is a multidimensional, composite concept encompassing psychological, ethical, social, and political dimensions. These dimensions facilitate a comprehensive understanding of liberty and prevent its reduction to a single aspect.

In its general legal concept, liberty is a normative state in which an individual's valid will, within the bounds of binding rules, is recognized as capable of being exercised and producing legal effects, and no unjust domination or intervention without legal basis can undermine it. From the perspective of general legal theory, this liberty is considered a fundamental right with a dual function: stabilizing the legal order and limiting public power. The legal system is obliged to regulate the state's sovereignty within the limits of necessity and proportionality, with the presumption of individual liberty unless the law explicitly restricts it. In this sense, liberty is not only concerned with the individual's discretion in determining the course of their legal life but also serves as the criterion for controlling the legitimacy of public interventions. According to this principle, any legal restriction must be supported by a clear and reasoned normative justification. Restrictions on liberty can only be applied within the framework of public order, the essential interests of society, and legitimate constraints, and any further limitation beyond these boundaries is considered legally invalid. In theoretical discussions, liberty is introduced as the individual's right to regulate their behavior within the framework of public order, and this recognition plays a determining role in shaping the relationship between the individual and the state.[2] Liberty, as a legal principle, affects all areas of law and underpins legislative, administrative, and judicial decisions. This position makes liberty not only the supreme principle of fundamental rights but also a criterion that strengthens the legitimacy of public authority. Thus, liberty, as a strategic principle, also determines the interpretive framework for other laws and regulations.

In the field of criminal law, liberty is recognized as the axis of the legitimacy of criminal authority and the normative basis for assigning criminal responsibility. A criminal analysis is not possible without understanding this position. In civil law systems, criminal law, because of the coercive nature of its sanctions, directly addresses the most severe forms of liberty limitation. Therefore, the legitimacy of criminal intervention is conditional upon proving the necessity and proportionality of such limitations. Any punishment inherently involves the deprivation or limitation of liberty, and its legitimacy is realized only when the severity and nature of the limitation align with the degree of fault and the social interests being protected.[3] Criminal responsibility, particularly from the perspective of its mental element, depends on the existence of sufficient liberty of will in the perpetrator, and without the establishment of this element,

1 AJ Kolber, 'The End of Liberty' (2021) 15 *Criminal Law and Philosophy* 407, 408.
2 S Evans, 'A Liberty-Balancing Approach to Crime' (2024) 62 *American Criminal Law Review* 153, 160.
3 MS Moore, 'Liberty's Constraints on What Should Be Made Criminal' in RA Duff and others (eds), *Criminalization* (Oxford University Press 2015) 122.

attributing criminal behavior lacks a normative basis. Contemporary theories regard the liberty of the will as a condition for the possibility of criminal reproach and ground responsibility in the individual's capacity to choose among behavioral alternatives.[1] Furthermore, Western criminal law views liberty as the outer limit of criminal authority and considers state intervention justified only when an individual's behavior presents a real and tangible threat to the liberty or security of others (the harm principle). The principle of necessity in criminal law dictates that the use of criminal tools must be limited to situations where no other legal means can achieve public order. Similarly, the principle of proportionality requires that the severity of punishment should not exceed what is necessary to achieve criminal policy objectives. Thus, liberty is not only the criterion for measuring the legitimacy of punishment but also an indicator for controlling criminal policy and the cornerstone of the criminal justice system. Ultimately, liberty occupies a central, structural position in criminal law, and the framework for analyzing criminalization, responsibility, and punishment is organized around it.

In contrast to the Western approach, Islamic criminal policy defines liberty not as an inherent concept, but as a divine gift and a tool for achieving higher goals. The basis of this view lies in the two fundamental principles of "the inherent dignity of humanity" and "the pursuit of perfection," which shape the direction of criminal policy.[2] In this view, liberty is a natural right granted by God to humanity, enabling them to choose their path of spiritual growth and perfection. Therefore, liberty itself is not the goal, but a means to realize the ultimate purpose of creation, which is human perfection. This natural liberty provides the foundation for the development of "duty" and the human responsibility toward God and society. Accordingly, Islamic criminal policy has a dual function: on the one hand, it supports legitimate liberties that contribute to individual and societal growth, and on the other hand, it restricts liberties that hinder human perfection and lead to individual or social corruption. In this framework, criminalization is not merely a reaction to violations of public order, but a pedagogical tool to preserve human dignity and provide a foundation for the moral development of society. From this perspective, Iran's criminal law approach to liberty of thought and religion should also be understood. While belief is free in the internal realm, its external manifestations are respected only as long as they do not harm the fundamental beliefs and ethics of the Islamic community. Therefore, Islamic criminal policy defines liberty within a coherent and purposeful value system, with the ultimate aim of protecting the path to human perfection.

In Shia jurisprudence, absolute and unconditional liberty is not recognized; instead, it is defined and limited within the framework of divine rules and values (Shariah). These limitations are not seen as negating liberty, but as guiding it toward the true interests of individuals and society. The ultimate goal is to protect "true liberty" for humanity, which means liberation from the bondage of carnal desires and the barriers to spiritual growth.[3] Thus, liberty is supported as long as it does not conflict with foundational principles such as monotheism, justice, and ethics. For example, freedom of expression is allowed only to

1 TA Green, *Liberty and Criminal Responsibility in American Legal Thought* (Cambridge University Press 2014) 7.

2 MA Haji-Deh-Abadi and L Bostani-Pour, 'The Status of Liberty in Islamic Criminal Policy' (2021) 12(4) *Maʿrefat-e Farhangi–Ejtemāʿi* 77, 89.

3 Haji-Deh-Abadi and Bostani-Pour (n 8) 90.

the extent that it does not insult sacred beliefs, spread falsehoods, or promote corruption. This approach contrasts sharply with the Western basis for limiting liberty in criminal law, which emphasizes the "harm principle," which focuses solely on tangible harm to others. In the Islamic system, in addition to material harm, "moral harm" and "social corruption" are also considered legitimate grounds for criminal intervention and the limitation of liberties.[1] Therefore, crimes such as apostasy or certain moral offenses are criminalized to preserve the ideological system and the moral health of society, even if they lack a direct victim in the Western sense. Ultimately, the fundamental difference lies in the fact that in the civil law system, liberty is an autonomous and inherent right that is limited only by the rights of others, while in Shia jurisprudence, liberty is a directed and responsible right that is given meaning and validity in the light of divine duties and the spiritual interests of society.

2. Foundations of Criminalization in Western and Islamic Criminal Law

The foundation of criminalization constitutes the normative substratum that, as the source of validity and the justificatory ground of penal prohibition, delineates the framework within which legislative intervention becomes defensible and articulates the relationship between criminal prohibition and the overarching aims of the legal order. The theoretical bases of criminalization in the Western criminal-law tradition rest on the normative premise that penal intervention is permissible only when the conduct in question amounts to a violation of the legal order, rather than merely reflecting social disapproval or moral deviance. Within this conceptual framework, individual liberty is recognized as a legally protected right, and its restriction—absent a clearly articulated and reviewable legal standard—is deemed normatively unjustified.[2] According to this view, the requisite criterion for transferring conduct from the sphere of legitimate liberty into the domain of penal authority is the occurrence of a legally cognizable disruption in the binding structure of the social order, and not the mere incompatibility of the conduct with prevailing moral expectations. In this way, the boundary between the state's criminal jurisdiction and the domain of individual liberties is drawn by the criterion of "violation of the legal order," thereby establishing the theoretical framework necessary to constrain penal authority. These foundations, by emphasizing the normative autonomy of law, prevent criminalization from becoming an instrument for imposing non-legal values or political preferences and thereby forestall expansionist tendencies in penal authority. Consequently, this theoretical system conceptualizes criminalization as a narrow, reviewable, and non-arbitrary rule, rendering its application contingent on the verification of a legally defined disturbance of public order.

The foundations of criminalization in the Western criminal-law paradigm rest upon an anthropological and normative structure in which the individual, endowed with autonomous will, constitutes the focal point for assessing the legitimacy of penal intervention, and in which the limits of penal authority are defined through the relationship between individual liberty and

1 Rahimi and others (n 9) 241.
2 TS Petersen, *Why Criminalize? New Perspectives on Normative Principles of Criminalization* (Springer 2019) 42.

the binding framework of public order. On this basis, conduct is capable of being transferred into the realm of penal prohibition only when it possesses the capacity to generate a legal disruption within the normative order of society, rather than merely representing moral disapproval or value deviation. Western theoretical analyses condition the legitimacy of criminalization on the establishment of juridical harm or a generalizable injury to others, and they define the necessity of intervention through the criterion of assessable harm.[1] Within the liberal tradition, the harm principle requires that criminal law be invoked only when the conduct in question poses a generalizable and attributable threat to the liberty or security of others, thereby justifying a restriction upon the offender's liberty.[2] The legal order, in this conceptual structure, is treated as an entity independent of moral judgment, whose function is to impose principled limits on penal authority regarding fundamental rights. The cumulative effect of these foundations is that criminalization in the West is formulated within a narrow, rational, and non-moralized framework, and human conduct becomes eligible for inclusion within the sphere of penal prohibition solely upon the establishment of a legally cognizable disruption of public order.

The foundations of criminalization in Islamic criminal law are grounded in a jurisprudential framework that conceptualizes human liberty in relation to religious obligation and within the binding norms of the Sharia. In this system, liberty is not an absolute right but a qualified competence that retains validity only insofar as it does not transgress divine limits or disrupt the value structure of the Sharia. Islamic anthropology rests on the premise that the human being is both autonomous and accountable, and this very accountability provides the normative basis for attributing penal sanctions. Accordingly, criminalization in Islam is conditioned upon the establishment of religious necessity, the preservation of human dignity, and the protection of the five essentials (ḍarūriyyāt).[3] The principle of permissibility establishes that human conduct remains within the sphere of the permissible unless subject to a scriptural prohibition, and therefore does not acquire a criminal character. This principle signifies that restrictions on liberty are justified only when a valid religious ground for prohibition exists. Normative doctrines such as the rule of no harm, the rule of removal of hardship, and the principle of prohibition of unjust dominance delineate the legitimate scope of penal intervention by emphasizing the prevention of harm and the negation of unduly burdensome obligations. These foundations indicate that criminalization in Islam functions not as an instrument for imposing governmental will but as a mechanism for safeguarding genuine interests and preserving the legal structure of the Islamic community.[4] The Qurʾānic verse "Indeed, We have shown him the way, whether he be grateful or ungrateful" (al-Dahr: 3) presents the human being as endowed with choice while situating that choice within the framework of divine responsibility and accountability. The implication is that, although liberty is recognized in Islam, it is not left without normative supervision. On this basis, conduct devoid of recognized harm remains within the domain of the permissible and cannot

1 RA Duff, *Criminalization: The Political Morality of the Criminal Law* (Oxford University Press 2015) 113.
2 R Lippke, 'Fundamental Values of Criminal Procedure' in DK Brown, JI Turner and B Weisser (eds), *The Oxford Handbook of Criminal Process* (Oxford University Press 2019) 64.
3 Haji-Deh-Abadi and Bostani-Pour (n 8) 89–92.
4 Q Eslami-Nia, 'Anthropological Foundations of Criminal Law' (PhD thesis, University of Qom 2016) 99–104.

be subjected to criminalization. Consequently, the penal sphere is restricted to cases in which the necessity of intervention is established on religious grounds. This structure renders the foundations of criminalization in Islam grounded in purposive reasoning, obligation-centered normativity, and a disciplined framework of legal ordering.

Another foundational basis of criminalization in Islamic criminal law is the concept of public interest (maslaha), which, in the principles of jurisprudence and Islamic legislative theory, serves as a legal-religious criterion for regulating the limits of liberty and the scope of penal intervention. In this sense, public interest is neither discretionary nor governmental, but rather a disciplined standard subordinated to the objectives of the Sharia, acquiring the capacity to ground criminal prohibition only within the framework of general necessity. Within this legal system, criminalization is legitimate only when a demonstrable and juridically cognizable relationship exists between the prohibition of a given act and the preservation of the fundamental values of the Sharia. The realization of a valid public interest is conditioned upon establishing religious necessity and the existence of a generalizable harm, and the legislator possesses no authority to restrict liberty in the absence of these criteria.[1] The Qurʾān, in the verse "He has not placed upon you in religion any undue hardship" (al-Hajj: 78), articulates a general rule that renders invalid any religious obligation or prohibition that imposes hardship beyond human capacity. This rule indicates that public interest in criminalization must align with the prevention of harm and the avoidance of unjustifiable burden. Moreover, the principles of presumption of innocence and permissibility establish normative mechanisms that prevent the unregulated expansion of penal authority and the encroachment upon legitimate liberties. These mechanisms ensure that criminalization occurs only when public interests, social order, and general security are genuinely threatened.[2] On this basis, public interest functions not as a tool for expanding state penal power but as a normative standard for limiting intervention and ensuring proportionality between prohibition and social necessity. Such an understanding renders criminalization subject to transparent and reviewable rules and prevents political motives or non-legal considerations from entering the legislative process. This structure also redefines the relationship between individual liberty and public order within the framework of Sharia-based criteria. Accordingly, any penal prohibition must be evaluated in light of religious necessity, foreseeability, and its consistency with the objectives of the Sharia. Consequently, public interest in Islamic criminal law operates as a legal-jurisprudential foundation that neither negates liberty nor renders it absolute, but instead directs it toward the preservation of fundamental values and the realization of social order.

In comparative perspective, the foundations of criminalization in the two systems of Western and Islamic criminal law rest upon two normatively distinct bases, each of which redefines the relationship between liberty and the scope of penal authority in accordance with its own internal logic. In the Western tradition, liberty—conceived as a legally protected right—functions as the basis for constraining penal authority, and the transfer of conduct into the realm

1 SH Alavi, 'Foundations of the Minimalist Criminalization Approach in Islamic Criminal Jurisprudence' (2024) 18(49) *Studies in Islamic Jurisprudence and Fundamentals of Law* 63, 63–68.

2 M Bagheri, 'Criminalization in the Field of Citizenship Rights' (PhD thesis, University of Kashan 2019) 45–55.

of criminal prohibition is contingent upon establishing harm or legal disruption within the normative order; thus, liberty constitutes the external boundary and the legitimacy-conferring criterion for penal intervention, and any restriction that exceeds legal necessity is regarded as normatively invalid. By contrast, the Islamic jurisprudential framework understands liberty in relation to religious obligation and within the binding norms of the Sharia, and conditions the legitimacy of criminalization upon the establishment of religious necessity, the existence of a generalizable harm, and conformity with the objectives of the Sharia; accordingly, liberty is not conceived as absolute liberty but as a qualified status governed by religious criteria. The result of these two structures is that, in the West, criminalization is organized around the rational structuring of the legal order and the principle of legal disruption, whereas in Islam the scope of penal intervention is defined in continuity with the purposive orientation of the Sharia and the preservation of genuine interests. Therefore, the relationship between liberty and penal authority in the former approach is grounded in the logic of limiting state competence and protecting individual autonomy, whereas in the latter it is founded upon the priority of religious obligations and the regulation of liberty within a framework of normative duty.

3. Governing Principles of Criminalization in Western and Islamic Criminal Law

Principles constitute the general and binding rules that regulate the process of legislation and the exercise of criminal law, determining the boundaries, standards, and modalities of penal intervention and providing the authoritative framework for interpreting and applying criminal norms. In Western criminal-law systems, the legal principles governing criminalization rest upon a set of mandatory criteria whose overarching purpose is to define the limits of legitimate recourse to penal sanctions within a normative legal order. Foremost among these is the principle of legality, which confines the criminal jurisdiction of the state to expressly enumerated and clearly articulated forms of conduct, requiring that no act or omission be incorporated into the sphere of penal prohibition absent an explicit statutory provision. This principle is complemented by the principle of strict interpretation, which prohibits expansive or conceptually elastic readings of criminal statutes and safeguards legal certainty against discretionary exercises of penal authority. The presumption of innocence reinforces these guarantees by providing that every individual retains immunity from penal intrusion unless and until criminal culpability is proven before a competent authority. Collectively—each oriented toward the protection of legal liberty—these principles restrict criminalization to cases in which a normative necessity for limiting liberty has been established.[1] In addition, the requirement of demonstrating a direct relationship between the conduct and harm inflicted upon a specific legally protected interest serves as a necessary condition for penal cognizability, ensuring that mere moral or non-legal disapproval does not constitute grounds for criminal intervention. The principle of proportionality further requires that the type and severity of penal sanction reflect the weight of the protected interest and that the extent of punitive response remain commensurate with the legal value at stake. The principle of foreseeability

1 PH Robinson and JM Darley, *Justice, Liability, and Blame* (Routledge 1995) 39.

mandates that individuals must be capable of anticipating the penal consequences of their conduct and that the scope of criminal prohibition remain free from ambiguity or uncertainty.[1] Taken together, these principles organize the system of criminalization within a framework of binding, predictable, and normatively coherent rules.

The supplementary principles of criminalization in Western criminal-law systems operate in continuity with the logic of constraining penal authority and articulate the criteria of necessity, responsibility, and normative coherence in determining the scope of criminal prohibition. The principle of penal necessity provides that recourse to criminal sanctions is justified only when non-penal mechanisms are incapable of remedying the harm and penal intervention is employed as a last resort. The principle of personal criminal responsibility stipulates that punitive reaction may be directed solely toward the individual to whom the conduct can be attributed in terms of fault or intent, thereby precluding the applicability of strict or vicarious liability. This principle is complemented by the principle of voluntary agency in criminal responsibility, which makes liability contingent upon establishing the existence of free will and the capacity for behavioral control, and thus excludes criminal responsibility for acts lacking the element of volition.[2] The principle of certainty and uniformity in the application of sanctions requires that punitive responses be applied within a structured framework, free from discrimination, and grounded in objective criteria so as to prevent arbitrariness or unequal treatment in criminal enforcement. The principle of equality before the law further aligns the structure of criminalization with normative ordering and ensures that individuals subjected to penal response are treated under conditions of equality. The principle of minimal penal authority mandates that the scope of state intervention be confined to situations of genuine legal necessity and that the state's competence to restrict liberty not be expanded without justification. The criterion of the existence of a specific legally protected interest constitutes a foundational condition for admitting conduct into the domain of criminal prohibition and prevents the incorporation of behaviors unconnected with the protection of recognized legal interests into the penal structure.[3] Taken together, these principles establish a normative and reviewable framework that regulates the application of penal sanctions as a narrow, clear, and predictable rule.

The principles governing criminalization in the Islamic criminal-law system rest on a set of jurisprudential–legal rules that legitimately constrain the exercise of penal authority and ensure that the legislative process conforms to the binding structure of the Sharia. At the outset, these principles rely on the principle of permissibility (Ibāḥa) and the principle of innocence, which stipulate that no conduct may enter the criminal domain absent a valid religious or legal prohibition—an approach reflected in Iranian law through Article 37 of the Constitution and Article 2 of the Islamic Penal Code. Within this framework, the principle of legality is not merely a procedural requirement but a substantive criterion for limiting state

1 Kai Ambos and others (eds), *Core Concepts in Criminal Law and Criminal Justice* (vol III, Cambridge University Press 2025) 22.

2 R Faani, 'The Foundations of Criminalization and the Scope of Discretionary Punishments' (2023) 2(2) *Interdisciplinary Studies in Society, Law, and Politics* 19, 23.

3 N Searle, 'The Criminalization of the Theft of Trade Secrets' (2012) 2(2) *IP Theory* 7.

power, preventing criminalization based on governmental discretion or subjective preference. Hosseini's analyses show that Islamic criminal policy recognizes penal authority only within the scope in which legal prohibition corresponds to the definitive interests of the Sharia, and that the legislator has no authority to restrict liberty beyond this domain.[1] Moreover, doctrines such as the rule of no harm and the rule of no undue hardship specify that no penal rule may impose unjustified harm or burdens exceeding human capacity, a requirement mirrored in Articles 36 and 40 of the Iranian Constitution. The principle of non-dominion further establishes that no institution may impose punishment without a valid religious justification, thereby requiring that criminalization rest upon decisive evidence, an authoritative scriptural text, or a demonstrable public interest. From a jurisprudential perspective, the principle of protecting the five essentials confines penal intervention to safeguarding religion, life, intellect, lineage, and property, thereby preventing criminalization from becoming an instrument of generalized social control. Eslami-Nia's findings indicate that criminal legislation in Islam is legitimate only when a demonstrable relationship exists between the legal prohibition and the necessity of preserving these foundational values, and that expanding the penal domain without such a relationship is inconsistent with Sharia-based foundations.[2] The cumulative effect of these principles is that criminalization in Islam is governed by rules of caution, necessity, and religious proportionality, and the legislator must in every instance provide a valid and assessable justification for any prohibition.

In Islamic criminal law, criminalization is not regarded as an absolute legislative power; rather, it is an institution bound by a set of jurisprudential-legal rules that structurally limit its legitimacy. The starting point of this system is the supremacy of the principles of innocence and permissibility, which means that human actions are immune to criminal labeling unless there is a legitimate, prior legal or Shariah-based prohibition. This logic holds that bringing an act within the domain of criminal sanctions requires establishing a compelling reason; mere governmental cost-benefit analysis is insufficient. The reflection of this principle in Iranian law is found in Article 37 of the Constitution and Article 2 of the Islamic Penal Code, demonstrating the substantive acceptance of this limitation within the legislative system. In this context, the principle of legality of crimes and punishments is not merely a formal rule concerning the primacy of law over the judiciary, but a substantive mechanism for restraining the state's criminal power and ensuring citizens' legal security. Hosseini's analysis emphasizes that Islamic criminal policy permits criminal intervention only when there is a legal prohibition based on clear and definite Shariah interests, and lawmakers outside this boundary lack the Shariah competence to restrict individuals' liberty.[3] From this perspective, criminalization without a valid Shariah backing is not only illegitimate but also contrary to the philosophy of criminal legislation in Islam. Additionally, the principles of "no harm" (La Dharar) and "no hardship" (La 'Usr wa La Haraj) negate any imposition of unjust harm or excessive hardship, and this restriction is also reflected in Articles 36 and 40 of the

1 SMR Hosseini, *Criminal Policy in Islam and in the Islamic Republic of Iran* (SAMT 2015) 14.
2 Eslami-Nia (n 16) 99–104.
3 Hosseini, 2015: 14.

Constitution. Based on these foundations, criminal legislation in Islam is always regarded as an exceptional and limited act, not a tool for broadly regulating social behaviors.

On the other hand, the principle of non-authority further narrows the scope of criminal authority and conditions any imposition of punishment or expansion of criminalization on the existence of a definite legal or Shariah-based reason. According to this principle, no legislative or judicial body has the competence to impose criminal coercion without relying on a valid text or a legitimate public interest. In this regard, the principle of safeguarding the five essentials (religion, life, intellect, lineage, and property) limits the scope of criminal intervention to preserving these essentials, thereby preventing the criminal system from becoming an instrument of public control. Eslami-Nia's research shows that in Islamic jurisprudence, the legitimacy of criminalization is contingent on establishing a necessary, direct, and defensible relationship between the legal prohibition and the preservation of these fundamental values, and any expansion of the criminal domain without such a relationship is considered contrary to Shariah principles.[1] Complementing this analysis, Momeni's study on international criminal trials shows that the principle of legality of crimes and punishments is also recognized at the international level as a substantive rule to prevent broad interpretations, criminal analogies, and post facto application of force.[2] The experiences of the Nuremberg and Tokyo tribunals clearly demonstrated that deviation from this principle, even when justified by justice or necessity, weakens the rule of law and undermines the rights of the accused. This experience also confirms that the emphasis in Islamic jurisprudence on text-based rulings and certainty in criminalization serves a protective and advanced function in restraining criminal authority. Therefore, the outcome of the jurisprudential principles governing criminalization is that the legislator is obliged to clearly establish and justify the necessity, proportionality, and Shariah-based foundation of prohibition in each case. Otherwise, criminalization will lack Shariah and legal legitimacy.

The supplementary principles of criminalization in Islamic criminal law constitute a body of substantive and procedural rules designed to ensure the legitimacy of penal intervention and prevent penal inflation. One such principle is the principle of religious proportionality, which requires that the severity of the penal response correspond to the nature of the harm, the degree of injury, and the significance of the protected religious interest—an approach reflected in Article 18 of the Islamic Penal Code of Iran. In addition, the principle of general necessity stipulates that criminalization is permissible only when non-penal mechanisms—such as civil, disciplinary, or administrative measures—are insufficient to avert the harm, thereby reserving penal sanctions as a last resort. Research by Saeedi and colleagues demonstrates that adherence to this principle prevents the expansion of penal authority in the domain of legal acts and confines criminal legislation to situations involving a demonstrable and protectable religious interest.[3] Furthermore, the principle of strict interpretation of criminal statutes, reflected both in Islamic jurisprudence and in Iranian law (Article 167 of the Constitution and Article 11 of

1 Eslami-Nia (n 16) 99–104

2 Mahdi Momeni, 'The Principles of Legality in International Criminal Trials' (2016) 33(55) *International Legal Journal* 159, 159–184.

3M Sa'idi, S Ebrahimi and MM Zarei, 'Foundations of Criminalization of Legal Acts' (2023) 10(19) *Pazhuheshnāmeh-ye Mazāheb-e Eslāmi* 523, 531–533.

the Islamic Penal Code), emphasizes that in cases of doubt, ambiguity, or uncertainty, extending the scope of criminal law is prohibited and liberty must be preferred. Alongside these rules, the principle of individual accountability mandates that penal sanctions may be imposed only when the conduct is voluntary and attributable to the agent, thereby preventing the introduction of objective or expansionist forms of liability. Studies by Najafi-Tavana show that these principles are binding not only in jurisprudence but also in Iran's legislative structure, obliging the legislator to reduce the scope of penal intervention to what necessity requires.[1] On the basis of these principles, criminalization must rest on valid evidence, an assessment of public religious interest, and a precise evaluation of social and legal consequences. Ultimately, these principles ensure that Islamic criminal law adopts a restrained and disciplined approach rather than an expansionist one, permitting penal intervention only where genuinely necessary and consistent with the definitive rules of the Sharia.

In comparative perspective, the relationship between the governing principles of criminalization and the concept of liberty in the two systems of Western and Islamic criminal law rests on two distinct normative foundations, each of which structures the limits of penal intervention and the criteria for restricting liberty according to its own internal logic. In the Western tradition, principles such as legality, strict interpretation, the presumption of innocence, proportionality, necessity, voluntary agency, and personal responsibility position liberty as a legally protected right and require that any restriction of liberty be permissible only upon the establishment of juridical harm, the foreseeability of prohibition, and the existence of normative necessity; thus, liberty functions as the external boundary of penal authority and as the overarching criterion for evaluating the legitimacy of all criminalization processes. By contrast, the principles governing criminalization in Islam—including permissibility, innocence, non-dominion, the prohibition of undue hardship, the no-harm rule, general necessity, religious proportionality, and the protection of the five essentials—conceive liberty as a qualified competence subordinate to religious limits, and condition the legitimacy of penal intervention on the existence of a valid prohibition, the establishment of a generalizable harm, and the possibility of assigning religious duty; accordingly, liberty is not understood as absolute liberty but as a status defined within the constraints of Sharia-based obligations and purposes. The outcome of these two approaches is that the principles of criminalization in the West ground liberty as the basis for constraining public authority, whereas the principles of criminalization in Islam regulate liberty in light of religious necessity and the preservation of fundamental interests, defining the boundaries of penal intervention according to the purposive orientation of jurisprudence and the discipline of normative order.

4. Criteria of Criminalization in Western and Islamic Legal Systems

In Western criminal law, criteria serve as normative tests for determining whether the necessary conditions for placing an act within the domain of criminal prohibition are satisfied, particularly regarding the necessity of intervention, the proportionality of the

1 A Najafi-To'ana and F Mostafazadeh, 'Criminalization in the Criminal System of Iran' (2013) 5(8) *Studies in Islamic Jurisprudence and Law* 149, 157–160.

response, and the attributable disruption of the legal order. These criteria operate as objective and assessable tools that delineate the permissible boundaries of penal authority and seek to ensure that conduct enters the criminal domain only when a violation of a legally protected and substantively significant interest can be established. A foundational criterion is whether the harm in question is attributable to the conduct under review, thereby determining whether criminal intervention is warranted as the appropriate legal response. A second prominent criterion requires proof of an actual or potential threat to a legally protective structure that the legislature recognizes as worthy of safeguarding; this prevents the criminalization of conduct that is merely undesirable or controversial without possessing a defined juridical nexus. A third criterion centers on the foreseeability of the penal consequences of conduct, ensuring that individuals can evaluate the scope of penal intervention on the basis of accessible legal rules—an element integral to the broader system of legal certainty in criminalization.[1] These criteria also weigh the proportionality between the intensity of penal intervention and the significance of the protected interest to prevent unwarranted expansion of punitive authority. In addition, a rational relationship between the nature of the conduct and the degree of juridical risk it generates constitutes a necessary condition for its inclusion in the criminal domain. Further criteria include assessing the necessity of penal protection in comparison to alternative regulatory mechanisms, thereby preventing the substitution of criminal sanctions for non-penal remedies. The practical enforceability of the criminal rule likewise serves as an evaluative benchmark, prohibiting the enactment of norms that cannot be effectively implemented. Taken together, these criteria establish the legal method by which undesirable conduct is normatively assessed and serve as the principal evaluative tools for determining the necessity and limits of criminalization in Western criminal law.

In continuity with this approach, the supplementary criteria of criminalization in Western systems emphasize the justifiability of penal intervention in light of legal and institutional functions. One such criterion is the requirement to assess the effectiveness of criminal sanctions relative to non-penal alternatives, determining whether resort to penal instruments is necessary when compared to available substitutes. Another criterion of particular importance concerns evaluating the coherence of criminalization with the overarching structure of the criminal justice system so as to prevent the introduction of rules incompatible with its foundational principles; this involves examining the extent to which a proposed criminal prohibition aligns with general principles of responsibility and penal response, and whether its incorporation into the criminal framework would generate doctrinal inconsistency. A third criterion focuses on the explanatory adequacy of the criminal rule, determining whether the legislature has defined the conduct in a manner that permits consistent and uniform enforcement; this requirement rests on the necessity of workable, unambiguous definitions.[2] Another criterion emphasizes the assessment of whether sufficient institutional resources exist to implement the new rule, thereby preventing the expansion of norms that lack practical enforceability. Alongside these considerations, the examination of the

1 L Zedner and JV Roberts (eds), *Principles and Values in Criminal Law and Criminal Justice* (Oxford University Press 2012) 2.
2 Nicola Cross, *Criminal Law for Criminologists: Principles and Theory in Criminal Justice* (1st edn, Routledge 2020) 30.

collateral effects of penal intervention on individual rights constitutes a crucial dimension of the evaluative process, ensuring that criminal prohibitions do not generate disproportionate or atypical consequences. The criterion of assessing the comprehensiveness of the penal rule is likewise applied to prevent the enactment of norms that would produce uncontrollable expansions of criminal liability. Moreover, evaluating the deterrent function of the proposed prohibition relative to the degree of penal intervention plays an identifiable role in this process. A further criterion examines whether a clear relationship can be established between the actus reus and *mens rea* in the proposed criminalization, ensuring that the conduct is compatible with the conceptual structure of criminal responsibility. Taken together, these criteria form a multi-layered evaluative system through which the necessity and feasibility of criminalizing particular behaviors are scrutinized, thereby playing a decisive role in delimiting the scope of penal intervention.

The jurisprudential criteria of criminalization in the Islamic criminal-law system rest on the premise that the incorporation of a given conduct into the domain of penal prohibition is permissible only where a demonstrable, generalizable harm and a threat to one of the essentials of the Sharia can be established. Within this framework, the primary rule is permissibility and the absence of penal intervention, and elevating a behavior to the status of criminal prohibition requires either valid Sharia-based proof or a governmental justification grounded in general necessity. The criterion of the "existence of a legitimate harm" requires that the prohibited conduct produce definite or near-definite detrimental effects on the social, moral, or legal order, and that such harm be objectively assessable through authoritative evidence rather than conjecture or politically motivated interpretations. In the analysis of the jurisprudence of regulatory systems (Fiqh al-nizāmāt), any criminalization lacking a clear nexus to the disruption of the Sharia-based normative order or to a demonstrable threat to the public interest is deemed illegitimate.[1] The criterion of "non-contradiction with primary rulings" further stipulates that no penal rule may conflict with the fixed substantive injunctions of the Sharia, except in cases of normative conflict where the rule of priority between the more and less important is applied. The criterion of "elimination of undue hardship" likewise functions as a constraint on the scope of criminal law and prevents the imposition of onerous or disproportionate penal obligations. Alongside these, "disruption of public order," as a recognized secondary title, can ground criminal prohibition only where a verifiable threat to security, public order, or the essential functions of society is established.[2] Collectively, these criteria are grounded in necessity, proportionality, and demonstrability and serve to prevent expansionist tendencies in the Sharia-based penal system.

Developments in international criminal law over the past century indicate that the shift from the "doctrine of absolute justice" to the "doctrine of legality" has been gradually accepted as a necessary condition for achieving fair and predictable trials. According to Momeni, the explicit acceptance of the principle of legality in international criminal documents and practices

1 A Arzhang, 'Criminalization from the Perspective of the Jurisprudence of Governance Systems' (2019) 27(104) *Feqh* 141, 153–157.

2 G Khosroshahi and A Ganji, 'Interest-Based Criminalization in Iran' (2019) 8(28) *Quarterly Journal of Criminal Law Research* 175, 181–185.

reflects the growing convergence of national and international criminal systems towards limiting the exercise of criminal power and guaranteeing fundamental liberties.[1] The criteria governing criminalization in the Islamic Republic of Iran are based on the Constitution's binding structure and statutory provisions that regulate the principle of legality and the restrictions on penal authority. Pursuant to Article 4 of the Constitution, all legislation must conform to the principles of the Sharia, and this requirement operates as the primary criterion of legitimacy in penal lawmaking. Article 36 of the Constitution and Article 2 of the Islamic Penal Code further stipulate that criminalization must rest upon an authoritative and foreseeable legal text, thereby making the criterion of "clarity and foreseeability" mandatory in the legislative process. The criterion of "legislative necessity" requires the legislator to establish the inadequacy or failure of non-penal mechanisms before resorting to penal instruments, and to enact criminal prohibitions only where alternative methods prove insufficient. The criterion of "coherence with the structure of criminal responsibility" likewise mandates that any new criminal prohibition be consistent with principles such as strict interpretation, the presumption of innocence, and the prohibition of imposing punishment without definitive legal justification. Within the domain of interest-based legislation, the criterion of a "demonstrable general public interest" requires that any appeal to public interest be grounded in verifiable and objective necessity rather than in political considerations or ad hoc expediency.[2] Additionally, the criterion of "practicability" requires that a criminal rule be enacted only when its enforcement is institutionally, socially, and judicially feasible and effective.[3] Taken together, these criteria demonstrate that penal legislation in the legal system of the Islamic Republic is anchored in necessity, transparency, normative coherence, and enforceability, and they operate to prevent the transformation of criminal law into an instrumental or politically reactive apparatus.

The criteria governing criminalization in the Islamic Republic of Iran are based on the Constitution's binding structure and statutory provisions that regulate the principle of legality and the limitation of penal authority. Pursuant to Article 4 of the Constitution, all legislation must conform to the principles of the Sharia, and this requirement functions as the primary criterion of legitimacy in penal lawmaking. Article 36 of the Constitution and Article 2 of the Islamic Penal Code further stipulate that criminalization must rest on an authoritative and foreseeable legal text, thereby making the criterion of "clarity and foreseeability" obligatory in the legislative process. The criterion of "legislative necessity" requires the legislator to establish the insufficiency or failure of non-penal mechanisms prior to resorting to penal instruments, and to engage in criminalization only when alternative regulatory tools prove inadequate. The criterion of "coherence with the structure of criminal responsibility" likewise mandates that any new criminal prohibition conform to principles such as strict interpretation, the presumption of innocence, and the prohibition against imposing punishment without definitive legal justification. In the domain of interest-based legislation, the criterion of a "demonstrable

1 Mahdi Momeni, *The Principles of Legality of Crimes and Punishments in International Criminal Law* (Mizan Publishing 2013) 119–125.
2 Arzhang (n 32) 154–156.
3 Sa'idi, Ebrahimi and Zarei (n 28) 531–533.

general public interest" provides that any reliance on public interest must rest upon objective and verifiable necessity rather than political interpretations or situational expediency.[1] Additionally, the criterion of "enforceability" requires that a criminal rule be enacted only when its implementation is institutionally, socially, and judicially feasible and effective.[2] Taken together, these criteria show that penal legislation in the legal system of the Islamic Republic is grounded in necessity, transparency, normative coherence, and enforceability, preventing the transformation of criminal law into an instrumental or politically reactive mechanism.

The relationship between criminalization and liberty in Islamic and Western criminal law, although both superficially limit state criminal power, rests on two distinct logics: normative foundations and the justification model for criminal intervention. In Western criminal systems, individual liberty is presumed as a prior value within the legal system, and criminalization is accepted as a limited exception that requires narrow justification in relation to this principle. Therefore, criteria such as the violation of legal interests, criminal necessity, and proportionality serve as control mechanisms to prevent the unwarranted expansion of criminal authority and to protect individual autonomy. In this framework, any restriction on liberty requires clear legal specification, predictability, and rational oversight over the legislator's decisions. In contrast, in Islamic criminal law, liberty is not considered an independent, unrestrained value but is defined structurally in relation to duty, responsibility, and the normative order of society. Accordingly, the criteria for criminalization in Islam focus on the existence of real harm and the necessity of criminal intervention to preserve fundamental interests, rather than solely protecting individual liberty as the starting point of analysis. The legitimacy of restricting liberty in this system is contingent on the alignment of criminalization with Shariah principles and rules, which themselves function as limits on criminal authority. Although the principle of proportionality is accepted in both systems, the basis for its evaluation differs: in Islamic law, proportionality must align with the substantive criteria of the Shariah order. In Western systems, liberty is primarily protected through statutory laws and formal guarantees, and criminalization holds an exceptional nature. In contrast, in Islamic law, the protection of liberty is achieved within the framework of the Shariah order and through regulating the exercise of criminal power. Despite these foundational differences, both systems share the principle that the absence of clear, measurable, and controllable criteria in criminalization puts liberty at risk and makes criminal authority prone to abuse. Thus, while the theoretical foundations of criminalization differ between Islam and the West, both systems ultimately lead to the regulation of liberty and the legitimate limitation of criminal power.

Conclusion

The present study demonstrated that liberty occupies a central and structural position within the architecture of criminal law, functioning as the external boundary of penal authority. The conceptual analysis of liberty conducted herein revealed that liberty is not merely a value-laden proposition but a binding normative condition that obliges the legislator to formulate

1 Arzhang (n 32) 154–156.
2 Sa'idi, Ebrahimi and Zarei (n 28) 531–533.

all penal decisions in light of it. The findings showed that liberty constitutes the foundation of valid volition and the precondition for attributing criminal responsibility; in its absence, penal blameworthiness lacks any normative grounding. The research further established that liberty performs a dual role in criminal law: it operates both as a protective shield against expansionist penal policies and as the principal criterion for assessing the legitimacy of coercive intervention. The comparative analysis indicated that liberty, in both legal systems examined, shapes the structure of criminal responsibility and constrains the scope of public intervention. The study demonstrated that liberty, as an individual right, imposes obligations on the legislator, requiring that any restriction be justified exclusively through substantiated necessity. It also clarified that liberty, as a foundational value, must be safeguarded throughout the criminal lawmaking process and cannot be subordinated to preferences or non-normative considerations. The analysis showed that liberty constitutes a prerequisite for the mental element of crime and that, without the existence of choice and free will, criminal responsibility cannot be attributed. Ultimately, the study established that liberty in criminal law is not merely an individual entitlement but an institutional mechanism for stabilizing the legal order.

The foundations of criminalization in Western criminal law rest on principles that delineate the conditions under which penal intervention is legitimately warranted. In this system, criminal intervention is justified only when the conduct in question disrupts the legal order and poses a threat to public security or the rights of others. Put differently, Western criminal law requires that penal intervention be grounded in a clearly articulated legal rationale and proportionate to the degree of threat generated by the conduct. The principles of legality, proportionality, and necessity operate as the principal criteria governing penal intervention and ensure that no criminal sanction is imposed absent a reasoned and legally cognizable justification. By contrast, the foundations of criminalization in Islamic law are anchored in the preservation of public welfare and adherence to religious obligations. In this framework, liberty is conceived as a qualified concept that must be regulated within the bounds of Sharia-based duties and the protection of collective interests. Penal intervention in Islamic law is legitimate only when the conduct threatens public welfare or the essential interests of the Sharia. The normative structure of Islamic law insists that criminalization must align with the objectives of the Sharia and that no penal intervention may exceed what is necessary to safeguard these objectives and the public good. These foundational divergences have led to the understanding that, in Western law, penal intervention functions primarily as a mechanism for maintaining the legal order and public security, whereas in Islamic law it operates principally to protect the five essential interests of the Sharia and the broader public welfare.

The governing principles of criminalization in Western and Islamic criminal law play a decisive role in defining the legitimate boundaries of penal intervention. In Western criminal law, the principles of legality and proportionality constitute two foundational pillars, requiring that criminal intervention be employed only when the conduct in question poses a serious threat to social order or the rights of others. The principle of legality entails that no penal intervention may be imposed without an authoritative legislative text, and that all crimes and punishments must be explicitly defined by law. In addition, the principle of proportionality requires that the severity of penal intervention correspond to the gravity and nature of the threat posed by the conduct. This principle functions as a safeguard against expansionist penal policies, ensuring that criminal sanctions are imposed only when necessary and in the least intrusive manner possible. In the Islamic legal system, the governing principles of criminalization are grounded in religious and ethical norms. The principles of the prohibition of harm, the elimination of undue hardship, and the protection of the five essential interests of the Sharia define the permissible scope of penal intervention. Under the prohibition of harm, no criminal sanction may inflict unwarranted or unnecessary harm on individuals or society. Likewise, the principle of eliminating undue hardship stipulates that no criminal obligation or punishment may place an individual in an intolerable or excessively burdensome situation. As a general rule, all penal intervention must fall within the bounds of public welfare and the essential objectives of the Sharia and must be justified by genuine religious and social necessity. Moreover, proportionality also operates as a principle of criminalization in Islamic law, requiring that the degree of penal intervention correspond to the harm or threat produced by the conduct. This principle prevents the overexpansion of penal authority and ensures conformity with Sharia-based constraints, emphasizing that no criminal intervention may be imposed without a valid legal and social justification.

The criteria governing criminalization in Western and Islamic criminal law plays a fundamental role in delineating the legitimate boundaries of penal intervention. In the Western legal tradition, criteria such as foreseeability, necessity, and proportionality serve as central benchmarks for assessing the legitimacy of criminal intervention. Foreseeability requires that individuals be able to anticipate and understand the penal consequences of their conduct, thereby functioning as a safeguard against disproportionate or unjustified criminal measures. The criterion of necessity further mandates that criminal intervention be employed only when non-penal mechanisms are incapable of addressing the underlying problem effectively; accordingly, penal sanctions must constitute a measure of last resort. The criterion of proportionality requires that the severity of criminal sanctions correspond to the nature and degree of the threat posed by the conduct, thereby preventing the imposition of penalties exceeding what is required to preserve public order and the rights of others. In Islamic criminal law, the criteria of criminalization are anchored in the normative framework of the Sharia and the preservation of public welfare. The prohibition of harm, as a principal criterion, dictates that no criminalization may result in unjustifiable harm to individuals or society. Similarly, the elimination of undue hardship functions as a limiting criterion, stipulating that criminal intervention may not impose excessive or unnecessary hardship upon individuals. In Islamic law, penal intervention must advance public welfare and safeguard the essential objectives of the Sharia, and no act may be criminalized without a valid religious and social justification. These principles operate to prevent expansionist penal policies and the imposition of disproportionate or unnecessary sanctions. In essence, the criteria for criminalization in both legal systems emphasize the need for measured, justified, and proportionate penal interventions to prevent the unregulated expansion of punitive authority and protect individual liberty from unwarranted encroachment.

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The Right to Repair Goods in Iranian and European Union Law

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Abstract

The right to repair has emerged as a fundamental component of modern consumer protection, playing a crucial role in complementing consumer rights, ensuring contractual fairness, and promoting environmental sustainability. This right not only guarantees that consumers can access adequate, affordable, and timely repair services in the event of product malfunction, but also empowers them to make informed choices and resist monopolistic control over after-sales services. This article adopts a comparative approach to examine the legal recognition and scope of the right to repair within the legal systems of Iran and the European Union. The findings indicate that while certain sector-specific regulations in Iran—such as those governing household appliances and motor vehicles—do incorporate limited aspects of this right, the absence of explicit legal recognition, weak enforcement mechanisms, and the lack of mandatory repairability design significantly hinder its full realization. In contrast, the European Union has formally recognized the right to repair through legislative instruments such as *Directive* (EU) 2019/771 and the *Ecodesign Directive*, alongside implementing circular economy initiatives. These measures have integrated the right to repair into the EU's broader consumer protection and environmental policies. The article concludes that establishing a comprehensive and enforceable right to repair in Iran requires structural legislative reform, technical standard development, and a fundamental rethinking of after-sales service policies.

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Introduction

The Right to Repair movement represents a consumer rights initiative that has attracted significant interest over the past few years. Essentially, the movement advocates for the freedom of individuals and small businesses to modify and repair their own products without being restricted by the limitations set by the manufacturers.[1] The concept grew out of concerns with the shortened lifespans of products, particularly electronic items, and the difficulties consumers face if and when they try to fix things themselves or through third-party providers other than the original manufacturer.[2] The movement has been driven by a diverse range of stakeholders, including independent commercial repairers, consumer rights organizations, individual hobbyists, farmers, sustainability advocates, and supporters of circular economy ideals.[3] Together, they have catalyzed pivotal policy discussions and legislative changes in key consumer markets worldwide, attempting to break down barriers to repair that limit consumer freedom and add to mounting electronic waste problems.[4] The Right to Repair movement has achieved notable legislative success. In the US, Massachusetts became the first state to pass right-to-repair legislation covering motor vehicles in 2012, which in turn resulted in a 2014 deal between automobile makers and third-party repair shops. More recently, in December 2022, New York enacted the Digital Fair Repair Act (DFRA), becoming the first US state to establish a right to repair for digital electronic products, though industry pressure led to significant modifications to the original proposal.[5] Currently, at least 18 states have introduced bills that would require manufacturers to provide consumers with access to replacement parts and repair manuals.[6]

Within the European Union, despite its ambitious sustainability aspirations, the Right to Repair has yet to be accorded a key position in its environmental policy, though elements of the concept can be identified in the existing legal framework.[7] Recent EU measures include proposals to amend the Sale of Goods Directive to require sellers to provide repairs at no cost when the repair cost is equal to or less than the replacement cost, to guarantee access to spare parts and repair information, and to require manufacturers to notify consumers of their rights. Other nations have also started to act on this matter. The United Kingdom has enacted Right to Repair Regulations, while France has adopted the 2020 Anti-Waste Law, obliging manufacturers to provide repair information to consumers prior to purchase.[8] In nations such as Australia, there are limited protections in intellectual property, consumer, and competition legislation, although adherence to international standards remains inconsistent.

1 Sila Ozturkcan, 'The Right-to-Repair Movement: Sustainability and Consumer Rights' (2023) 14 *Journal of Information Technology Teaching Cases* 218.

2 Hernández, Ricardo J., Miranda, Carmen, & Goñi, Javier I. (2020). Empowering sustainable consumption by giving back to consumers the 'right to repair'. Sustainability, 12(3), 850, 2020, 3.

3 Kayleen Manwaring, '"Slowing Down the Loop": Smart Devices and the Right to Repair' (2024) 38 *International Review of Law, Computers & Technology* 269.

4 Ozturkcan (n 1) 218.

5 Manwaring (n 3) 269.

6 Hernández, Miranda and Goñi (n 2) 3.

7 Imarhiagbe, Michael, right to repair in EU competition law. Nordic Journal of European Law, 5(1), 2022, 166.

8 Surajit Kumar Roy and Nilanjana Sen, 'Right to Repair: A Reflective Facet of Consumer Justice' (2023) 32 *Studia Iuridica Lublinensia* 15.

The campaign seeks not only to prolong the lifespan of electronic products through repair and refurbishment but also to safeguard the viability of repair and refurbishment labor markets by making diagnostic tools, repair manuals, and replacement parts available to the general public. Manufacturers have, however, lobbied against such legislation, arguing that it may infringe on their intellectual property rights, including trade secrets and patent exclusivity.[1]

As the Right to Repair movement continues its global spread, it has the potential to reduce electronic waste, protect the environment, and advance sustainable consumption by advancing legislative agendas that expand internet access, extend the useful life of existing technology, and enhance digital equity.[2]

1. Definition

1.1. Right to Repair

The right to repair may be defined as "the consumer's ability to repair defective goods or to access repair services at competitive prices".[3] This right operates at the intersection of consumer protection law and intellectual property law, as in many instances restrictions arising from patent rights, copyright, and trade secrets are enforced in ways that effectively preclude independent or competitive repair. From a legal perspective—particularly within patent law—the right to repair is often conceptualized as a legal defense against conduct that would otherwise be considered infringing, thereby allowing consumers to repair their products without violating exclusive intellectual property rights.[4]

The significance of this relationship between the right to repair and intellectual property rights became especially pronounced during the COVID-19 pandemic, when the urgent need to repair ventilators and other medical equipment demonstrated that rigid enforcement of exclusive rights could directly endanger public health. Within this framework, the right to repair is no longer viewed merely as a consumer privilege, but rather as a necessary limitation on the scope of intellectual property enforcement. From this perspective, some advocates argue that the right to repair should be understood as a "positive obligation on manufacturers to facilitate the lawful repair and servicing of goods that have been sold".[5]

This approach recalibrates the traditional balance of intellectual property law by shifting responsibility from consumers to manufacturers, requiring producers to support repair rather than using exclusive rights to obstruct it. The legal foundation of this position is often traced to the doctrine of exhaustion (or the first-sale doctrine), which holds that "the right holder's authority to control or restrict further distribution or use of a product is exhausted after the initial sale." Consequently, once manufacturers have fully benefited from the primary sale,

1 Leah Chan Grinvald and Ofer Tur-Sinai, 'Intellectual Property Law and the Right to Repair' (2019) *SSRN Electronic Journal* 63.
2 Ozturkcan, (n 1) 218.
3 11 Abbas M, "Patent law and 3D printing applications in response to COVID-19: Exceptions to inventor rights" (2022) 25(2) *Journal of World Intellectual Property* 320.
Ibid, 321.
4 Ibid, p. 321.
5 Ibid, p. 321.

they should not be permitted to rely on intellectual property rights to restrict or monopolize secondary repair markets or after-sales services.[1]

Beyond the bilateral relationship between consumers and manufacturers, the right-to-repair movement also carries broader environmental and economic implications and indirectly challenges the legitimate scope of intellectual property enforcement. The movement seeks to “extend the lifespan of electronic products through repair and refurbishment,” thereby reducing electronic waste while safeguarding independent repair and refurbishment markets by ensuring access to diagnostic tools, repair manuals, and spare parts. From this perspective, intellectual property–based barriers to repair not only undermine consumer autonomy but also contribute to unnecessary electronic waste and increased overall equipment costs.[2]

Ultimately, the right to repair is increasingly becoming “a reality that cannot and should not be avoided”.[3] Whereas economic interests of manufacturers and maximalist protection of intellectual property rights previously dominated policy debates, environmental concerns and sustainability objectives are now redefining this balance. Product repairability and access to spare parts are emerging as “market standards” to which all market participants—including consumers and intellectual property right holders—are gradually adapting. This shift reflects a growing recognition that extending product lifespans requires a reasonable limitation on the exercise of exclusive rights and their alignment with broader public interests, including waste reduction and the conservation of natural resources.[4]

1.2. Warranty

A warranty is fundamentally a contractual agreement between a manufacturer or seller and a consumer that provides protection against product defects and failures. Under this agreement, the manufacturer commits to repairing, replacing, or providing partial or full reimbursement to the consumer when a product fails during the warranty period.[5] Warranties come in different forms and serve as both promises and legal protections. Express warranties are those explicitly stated by sellers in contracts, documentation, or advertisements, while implied warranties are automatically recognized by law, such as the implied warranty of merchantability that ensures products work for their ordinary intended purposes. The warranty acts as a pledge that the product will perform its intended function under normal use conditions for at least the warranty period.[6]

Beyond just fixing broken products, warranties serve multiple purposes in consumer protection. They serve as quality indicators and promotional tools, making products more attractive to buyers while distinguishing them from competitors. Warranties also reduce customer risk by protecting against unexpected repair costs when products don’t perform as expected. Many countries have established legal warranty requirements - for example, EU

1 Ibid, p. 322.
2 Ozturkcan, (n 1) 218.
3 Tischner, Anna, and Karolina Stasiuk, ‘Spare Parts, Repairs, Trademarks and Consumer Understanding’ (2023) 54 *IIC International Review of Intellectual Property and Competition Law* 27.
4 Ibid.
5 Jie et al., 2020, p. 95527
6 Reisenwitz et al., 2016, p. 3.

rules provide a mandatory two-year warranty period for all consumer products, while Brazil has both legal and contractual warranty systems.[1]

1.3. Difference between Warranty and Right to Repair

The most fundamental difference between warranty and right to repair lies in their scope and timing. Warranties operate within a specific time frame - typically two years in the EU or as determined by the manufacturer - during which consumers can claim repair, replacement, or refund for defective products.[2] In contrast, the right to repair extends beyond warranty periods and focuses on consumers' ongoing freedom to fix, upgrade, or choose repair services for products they own. The relationship between these concepts becomes particularly important when warranty periods end. The right to repair remains relevant even after warranty expiration, which is significant given concerns about planned obsolescence - where manufacturers may design products to fail shortly after warranty periods end.[3] This highlights how warranty law focuses primarily on whether products meet expected durability standards, while right to repair addresses the separate question of whether products can be repaired at all.

Another key difference involves who controls the repair process. Warranty systems typically require consumers to use manufacturer-authorized repair services to maintain coverage. However, EU consumer law clarifies that commercial warranties cannot override legal guarantee rights, meaning consumers can seek independent repairs during warranty periods without voiding their legal protections, though manufacturers often create confusion about this through ambiguous warnings. Finally, the two concepts serve different but complementary consumer protection goals. Warranty law could be expanded to include both defect protection and separate reparability duties, addressing the distinct issues of product durability versus product repairability. While warranties focus on the beginning of product use and ensure initial functionality, right-to-repair legislation addresses the physical end-of-life phase and extends product usability.[4]

2. European Legal Framework for Right to Repair

The European Union's legal framework for the Right to Repair consists of a set of interrelated directives and regulations addressing different aspects of repairability, durability, and sustainability of products. Unlike the United States, where Right to Repair efforts are largely motivated by consumer rights and market competition concerns, the EU's approach is rooted mainly in environmental protection and circular economy goals.[5] The EU's Right to Repair approach is centered on the Ecodesign Directive (2009/125/EC), which establishes eco-design requirements for products related to energy consumption. This directive has led to the creation

1 Marques et al., 2022, p. 32.

2 van der Velden, M., Maitre-Ekern, E., and Wanja, D.K., 'The Role of Independent Repair in a Circular and Regenerative Economy' (2023) 4 Circular Economy and Sustainability p 2986.

3 Malinauskaite J and Erdem F, 'Planned Obsolescence in the Context of a Holistic Legal Sphere and the Circular Economy' (2021) 41 Oxford Journal of Legal Studies 732.

4 Lebloch, K. and Rafetseder, A., 'Laying foundations for a "Right to Improve"' (2024) Frontiers in the Internet of Things, p. 8.

5 Ibid, 28.

of implementing regulations for 31 product categories, including many consumer products like refrigerators, washing machines, electronic displays, and kitchen appliances.

These regulations require manufacturers to make "access to repair and maintenance information" available to "professional repairers," though they may charge "reasonable and proportionate fees" after a specified timeframe from the products' market launch. In 2019, the EU made a major advance in adopting specific "right to repair" rules for appliances such as televisions, washing machines, dishwashers, and refrigerators. These rules require manufacturers to provide spare parts to independent service providers for at least 10 years after purchase.[1] The EU has also discussed applying this rule to smartphones and other electronic products, indicating a general trend to advance repairability across product types. The European legal initiative for Right to Repair was given additional impetus by the 2020 passage of the Circular Economy Action Plan (CEAP) as a central element of the European Green Deal.[2] The CEAP proposes to create a sustainable product policy framework that combats premature obsolescence and enhances product repairability, explicitly linking environmental interests to competitive market concerns. It suggests revising EU consumer law to create a formal "right to repair" alongside new consumer rights to information on product repairability, lifespan, access to repair services, spare parts, and repair manuals.[3]

The European Union's legal framework on repairability covers different phases in a product's life. The Ecodesign Directive addresses the design phase, well ahead of the product being placed on the market. The Sale of Goods Directive, on the other hand, ensures that consumers receive a functional product for a set period of time. The provisions on the Right to Repair explicitly address the end-of-life phase, thus extending product lifetimes as long as economically viable.[4] In addition, some elements of EU intellectual property law support the Right to Repair movement. More precisely, Article 110(1) of the Community Design Regulation protects spare parts from design infringement actions, while Article 5(3)(l) of Directive 2001/29/EC introduces a copyright exception for "use in connection with the demonstration and repair of equipment." Despite these advances, recent critical analyses of the European Commission's proposed Directive to improve repairability have identified gaps in the EU's approach. The proposal has been criticized for its narrow scope and the potential transfer of control over the emerging repair market to manufacturers, rather than supporting independent repairers in overcoming access barriers.[5]

The Right to Repair policy of the EU is built on the back of previous policies concerning durability and product lifetime, such as the Sustainable Industry Low Carbon Programs, Energy Efficiency Directive, EU Energy Labeling Directive, Zero Waste Program, EU Action Plan for the Circular Economy, Air Quality Directive, EU Consumer Rights Directive, and Product Safety Law.[6] This extensive basis demonstrates the EU's commitment to converting

1 Contreras, 2020, 6.
2 Tischner, (n 16) 28.
3 Ibid.
4 K Lebloch and A Rafetseder, 'Laying Foundations for a "Right to Improve"' (2024) *Frontiers in the Internet of Things* 8.
5 Bermúdez et al., 2024, 16.
6 Hernández, Miranda and Goñi (n 2) 8..

the Right to Repair from a social movement into a legal endeavor, with robust environmental foundations deeply embedded in primary EU law, as set out in Article 11 of the Treaty on the Functioning of the European Union and Article 37 of the EU Charter.[1]

2.1. Consumer Rights and Remedies Under EU Law

The European Union has established a comprehensive framework of consumer rights and remedies regarding defective products, primarily through directives that have been transposed into Member State law. At the core of this framework is the Consumer Sales Directive 99/44/EC, which, together with the Unfair Terms in Consumer Contracts Directive 93/13/EEC and the Consumer Rights Directive 2011/83/EU, has significantly changed Member State law to promote the concept of the "informed consumer" who can assert their rights when entering into consumer contracts.[2]

Under EU consumer protection law, all products purchased by consumers are covered by a minimum two-year legal guarantee. During this period, if a product becomes defective or fails to function as expected due to a defect present at the time of delivery, consumers have the right to request repair or replacement. This legal protection exists regardless of any additional commercial guarantees provided by sellers, which may supplement but not replace the statutory minimum guarantee.[3] A defining characteristic of the EU's approach to consumer remedies is the establishment of a hierarchical system. The recently adopted Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods maintains the two-stage "hierarchy of remedies" introduced by Directive 1999/44/EC (2025)

In the first stage, consumers have the right to demand that goods be brought into conformity through repair or replacement, both of which are provided free of charge. Only if repair or replacement is impossible or cannot be completed within a reasonable time can consumers proceed to the second stage of remedies: price reduction or contract termination (2025). This hierarchical approach follows the principle of *pacta sunt servanda* (agreements must be kept), preferring remedies that maintain the contractual relationship (2025). The directive specifies that "a repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods".

The implementation of this hierarchy varies somewhat across Member States. For example, in Serbia, if non-conformity occurs within six months of the date of purchase, consumers have broader rights, being entitled to choose among demanding removal of the non-conformity, seeking a corresponding price reduction, or terminating the contract. However, the common denominator across the laws examined in Croatia, Slovenia, and Serbia is a hierarchy of rights, with repair and replacement as primary remedies and price reduction and contract termination as secondary options.[4]

Recent revisions to the Consumer Rights Directive have further emphasized the importance

1 Tischner and Stasiuk (n 16) 29.
2 Giliker, P., 'The Consumer Rights Act 2015 – a bastion of European consumer rights?' (2017) 37(1) Legal Studies 83.
3 Paula Giliker, 'The Consumer Rights Act 2015 – A Bastion of European Consumer Rights?' (2017) 37(1) Legal Studies 83.
4 Dudas and others, '[title unknown]' (2023) 229.

of repair as a remedy. Recital 48 explicitly states that “enabling consumers to require repair should encourage sustainable consumption and could contribute to greater durability of products”.[1] This reflects the dual purpose of EU consumer remedies: not only protecting consumers’ economic interests but also advancing sustainability objectives by reducing waste and extending product lifespans.[2] The right to repair as a consumer remedy is increasingly aligned with broader sustainability movements. One approach focuses on consumer protection rationales, arguing that consumers should be allowed to repair their own products rather than being forced to seek more expensive alternatives, such as manufacturer-certified repair shops or new product purchases. A parallel movement connects repair rights to sustainability goals aimed at reducing waste and pollution in response to climate change.[3]

Despite these advancements, some scholars have noted that the directive’s text maintains a strict hierarchy of remedies that might facilitate easier termination of contracts, potentially undermining the prioritization of repair.[4] This highlights the ongoing tension between consumer choice and sustainability objectives in the development of EU consumer protection law.

2.2. Implementation in National Laws

The European Union has put in place a comprehensive framework of consumer rights and remedies for faulty goods, primarily through directives that have been transposed into Member State law. Foremost among these is the Consumer Sales Directive 99/44/EC, which, together with the Unfair Terms in Consumer Contracts Directive 93/13/EEC and the Consumer Rights Directive 2011/83/EU, has significantly revised Member State law to promote the concept of the “informed consumer” who is able to assert their rights in the framework of consumer contracts.[5]

Under European Union consumer protection law, all products purchased by consumers are covered by a basic legal guarantee of at least 2 years. During this period, if a product is found to be defective or does not perform as expected due to a fault present at the time of delivery, consumers have the right to request repair or replacement. This legal protection is provided regardless of any additional commercial guarantees offered by sellers, which may augment but do not replace the statutory minimum guarantee.[6] One of the characteristic features of the EU’s approach to consumer remedies is the establishment of an ordered hierarchy. The new Directive (EU) 2019/771 on certain aspects of contracts for the sale of goods maintains the two-tier “hierarchy of remedies” set out by Directive 1999/44/EC (2025).

In the first tier, consumers are entitled to have goods brought into conformity by repair or replacement, both of which are free of charge. It is only if repair or replacement is impossible or cannot be achieved within a reasonable time that consumers can move to the second tier of remedies: price reduction or contract termination (2025). This hierarchical structure adheres to the principle of *pacta sunt servanda* (agreements must be kept), with a preference for

1 Malinauskaite and Erdem (n 22) 733.

2 Larry DiMatteo, ‘Right to a Clean Environment: Role of Contracts and Contract Law’ (2019) 53 *Revija Kopaoničke škole prirodnog prava*.

3 Ibid.

4 Malinauskaite and Erdem (n 22) 733.

5 Giliker (n 32) 83.

6 Kissova and Dubcova (n 33) 3.

remedies that preserve the contractual relationship (2025). The directive details that “a repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.”.

The application of this hierarchy differs to some extent among Member States. In Serbia, for instance, when non-conformity occurs within six months of the date of purchase, consumers enjoy broader rights, as they are entitled to choose among requesting removal of the non-conformity, requesting an appropriate price reduction, or terminating the contract. Nevertheless, the common denominator among the laws considered in Croatia, Slovenia, and Serbia is that there is a hierarchy of rights, with repair and replacement as first-rank remedies and price reduction and contract termination as second-rank remedies.[1] Recent changes to the Consumer Rights Directive have highlighted repair as an effective remedy. Recital 48 succinctly explains that “enabling consumers to require repair should encourage sustainable consumption and could contribute to greater durability of products”.[2] This assertion shows the twin aims of EU consumer remedies: not only protecting consumers’ economic interests but also supporting sustainability initiatives by preventing waste and increasing product durability.[3] The right to repair, as a consumer remedy, is increasingly aligned with broader sustainability movements. One strand focuses on consumer protection arguments that consumers should be allowed to repair their own products rather than being forced into more expensive alternatives, such as manufacturer-approved repair shops or new purchases. A second movement links repair rights with sustainability goals intended to reduce waste and pollution in the face of climate change.[4]

Notwithstanding these developments, some commentators have pointed out that the text of the directive preserves the stringent hierarchy of remedies, which could pave the way for the easier cancellation of contracts, and hence undermine the preference for repair.[5] This illustrates the tension between consumer choice and sustainability goals in the evolution of EU consumer protection law.

2.3. Challenges and Limitations

While substantial strides have been made to establish Right to Repair systems in Europe, a host of compelling obstacles and limitations persist in fully realizing repair rights. A primary barrier is manufacturers’ attempts to utilize intellectual property laws to limit repair rights. Manufacturers have tactfully incorporated industrial property rights to retain control over their products beyond their immediate sale to consumers, thwarting not only consumers but also any independent repair approach in the aftermarket.[6]

An example of a manufacturer tactic would be to put the brand name on every single

1 Dudas and others (n 34) 229.
2 Malinauskaite and Erdem (n 22) 733.
3 DiMatteo (n 36).
4 Ibid.
5 Malinauskaite and Erdem (n 22) 733.
6 Alba Nogueira, ‘Are Soft Legal Measures in Circular Economy Action Plans Enough to Permeate EU Strong Economic Core Regulations Bringing Systemic Sustainable Change?’ (2022) Circular Economy and Sustainability 1561.

part (even on tiny parts like screws and plastic caps), making it impossible for the consumer or repairer to replace components or parts (even the smallest) with components provided by another alternative service provider. An example would be if Apple allowed independent technicians to replace a phone battery, it could effectively open the door for a multitude of independent services that would provide battery replacements at a cheaper cost than Apple could 'provide'; the repair would simply not be performed by Apple technicians. Manufacturers have succeeded with this strategy through litigation, suing the parts replacement firm and deriding them in court as an authentic product; an example of this legal course was played out before the Norwegian Supreme Court in a ruling handed down in June 2020.[1] Another major barrier concerns the technological protection measures manufacturers implement to prevent access to the device software necessary to enable repairs. Manufacturers create a culture of ease in limiting independent access to device software that would otherwise enable repairs. There are needed regulations that would mandate companies to disseminate basic information enabling a repair to take place, thereby defeating protective measures that restrict access to consumer devices.[2]

Navigating corporate lobbying presents an additional obstacle to building traction for repair rights. Manufacturers have actively lobbied against Right to Repair (or Right to Repair provisions) in the United States and the European Union.[3] It is not entirely unexpected then that lobbying has successfully delayed or stopped legislative initiatives in many U.S. states, as manufacturers have engaged in arguing that Right to Repair laws could infringe upon their intellectual property rights, which included patents, trade secrets, and other protections.[4] The recent Directive on Common Rules Promoting the Repair of Goods in the EU is similarly likely to be rife with ambiguities that could minimize its impacts. In the directive, manufacturers are required to sell parts and tools to independent repairers at "a reasonable price, and that does not deter repair"; however, "reasonable" remains undefined and will likely vary across national jurisdictions.[5] Overall, this ambiguity would seem to provide potential loopholes for manufacturers to exploit in their domination of the repair marketplace.

The jurisdiction supporting the Right to Repair is also problematic due to enforcement of competition law principles. While competition law principles exist within European Union (EU) competition rules that could, at least in principle, address constraints on access to repair services through non-authorized repair services, the Court of Justice of the European Union (CJEU) has been unwilling to challenge the manufacturer-dominated repair market. For instance, in the matter involving Swiss watchmakers who refused to share spare parts with independent repairers, the General Court determined that the absence of legal constraints was lawful in part because there was competition among authorized repairers.[6] To navigate through these challenges, legal scholars and advocates propose relying on the principle of

1 Ibid., p. 1561.
2 Abbas (n 11) 322.
3 Grinvald and Tur-Sinai (n 9) 63.
4 Ibid.
5 LR Batista-Pritchard and others, 'How Circular Can We Legally Be? A Research Agenda for Adaptiveness to Close the Gap Between "Traditional" Legal Concepts and Circular Innovation' (2024) 12(3) Journal of Innovation Management.
6 Ibid. 4.

exhaustion of rights. Under this principle, the rights holder's ability to control or limit the distribution of further use of their products is "exhausted" where a first sale has taken place. As an advocacy approach, exhaustion of rights could be a useful means to challenge patent owners' ability to control aftermarket repairs once they have earned their full profit from the sale of the original product.[1]

3. European Legal Warranty of Goods

3.1. The Legal Warranty Framework for Goods in the European Union

Throughout Europe, consumer law applies broadly, and statutory warranties govern products. Consumer protection is articulated at an EU-wide level, with a minimum two-year warranty period applying to the purchase of any product. The statutory guarantee covers product defects that were present at the time of delivery. This means the consumer can request that a faulty or defective good be repaired during that period.[2] The EU framework recognizes three general types of warranties in the European retail market: statutory, extended, and commercial. Statutory warranties provide consumer protection, a certain level of quality in the marketplace, and free repair or replacement, at least in the first two years after purchase of a good.[3]

While the EU provides a basic legal framework, it is up to individual member states to implement laws that can be more favorable than the minimum requirements in EU law.[4] For example, for certain new and second-hand goods expected to last longer, Norway has provided consumers with a five-year legal guarantee.[5] When repairs cannot be completed within a reasonable time period, consumers may demand a full refund of the purchase price or a discount. Commercial guarantees can provide protections for consumers, but cannot replace the legal guarantee of a minimum of two years.[6] However, the current legal guarantee minimum is facing practical challenges because repairs are getting expensive, as providers are not able to source parts for the repairs on some products, and therefore commercial guarantees and/or legal guarantees tend to be replaced with replacements, particularly when global supply chains make repairs more expensive. This economic reality often drives suppliers/producers to choose replacements rather than repairs during the guarantee period.[7]

3.2. The Relationship Between the Right to Repair and Warranty Law in the European Union

The overlap of rights-to-repair and warranty law raises important legal issues that could arise when planned obsolescence occurs. The importance of enforceable rights to repair up

1 Abbas (n 11) 322.
2 Kissova and Dubcova (n 33) 227.
3 Davor Dunkovic and Božidar Knežević, 'Extended Warranty and Its Impact on Perception in Sales Promotion of Durables' (2023) 21 *Business, Management and Economics Engineering* 204.
4 Jagdeep Singh and others, 'Evaluating Approaches to Resource Management in Consumer Product Sectors: An Overview of Global Practices' (2019) 235 *Journal of Cleaner Production* 234.
5 Ibid. 227.
6 Kissova and Dubcova (n 33), 227.
7 Singh (n 56) 227.

to the expiry of the warranty is particularly significant where companies operate in ways that manipulate the life cycle of products to align with warranty periods, and deliberately design goods to fail only after the warranty has expired.[1] The overlap of rights to repair and warranty law has led the European Commission to amend the Consumer Rights Directive as part of a push to put repair rights ahead of replacement, and to say in recital 48 that consumers should have a choice of repair or a replacement, but that, "Enabling consumers to demand that products should be repaired should stimulate sustainable consumption and could lead to better durability of products".[2]

The legal characterization of irreparability creates complex issues for warranty law. Irreparability can be evidence of planned obsolescence when it provides a partial explanation for failure to meet expected lifetime standards, but irreparability cannot be seen as warranty law relevant under current definitions. Currently, warranty law considers products to have failed to meet their expected lifetime based on the end of usability of the product itself, rather than on whether the defective product was/was not reparable.[3] Legal theorists suggest, however, that whether a product is repairable could be viewed separately in warranty law contexts, especially where the consumer might reasonably believe that a product should be reparable. Such a perspective would delineate the conceptual difference between irreparability and planned obsolescence, treating issues related to irreparability as a matter of law, detached from issues of durability defects. The easiest fix, proposed by DiMatteo, is to add a right to self-repair to warranty law and expand warranty protections to cover defective products, with an additional duty of repairability.[4]

4. The Right to Repair in Iranian Consumer Protection Laws

In the Iranian legal system, the "right to repair" is recognized as one of the fundamental rights of consumers and is relatively coherently and comprehensively reflected in the legal instruments pertaining to consumer protection. This right not only allows consumers to benefit from free or reasonably priced repair services in the event of a product malfunction or defect, but also ensures that manufacturers and suppliers bear full responsibility for providing spare parts and after-sales services for a defined period and in accordance with statutory standards. Iranian consumer protection laws have addressed this right particularly in the overarching *Consumer Protection Act* and in two key sectors: household appliances and motor vehicles (automobiles).

4.1. The Consumer Protection Act of 2009 (1388 SH)

The *Consumer Protection Act of 2009*, as the principal legal framework for consumer protection policies in Iran, provides a general and binding framework for safeguarding citizens' rights regarding goods and services. While this law primarily focuses on suppliers' obligations and product quality guarantees, the concept of the "right to repair" can be inferred implicitly and

1 Malinauskaite and Erdem (n 22) 733.
2 Ibid.
3 DiMatteo, (n 36) 53.
4 Ibid.

in a dispersed manner from certain provisions. However, unlike more specific regulations—such as those concerning household appliances or automobiles—it does not explicitly or structurally recognize the right to repair as a distinct legal entitlement. Under Article 1, paragraph 3, the definition of a warranty includes the obligation to "eliminate defects" and to replace components or products without charge. This language effectively supports the consumer's entitlement to free repair services within a specified period and implicitly lays the foundation for a right to repair. Furthermore, Article 4 requires manufacturers of capital goods, including automobiles, home appliances, and electronic devices, to maintain authorized repair centers and supply spare parts. Article 20 more explicitly addresses the issue of repair, empowering competent authorities to compel suppliers to collect, repair, or rectify defective products that have already been sold.

Nevertheless, the law suffers from several shortcomings that weaken the status of the right to repair. Firstly, this right is not expressly recognized as a standalone consumer right; rather, it is addressed only in the context of supplier obligations and within the framework of warranties. Secondly, the law lacks any definition of the standards or requirements for "repairability" of products and makes no reference to the rights of independent repairers, access to spare parts, technical documentation, or software-related information. Moreover, there is no provision specifying standard repair timeframes, mandatory guarantees for repair services, or compensation for delays in repair. In comparison with more advanced legal regimes—such as those of the European Union—that not only recognize the right to repair but also implement mechanisms requiring manufacturers to design repairable products, provide technical documentation to independent repairers, and respect consumers' rights to choose between recycling and repair, the Iranian *Consumer Protection Act* remains generalist and traditional in nature. While the Act provides a preliminary basis for recognizing the right to repair in the context of warranties and after-sales service, the full and modern realization of this right requires legal reform, the enactment of more detailed legislation, and the development of specialized regulations in the fields of repairability and digital consumer rights.

4.2. The Right to Repair in the Executive Regulations of the Consumer Protection Law in the Household Appliances Sector

In the established regulations governing household appliances, the "right to repair" has been codified and made mandatory through a comprehensive set of provisions and standards under the supervision of the Ministry of Industry, Mine and Trade. According to Article 4-1, after-sales services include technical support, the provision of standard parts, and free repairs during the warranty period. This warranty is defined in Article 7-1 as a set of obligations by the manufacturer or importer to provide free repair services and parts during a specified period. Article 16 explicitly states that in the event of any defect arising from design, production, or normal use, the manufacturer or importer is obligated to repair the goods free of charge during the warranty period. Note 1 of the same article stipulates the obligation to provide repair services and parts supply even after the warranty period expires, within the framework of the "commitment period" (typically up to 10 years). Another significant requirement in this regard is Article 20, which mandates the provision of repair services and the supply of parts for up to 10 years following the sale of goods.

In cases where repairs cannot be performed within the standard timeframe, Section 16-1 and Article 22 require the supplier to provide a similar replacement device to the consumer. Furthermore, in cases of recurring defects or prolonged repair times, Article 23 imposes an obligation to replace the goods or refund their value. Article 21, through its precise definition of a valid warranty card, considers information regarding repair and replacement conditions among the mandatory obligations of the manufacturer. To ensure transparency and enable consumer rights monitoring, Articles 24 and 25 require manufacturers to document and register information concerning performed repairs, reported defects, and replaced parts. From a quality perspective, Article 33 stipulates that repairs performed during the warranty period and even subsequent services must be covered by a guarantee for up to 6 months. Finally, Article 30 declares null and void any agreement that results in the waiver of the supplier's legal obligations toward the consumer. This protective framework, with its provisions for implementation, educational (Articles 26 and 36), and supervisory mechanisms (Articles 40 to 45), constitutes a guarantee for the effective realization of the right to repair in the household appliances sector.

4.3. The Right to Repair in the Automotive Consumer Protection Law

Alongside regulations governing durable goods, the Automotive Consumer Protection Law, enacted in 2007, has incorporated the "right to repair" precisely and transparently within its protective framework. This law mandates that automotive suppliers remedy any defect or fault arising from design, production, assembly, or transportation **free of charge and at no cost to the consumer** during the warranty period (Article 3). According to the notes of Article 2, the warranty period is a minimum of one year or 30,000 kilometers (whichever comes first), and the commitment period for parts supply and repair services is established at 10 years. This precise temporal framework represents the practical and mandatory crystallization of the right to repair in Iran's automotive market. The executive guarantee of this right is more clearly articulated in Article 4, whereby if safety component defects are not remedied after three repair attempts, or if the vehicle remains in the repair shop for more than 30 days, the supplier shall be obligated to either **completely replace the vehicle or refund its value to the consumer**. Additionally, if the vehicle is out of service due to repairs for more than 48 hours, the supplier is required to provide a replacement vehicle to the consumer.

Transparency in the provision of repair services is another requirement of this law. Article 5 obliges the supplier to notify the consumer in writing of all defects, actions taken, and parts replaced. The use of non-standard parts in the repair process is explicitly prohibited. Article 8 also stipulates that if the consumer does not utilize the official and authorized repair network, the protections of this law will not apply to them. More importantly, any agreement that results in the waiver or transfer of the supplier's legal obligations shall be null and void according to **Article 7**. In Article 9, the legislator requires the supplier to explicitly present the legal provisions to the consumer at the time of vehicle delivery, and in Articles 10 and 11, oversight of this law's implementation is entrusted to the Ministry of Industries and Mines.

4.4. Critique

Despite the provision of the "right to repair" in Iran's consumer protection laws, particularly in the household appliances and automotive sectors, these regulations face significant deficiencies when compared to the more advanced standards of legal systems such as the European Union. In Iranian regulations, the right to repair is primarily confined to the framework of warranties and after-sales services and lacks an independent philosophical foundation, particularly with respect to environmental rights and sustainable consumption. Conversely, in the European system, this right is conceived as part of the movement toward a circular economy and sustainable consumption. Furthermore, under Iranian law, the scope of goods and beneficiaries is limited, and there is no obligation to provide repair information, schematics, diagnostic software, or open access for third-party repairers to parts. This contrasts with the European Union, where manufacturers are obligated to provide such access to all users and independent repairers in order to break the monopoly of companies over after-sales services.

Moreover, the absence of effective enforcement mechanisms beyond product replacement or refund, weaknesses in addressing consequential damages, lack of obligations regarding repairable design, and inadequate dispute resolution mechanisms constitute other deficiencies in these two laws. Despite the existence of dispute resolution boards and numerous legal obligations, institutional protections and public access to rights-claiming processes in Iran are limited and predominantly paper-based. Additionally, Iranian law imposes no obligations on companies regarding sustainable and repairable design, whereas such requirements exist in European Union directives. Therefore, although Iranian laws have, as a first step, recognized repair services within the framework of consumer rights, they have a considerable path ahead to achieve the complete and effective realization of the "right to repair" based on global standards.

5. The Impact of Warranty on the Right to Repair

Warranties are fundamental consumer protection mechanisms provided by manufacturers to address the inherent risk of future defects or damage in electronic products and other consumer goods. These contractual assurances offer consumers certain remedies when products fail to meet expected standards or develop defects within a specified period. The right-to-repair movement has emerged as a significant consumer advocacy initiative with two distinct yet complementary motivations. The first is deeply rooted in consumer protection principles, arguing that consumers should have the freedom to repair their own products rather than being forced into expensive manufacturer-certified repair services or premature replacement purchases. The second motivation aligns with sustainability goals pursued by governments and international organizations that seek to reduce waste and pollution in response to climate change.[1]

The right to repair constitutes one of the most significant aspects of consumer rights, particularly when framed within the context of a warranty. This right directly stems from the obligations undertaken by the manufacturer, importer, representative, or seller. A warranty is a binding commitment that allows the consumer to request a free repair in the event of a defect in the product within a specified period. The legal structure governing this commitment—especially the agency relationship and the interaction among various actors in the supply chain—has a direct bearing on the practical enforcement of the right to repair.

5.1. The Role of the Representative in Implementing the Right to Repair under Warranty

Under Iranian law, a representative operates within the scope of authority delegated by the principal (manufacturer or importer). Based on agency principles, any obligations assumed by the representative toward the consumer—such as those arising under a warranty—are generally attributable to the principal. Accordingly, if the representative undertakes, within the scope of their mandate, to repair a product within the warranty period, such an obligation will be binding on the manufacturer. This approach is reflected in Note 3 to Article 3 of the Regulation on the Activities of Importers of Capital and Durable Consumer Goods (enacted on January 12, 2012), which explicitly provides that if the representative changes, the obligations of the previous representative are transferred to the new one. Furthermore, Note 4 of the same article obliges the foreign company, following the termination of the agency, to continue fulfilling its prior obligations and to appoint a new representative. These legal provisions confirm that the consumer's right to services such as product repair remains intact despite any change in representation, and that the transfer of warranty obligations ensures the continuity of this right.

Nevertheless, if the representative acts outside the bounds of their authority or contrary to the terms of the warranty—for instance, by agreeing to repair a product for which physical damage is excluded under the warranty—they shall bear personal liability unless the principal expressly ratifies the commitment.[2] According to Article 247 of the Iranian Civil Code, acts performed without permission or beyond the scope of the given authority are only effective upon subsequent ratification by the principal. Should the representative commit a breach in the course of duty, they may be held contractually liable or, in the absence of a contract, incur tortious liability.[3]

5.2. The Role of Warranty in Establishing the Right to Repair for Consumers

In practice, warranties play a vital role in confirming the consumer's right to repair. Depending on the nature of the product, how the warranty is activated, and who is identified

1 DiMatteo, (n 36) 53.
2 Esmaeil Safaei, Abbas Hossaini and Mohammad Emami, *Civil Law* (SAMT 2005) 141.
3 Hamidreza Hajiani, *Liability of the Agent in Iranian Law and Imamiyyah Jurisprudence* (Mizan 2013) 98–99.

as responsible in the sales chain, the right to repair may be claimed from the manufacturer, importer, representative, or seller.

For goods requiring specialized installation (e.g., refrigerators or air conditioners), the warranty is valid only if the installation is carried out by an authorized agent and the warranty certificate is officially completed. In such cases, the consumer may claim repair only from the authorized representative or the manufacturer, and the seller does not play a direct role in the warranty process.[1]

For goods that do not require specialized installation, the seller typically completes and delivers the warranty certificate to the consumer. At first glance, this action may appear to impose an obligation in favor of a third party (i.e., the manufacturer), but in practice it rests on an agency relationship implicitly granted by the manufacturer or its official representative. Consequently, the consumer may invoke the warranty and claim the right to repair. This practice is also validated and reinforced by prevailing commercial custom.[2]

From a legal standpoint, this arrangement constitutes a form of third-party beneficiary contract, which—despite the principle of privity of contract enshrined in Article 231 of the Iranian Civil Code—is enforceable by the consumer. Such exceptions to privity are widely accepted in various legal systems, allowing consumers to directly claim performance from the warrantor.[3]

6. Final Analysis in Iranian Law

The Iranian legal system still adopts a limited approach toward the right to repair, treating it primarily within the confines of contractual warranties. While Article 20 of the Executive Regulations on Home Appliances and its annexed notes define a ten-year period for after-sales service obligations, in practice, this period is limited to the supply of spare parts and repairs at a capped cost. There is no legal requirement to train independent repairers or to make spare parts available on the open market. As a result, repair remains monopolized by authorized dealers, leading to higher costs and reduced accessibility for consumers.

In the *Consumer Protection Law for Automobiles*, the right to repair is also largely confined to the warranty period, with enforceability limited to complete replacement for recurring defects or prolonged vehicle downtime (Article 4). However, even in this law, no explicit obligation is imposed on manufacturers or importers to provide public access to diagnostic tools and technical information for independent repairers. Consequently, the system diverges from principles of free competition and equitable access to technical services.

Despite the important role of warranties in protecting consumer rights, it must be acknowledged that the scope and function of this legal institution are inherently limited to a specific time frame and to narrowly defined powers concerning the repair or replacement of goods. Whether in the form of contractual commitments or statutory guarantees, warranties

1 Mohammad Ghasemi, Alireza Rezaei and Shima Bakhshi, 'Legal Analysis of Consumer Rights in the Warranty System' (2018) *Economic Law Quarterly* 92.
2 Ibid. 93.
3 Abdipourfard Ali, *General Theory of Contracts in Iranian Law* (Mizan 2013) (in Persian).

primarily aim to ensure a product's initial functionality for a predetermined period following purchase. Once this period expires, consumers are, in practice, deprived of a substantial portion of legal protection. By contrast, the right to repair encompasses a significantly broader scope, both in terms of temporal continuity—extending beyond warranty periods—and in terms of substantive content, as it includes the consumer's freedom to choose the method, tools, and service providers for repairing their products.

From this perspective, recognizing the right to repair within the Iranian legal system appears to be an undeniable necessity. This right can operate as a complementary legal mechanism to warranties by addressing the protection gap that emerges after warranty periods expire. While warranties constitute time-limited obligations that are largely controlled by manufacturers, the right to repair is grounded in the consumer's ownership of the product and secures their autonomy in deciding whether to repair, upgrade, or continue using the good. Consequently, consumer protection is extended beyond the stage of "initial product performance" to encompass the broader objective of "long-term and sustainable usability."

The importance of recognizing this right becomes even more pronounced in light of planned obsolescence. In many instances, manufacturers design products in a manner that leads to malfunctions or diminished performance shortly after the warranty period expires, thereby encouraging consumers to replace goods and purchase new products. Since this process typically unfolds after warranty coverage has ended, traditional consumer protection mechanisms prove inadequate in addressing it. Under such circumstances, effective prevention of planned obsolescence requires the formal recognition and protection of the right to repair—a right that ensures consumer access to spare parts, technical information, and independent repair services, while reducing dependence on manufacturer-imposed consumption cycles.

At the same time, it must be emphasized that the mere existence of after-sales services cannot fulfill the functions of the right to repair. Although both the right to repair and after-sales services relate to the repair and maintenance of goods after sale, they differ fundamentally in terms of their legal nature and scope. After-sales services constitute a contractual and commercial arrangement in which the conditions, duration, and manner of performance are largely determined by the manufacturer or seller, leaving the consumer in a relatively passive and constrained position. By contrast, the right to repair is grounded in the consumer's ownership of the product and guarantees their autonomy in choosing repair methods and service providers, accessing spare parts and technical information, and even carrying out repairs independently. Unlike after-sales services, which are typically limited to a specific time period and to manufacturer-authorized repair networks, the right to repair has temporal continuity and remains applicable even after the expiration of warranty coverage. Accordingly, the right to repair should be understood not as an optional service, but as a protective, mandatory legal institution aimed at strengthening consumer rights and reducing consumer dependence on manufacturers' commercial policies.

Another major challenge in Iran is the absence of an independent, specialized body to resolve repair-related disputes. While the European Union has developed various mechanisms such as *Alternative Dispute Resolution (ADR)* and *Online Dispute Resolution (ODR)* to address consumer disputes efficiently, Iranian law primarily refers such cases to Dispute Settlement Boards or formal courts, which are both time-consuming and costly (Article 3 of the Automotive Law).

Critical Summary:

Although Iranian regulations in the field of repair rights during the warranty period acknowledge the minimal obligations of manufacturers and importers, and in some instances provide for product replacement or refund guarantees, there remain substantial shortcomings in the following areas:

- Lack of a legally binding and comprehensive extension of repair rights beyond the warranty period;
- Absence of public access to spare parts, repair manuals, and tools;
- Monopolization of repair services by authorized dealers, with no recognition of independent or home-based repair rights;
- Lack of a competitive framework for repair services and insufficient support for small, independent repair businesses;
- Institutional weakness in monitoring and resolving technical-commercial disputes.

Accordingly, similar to the challenges observed in the EU legal system, Iran also faces considerable difficulties in enforcing the right to repair, particularly beyond the warranty period. However, the key difference is that the European Union has taken active steps, through the enactment of binding supranational legislation, to enhance public access, reduce monopolization, and promote transparency in repair services. In contrast, Iran's legal framework still requires fundamental reforms to effectively recognize and support the right to repair beyond the confines of contractual warranties. Looking ahead, this issue could serve as a key axis for reform in Iran's consumer protection regulations.

Conclusion

The Right to Repair has evolved from a niche consumer rights movement to "a reality from which we cannot and should not escape". This transformation reflects a fundamental shift in priorities, as environmental concerns increasingly outweigh purely economic considerations in policy discussions. The "impending climate catastrophe" has altered the political calculus around repair rights, diminishing the influence of particular economic interests in favor of broader societal benefits that come from extending product lifespans and preserving natural resources. The movement continues to gain momentum globally, with legislative initiatives advancing across the United States, European Union, and other nations. These efforts aim not only to expand consumer repair options but also to achieve broader environmental and social goals by "reducing electronic waste, protecting the environment, and promoting sustainable living".

The movement's focus on extending device lifespans through repair and refurbishment serves the dual purpose of reducing electronic waste while protecting repair and refurbishment labor markets. Despite this progress, significant challenges remain. The persistence of two separate repair markets—authorized repair services versus independent and DIY repairers—continues to place the latter group at a disadvantage due to restricted access to repair information and spare parts. Even in regions with advanced repair legislation, vague terms like “reasonable price” leave room for inconsistent implementation across jurisdictions. Consequently, “repair as a whole, and independent and DIY repair in particular, are still facing great barriers in terms of access, affordability, and behaviors”.

For countries like Iran with less developed repair rights frameworks, these challenges present both obstacles and opportunities. Interventions in policy and legislative frameworks could help establish stronger repair rights, including measures to prevent unfair trade practices and legislation that explicitly recognizes consumers’ right to repair while balancing competition law with intellectual property protection. Educational initiatives to develop repair skills and awareness among consumers could further support the emergence of a repair culture. As the Right to Repair becomes increasingly “a market standard to which all market participants, including consumers, are growing accustomed,” its integration into legal frameworks worldwide appears inevitable. This trend suggests that while the path toward comprehensive repair rights may face continued resistance from manufacturers, the long-term trajectory favors increased consumer repair freedom, reduced electronic waste, and more sustainable product lifecycles—goals that align with both environmental imperatives and consumer interests in Iran and globally.

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The Possibility of Considering Generative Artificial Intelligence as the Author of Literary and Artistic Works

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Abstract

The use of Artificial Intelligence technology in different areas of human life has caused several important legal challenges, which indicate an unprecedented development. Generative Artificial Intelligence, which appears to be a creative form of this technology, is important from a literary and artistic law perspective, since generating high-quality literary and artistic works is among the tasks it can perform. Such productions are similar to those created by human authors, and in some cases it is difficult to recognize that they were generated by Artificial Intelligence. Therefore, this paper addresses one of the most important challenges in intellectual property law: whether Generative Artificial Intelligence can be considered the author of the literary, artistic, and scientific works it generates. The results of this descriptive-analytical article show that, in the legal systems compared, the concept of author is currently restricted to human authors; consequently, it is not possible to consider Generative Artificial Intelligence as the author of literary and artistic works. Legislators are recommended to modify the laws to identify the author of literary and artistic works created using Generative Artificial Intelligence while meeting the needs of developers and users of this technology.

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Introduction

"A short novel written by a Japanese computer program in 2016 reached the second round of a national literary prize".[1]

A few years ago, news of this kind looked strange to many people. However, with rapid developments in computer science and significant advances in Artificial Intelligence, producing works using this technology that appear to be created by human authors or to be better than them has become a routine issue. Generative Artificial Intelligence, as an advanced kind of Artificial Intelligence, is capable of generating content including books, audio, films, etc. that, at first glance, appear to be among literary and artistic works protected by intellectual property law.

Given the nature of Generative Artificial Intelligence and its ability to generate literary and artistic works just as humans do, an important question should be answered: can Artificial Intelligence be considered an author? This question arises because every work must have been created by an author; in addition, to protect the work effectively, its author must be known.

Before answering the above question, it is necessary to address a related topic concerning the purpose of intellectual property. The relation between the purpose of intellectual property and the possibility of considering Artificial Intelligence as author is that if the purpose of intellectual property is defined, we can more easily arrive at a correct answer to that question; since by identifying the purpose of the intellectual property system, it would be possible to determine the persons enjoying intellectual property rights. Is the author entitled to be protected or the investor? If the author deserves protection, what is meant by author? Do we mean by author a human being, or does author have a broader meaning that includes non-humans such as animals or Artificial Intelligence?

In this paper, the legal systems of the United States, France, Egypt, Iraq, and Iran are examined. The United States has been selected because its law reflects the Copyright System followed by common-law jurisdictions; in addition, the United States is where Artificial Intelligence originated and where important cases have been addressed by the Copyright Office and courts in the field of copyright and Artificial Intelligence. The reason for choosing France is that its literary and artistic law is based on the Author's Right System, which is applicable in continental countries. In both countries, in-depth studies on the relationship between Artificial Intelligence and intellectual property law have been conducted and will be used in this article. The law of Egypt, as a Muslim country with a rich history in literary and artistic law, is a valuable source for comparative study. Finally, Iraq and Iran have been selected to introduce their approaches to literary and artistic law regarding Artificial Intelligence and to pave the way for their laws to be modified in light of the latest developments in this context and to find solutions to potential problems.

To find an appropriate answer to the main questions of this article, it is necessary to have sufficient knowledge of Artificial Intelligence including its definition, types and how it works (first part); then explain the purpose of intellectual property (second part) and finally, describe and analyze the approach of American, French, Egyptian, Iranian and Iraqi legal systems towards considering Generative Artificial Intelligence as author of literary and artistic works (third part).

1 https//:www.wipo.int/en/web/wipo-magazine/articles/artificial-intelligence-and-copyright40141- (accessed: 10/2/2025).

1. Definition of Generative Artificial Intelligence

Generative Artificial Intelligence refers to a type of Artificial Intelligence that uses machine learning technologies and neural networks to automatically produce new and innovative content, including images, texts, and videos, while the term Artificial Intelligence refers to a broader field that includes all Artificial Intelligence applications such as Generative Artificial Intelligence.[1] Generative Artificial Intelligence tools have the capacity to create new content such as texts, computer codes, images, sounds, as well as audio and video content in response to the user's request, called a prompt, i.e., a short written description of the result desired.[2]

Generative Artificial Intelligence is a type of Artificial Intelligence that aims to automatically produce new, creative content rather than merely analyze or use existing data. Generative Artificial Intelligence can generate various types of content, such as text, images, audio, and code, in ways that appear to have been created by humans.[3]

Generative Artificial Intelligence has also been described as a branch of Artificial Intelligence that develops systems, models, and neural networks to produce new and innovative content, including text, images, audio, and visuals, based on the data it was trained on. It is called Generative because it generates new data based on the data it has been trained on. This means that the model not only learns from the data it has been fed but also uses this learning to generate new data similar to it.[4]

Generative Artificial Intelligence is based on machine learning, and the Artificial Intelligence tools are trained using large amounts of data, which generally contain billions of pages of text or images. Depending on the approach adopted by the developer of the tool, the learning datasets may contain open-access information (pure data), protected data (works protected by copyright), or a mixture of both. The learning tool then requires human action, which will result in a series of billions of complex calculations to generate a result. Generally speaking, it is impossible to predict this result or assess the extent to which certain parts of the learning data will influence the result produced.[5]

ChatGPT is an example of Generative Artificial Intelligence. It is an AI-powered chatbot that uses natural language processing to create human-like dialogue. ChatGPT can answer questions and create written content.[6] For instance, this application can produce articles, books, and music.

2. The Purpose of Intellectual Property

In the United States, the best example of a country adopting the Anglo-Saxon System, the main purpose of granting property rights to creators and innovators is to motivate scientific and technological progress. Consequently, the law of the United States emphasizes on the

1 H. Al-Khalifah, An Introduction to Generative Artificial Intelligence, 2023, Iwan Research Group, 9.
2 OMPI, L'IA générative Saisir les enjeux en matière de propriété intellectuelle (2024) 18.
3 Alkhalifa, 8.
4 A. Baleegh, 'Applying Artificial Intelligence Technologies in Comparative Jurisprudential Inference', 2025, 5 *International Journal of Sharia and Islamic Studies*, 52.
5 OMPI, 3.
6 Al-Khalifah, 20-22.

economic aspects of works. According to the intellectual property clause or Article 1, Section 1, Clause 8 of the United States Constitution, Congress is granted power:

"To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Under the utilitarian theory, copyright is justified since it is a necessary means to generate useful results for society.[1]

The Supreme Court of the United States has stated that, under the intellectual property clause, copyright and patents are based on a utilitarian approach, according to which exclusive rights are necessary to provide incentives and motivation to create literary and artistic works and new inventions.[2] Even the Supreme Court has gone beyond this and said that "copyright law, like patent law, makes reward to the owner a secondary consideration".[3]

This means that utilitarian theory prioritizes the public interest. Accordingly, under such theory, the rights granted to creators have been described as "minimum individualist protections necessary to promote creation".[4]

Therefore, in the United States, copyright is not considered a natural right or a means to protect the author's personality.[5]

In France, as the most prominent example of a country with a Civil Law System, emphasis is placed on the author's personality. Therefore, literary and artistic rights are related to the author's personality and due to this fact, the term "Droit d'Auteur" is used which means "Author's Right" in order to indicate the importance of the author and his personality, while in the United States, as a result of the utilitarian principle, the work is of an economic nature and is considered as a pure commercial product like any other tradable product and as a result, the term copyright is used that means the right to copy the work and obviously, copying relates to the work. Accordingly, the term copyright has been used to indicate the status and importance of the work. Hence, the focus of this legal system is on intellectual products, unlike French law, which treats the work primarily as an intellectual output.[6]

The legal systems of Iran, Egypt and Iraq have also adopted the Author's Right System. The Iranian Law on the Protection of Rights of Authors, Composers and Artists of 1970 has recognized moral rights for authors. For example, article 4 of this Law states as follows:

"Author's moral rights are not limited in time and place nor are they alienable".

1 N Snow, 'Moral Bars to Intellectual Property', (2021) 80, available at: https://ssrn.com/abstract=3877573 (accessed: 2/19/2026).

2 *Sony Corp. of Am. v. Universal City Studios*, Inc., 464 U.S. 417, 429 (1984).

3 *United States v. Paramount Pictures*, Inc., 334 U. S. 131, 158 (1948).

4 M Longan, 'A System Out of Balance: A Critical Analysis of Philosophical Justifications for Copyright Law Through the Lenz of Users› Rights', 2023, 56 *University of Michigan Journal of Law Reform* 799.

5 It should be noted that the utilitarian basis of copyright has been criticized by some authors who believe that copyright may have other purposes than merely maximizing utility. For more information see. P. R. Goold, D. A. Simon, 'On Copyright Utilitarianism', (2024), 99(3) *Indiana Law Journal* 723-724.

6 E. Ghattan, 'Protection of Author's Right on the Internet, An Analytical-Comparative Study in French and American Laws', 2015, *Ahmed Bin Mohammed Military College Journal for Administrative Sciences and Law*, 40.

In addition, the title of this law shows that from the viewpoint of the Iranian legislator, the author is the center of gravity, since the purpose of this law is to protect his rights. The same is true for the Iraqi law on the Protection of Authors' Rights of 1971 (as amended in 2004).

The Egyptian legislator has adopted a similar approach. The title of the Third Chapter of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights is "Author's Rights and Neighboring Rights". The use of the expression "Author's Rights" indicates that, in Egypt, the author must be protected. Moreover, recognition of neighboring rights is a main feature of the Author's Rights System.[1]

In any case, the main question that must be answered is: what is meant by "author"? In light of developments occurring due to the use of Artificial Intelligence and that lead to the creation of literary and artistic works through the use of this technology, is it possible to insist on restricting the concept of author to a human author, or is there room to consider Artificial Intelligence as an author protected by intellectual property law?

3. Qualification of Generative Artificial Intelligence as Author

In this part, the approaches of American, French, Egyptian, Iraqi and Iranian legal systems will be studied.

3.1. American law

In the American legal system, due to utilitarian logic, some may think that Artificial Intelligence can be an author. However, the situation is different: the term "author" refers exclusively to humans.[2] The United States Copyright Office, citing some cases, has declared that:

"An original work of authorship is a work that is independently created by a human author and possesses at least some minimal degree of creativity."[3]

Consequently, in cases where the work has not been created by a human being, the copyright application would be refused by the United States Copyright Office.[4] The examples are when the Artificial Intelligence operates randomly or automatically without any input or intervention by a human author, or when an animal created the work.[5]

The California court declared, in a case concerning a selfie taken by a monkey, that a monkey cannot be an author for the purposes of the American Copyright Act.[6]

The United States Supreme Court has defined the term author as "he to whom anything owes its origin; originator; maker; one who completes a work of science or literature."[7] In this leading case, the Supreme Court repeatedly referred to authors as human beings and

1 For detailed information about neighboring rights see: C. Colombet, Grands Principes du Droit d›Auteur et des Droits Voisins dans le Monde, UNESCO, 1987, 97 et seq.

2 Ch. Mammen et al, *Creativity, Artificial Intelligence, and the Requirement of Human Authors and Inventors in Copyright and Patent Law*, University of Oxford, 2024, p. 8.

3 U.S Copyright Office, Compendium of U.S Copyright Office Practices, 3rd Ed, 2021, §308.

4 M. Blaszczyk, 'Impossibility of Emergent Works› Protection in U.S and E.U Copyright Law', 2023, 35(1), *North California Journal of Law & Technology*, 41.

5 U.S Copyright Office, 2021, §313.2.

6 *Naruto*, *et al. v. Slater, et al.*, no. 15-CV-04324 (N.D. Cal. January 28, 2016).

7 *Burrow-Giles Lithographic Company v. Sarony*, 111 U.S. 53 (1884)

described them as "a class of persons,"[1] and that copyright is "the exclusive right of a man to the production of his own genius or intellect".[2]

As was observed earlier, utilitarianism is the dominant justification for recognizing copyright in the United States. Accordingly, this theory has been invoked to support granting copyright to works generated by Artificial Intelligence. The proponents of this argument believe that granting copyright to such works promotes creative activity and the production of new works in the relevant field, including artistic works.[3] This argument will be discussed below.

As far as Artificial Intelligence is concerned, there are two examples of copyright registration applications submitted to the United States Copyright Office to acquire copyright for works generated by Artificial Intelligence, which will be studied in the next section.

3.1.1. The First Case: A Recent Entrance to Paradise

In this case, an AI creator, Dr. Thaler, sought to acquire copyright in a two-dimensional work titled "A Recent Entrance to Paradise" generated by Artificial Intelligence. The interesting fact is that Thaler had identified the Artificial Intelligence tool, namely the Creativity Machine, as the sole author of the work. He claimed to be the owner of copyright in the work, which, according to him, "was autonomously created by a computer algorithm running on a machine". He described the work as a "work-for-hire to the owner of the Creativity Machine". The application was refused by a Copyright Office registration specialist, who reasoned that the work lacks human authorship, a necessary element for any copyright claim.[4]

Thaler subsequently requested that the Office reconsider its initial refusal on the grounds that the authorship requirement it relied upon is unconstitutional and that no statute or case law supported this reasoning. Thaler asserted that under American law, non-human entities may be authors under the work-made-for-hire doctrine. The Office refused the request, reiterating its previous argument that human authorship is necessary for any copyright registration claim. The Office stated that Thaler had provided no evidence of sufficient creative input or human authorial intervention in the work. In addition, the Office declared that it would not "abandon its longstanding interpretation of the Copyright Act, Supreme Court, and lower court judicial

1 Ibid, p. 58.
2 Ibid, pp. 57-58.
3 G Myers, 'The Future is Now: Copyright Protection for Works Created by Artificial Intelligence', 2023, 102 *Texas Law Review Online* 8.
4 Copyright Review Board, Letter to Rayan Abott, (2020) 2.

precedent that a work meets the legal and formal requirements of copyright protection only if it is created by a human author."[1]

Thaler was not satisfied with the result and therefore proceeded with a second request, which contained the arguments of the first request alongside new reasoning based on public policy considerations: Thaler claimed that registration of copyright in machine-generated works is in line with copyright law goals and the constitutional rationale for copyright protection, i.e., to promote the progress of science and useful arts.[2]

The Review Board accepted Thaler's representation that the entire work was autonomously created by Artificial Intelligence, with no human creative contribution. The Review Board, however, confirmed the Office's refusal of registration. The Review Board, referring to the Compendium (Third) of the United States Copyright Office, argued that the Copyright Act protects the fruits of intellectual labor that are founded in the creative powers of the human mind.[3] Therefore, the Board declared that "the Office would not register works generated by a machine or as a result of a mere mechanical process which operates without any creative contribution or input from a human author"[4] for the law requires that a work must be created by a human being. Accordingly, the Board stated that the applicant must either provide evidence that the work is the product of human authorship or persuade the Office to neglect a century of copyright jurisprudence under which an author may not be a non-human.[5]

In declaring that Thaler failed to prove human authorship of the work, the Review Board relied upon Thaler's assertion that the work was wholly generated by Artificial Intelligence and there was no creative human input or intervention. Therefore, the only issue to be considered, according to the Board, was Thaler's claim that the human authorship requirement was unconstitutional and unsupported by case law. In response, the Board stated that after reviewing the statutory texts, case law, and the longstanding practice of the Copyright Office, it again concluded that human authorship was a prerequisite for copyright protection and that the work could not be registered under U.S. law.[6]

The Board further explained the details of its decision.[7] First, the Board cited section 102(a) of the Copyright Act, according to which copyright protection is afforded to "original works of authorship" that are fixed in a tangible medium of expression. The Board declared that the phrase "original works of authorship" was purposely left undefined by Congress to incorporate the originality standard established by courts. While acknowledging that the term "original" was very broad, the Board stated that its scope was not unlimited. Then, the Board referred to the decisions made by the Supreme Court and lower courts that, according to the Board, uniformly limited copyright protection to human authors.[8] The Board refused Thaler's claim that the work

1 Ibid.
2 Ibid.
3 United States Copyright Office, 2021, § 306.
4 Ibid., § 313.2.
5 Copyright Review Board, (2020) 3.
6 Ibid.,
7 Ibid., 3 et seq.
8 The Supreme Court cases include: *Burrow-Giles Lithographic Co. v. Sarony; Mazer v. Stein; Goldstein v. California;* and the lower court cases referred to by the Board are*: Urantia Found. v. Kristen Maaherra; Naruto v. Slater; Kelley v. Chicago Park Dist; Satava v. Lowry.*

generated by Artificial Intelligence was a work made for hire. To do this, the Board first referred to section 101 of the Copyright Act, which defines it as a work prepared by an employee or one or more parties to whom a work has been specially ordered or commissioned for use in a collective work and the parties expressly agree by means of a written contract signed by them that the work is for hire. Then the Board declared that in both cases, an employment or a work-made-for-hire contract is required to create the work. However, according to the Board, because Artificial Intelligence lacks legal personhood, including Creativity Machine, it cannot be a party to a binding contract and therefore cannot meet this requirement. In addition, the Board noted that the work-made-for-hire doctrine identifies only the copyright owner, not whether a work is protected. The Board again referred to the Copyright Act, which requires that a work be created by a human author. Finally, the Board affirmed the decision of the Copyright Office to refuse the registration application since the work was neither a work of authorship nor a work made for hire.

The views of Thaler and the Review Board have been evaluated. First, the argument that the Copyright Clause of the U.S Constitution does not include Artificial Intelligence is supported by the fact that "the Copyright Clause makes reference to authors, and it is obvious that the Framers could never have contemplated that anyone other than a human author could make a creative work".[1]

Second, it has been argued in favor of the copyrightability of works created by Artificial Intelligence that, over the years, the Copyright Act has evolved to extend its scope of protection to new works previously left unprotected or unprecedented. Examples of such works are photography, sound recordings, motion pictures, and computer software. The common feature of these works is the involvement of a mechanical process in their creation and fixation. The text of the Copyright Act is so broad as to encompass new works, and nothing is found therein which may be considered as an impediment to protect Artificial Intelligence works.[2]

The author believes that an important difference exists between the works cited as examples of works gradually added to the Copyright Act scope of protection and Artificial Intelligence. The examples mentioned are the result of creative human input. For example, creative photographic work whose copyright is granted today is produced by photographers capturing specific scenes using their own talent and skills. However, Generative Artificial Intelligence produces creative works without human involvement. Therefore, the work may not be attributed to an individual.

The case law, though indirectly, supports the prevailing view that works of Artificial Intelligence are not subject to copyright protection. However, none of the cases involving non-human works has dealt with Artificial Intelligence.[3]

As regards policy considerations, two conflicting views may be presented. First, Artificial Intelligence itself is indifferent to incentives arising from copyright protection. In fact, Artificial Intelligence operates regardless of whether economic rewards are granted. On the contrary, it may be argued that such a view ignores the purpose of copyright, which is to

1 Myers, 2023, 21.
2 Ibid., 22.
3 Ibid..

reward the humans behind Artificial Intelligence, i.e., its developers and those who employ it. Evidently, it is expected that these persons respond to rewards and are motivated to develop new Artificial Intelligence tools capable of producing creative works.[1]

The author believes that this argument, despite appearing to justify copyright protection for Artificial Intelligence works, is not effective to the extent that the issue of recognizing Artificial Intelligence as the author of literary and artistic works it generates is concerned; since granting copyright to such works is different from considering Artificial Intelligence as the author.

It should be noted that Thaler was not satisfied with the Board's decision and sought review in the District Court of Columbia. In addition to his previous argument, Thaler asserted new facts to prove that he played a controlling role in generating the work: he claimed to control the Creativity Machine entirely and that it operates only at his direction.[2] The District Court for the District of Columbia declared that the Copyright Office did not make an error in denying the copyright registration for the work at issue, since the "United States copyright law protects only works of human creation".[3] Additionally, the Court described human authorship as "the bedrock requirement of copyright".[4]

Therefore, the Court affirmed the Copyright Office's decision to deny registration of the work created by Artificial Intelligence. The Court did not deal with new claims by Thaler that he entirely controlled the operation of Creativity Machine, and he provided instructions to his AI to create the work; for he had previously acknowledged that the work had been generated autonomously by Artificial Intelligence without his intervention.[5] As regards the copyright transfer to Thaler, the Court stated that, since no copyright exists in the work generated by Artificial Intelligence, he cannot claim any transfer of copyright.[6]

After Thaler's action in the District Court was denied, he appealed in the Court of Appeals for the District of Columbia Circuit.[7]

The Court of Appeals affirmed the District Court's denial of Thaler's copyright application. To reach this conclusion, the Court began by analyzing the Constitution's Intellectual Property Clause and the purpose of copyright law. To do this, it relied on a case in which it was declared that copyright is not granted as a special reward to the author; instead, its purpose is "to encourage the production of works that others might reproduce more cheaply."[8] Therefore, copyright is an incentive for individuals to produce original works.[9] The Court, then, referred to the Copyright Office regulations, which are published in the Compendium of Copyright Office Practices and require human authorship. In addition, the Court stated that the term "author" in the Copyright Act is intended to mean a human, not a machine. To prove this, the court cited numerous provisions of the Act that make sense only if "an author is a human being". For example, under the Copyright Act, copyright "endures for a term consisting of

1 Ibid., pp. 23 et seq.
2 Civil Action No. 22-1546 (BAH).
3 Ibid., 7.
4 Ibid., 8.
5 Ibid., 13.
6 Ibid., 14.
7 Appeal from the United States District Court for the District of Columbia (No. 1:22-cv-01564).
8 *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 16 (2021).
9 Appeal from the United States District Court for the District of Columbia (No. 1:22-cv-01564), 4.

the life of the author and 70 years after the author's death".[1] This is good evidence that only human authors have been contemplated by the Act.[2] Other provisions mentioned by the Court include, inter alia, those relating to ownership,[3] inheritance,[4] copyright transfers which require the owner's signature,[5] domicile, and nationality.[6]

The Court, then, referred to the Copyright Office's established rule that requires the author to be a human.[7]

As far as work made for hire is concerned, the Court rejected Thaler's argument that he should be considered the author because the Creativity Machine was his employee. The Court pointed, inter alia, to the fact that, under the Copyright Act, only original works of authorship, including those made for hire, are protected, and authorship, as used in the Act, refers to a human being.[8]

3.1.2. The Second Case: Zarya of the Dawn

The work in question was an 18-page comic book, including the cover. The image of a young woman, along with the words "Kashtanova" and "Midjourney", appeared on the cover page. Mixed texts and visual material were included in the remaining pages.[9] Kashtanova declared in the application before the Copyright Office that she was the author of the book without disclosing that she had used the Artificial Intelligence tool Midjourney to create any part of it.

The Copyright Office accepted the application and registered the work. After a short time, the Office found statements on social media attributed to Kashtanova that she had created the comic book using an Artificial Intelligence program. Since the application had not disclosed the use of Artificial Intelligence, the Office decided to cancel the registration unless Kashtanova provided sufficient information to justify cancellation. Subsequently, the Office received a letter from Kashtanova's attorney demanding the Office to register the work as the product of human intellect using Artificial Intelligence as a merely assisting tool or in case this demand is refused, alternatively to register portions of the book because they were written by Kashtanova and taking into account the creative selection, coordination and arrangement of texts and images, the work is considered a compilation deserving copyright.[10]

The Office, after noting the human authorship requirement, agreed that the text was human-authored. In addition, the Office believed that the work contained more than a modicum of creativity, as required by the United States Supreme Court for copyright protection.[11]

The Office, further, agreed that selection and arrangement of images and texts in the work deserve protection because the images and text in such a form constitute a compilation involving sufficient creativity. Based on the claim that the images had been selected and arranged completely by Kashtanova in the work, the Office concluded that it is the product of

1 Copyright Act§ 302(a).
2 Appeal from the United States District Court for the District of Columbia (No. 1:22-cv-01564), 11.
3 Copyright Act §201(a).
4 Ibid., § 203(a)(2), (A).
5 Ibid., § 204(a).
6 Ibid., §104(a).
7 Appeal from the United States District Court for the District of Columbia (No. 1:22-cv-01564), 13-14.
8 Appeal from the United States District Court for the District of Columbia (No. 1:22-cv-01564), 23.
9 United States Copyright Office, Letter to Lindberg, 2023, 2.
10 Ibid., 3.
11 Ibid., 3-4.

human authorship and accordingly, while the output generated by Artificial Intelligence was not protectable, the author acquired the raw material and stamped it with her personality by transforming it through the compilation process so that she became the author of the whole work.[1]

As regards the individual images used in the work, the Office declared that it needs to consider the impact of using Artificial Intelligence technology in the analysis of copyrightability.[2] It is noteworthy that, according to the Copyright Office's Copyright Registration Guidance, to find such an Impact, a case-by-case inquiry is necessary, and the circumstances must be taken into account.[3] The question is whether Artificial Intelligence is a mere tool that the user controls and instructs, or autonomous, with the results of its operation not attributed to the user.

The Office found that the Artificial Intelligence technology used by Kashtanova could generate images in response to user-provided text. Taking into account how Artificial Intelligence technology works, the Office concluded that the AI-generated images in the book are not original works of authorship protected by copyright law. Although Kashtanova claims to have directed the structure and content of each image, the process described in her letter makes it clear that AI, not Kashtanova, created the traditional elements of authorship in the images.[4]

The office added that instead of Ms. Kashtanova controlling and directing a tool to produce the desired image, the Artificial Intelligence used generates images in an unpredictable way. Therefore, for copyright purposes, the AI users are not the authors of the images generated by this technology. As the Supreme Court clarified, the author of a copyrighted work is the person who actually created the image, acting as the creator or mastermind. The person providing explanatory text to the AI program does not actually create the generated images and is not considered the mastermind behind them.[5]

In conclusion, the Office declared that, in light of the new information, it would cancel the previous registration and replace it with a new one covering Ms. Kashtanova's original contribution to this work: the text, the selection, arrangement, and formatting of this text, and the AI-generated artwork. Because these contributions consist primarily of textual material, they will be re-registered as unpublished literary works, and the new registration will explicitly exclude the AI-generated artwork.[6]

3.2. French Law

The French Code of Intellectual Property has not defined the term author. It only states in article L.113-1 as follows:

"Authorship shall belong, unless proved otherwise, to the person or persons under whose name the work has been disclosed".

1 Blaszczyk, 49.
2 United States Copyright Office, Letter to Lindberg, 2023, 5.
3 United States Copyright Office, 2023, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 3.
4 United States Copyright Office, 2023, 7-8.
5 Ibid., 9.
6 Ibid., 12.

Accordingly, the Code of Intellectual Property does not clearly indicate that the author must be a natural person.[1] However, in French law, which aims to protect the author's personality,[2] the author can only be a human being.[3] Some writers believe that the link between creation and the natural person is inseparable. At the same time, advancements in Artificial Intelligence enable programs to create things independently. But regardless of Artificial Intelligence's literary and artistic achievements, this technology lacks sensitivity and awareness. Artistic emotion is alien to Artificial Intelligence. In France, works can only enjoy copyright protection if they are original. French copyright law traditionally defines the originality of a work according to the personal standard: that which bears the author's personal imprint, i.e., the sensitivity and intelligence of the creator.[4] It follows that this standard of originality is only achieved if the author is a human being.[5]

The first paragraph of Article L. 112 of the French Intellectual Property Code states as follows:

"The provisions of this Code shall protect the rights of authors in all works of the mind, whatever their kind, form of expression, merit or purpose".

So how can we imagine that a work generated by Artificial Intelligence-that is, created by one or more algorithms-can be considered an intellectual work protected by copyright law under this title? In fact, case law recognizes that the author of an intellectual work can only be a natural person, and the Court of Cassation has ruled in this regard that a legal entity cannot be considered an author. [6] This is the exact approach taken by doctrine.[7]

3.3. Egyptian Law

The Egyptian legislator has defined the work in the first paragraph of Article 138 of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights as:

"Any original literary, artistic, or scientific work, regardless of its type, method of expression, importance, or purpose".

It is clear from this text that originality is a fundamental characteristic of a literary or artistic product to be considered as a work.[8]

According to the second paragraph of the same article, creation is defined as:

"The creative nature that confers originality on the work".

The third paragraph defines the author as "the person who creates the work.…" Thus, Egyptian law requires that a work contain some element of creation; that is, a trace of the author's personality must be found in the work. This condition can be considered the

1 M. Rouxel, 2019, Le Refus de Reconnaître le Statut d›Auteur à l›Intelligence Artificielle et ses Consequences, Université Laval, Québec, Canada, Maître en droit (LL. M.) et Université Paris-Saclay Cachan,France Master (M.), 16.

2 Ghattan, 40.

3 Rouxel, 16.

4 C. Gestin-Vilion, La Protection par le Droit d'auteur des Creations Générées par Intelligence Artificielle, Université Laval Québec, Canada Maître en droit (LL.M.) et Université Paris-Saclay Sceaux, France Master 2 (M2), 2017 22.

5 L. d. Godefroy, Quel Droit pour l'IA Générative ?, 2025, Revue LexSociété. hal-05013796, 15.

6 C. Murielle, 2023, Intelligence Artificielle et Droit d'Auteur, available at: https://www.murielle-cahen.fr/intelligence-artificielle-et-droit-dauteur /(accessed: 1/2/2026).

7 Rouxel, 18.

8 M. Al-Tahhan, The Legal Problems of Generative Artificial Intelligence, in the Light of the Restrictions of Copyright and Personal Data Protection (Comparative study), 2025 1 Legal and Economic Sciences Journal, 29.

objective element of the work. A work lacking the author's personal imprint will not enjoy legal protection.[1] Based on the definition of author and work in Egyptian law, a person who lacks the capacity for creativity and innovation to add to his work cannot be considered an author.[2] The insane and minors who lack discernment fall into the category of individuals who do not possess the power of innovation and creativity. Based on what was mentioned, it is self-evident that an animal cannot be an author for the purposes of Egyptian copyright law. What about Artificial Intelligence? As we stated previously, this technology does not possess the capacity for creativity, and even if we were to assume that it did, it would lack human personality, which means that a human being is conscious and possesses feelings**.**

3.4. Iraqi Law

Article 1 of the Iraqi Author's Right Protection Law n. 3 of 1971 (as amended in 2004) states the following:

"Authors of original works in literature, arts, and sciences, regardless of the type of these works, their mode of expression, their importance, or the purpose of their creation, shall enjoy the protection of this law".

Therefore, for an author to enjoy legal protection, his work must be original. The Iraqi law does not provide a definition of originality. Some writers believe that the legislator intended originality in works to mean creation, meaning that they are "the product of the author's original intellectual effort".[3]Thus, the criterion adopted in determining originality is personal; it is necessary that "the intellectual production be characterized by a specific style that reflects a particular personality of its author".[4]What is the purpose of focusing on the emergence of one or more dimensions of the author's personality in a work? The answer is that, from the perspective of the Iraqi legislator, the concept of author is limited to the person who can express himself and demonstrate his personality, literary, artistic, and scientific abilities, as well as his emotional feelings, in the work. It goes beyond saying that only a normal person (excluding the insane and minors) can do this, and not an animal or an Artificial Intelligence application.

3.5. Iranian Law

The Iranian Law on the Protection of the Rights of Authors, Composers, and Artists does not use the term "originality," but it does stipulate that the work must be creative. Therefore, as researchers in Iran believe, originality is in fact, the creation mentioned in Articles 1 and 2 of this law.[5]

As observed, the Iranian legislator has neither defined originality nor mentioned any criteria for determining it. Rather, it simply stipulated creation, i.e., originality, as a condition for protection. However, from the perspective of legal scholars, originality means that the

1 A.R. Al-Sanhuri, 'Middle Commentary on the New Civil Code, part.8, Property Right', *Dar Ihya al-Turath al-Arabi* (n.d), 292.

2 Al-Tahhan, 23.

3 S.H. Shobeiri Zanjani, M. Abdullah, 'The Scope of Author's Rights and its Exceptions', 2025, 73(5) *Journal of the Iraqi University*, 229.

4 A. Al-Fatlawi, A. Hussain, 'How to Determine Originality in Literary Works: A Comparative Study›, 2022, 65(2), 25.

5 S. Zarkalam, Literary and Artistic Property Law, 2009, Samt, 45.

work reflects the author's personality.[1] It is worth noting that the Iranian Literary and Artistic Rights Bill of 2015 defines a work as "any original intellectual creation in the scientific, literary, and artistic fields..." Article 4 of the same Bill states that works are protected simply by virtue of their originality.

The requirement of originality, meaning the reflection of the author's personality in the work, leads to the conclusion that a non-human entity cannot be considered an author, since personality is a characteristic of humans. Therefore, Artificial Intelligence cannot be considered an author under Iranian law. A question may arise regarding the legal status of an insane person or a minor lacking discernment: if the criterion for originality is the manifestation of the author's personality in the work, then there is no impediment to considering an insane person or a minor lacking discernment as an author, since they possess human personality. The answer is that the meaning of the appearance of the personality is to express what is going on in the person's mind in terms of scientific, literary, and artistic thoughts and opinions. It is clear that the insane or minor do not have such thoughts and opinions due to the total loss of perception and will**.**

Conclusion

Generative Artificial Intelligence can create new, creative content, such as scientific and literary texts, images, and sounds. The content generated by this type of Artificial Intelligence is of such high quality that it resembles, and in some cases surpasses, works created by individuals. This raises an important question regarding the possibility of protecting these works under copyright laws. A more crucial question must be answered before addressing other issues: given the element of innovation in works generated by Generative Artificial Intelligence, can this technology be considered the author? To answer this question, we must first understand the concept of author. Most of the laws compared in this paper stipulate originality or creation as a condition for granting protection to literary and artistic works. Originality means that a work is the result of the author's endeavors or reflects the author's personality, such that we find traces of his character within it. Therefore, Artificial Intelligence cannot be considered the author of works it creates because it lacks a personality that can be discerned in its creations. In fact, originality or creation belongs to a natural person who possesses the faculties of perception, feeling, and artistic sensibility. Even in the United States, which follows a utilitarian approach to intellectual property, the Copyright Office does not accept registration of works produced by Artificial Intelligence, stating that the author must be a natural person; this is the attitude of American courts in cases concerning this issue. The same is true in the legislation of France, Egypt, Iraq, and Iran**.** Given the large number of literary and artistic works generated using Generative Artificial Intelligence, the laws of the countries studied in this paper need to be amended to determine the authorship of these works**.** Such an amendment must take into consideration the characteristics of this technology and the roles and needs of developers and users.

1 S. Mohseni, SMH Ghabooli Dorafshan, *Literary and Artistic Rights, 2015, Literary and Artistic Rights (Comparative Study in Iranian, French and Egyptian Law),* Ferdowsi University of Mashhad, 59.

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S Mohseni and SMH Ghabooli Dorafshan, Literary and Artistic Rights: A Comparative Study in Iranian, French and Egyptian Law (Ferdowsi University of Mashhad 2015).

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Iran's New Governance over the Strait of Hormuz under International Law

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Abstract

The strategic importance of the Strait of Hormuz is such that Marco Rubio, the U.S. Secretary of State, has referred to it as an "economic nuclear weapon." Iran's fury following the U.S.-Israeli "Epic Fury" operation led to the blockade of the world's economic artery in the Strait of Hormuz. Iran's diplomatic apparatus and its leadership emphasize that what is occurring in the Strait of Hormuz is not a closure, but rather the "management of the Strait of Hormuz." The question is whether international law provides any legal grounds for defending Iran's new governance framework over the Strait of Hormuz. Descriptive and analytical assessments demonstrate that there are some legal justifications for Iranian practice in the Strait of Hormuz. Iran's objections to the legal regime governing international straits even make it plausible that "non-suspendable innocent passage" may not apply in the Strait of Hormuz. The prohibition on passage throughout the entire territorial sea applies to unauthorized military vessels, especially those linked to a hostile State, and to vessels engaged in non-innocent passage. The levying of transit tolls on goods aboard vessels, or on the vessels themselves, may be defensible by invoking the doctrine of fundamental change of circumstances. The possible emergence of a particular regional custom could also justify the continued collection of transit tolls. The non-discriminatory levying of charges for all maritime services, including those based on treaties such as COLREG, MARPOL, and SOLAS, is permissible. Compensation may also be collected by invoking the doctrine of countermeasures and, potentially, the doctrine of necessity. Any Iranian action aimed at generating such economic revenue from the Strait of Hormuz on the Omani side would require additional legal justifications, such as designating the area as a "war zone" or designating Oman as a "hostile State" or "co-belligerent." Invoking necessity could also assist Iran in this regard.

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Introduction

Barros (João de Barros), the Portuguese historian, quoted the inhabitants of Hormuz as saying: "If the world were a ring, Hormuz would be its gem."[1] The strategic importance of the Strait of Hormuz is such that Marco Rubio, the U.S. Secretary of State, has referred to it as an "economic nuclear weapon."[2] The Strait of Hormuz hosts approximately 65% of the world's total oil reserves. About 40% of the world's crude oil, 20% of global oil and petroleum products,[3] and 97% of the oil produced by Persian Gulf states transit through this strait.[4] Furthermore, approximately 30% of the world's fertilizer supply passes through this strait. Hence, Hormuz can be regarded as the world's vital energy artery. "Iran's fury" following the U.S.-Israeli Operation "Epic Fury" led to the blockage of the world's economic artery. Iran's diplomatic apparatus and its leadership emphasize that what is occurring in the Strait of Hormuz is not a closure, but rather "managing its traffic." This management, as reflected in the statements of Iranian officials, manifests in four dimensions: prohibition, tolls (dues levied solely for passage), charges (Fees charged for the provision of services), and compensation (Indemnity received for loss or damage). Before examining these four approaches, it is necessary to consider the legal regime governing passage through the Strait of Hormuz prior to the U.S.-Zionist war against Iran on 28 February 2026.

1. The Legal Regime of Passage through the Strait of Hormuz before 28 February 2026

Passage through international straits that connect one part of the high seas or EEZ to another part of the high seas or EEZ is considered, in the view of the International Court of Justice, a "generally accepted" rule and "customary international law" and furthermore, under the 1958 Convention on the Territorial Sea and the Contiguous Zone, is subject to "non-suspendable innocent passage," while under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), it is governed by "transit passage." Notwithstanding serious doubts regarding the crystallization of "transit passage" as customary law,[5] The Islamic Republic of Iran has consistently voiced various objections since the introduction of this doctrine into UNCLOS. Moreover, it is possible that Iran is not bound by the rule of "non-suspendable innocent passage" in the Strait of Hormuz. Indeed, the possibility of an objection that would exempt Iran from this rule cannot be ruled out[6].

Iran's practice in opposition to "non-suspendable innocent passage" is as follows: In negotiations between Mohammad Reza Pahlavi, the Shah of Iran, and Sultan Qaboos bin Said

1 See João de Barros. Segunda Década da Ásia. Lisbon: Germão Galharde, 1553.

2 https://www.foxnews.com/video/6394028049112

3 UNCTAD Reports, Strait of Hormuz Disruptions Implications for Global Trade and Development, 10 March 2026; International Energy Agency. (n.d.). *Strait of Hormuz - Oil security and emergency response*. Retrieved June 2, 2026, from https://www.iea.org/about/oil-security-and-emergency-response/strait-of-hormuz

4 Mehdi Lotfi, ***Tangeh Hormuz dar Zarban-e Ensedad***, [The Strait of Hormuz in the Pulse of Blockade], Zamzam Hidayat Publishing, 2013, p. 43.

5 Hugo Caminos & Vincent P. Cogliati-Bantz, ***The Legal Regime of Straits: Contemporary Challenges and Solutions***, Cambridge University Press, 2014, pp. 452-470. See also, Seyed Ali Asghar Kazemi, "The Question of the Applicability of the Provisions of the New Law of the Sea Convention", ***Legal Journal***, Vol. 7, No. 8, 1987 (1366 SH), p. 67.

6 International Law Association, Committee on Formation of Customary General International Law, 2000, p. 28.

Al Said, the Sultan of Oman, in 1974, emphasis was placed on the “*condemnation of any act contrary to the interests of the two states*,” including the influence of external forces in the region.[1] Furthermore, from Iran’s perspective, in its declaration accompanying UNCLOS 1982, “*certain of its provisions are merely product of quid pro quo which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character… only states parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein. The above considerations pertain specifically (but not exclusively) to the following… The right of Transit passage through straits used for international navigation*”.[2] Later, in 1994, in its Maritime Areas Act, Iran established a 12-nautical-mile territorial sea along its entire coastline and declared it subject to “innocent passage” (Articles 2 and 5). Iran’s 2019 proposal for a “Coalition for Hope” in the Persian Gulf also advanced the idea of progress and prosperity for “*all inhabitants of the Strait of Hormuz region*.”[3] Furthermore, in the case of the detention of the vessel Stena Impero in the Strait of Hormuz in 2019, Iran registered an official letter with the United Nations, emphasizing “*innocent passage*” in the Strait of Hormuz.[4] On 18 August 2023, Iran also submitted a letter to the United Nations in which it declared: “*The Islamic Republic of Iran reaffirms its commitment to the safety and security of innocent passage through the Strait of Hormuz and its territorial waters*.”[5] With the onset of Western threats to impose sanctions on Iranian oil, statements by the then-President of Iran and some commanders of the Islamic Revolutionary Guard Corps (IRGC) emerged, suggesting “closure or restricting passage through the Strait of Hormuz” if such threats were implemented.[6] Iran’s non-ratification of the 1958 Convention and UNCLOS 1982 means, domestically, that it has not agreed to the legal regimes of “non-suspendable innocent passage” and “transit passage,” respectively, in the Strait of Hormuz. It should not be forgotten that passage through the Strait of Hormuz on the Omani territorial sea side is subject to “transit passage,” as Oman signed UNCLOS in 1983 and ratified it in 1989.

The aforementioned practices may be considered as “persistent and open dissent” and may prevent the extension of the customary rule of “non-suspendable innocent passage” to the Strait of Hormuz. The difference between “innocent passage” and “non-suspendable innocent passage” lies in the possibility of closing the strait. However, from the perspective of the possibility of levying tolls and charges, there is no difference between these two types of passage.

2. The Legal Regime of Passage through the Strait of Hormuz after 28 February 2026

Following the U.S. President’s announcement of a cessation of hostilities, based on Iran’s acceptance of negotiations under 10 conditions, and Iran’s Supreme National Security

1 Reprinted from Oman News, 1/74, March 1974, Embassy of the Sultanate of Oman, Washington, D.C.
2 Iran’s declaration upon signing UNCLOS on 10 December 1982.
3 https://news.un.org/en/story/2019/09/1047472
4 UN Doc. S/2019/593
5 Letter dated 17 August 2023 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, S/2023/609
6 https://www.alef.ir/news/3970913085.html, https://www.mosalasonline.com/fa/tiny/news-12626

Council's statement agreeing to the cessation of hostilities on 8 April 2026, the U.S.-Zionist war against Iran entered a new phase. Iran's Supreme National Security Council declared the new status of the strait as "*managed passage through the Strait of Hormuz in coordination with Iran's armed forces*." The Supreme Leader of the Islamic Revolution, in a message on the occasion of National Persian Gulf Day, spoke of "*legal rules and the implementation of new management of the Strait of Hormuz*." The IRGC Navy also announced it would ensure passage through the Strait of Hormuz with "*new protocols in place*."[1] A legislative bill presented in the Iranian Parliament, titled the "*Strategic Action Plan for Ensuring Security and Sustainable Development of the Strait of Hormuz and the Persian Gulf*," has introduced new restrictions on traffic and transit through the Strait of Hormuz. Overall, the State practice and statements of Iranian officials have revolved around four axes: prohibited passage, passage upon payment of tolls, passage upon payment of charges, and passage upon payment of compensation. These are examined below.

2.1. Prohibited Passage in Iran's Territorial Sea in the Strait of Hormuz: A Defendable Practice

Under the legal regime of "innocent passage," there exists a right to suspend the passage of all vessels in a part of the territorial sea, temporarily, in a non-discriminatory manner, and with prior notification. However, the main issue is the possibility of preventing some or all vessels in the 'entire territorial sea'. It will be explained below that Iran can stop the passage of military vessels and vessels engaged in non-innocent passage throughout the entire territorial sea of the Strait of Hormuz.

Given the ambiguity of UNCLOS 1982 regarding the passage of military vessels under the innocent passage regime, this interpretative matter was left to state practice. The practice of some states indicates that they do not recognize the innocent passage of such vessels.[2] At least 25 states[3] condition the passage of military vessels through their territorial sea on prior authorization, and at least 10 states[4] condition it on prior notification.[5] Article 9 of Iran's Maritime Areas Act of 1993, under the heading of exceptions to innocent passage, conditions the passage of *warships, submarines, vessels with nuclear propulsion, any other submersible vessels, as well as vessels and submarines carrying nuclear, hazardous, or environmentally harmful substances, and foreign research vessels*, on prior approval by the competent authorities of the Islamic Republic of Iran. Iran's law extends beyond military vessels to include submarines, even if they are non-military. It is evident that, at a minimum, the passage of unauthorized military vessels through Iran's territorial sea in the Strait of Hormuz can be prohibited.

1 https://www.presstv.ir/Detail/2026/05/06/768144/Iran-IRGC-Navy-statement-resumed-passage-Hormuz-Strait

2 Jamshid Momtaz & Amir Hossein Ranjbarian, "The Dual Interpretation of the Law of the Sea Convention: Iran's Maritime Areas Act and the US Protest", ***Journal of the Faculty of Law and Political Science***, Vol. 35, No. 1064, 1996 (1375 SH), p. 99.

3 Algeria, Argentina, Antigua and Barbuda, Bangladesh, Barbados, Congo, Grenada, Iran, Maldives, Oman, Pakistan, Philippines, Romania, St. Vincent and the Grenadines, Seychelles, Somalia, Sri Lanka, Sudan, Syria, United Arab Emirates, Vietnam, and Yemen.

4 Croatia, Egypt, Finland, Guinea, India, South Korea, Libya, Malta, Mauritania, and the former Yugoslavia.

5 William K. Agyebeng, "Theory in Search of Practice: The Right of Innocent Passage in the Territorial Sea", ***Cornell International Law Journal***, Vol. 39, Issue 2, 2006, p. 397.

Furthermore, Article 5 of Iran's Maritime Areas Act states: "The passage of foreign vessels [...] through the territorial sea of Iran is subject to the principle of innocent passage as long as it does not disturb the *public order, peace, or security* of the country. Passage must be *continuous and expeditious*, except in cases of emergency." According to Articles 18 and 19 of UNCLOS, vessels enjoy the right of innocent passage only if they comply with the conditions of innocent passage;[1] otherwise, they do not enjoy this right. These conditions include continuous and expeditious passage and also include not prejudicing the peace, good order, or security of the coastal State; examples of which are set forth in Article 19. Therefore, in such cases, the vessel does not enjoy the right of innocent passage, and Iran may take measures to prevent such vessels from passing.

Another situation in which the passage of a vessel may be prohibited is that of hostile vessels. Currently, the Islamic Republic of Iran has designated the United States as a "hostile state."[2] and the United States Central Command (CENTCOM) as a "terrorist" entity.[3] Given that Iran can already prevent the entry of any unauthorized military vessel, this latter designation may be of limited practical significance.

2.2. Passage with Tolls in Iran's Territorial Sea in the Strait of Hormuz: A Contentious Practice

Traditionally, "transit dues or tolls" through international straits were not prohibited. This approach is found in Grotius's 'On the Law of War and Peace', in Danish practice concerning the "Sound Dues," and in a statement by the British Foreign Secretary in 1857 as a principle of international law.[4] Beyond the historical practice of collecting tolls in the Suez, Panama, Kiel, and Corinth Canals, the 1910 "Boundary Waters Treaty" between the United States and the United Kingdom also refers to the possibility of collecting tolls for passage through canals.

However, this traditional rule has faced opposition, particularly concerning transit tolls on air and maritime routes. Article 26(1) of UNCLOS 1982 prohibits the levying of tolls for passage, even for innocent passage.

For levying tolls on vessels passing through the Strait of Hormuz, Iran may potentially invoke the doctrine of "fundamental change of circumstances" *(rebus sic stantibus)*.[5] This doctrine is applied in a very restrictive manner, but there are no legal objective obstacles to invoking it. Iran could argue that the imposition of oil sanctions against it and the forced war upon it have nullified the basis of its consent to the general customary international law rule of "innocent passage," and that Iran wishes to revert to the *principle of sovereignty* over

1 Noting to UNCLOS provisions is based on the likely possibility of their transformation to customary law.
2 Intensifying Punishment for Espionage and Collaboration with the Zionist Regime Act, adopted 2025 (1404 SH).
3 Reciprocal Action Act in Response to the Designation of the Islamic Revolutionary Guard Corps (IRGC) as a 'Terrorist Organization' by the United States of America, adopted 2019 (1398 SH).
4 See The Earl of Clarendon, UK Parliament, Sound Dues Bill, Volume 146, debated on Thursday 2 July 1857.
5 ILC, Draft Articles on the Law of Treaties with commentaries, 1966, p. 256.

its territorial sea.[1] Of course, such a claim might reciprocally restrict the access of Iranian vessels to the territorial seas of other states[2].

Additionally, it is not inconceivable that Iran could invoke the emergence of a "*particular regional custom*" specific to the Strait of Hormuz, thereby derogating from general customary international law. In effect, if Iran's practice of collecting tolls during this period is met with no protest from flag states, and such absence of protest implies their acceptance of Iran's right, it could give rise to this possibility.

Furthermore, Article V of the General Agreement on Tariffs and Trade (GATT) prohibits the imposition of any transit tolls on "traffic in transit." Traffic in transit refers to any goods or vessels that do not engage in activities such as warehousing or trans-shipment while passing through the territory of a State. However, Iran is not a full member of the WTO, and it is conceivable that transit tolls could be imposed on "cargoes" carried aboard vessels transiting the Strait of Hormuz.

The Strait of Hormuz hosts important submarine cables that cover a portion of data transmission in the Persian Gulf states, as well as Africa and East Asia. As stipulated in Article 21 and Article 79, paragraph 4, of the 1982 Convention, the coastal State has the authority to impose conditions on cables on the continental shelf, including the requirement to obtain authorizations. India's practice of imposing indirect costs on cables[3] and the judgment of the Supreme Court of Spain regarding the possibility of charging fees for cables in areas under its sovereignty[4] support this view. Therefore, it appears that Iran has the right to impose tolls or charges on these submarine cables.

Therefore, while the collection of tolls on *goods aboard* vessels and *submarine cables* transiting the Strait of Hormuz is not prohibited, the collection of tolls on the vessels themselves is contingent upon Iran's invocation of a fundamental change of circumstances or the emergence of a new regional custom.

2.3. Passage with Charges in Iran's Territorial Sea in the Strait of Hormuz: An Established Practice

In straits governed by the *transit passage* regime for States Parties to UNCLOS 1982—such as the Dover Strait (UK/France), the Malacca Strait (Malaysia/Indonesia/Singapore), the Torres Strait (Australia/Papua New Guinea), the Gibraltar Strait (Spain/Morocco), the Bering Strait (Russia/USA), the Sound Strait (Denmark/Sweden), the Bab-el-Mandeb Strait (Yemen/Djibouti side), and the Strait of Hormuz (Omani side)—it is possible to levy charges for "*specific services*" in accordance with Article 127(1) of UNCLOS 1982. In straits

1 Kazem Gharibabadi, the Deputy Foreign Minister, has also invoked this doctrine regarding the new situation in the Strait of Hormuz. https://dolat.ir/detail/481842

2 It should be mentioned that in *VTB v. Luiza Shamilyevna Bikmaeva* (A39-5782/2015) the court of first instance accepted the sanctions as constituting a fundamental change of circumstances, but the higher court (the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation) reversed that decision, ruling that the change was foreseeable for the bank and therefore could not be invoked as a fundamental change of circumstances.

3 Anjali Sugadev, 'India's Critical Position in the Global Submarine Cable Network: an Analysis of Indian Law and Practice on Cable Repairs', ***Indian Journal of International Law***, Vol. 56, No. 2, 2016, p. 176.

4 Tribunal Supremo de España. (2008, June 16). Sentencia núm. 1341/2004 (CANDALTA submarine cable case). https://vlex.es/vid/dominio-maritimo-plataforma-continental-42923317

subject to *non-suspendable innocent passage* for States Parties to UNCLOS 1982—such as the Messina Strait (Italy) and the Tiran Strait (Egypt/Saudi Arabia)—it is also possible to levy non-discriminatory charges for “*specific services*” under Article 26(2) of UNCLOS 1982. Consequently, in other straits—i.e., those subject to non-suspendable innocent passage or innocent passage in non-States Parties to UNCLOS 1982, such as the Bab-el-Mandeb Strait (Eritrean side) and the Strait of Hormuz (Iranian side)—there is no obstacle to levying charges for “*all services*".

It should be noted that the scope of these services cannot be limited to purely optional services, because services related to security, referred to in Article 42(1) of UNCLOS 1982, and environmental services, explicitly mentioned in Article 233 of UNCLOS 1982, may be quasi-compulsory upon a vessel’s entry.

Therefore, the Islamic Republic of Iran may levy non-discriminatory charges for all maritime services on vessels transiting the Strait of Hormuz. These services may be based on obligations arising from treaties to which Iran is a party, such as the Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972, the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, and the International Convention for the Safety of Life at Sea (SOLAS), 1974. Proposals to establish an “Iran-Oman Insurance Fund” could offer an attractive alternative for vessels currently using European maritime insurance. Exemptions for non-dollar transactions or transactions denominated in Iranian Rial could also provide significant incentives for vessels.

2.4. Passage with Compensation in Iran’s Territorial Sea in the Strait of Hormuz: A Forward-Looking Practice

During the U.S.-Zionist war against Iran, the Deputy for Communications and Information of the Office of the President of Iran announced: “*The Strait of Hormuz will only be reopened when a portion of transit revenues is used to compensate for all losses incurred due to the imposed war*.”[1] Furthermore, some members of the Iranian Parliament have proposed a bill to regulate the collection of compensation from states participating in the war before allowing their vessels to pass.[2] The damages caused by the war—compensation for which has been one of Iran’s ten conditions for ending the war negotiations—have been estimated and announced at approximately 270 billion US dollars.[3] War damages could constitute part of the compensation that Iran claims from debtor states. In this scenario, unlike transit tolls, which are collected from all vessels, compensation would only be collected from vessels linked to such debtor states. Therefore, it is necessary to examine whether it is possible for Iran to levy “countervailing duties” in the Strait of Hormuz as a form of compensation.

Beyond the new legal regime under UNCLOS, examining trends in customary law, particularly regarding non-member States, could be worthwhile. Under the Convention between France and Germany on the Octroi of Navigation of the Rhine (1804), Germany agreed to impose taxes on France as compensation for the annexation of the western part

1 mehrnews.com/x3bKZ9
2 khabaronline.ir/xpQ63
3 https://donya-e-eqtesad.com/fa/tiny/news-4264038

of the Rhine River to France. Additionally, after World War I, under the Treaty of Versailles (1919), Germany was required to cede certain German commercial vessels to the Allied Powers.[1] However, these practices were based on agreement.

It appears that, pending a comprehensive agreement, Iran could, under the doctrine of "*countermeasures*," collect compensation based on a specified list established by its competent authorities.[2] The explanation is that as long as an internationally wrongful act—such as unlawful sanctions—is being committed, the injured state may, under Article 22 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (2001), take countermeasures, including suspending some of its own obligations, such as complying with the rules of innocent passage. It should be noted that breaching the "*obligation to full reparation*" is itself a separate internationally wrongful act that could justify countermeasures until the debts are recovered.[3] It should also be noted that if appropriate judicial decisions are issued by Iranian courts or foreign courts, it may be possible to collect compensation outside the framework of countermeasures, specifically within the framework of "*enforcement of judicial decisions*." In that case, obstacles related to the jurisdictional immunity of foreign states would need to be addressed.

Furthermore, Iran's invocation of the doctrine of "*necessity*" under Article 25 of the ILC Articles for collecting compensation is also worthy of consideration. Where the protection of an essential interest of a state against a grave and imminent peril is at stake, and it does not seriously impair the essential interests of other states or the international community as a whole, necessity may preclude the wrongfulness of otherwise internationally wrongful acts. Previously, Russia (to protect fur seals) and the United Kingdom (to protect the marine environment) have taken enforcement actions against foreign vessels on the "high seas." However, whether the doctrine of "necessity" can preclude the wrongfulness of a breach of the "comparative sovereignty" that a coastal state enjoys in the territorial sea of another state remains doubtful.

In any event, it appears that, by invoking countermeasures and, with somewhat more doubt, by invoking necessity, Iran should determine the criteria for linking vessels to such states, including nationality, place of registration, ownership, origin, destination of the vessel and the type of goods on board.

2.5. Enforcement Measures in the *Territorial Sea of Oman* in the Strait of Hormuz: An Exceptional Practice

According to Article 43 of UNCLOS 1982, "*States bordering straits shall cooperate by agreement in the establishment and maintenance of navigational aids, and in the prevention and reduction of pollution from shipping*." Accordingly, such cooperation, with Oman's collaboration, could facilitate the establishment of a new legal regime based on levying

1 Treaty of Versailles 1919, Annex III, Paragraph 1

2 Currently, certain judicial decisions have been issued against the United States under the Act on the Jurisdiction of the Islamic Republic of Iran's Judiciary to Hear Civil Claims against Foreign States, adopted 2011 (1390 SH)*. For example, in the General Soleimani case, the United States was ordered to pay approximately 50 billion dollars in compensation.

3 See Rosemary Rayfuse, "Countermeasures and High Seas Fisheries Enforcement", ***Netherlands International Law Review***, Vol. 51, No. 1, 2004, pp. 41-76

charges for services. However, these services would necessarily be either optional services or services provided without charge; otherwise, they would conflict with Oman's obligations regarding transit passage through the Strait. Oman, as a State Party to UNCLOS alongside over 170 other states, cannot bilaterally restrict the rights of those states under the Convention.

One possible solution lies in Article 35 of UNCLOS 1982, under which Iran could conclude an international convention with interested or powerful states to apply a special legal regime in the Strait of Hormuz. However, the text of Article 35 suggests it refers to conventions concluded prior to UNCLOS or those established over a long period (*long-standing international conventions*). An alternative is to argue that since Iran is not a party to UNCLOS 1982, the customary rule regarding special legal regimes in straits, as articulated by the International Court of Justice, can derive from *any* convention.

Invoking extraterritorial enforcement jurisdiction to levy tolls, charges for compulsory services, or compensation in the territorial sea of Oman is a matter of serious concern. Article 301 of UNCLOS 1982 explicitly states that the threat or use of force against the territorial integrity of another state is prohibited. Some scholars distinguish between the "*use of force*" prohibited by the UN Charter and "*law enforcement*" through police actions.[1] Although the concept of "comparative sovereignty" in the territorial sea might raise the question of the legality of such actions in another state's territorial sea, state practice has generally limited enforcement actions to areas "beyond the territorial sea" of a foreign state.[2]

Assuming that Oman has stepped out of neutrality and is designated as a "*hostile state*" or perhaps a "*co-hostile state*", or if Oman's territorial sea is defined as a "*war zone*," it could provide a basis for Iran's continuous presence in Oman's territorial sea.[3] "Necessity" could also, though perhaps hardly, be invoked as a circumstance precluding the international wrongfulness of Iran's actions in collecting service charges, goods/cables tolls, and compensation in Omani waters.

Conclusion

It appears that applying the innocent passage regime in Iran's territorial sea in the Strait of Hormuz has substantial legal justifications. The consequence of this legal regime is the possibility of temporary suspension of passage in a part of the territorial sea. However, the prohibition on passage throughout the entire territorial sea applies to unauthorized military vessels, especially those linked to a hostile state, and to vessels engaged in non-innocent passage. The levying of transit tolls on goods aboard vessels and submarine cables is defensible, and the levying of tolls on the vessels themselves may be arguable by invoking the doctrine of fundamental change of circumstances. The possible emergence of a particular regional custom could also justify the continued collection of transit tolls. The non-discriminatory levying of

1 Patricia Jimenez Kwast, "Maritime Law Enforcement and the Use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award", ***Journal of Conflict & Security Law***, Vol. 13, No. 1, 2008, p. 60.

2 See Anthony Colangelo, "Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and The Intersection of National and International Law", ***Harvard International Law Journal***, Vol. 48, No. 1, 2007.

3 Although the United States does not have a military base in Oman, the US-Oman military cooperation and the US use of Oman's territorial waters make it plausible that Oman could abandon its neutrality.

charges for all maritime services like ensuring security, and services based on treaties such as COLREG, MARPOL, and SOLAS, is permissible. The collection of compensation may also be possible by invoking countermeasures and, potentially, necessity. Any Iranian action aimed at generating such economic revenues from the Strait of Hormuz on the Omani side would require additional legal justifications, such as designating the area as a war zone or designating Oman as a hostile state or co-belligerent. Invoking necessity could also assist Iran in this regard.

The conclusion of bilateral treaties or a multilateral convention under Article 35 of UNCLOS 1982, or based on customary international law, could be pursued as secondary solutions. Furthermore, Iran may pursue legal diplomacy to designate the Strait of Hormuz as a “Particularly Sensitive Sea Area (PSSA)” and to register a new Traffic Separation Scheme (TSS) on its side. Proposals such as establishing an Insurance Fund and a special ‘Hormuz Currency’ could provide sufficient incentives for both littoral states of the Strait of Hormuz – and other neighboring states- to participate in this “new management of the Strait of Hormuz".

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The Americanization of International Law and the Strategies of the Islamic Republic of Iran by *Seyed Ghasem Zamani*

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Abstract

This book review examines Seyed Ghasem Zamani's The Americanization of International Law and the Strategies of the Islamic Republic of Iran, which critically analyses the growing influence of the United States on the formation, interpretation, and application of international legal norms and institutions. The book is structured in three chapters: the conceptual framework of Americanization; its manifestation across branches of international law—including the use of force, self-defence, targeted killings, dispute settlement, investment law, and the law of the sea; and proposed strategies for Iran to respond to this phenomenon. The central thesis is that contemporary international law is increasingly shaped by U.S. political, military, economic, and cultural preponderance rather than multilateral consensus. This "Americanization" operates through unilateral reinterpretation of fundamental norms (notably Article 51 of the UN Charter), selective treaty ratification, double standards, resistance to international judicial bodies, and the export of U.S. legal practices to international dispute settlement mechanisms. The book draws on case studies including the 2003 Iraq invasion, the targeted killing of General Qasem Soleimani, and U.S. non-ratification of UNCLOS to illustrate how American exceptionalism has reshaped substantive and procedural rules. The final chapter offers counter-strategies: strengthening international legal education, enacting responsive legislation, fostering regional cooperation, utilising international organisations (OIC and Non-Aligned Movement), lodging persistent objections to emerging customary rules, producing alternative legal scholarship, reinforcing judicial institutions, and enhancing Iran's role in the UN Sixth Committee. The book contends that the Americanization of international law challenges the rule-of-law-based character of the international order. While acknowledging some beneficial effects, Zamani insists that concerned States must adopt a multi-layered approach—combining education, diplomacy, legislation, and institution-building—to preserve the universality, diversity, and legitimacy of international law. The review concludes that the work is a timely and valuable contribution, offering both analytical depth and practical relevance for scholars, policymakers, and practitioners.

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1. An Introduction to the Influence of Contemporary Powers on International Law

Is international law truly derived from the domestic legal systems of all members of the international community? Has this legal order not, throughout different historical periods, been shaped by the dominant powers of the day? It is often argued that the foundations of modern international law emerged in Europe following the end of the Thirty Years' War in 1648. In the same vein, the writings of European jurists have long maintained that contemporary international law is essentially of European origin. If one accepts that international law is closely intertwined with international politics and power, then it follows that the approaches adopted by dominant States in any given era will inevitably influence the formation and development of international law.

Indeed, the great powers of successive periods—including Spain, Britain, and, in the last century, the United States—have frequently employed international law as an instrument to pursue their political and strategic objectives. Whenever this instrument has failed to serve their interests adequately, they have often chosen to circumvent or disregard it.[1] This proposition constitutes the central theme of the book authored by Seyed Ghasem Zamani, Professor of International Law at the Faculty of Law and Political Science of Allameh Tabataba'i University.

The book's principal argument, however, goes beyond this general observation. It contends that a contemporary hegemonic power may seek to weaken international legal norms and institutions by emphasizing its own political and military power rather than legal obligations. Such an approach can undermine the coherence of the international community and create uncertainty regarding the adoption of a common rule-of-law-based framework for international relations. Consequently, the author argues that States which do not share the United States' vision of international law should adopt measures to counter what he characterizes as the unilateralism and exceptionalism of the present dominant power.

In line with a number of earlier scholars, Zamani appropriately employs the concept of the **"Americanization of International Law"** to describe the influence of American political thought and culture on international legal norms, institutions, and decision-making processes. As some American scholars critical of their government's approach to international law have observed, today's world is no longer the world that the United States sought to shape in the aftermath of the Second World War under the banner of preserving international peace and security. According to these commentators, the international legal policies and practices adopted by the United States have themselves played a significant role in transforming the international legal order, often contributing to the weakening of international legal norms and institutions rather than their consolidation.[2]

The book *The Americanization of International Law* was published at a particularly significant moment. Only a few months earlier, Iran had been subjected to military invasion

1 Rahul Mohanty and Prabhash Ranjan, Trump 2.0: A Disruptive Peripeteia for International Law, 21 April 2026, at: https://www.orfonline.org/research/trump-2-0-a-disruptive-peripeteia-for-international-law

2 Monica Hakimi and Jacob Katz Cogan, The End of the U.S.-backed International Order and the Future of International Law, American Journal of International Law, Vol. 119: 2.

of on two separate occasions within a period of less than nine months: first, during a twelve-day conflict in June 2025, when Israel—acting with the approval of the United States and alongside direct U.S. military strikes against Iran's nuclear facilities—launched attacks against Iran; and second, in February 2026, when Iran again faced direct invasion of by the United States and Israel during a thirty-nine-day conflict.

The legal justifications advanced by the United States for these two operations, as reflected in its letters to the Security Council, suggest that the title of Zamani's book aptly captures the phenomenon of the "Americanization of international law," particularly as manifested through claims of American exceptionalism in the international legal sphere. Viewed in this context, the book's central argument appears especially relevant and compelling, making it an even more engaging and timely contribution to contemporary debates on international law.

2. Overview of the Book

The book under review is the product of a research project commissioned by Allameh Tabataba'i University in 2019 and subsequently published by the university's press in 2025. Consisting of 225 pages, the work is organized into three chapters: The Americanization of International Law; The Americanization of the Branches of International Law; and The Americanization of International Law and the Strategy of the Islamic Republic of Iran.

In the first chapter, across four sections, the author examines the concept of the Americanization of international law, the mechanisms by which influence is exerted on international law, the reasons for the United States' influence on contemporary international law, and the phenomenon of American exceptionalism in the international legal order.

After tracing the historical origins of the debate, particularly the notion of "American international law," which emerged in the mid-nineteenth century to describe the distinctive approach of the American continent to international law, the author defines the concept of Americanization as follows: *"Simply put, the Americanization of international law means that the unique characteristics of the United States legal system come to dominate the international legal order"* (p. 10).

The author then identifies the principal channels through which influence may be exercised over international law and explains the factors underlying the United States' influence on the contemporary international legal system. These factors include political influence and diplomatic power, economic and financial strength, military capability, cultural influence, and linguistic dominance. According to the author, these elements, combined with other distinctive features of the United States—such as its geographical position, social conditions, perceived national characteristics, territorial size, and abundant natural resources—have contributed to a self-perception of the United States as a "new world." On this basis, the State has developed a sense of exceptionalism vis-à-vis other states and regions of the world (p. 29).

The author argues that this exceptionalism manifests itself in three principal ways. First, the United States often participates actively in the negotiation and drafting of international treaties while subsequently declining to ratify them domestically, as illustrated by its approach to the Covenant of the League of Nations and the Rome Statute of the International

Criminal Court. Second, it applies double standards when evaluating the conduct of allies and adversaries, a tendency exemplified by differing approaches toward the nuclear capabilities of Israel and North Korea. Third, it frequently resists the jurisdiction of international and regional human rights bodies empowered to assess its conduct, as reflected, for example, in its non-ratification of the American Convention on Human Rights.

According to the author, this combination of practices is highly unusual among democratic States. In his view, it is unprecedented for a democratic country to simultaneously pursue policies consistent with these three characteristics and claim leadership of the international legal order (p. 30).

In the first part of the second chapter, the author provides a detailed examination of the United States' approach to specific areas of the law of armed conflict, including the use of force and self-defense, counterterrorism, and targeted killings. In this section, after outlining the fundamental principles governing the use of force and the right of self-defense under international law, the author turns to the distinctly American interpretation of self-defense.

The author's analysis of anticipatory self-defense focuses primarily on the United States' military interventions in Afghanistan and Iraq. According to the author, although the legal arguments advanced to justify the use of force against the Taliban regime in Afghanistan following the events of 2001 may be acceptable to some extent, the 2003 invasion of Iraq cannot be similarly justified. In his view, the claims that the Iraqi government under Saddam Hussein possessed weapons of mass destruction and might provide them to terrorist groups, together with attempts to reinterpret Article 51 of the United Nations Charter to encompass anticipatory self-defense, lacked a valid legal foundation.

The author argues that much of the contemporary legal discourse surrounding anticipatory and preventive self-defense emerged as a consequence of the United States' military actions in Afghanistan and Iraq. As he observes, *"The United States appears to claim a form of exceptionalism with respect to Article 51 of the Charter and the inherent right of self-defense, as if it possesses the authority to define and determine the rules and foundations of the right of self-defense itself"* (p. 47).

The book further contends that the political and military influence exercised by the United States over certain NATO allies contributed significantly to their support for military operations in Afghanistan and Iraq. According to the author, the combination of U.S. military action and the simultaneous development of supporting legal arguments by a number of American international law scholars facilitated the broader acceptance of the doctrine of anticipatory self-defense among some States. In this way, concepts that had previously occupied a contested position within international legal discourse acquired greater prominence and influence in State practice through the political and strategic leadership of the United States.

A similar pattern of limited acceptance by a number of States can be observed with respect to President George W. Bush's "war on terror" doctrine following the attacks of 11 September 2001. The adoption of numerous resolutions by the United Nations Security Council and General Assembly condemning terrorism and emphasizing the need to respond through all available means provided the United States with a legal and political basis for its military intervention in Afghanistan. According to the author, however, this doctrine has gradually lost support, even among some of its former proponents, particularly in light of the United States' treatment of individuals accused of terrorism at Guantanamo Bay detention camp and the eventual withdrawal of American forces from Afghanistan after two decades of military engagement.

Another dimension of the law governing the use of force examined in this section of the book is the United States' role in advancing the theory and practice of targeted killing. The author defines targeted killing as the use of lethal force by a State, pursuant to a deliberate and premeditated decision, against an individual who is not in custody. While Israel is frequently associated with this practice, the United States has also played a significant role in shaping its contemporary application through a series of high-profile operations, including the killing of Osama bin Laden.

The book argues that this approach has not been limited to individuals associated with terrorist organizations, such as Abu Bakr al-Baghdadi, but has also been directed against senior military and civilian officials of sovereign states. In this regard, the author devotes particular attention to the killing of Qasem Soleimani near Baghdad International Airport on 3 January 2020.[1]

This incident serves as a central case study in the author's critique of the American approach. He argues that the operation lacked a sufficient legal basis under international law for several reasons, including the absence of an armed attack attributable to a State within the meaning of Article 51 of the United Nations Charter, the alleged inconsistency of the operation with the agreement on the presence of U.S. forces (SOFA) in Iraq, and the broader principle prohibiting attacks against senior officials of foreign governments. On these grounds, the author concludes that the targeted-killing doctrine, as developed and applied by the United States, represents another example of the broader trend of American exceptionalism in the interpretation and application of international law (pp. 77–80).

Another example discussed in the book regarding the influence of the American approach on specific branches of international law is the field of international dispute settlement. According to many scholars in this area, international adjudication and arbitration have undergone a process of "Americanization" as a result of the increasing use of adversarial litigation tactics, heavy reliance on documentary evidence, the growing prominence of oral hearings—particularly the cross-examination of witnesses—and the adoption of highly detailed procedural rules in arbitral proceedings. This transformation has also been facilitated by the increasing participation of American lawyers in international proceedings and by the adaptation of procedural rules modeled on those found in the United States legal system.

1 *See*: Khorshidi Athar, M., Lesani, S. H. (2023). 'A Critical View towards U.S. Claim of Preemptive Self-Defense in the Assassination of General Qasem Soleimani', *Iranian Journal of International and Comparative Law*, 1(1), pp. 88-99. DOI: 10.22091/ijicl.2022.7522.1001; Taskhiri, M. S. (2023). 'Book Review, "The Legal Implications of The United States' Strike on General Soleimani, His Associates, And Iran's Response" Edited by Mostafa Fazaeli', *Iranian Journal of International and Comparative Law*, 1(2), pp. 253-258. DOI: 10.22091/ijicl.2024.10444.1093.

As a consequence, the author argues, contemporary international dispute settlement has gradually moved away from the more diplomatic, courteous, and less confrontational style that traditionally characterized international legal proceedings.

To illustrate this development, the book provides examples from commercial arbitration, interstate arbitration, proceedings before the dispute-settlement mechanisms of the World Trade Organization, and litigation before the International Court of Justice. One of the most prominent examples discussed is the Court's judgment in Military and Paramilitary Activities in and against Nicaragua. The author notes that the United States declined to comply with the Court's judgment and further exercised its veto power in the Security Council to block efforts by Nicaragua to secure enforcement of the judgment. He also points out that, during the proceedings in the United States Diplomatic and Consular Staff in Tehran, the United States simultaneously undertook a military operation aimed at rescuing its nationals in Iran (p. 115). According to the author, these examples demonstrate a pattern of American exceptionalism in international dispute settlement.

The book next turns to international investment law as another branch of international law significantly shaped by American influence. The author argues that the United States has affected this field through its influence over the form and substance of bilateral investment treaties, its impact on adjudicatory processes within the International Center for Settlement of Investment Disputes, and its promotion of an American understanding of compensation for expropriation (p. 128).

According to the author, the United States has played a leading role in advancing the principle of full compensation for expropriation, in contrast to alternative approaches that advocate compensation based on broader standards of equity or proportionality. The book further argues that the United States contributed to the development of modern bilateral investment treaty practice through earlier Friendship, Commerce and Navigation (FCN) treaties, which emphasized pre-establishment protections for foreign investment rather than the more traditional European model focused primarily on post-establishment protection. The author also identifies the growing influence of American judicial practices within international investment arbitration, including ICSID proceedings, particularly through the adoption of evidentiary techniques associated with U.S. litigation. Finally, he contends that the influence of American legal culture is evident in the drafting style of arbitral awards, which increasingly resemble the analytical, detailed style characteristic of American judicial opinions rather than the more concise style traditionally associated with continental European legal practice.

The book also identifies the law of the sea as another area in which the United States has exerted significant influence on the development of international law. Accordingly, the United States was among the principal opponents of the adoption of the 1982 United Nations Convention on the Law of the Sea, primarily because of the provisions contained in Part XI concerning the exploitation of deep seabed resources. Even after those provisions were modified through the 1994 Implementation Agreement and the Convention subsequently entered into force, the United States has continued to refrain from ratifying the Convention, despite having participated extensively in the negotiations and generally accepting many of its provisions as reflective of customary international law.

A further example discussed in the book concerns the regime governing archipelagic waters. The author argues that the United States strongly promoted a broad interpretation of navigational and overflight rights through archipelagic sea lanes during the negotiations of the Third United Nations Conference on the Law of the Sea. As a result, the final text of the 1982 Convention recognized a right of archipelagic sea lanes passage, permitting ships and aircraft to navigate and overfly such waters in their normal mode of operation for the purpose of continuous, expeditious, and unobstructed transit. According to the author, the successful incorporation of this regime into the Convention reflects the considerable influence exercised by the United States and other major maritime powers in shaping the substantive rules of the law of the sea in a manner consistent with their strategic and navigational interests.

For the author, these developments illustrate a broader pattern that runs throughout the book: the capacity of the United States not merely to influence the interpretation of existing international legal rules, but also to shape the creation of new norms and institutions in ways that reflect its political, military, and economic priorities.

3. Proposed Strategies for Responding to the Americanization of International Law

The final chapter of the book is devoted to the strategies the author proposes for Iran to respond to the Americanization of international law. These recommendations, however, do not appear to be exclusively applicable to Iran. Rather, they may be relevant to any member of the international community that is concerned about the increasing influence of American legal and political preferences on the development of international law.

The author proposes a range of measures at the domestic, regional, and international levels.

3.1. Strengthening International Legal Education

The first and most fundamental recommendation is to promote international legal education. The author emphasizes the importance of developing a deeper understanding among students, researchers, policymakers, and public officials regarding the phenomenon of the Americanization of international law, its methods, and its objectives. In the author's view, effective resistance to what he describes as American legal imperialism depends upon a thorough and accurate understanding of international law itself. As he argues, "If Iran wishes to resist the legal imperialism of the United States, it has no choice but to provide proper and adequate instruction in international law within its domestic system. A thorough and accurate understanding of international law equips a society to confront misinterpretations and deviations. Such knowledge and understanding strengthen the foundations for the implementation of international law and prevent a State such as the United States from taking advantage of the lack of legal awareness among developing nations." (p. 168).

3.2. Adopting Domestic Legislation

A second domestic strategy involves enacting national laws to challenge or respond to legal and political actions undertaken by the United States. The author cites as an example Iran's *2012 Law on the Disclosure of Human Rights Violations Committed by the United States and* *the United Kingdom in the Contemporary World*. Together with legal education, domestic legislation constitutes one of the principal internal mechanisms through which States may seek to address perceived imbalances in the international legal order.

The author nevertheless argues that domestic measures alone are insufficient and must be complemented by regional and international initiatives.

3.3. Strengthening Regional Political Relations

At the regional level, the author recommends enhancing political cooperation among neighboring and regional States to reduce American political influence and build greater resilience to political and economic pressures exerted by the United States.

3.4. Utilizing International and Regional Organizations

The book further advocates active engagement within international and regional organizations, particularly the Organization of Islamic Cooperation and the Non-Aligned Movement. Accordingly, such organizations can serve not only as platforms for developing a common intellectual and political response to the Americanization of international law but also as forums for generating alternative legal norms that reflect the interests and perspectives of a broader range of states.

The author then turns to a series of specifically legal strategies.

3.5. Persistent Objection to Emerging Customary Rules

One recommendation is to consistently and explicitly object to the formation of customary international law in areas where the author believes American legal doctrines are gaining acceptance, particularly with respect to anticipatory and preventive self-defense. By maintaining a position of persistent objection, States may seek to prevent such practices from crystallizing into generally accepted rules of customary international law.

3.6. Formal Diplomatic and Legal Protest

The author also encourages States to register formal objections before international institutions whenever they consider American conduct to be inconsistent with international law. Such protests may take the form of official statements, diplomatic communications, or submissions to bodies such as the United Nations Security Council.

3.7. Developing Alternative Legal Scholarship

Another important recommendation concerns the production of legal scholarship. The author argues that States and scholars should contribute to the development of academic literature that respond to and challenge the arguments advanced by American scholars whose work, in his view, supports the Americanization of international law. Intellectual engagement and scholarly debate are therefore presented as essential components of a broader legal strategy.

3.8. Strengthening International and Regional Judicial Institutions

The book also advocates the reinforcement and expansion of international and regional judicial mechanisms. Among the examples discussed are proposals for the establishment of an Asian human rights court and efforts to operationalize an Islamic International Court of Justice under the auspices of the Organization of Islamic Cooperation. Such institutions are viewed as potential alternatives that could diversify the sources of authority and interpretation within the international legal system.

3.9. Enhancing Iran's Role in the Sixth Committee of the General Assembly

Finally, the author recommends strengthening Iran's participation in the Sixth Committee of the United Nations General Assembly. By taking a more active role in this forum, Iran could present legal arguments, raise emerging legal issues, and articulate well-documented positions concerning the legal limits of unilateral action in international relations. In the author's assessment, greater engagement within the Sixth Committee would provide an important platform for advancing legal arguments against unilateralism and for promoting alternative interpretations of international law.

Taken together, these recommendations reflect the author's broader view that responses to the Americanization of international law must extend beyond political opposition and should encompass educational, legislative, diplomatic, scholarly, and institutional initiatives aimed at shaping the future development of the international legal order.

Conclusion

In his final reflections on the topics discussed throughout the volume, the author contends that international law has increasingly fallen under the influence of a phenomenon he terms the "Americanization of international law." He posits that this trend is persistent and, in his perspective, poised to speed up following Donald Trump's re-election as President of the United States on November 6, 2024. As the author notes:

"International law has become subject to a phenomenon known as Americanization. This process of Americanization is continuing and appears likely to accelerate following the re-election of Donald Trump as President of the United States on 6 November 2024. Whether international law is shaped by the direct will of the United States through extra-legal, unilateral, and expansive actions, or by the gradual and subtle influence of the United States on both the substantive and procedural dimensions of law, the essential issue remains the same. At the same time, Americanization has not always been entirely negative, and in some instances this process may also produce certain benefits." (p. 204)

The author further asserts that the Islamic Republic of Iran has long been cognizant of the phenomenon of Americanization within international law. In response, it has implemented a spectrum of policies and strategies to counteract U.S. influence both on regional and global stages. According to the text, these endeavors encompass domestic legislative measures as well as diplomatic and legal engagements within international organizations.

The author contends that the paramount long-term strategy for addressing contemporary developments in international law is to bolster regionalism while concurrently safeguarding the universal essence of the legal framework. He advocates that a form of international federalism could serve as an effective mechanism to counter the rising tide of Americanization and to foster a more equitable and diverse global legal order.

The author further underscores that as the United States increasingly assumes a predominant role in shaping the global order—taking stances on nearly every international matter and responding unilaterally—there is a risk that international law may be overshadowed by power politics. In such a climate, legal norms and institutions could gradually diminish in authority, jeopardizing their role as the foundational framework governing international relations. Ultimately, the author concludes, this trend would weaken the rule of law within the global community and erode the normative bedrock that sustains the present international legal order.