



Introduction

In early March 2022, the United Nations (UN) General Assembly voted to demand that Russia stop its offensive and immediately withdraw all its troops from Ukraine.¹ The resolution was not legally binding but was meant to be an indication of the international opinion on the matter. One hundred forty-one states voted in favor of the resolution. As such, the United States and the European Union, in particular, saw this as a salient condemnation of Russia. However, this interpretation of the vote does not give the full picture. To be sure, only five countries voted against the resolution: Belarus, the Democratic Republic of Korea, Eritrea, the Russian Federation, and the Syrian Arab Republic. But, on this important and clear-cut issue – the invasion of a country – no less than thirty-five countries abstained. These countries included China, India, Pakistan, Iran, Iraq, South Africa, Vietnam, Algeria, Angola, Mozambique, and Cuba. It is all the more difficult to disregard the abstention of these thirty-five countries in that they represent a significant part of the world population and that some of them are major powers, including China, of course, and India. Moreover, the abstaining countries represent various regions of the world, such as Asia, the Middle East, Africa, and Latin America.

A few weeks later, in April, the UN General Assembly adopted another resolution calling for Russia to be suspended from the Human Rights Council.² Once again, the resolution passed, with ninety-three countries voting in favor. But more than eighty countries either opposed it or abstained. China was among the twenty-four countries that voted against the resolution

¹ United Nations, “General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops,” in United Nations, *Meetings Coverage and Press Releases* (New York, NY, UN Headquarters, March 2, 2022), <https://press.un.org/en/2022/ga12407.doc.htm#:~:text=Member%20States%20today%20overwhelmingly%20adopted,emergency%20session%20on%20the%20crisis>.

² United Nations, “UN General Assembly Votes to Suspend Russia from the Human Rights Council,” in United Nations, *UN News* (New York, NY, UN Headquarters, April 7, 2022), <https://news.un.org/en/story/2022/04/1115782>.

condemning Russia. And the fifty-eight countries that abstained included important countries such as India, Brazil, South Africa, Mexico, Pakistan, Malaysia, and Indonesia.

In other words, the international views on the Russian aggression against Ukraine in February 2022 have not been as monolithic as the West initially claimed. Although in Europe and the United States, the condemnation of Russia has been overwhelming and has led them to support in concrete terms Ukraine's war efforts, this has not exactly been the case in other parts of the globe.

Needless to say, this is not the first time that a split between the West and a number of non-Western nations has happened. Since the end of the Cold War, more or less similar situations have taken place on several occasions. In the 1990s, this was the case over issues of international humanitarian interventions in the Balkans and in Africa. In the 2000s, there were divergences as well over Iraq. In fact, the 2003 war against Iraq produced a split within the Western camp itself, with some favoring using force (the United States and England, in particular) and others opposing it. And in the 2010s, there were also divisions concerning the conflicts in Libya and Syria.

But what was perhaps new in 2022 compared to previous circumstances was that the reluctance of countries, mainly from the non-West, to condemn the Russian invasion of Ukraine was less about the crisis itself than a message sent to the West. Arguably, it was a signal of disapproval and criticism addressed to Western powers and the type of international order and policies that have been adopted under their leadership. The display of the international gap that has existed over the war in Ukraine could be an indication that concerns and doubts about the legitimacy of the current international system and its international law have become very serious.

In 2023 and 2024, the situation has not changed drastically. The gap between the West and the non-West remained a reality. In fact, it may even have deepened beyond the war in Ukraine. In late August 2023, the Brazil, Russia, India, China, and South Africa (BRICS) bloc, which met for its annual leaders' summit, admitted six new member countries (Argentina, Egypt, Ethiopia, Iran, Saudi Arabia, and the United Arab Emirates) and expressed its growing disenchantment with the prevailing international system. And after the October 7, 2023, Hamas terrorist attacks on Israel and the subsequent Israeli bombing and ground assault on Gaza, the reignition of the Israeli-Palestinian conflict has come to embody the tensions between the larger Western powers that support Israel and the non-Western ones that support the Palestinians.

To be sure, since World War II, the international system and international law have changed a lot. Among other things, in comparison with the first part of the twentieth century – let alone the nineteenth century – they have made room for a more progressive agenda. Decolonization has happened, and so

have major developments in international human rights. However, it remains the sentiment of many in the non-West that, despite progress, international law and the kind of international order it expresses and defends have not entirely severed their links with their self-serving past and continue to cater first and foremost to the interests of the West. This is all the more the case considering that in the aftermath of the Cold War, after years of tensions, what was supposed to be a time of newly found peace between the big powers and their proxies has become a time of further antagonized international relations. As Western central powers have been eager to project their views on international affairs, resentment has grown in the rest of the world. Increasingly, this has helped to make international cooperation more difficult, fueling a return to harsh geopolitical and political competition.

Of course, harsh geopolitical competition is not a new phenomenon. It is emblematic of international life. But the end of the Cold War had generated the (probably naive) hopes, at least of some, that this time things could be different, that things would get better. Quickly, however, rather than coming together in the pursuit of the international interest, most countries have essentially been focusing on their national interest. In an international system built around states and nations, the fact that countries pay attention to their national interest is normal – in fact, necessary.

But when this takes place at the expense of the big picture – the interest of all – this becomes destructive, especially when there is so much interdependence, as is now the case, among countries.

Today's problematic state of political legitimacy is a telling aspect of this situation. At the domestic level, certainly, the reality of legitimacy is questioned. This is illustrated by what has been in recent years the loss of confidence in democratic institutions and leaders in many parts of the world, as shown by the rise of populism and the attraction of illiberalism. But at the international level, political legitimacy appears even more precarious. The unraveling of international organizations, and the disregard for the international norms and regulations that are designed to help manage the international system are part of this story. Think, for instance, about the deepening of the marginalization of the UN since the first decade of the twenty-first century. Think about the violations of the laws of war in Iraq in the 2000s and, more recently, in Ukraine and in the context of the Israeli–Palestinian conflict. Think about the fractured international order.

In these circumstances, how can one believe that a consensus exists on international legitimacy? How can one believe that international legitimacy even exists? The prevailing instability, uncertainty, and anxiety about the present and future of the international system put in doubt the very idea of legitimacy internationally. And yet, at the international level, as at the national one, we do not stop referring to and looking for legitimacy. We do not stop exploring the conditions under which it can be realized – if not fully, then at

least sufficiently. Like justice, though, political legitimacy is hard to achieve. It is elusive. But it is sought after. And it is the saving grace of politics. To the extent that they are taken seriously, the demands that legitimacy puts on relations of power contribute to making these relations right. If only for this reason, it is worth examining the law and politics of international legitimacy. This is what this book attempts to do.

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In focusing on the issue of legitimacy at the international level, this book addresses some of the following questions:

- What is the relevance of legitimacy, in general and today?
- How does legitimacy compare nationally and internationally?
- What are the components of legitimacy at the international level?
- What are the limitations of international law when it comes to legitimacy?
- How does legitimacy change over time at the international level?
- How can the international system and the international law that comes with it be made more just and legitimate?

To tackle these questions, and more, the book is organized into six parts and twenty-three chapters.

Part I sets the stage for the book. I begin in Chapter 1 by outlining the successive steps of my interest in matters of political legitimacy. I have been intrigued by issues of legitimacy since my doctoral studies, first in the context of Latin American political regimes and then in the context of political and legal theory.

Later on, working for the UN in the United States and Asia, I started to explore the international dimension of legitimacy. Chapter 2 reviews some of the changes and challenges that have been at play in recent years in international, and national, life and that make reflecting on legitimacy all the more pressing. These changes and challenges concern questions of social integration and disintegration; financial and economic problems; geopolitical competition and tensions; normative and technological transformations; and difficulties related to globalization, democracy, and governance. Chapter 3 concentrates on the relationship between law and legitimacy. This relationship is central to both legitimacy and law. Moreover, as legitimacy and law cannot be equated, it is a relationship of a somewhat paradoxical nature. On the one hand, law needs to be seen as legitimate to be accepted as part of an effective system of governance; in that sense, legitimacy is more than law. On the other hand, law is a key expression and benchmark of legitimacy, as illustrated by the importance of the notion of “rule of law” – in that sense, law is more than legitimacy.

Part II unpacks the meaning and role of legitimacy in politics. Chapter 4 begins with the ambiguous status of the idea of legitimacy in politics. It is

constantly referred to, and yet it is an object of suspicion because it is difficult to pinpoint. Nevertheless, to the extent that it is about identifying the conditions for the right to govern, legitimacy is crucial to the theory and practice of politics. Chapter 5 shows that political legitimacy entails a process of evaluation and eventually of judgment about whether or not, and to what extent, the disparities of power at play in politics between the governors and the governed can meet the conditions required by the right to govern. Chapter 6 stresses lessons that can be drawn from an analysis of political legitimacy: political legitimacy includes both conservative and progressive characteristics, with more emphasis on the progressive; a theory of political legitimacy involves a certain scope of evaluation and judgment; empirical evidence can be mobilized to assess the legitimacy or illegitimacy of power holding; and contemporary politics has special relevance to the discussion of political legitimacy.

Part III turns its attention to legitimacy at the international level. Chapter 7 indicates that although historically the problem of political legitimacy has emerged at the domestic level, it is highly significant at the international level. This significance goes far back in time. Long-standing issues of legitimacy in relation to just war theory, in the context of the right to go to war (*jus ad bellum*) or the right conduct in war (*jus in bello*), serve as an illustration. In addition, the importance of the question of legitimacy internationally has only become more acute with the growing interdependence of nations and sense of international community, however thin this sense of community is. More specifically, the chapter shows that the significance of legitimacy at the international level unfolds in the context of the interactions between the national and the international realms that take place in the framework of the following distinctions: we/them, inside/outside, particularist/universalist, and system/society. Chapter 8 describes the specific features of the international realm and what they imply for political legitimacy. This is done through the analysis of the ambiguity of the notion of the international community itself, the national bent of international life, the cultural diversity and the differences of development at play internationally, the hegemonic yet fragmented and contested conception and exercise of power at the international level, and the extent to which actors have the possibility to be represented and to participate in international life. On this basis, Chapter 8 highlights some of the contributions that political legitimacy can make in support of the socialization, viability, and maintenance of international order. As such, the chapter indicates that internationally, like nationally, legitimacy is about providing a rationale for the organization of power and searching for a balance between the status quo and change.

Part IV focuses on how international legitimacy is constructed in international law. It identifies five components, or building blocks, of international legitimacy at the core of international law that help to make international law a

benchmark of legitimacy. Chapter 9 refers to the first of these building blocks – that is, membership in the international community. This entails the type of organization of society that international law requires for being a legitimate member of the international community. The chapter adds that within limits, since the end of World War II, access to international membership has grown more universal and pluralistic than in the past. Chapter 10 concerns international rights holding. It shows that international membership is a gateway for collective entities and even individuals to have the right to have rights (Hannah Arendt) at the international level. But if international rights holding acknowledges the fact of being “in” and having rights, it also leaves “out” some communities and their members and denies them the kind of rights that those who are “in” enjoy. Chapter 11 is dedicated to a third component of international legitimacy – that is, the fundamental principles of international law and the hierarchy of rights holding. Regulating the principles are relations of compatibility, competition, and hierarchy. Hierarchy among these principles helps to determine the ranking that exists in international law and international life among international rights holders. In this regard, I argue that although in the aftermath of World War II the individual has emerged as a major international rights holder (human rights), the state continues to be the central player. From this state of affairs, it is possible to derive, in Chapter 12, that rightful conduct – a fourth building block of legitimacy in international law – revolves around the attitude of the state vis-à-vis, first, other states and, second, individuals. Even though the idea of what is owed to individuals, what is owed to the rights of individuals, has recently gained traction, the rights of individuals still do not trump the rights of states. Chapter 13 stresses the significance of international authority as a fifth component of legitimacy in international law. In the current international architecture, this authority is officially embodied by the United Nations. Here, the stakes are high. The challenges that the UN faces and what tends to be its loss of credibility are not only endangering this institution but also putting at risk the whole international system of values, norms, rules, and institutions on which the present international order rests.

Part V addresses change and international legitimacy. As a way to prepare the ground for this, Chapter 14 reflects on international legitimacy as a system of reference in the context of which actors, primarily states and individuals, experience meaning in the international sphere. Aspects of this phenomenon include how the start of an international order can impact its legitimacy; how, once in place, the sense of legitimacy in an international system influences actors; and how the scope and depth of legitimacy internationally can vary greatly with time and circumstances. This helps to take the measure of what is at stake in the question of change and international legitimacy. Building on Chapter 14's general discussion of the scope and depth of international legitimacy, Chapter 15 examines the scope and depth of international

legitimacy in the context of modernity as defined by the role of the West. Chapter 16 first discusses the fact that scholarship on legitimacy and order has tended to focus on stability to the detriment of discussions about the relationship between legitimacy and change. After advocating for the socialization of instability, Chapter 16 analyzes the connection between the characteristics of an international order and the issue of its change, including the change of its legitimacy. Chapter 17 focuses on a change *of* international order and legitimacy – in other words, a change that is so transformative that it brings about a change in both how an international order is organized, institutionalized, and functions and how this is justified by the culture of legitimacy that is part of it. The chapter explores the reasons that can trigger a change of great magnitude, the modalities, and processes indicating that an international system and its legitimacy are changing toward new ones, and what has shifted when a new international order and its culture of legitimacy have emerged. Chapter 18 is concerned with the change of legitimacy *in* a given international order. This chapter examines some of the main features of change in an international system and what this implies for legitimacy. Referring, in particular, to the international system in the last few years, the chapter also explores the resources of adaptation that an international order and its legitimacy can mobilize, which are a source of resilience and strength. The chapter ends by alluding to the systemic risk to which the present international system is exposed. Part V ends with Chapter 19, which seeks to answer three questions:

- (1) Does it make sense to examine the issue of the evaluation of international legitimacy, established or changing?
- (2) What are the criteria that can be used to evaluate the validity of a claim or belief of international legitimacy, established or changing?
- (3) What are the relevance and the modalities of application of a normative approach to international legitimacy, established or changing, across various periods and cultures?

Part VI is the last main section of the book. Focusing on international law and the international system it serves, it adopts a point of view that is at the same time critical and constructive or, more precisely, reconstructive of international order. Chapters 20 and 21 are the critical chapters of Part VI, reflecting on the past and the present of international law. Chapter 20 addresses the history of international law, and Chapter 21 is about the philosophy of international law. Parts of Chapters 20 and 21 synthesize elements mentioned in the earlier chapters in the book, so these two chapters are short. The rest of the chapters of Part VI is dedicated to the future of international law. It identifies what can be done to make it more responsive to the demands of legitimacy and justice. It stresses the need to better bridge positive values and norms with reality and explores where normative, legal, and institutional innovations are required. More specifically, Chapter 22 refers

to the lessons and the principles that can be found in how international law has been challenged and ameliorated over time, especially since the twentieth century, and that could be useful for the way forward. The principles, described as principles of agency, are consent; justification; accountability; consistency; representation and participation; and, generally, nonabuse of power. In addition, the chapter examines the areas of international law decisive for its future to which these principles could be applied. This leads me to call for a better universality of international law, for making respect for human rights a strong benchmark of the legitimacy of sovereignty, and for having human rights supported by a culture of public goods. Chapter 23 encourages international law to move from an agenda of international justice to one more sensitive to the demands of global justice. This includes the need for the global justice agenda, from intellectual and policy standpoints, to not rely essentially on Western perspectives, as is by and large the case today. The ownership of the agenda cannot be lopsided: to have the non-West identify with and be on board with the global justice agenda, it is imperative to integrate what it thinks and has to say on the topic. It is important to note, though, that a cosmopolitan approach, such as the one of global justice, does not have to entail the removal or elimination of the state and sovereignty; rather, it recommends their reconceptualization and the application of this reconceptualization in light of the new environment.

The Conclusion outlines future directions of research for the way forward. The afterword alludes to the impact of Trump's election as president in 2024 on the international system and international law.