

An abstract artwork consisting of horizontal bands of various colors (green, blue, red, white, yellow, grey, orange, dark green, light blue) separated by irregular, torn edges. A vertical crease or fold runs down the center of the composition.

# Fault Lines of International Legitimacy

Edited by  
Hilary Charlesworth and Jean-Marc Coicaud

CAMBRIDGE

## FAULT LINES OF INTERNATIONAL LEGITIMACY

*Fault Lines of International Legitimacy* addresses the following questions: What are the features and functions of legitimacy in the international realm? How does international legitimacy – as exemplified in particular by multilateral norms, organizations, and policies – change over time? What role does the international distribution of power and its evolution have in the establishment and transformation of legitimacy paradigms? To what extent do democratic values account for the growing importance of legitimacy and the increasing difficulty of achieving it at the international and national levels?

One of the central messages of the book is that although the search for international legitimacy is an elusive endeavor, there is no alternative to it if we want to respond to the intertwined demands of justice and security and make them an integral and strategic part of international relations.

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## Contents

<i>Acknowledgments</i>	page vii
<i>Contributors</i>	viii
Introduction <i>Jean-Marc Coicaud</i>	1
PART I: FROM THE HISTORY AND STRUCTURE OF INTERNATIONAL LEGITIMACY TO FAULT LINES IN CONTEMPORARY INTERNATIONAL POLITICS	
1. Legitimacy, Across Borders and Over Time <i>Jean-Marc Coicaud</i>	17
2. Deconstructing International Legitimacy <i>Jean-Marc Coicaud</i>	29
3. The Evolution of International Order and Fault Lines of International Legitimacy <i>Jean-Marc Coicaud</i>	87
4. Intervention in a “Divided World”: Axes of Legitimacy <i>Nathaniel Berman</i>	115
5. From Berlin to Bonn to Baghdad: A Space for Infinite Justice <i>Vasuki Nesiah</i>	146
PART II: THE UN SECURITY COUNCIL: EXPRESSION, VENUE, AND PROMOTER OF INTERNATIONAL LEGITIMACY?	
6. Legal Deliberation and Argumentation in International Decision Making <i>Ian Johnstone</i>	175

7. The UN Security Council, Regional Arrangements, and Peacekeeping Operations <i>Nishkala Suntharalingam</i>	204
8. The Security Council's Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325 <i>Dianne Otto</i>	239
PART III: LEGITIMACY OF INTERNATIONAL INTERVENTIONS AND HIERARCHY OF INTERNATIONAL RIGHTS	
9. Cosmopolitan Militaries and Cosmopolitan Force <i>Lorraine Elliott</i>	279
10. Sovereignty, Rights, and Armed Intervention: A Dialectical Perspective <i>B. S. Chimni</i>	303
PART IV: IN SEARCH OF NEW FORMS OF INTERNATIONAL LEGITIMACY: BETWEEN POWER AND PRINCIPLES	
11. Determining How the Legitimacy of Intervention Is Discussed: A Case Study of International Territorial Administration <i>Ralph Wilde</i>	327
12. The Legitimacy of Economic Sanctions: An Analysis of Humanitarian Exemptions of Sanctions Regimes and the Right to Minimum Sustenance <i>Jun Matsukuma</i>	360
Conclusion: The Legitimacies of International Law <i>Hilary Charlesworth</i>	389
<i>Index</i>	399

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Carl F. Stychin (editors), *Sexuality and the Law: Feminist Engagements* (2007), and “Lost in Translation: Re-scripting the Sexed Subject of International Human Rights Law,” in Anne Orford (editor), *International Law and Its Others* (2006).

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## Introduction

*For Samir Kassir, in memoriam*<sup>1</sup>

The question of legitimacy has a paradoxical status in international relations. On the one hand, it is a feature of international life. Indeed, as far as a country tries to live in relative harmony with its neighbors, it has to factor in what is right and what is wrong internationally so that peace can be maintained. As such, issues of legitimacy (e.g., legitimate and illegitimate behavior) are part and parcel of international relations, and one of the tasks of international law – a key tool for the regulation of international affairs – is to draw a line between legitimacy and illegitimacy in international life. On the other hand, over time, questions of international legitimacy have received secondary

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<sup>1</sup> Samir Kassir (1960–2005) – fellow philosophy student in the middle of the 1980s at the University of Paris I – Sorbonne, journalist, person of passion and integrity, and friend – was assassinated by a car bomb in Beirut on the morning of Thursday, June 2, 2005. His assassination has still to be elucidated. For more on Samir Kassir’s assassination and the context in which it took place in Lebanon (including the assassination of former Lebanese Prime Minister Rafik Hariri), see the *Fourth Report of the International Independent Investigation Commission Established Pursuant to Security Council Resolutions 1595 (2005), 1636 (2005), and 1644 (2005)* (Beirut: United Nations, S/2006/375, June 10, 2006). Refer also to the establishment of a special UN tribunal for Lebanon to try those responsible for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others, *Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon* (New York: United Nations, S/2006/893, November 15, 2006), and, more important, Security Council Resolution 1757, adopted on May 30, 2007, which decided that the Special Tribunal for Lebanon would enter into force on June 10, 2007 (New York: United Nations, S/RES/1757(2007), May 30, 2007).

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attention.<sup>2</sup> It is not surprising because the socialization of individuals have taken place historically first at the national level; it is at this level that legitimacy has been principally addressed. This has been particularly the case in the context of reflecting on whether the organization and functioning of society is just and, therefore, whether its political institutions and leaders are legitimate.

However, in the past twenty years, legitimacy at the international level has been the object of increased attention. The international redistribution of power resulting from the collapse of the Soviet Union; the possibility of and need for multilateral institutions (primarily the United Nations [UN]) to be more involved than in the past in the management of the international system; the use of democratic and human-rights values as benchmarks of legitimate and illegitimate behaviors internationally, especially in connection with the use of force are some of the factors that account for the emergence of legitimacy on the international scene. In this perspective, following the seminal work of Thomas M. Franck,<sup>3</sup> a stream of books and articles dedicated to international legitimacy in the fields of international relations and international law is now being published.<sup>4</sup>

<sup>2</sup> The few publications on international legitimacy before the 1990s include Inis L. Claude, Jr., "Collective Legitimation as a Political Function of the United Nations," in *International Organization* (Vol. 20, No. 3, Summer 1966); and Martin Wight, "International Legitimacy," in *International Relations: Journal of the David Davies Memorial Institute of International Studies* (Vol. 4, No. 1, May 1972).

<sup>3</sup> Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990). For an analysis of this book, refer, for example, to José E. Alvarez, "The Quest for Legitimacy: An Examination of *The Power of Legitimacy Among Nations* by Thomas M. Franck," in *New York University Journal of International Law and Politics* (Vol. 24, No. 1, Fall 1991).

<sup>4</sup> In recent years, books that focus essentially on legitimacy at the international level include Brad R. Roth, *Governmental Illegitimacy in International Law* (Oxford: Oxford University Press, 1999); Christopher Gelpi, *The Power of Legitimacy: Assessing the Role of Norms in Crisis Bargaining* (Princeton, NJ: Princeton University Press, 2003); Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004); Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005) and *International Legitimacy and World Society* (Oxford: Oxford University Press, 2007); and Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton, NJ: Princeton University Press, 2007). Journal articles include Dencho Georgiev, "Politics or Rule of Law: Deconstruction and Legitimacy in International Law," in *European Journal of International Law* (Vol. 4, No. 1, 1993); David Dyzenhaus, "The Legitimacy of Legality," in *University of Toronto Law Journal* (Vol. 46, No. 1, Winter 1996); Mattias Kumm, "The Legitimacy of International Law: A Constitutionalist Framework of Analysis," in *European Journal of International Law* (Vol. 15, No. 5, 2004); J. H. H. Weiler, "The Geology of International Law: Governance, Democracy, and Legitimacy," in *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* (Vol. 64, 2004); David Armstrong and Theo Farrell (2005). Force and Legitimacy in World

*The Legitimacy of International Organizations*, a book that evolved from a United Nations University (UNU) research project and was published in 2001,<sup>5</sup> was part of this new attention given to legitimacy at the international level. As the title indicates, the book focused on the institutions of global governance, including the UN and the Bretton Woods institutions, and their various policies in the fields of collective security, development, trade, environment, and so on. The book's main objective was to assess the legitimacy of international organizations and their activities in the aftermath of the Cold War. In this regard, the mixed picture that emerged from the book showed that the legitimacy of international organizations – and that of their values, internal mechanisms, and policies – was anything but secure. In retrospect, the first ten years of the twenty-first century have confirmed this state of affairs.

During this period, the insistence of progressive scholars of global governance on the need for international institutions to fulfill the demands of democratic legitimacy, including the need to develop a better sense of accountability,<sup>6</sup> also pointed toward the current difficulty of these organizations in doing so. Moreover, September 11 and the U.S. response to it – particularly the war in Iraq – showed, on both sides of the issue, a radicalization of international politics at odds with the very *raison d'être* of the UN. In the process, the legitimacy of the international system, as well as that of the international organizations that comprise an integral part, has come under fire. This explains the fact that “talk of crisis is everywhere in contemporary international relations, and crises of legitimacy seem especially widespread.”<sup>7</sup>

Does this mean that this book, *Fault Lines of International Legitimacy*, conceived as a sequel to *The Legitimacy of International Organizations*, is itself going as far as arguing that we are now facing a crisis of international legitimacy? A crisis of international legitimacy has been defined recently in the following terms:

Politics: Introduction. *Review of International Studies*, 31, pp. 3–13. Steven Wheatley, “The Security Council, Democratic Legitimacy, and Regime Change in Iraq,” in *European Journal of International Law* (Vol. 17, No. 3, 2006); Allen Buchanan & Robert O. Keohane, “The Legitimacy of Global Governance Institutions,” in *Ethics and International Affairs* (Vol. 20, No. 4, Winter 2006); Ian Clark & Christian Reus-Smit, guest editors of the special issue of *International Politics, Resolving International Crises of Legitimacy* (Vol. 44, Nos. 2/3, March/May 2007).

<sup>5</sup> Jean-Marc Coicaud & Veijo Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo: United Nations University Press, 2001).

<sup>6</sup> See, for instance, Ruth W. Grant & Robert O. Keohane, “Accountability and Abuses of Power in World Politics,” in *American Political Science Review* (Vol. 99, No. 1, February 2005).

<sup>7</sup> Ian Clark & Christian Reus-Smit, “Preface,” in the special issue of *International Politics, Resolving Crises of International Legitimacy* (ibid.), p. 153.

... we use the term “international” to refer to that amorphous social realm that encompasses the complex array of political relations among states and non-state actors (and the institutions they construct and maintain) that transcend and constitute the territorial boundaries of sovereign states. An international crisis of legitimacy is thus one that afflicts these actors, their institutions, or the political orders they constitute. . . . [C]rises will be defined as critical turning points in which the imperative to adapt is heightened by the imminent possibility of death, collapse, demise, disempowerment, or decline into relevance. What kind of crisis, then, is a crisis of *legitimacy*? When we say that an actor or institution is suffering a crisis of legitimacy, we are saying that the decline in its legitimacy, or its failure to cultivate sufficient legitimacy, has reached a critical turning point. Because legitimacy is but one source of social power, the critical turning point is not necessarily, or immediately, marked by a precipitous decline in an actor’s or an institution’s political capacity.<sup>8</sup>

The answer is “no.” The editors of and contributors to *Fault Lines of International Legitimacy* do not think that international order and its values, mechanisms, and institutions are facing a crisis of the magnitude alluded to in the previous quote. Surely, we do not deny the seriousness of the situation. We see that the current tensions and conflicts at work internationally are the result of competitive and unresolved claims that, for most of them, are based on the disputed interpretation and implementation of key international norms. In addition, we see that these tensions and conflicts have the potential to undermine the international system; however, at the moment, it is simply a potentiality. The stability and legitimacy of the international system are very much under stress but, so far, there is no systemic breakdown; the system is holding up. For example, no member state, much less any major member state, is leaving the UN because of pending disputes – hence, the free use of the expression “fault line,” which provides the title to this book, helps describe the areas of friction, analyze their nature, and understand what is at stake in their handling by international actors. In this regard, somewhat like what happens in geology,<sup>9</sup> fault lines of international legitimacy are simultaneously zones of fracture and opportunities for adjustment – opportunities through which, in the midst of adversarial claims, the international system seeks its

<sup>8</sup> Christian Reus-Smit, “International Crises of Legitimacy,” in *International Politics* (ibid.), pp. 166–167.

<sup>9</sup> In geology, the creation and behavior of faults, or fault lines, in both an individual small fault and the greater fault zones that define the tectonic plates, are controlled by the relative motion of rocks on either side of the fault surface. Because of friction and rigidity of the rock, the rocks cannot simply glide or flow past each other. Rather, stress builds up in rocks and when it reaches a level that exceeds the strain threshold, the accumulated energy is released as strain, which is focused onto a plane along which relative motion is accommodated – that is, the fault. See Frank D. Stacey & Paul M. Davies, *Physics of the Earth*, fourth edition (Cambridge: Cambridge University Press, 2008).

preservation. It is only when fault lines of international legitimacy are not kept under check, when they become critical and define the international system essentially by its contradictions, that – in extreme circumstances – there is a risk of an “extinction-level event” (ELE),<sup>10</sup> so to speak, bringing about its unraveling and demise. In the context of the 1930s, the work of Nathaniel Berman shows convincingly how this ELE can occur.<sup>11</sup>

Against this background, *Fault Lines of International Legitimacy* – moving beyond the rather straightforward assessment of the legitimacy of international institutions in the previous UNU project, *The Legitimacy of International Organizations* – focuses on some of the battles of legitimacy occurring within international institutions, especially in the context of the UN Security Council, and examines how they relate to the quest for stability and legitimacy of the international system. This leads the book’s editors and contributors to address the following questions, among others: What are the features and functions of legitimacy in the international realm? How does international legitimacy (as exemplified, in particular, by multilateral norms, organizations, and policies) change over time? What role does the international distribution of power (and the position of major actors with regard to this distribution) and its evolution have in the establishment and transformation of a legitimacy paradigm(s)? To what extent do democratic values account for the growing importance of legitimacy and the increasing difficulty of achieving it at the international (as at the national) level, all the while constituting its best recourse?

As such, issues surrounding fault lines of international legitimacy are entry points to analyze the socialization of international life – its limits but also the opportunities that it entails – in connection with the international norms, mechanisms, and institutions, which bring the world and its actors together while also keeping them apart, and how this state of affairs could unfold in the future. In addition, by adopting a critical approach to the discourses and practices of global governance, mainly examined within the field of international law,<sup>12</sup> *Fault Lines of International Legitimacy* aims to identify ways to strengthen international legitimacy and, consequently, the

<sup>10</sup> This is also called “mass extinction.” See Vincent Courtillot, *Evolutionary Catastrophes: The Science of Mass Extinction*, translated by Joe McClinton (Cambridge: Cambridge University Press, 1999).

<sup>11</sup> Nathaniel Berman, *Passions et ambivalences: Le colonialisme, le nationalisme et le droit international*, translated under the direction of Nathaniel Berman and Emmanuelle Jouannet by Lucie Delabie, Marie Blocteur, Leila Choukroune, Céline Clerfeuille, & Olivia Harrison (Paris: Editions Pedone, 2008); see especially pp. 317–387.

<sup>12</sup> Most of the contributors to the book are international lawyers.

international rule of law. That is, in a relatively indirect manner, the book pursues a normative agenda; it elucidates how international life could take “right” more seriously.

Ultimately, one of the central messages of the book is that although the search for international legitimacy is an elusive endeavor and one that cannot avoid confrontations and struggles, there is no alternative – at least, not if one wants to respond to the intertwined demands of justice and security and make them all an integral and strategic part of international relations.

### **The Book at a Glance**

The book is organized into four parts. The first part discusses the history of international legitimacy and its structure while setting the stage for the question of fault lines of international legitimacy. It explores the normative and institutional tensions in international order, including fault lines, and how they affect the perception and validity claims of international legitimacy. The second part analyzes the role that the UN Security Council plays in shaping international legitimacy – which is only natural, considering the crucial function of the Security Council as a key organ of global governance, in terms of both interpretation and implementation but also with regard to its limits. The third part of the book focuses on the issue of international humanitarian intervention. It approaches this question as an illustration and a test of matters of international legitimacy in the post–Cold War era, especially pertaining to individuals as international right holders and the question of the rightful conduct of states. The importance that this issue has acquired since the early 1990s and its continued evolution – particularly in connection with the Responsibility to Protect and the unresolved crisis in Darfur – justify this choice. The fourth part of the book identifies the emergence of new forms of international legitimacy based on debates and practices in the UN context and beyond. The ideas explored at this level must be understood relative to the question of balance between status quo and change, which is examined specifically in the first part of the book.

**From the History and Structure of International Legitimacy to Fault Lines in Contemporary International Politics.** Jean-Marc Coicaud’s chapters set the stage for the book regarding the notions of international legitimacy and fault lines of international legitimacy. Chapter 1 offers a general definition of legitimacy and proceeds with the identification of what distinguishes political legitimacy at the national and international levels. It then provides an historical overview of the issue of international legitimacy by examining a

number of case studies. The main objective of the overview is to emphasize the fact that the question of international legitimacy has long been significant, although it has acquired a special importance in recent decades. Chapter 2 focuses on the main characteristics of international legitimacy. Considering the complexity of the notion and its relative lack of academic analysis, the editors of and contributors to the book wanted to unpack, in detail, some of the key aspects of international legitimacy. This process entails examining the meaning and mechanisms, at the international level, of the notions of right holders, hierarchy of right holders, and rightful conduct. Chapter 3 moves from a relatively static analysis of international legitimacy to a more dynamic one, exploring the notion of fault lines of international legitimacy per se. From this perspective, it focuses on the need to balance status quo and change internationally and shows how international fault lines of legitimacy tend to be unresolved disputes between them. In the process, the chapter identifies some of the main types of fault lines of international legitimacy, doing so within the framework of resolutions adopted by the UN Security Council since the end of World War II.

Nathaniel Berman's chapter, Chapter 4, "Intervention in a 'Divided World': Axes of Legitimacy," examines some of the ideas discussed in the first three chapters. In this context, he contradicts the idea that the first post-Cold War decade represented the "golden age" of internationalism, in terms of the status and coherence of internationalism. Indeed, Berman rejects any temptation to be nostalgic about the post-Cold War decade as historically inaccurate and theoretically flawed. More fundamentally, he proposes to eliminate the utopian dream of an international community that integrates power and principle. Moreover, the final integration of power and principle is impeded by the fact that internationalist principles and institutions are themselves deeply heterogeneous. According to Berman, the September 11 terrorist attacks are only the most recent example of perennial challenges to international order – challenges that reveal much about the theoretical and practical elements of internationalist legitimacy. Against this background, Berman advocates a focus on the situational, provisional aspect of legitimacy – on the way internationalist actors must continually seek to reaffirm legitimacy relative to a variety of constituencies and in the face of ever-changing developments. He calls for an understanding of legitimacy that is less foundational and more vulnerable, less static and more tentative, less certain and messier. In the process, he also recognizes that the internal tensions of internationalism have been a source of great strength, which allowed the creation of its most audacious experiments. The work-in-progress nature of internationalism is linked to the heterogeneity of its elements and the flexibility that results.

In conclusion, Berman argues that legitimacy, especially the composite of power and idealism that has marked the most robust internationalism of the past century, can and should only ever be a provisional achievement. It is a provisional achievement arrived at through internationalism's wrestling with its doubles, whether ideological adversaries, heterogeneous elements in local conflicts, or specters of its own unsavory past.

In Chapter 5, "From Berlin to Bonn to Baghdad: A Space for Infinite Justice," Vasuki Nesiah studies the fault lines of legitimacy in the relationship between internationalist humanitarian and military intervention. She contends that humanitarianism functions not only in opposition but also as a complement to militarism. She argues that Kosovo marked a great temporal line because, to many, it legitimized the use of militarism for humanitarian purposes and increased states' humanitarian confidence in the ability to use military power for good. In addition, Nesiah deconstructs how the discourse of humanitarianism permeated the military offensive in Afghanistan, discussing in the process the notion of Responsibility to Protect. Here, she emphasizes that proponents of the war in Afghanistan couched much of the normative rationale for intervention in the Responsibility to Protect, not only in the right to intervene. Human rights, particularly women's rights, were strongly emphasized, as were less obvious discourses regarding intercivilizational dialogue, poverty alleviation and economic development, democratization, multiculturalism, cultural authenticity, and peace. These discussions created the space for militarism by giving the Anglo-American coalition the moral authority to challenge the policies and practices of the Taliban government. Ultimately, Nesiah seeks to identify humanitarian principles to produce legitimacy for military intervention. However, she argues that efforts to fortify the ramparts of humanitarianism against the grasp of imperial interventionists may prove futile. Indeed, based on the record of humanitarian militarism since the end of the Cold War, one can see that there is complicity on the part of humanitarians in that they enabled the linkage between humanitarian and militarist arguments, in some contexts, even as they resented the linkage in others. Thus, Nesiah concludes that the intervention in Iraq remains mired in legitimacy fault lines, "connecting the dots" from Berlin 1884 to Baghdad 2003.

**The UN Security Council: Expression, Venue, and Promoter of International Legitimacy?** In Chapter 6, "Legal Deliberation and Argumentation in International Decision Making," Ian Johnstone draws on the theory of deliberative democracy and, in the context of international organizations and the UN Security Council, analyzes the following question: Can democracy be

transposed beyond the level of the nation-state? In this regard, indicating that international law operates largely through a process of justificatory discourse – which is fundamentally an effort to gain assent to value judgments on reasoned rather than idiosyncratic grounds – he stresses that it is possible to apply the deliberative principle at the transnational level. To be sure, one must recognize that international law, like any other type of law, can be used in strategic, instrumental, and hypocritical ways. However, the fact is that once governments accept a legal norm at the international level, they begin to argue about its interpretation and its application to the particular case at hand. This creates a discursive opening for their critics (e.g., “If you say you respect human rights, why then do you violate them?”), which eventually becomes an incentive for governments to match words with deeds. Of course, the constraint this imposes is not absolute, and it is felt more by the weak states than by the strong. Yet, the real or anticipated judgment of the interpretive community is one factor that the most powerful states cannot ignore. Johnstone tests this thesis by considering whether decision making in the UN Security Council is influenced at all by deliberative conventions and constraints. His answer is “yes,” especially in light of the fact that the past two decades have heralded some convergence of understanding about the rules of international life. Moreover, he argues that there is evidence in those failed deliberations (e.g., Iraq in early 2003) of a fairly robust normative framework that structured debates and affected the course of events. According to Johnstone, this shows that because there is an interpretive community to guard the normative framework, the law cannot be manipulated infinitely. He concludes his chapter by suggesting avenues for reform that would reduce the deliberative deficit in the UN Security Council, thereby enhancing the legitimacy of its decisions and of the UN as a whole.

In Chapter 7, “The UN Security Council, Regional Arrangements, and Peacekeeping Operations,” Nishkala Suntharalingam poses the following questions: What is the scope for involvement of regional arrangements in peace and security issues? How is legitimacy conferred on the actions and interventions of regional organizations in maintaining international peace and security via peace operations? To what extent is the capacity of using force a prerequisite for the effectiveness and legitimacy of these operations? Suntharalingam addresses these issues in the context of recent crises. In this perspective, she argues that there is growing consensus among member states that UN Security Council authorization is necessary to provide legitimacy for intervention regardless of whether the UN is the implementer. Nevertheless, conferring this legitimacy by the UN Security Council comes at a price because it requires the UN to better coordinate and manage the partnerships