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International law is fragmented and complex, and at the same time increasingly capable of shaping reality in areas as diverse as human rights, trade and investment, and environmental law. The increased influences of international law and its growing institutionalization and judicialization invites reconsideration of the question how should the authority to make and interpret international law be allocated among states, international organizations and tribunals, or in other words, "who should decide what" in a system that formally lacks a central authority? This is not only a juridical question, but one that lies at the very heart of the political legitimacy of international law as a system of governance, defining the relationship between those who create the law and those who are governed by it in a globalizing world. In this book, leading international legal scholars address a broad range of theoretical and practical aspects of the question of allocation of authority in international law and debate the feasibility of three alternative paradigms for international organization: Sovereignty, Supremacy and Subsidiarity. The various contributions transcend technical solutions to what is in essence a problem of international constitutional dimensions. They deal, inter

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alia, with the structure of the international legal system and the tenacity of sovereignty as one of its foundations, assess the role of supremacy in inter-judicial relations, and draw lessons from the experience of the European Union in applying the principle of subsidiarity. This volume will be of great interest to scholars and practitioners of international law alike.

It has never been more important to understand how international law enables and constrains international politics. By drawing together the legal theory of Lon Fuller and the insights of constructivist international relations scholars, this book articulates a pragmatic view of how international obligation is created and maintained. First, legal norms can only arise in the context of social norms based on shared understandings. Second, internal features of law, or 'criteria of legality', are crucial to law's ability to promote adherence, to inspire 'fidelity'. Third, legal norms are built, maintained or destroyed through a continuing practice of legality. Through case studies of the climate change regime, the anti-torture norm, and the prohibition on the use of force, it is shown that these three elements produce a distinctive legal legitimacy and a sense of commitment among those to whom law is addressed.

This collection presents an analysis of the imperatives of sovereignty, human rights and national security in the post 9/11 era, and examines their relationship to procedural and substantive legitimacy in liberal democratic states

"The description for this book, How to Do Things with International Law, will be forthcoming. "--

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This book examines the features and functions of international legitimacy and how these change over time. This intellectually rigorous introduction to international law encourages readers to engage with multiple aspects of the topic: as 'law' directing and shaping its subjects; as a technique for governing the world of states and beyond statehood; and as a framework within which several critical and constructivist projects are articulated. The articles situate international law in its historical and ideological context and examine core concepts such as sovereignty, jurisdiction and the state. Attention is also given to its operation within international institutions and in dispute settlement, and a separate section is devoted to international law's 'projects': protecting human rights, eradicating poverty, the conservation of resources, the regulation of international trade and investment and the establishment of international order. The diverse group of contributors draws from disciplinary orientations ranging from positivism to postmodernism to ensure that this book is informed theoretically and politically, as well as grounded in practice.

This work deals with the question of unlawful territorial situations, i.e. territorial regimes that are established and maintained in defiance of international law. The book represents a welcome contribution to an issue of the utmost importance in international affairs at present times. It brings together elaborate theoretical discussion and thorough empirical research. Students of international law, practitioners, and anyone interested in deepening the understanding of the role and relevance of international law to territorial occupation will greatly

benefit from this study.

This book investigates the legitimacy deficits of two potentially conflicting legal systems, namely Public and Islamic international law. It discusses the challenges that Public international law is being presented within the context of its relationship with Islamic international law. It explores how best to overcome these challenges through a comparative examination of state practices on the use of force. It highlights the legal-political legacies that evolved surrounding the claims of the legitimacy of use of force by armed non-state actors, states, and regional organizations. This book offers a critical analysis of these legacies in line with the Islamic Shari'a law, United Nations Charter, state practices, and customs. It concludes that the legitimacy question has reached a vantage point where it cannot be answered either by Islamic or Public international law as a mutually exclusive legal system. Instead, Public international law must take a coherent approach within the existing legal framework.

This volume examines the role of international law in shaping and regulating transitional contexts, including the institutions, policies and procedures that have been developed to steer constitutional regime changes in countries affected by catalytic events. The book offers a new perspective on the phenomenon of conflict-related transitions, whereby societies are re-constitutionalized through a set of interim governance arrangements subject to variable degrees of internationalization. Specifically, this

volume interrogates the relevance, contribution and perils of international law for this increasingly widespread phenomenon of inserting an auxiliary phase between two ages of constitutional government. It develops a more nuanced understanding of the various international legal discourses surrounding conflict- and political crisis-related transitional governance by studying the contextual factors that influence the transitional arrangements themselves, with a specific focus on international aspects, including norms, actors and related forms of expertise. In doing so, the book builds an important bridge between comparative constitutional law and international legal scholarship in the practical and highly dynamic terrain of transitional governance. This book will be of much interest to practitioners and students of international law, diplomacy, mediation, security studies and International Relations.

Concepts shape how we understand and participate in international legal affairs. They are an important site for order, struggle and change. This comprehensive and authoritative volume introduces a large number of concepts that have shaped, at various points in history, international legal practice and thought; intimates at how the many projects of international law have grappled with, and influenced, the world through certain concepts; and introduces new concepts into the discipline.

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An interdisciplinary volume exploring the concept of legitimacy in relation to international courts and what can drive and weaken it.

Sovereignty and the sovereign state are often seen as anachronisms; Globalization and Sovereignty challenges this view. Jean L. Cohen analyzes the new sovereignty regime emergent since the 1990s evidenced by the discourses and practice of human rights, humanitarian intervention, transformative occupation, and the UN targeted sanctions regime that blacklists alleged terrorists. Presenting a systematic theory of sovereignty and its transformation in international law and politics, Cohen argues for the continued importance of sovereign equality. She offers a theory of a dualistic world order comprised of an international society of states, and a global political community in which human rights and global governance institutions affect the law, policies, and political culture of sovereign states. She advocates the constitutionalization of these institutions, within the framework of constitutional pluralism. This book will appeal to students of international political theory and law, political scientists, sociologists, legal historians, and theorists of constitutionalism.

International Humanitarian Law (IHL) is in a state of some turbulence, as a result of, among other things, non-international armed conflicts, terrorist threats and the rise of new technologies. This incisive book

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observes that while states appear to be reluctant to act as agents of change, informal methods of law-making are flourishing. Illustrating that not only courts, but various non-state actors, push for legal developments, this timely work offers an insight into the causes of this somewhat ambivalent state of IHL by focusing attention on both the legitimacy of law-making processes and the actors involved.

Legality today commands substantial currency in world affairs, and this volume examines the struggle over its meaning in diverse practices.

By showing how Kelsen's theory of law works alongside his political philosophy, the book shows the Pure Theory to be part of a wider attempt to understand how political power can be legitimately exercised in pluralist societies.

A comprehensive discussion of international trade courts and tribunals with specific emphasis on their performance and legitimacy.

Since the Second World War, States have increasingly relied upon economic sanctions programs, in lieu of military action, to exert pressure and generally to fill the awkward gap between verbal denunciation and action. Whether or not sanctions are effective remains a point of contention among policymakers. Frequently asked questions include whether any legal order constrains the use of sanctions, and, if so, what the limits on the use of sanctions are. This volume gathers contributions from leading experts in various relevant fields providing a

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seminal study on the limits of economic sanctions under international law, including accountability mechanisms when sanctioning States go too far. Where there are gaps in the law, the authors provide novel and important contributions as to how existing legal structures can be used to ensure that economic sanctions remain within an accepted legal order. This book is a most valuable contribution to the literature in the fields of international economic law, public international law and international dispute resolution. Ali Z. Marossi is an advisory board member of The Hague Center for Law and Arbitration. Marisa R. Bassett is Associate Legal Officer in the Office of the Prosecutor for the ICTY and former Associate at White & Case LLP.

## PART V CRITICAL APPROACHES.

The proposed volume consists of an edited collection within the new Melland Schill Guidebooks on International Law (MSGIL) series. In line with the MSGIL objective of inclusiveness, originality, perspectivism and critical thought, the book is the first of an intended series pertaining to perspectives related to the ways in which the arts influence the perception and attitude of the public towards international law, and the manner this affects the discipline, both in terms of its own development and in terms of its social legitimacy. The book contrasts the narratives of international law depicted in cinema and TV productions with the corresponding narratives advanced by legal scholars. It identifies a cognitive dissonance between them and ascertains its implications on general perceptions of international law.

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In countries such as Syria, Iraq, South Sudan, and Yemen, internationally recognized governments embroiled in protracted armed conflicts, and with very little control over their territory, have requested direct military assistance from other states. These requests are often accepted by the other states, despite the circumvention of the United Nations Security Council and extensive violation of international humanitarian law and human rights. In this book, Erika De Wet examines the authority entitled to extend a request for (or consent to) direct military assistance, as well as the type of situations during which such assistance may be requested, notably whether it may be requested during a civil war.

Ultimately, De Wet addresses the question of if and to what extent the proliferation of military assistance on the request of a recognized government is changing the rules in international law applying to the use of force. Unmanned combat air vehicles, or in common parlance 'drones', have become a prominent instrument in US efforts to counter an objective (and subjective) cross-border terrorist threat with lethal force. As a result, critical questions abound on the legitimacy of their use. In a series of multidisciplinary essays by scholars with an extensive knowledge of international norms, this book explores the question of legitimacy through the conceptual lenses of legality, morality and efficacy, it then closes with the consideration of a policy proposal aimed at incorporating all three indispensable elements. The importance of this inquiry cannot be overstated. Non-state actors fully understand that attacking the much more powerful state requires moving the conflict away

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from the traditional battlefield where they are at an enormous disadvantage. Those engaging in terrorism seek to goad the ruling government into an overreaction, or abuse of power, to trigger a destabilization via an erosion of its legitimacy. Thus defending the target of legitimacy”in this case, insuring the use of deadly force is constrained by valid limiting principles”represents an essential strategic interest. This book seeks to come to grips with the new reality of drone warfare by exploring if it can be used to preserve, rather than eat away at, legitimacy. After an extensive analysis of the three key parameters in twelve chapters, the practical proposition of establishing a 'Drone Court' is put forward and examined as a way of pursuing the goal of integrating these essential components to defend the citizenry and the legitimacy of the government at the same time.

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With the ad hoc tribunals completing their mandates and the International Criminal Court under significant pressure, today's international criminal jurisdictions are at a critical juncture. Their legitimacy cannot be taken for granted. This multidisciplinary volume investigates key issues pertaining to legitimacy: criminal accountability, normative development, truth-discovery, complementarity, regionalism, and judicial cooperation. The volume sheds new light on previously unexplored areas, including the significance of redacted judgements, prosecutors' opening statements, rehabilitative processes of international convicts, victim expectations, court financing, and NGO activism. The book's original

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contributions will appeal to researchers, practitioners, advocates, and students of international criminal justice, accountability for war crimes and the rule of law.

The question of the sources of international law inevitably raises some well-known scholarly controversies: where do the rules of international law come from? And more precisely: through which processes are they made, how are they ascertained, and where does the international legal order begin and end? These traditional questions bear on at least two different levels of understanding. First, how are international norms validated as rules of international "law", i.e. legally binding norms? This is the static question of the pedigree of international legal rules and the boundaries of the international legal order. Second, what are the processes through which these rules are made? This is the dynamic question of the making of these rules and of the exercise of public authority in international law. The Oxford Handbook on the Sources of International Law is the very first comprehensive work of its kind devoted to the question of the sources of international law. It provides an accessible and systematic overview of the key issues and debates around the sources of international law. It also offers an authoritative theoretical guide for anyone studying or working within but also outside international law wishing to understand one of its most foundational questions. This handbook features original essays by leading international law scholars and theorists from a range of traditions, nationalities and perspectives, reflecting the richness and diversity of scholarship in this area.

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Virtually every important question of public policy today involves an international organization. From trade to intellectual property to health policy and beyond, governments interact with international organizations in almost everything they do. Increasingly, individual citizens are directly affected by the work of international organizations. Aimed at academics, students, practitioners, and lawyers, this book gives a comprehensive overview of the world of international organizations today. It emphasizes both the practical aspects of their organization and operation, and the conceptual issues that arise at the junctures between nation-states and international authority, and between law and politics. While the focus is on inter-governmental organizations, the book also encompasses non-governmental organizations and public policy networks. With essays by the leading scholars and practitioners, the book first considers the main international organizations and the kinds of problems they address. This includes chapters on the organizations that relate to trade, humanitarian aid, peace operations, and more, as well as chapters on the history of international organizations. The book then looks at the constituent parts and internal functioning of international organizations. This addresses the internal management of the organization, and includes chapters on the distribution of decision-making power within the organizations, the structure

of their assemblies, the role of Secretaries-General and other heads, budgets and finance, and other elements of complex bureaucracies at the international level. This book is essential reading for scholars, practitioners, and students alike.

Using a methodology that both analyzes particular constitutional texts and theories and reconstructs their historical evolution, Chris Thornhill examines the social role and legitimating status of constitutions from the first quasi-constitutional documents of medieval Europe, through the classical period of revolutionary constitutionalism, to recent processes of constitutional transition. *A Sociology of Constitutions* explores the reasons why modern societies require constitutions and constitutional norms and presents a distinctive socio-normative analysis of the constitutional preconditions of political legitimacy.

Scholars have generally assumed that authoritarianism and rule of law are mutually incompatible. Convinced that free markets and rule of law must tip authoritarian societies in a liberal direction, nearly all studies of law and contemporary politics have neglected that improbable coupling: authoritarian rule of law. Through a focus on Singapore, this book presents an analysis of authoritarian legalism. It shows how prosperity, public discourse, and a rigorous observance of legal procedure have enabled a reconfigured rule of law

such that liberal form encases illiberal content.

Institutions and process at the bedrock of rule of law and liberal democracy become tools to constrain dissent while augmenting discretionary political power - even as the national and international legitimacy of the state is secured. This book offers a valuable and original contribution to understanding the complexities of law, language and legitimacy in our time.

There has been intense debate in recent times over the legitimacy or otherwise of international law. This book contains fresh perspectives on these questions, offered at an international and interdisciplinary conference hosted by the Max Planck Institute for Comparative Law and International Law. At issue are questions including, for example, whether international law lacks legitimacy in general and whether international law or a part of it has yielded to the facts of power.

This book focuses on the problematic relationship between legality and legitimacy when a nation (or nations) intervene in the work of other nations.

Bringing together a wide range of contributors with a broad set of cases that consider when such intervention is legitimate even if it isn't legal--and vice versa--the chapters cover humanitarian intervention, nuclear nonproliferation, military intervention, international criminal tribunals, interventions driven by environmental concerns, and

the export of democracy. By focusing on a diverse array of cases, this volume establishes a clear framework for judging the legitimacy of such actions. While its importance in domestic law has long been acknowledged, transparency has until now remained largely unexplored in international law. This study of transparency issues in key areas such as international economic law, environmental law, human rights law and humanitarian law brings together new and important insights on this pressing issue. Contributors explore the framing and content of transparency in their respective fields with regard to proceedings, institutions, law-making processes and legal culture, and a selection of cross-cutting essays completes the study by examining transparency in international law-making and adjudication.

This edited volume examines the role of international law in a changing global order. Can we, under the current significantly changing conditions, still observe an increasing juridification of international relations based on a universal understanding of values? Or are we, to the contrary, facing a tendency towards an informalization or a reformalization of international law, or even an erosion of international legal norms? Would it be appropriate to revisit classical elements of international law in order to react to structural changes, which may give rise to a more polycentric or non-polar world order? Or are

we simply observing a slump in the development towards an international rule of law based on a universal understanding of values? In eleven chapters, distinguished scholars reflect on how to approach these questions from historical, system-oriented and actor-centered perspectives. The contributions engage with the rise of European international law since the 17th century, the decay of the international rule of law, compliance as an indicator for the state of international law, international law and informal law-making in times of populism, the rule of environmental law and complex problems, human rights in Europe in a hostile environment, the influence of the BRICS states on international law, the impact of non-state actors on international law, international law's contribution to global justice, the contestation of value-based norms and the international rule of law in light of legitimacy claims.

This book examines the international law of forcible intervention in civil wars, in particular the role of party-consent in affecting the legality of such intervention. In modern international law, it is a near consensus that no state can use force against another - the main exceptions being self-defence and actions mandated by a UN Security Council resolution. However, one more potential exception exists: forcible intervention undertaken upon the invitation or consent of a government, seeking

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assistance in confronting armed opposition groups within its territory. Although the latter exception is of increasing importance, the numerous questions it raises have received scant attention in the current body of literature. This volume fills this gap by analyzing the consent-exception in a wide context, and attempting to delineate its limits, including cases in which government consent power is not only negated, but might be transferred to opposition groups. The book also discusses the concept of consensual intervention in contemporary international law, in juxtaposition to traditional legal doctrines. It traces the development of law in this context by drawing from historical examples such as the Spanish Civil War, as well as recent cases such those of the Democratic Republic of the Congo, Somalia, Libya, and Syria. This book will be of much interest to students of international law, civil wars, the Responsibility to Protect, war and conflict studies, and IR in general.

Offers an accessible discussion of conceptual and moral questions on international law and advances the debate on many of these topics.

Promoting the rule of law is at the heart of the United Nations' mission. Critically evaluating rule of law initiatives from a contemporary global perspective, *The International Rule of Law Movement* explains which measures work and which fail, and why. It proposes better models for instituting justice and the rule of law in fragile states.

In *Regulating International Sport: Power, Authority and*

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Legitimacy Lloyd Freeburn provides a ground-breaking account of the legal basis of regulatory power in international sport and outlines the reforms necessary to give the regime legality and legitimacy.

This book articulates a systematic vision of an international legal system grounded in the commitment to justice for all persons. It provides a probing exploration of the moral issues involved in disputes about secession, ethno-national conflict, 'the right of self-determination of peoples,' human rights, and the legitimacy of the international legal system itself.

Buchanan advances vigorous criticisms of the central dogmas of international relations and international law, arguing that the international legal system should make justice, not simply peace, among states a primary goal, and rejecting the view that it is permissible for a state to conduct its foreign policies exclusively according to what is in the 'the national interest'.

He also shows that the only alternatives are not rigid adherence to existing international law or lawless chaos in which the world's one superpower pursues its own interests without constraints. This book not only criticizes the existing international legal order, but also offers morally defensible and practicable principles for reforming it. Justice, Legitimacy, and Self-Determination will find a broad readership in political science, international law, and political philosophy. Oxford Political Theory presents the best new work in political theory.

It is intended to be broad in scope, including original contributions to political philosophy and also work in applied political theory. The series contains works of outstanding quality with no restrictions as to approach or subject matter.

Series Editors: Will Kymlicka, David Miller, and Alan Ryan

The book explores the main characteristics of contemporary theory in international law. It examines in an analytical fashion 32 schools, movements, and trends as well as the works of more than 500 authors on substantive issues of international

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When is a de facto authority not entitled to be considered a 'government' for the purposes of International Law? International reaction to the 1991-4 Haitian crisis is only the most prominent in a series of events that suggest a norm of governmental illegitimacy is emerging to challenge more traditional notions of state sovereignty. This challenge has dramatic implications for two fundamental legal strictures: that against the use or threat of force against a state's political independence, and that against interference in matters 'essentially' within a state's domestic jurisdiction. Yet although human rights advocates have begun to speak of state sovereignty as an 'anachronism', with some expansively proclaiming the emergence of an international 'right to democratic governance,' international law literature lacks systematic treatment of governmental illegitimacy. This work seeks to specify the international law of collective non-recognition of governments, so as to enable legal evaluation of cases in which competing factions assert governmental authority. It subjects the recognition controversies of the United Nations era to a systematic examination, informed by theoretical and comparative perspectives on governmental legitimacy. The inquiry establishes that the category of 'illegitimate government' now occupies a place in international law, with significant consequences for the legality of intervention in certain instances. The principle of popular sovereignty, hitherto vague and ambiguous, has acquired sufficient determinacy to serve, in some circumstances, as a basis for denial of legal recognition to putative governments. This development does not imply, however, the emergence in international law of a meaningful norm of 'democratic governance,' nor would such a norm serve the purposes of the scheme of sovereign equality of states embodied in the United Nations Charter.

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