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## From Fragmented Legal Order to Globalised Legal System: Towards a Framework of General Principles for the Consistency of International Law

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### ABSTRACT

Fragmentation is out; general principles are in. After years of work on fragmentation, the International Law Commission (ILC) has concluded that international law is a legal system with interconnected norms. The ILC has now shifted its focus to the general principles of law. These principles are a wellspring of rights and obligations, help interpret sources, and guide legal reasoning. This paper focuses on the latter function; it argues that a framework of legal principles can contribute to the consistency of international law as the legal system *par excellence* for a globalised world. This manuscript begins by outlining how fragmentation is a paradox of globalisation and presenting the prevailing systemic view of international law. The paper then presents a reason-based scheme for reasoning with norms. It finishes by advocating for a framework of principles for legal consistency.

**Keywords:** international law as legal system, fragmentation, general principles of law, legal consistency, reason-based reasoning

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## 1. Introduction

Fragmentation is out; general principles are in. After years of work on fragmentation, the International Law Commission (ILC) has concluded that international law is a legal system with interconnected norms<sup>1</sup> (2006b, para. 14). This means that instead of being a collection of separate and isolated legal regimes, international law operates as a consistent<sup>2</sup> whole, with various rules and principles working together to create a comprehensive legal framework. Based on these findings, the ILC has shifted its focus to the general principles of law. According to the ILC, these principles are a wellspring of rights and obligations, help interpret sources, and guide legal reasoning (2019, para. 26). They are fundamental to the functioning of the international legal system and act as foundational elements in the “constitutional processes” of international law (Eggett 2019). In this respect, according to the 2023 draft conclusions of the ILC, these principles “contribute to the coherence of the international legal system” (2023, 2).

In this paper, I will focus on how principles guide legal reasoning. I argue that establishing an overarching set of legal principles can enhance the consistency of international law. Consistency is crucial for international law to effectively fulfil its role as the legal system *par excellence* for a globalised world. Specifically, I will concentrate on how principles, such as *lex specialis*, *superior* and *posterior*, provide legal actors with relevant values and standards to resolve international law norm conflicts. I will explain that “*conflict-resolving principles*” offer reasons for the application and non-application of norms; legal actors can use these reasons to determine which

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<sup>1</sup> In this paper, I use the term “norm” to refer to the category that includes rules and principles. In this context, the term “normative” refers to things related to norms rather than the strict deontic sense of normativity. See (Hage 2020).

<sup>2</sup> Some authors, such as Andenas et al. (2019), prefer to use the terms “coherence” or “cohesiveness” instead of “consistency.” Terminology is not my primary concern; we can interpret “consistency” as “coherence” or any other preferred term. As I will explain in section 3, I use the term “consistency” to refer to either the absence of conflicts or the ability to make sense despite their presence.

norms apply and do not apply in their cases.<sup>3</sup> In this regard, I argue that the ILC, states, international organisations, legal officials, and other actors of international law should strive to establish an overarching framework of conflict-resolving principles that determine priority relationships among international legal norms. This framework would aid legal actors by giving them reasons to reach unambiguous conclusions on norm application.

This philosophical investigation does not discuss the doctrinal or historical aspects of legal principles. Instead, this paper aims to present a theoretical argument about the foundational role of general principles of law in maintaining the consistency of international law. By moving away from dogmatic research and delving into legal philosophy, we can better understand the complex issues surrounding this topic. Such a philosophical investigation can contribute to current discussions on international law by supplying scholars and lawyers with the theoretical groundwork to discern the role general principles play in legal practice.

Concerning the structure of this paper, section 2 reviews the discussion on the fragmentation of international law and explains how fragmentation is one of the paradoxes of globalisation. Section 3 discusses how the ILC concluded the fragmentation debate by determining that international law is a legal system. It also highlights two defining elements of a legal system: unity and consistency. Section 4 discusses the distinction between rules and principles, adopting a weak differentiation (or an integrated view) between them (4.1). That section then presents a reason-based scheme for reasoning with norms (4.2). Section 4 explains that to maintain consistency in international law, we should establish an overarching framework of conflict-resolving principles to help legal actors deal with norm conflicts (4.3). Section 5 concludes this paper with some final remarks.

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<sup>3</sup> When referring to “conflict-resolving principles,” I am talking about principles that help us address normative conflicts, not actual armed conflicts. These principles help resolve conflicts between legal norms rather than hostilities between or within nations.

## 2. Fragmentation as a Paradox of Globalization

Even before the ILC began discussing the fragmentation of international law, several scholars had already questioned international law's nature as a legal system or even as real law.<sup>4</sup> For instance, Austin stated that international law could never be true law because it concerns the conduct of sovereigns between one another rather than the conduct of a sovereign towards its subjects (1954, 201). Schmitt also expresses scepticism towards international law in his works, particularly in his conclusion that international law is “empty normativism” that cannot be distinguished from politics (2006, chap. 2). He uses the example of the trial of Kaiser Wilhelm II by a special international tribunal to illustrate how political actors use the language of international law to further their own interests, transforming their confrontations into a theatre of good versus evil (Schmitt 2006, 262 f.; see also: Koskenniemi 2002, chap. 6; 2006a, 613).

Hart was not as sceptical about the nature of international law as real law, but he claimed that it did not qualify as a legal system (2012, 213–16). He argued that international law lacks a centralised legislature, courts with compulsory jurisdiction, and centrally organised sanctions. Moreover, according to Hart, international law consists only of primary norms of obligation and lacks secondary norms of change and adjudication. These secondary norms provide for legislature and courts, include a unifying rule of recognition that specifies sources of law, and supply criteria for identifying primary norms. Hart concludes that international law more closely resembles the normative order of primitive social groups than a proper legal system (2012, 232–36). Kelsen would disagree with the assessment that international

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<sup>4</sup> Despite the distinction between historical debates on the nature of international law as real law and contemporary fragmentation issues, a connection can be drawn between them as both address the lack of a single, determinative normative source for international law (Koskenniemi 2006a, chap. 6; Koskenniemi and Leino 2002, 556–62). In this context, fragmentation can be viewed as a modern expression of a long-standing debate (Menezes 2013). Recently, there have been differing opinions on whether fragmentation is an actual issue that needs to be addressed or if it is merely an academic concern about the future of international law (Shongwe 2020).

law is not a legal system. His monistic theory connects domestic and international law, with international law being the superior legal system (Kelsen 1949, chap. 6; 1952, chap. 5). However, due to international law's decentralised nature, Kelsen must concede that international law has characteristics of primitive law. This is because it lacks specialised legislative, judicial, and executive organs and relies on members of the international community to perform these functions (Kelsen 1951, 707; 1952, 22).

Although some may argue that many aspects of these views are no longer relevant,<sup>5</sup> the issues they addressed remain pertinent. The continued relevance of these issues is due to the structural differences between international and domestic law, with the former being far more decentralised than the latter. Contemporary international law still lacks centralised legislative, judiciary and executive bodies. Despite the undeniable importance of institutions such as the United Nations (UN) General Assembly, the Security Council, and the International Court of Justice (ICJ), there is no single central body responsible for overseeing international law-making, deciding cases with compulsory jurisdiction, or enforcing sanctions at a central level.

The decentralised nature of international law has long been a defining characteristic of this legal system (Menezes 2005, 36–38). However, in recent years, this decentralisation has led to increased complexity due to the expansion and diversification of international law. After the UN was formed and especially after the end of the Cold War, there was a period of accelerated growth in the number of international regulations and adjudicative bodies. ICJ Judge Gilbert Guillaume was among the first to draw attention to the proliferation of international courts and tribunals in both scientific publications (1995) and speeches to the UN (2000). He expressed concern about the potential for “forum shopping” by litigants, which could create

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<sup>5</sup> For commentary on these views, see (Lefkowitz 2020, chaps. 2–3; Murphy 2013; Payandeh 2010; Waldron 2013).

uncertainty and increase the risk of conflicting decisions, contradictory interpretations, and incoherent legal precedents.

The concerns expressed by Guillaume were echoed by the ILC, which addressed this emerging issue in its first report on fragmentation (2000). In its report, the Commission examined the causes of fragmentation and noted that international law was undergoing structural changes. These changes were due to an increase in international regulations and growing political polarization, as well as rising regional and global interdependence in areas such as the economy, environment, energy, resources, health, and the proliferation of weapons of mass destruction (2000, p. 143). The ILC pointed out that while the resulting separate international legal microsystems could have a positive effect by enforcing the rule of law in international relations, they would also risk creating frictions and contradictions between legal regulations. This can result in states having to comply with mutually exclusive obligations, leading to inevitable responsibility for liabilities when states cannot fulfil all such obligations (2000, p. 144). Simply put, fragmentation leads to conflicts between different sets of norms of international law.

After the ILC's first report was published, the General Assembly requested further work on fragmentation. This second report was finalised by Koskenniemi (ILC, 2006a). As an international law scholar, Koskenniemi is well-known for his postmodernist reinterpretation of international law's doctrine and intellectual history (Jouannet 2011; Murphy 2013). Koskenniemi sees international law as a realm of rhetorical patterns and structures filled with inescapable contradictions. These contradictions are driven by the tension between formalism and realism, objectivism and subjectivism, and naturalism and positivism (Koskenniemi 2007b). In arguments about applicable international law norms, Koskenniemi sees these contradictions as allowing both sides to advance their positions through equally valid and plausible legal claims (Koskenniemi 2006a, 562 f.).

In line with Koskenniemi's interdisciplinary approach, the ILC's second report uses the concept of "functional differentiation" from sociology to explain the fragmentation of international law (ILC, 2006a, para. 7 f.). According to Luhmann, functional differentiation is the process by which society becomes more complex and specialised, with different subsystems emerging to perform specific functions for the overall system (Luhmann 2004, 93, 934; Marcos 2021; Pineda 2022; Rogowski 2001). Each subsystem can connect with other subsystems in different ways, leading to more variation within the system and allowing for better responses to the environment and faster evolution. However, when a system (legal or otherwise) undergoes restructuring in response to changing social contexts, it does so through a critical rearrangement of established institutions rather than an organised and planned reformation.

In the report, the ILC explains that functional differentiation is a characteristic of late modernity, occurring both within and between states and is driven and accelerated by globalisation (2006a, paras. 7–8, 481–482). In this context, globalisation refers to the increasing interdependence between states, nations and peoples worldwide. This interdependence spans many areas, including time, space, place, boundaries, diasporas and migrations. It also encompasses social, cultural, economic and legal connections (Berman, 2002, 314–15; 2005, xvii). Functional differentiation is closely related to many aspects of globalisation. The ILC specifically mentions global cooperation networks that are technically specialised in areas such as communication, scientific research, trade, the environment, human rights and transboundary crime prevention. These networks extend beyond national borders and span various spheres of life and expert cooperation. Because of such characteristics, according to the ILC, these frameworks are challenging to regulate through traditional international law (2006a, paras. 481–482).

Due to globalisation, contemporary international law has evolved to include normative microsystems, often called "special regimes" (ILC, 2006a, paras. 123–137, 482–483). Special regimes, such as those for trade,

environmental and human rights law, can emerge informally. This happens when leading actors adopt standardised solutions and behaviours that create mutual expectations and are replicated by other actors. These regimes often arise through intergovernmental cooperation, particularly with the support of specialised international organisations. This results in the creation of international law regimes based on bilateral or multilateral treaties and customary patterns. Specialised legal regimes have their own microsystems designed to address their specific needs and interests. However, we often witness “regime failure” when these microsystems do not take into account the broader macrosystem, leading to inconsistencies between the two (Koskeniemi 2004, 205; 2006b, 18–21). In this regard, the importance of having a “fallback” option to general international law and its principles lies in the concrete risk of regime failure (Gradoni 2009, chap. 1). This fallback provides a necessary solution when the microsystem’s limitations prevent the legal order’s objectives from being achieved.

Paradoxically, as globalisation continues to grow stronger, fragmentation also increases (ILC, 2006a, para. 7; Lundestad 2004). According to Zolo (1997; 2004), globalisation is causing social life worldwide to become increasingly uniform. He attributes this to the advancement of new technologies in transportation and communication, the growth of multinational corporations, and the diminishing power of nation-states. These factors have created a vacuum that has been filled by international organisations and other actors, resulting in a global order marked by greater interconnectedness, interdependence, and inequality. While globalisation has led to greater uniformity in our world, it has also given rise to specialised and relatively autonomous spheres of social action and legal structure. This can result in fascinating changes and significant new interconnections in the legal sphere, but it can also lead to a greater risk of contradictions and normative conflicts. The future of globalisation is even more uncertain in light of the continued impact of the recent Covid-19 pandemic, climate change, and the



rise of political extremism (Andrea Willige 2022; Foroohar 2022; Guerra, Marcos, and Hardman 2020; Menezes and Marcos 2020).

No matter what the future brings, whether it be more multilateral integration or nationalistic isolation, many aspects of our world will remain global. However, this does not mean that our world will be uniform. In this respect, with the potential for continued fragmentation and functional differentiation, international law should not aim to impose absolute supranational homogeneity or even predefine solutions to all possible international issues. Instead, it should establish minimum standards<sup>6</sup> via a set of guiding principles that allow for a consistent interpretation of international legal obligations and cooperation between the many actors in the international legal sphere. A framework of general principles could play a critical role in creating an effective legal system for a globalised world. It could do this by providing legal actors with minimum standards for legal consistency. In the next section, we will discuss international law's systemic character, leading us to consider how general principles can contribute to legal consistency in section 4.

### **3. The Systemic Character of International Law**

As pointed out in section 1, the ILC concluded its work on fragmentation by declaring that international law is a legal system (2006b, para. 14). In other words, despite any complications brought about by international law's decentralised character, its functional differentiation, globalisation and ongoing regulatory expansion, international law is still a legal system. Even Koskenniemi, who is known for advocating the idea that international law is fragmented, has revised his stance and now acknowledges that it is a system. In his words: “[l]aw is a whole [...] You cannot just remove one of its fingers and pretend it is alive. For the finger to work, the whole body must come

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<sup>6</sup> This notion of minimum standards is inspired by Zolo's ideas of minimum supranational standards (1997; 2010).

along” (2007a, 10). In this connection, many authors have presented different views on what it means for international law to be a system. Dupuy (2002; 2020) speaks of systematicity resulting from the joint operation of international law’s formal and material unity. Benvenuti (2008) and Menezes (2017) refer to a logical order that keeps international law coherent. Delmas-Marty (2009) sees contemporary international law as a pluralistic legal order that overcomes contradictions.

Despite the variety of perspectives on the systemic nature of international law,<sup>7</sup> most authors who view it as a legal system agree on two key elements: unity and consistency.<sup>8</sup> That is to say, international law is a legal system insofar as it is a unified and consistent set of norms. This idea is reflected in Losano’s definition of internal systems as opposed to external systems (2002, sec. I). An external system is an outward organisation imposed on certain elements, such as organising wine bottles based on their vintage. The vintage does not reveal any inherent relationship between the wines but rather a categorisation based on the year the grapes were harvested. In contrast, an internal system comprises interconnected components that work consistently together towards a particular end. A good example of this is the nervous system in vertebrates. The nervous system comprises the brain, spinal cord, and nerves. These components work together to receive, process and send information throughout the body.

When discussing the systemic character of international law, we focus on its nature as an internal system of unified and consistent elements. While some authors, such as Kelsen (1949, 147), argue that completeness is another necessary element of a system, others, like Carrió (1986, 88–89), maintain that legal systems are inherently incomplete. Bulygin (2015a; 2015b) suggests that this debate arises from not considering the relational nature of

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<sup>7</sup> For an overview, see (Prost 2012).

<sup>8</sup> In previous work (Marcos 2023; Forthcoming), I have explained that consistency results from the internal logic of a normative system. Although there is a difference between these two concepts (internal logic and consistency), we can disregard this distinction in this paper, thus focusing only on consistency.

completeness and viewing legal orders as encompassing all legal norms rather than examining each microsystem individually. Although there is much to be said about the completeness or incompleteness of legal systems in general and international law specifically, we do not need to delve into this discussion in this paper. Instead, we can focus on the widely accepted elements of unity and consistency.

A legal system, such as international law, is unified if we can conceptually understand it as a single entity. That is, international law is unified as it exists as a distinct entity to which we refer as international law. This does not preclude the existence of microsystems, such as special regimes within international law. International law is an overarching macrosystem comprising several microsystems (special regimes). These microsystems are still part of the international law system, and their special norms are still norms of international law. Norms that are part of international law but do not belong to special regimes are considered norms of general international law. The ILC agrees with this perspective, acknowledging that the designation of a special regime has no inherent value because no international legal regime exists in isolation from general international law (2006a, paras. 21, 193, 254).

Consistency can be understood in at least two ways (Marcos 2023; Forthcoming).<sup>9</sup> One way is to consider a set of elements consistent if there is no conflict between them. Another way is to consider a set consistent even if there are conflicts between its elements, as long as these conflicts can be resolved through the system's underlying rationality. For instance, the set of descriptions "Rome is the capital of Italy," "Rome is in Europe," and "Rome is a beautiful city" is consistent because there is no conflict between these descriptions. Contrarywise, the set "Rome is the capital of Italy" and "Rome is not the capital of Italy" is inconsistent because Rome cannot simultaneously be and not be the capital of Italy.

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<sup>9</sup> In previous work (Marcos 2023; Forthcoming), I have differentiated between "statement-consistency" and "rule-consistency." This terminology will be ignored for present purposes as we will focus only on the consistency of normative systems.

Norms offer more flexibility than descriptions; a normative system is consistent even if there are conflicts between its norms as long as these conflicts can be resolved. Let us define a normative conflict as a situation where at least two norms are applicable to a case, but their application would result in incompatible legal consequences. To clarify this definition, consider a simple microsystem with only two norms: N1 (acts of force are prohibited) and N2 (acts of force in self-defence are permitted). Now, imagine a case where Ukraine responds to an unwarranted military attack by Russia. Let us call it the “Ukraine v Russia case.”<sup>10</sup> Under N2, Ukraine’s act of force would be permitted because it is in self-defence. However, under N1, that act would be prohibited because it is an act of force.

According to the logical standard of non-contradiction, an action cannot be permitted and prohibited simultaneously (Hansson 2013; Von Wright 1963, 86 f.). This is because a prohibition to  $\varphi$  is equivalent to an obligation to not  $\varphi$ , while permission to  $\varphi$  is equivalent to a non-obligation to not  $\varphi$ .<sup>11</sup> But legal practitioners know that when there is a conflict between two norms like N1 and N2, only N2 should apply. This is due to the legal principle of *lex specialis*, which prioritises the more specific norm over the less specific one. In this case, N2 is more specific than N1 because N2 only pertains to acts of force in self-defence, while N1 pertains to all acts of force. Therefore, even though N1 and N2 are conflicting, their microsystem can still be considered consistent if seen under the light of the principle of *lex specialis*. This example illustrates the importance of conflict-resolving principles like *lex specialis* in maintaining the consistency of a normative system. We will explore these principles in greater detail in the following section.

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<sup>10</sup> The recent Russian attacks on Ukrainian territory inspire this case. See (Sayapin 2022)

<sup>11</sup> In this paper, the symbol “ $\varphi$ ” represents an action or an act. So,  $\varphi$  is a variable that can be replaced with any specific act or action, such as making a claim, deciding on a course of action, using force and so on. This allows for general discussions and arguments about acts and actions without specifying a particular act or action in each instance.

#### 4. Principles of International Law

Arbitral decisions concerning international disputes have referenced the general principles of law long before the adoption of the Permanent Court of International Justice's (PCIJ) Statute.<sup>12</sup> For example, in the *Antoine Fabiani* case, the award explicitly mentioned the application of the "general principles of the law of nations."<sup>13</sup> In the *Gentini* case, the Italian-Venezuelan Commission stated that while rules are practical and mandatory, principles express a "more general truth" that guides our actions and serves as a theoretical foundation for norm application.<sup>14</sup> This notion that rules are more concrete or specific while principles are more abstract or general is still widely accepted in international law, finding echoes in both the ILC's fragmentation report (2006a, para. 28) and its current studies on general principles (2019, para. 67).<sup>15</sup>

The significant role of general principles of law in international adjudication was explicitly clarified by Article 38 of the PCIJ Statute. The Article posits that "[t]he Court shall apply [...] the general principles of law recognized by civilized nations." Article 38 (1) (c) of the ICJ Statute uses similar language to the PCIJ Statute, but with a key difference. It posits that "[t]he Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply [...] the general principles of law recognized by civilized nations." This subtle change clarifies that general principles of law are indeed principles of international law (Tunkin 1971). Nonetheless, the ICJ's case law often refers to principles that have their origins in domestic law. For example, the ICJ has cited procedural principles

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<sup>12</sup> The ICJ Statute is based on the PCIJ Statute. For an overview of the drafting of the provisions of the PCIJ and ICJ Statutes on general principles, see (Gaja 2020).

<sup>13</sup> *Antoine Fabiani Case* [1905] 10 Reports of International Arbitral Awards 83, pp. 115-117.

<sup>14</sup> *Gentini Case* [1903] 10 Reports of International Arbitral Awards 551, p. 556.

<sup>15</sup> In subsection 4.1, we will delve deeper into the supposed distinction between rules and principles.

from domestic law regarding the burden of proof,<sup>16</sup> *res judicata*,<sup>17</sup> and pleas of error.<sup>18</sup>

In 2017, the ILC began discussing general principles as a continuation of its previous work on the fragmentation of international law and the sources of international law identified in Article 38 of the ICJ Statute. National delegations agreed that the Commission could provide authoritative clarification on the nature, scope, and function of general principles of law, as well as the criteria and methods for their identification. In his first report on general principles, Special Rapporteur Vázquez-Bermúdez explained that the ILC aimed to clarify various aspects of general principles of law based on current law and practice (ILC, 2019, 4–5). The Commission’s goal is to provide pragmatic guidance to states, international organisations, courts, officials, lawyers, and other legal actors dealing with the general principles of international law.

In his first report, the Rapporteur outlined a list of issues and questions the ILC should address in its work (ILC, 2019, 5–9). These included the legal nature of general principles of law as a source of international law, their origins, functions, and relationship with other sources of international law, and the identification of general principles. In addition to serving as a direct source of rights and obligations, the Commission declared that these principles serve as a means to interpret other norms of international law and a tool for legal reasoning (ILC, 2019, pp. 7–8). In truth, the purposes of general principles had already been discussed during the *travaux préparatoires* to the PCIJ Statute (Advisory Committee of Jurists 1920, 306 f.). The ILC also referenced these purposes in its report on the law of

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<sup>16</sup> *Corfu Channel Case (United Kingdom v Albania)* (Merits) [1949] ICJ Reports 4.

<sup>17</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v Colombia)* (Preliminary Objections) [2016] ICJ Reports 100.

<sup>18</sup> *Temple of Preah Vihear (Cambodia v Thailand)* (Merits) [1962] ICJ Reports 6.

In *Chorzow* the PCIJ had already clarified the principle that a party cannot take advantage of its own wrong. See *Factory at Chorzow (Germany v Poland)* (Merits) [1927] PCIJ Reports, Series A, No 9, 31.

treaties (1966, 187 f.), and the preamble of the Vienna Convention on the Law of Treaties mentions several roles played by principles, including helping resolve legal disputes.

As mentioned in section 1, this paper focuses on how principles function as tools for legal reasoning, particularly on how (conflict-resolving) principles can help legal actors deal with norm conflicts in international law. Nevertheless, the general principles of law serve a variety of other essential functions not directly related to dealing with normative conflicts.<sup>19</sup> For example, some principles establish the rights and obligations of states, such as sovereignty, non-intervention, and self-determination. Additionally, some principles govern the conduct of international relations, such as good faith, *pacta sunt servanda*, and the peaceful settlement of disputes. While these principles serve critical functions in the international legal system and may indirectly play a role in resolving normative conflicts, they are not directly related to conflict resolution. As such, these principles fall outside the scope of this investigation, but the findings brought by this paper can still be helpful to practitioners dealing with such principles. In the following subsections, we will continue discussing general principles. I will first explain the difference (or lack thereof) between rules and principles (4.1). Then I shall present a reason-based scheme for reasoning with norms (4.2). And finally, I will argue for the relevance of establishing an overarching framework of conflict-resolving principles (4.3).

#### 4.1 *Between Rules and Principles*

Much has been written about the distinction between rules and principles.<sup>20</sup> Alexy (2000; 2016), for instance, offers a well-known distinction between the two, drawing on Dworkin's views (1978a; 1978b) that rules are conclusive reasons that apply in an all-or-nothing fashion, while principles have a dimension of weight and importance and provide *prima facie* reasons for a

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<sup>19</sup> For a general discussion on general principles, see (Andenas et al. 2019; Cheng 2006; Eggett 2021; Shao 2021).

<sup>20</sup> For an overview, see (Feteris, 2017).

specific conclusion. However, Alexy disagrees with Dworkin, claiming that both rules and principles provide *prima facie* reasons and are always overridable. Alexy also believes there is a difference in the defeasible nature of rules and principles. According to Alexy, rules are definitive commands that either apply or do not apply, with no middle ground. In contrast, principles are optimisation commands that require something to be accomplished to the greatest extent possible (Duarte 2017).

I do not intend to argue extensively against Alexy's interpretation of Dworkin's work. Instead, I will state that while there is a difference between rules and principles, there is no complete segregation between them. Alexy's interpretation stems from his attempt to create an absolute separation between rules and principles. However, this separation disappears when rules and principles are considered in isolation. Thus, any distinction between them is a matter of comparison rather than a categorical difference (Sartor 1994; Soeteman 1991; Streck 2011, chap. 10; Verheij, Hage, and Van Den Herik 1998). Both rules and principles consist of conditions of applicability that lead to legal consequences. Their differences arise from their varying relationships with other rules and principles. The only distinction is that the connection between conditions and legal consequences appears stronger for a rule than for a principle—principles seem “more defeasible” than rules. When considered in isolation, if their conditions are met, the legal consequences of both rules and principles follow. Thus, their differences only exist when contrasted; when considered individually, the distinction vanishes.

I believe Dworkin would agree that rules and principles are not absolutely separate, even though he may have played a role in Alexy's efforts to distinguish between them. In *The Model of Rules I* (1978a, 24), Dworkin states that the “difference between legal principles and legal rules is a logical distinction.” However, in *Model of Rules II* (1978b, 76), he clarifies his position by stating that:



My point was not that ‘the law’ contains a fixed number of standards, some of which are rules and others principles. Indeed, I want to oppose the idea that ‘the law’ is a fixed set of standards of any sort. My point was rather that an accurate summary of the considerations lawyers must take into account, in deciding a particular issue of legal rights and duties, would include propositions having the form and force of principles, and that judges and lawyers themselves, when justifying their conclusions, often use propositions which must be understood in that way. Nothing in this, I believe, commits me to a legal ontology that assumes any particular theory of individuation.

In this paper, I will adopt an integrationist view of the relationship between rules and principles. While there is a difference between them, it is more a matter of degree than of distinct logical categories. This view is supported by the notion that norms of any category (whether rules or principles) lead to *prima facie* conclusions in the sense that they offer defeasible reasons for a particular conclusion that may be overridden by reasons supporting a contrary conclusion (Hage 1997; Marcos 2021; Sartor 1994). The discussion of whether the connection between conditions and legal consequences is stronger for rules than principles is intriguing, but it can be set aside in this paper. In the next subsection, I will present a reason-based scheme of reasoning with norms (rules and principles) that considers the defeasible nature of legal reasoning.

#### 4.2 A Reason-Based Scheme for Legal Reasoning

My reason-based scheme<sup>21</sup> is based on the idea that reasons are facts that support a conclusion. In this context, I define facts as states of affairs that obtain, whether natural, such as the Sun being larger than the Earth, or social, such as Paris being the capital of France, the Euro being the currency in that country, or Nicolas de Rivière being the French ambassador to the UN. It is

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<sup>21</sup> For an in-depth explanation of this scheme, including a logical framework and a list of axioms for legal reasoning, see (Marcos 2023). See (Hage 1997; 2005; Hage and Verheij 1994) for earlier iterations of this scheme.

essential to stress that my definition of facts includes social facts because lawyers have specific expectations about what qualifies as factual. For instance, Hart argues that rights and corporations do not have factual counterparts (1983, 23) because he defines facts in a way that excludes social facts. However, we can speak of social facts because humans can collectively adopt relevant social attitudes through mutual commitment to what they believe to be true (Lagerspetz 2001; Searle 1995; 2010; Tuomela 2003). This collective commitment allows a piece of land to be considered a city and a capital of a country, a piece of paper to be money, and a person to be an ambassador.

A reason is a fact, whether social or not, that supports a conclusion. Some reasons may argue against a conclusion, but this is the same as supporting a contrary conclusion. Therefore, I will refer to reasons as either pro or con reasons, depending on whether they support a conclusion to  $\phi$  or to not- $\phi$ . According to Alvarez (2009; 2010, chap. 2), there are three types of reasons: justifying reasons, motivating reasons, and explanatory reasons. Justifying reasons have deontic force and provide guidance and evaluation. They inform an agent about what they ought to do or what ought to be the case. As such, justifying reasons make  $\phi$ -ing justified in the sense that  $\phi$  is proper, adequate, or suitable in a particular situation. A motivating reason is a fact that motivated an agent to  $\phi$ . It is the fact that an agent considered when deciding to  $\phi$ . An explanatory reason explains why an agent  $\phi$ -ed by making their  $\phi$ -ing understandable.

Justifying, motivating, and explanatory reasons play distinct roles in an agent's actions, but it can be challenging to distinguish between them in practice. As Alvarez explains, a motivating reason is a reason that an agent acts upon and serves as the premise of their reasoning about acting. Meanwhile, an explanatory reason tries to make sense of an agent's actions (2010, 35–36). But a reason that explains why someone  $\phi$ -ed is often the same reason that motivated them to  $\phi$ . Moreover, a reason that justifies  $\phi$ -ing can also explain why someone  $\phi$ -ed and reveal their motivations to  $\phi$ . For

example, a reason that justifies an ambassador's decision not to sign a treaty can also explain their actions and reveal what motivated them to oppose signing the treaty (Marcos 2023, 35).

All three reasons — justifying, motivating, and explanatory — are relevant in legal reasoning. For instance, if we want to understand what motivated a lawyer to file a petition in a certain way or why a judge ruled in favour of one party over another, we would be dealing with motivating reasons. At the same time, we use explanatory reasons to understand actions and scenarios within the legal framework of (international) law. But, most importantly, in legal practice, we often seek justifying reasons to support our positions. This could include lawyers searching for grounds to support their claims or decision-makers needing to justify their verdicts. This is because the law finds itself within the realm of social practices that determine what we ought to do and what ought to be the case. As Postema (1982, 165) explains, the law is a type of practical reasoning that, like morality and prudence, establishes a general framework for making decisions. The law provides reasons for legal action to the members of the legal community, including both lawmakers and those subject to the law.

Reasons for legal action are reasons that attempt to justify legal positions. When evaluating the appropriateness of legal decision-making, we consider reasons that justify why a legal agent acted in a certain way and reasons that show that a legal agent's actions may have been (un)justified. So, in legal practice, we often deal with reasons that plead for or against the conclusion that one's actions are justified. One's actions are justified if they acted in the way they ought to have and unjustified if they ought not to have acted in that way. It is important to note that my terminology differs from Raz's. While Raz equates the statement "one ought to  $\phi$ " with "one has a reason for  $\phi$ -ing" (2002, 28 f.), I would argue that a reason for  $\phi$ -ing supports the conclusion that  $\phi$ -ing is justified and that one ought to  $\phi$ . But this reason for  $\phi$ -ing can be outweighed by stronger reasons against  $\phi$ -ing. Therefore, having a reason to  $\phi$  does not necessarily mean that one is justified in  $\phi$ -ing or ought to  $\phi$ .

The justification of  $\varphi$ -ing depends on carefully balancing the reasons that support and oppose  $\varphi$ -ing. We can only conclude that one ought to  $\varphi$  or  $\varphi$  ought to be the case after carefully weighing all the reasons for and against  $\varphi$ . This involves assessing which set of reasons (pro or con) carries more weight and, based on this evaluation, determining whether  $\varphi$ -ing is justified or unjustified. For instance, in the Ukraine v Russia case above, the fact that Ukraine used force against Russia provides a reason to conclude that, according to the law, such use of force is prohibited (under N1). However, this reason may need to be weighed against stronger opposing reasons that support the conclusion that Ukraine's use of force was justified as it was carried out in self-defence (N2). In other words, the justification for Ukraine's actions depends on weighing reasons for and against its use of force.

A structured way to provide clarity when reasoning with norms is to consider the role that reasons play in the shift from the applicability of a norm to a case to its application to that case (Marcos 2023, 30 f.). A norm N is *applicable* to a case C if N's conditions are met by C. In contrast, *application* refers to whether a norm N applies to a case C. When talking about norm application, we could focus on adjudicators (such as a court or a judge) and talk about whether they ought to (or ought not to) apply a specific norm to a case. But our focus on justifying reasons allows us to sidestep adjudicators to say that a norm applies (or does not apply) to a case.

Determining whether a norm applies (or ought to be applied) to a case is based on the justifying reasons that support its application. So, a norm N applies to a case C if and only if the reasons for N to apply to C outweigh the reasons against it. If N applies to C, then N's legal consequences are imposed on C. For example, in the Ukraine v Russia case, while both norms N1 and N2 are applicable, only N2 applies, while N1 does not. We could say that an adjudicator ought to apply N2 and not apply N1 to this case. Still, we can also say that N1 does not apply, and N2 does apply to this case because the reasons for N1 to apply did not outweigh the reasons for it not to apply, while the opposite is true for N2.

In legal reasoning, reasons plead for or against applying a norm to a specific case. A common reason for a norm to apply to a case is its applicability to that case. However, as previously mentioned, pro reasons for norm application can be outweighed by con reasons. For example, while norm N1 is applicable to the Ukraine v Russia case, the fact that N1 is less specific than N2 is a reason against applying N1. By balancing these reasons, we can conclude that the applicability of N1 to this case does not outweigh the fact that N2, which is also applicable, is more specific than N1. It is important to note that the reason for prioritising N2 over N1 comes from a conflict-resolving principle, *lex specialis*. In this regard, these principles help us resolve conflicts by providing reasons for (and against) the application of norms. In the following subsection, I will explain how conflict-resolving principles function within the reason-based framework of norm application presented in this paper.

#### 4.3 A Framework of Principles to Safeguard Legal Consistency

The way *lex specialis* works to help us resolve the conflict between N1 and N2 in the Ukraine v Russia case is straightforward. Both norms N1 and N2 are applicable to this case and have pro reasons for their application (their applicability), which we can call R1 and R2, respectively. However, their application would result in incompatible legal consequences because the same act would be prohibited under N1 and permitted under N2. As explained above (section 3), these legal consequences are incompatible under the logical standard of non-contradiction. To resolve this conflict, *lex specialis* prioritises the more specific norm (N2) over the less specific one (N1). We can interpret this as *lex specialis* providing a third reason (R3) that the reason for N2's applicability (R2) outweighs the reason for N1's applicability (R1).

Assuming there are no more reasons to consider, we can balance R1 against R2. Due to R3 given by *lex specialis*, we can conclude that R2 outweighs R1 and, therefore, N2 applies while N1 does not. So, despite the

conflict between N1 and N2, the microsystem composed of these two norms and *lex specialis* is still consistent.

Notice that the reason provided by *lex specialis* is a second-order reason (or a meta-reason) that affects how we should treat or respond to first-order reasons. Second-order reasons are reasons for (or against)  $\phi$ -ing on account of a first-order reason in favour (or against)  $\phi$ -ing (Adams 2021; Moreso 2023; Raz 2021). To put it another way, while first-order reasons are reasons to perform a specific action, second-order reasons guide how we should respond to those first-order reasons. R3, as provided by the principle of *lex specialis*, is a second-order reason because it affects how we should treat or respond to other reasons (R1 and R2) rather than directly affecting the application of norms (N1 and N2).

Similar to *lex specialis*, other legal principles provide different pro and con reasons for norm application. These principles include *lex superior* and *lex posterior*. *Lex superior* prioritises norms found in more fundamental provisions over those found in lesser provisions. For example, according to Article 103 of the UN Charter, norms derived from the UN Charter have priority over norms derived from other documents. This means that *lex superior* provides reasons for the applicability of a more fundamental norm to outweigh the reasons for the applicability of a less fundamental one. *Lex posterior* prioritises norms from newer provisions over those from older ones. For instance, in the admissibility decision of *Slivenko and Slivenko v Latvia*, the European Court of Human Rights (ECtHR) held that norms from the European Convention on Human Rights have priority over norms from a prior bilateral treaty between Latvia and Russia.<sup>22</sup> This means that, according to the ECtHR, *lex posterior* provides reasons for the applicability of a newer norm to outweigh the reasons for the applicability of an older norm.

Many other principles also function as conflict-resolving principles, even if resolving conflicts is not their primordial role. For example, we can speak

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<sup>22</sup> *T Slivenko and Others v Latvia* (Admissibility Decision) [2002] (App no 48321/99) ECtHR Reports.

of *pro persona* and the precautionary principle. The *pro persona* (or *pro homine*) principle can assist us in dealing with conflicts by prioritising the norm that promotes a more favourable outcome for individuals' rights.<sup>23</sup> The Inter-American Court of Human Rights (IACtHR) has consistently used the *pro persona* principle in its decisions.<sup>24</sup> This is evident in cases where the IACtHR has carefully considered the individual rights of detainees, including fair trials, judicial protection for detainees and their families, and the right not to be detained. In these situations, the IACtHR has shown a presumption in favour of applying human rights norms against non-human rights norms when all other factors are equal.

The precautionary principle, in turn, is a (controversial) principle in international environmental law that aims to prevent harm to the environment before it happens rather than addressing it after the fact.<sup>25</sup> This principle encourages caution in decision-making when there is a potential risk of environmental harm and places the burden of proof on ensuring environmental safety. In essence, the precautionary principle prioritises the application of norms that provide greater protection to the environment from harm over those norms that provide less protection or do not protect the environment at all. The European Commission (2000) has acknowledged that the principle is integrated into the high level of protection chosen by the European Union, and the European Court of Justice has applied it in specific cases.<sup>26</sup> However, both the World Trade Organisation Appellate Body in *EC-*

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<sup>23</sup> For a general discussion of the *pro persona* principle, see (Lixinski 2019).

<sup>24</sup> For example, *Barreto Leiva v Venezuela* (Merits, Reparations, and Costs) [2009] IACtHR Reports 1, para. 122; *Case of Gomes Lund et al. ('Guerrilha do Araguaia') v Brazil* (Preliminary Objections, Merits, Reparations, and Costs) [2010] IACtHR Reports 1, para. 178; *Mendoza et al. v Argentina* (Preliminary Objections, Merits and Reparations) [2013], IACtHR Reports 1, para. 165.

<sup>25</sup> For an overview of the precautionary principle, see (Schröder 2014).

<sup>26</sup> See, for example, *United Kingdom v Commission (Case C-180/96)* [1998] ECR I-2265 and *Monsanto Agricoltura Italia SpA and Others v Presidenza del Consiglio dei Ministri (Case C-236/01)* [2003] ECR I-8105.

*Hormones*<sup>27</sup> and the ICJ in *Gabčíkovo-Nagymaros*<sup>28</sup> have expressed doubts about whether the precautionary principle has truly evolved into a norm in international environmental protection, declining to assert that it could override applicable norms in these cases.

We can quickly solve the conflict between N1 and N2 by using the *lex specialis* principle, but it is possible to face a scenario where different principles provide reasons pleading for opposite conclusions. Let us consider an example mentioned by the ILC in its second fragmentation report (2006a, para. 273; Marcos 2023, 70 f.) where we face two norms concerning the lawfulness of commercialising some genetically modified microorganisms. One norm, let us call it N3, stems from the 2000's Cartagena Protocol on Biosafety. N3 permits the commercialisation of this microorganism. The second norm, let us call it N4, stems from 1972's Biological Weapons Convention. N4 prohibits trading this microorganism because it is considered a biological weapon. N3 and N4 are conflicting as they are both applicable to this case, but if applied, they would lead to incompatible legal consequences: trading this microorganism would be permitted under N3 and prohibited under N4.

The conflict between N3 and N4 is complicated because the two different principles providing opposing reasons for prioritising these norms. The *lex posterior* principle prioritises N3 over N4 because the Cartagena Protocol from the 2000s is more recent than the Biological Weapons Convention from 1972. However, the *lex specialis* principle prioritises N4 over N3 because it is more specific in scope, dealing only with microorganisms that can be considered biological weapons, while N3 deals with all microorganisms. As a result, there are two reasons for the application of N3 and N4 (their applicability to this case, reasons R4 and R5, respectively) and two reasons for their prioritisation: one in favour of N3 over N4 (R6 given by *lex*

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<sup>27</sup> *EC-Measures Concerning Meat and Meat Products (EC-Hormones)* [1998], Appellate Body Report (16 January 1998), WT/DS26/AB/R and WT/DS48/AB/R.

<sup>28</sup> *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* [1997] ICJ Reports 7.



*posterior*, prioritising R4 over R5) and another in favour of N4 over N3 (R7 given by *lex specialis*, prioritising R5 over R4).

Although this scenario is more complex than the previous one, the reason-based scheme developed in this paper can still help us resolve the conflict between N3 and N4. We need a meta-conflict-resolving principle, that is, a conflict-resolving principle that operates on the level of other principles.<sup>29</sup> Let us consider the *generalia specialibus non derogant* principle, which states that the general norm does not detract from the specific one (Pauwelyn 2003, 405). This principle was referred to in the *Beagle Channel case*<sup>30</sup> and can be interpreted as supporting a reason R8 that the reasons given by *lex specialis* outweigh those given by *lex posterior*. This provides a “third-order reason” (or a “meta-meta-reason”). R8 is a reason the second-order reason provided by *lex specialis* (R7) outweighs the second-order reason provided by *lex posterior* (R6). Assuming there are no more reasons to consider, R8 allows us to conclude that R7 outweighs R6, and so, R5 outweighs R4. Consequently, N4 outweighs N3, and N4 applies, while N3 does not. In conclusion, states would be prohibited from trading that microorganism.

A framework of such conflict-resolving principles and meta-conflict-resolving principles can help guide legal reasoning and norm application in international law. Notice that despite the complexity of dealing with the conflict between N3 and N4, the microsystem composed of these two norms, alongside the conflict-resolving principles of *lex specialis* and *lex posterior*, and the meta-conflict resolving principle of *generalia specialibus non derogant*, is still legally consistent. Regardless of the conflict between N4 and N3, we could still make sense of their microsystem. With the potential for continued fragmentation and functional differentiation (explained in section 2), we should not expect international law to become a supranational homogeneous legal system any time soon. Instead, if we aim to develop an

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<sup>29</sup> In previous work, I have referred to these principles as “adages” or “meta-meta-rules” that provide for “meta-meta-reasons.” See (Marcos 2023, 73)

<sup>30</sup> *Dispute between Argentina and Chile Concerning the Beagle Channel* [1977], 21 Reports of International Arbitral Awards 53, para. 39.

effective globalised legal order that provides a minimum level of consistency in interpreting legal obligations and cooperation between states, we should work towards establishing a framework of principles and meta-principles to help resolve normative conflicts.

This framework would not provide predefined solutions to every possible conflict of norms within the international law macrosystem. Instead, it would offer determinative principles and meta-principles to help legal actors understand international law. This framework would aid them in reaching conclusions on norm application in cases of rule conflicts, particularly when different principles provide reasons pleading for contradictory conclusions. In theory, we could face scenarios where meta-principles themselves also support contradictory conclusions. In such cases, we would need even more abstract “meta-meta-principles,” potentially leading to an infinite regress. However, in practice, our balancing of reasons would likely end at the meta-principle level, as international law would run out of relevant norms for us to consider. Thus, this framework could serve as a foundational structure for legal reasoning and argumentation, equipping lawyers with the tools to discuss relevant reasons, weigh their importance, and construct a consistent interpretation of international law.

## **5. Final Remarks**

In this paper, I have argued for the importance of establishing a set of conflict-resolving principles (and meta-conflict-resolving principles) to enhance the consistency of international law. These principles provide legal actors with values and standards in the form of first-, second- or even “third-” order reasons relevant for resolving norm conflicts in international law. By establishing an overarching framework of such principles that provide priority relationships among international legal norms, legal actors could reach more evident conclusions on norm application. As a basis for legal reasoning and argumentation, this framework would equip lawyers with the

necessary tools to evaluate pertinent reasons and construct a consistent understanding of international law. In conclusion, this framework of principles can assist international law in fulfilling its function as *the* legal system for our globalised world.

In future research, it would be valuable to apply the reason-based scheme developed in this paper to current discussions on exclusionary reasons (Moreso 2022) and the role of rebutting and undercutting defeaters (Moreso 2020). Additionally, it would be important to further explore the topic of general principles in light of current discussions on the existence of a “second category” of general principles of international law. These second-category principles may be formed within the international legal system as opposed to those derived from national legal systems (ILC, 2023, 1). It would also be interesting to consider the existence of specific second-category principles, like the principle of freedom of maritime navigation, as “principles that are not of a general character” and how these principles interplay with current discussions on military exercises and manoeuvres in geopolitically sensitive regions of the oceans (Askary 2023; Marcos and Mello Filho 2023).

## References

- Adams, N. P. (2021). In Defense of Exclusionary Reasons, in *Philosophical Studies*, n. 178(1).
- Advisory Committee of Jurists. (1920). *Procès-Verbaux of the Proceedings of the Committee*. Permanent Court of International Justice.
- Alexy, R. (2000). On the Structure of Legal Principles, in *Ratio Juris*, n. 13(3).
- \_\_\_ (2016). Zum Begriff des Rechtsprinzips, in *Recht, Vernunft, Diskurs: Studien zur Rechtsphilosophie* (Suhrkamp Taschenbuch Verlag).
- Alvarez, M. (2009). How Many Kinds of Reasons?, in *Philosophical Explorations*, n. 12(2).

- \_\_\_ (2010). *Kinds of Reasons: An Essay in the Philosophy of Action* (Oxford University Press).
- Andenas, M., Fitzmaurice, M., Tanzi, A., and Wouters, J. (2019). *General Principles and the Coherence of International Law* (Brill Nijhoff).
- Willige, A. (2022, May 23). *What's next for economic globalization?*, in World Economic Forum. <https://www.weforum.org/agenda/2022/05/future-globalization-multilateralism-nationalism-digital-integration/>
- Askary, P. (2023). The ILC Work on the General Principles of Law and its Implications for the Coherence of the International Legal System, in *Opinio Juris*. <https://opiniojuris.org/2023/05/22/the-ilc-work-on-the-general-principles-of-law-and-its-implications-for-the-coherence-of-the-international-legal-system/>
- Austin, J. (1954). *Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence* (Noonday Press).
- Benvenisti, E. (2008). The Conception of International Law as a Legal System, in *German Yearbook of International Law*, n. 50.
- Berman, P. S. (2002). The Globalization of Jurisdiction, in *University of Pennsylvania Law Review*, n. 151(2).
- \_\_\_ (2005). *The Globalization of International Law* (Ashgate).
- Bulygin, E. (2015a). Carlos E. Alchourrón and the Philosophy of Law, in *South American Journal of Logic*, n. 1(2).
- \_\_\_ (2015b). Kelsen on the Completeness and Consistency of Law. In C. Bernal, C. Huerta, T. Mazzarese, J. J. Moreso, P. E. Navarro, and S. L. Paulson (eds.), *Essays in Legal Philosophy* (Oxford University Press).
- Carrió, G. R. (1986). *Notas Sobre Derecho y Lenguaje* (Abedelo-Perrot).
- Cheng, B. (2006). *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press).
- Delmas-Marty, M. (2009). *Ordering Pluralism: A Conceptual Framework for Understanding the Transnational Legal World* (Hart).

Duarte, D. (2017). Alexy's Theory of Rules and Principles. In M. Sellers and S. Kirste (eds.), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer).

Dupuy, P.-M. (2002). L'Unité de L'Ordre Juridique International, in *Cours Général de Droit International Public*, n. 297(9).

\_\_\_ (2020). 2000–2020: Twenty years later, where are we in terms of the unity of international law?, in *Cambridge International Law Journal*, n. 9(1).

Dworkin, R. (1978a). The Model of Rules I, in *Taking Rights Seriously* (Harvard University Press).

\_\_\_ (1978b). The Model of Rules II, in *Taking Rights Seriously* (Harvard University Press).

Eggett, C. (2019). The Role of Principles and General Principles in the 'Constitutional Processes' of International Law, in *Netherlands International Law Review*, n. 66(2).

\_\_\_ (2021). *General Principles as Systemic Elements of International Law* (Doctoral Dissertation in Law, Maastricht University).

European Commission. (2000). *Communication from the Commission on the Precautionary Principle* (COM(2000)).

Feteris, E. T. (2017). *Fundamentals of Legal Argumentation: A Survey of Theories on the Justification of Judicial Decisions* (Springer).

Foroohar, R. (2022). *Homecoming: The Path to Prosperity in a Post-Global World* (Crown).

Gaja, G. (2020). General Principles of Law, in A. Peters (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press).

Gradoni, L. (2009). "Regime failure" nel Diritto Internazionale (CEDAM).

Guerra, G. R., Marcos, H., and Hardman, A. Í. (2020). De Wuhan ao Planalto Central: Federalismo, Patriotismo Constitucional e o Supremo Frente a Covid-19, in *Revista Jurídica Unicuritiba*, n. 4(61).

Guillaume, G. (1995). The Future of International Judicial Institutions, in *The International and Comparative Law Quarterly*, n. 44(4).

- \_\_\_ (2000). *The Proliferation of International Judicial Bodies: The Outlook for the International Legal Order* (Speech to the United Nations General Assembly Sixth Committee, 55th Session) (UN Doc A/C.6/55/SR.17).
- Hage, J. (1997). *Reasoning with Rules: An Essay on Legal Reasoning and its Underlying Logic* (Springer).
- \_\_\_ (2005). Reason-Based Logic, in *Studies in Legal Logic* (Springer).
- \_\_\_ (2020). Two Kinds of Normativity, in S. Berteia (ed.), *Contemporary Perspectives on Legal Obligation* (Routledge).
- Hage, J., and Verheij, B. (1994). Reason-Based Logic: A logic for Reasoning With Rules and Reasons, in *Information & Communications Technology Law*, n. 3(2–3).
- Hansson, S. O. (2013). The Varieties of Permission. In D. M. Gabbay, J. Horty, X. Parent, R. van der Meyden, and L. van der Torre (eds.), *Handbook of Deontic Logic and Normative Systems* (College Publications).
- Hart, H. L. A. (1983). Definition and Theory in Jurisprudence, in *Essays in jurisprudence and philosophy* (Clarendon Press; Oxford University Press).
- \_\_\_ (2012). *The Concept of Law* (Oxford University Press).
- International Law Commission. (1966). *Draft Articles on the Law of Treaties with Commentaries* (UN Doc A/6309/Rev.1 (A/21/9)).
- \_\_\_ (2000). *Risks Ensuing from Fragmentation of International Law* (UN Doc A/55/10).
- \_\_\_ (2006a). *Conclusions of the Study Group of the International Law Commission on the Fragmentation of International Law* (UN Doc A/CN.4/L.702).
- \_\_\_ (2006b). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (UN Doc A/CN.4/L.682 and Add.1).
- \_\_\_ (2019). *First Report on General Principles of Law by Marcelo Vázquez-Bermúdez, Special Rapporteur* (UN Doc A/CN.4/732; p. 75).

- \_\_\_ (2023). *General principles of law: Text of the Draft Conclusions Provisionally Adopted by the Drafting Committee on First Reading* (UN Doc A/CN.4/L.982).
- Jouannet, E. (2011). Koskenniemi: A Critical Introduction, in M. Koskenniemi, *The Politics of International Law* (Hart).
- Kelsen, H. (1949). *General Theory of Law and State* (Harvard University Press).
- \_\_\_ (1951). *The Law of The United Nations* (Stevens & Sons Limited).
- \_\_\_ (1952). *Principles of International Law* (Rinehart & Company).
- Koskenniemi, M. (2002). *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge University Press).
- \_\_\_ (2004). International Law and Hegemony: A Reconfiguration, in *Cambridge Review of International Affairs*, n. 17(2).
- \_\_\_ (2006a). Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization, in *Theoretical Inquiries in Law*, n. 8(1).
- \_\_\_ (2006b). *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press).
- \_\_\_ (2007a). International Law: Constitutionalism, Managerialism and the Ethos of Legal Education, in *European Journal of Legal Studies*, n. 1(1).
- \_\_\_ (2007b). The Fate of Public International Law: Between Technique and Politics, in *Modern Law Review*, n. 70(1).
- Koskenniemi, M., and Leino, P. (2002). Fragmentation of International Law? Postmodern Anxieties, in *Leiden Journal of International Law*, n. 15(3).
- Lagerspetz, E. (2001). On the Existence of Institutions, in E. Lagerspetz, H. Ikäheimo, and J. Kotkavirta (eds.), *On the Nature of Social and Institutional Reality* (SoPhi; University of Jyväskylä).
- Lefkowitz, D. (2020). *Philosophy and International law: A Critical Introduction* (Cambridge University Press).

Lixinski, L. (2019). Balancing Test: Inter-American Court of Human Rights (IACtHR), in H. Ruiz Fabri (ed.), *Max Planck Encyclopedia of International Procedural Law* (Oxford University Press).

Losano, M. G. (2002). *Sistema e Struttura nel Diritto: Vol. 2* (Giuffrè).

Luhmann, N. (2004). *Law as a Social System* (Oxford University Press).

Lundestad, G. (2004). Why does Globalization Encourage Fragmentation?, in *International Politics*, n. 41(2).

Marcos, H. (2021). A Study on Defeasibility and Defeaters in International Law: Process or Procedure Distinction Against the Non-Discrimination Rule, in W. Menezes, A. Nunes Filho, and P. H. R. de Oliveira (eds.), *Tribunais Internacionais e a Garantia dos Direitos Sociais* (Academia Brasileira de Direito Internacional).

\_\_\_ (2023). *Consistency in International Law: How to Make Sense of a Decentralised and Expansive Rule-Based World* (Doctoral Dissertation in Law, Maastricht University; São Paulo University).

\_\_\_ (Forthcoming). Two Kinds of Systemic Consistency in International Law, in *European Journal of Legal Studies*.

Marcos, H., and Mello Filho, E. C. (2023). Peaceful Purposes Reservations in the Law of the Sea Convention and the Regulation of Military Exercises or Maneuvers in the Exclusive Economic Zone, in *University of Pennsylvania Journal of International Law*, n. 44(2).

Menezes, W. (2005). *Ordem Global e Transnormatividade* (Editora Unijuí).

\_\_\_ (2013). *Tribunais Internacionais: Jurisdição e Competência* (Saraiva).

\_\_\_ (2017). International Law in Brazil, in *Bulletin of the Brazilian Society of International Law*, n. 103(125–130).

Menezes, W., and Marcos, H. (2020). International Law Post-Pandemic, in G. L. O. Salinas (ed.), *Lo Multidisciplinario del Antes y Después del Covid-19* (Thomson Reuters).

Moreso, J. J. (2020). Towards a Taxonomy of Normative Defeaters, in S. Berteá (ed.), *Contemporary Perspectives on Legal Obligation* (Routledge).



\_\_\_ (2022). Acerca del Alcance de la Exclusión de las Razones Razianas, in *Revista Telemática de Filosofía del Derecho*, n. 25.

\_\_\_ (2023). On the Scope of the Exclusion of Razian Reasons, in *Maastricht Foundations of Law Colloquia*.

Murphy, S. D. (2013). Deconstructing Fragmentation: Koskenniemi's 2006 ILC Project, in *Temple International & Comparative Law Journal*, n. 27(2).

Pauwelyn, J. (2003). *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (Cambridge University Press).

Payandeh, M. (2010). The Concept of International Law in the Jurisprudence of H.L.A. Hart, in *European Journal of International Law*, n. 21(4).

Pineda, J. A. (2022). A Sociological Systems Theory. In Pineda Jaime A. (ed.), *The Social Impulse: The Evolution and Neuroscience of What Brings Us Together* (Springer).

Postema, G. J. (1982). Coordination and Convention at the Foundations of Law, in *The Journal of Legal Studies*, n. 11(1).

Prost, M. (2012). *The Concept of Unity in Public International Law* (Hart Publishing).

Raz, J. (2002). *Practical Reason and Norms* (Oxford University Press).

\_\_\_ (2021). *Exclusionary Reasons*, in Social Science Research Network (SSRN) Scholarly Paper ID 3933033. <https://doi.org/10.2139/ssrn.3933033>

Rogowski, R. (2001). Law, Autopoiesis in, in James D. Wright (ed.), *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier).

Sartor, G. (1994). A Formal Model of Legal Argumentation, in *Ratio Juris*, n. 7(2).

Sayapin, S. (2022). Russia's Invasion of Ukraine: A Test for International Law, in *Nature Human Behaviour*, n. 6(6).

Schmitt, C. (2006). *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (Telos Press).

- Schröder, M. (2014). Precautionary Approach/Principle, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press).
- Searle, J. (1995). *The Construction of Social Reality* (Free Press).
- \_\_\_ (2010). *Making the Social World: The Structure of Human Civilization* (Oxford University Press).
- Shao, X. (2021). What We Talk about When We Talk about General Principles of Law, in *Chinese Journal of International Law*, n. 20(2).
- Shongwe, M. N. (2020). The Fragmentation of International Law: Contemporary Debates and Responses, in *The Palestine Yearbook of International Law Online*, n. 19(1).
- Soeteman, A. (1991). Hercules aan het Werk: Over de Rol van Rechtsbeginselen in het Recht, in *Ars Aequi*, n. 40(10).
- Streck, L. L. (2011). *Verdade e Consenso: Constituição, Hermenêutica e Teorias Discursivas* (Saraiva).
- Tunkin, G. J. (1971). “General Principles of Law” in International Law, in Rene Marcic, Hermann Mosler, Erik Suy, and Karl Zemanek (eds.), *Internationale Festschrift für Alfred Verdross zum 80 Geburtstag* (Wilhelm Fink Verlag).
- Tuomela, R. (2003). Collective Acceptance, Social Institutions, and Social Reality, in *The American Journal of Economics and Sociology*, n. 62(1).
- Verheij, B., Hage, J., and Van Den Herik, H. J. (1998). An Integrated View on Rules and Principles, in *Artificial Intelligence and Law*, n. 6(1).
- Von Wright, G. H. (1963). *Norm and Action: A Logical Enquiry* (Routledge and Kegan Paul; The Humanities Press).
- Waldron, J. (2013). International Law: ‘A Relatively Small and Unimportant’ Part of Jurisprudence? In L. Duarte d’Almeida, J. Edwards, and A. Dolcetti (eds.), *Reading HLA Hart’s The Concept of Law* (Hart Publishing).
- Zolo, D. (1997). *Cosmopolis: Prospects for World Government* (Polity Press).

\_\_\_ (2004). *Globalizzazione: Una Mappa dei Problemi* (GLF editori Laterza).

\_\_\_ (2010). Por um Direito Supranacional Mínimo. In A. V. Teixeira and E. S. de Oliveira (Eds.), *Correntes Contemporâneas do Pensamento Jurídico* (Editora Manole).