

DOES INTERNATIONAL LAW MAKE A DIFFERENCE?

In Conversation with Oona A. Hathaway

Spring 2026

IN THIS CONVERSATION

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INTRODUCTION

Alaa Hajyahia & Tawreak Gamble-Eddington: International law and the liberal global governance order are being tested as never before in their nearly century-long history. The multilateral institutional frameworks built over the past century—ranging from the prohibition on the use of force codified in Article 2(4) of the United Nations Charter and the establishment of the International Court of Justice (ICJ) in 1945 to the Universal Declaration of Human Rights in 1948, the Geneva Conventions in 1949, and the International Criminal Court (ICC) in 2002—represent some of the most ambitious projects in the history of global governance. Forged in the aftermath of two World Wars, these frameworks were developed to prevent the outbreak of large-scale conflict, protect civilians, and create durable channels for cooperation among states. Alongside these global institutions and frameworks emerged regional bodies like the European Union, as well as a dense ecosystem of non-governmental organizations dedicated to the development, study, and enforcement of international law.

Yet these frameworks now face mounting pressures: the proliferation of state-versus-non-state conflict, great-power retreat from multilateral commitments, and the deliberate exploitation of legal ambiguity to evade accountability. These pressures are playing out today across Israel's war in Gaza, the U.S. military action in Iran, and Russia's invasion of Ukraine, among others.

Together, these pressures force the field to confront urgent questions: how will international law be reshaped by this moment, and how must it reinvent itself to meet it? Underlying all of this is the question that has defined the field for decades: does international law actually make a difference?

With these pressing issues in mind, we reached out to Professor Oona A. Hathaway for her thoughts on that very question. Professor Hathaway was recently elected President of the American Society of International Law (ASIL), becoming the first Yale Law School faculty member to lead the organization since the legendary Myres McDougal, who co-founded the New Haven School of Jurisprudence and served as President of ASIL in 1958-1959.¹ As the Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School and Director of the Center for Global Legal Challenges, she has devoted her career to grappling with how international law can be reimaged to meet these challenges, and to building the legal tools to act on the answers.

Her landmark book *The Internationalists* (2017, co-authored with Scott Shapiro) illustrated how the Kellogg-Briand Pact's prohibition on aggressive war transformed state behavior, demonstrating that international law can tangibly change the world rather than merely aspire to do so.² Her forthcoming book, *Civilians*, examines how protections for civilians in war emerged, how recent changes in the nature of war and in the law regulating it have eroded protections for civilians under international humanitarian law, and how those protections might be rebuilt.³ Along the way, she has also written more than 50 law review articles developing concrete legal tools to strengthen international law's reach—such as erga omnes partes standing to enforce human rights obligations,⁴ collective countermeasures for obtaining war

¹ Harold Lasswell, who was a professor of law and political science at Yale and co-founded the New Haven School with McDougal, also served as President of ASIL in 1971–1972, but he was at the time professor of law at the City University of New York's John Jay College, having left Yale in 1970.

² OONA A. HATHAWAY & SCOTT J. SHAPIRO, *THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD* (2017).

³ OONA A. HATHAWAY, *CIVILIANS* (forthcoming).

⁴ Alaa Hachem, Oona A. Hathaway & Justin Cole, *A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing*, 62 COLUM. J. TRANSNAT'L L. 259 (2024).

reparations,⁵ and what can be done about the “articulation gap” that allows powerful states to disproportionately shape international law.⁶

In this context, Volume 52 of the *Yale Journal of International Law* is honored to shed light on Professor Hathaway’s work and to feature this conversation. We sat down with Professor Hathaway in April of 2026 as she takes the helm of ASIL—an organization whose founding mission to foster international law and promote international relations on the basis of law and justice has rarely felt more vital or more contested. The question that has defined her scholarship is also the question that defines this moment: does international law make a difference? We asked her about the role international law has played in shaping the global order, the new pressures bearing down on it, and how scholars, students, institutions, and practitioners of international law might work to meet the challenges that lie ahead.

LESSONS FROM *THE INTERNATIONALISTS*

YJIL Co-EICs: In *The Internationalists*, you discuss the Kellogg-Briand Pact, which was signed in 1928. There, you and Professor Shapiro argue that the Pact was not merely symbolic, but an agreement that changed how states behave, reshaping the international order in ways that echo to the modern day.⁷ Can you walk us through your argument and what the Pact achieved?

Hathaway: Thank you again for the invitation and the kind words. I am glad to be talking with you today. So yes, the Kellogg-Briand Pact was signed in 1928, and Scott Shapiro and I wrote a book arguing that it was a critical moment in the creation of the modern international legal order. Many people look at that argument and think it is absurd on its face. The Kellogg-Briand Pact is generally taught in American history classes as something of a laughingstock—an obvious case of a total failure of international law, a case of futile legalism in the wake of one war and on the eve of another. So, it seems an unlikely candidate for the centerpiece of a book about the success and importance of international law.

What we argue, however, is that while the Pact obviously did not achieve its immediate aim—which was to prevent war—it set in motion a transformation in the international system that gave us the international legal order we have today. We

⁵ Oona A. Hathaway, Maggie M. Mills & Thomas M. Poston, *War Reparations: The Case for Countermeasures*, 76 STAN. L. REV. 971 (2024).

⁶ Oona A. Hathaway, Alaa Hajyahia & Federica Du Pasquier, *Whose Voices Matter: The Articulation Gap and the Law of War*, (forthcoming 2027).

⁷ HATHAWAY & SHAPIRO, *THE INTERNATIONALISTS*, *supra* note 2.

cannot understand the post-World War II era without understanding the years that led up to it and the process set in motion by the 1928 Pact. The decision to outlaw war in 1928 was critical because it started a process of working through what an international legal order grounded in the prohibition on war would actually look like. This was a totally revolutionary idea. For hundreds of years preceding 1928, the international legal order rested on the idea that states were permitted to resort to force—that war was entirely lawful and legitimate, and that states could use it as a primary means of resolving disputes and pursuing their legal rights.

The decision to outlaw war in 1928, therefore, represented a rejection of a foundational principle of the international legal order at the time. But those who put this new order in place did not fully think through the consequences of their actions. They did not appreciate what it would mean to transform a legal order from one in which war is the principal means by which states resolve disputes and pursue rights, to one in which war is no longer lawful. Making that switch required a complete reorientation of the international legal order in ways that they had not fully anticipated. And so, the Pact set in motion a process of rethinking the international system—one that meant that when the world sought to keep the peace after World War II, the hard questions had already been worked through. They were able to take the prohibition on war from the Kellogg-Briand Pact and put it into the UN Charter. As we show in the book, the same person who ghost-wrote the Kellogg-Briand Pact also wrote the first draft of the UN Charter, enshrining the prohibition in what is now Article 2(4), making it the foundational principle of the international system. By then, the rest of the rules had been thought through, and an institutional structure was put in place to enable the system to hold together and function.

YJIL Co-EICs: In light of recent events, your argument in *The Internationalists* makes us wonder: if the Kellogg-Briand Pact marked such a significant transformation in conceptions of force, why are we seeing a breakdown of the progress only a century later—with Russia’s aggression in Ukraine, Israel’s war in Gaza, the U.S. military action in Iran, and other unlawful uses of military force in the modern day? Great powers seem to be flouting the principle of non-aggression embedded first in the Pact and later in Article 2(4) of the UN Charter. How does your argument in *The Internationalists* hold up today, or better yet, how does it function in the current moment?

Hathaway: There are two things to say about that. First, without denying the serious problems we face—and I spend a great deal of my time writing and speaking about current violations of international law—it is important to begin with the recognition that the international legal order has been remarkably successful over the last eight decades. Scott and I document in our book the way in which territorial

conquest, which used to be quite common, fell radically after World War II and the entry into force of the UN Charter. In fact, that change began in 1928, which prompted the rejection of the idea that title to territory could be transferred by force. You can see this transformation in real changes in the world: territorial conquest, once common, became rare; the number of interstate wars fell dramatically; global cooperation increased dramatically.

Second, we tend to notice international law most often when it fails. For example, we notice the UN Charter Article 2(4)'s prohibition on the use of force when a state illegally uses force against another. We do not spend much time discussing the fact that most states are not invading other states right now, or that, before Russia invaded Ukraine, there was remarkably little armed conflict between states in Europe since World War II. We focus on breakdowns and not on successes. This is in part due to a broader journalistic tendency to focus on problems rather than successes. But this is also a feature of international law itself—it tends to raise to our consciousness precisely when it is being violated. International law sets the expectations that states have for one another, so it tends to recede into the background except when it is being breached.

Certainly, we can look around today and see violations. There is Russia's invasion of Ukraine, which has been roundly condemned for violating the UN Charter and international humanitarian law. There are various actions that the United States has recently taken—the bombing of Iran's nuclear sites last summer, the boat strikes on suspected drug traffickers, the Venezuela operation, and the war against Iran in February, and of course, as we speak, the U.S. military campaign in Iran—that also manifestly violate international law.⁸ Those violations are real, and they are important to discuss. But I think we should not lose sight of the fact that the international system has worked remarkably well up to this point.

⁸ For Professor Hathaway's recent writing on these violations, see Oona A. Hathaway & Scott J. Shapiro, *A World Without Rules*, FOREIGN AFFS. (Jan. 13, 2026), <https://www.foreignaffairs.com/united-states/world-without-rules>; Oona A. Hathaway, *The Great Unraveling Has Begun*, N.Y. TIMES (Jan. 6, 2026), <https://www.nytimes.com/2026/01/06/opinion/peace-conflict-war.html>; Isaac Chotiner, *The Brazen Illegality of Trump's Venezuela Operation*, NEW YORKER (Jan. 3, 2026), <https://www.newyorker.com/news/q-and-a/the-brazen-illegality-of-trumps-venezuela-operation>; Oona A. Hathaway & Scott J. Shapiro, *Might Unmakes Right: The Catastrophic Collapse of Norms Against the Use of Force*, FOREIGN AFFS. (June 24, 2025), <https://www.foreignaffairs.com/united-states/might-unmakes-right-hathaway-shapiro>; Oona A. Hathaway, *Trump's Strikes on Iran Were Unlawful. Here's Why That Matters.*, N.Y. TIMES (June 23, 2025), <https://www.nytimes.com/2025/06/23/opinion/international-world/trump-iran-strikes.html>; Oona A. Hathaway, *International Law Goes to War in Ukraine*, 38 EMORY INT'L L. REV. 569 (2024).

YJIL Co-EICs: Everything you have described points to a system that has made a real difference—and yet one that is now under unprecedented assault. Do you think it can survive?

Hathaway: Will it survive this assault? I do not know. We are at a moment that may prove to be a critical turning point. It may be that we will look back and say it was a great eighty-year run of a global legal order that brought remarkable peace and prosperity and reduced interstate war—and that it came to an end in the mid-2020s, beginning perhaps with Russia’s invasion of Ukraine. But I do not think we can look at what’s happening now and conclude that the whole system has been a failure. What we are really seeing is evidence of how well the system has worked, and of how terrible and costly it is when states decide to violate the prohibition on the use of force outside the very narrow exceptions permitted under the UN Charter.

DOES INTERNATIONAL LAW PROTECT? *CIVILIANS* AND THE LAW OF ARMED CONFLICT

YJIL Co-EICs: Let’s move from *The Internationalists* to your forthcoming book, *Civilians*.⁹ That book cites the Geneva Conventions as the modern legal foundation for protecting civilians in armed conflict. It traces how that foundation has been complicated by the shift away from state-versus-state to conflict between states and non-state actors. Could you walk us through how that shift has played out in practice, and how international humanitarian law might be reimaged in light of it?

Hathaway: I am about halfway through writing this book, and it starts all the way back in the 1600s. It traces how the rules governing the conduct of war came about—similar in approach to *The Internationalists*, which looked at the origins of the law governing the resort to force. This book asks: how did the rules governing the conduct of war emerge and change over time?

I begin in the 1600s to understand the limits—or rather, the absence of them—that existed when this body of law was first taking shape. The short answer is that there were essentially no limits at all. The enemy—anyone on the other side—was fair game. Women and children could be killed. There was almost no restriction on the suffering that could be imposed on civilians, and as a result, civilians died in extraordinarily high numbers. One of the worst cases I examined was the Thirty Years’ War, which began in 1618 and devastated large parts of what is now

⁹ HATHAWAY, *CIVILIANS*, *supra* note 3.

Germany—then the Holy Roman Empire—where in some regions as many as fifty percent of the civilian population perished. That is the baseline: this is what war looks like without rules. The human cost is staggering.

I won't take you through every step in the book, but I trace the critical moments in the evolution of the law of war and ask: what motivated states to try to regulate it? It began partly out of self-interest, and partly from the remarkable efforts of Henry Dunant. Dunant witnessed the carnage of Solferino during the Second Italian War of Independence and, seeing young men left dying on the battlefield without medical care, felt compelled to do something. His personal effort, and then his success in writing a compelling narrative about the horrors he had witnessed, became a starting point. At each moment of legal innovation that I trace in my new work, I try to understand what problem the people creating the law were trying to solve, and why they believed law was the right tool. There is an obvious reaction that many people have to the idea of applying law to war—that it is almost naive or impossible to think law could tame something as chaotic and violent as war. Yet, time and time again, people have come together and thought otherwise. These were not naive idealists; many were hardened veterans of war themselves.

I have now worked my way through the Geneva Conventions, which were a critical moment—they achieved a great deal, but they also missed a great deal. States updated the laws of war that had already been in place, but they refused to address some contentious issues like aerial bombardments, which, by that point, had become a real threat to civilians and in many ways posed the greatest danger following World War II. This was likely because, in part, many of the states at the conference had been responsible for killing large numbers of civilians through aerial bombardment during the War, and they were simply unwilling to confront that fact or its implications following the conclusion of the war. The drafters were also not willing to seriously engage with rules governing internal wars or civil wars, adopting only the thinnest of provisions in Common Article 3. Some of those gaps were filled in the 1970s, in the wake of the Vietnam War, through the Additional Protocols.

What I am trying to understand is how we arrived at this current moment—where we feel a kind of helplessness in the face of the law's limitations. Yet the challenges we face today are not new. The law we currently have is the product of people who found a way through these same challenges. Looking at that history helps me to understand what problems they encountered, how they tried to fix them, and where they succeeded and where they failed. That history provides something of a roadmap for us now: what challenges do we face, and how might we overcome them?

When I began the book, I perceived the challenges somewhat differently than I do now. I could not have imagined a U.S. President threatening to wipe out an entire civilization, as President Trump recently has. The problems are even more massive at this moment than I could have imagined when I began this project a year ago. But in some ways the same fundamental challenge and question remains: how do we use law to regulate violence and war, and to protect civilians from its worst effects? That, in the end, is what I am most deeply trying to work through.

YJIL Co-EICs: Focusing specifically on dual-use targeting—in your 2025 article co-authored with Azmat Khan and Mara Revkin, you discuss how dual-use targeting has become central to the ways wars are being fought today.¹⁰ For those of us still getting our heads around the concept, could you explain what dual-use targeting means, how it has been stretched beyond what the law was originally designed to permit, and how we might respond to that stretching?

Hathaway: Briefly put, a dual-use object is one that has both military and civilian uses. This creates a real challenge in wartime because international law requires parties to distinguish between civilian and military objects. Dual-use objects complicate that distinction because they serve both purposes. Most military forces would maintain that they are lawful military objectives if they meet the legal definition—even if they also serve civilians.

Take a simple example: say we have a power plant that supplies electricity to both a local military base and to a surrounding civilian neighborhood. It serves important civilian uses, but because it is also substantially used by the military, it is generally regarded as a lawful military objective that may be targeted. Even so, the expected harm to civilians must be weighed against the anticipated military advantage. If a hospital attached to the power plant would lose power and suffer civilian deaths as a result, that factor must be taken into account—and might render the strike unlawful.

There are other ways dual-use questions arise. A school or hospital is ordinarily a protected civilian object. But imagine that a military force occupies that school and uses it as a headquarters. That military use might transform the otherwise protected object into a military objective—and it might then be referred to as a dual-use object, because it remains a school but is also being used for military purposes. Again, you have the question of whether the expected harm to civilians from targeting it is justified by the anticipated military advantage.

¹⁰ Oona A. Hathaway, Azmat Khan & Mara Revkin, *The Dangerous Rise of “Dual-Use” Objects in War: History, Evidence, and the Case for Reform*, 134 YALE L.J. 2645 (2025); see also Oona A. Hathaway & Azmat Khan, “Mistakes” in War, 173 U. PA. L. REV. (2024).

A number of legal debates flow from this framework. For instance: if one wing of a school complex is being used by the military while other parts remain in use as a school, is the entire complex a military objective? Some would say yes. Others would say only the part being used for military purposes becomes a military objective, and the rest retains its protected status.

There are also debates about reverberating effects—that is, not just the immediate impact of a strike on a dual-use object, but the broader downstream effects of said strike. Destroying a power plant used by both the military and civilians may leave a civilian population without heat in winter, cause pipes to freeze, eliminate access to water, and deprive people of objects indispensable to survival. Those cascading harms are what the law calls reverberating effects and they are relevant to determining the legality of any strike.

What we were trying to do in the article was to document, using data from civilian casualty reports that my co-author Azmat Khan had gathered through her reporting for *The New York Times*, the ways in which the U.S. military was targeting elements of civilian infrastructure on the justification that they were dual-use objects. Based on this evidence, we wanted to make the argument that the government ought to take greater account of the long-term effects of destroying infrastructure deemed “dual-use”—even where there may be some military utility—by properly weighing the reverberating harm to the civilian population not just in the short term but also the long term. The same principle applies to the concept of cumulative harm: destroying the first power plant may be harmful; destroying the second, third, and fourth has an increasingly significant impact on civilians. The same is true of hospitals, bridges, and other infrastructure. Destroying the last bridge in an area can be catastrophic for a civilian population. We were both making a theoretical argument and grounding it in an empirical study of how the U.S. government has actually carried out these strikes.¹¹

¹¹ Hathaway et al., *The Dangerous Rise of “Dual-Use” Objects in War*, *supra* note 10. For a proposal to systematically compensate civilians harmed by such strikes, see Sarah Donilon, Oona A. Hathaway & Carter Squires, *War Hazards Compensation for Civilians*, 59 U.C. DAVIS L. REV. 1839 (2026).

MAKING INTERNATIONAL LAW WORK: NEW TOOLS FOR ACCOUNTABILITY

YJIL Co-EICs: Your work on *erga omnes partes* standing,¹² along with related scholarship on accountability mechanisms,¹³ has focused on how to open up access to the international system and hold states accountable for their actions. The doctrine has already been put to the test in landmark cases—most recently, South Africa’s case against Israel at the ICJ over Gaza.¹⁴ Let us begin with the basics: what does *erga omnes partes* mean, and how has the tool begun to change practice? How might it be developed further to close the so-called enforcement gap we often hear about in international law?

Hathaway: Obligations *erga omnes partes* are obligations owed “towards all parties” to a treaty. The underlying idea is that international treaties often create obligations where the harm from a violation is not suffered only by one state, but by every state that is a party. There is also the related concept of obligations *erga omnes*, which are obligations owed “towards all” regardless of treaty membership. Because the obligation is owed to all, the entire international community is harmed by a violation.¹⁵

Take the Genocide Convention. States join it not primarily because they are concerned about their own citizens being directly harmed; they join because they want to support the general norm prohibiting genocide. Hence, any genocide, wherever it occurs, is a harm to all states that are party to the Convention. The ICJ gave effect to this understanding in the *Gambia v. Myanmar* case, holding that The Gambia had standing to challenge Myanmar’s alleged genocide against the Rohingya minority—not because The Gambia suffered any specific, individual harm, but because it is a party to the Genocide Convention and has an interest in the prohibition on genocide being upheld everywhere.¹⁶ The obligation not to commit genocide is an *erga omnes partes* obligation that is owed to all parties to the treaty.

¹² Hachem et al., *A New Tool for Enforcing Human Rights*, *supra* note 4.

¹³ See Cindy Garay, Oona A. Hathaway & Kevin Zhang, *The World Court’s Enforcement Dilemma — And How to Solve It*, 114 GEO. L.J. 63, (2025)

¹⁴ Alaa Hachem & Oona A. Hathaway, *The Promise and Risk of South Africa’s Case Against Israel*, JUST SEC. (Jan. 4, 2024), <https://www.justsecurity.org/91000/the-promise-and-risk-of-south-africas-case-against-israel>.

¹⁵ Garay et al., *The World Court’s Enforcement Dilemma*, *supra* note 13.

¹⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Gam. v. Myan.*), I.C.J. (2019).

This was genuinely revolutionary. Before that holding, human rights treaties could feel unenforceable—because in the ICJ, only states can bring cases, and individuals subjected to violations have no standing. It seemed there might be no one with the legal right to challenge systematic atrocities committed by a state against its own people. The Gambia decision changed that: now every state party to the Genocide Convention potentially has standing to bring a case to enforce the Convention, giving the court an opportunity to weigh in on major human rights violations.¹⁷

In another co-authored paper, I have argued that recognizing *erga omnes* and *erga omnes partes* standing also creates a vulnerability for the court.¹⁸ The ICJ is now increasingly drawn into highly politically contested international crises, in cases where the states that originally joined the underlying conventions may not have appreciated that they could be subject to such proceedings.¹⁹ That increases the likelihood that states will simply ignore the court's decisions, which could create a legitimacy crisis. If the court's decisions are persistently disregarded, the institution risks being seen as irrelevant.

To address that, we develop the argument that states have an obligation *erga omnes partes* (and perhaps even *erga omnes*) to comply with decisions of the ICJ. That argument provides states with a legal basis to take countermeasures in support of the court's decisions, because they have their own interest in the effectiveness and legitimacy of the institution as a whole.²⁰

YJIL Co-EICs: Along similar lines—how does the standing doctrine you have described connect to your 2024 work with Maggie Mills and Thomas Poston on reparations frameworks? Specifically, what relief or remedies are available in light of these new standing doctrines, and how does that bear on the current debate over the seizure of frozen Russian assets as the war in Ukraine rages on?

¹⁷ See Hachem et al., *A New Tool for Enforcing Human Rights*, *supra* note 4.

¹⁸ See Garay et al., *The World Court's Enforcement Dilemma*, *supra* note 13.

¹⁹ South Africa's ICJ case against Israel over Gaza illustrates this dynamic well, invoking *erga omnes partes* standing as a party to the Genocide Convention rather than as a directly harmed state. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (S. Afr. v. Isr.)*, Application Instituting Proceedings and Request for the Indication of Provisional Measures (Dec. 29, 2023), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-bi.pdf>.

²⁰ “When a State is harmed by another State's internationally wrongful act, that State is entitled to take otherwise unlawful action—known as a “countermeasure”—against the responsible State to induce compliance with its legal obligations.” Garay et al., *The World Court's Enforcement Dilemma*, *supra* note 13, at 90.

Hathaway: That paper takes up the question of what kinds of reparations are permissible on behalf of a state like Ukraine, whose legal rights have been violated.²¹ The international community has frozen Russia's central bank assets, but there is a real legal question about whether those funds can be transferred to Ukraine. Different states have taken different positions on that.

What we try to do is step back and ask: what is Ukraine's legal claim against Russia, and on what basis could it claim entitlement to those assets? And can other states assist in carrying out or facilitating access to those funds in a way that is legally justified?

The argument proceeds in several steps. First, we establish that under international law, a state subjected to an unlawful war—a clear violation of Article 2(4) of the UN Charter, constituting a crime of aggression—is entitled to reparations. The scale of destruction in Ukraine is well documented. At the time of writing, estimates were that reconstruction would cost at least \$400 billion, and likely considerably more. So, Ukraine has a clear legal claim to reparations for that internationally wrongful act of aggression.

The second question is whether other states can assist Ukraine in seizing or retaining the frozen Russian central bank assets to satisfy that claim. Our argument does not endorse everything that some states might wish to do. The short answer is that they cannot simply take the money outright. What they can do is continue to freeze the assets. The failure to pay reparations is an ongoing internationally wrongful act, and countermeasures may be maintained as long as the wrongdoing continues. States holding those assets—the vast majority of which are located in Belgium—can justify continuing to freeze them as a collective countermeasure.

The justification for that returns to *erga omnes* obligations. Russia has violated its obligation under the UN Charter not to resort to the use of force—a violation that is a harm not just to Ukraine but to the entire international community. The international community can therefore continue to freeze those assets and refuse to release them until Russia has met its reparation obligation.

YJIL Co-EICs: Would this argument apply to U.S. assets held in overseas banks in response to its war in Iran—and if not, why not?

Here it's interesting to note that there are those who have argued that we are too tepid in arguing that the Russian central bank assets cannot simply be seized outright. Indeed, the U.S. government adopted a position in favor of seizing the assets, a position the European Union has resisted. In the article and in related

²¹ Hathaway et al., *War Reparations*, *supra* note 5.

writing,²² we argued that these assets cannot be seized both because the assets are protected by the international law principle of sovereign immunity and because seizing the assets does not meet the requirements of countermeasures doctrine—especially the requirement that the countermeasure be reversible if the violating state comes into compliance.

It is interesting that the issue has not yet been raised in relation to the war in Iran. It is clear that this war is also a manifest violation of the United Nations Charter—well over 100 international lawyers have signed a letter to this effect.²³ And yet those who have been enthusiastic about seizing Russian assets have not yet made similar arguments with regard to U.S. government assets. I think the reasons for this are obvious—and it has nothing to do with the quality of the legal arguments.

YJIL Co-EICs: How did your thinking on collective countermeasures evolve as you worked on this paper?

Hathaway: One of the most intellectually interesting aspects of the paper for me was working through the doctrine of collective countermeasures. I had previously been somewhat skeptical of collective countermeasures, because they amount to legalized law-breaking: a state does something it would otherwise not be permitted to do, on the justification that the other side has broken the law and that the countermeasure is a temporary, reversible measure aimed at producing compliance. The risk is that if you allow too much of this, you undermine the system itself. But my co-authors helped me work through the argument and persuaded me that collective countermeasures are legitimate if properly constrained. The constraint is key: collective countermeasures are permissible only in response to violations of obligations *erga omnes*. That limitation serves as a disciplining device. You could almost say that because these are obligations *erga omnes*—owed to everyone—every state has a legal right that has been violated, since the obligation is owed to them as well. Working through that argument with my co-authors genuinely changed my

²² Hathaway et al., *War Reparations*, *supra* note 5; Oona A. Hathaway, Maggie Mills & Thomas Poston, *How to Make Russia Pay to Rebuild Ukraine*, JUST SEC. (Feb. 20, 2024), <https://www.justsecurity.org/92460/how-to-make-russia-pay-to-rebuild-ukraine>; Oona A. Hathaway, Maggie Mills & Thomas Poston, *The Emergence of Collective Countermeasures*, ARTICLES OF WAR (Nov. 1, 2023), <https://lieber.westpoint.edu/emergence-collective-countermeasures>; Oona A. Hathaway, Maggie Mills & Thomas Poston, *Seizing Sovereign Assets Violates International Law*, in *Should We Seize Russian Funds to Pay for the War in Ukraine? Commentators Weigh In.*, WASH. POST (Nov. 16, 2023), <https://www.washingtonpost.com/opinions/2023/11/16/russia-ukraine-assets-seizure-sovereign>.

²³ See Tom Dannenbaum, Rebecca Hamilton, Adil Ahmad Haque, Oona A. Hathaway & Gabor Rona, *Over 100 International Law Experts Warn: U.S. Strikes on Iran Violate UN Charter and May Be War Crimes*, JUST SEC. (Apr. 2, 2026), <https://www.justsecurity.org/135423/professors-letter-international-law-iran-war>.

thinking and helped me put another piece in place in my broader understanding of how the international legal order functions.

CAN INTERNATIONAL INSTITUTIONS SURVIVE UNDER CURRENT PRESSURE?

YJIL Co-EICs: Moving to the question of institutions: we hear you talking about all these mechanisms, and of course institutions and courts are needed to apply and legitimize them. But at the same time, we are seeing these institutions being assaulted—the Trump administration cuts funding for international organizations, issues sanctions against ICC officials, and makes claims that it has solved eight conflicts while the UN did nothing. You have written recently about why going to war with the ICC is a bad idea.²⁴ Specifically, what role do you see for states—those that still genuinely care about international law—in defending the legitimacy of courts and international institutions like the UN?

Hathaway: I think this is a moment when we are seeing the results of many states having relied heavily on the U.S. in the past to play a central role in maintaining and overseeing the international system. Their ability to rely on it now, however, has disappeared. That is part of why the international system is so paralyzed in responding to the lawlessness of the current U.S. administration—it simply doesn't know how to address a situation in which the actor that has been so critical to maintaining and enforcing the legal order is now attacking and dismantling it.

The only answer, I think, is going to have to be that other states step up. This is what some have called the rise of the middle powers—the idea that states that are not great powers are going to have to play a critical role in providing consistency, coherence, and balance for the system, in the face of assaults from two, or possibly three, of the permanent members of the U.N. Security Council. The only way through this situation is through global cooperation—for middle powers and smaller states to band together and work collectively in response to the current lawlessness.²⁵

²⁴ Oona A. Hathaway, *Don't Go to War With the ICC: America Can Help Israel Without Attacking the Court*, FOREIGN AFFS. (May 24, 2024), <https://www.foreignaffairs.com/israel/dont-go-war-icc>.

²⁵ See Oona A. Hathaway & Stewart Patrick, *Is the Prohibition on the Use of Force Collapsing?*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Aug. 26, 2025), <https://carnegieendowment.org/research/2025/08/is-the-prohibition-on-the-use-of-force-collapsing> (arguing that as three permanent members of the Security Council increasingly abandon the prohibition on the use of force, middle powers and smaller states spanning the Global North and South must build new coalitions to sustain the core principles of the UN Charter); Hathaway & Shapiro, *Might Unmakes Right*, *supra* note 8 (“States should also work within regional or issue-specific coalitions to achieve shared goals.”);

But I think it's not only about playing defense. These states are going to have to start thinking creatively about how to build systems and mechanisms of global cooperation that do not depend on the U.S. For the next several years at least, the U.S. is not going to be a constructive player in the international system—if anything, it will be a destructive one. Since World War II, almost all major international institutions have been built with U.S. support—financial, intellectual, bureaucratic, and in terms of personnel. Those capacities have atrophied elsewhere. Other states are going to have to figure out how to step in and fill that gap.

YJIL Co-EICs: You describe a path forward that depends on middle and smaller powers stepping up—yet that coalition has not yet materialized in a significant way. What is holding them back in your view?

Hathaway: I think they are still somewhat stunned, frankly. Many are in disbelief at where we are. But they are being shaken out of that disbelief, because it is clear the President is not changing course. The U.S. has withheld dues from the UN. It has sanctioned ICC officials. It has withdrawn from more than sixty international agreements. It has attacked and dismantled institutions at every turn. The deep irony is that the President claims he wants to strengthen the United States—but what he is actually doing is creating an enormous vacuum that China, which the President claims to regard as an adversary, could move to fill, were it to choose to do so. China is gaining influence across these institutions precisely because the U.S. is ceding its position. I think this will prove deeply counterproductive.

The hopeful part, for me, is that I do think states are coming around to the realization that they are going to have to build something new—systems of cooperation that do not depend on the United States, and a way forward that takes seriously the responsibilities that the U.S. has abandoned. I wish that was not the case. But I think we are all slowly arriving at the recognition that this is the reality we are in, at least for now.

Oona A. Hathaway & Scott J. Shapiro, *Welcome to the Post-Leader World*, FOREIGN POL'Y (July 4, 2020), <https://foreignpolicy.com/2020/07/04/after-hegemony> (arguing that some of the gap left by the United States could be filled by small and middle powers forming “global clubs”); *see also* Mark Carney, Special Address at the World Economic Forum Annual Meeting, DAVOS (Jan. 20, 2026), <https://www.weforum.org/stories/2026/01/davos-2026-special-address-by-mark-carney-prime-minister-of-canada> (calling on middle powers to step up and fill the vacuum left by U.S. retreat from multilateral commitments).

ON HATHAWAY'S SCHOLARSHIP: WHAT DRIVES HER WORK

YJIL Co-EICs: We want to ask about the development of your scholarship. Looking at your writing over the last decade or so, comparing the earlier work to what you produce now, we see a shift: before, particularly in your human rights work, you were testing what international law does—empirically, skeptically. Now, across this conversation, we keep hearing about building new tools, about reimagining what international law could be. What drove that shift?

Hathaway: It is true that my early work asked, quite literally, do human rights treaties make a difference?²⁶ It was testing the question: does international law fulfill its promise? At the time, there was a strong push for states to ratify the core human rights conventions, and my genuine curiosity was—how do these treaties actually affect people's lives? Are people better off as a result of them? Does a state signing a treaty translate into real differences on the ground?

I came in with a genuinely open mind and, using empirical tools, found something that surprised me: if anything, there was a negative association, not a positive one, between treaty ratification and human rights outcomes. In other words, ratification of human rights treaties was associated with worse human rights practice, not better ones. The important exception to this finding was for democratic states, which did better if they had ratified human rights treaties. That part of the paper tends to get less attention when people discuss my findings.

In general, I think my earlier work is largely consistent with my later work, because throughout my research what I have always cared about is not the law for its own sake, but the law for the sake of making people's lives better. The question I was asking then is the question I am still asking today: how do we use law to meaningfully protect people? How do we make it work, rather than just having something to show off and claim as an achievement? If the treaties are not working as intended, why not—and what do we do about it? I never argued that because ratification of human rights treaties was not associated with better human rights practices, international law was therefore useless and should be discarded. My approach was almost always: it is not working the way we thought. Why? And how do we make it work better?

Maybe that orientation is more transparent in my current work, because I take as my starting point the idea that law is imperfect, that it often works but sometimes doesn't. Today, I am often the person trying to explain that international law works

²⁶ Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

far better than people give it credit for. But like any legal system, it can always be improved. What I want to understand is how.

These questions led me to the concept of “outcasting” that Scott Shapiro and I developed. We asked: if international law is not enforced through the traditional mechanisms associated with domestic legal systems—police, courts, a comprehensive enforcement scheme—how does it work? Much of the time, we explained, the answer is outcasting, which is the process of enforcing the law by excluding those that violate the law from the benefits of cooperative relationships.²⁷ And, from there, we ask: where does outcasting work, and where does it break down? It doesn’t work for human rights in the same way it works for trade, because you can’t use in-kind countermeasures the way you can with a tariff violation—you can’t respond to torture with torture in the way you can respond to an illegal tariff with a tariff. So, what other tools are available? What are the mechanisms? That has been the throughline—not really a shift, but the same question asked at deeper levels.

YJIL AND THE ROLE OF STUDENT-EDITED LAW JOURNALS

YJIL Co-EICs: Prior to becoming a professor, you were a student here at Yale Law School, where you served as the Editor-in-Chief of the *Yale Law Journal* and also as a Managing Editor of this journal. What do you think the role of student-edited law journals is in the development of a field like international law that is changing so rapidly?

Hathaway: Being a student editor of a journal like *YJIL* was a genuinely privileged position. It is unusual in virtually any field for people who are still studying a discipline, in this case law, to be the arbiters of the leading journals in that field. This dynamic creates a real opportunity to think a little outside the box—to take seriously ideas that those who have been in the field for a long time might dismiss as outlandish or impossible.

Previous moments of chaos in the international legal order—after World War I, at the moment the Kellogg-Briand Pact emerged with its outrageous idea of simply outlawing war, after World War II—required exactly that kind of openness. Sometimes the kernels of the future are ideas that seem, at the time, impossible. I think one genuine advantage you have is that you won’t write off an idea simply

²⁷ Oona A. Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L.J. 252 (2011).

because it is new. People who have been in the field for decades may have developed a kind of blindness to various possibilities that you don't yet have.

Beyond your time on the journal, I hope you will carry this open thinking into your careers. We are going to need creative people who are willing to do the hard work of figuring out how to make the system function better—or how to build something new where it has failed. I don't think there is anyone better positioned to help us figure that out than students at Yale Law School. My hope is that you use your time here to think seriously about these ideas, and that you use your time at *YJIL* to look for the exciting new possibilities; to take the creative thinking you are doing now and bring it to bear on the project of restoring some sanity to the global legal order because we are going to need it.

ASIL AND THE FUTURE OF INTERNATIONAL LAW

YJIL Co-EICs: ASIL was founded in 1906 with a mission to foster the study of international law and promote international relations on the basis of law and justice. As you assume the presidency, what do you see as ASIL's most important contribution to international law? How has that role been challenged by the current environment, and how might ASIL be reimagined to better serve the field and the world it is trying to shape?

Hathaway: ASIL is a unique organization. It is a membership organization with 4,000 members from over 100 countries—people involved in every kind of international law practice and institution you could imagine, from international organizations to academic institutions to government practice and beyond. It is a remarkable community of people thinking about international law from a wide variety of perspectives.

Because we are the American Society of International Law at a moment when the United States is no longer living up to its history as a champion of international law, I feel we have a unique capacity—and a responsibility—to explain the value of international law to the American and global public, to support our members both in the U.S. and abroad who are practicing international law, and to pursue the rule of law in international affairs, which is the core of ASIL's mission. We do that by having a conversation with one another and supporting one another in our work.

ASIL is the oldest and largest international law society in the world. It has genuine global reach, and that gives us an opportunity to speak on these issues and

to champion international law in a way that I think no one else really can. I take that responsibility very seriously, and I hope that over these next two years I can help position ASIL to be a real champion of international law—to fulfill its mission of explaining and educating about international law and championing its foundational principles and goals.

Beyond those broader goals, there are also institutional matters: getting ASIL onto firmer financial footing, improving our ability to communicate effectively, and—something I feel very strongly about—expanding conversations with our global membership. We are bringing ASIL abroad: ASIL will be in Buenos Aires, Argentina, this July, and I am excited about that. I am also hoping to plan a meeting in Africa, either next summer or the summer after. The United States is no longer in a position to lecture others about international law. We have a great deal to learn from the rest of the world, and being in that conversation is critical right now.

April 7, 2026

New Haven, CT, United States

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This interview has been edited for length and clarity. We thank Elsie Mares and James Boyle of the Yale Journal of International Law Features team for their editorial assistance.

Suggested Citation: Alaa Hajyahia & Tawreak Gamble-Eddington, *Does International Law Make a Difference?: A Conversation with Oona A. Hathaway*, 52 YALE J. INT'L L. ONLINE 1 (2026).