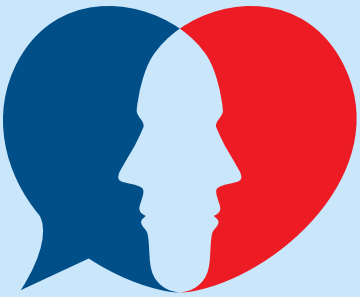

INTER-CIVILISATIONAL

Dialogue

The State of Debate on International Jurisprudence:

Fragmentation, Accountability, and the Search for Shared Legal Values

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I. Introduction: Why International Jurisprudence Needs Inter-civilisational Dialogue

International law presents itself as universal. Its foundational instruments speak in the name of all humankind. Yet the system that gives those instruments effect is characterised by deep structural inequalities, such as unequal access to legal forums, the de facto hierarchy of the Security Council's permanent members, and a colonial inheritance that has never been fully reckoned with.

This paper examines that tension through three main threads. The first is structural, centring on the International Law Commission (ILC) diagnosis of "fragmentation" and what it reveals about the internal contradictions of international law as a system. The second is historical, drawing on Antony Anghie's demonstration that those contradictions are not accidental but were built into the discipline from its colonial origins. The third is contemporary, tracing two live developments that illustrate both the law's normative ambition and the limits of its practical reach, namely the 2025 International Court of Justice (ICJ) Advisory Opinion on climate change and the twenty-year evolution of the Responsibility to Protect (R2P).

Running through all three is a question that Philip McDonagh's reading of Thucydides poses. In his analysis of the *stasis* at Corcyra, Thucydides shows how a shared normative language

can decompose from within: words lose their *axiōsis*, their proper evaluative force, and legal and political norms become instruments of the powerful rather than constraints upon them. The antidote is not a better vocabulary alone but the sustained co-presence of actors who remain accountable to one another across their disagreements. This describes the reality of the individuals whose access to justice depends on whether international law's shared language holds.

II. Fragmentation: International Law as a System Under Strain

II.1 The ILC Diagnosis

In 2006, the ILC Study Group, convened under Martti Koskenniemi, delivered its report on the "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law". The report documented what had become the defining structural feature of the international legal landscape: the proliferation of specialised legal regimes (trade law, investment law, environmental law, human rights law, international criminal law) each developing its own tribunals and institutions, often in isolation from one another and sometimes in conflict.

The ILC identified the central danger as the loss of what it called "systemic integration", defined as the capacity of international law to function as a coherent legal system rather than as a collection of competing sub-systems. The proposed remedy was doctrinal, namely the principle of systemic integration under Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which requires that treaties be interpreted in the light of "relevant rules of international law applicable in the relations between the parties". On this reading, the unity of international law is maintained by courts and scholars reasoning across the boundaries of specialised regimes towards a common understanding of the whole.

Almost two decades later, this doctrinal remedy has proved insufficient. The fragmentation the ILC described has deepened. Investment tribunals award compensation against climate regulations adopted pursuant to states' legal obligations under the Paris Agreement. Regional human rights bodies reach divergent conclusions on equivalent facts. The UN Security Council

is paralysed on the most urgent protection crises. And the very concept of a rules-based international order has become a battleground, with states across the political spectrum questioning whether the rules were ever as universal as claimed.

The most consequential form of fragmentation is the systematic exclusion of human rights obligations from the regimes that govern global economic power.

II.2 Anghie and the Colonial Foundation

The ILC's report treated fragmentation as a relatively recent development arising from the expansion of international law in the post-war period. Antony Anghie's Imperialism, Sovereignty and the Making of International Law goes much further back, to argue that the very foundations of international law were laid in and through the colonial encounter.

Anghie's central argument is that the main concepts of international law (such as sovereignty, treaty, jurisdiction, the distinction between "civilised" and "uncivilised" peoples) were constituted by colonialism. He traces this "dynamic of difference" from Francisco de Vitoria's sixteenth-century theorisation of the rights of the Spanish against indigenous peoples of the Americas, through the development of the doctrine of sovereignty in the nineteenth century, to the mandate system of the League of Nations, and into the development discourse of post-colonial international law. In each phase, international law found new doctrinal mechanisms to assert universality while maintaining the hierarchy between those who made the rules and those who were subject to them.

This history explains the structure of the present deficit in access to justice. The International Criminal Court prosecutes overwhelmingly African defendants while the nationals of permanent Security Council members remain effectively immune. The investor-state arbitration system was designed by and for capital-exporting states. The development finance architecture reproduces colonial patterns of conditionality.

Anghie's analysis establishes that any genuine inter-civilisational dialogue about international law must confront this inheritance directly. It is not enough to assert that the law's values are universal and invite others to accept them. The question that the Global South, indigenous

peoples, and other excluded communities put to international law is precisely the question Anghie poses: whose universality? Designed by whom? Enforced against whom? Inter-civilisational dialogue is the space in which those questions can be asked and, perhaps, be answered.

II.3 The Crisis of Multilateralism and the Rule of Law

The structural fragmentation diagnosed by the ILC and the colonial inheritance traced by Anghie now interact with a third crisis, which is the weakening of the multilateral institutions that were meant to hold the international legal system together. The UN Security Council recorded seven vetoed resolutions in 2024, the highest annual figure since 1986. Official Development Assistance is declining sharply. The World Trade Organisation dispute settlement mechanism remains dysfunctional. Confidence in the international criminal justice system is severely strained.

The 2024 Pact for the Future acknowledges these failures, committing states to "strengthen and reinvigorate multilateralism" while the very instruments for doing so are under strain.

What the project proposes as a response ("spaces of shared projection" in which diverse actors reflect on medium-term futures in the light of high-level values) corresponds, from a legal perspective, to the ILC's aspiration for systemic integration, in that both require actors who remain in relationship and accountable to one another across the boundaries of their disagreements.

III. The 2025 ICJ Advisory Opinion on Climate Change

III.1 A Unanimous Breakthrough

On 23 July 2025, the ICJ delivered its Advisory Opinion on the Obligations of States in Respect of Climate Change. The Court, speaking unanimously, described climate change as an "urgent and existential threat". The implications of this opinion extend far beyond the climate domain.

The Opinion demonstrates the ILC's systemic integration principle at its most ambitious. The Court drew simultaneously on the Paris Agreement, UNCLOS, the Convention on Biological

Diversity, the ICCPR, the ICESCR, and customary international law, weaving them into a coherent framework of state obligations. It held that the 1.5°C temperature target of the Paris Agreement creates legally binding obligations, and that states must align their nationally determined contributions with the "highest possible ambition" in pursuit of that goal. It held that the right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights and inherent in them. Consequently, states party to human rights treaties cannot fulfil their obligations under those treaties without at the same time ensuring the protection of that right.

Two additional holdings are of particular significance for access to justice. First, the Court extended the principle of non-refoulement to climate displacement. Therefore, states may not return climate-displaced persons to environments where there is a real risk of irreparable harm to their right to life. Second, it held that the disappearance of one of a state's constituent elements through sea-level rise would not necessarily entail the loss of its statehood. This establishes a strong presumption in favour of the continued legal existence of small island states even in the event of complete territorial inundation. These developments empower the most climate-vulnerable communities in the world, those whose voices have been most marginalised by the legal order's colonial inheritance.

III.2 The Systemic Integration of Human Rights and Climate Law

The most important aspect of the Advisory Opinion is its demonstration that international law can function as a coherent system when courts exercise interpretive discipline across regime boundaries. The Court held that general international law (including human rights law, the law of state responsibility, and customary environmental obligations) applies alongside and independently of the specific obligations in the Paris Agreement, rejecting the argument that the climate treaty regime exhaustively governs states' obligations.

This matters for access to justice because it means that individuals affected by climate harm can invoke general principles of state responsibility in human rights bodies and domestic courts applying international law.

The Opinion also advances a broader principle, namely that the fragmentation of international law into specialised regimes cannot be used to insulate one domain from the human rights obligations that attach to state conduct as such.

III.3 Authority Without Enforcement

Yet the Advisory Opinion also illustrates the central tension of contemporary international jurisprudence with particular clarity. It is non-binding. Its most robust findings on the legal obligations of historically disproportionate emitters were received with resistance by major emitting states. COP30 in November 2025 failed to produce outcomes consistent with the legal standards the Court had articulated. UN Special Rapporteurs expressed grave concern about organised attempts to block UN General Assembly follow-up.

This gap between legal authority and political reality is familiar to all who work on access to justice. What the Advisory Opinion provides (and what makes it significant for the project's purposes) is a normative reference point. It is a statement, issued by the world's highest court, of what international law actually requires. In Thucydides' terms, it is the voice of Diodotus (the argument for a different course based on reason, justice, and long-term interest) in a world that too often chooses Cleon.

The challenge that the project's methodology addresses is precisely the challenge the Advisory Opinion poses: how does authoritative legal reasoning translate into political will? How do "high-level values" become "performative" in the twenty-first century? Just Access's answer, from an access to justice perspective, is that the translation requires three things the Advisory Opinion alone cannot provide: sustained multi-stakeholder dialogue that includes affected communities; institutions with genuine enforcement capacity; and a political culture in which accountability to international norms is seen as a source of legitimacy rather than a constraint on sovereignty.

IV. The Responsibility to Protect: Sovereignty, Accountability, and the Inter-civilisational Fault Line

IV.1 The Architecture of R2P

The R2P doctrine was codified in paragraphs 138 and 139 of the 2005 World Summit Outcome Document. It sets out that (1) each state bears primary R2P its population from genocide, war crimes, ethnic cleansing, and crimes against humanity; (2) the international community should help states meet this responsibility; and, (3) should a state manifestly fail and peaceful means prove inadequate, the Security Council may authorise collective action under Chapter VII. R2P was the most significant normative innovation of the post-Cold War era, as it formally subordinated the principle of non-interference to the obligation of protection.

Twenty years later, the Global Centre for the Responsibility to Protect's systematic tracking of UN resolutions tells a story of institutional normalisation alongside persistent structural dysfunction. The Security Council has referenced R2P in 99 resolutions since 2006. The General Assembly has done so in 45 resolutions. Since 2021, R2P has been a standing item on the UN General Assembly annual agenda, with a mandatory annual report from the Secretary-General.

R2P has changed the normative vocabulary of sovereignty. No state today can commit mass atrocities and expect the international community to remain silent on grounds of non-interference. The language of primary state R2P populations, once contested, has become standard boilerplate in the Security Council and General Assembly resolutions that govern the most acute protection crises of our time.

But the record also reveals the limits of the shift. R2P's routine invocation in resolutions relating to countries with international peacekeeping missions (Democratic Republic of Congo, Central African Republic, South Sudan, Somalia) exists alongside the complete absence of equivalent action in cases of comparable or greater urgency, such as Gaza, Myanmar, and Yemen. The Security Council's veto, which the architects of R2P chose not to reform, remains the doctrine's main limitation.

IV.2 The Inter-civilisational Dimension

The political history of R2P embodies the inter-civilisational tension at the heart of international jurisprudence with particular clarity. The doctrine was developed during the post-

Cold War liberal international moment, shaped above all by NATO interventions in Kosovo and the failure to act in Rwanda. It reflects a particular understanding of the relationship between sovereignty and human rights, one that is, broadly speaking, the European and North Atlantic understanding.

When the Security Council authorised intervention in Libya in 2011 (invoking R2P for the first time in an enforcement context), China and Russia abstained rather than vetoing, representing a moment of genuine normative progress. But the subsequent conduct of the NATO-led intervention, which they perceived as a regime-change operation beyond the resolution's mandate, produced scepticism towards any future R2P enforcement that has hardened with each subsequent crisis.

That scepticism also reflects a genuine civilisational disagreement about the relationship between sovereignty and accountability. The Chinese *tianxia* framework places relational harmony and non-interference at the centre of political order. The Russian insistence that the "rules-based international order" is a Western ideological project draws on a real historical experience of selective norm enforcement. Anghie's analysis of the colonial origins of international law gives credence to those concerns. The history of "humanitarian intervention" is indeed a history of interventions that served the intervening powers as often as the populations they claimed to protect.

Just Access does not dismiss these concerns. But neither does it accept the conclusion that follows from them in practice, which is a return to absolute sovereignty as a shield against external scrutiny of how governments treat their own populations. The civilian populations of countries like the Democratic Republic of Congo, Myanmar, and Yemen bear the cost of that conclusion. They have no alternative forum, and the R2P doctrine is, for them, the only legal framework that imposes an obligation on the international community to prevent their governments from committing atrocities against them.

Having outlined the access to justice dimension of the inter-civilisation debate regarding the R2P, the question is whether the solution to selective enforcement is no enforcement or consistent enforcement. For Just Access, the answer is the latter: accountability that applies to

all states, that is not subject to the veto of those with geopolitical interests in impunity, and that is grounded in genuine inclusion of affected communities in the design and operation of the mechanisms.

V. Access to Justice as a Structural Value: What International Law Owes Its Subjects

V.1 The Legitimacy Problem

The three threads traced in this paper converge on a single structural problem, namely that the legitimacy of international law depends on its availability to those it claims to protect, and that availability is profoundly unequal.

Just Access proposes that access to justice is a condition for the legitimacy of the international legal system. A rule of international law that can only be invoked by powerful states or only before institutions that exclude affected communities does not qualify as universal in any meaningful sense. The ILC's fragmentation report identified the structural mechanisms by which this exclusion operates, Anghie identified its historical roots, and the Advisory Opinion and the R2P record together illustrate its contemporary form.

The project description asks whether it is possible to "refine a series of structural questions that arise independently of any one religious or philosophical tradition". From an access to justice perspective, one such structural question is: what are the conditions under which a legal norm is genuinely obligatory for all, including the powerful? Thucydides posed the same question in the Melian Dialogue: the Athenians' dismissal of justice as mere *onomata kala* (fine words) in the face of superior force is, for Thucydides, not sophistication but moral failure, one that will ultimately destroy them. The structural question for international law is how to build institutions robust enough to hold those who wield the most power to account, and what role inter-civilisational dialogue plays in building the political will to do so.

V.2 The Excluded Voices

Inter-civilisational dialogue on international jurisprudence must include voices that are typically absent from high-level diplomatic and academic discussions. Indigenous peoples, whose territorial and cultural rights are threatened by extractive industries operating under international investment law regimes. Climate-vulnerable communities in the Pacific and sub-Saharan Africa, whose legal standing in international forums has only recently begun to be recognised. Stateless persons denied access to any legal system.

These communities are the most important interlocutors of the project of re-imagining international law. Their civilisational traditions contain their own sophisticated understandings of justice, obligation, and community. The project description's vision of a dialogue that brings the European, West Asian, South Asian, Chinese, North-East Asian, ASEAN, North American, Latin American, and African perspectives closer together is, from an access to justice perspective, incomplete without the voices of those within each region who are most directly affected by international law's current failings.

VI. Conclusion: Four Questions for the Barcelona Dialogue

International jurisprudence in 2026 reflects a genuine tension. The ICJ has declared climate inaction a violation of international law, and a near-universal consensus holds that states bear primary R2P their populations from atrocity crimes. At the same time, the political will to give those commitments effect remains weak, multilateral institutions are underfunded and often paralysed, enforcement is selective, and the voices of those who bear the cost of legal failures are too rarely heard in the processes that design legal remedies.

The project's ambition to find a bigger language and a more convincing narrative is, in this context, a necessity. What follows are four questions that Just Access proposes as contributions to the Barcelona session's discussion of international jurisprudence.

1. On fragmentation: The ILC diagnosed the fragmentation of international law in 2006, and the fragmentation has deepened since. What would systemic integration look like in practice, as an institutional reality? What role can inter-civilisational dialogue play in building the political consensus for the reforms needed to hold the system together?

2. On colonial inheritance: Anghie's analysis demonstrates that the current access to justice deficit is structural. How does the project's vision of inter-civilisational dialogue confront the hierarchies that Anghie identifies? Whose voices, in practice, shape the "bigger language" the project seeks?
3. On the ICJ Advisory Opinion: The 2025 Opinion offers a rare example of international jurisprudence reaching its normative potential. What would it take to build on it? How do we move to the political will to act?
4. On R2P and accountability: The R2P record shows that normalisation at the level of language does not produce consistent enforcement at the level of action. The inter-civilisational disagreement about sovereignty and accountability is deep. Is there a formulation of the accountability principle that states across civilisational traditions could accept as genuinely universal rather than as a Western imposition? If so, what would it require?

VII. A Note on Outer Space: Continuity with the Dublin Contribution

At the Dublin meeting, Just Access presented a paper on space governance and inter-civilisational dialogue. That paper argued that the ambiguity at the heart of the 1967 Outer Space Treaty (the unresolved meaning of "peaceful use") reflects divergent civilisational understandings of peace itself: the American deterrence-based conception, the Chinese sovereignty-centred approach, and the European juridical-multilateral tradition. It proposed that Europe, drawing on its post-war legal humanism, could act as a mediating civilisation between these competing paradigms.

The argument developed in the present paper provides the foundation for that earlier claim. Space governance is one site where the pathologies diagnosed here play out in a concentrated form.

The fragmentation dynamic is visible with particular clarity in space law. The parallel existence of the Artemis Accords and the China-Russia International Lunar Research Station framework is a textbook instance of what the ILC's Koskenniemi report called competing "parallel lawmaking attempts": two blocs building rival normative systems around the same

foundational treaty, each claiming consistency with the Outer Space Treaty while interpreting it in ways that serve their strategic interests.

Anghie's colonial inheritance argument also resonates in the space domain. The "province of all mankind" language of Article I of the Outer Space Treaty, and the "common heritage of mankind" principle of the 1979 Moon Agreement, were precisely the kind of universalist formulations that developing states embraced as a counterweight to the first-mover advantages of the early spacefaring powers. The subsequent non-ratification of the Moon Agreement by the United States, Russia, and China, and the development of domestic legislation authorising commercial resource extraction, reproduces the pattern Anghie traces across the history of international law: universal language asserted, then circumvented, when it would constrain the powerful.

Finally, the 2025 ICJ Advisory Opinion's logic of systemic integration offers the most constructive available model for how space law could evolve. The Court's insistence that specialised treaty regimes cannot insulate state conduct from general international law applies in principle to outer space. A right to benefit from space technologies, grounded in the Outer Space Treaty's "benefit and interests of all countries" language and reinforced by the human rights framework, is the direction in which the jurisprudence is moving, if states choose to follow it.

The Dublin contribution identified the problem as it appears in one specific domain. The present paper attempts to name the deeper structure of which that domain is one expression. Access to justice in international law is not a sector-specific question but a systemic one, and the inter-civilisational dialogue this project envisions is the necessary condition for addressing it at the level where it actually resides.