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INDIA, THE WORLD, AND THE FOLDING LAPSES OF INTERNATIONAL LAW

Sovereignty, Adjudication, And The Structural Gaps Of A Consent-Based Order

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ABSTRACT

International law rarely collapses outright; it *folds*. It bends and pleats around concentrations of power, and it *lapses*—leaving open gaps—wherever consent, enforcement, or institutional design run out. This paper examines India as a particularly insightful example of those folding lapses, as India serves multiple roles: a beneficiary, a critic, a litigant, a respondent, and a potential architect of the international order. It follows India's involvement from its adoption of international norms in its constitution to its cases at the International Court of Justice and arbitral tribunals, and then to the investment-treaty issues of the past decade and the ongoing crises related to the Indus Waters Treaty, Ukraine, and Gaza. It wraps up by asking how these seams might be stitched together: through Third-World jurisprudence of sovereign equality, a structured idea of treaty suspension, and reform of the Security Council.

INTRODUCTION: THE PARADOX OF THE RELUCTANT CHAMPION

There is a familiar image of international law as a fragile edifice that occasionally crumbles under the weight of power politics. The image is misleading. International law seldom *breaks*; far more often it *folds*—it yields elastically around the interests of powerful states, pleating itself into exceptions, reservations, and silences—and at the limits of that elasticity it *lapses*, leaving gaps where there ought to be obligation. These “folding lapses” are not bugs in the system; they are the predictable product of a legal order that is horizontal rather than hierarchical, that rests on the

consent of sovereign equals,¹ and that possesses no compulsory legislature, no general compulsory court, and no standing executive to enforce its judgments.

No state illustrates the paradoxes of this order more richly than India. A civilisational polity that entered the modern system as a colonised object of European international law, India became, upon independence, one of the most articulate defenders of the United Nations Charter, of decolonisation, and of the sovereign equality of states. Yet the same India has refused to sign the Non-Proliferation Treaty as discriminatory,² has withdrawn from most of its investment treaties after a string of adverse awards, and in 2025 placed a sixty-five-year-old water treaty “in abeyance”—a status the law of treaties does not recognise. India is therefore simultaneously a rule-taker and a rule-maker, a champion of the order and one of its sharpest critics.

In this paper, India serves as a diagnostic tool. The Indian Constitution's reception of international law and the manner in which Indian courts have subtly moderated the nation's formal dualism are the subjects of Part 2. The limits of consent-based adjudication are most evident in India's appearance before the World Court and arbitral tribunals in Part 3. In Part 4, the investment-treaty reckoning is examined, which occurred when sovereign resistance merged with investor protection. The structural deficiencies at the pinnacle of the order are addressed in Part 5, which includes India's disputed stances on Gaza and Ukraine, selective enforcement, and an incapacitated Security Council. Part 6 examines the Indus Waters Treaty as a bared lacuna. Reform and the Third-World critique are scrutinised in Part 7. The final question considers the potential closure of the creases. International law is incomplete, but it is also indispensable. India's experience demonstrates both the reasons for the persistence of the gaps and the potential for their closure. The argument is non-celebratory and non-cynical.

¹ Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(1) (“The Organization is based on the principle of the sovereign equality of all its Members.”).

² Treaty on the Non-Proliferation of Nuclear Weapons (opened for signature 1 July 1968, entered into force 5 March 1970) 729 UNTS 161. India has consistently characterised the NPT's division of the world into nuclear “haves” and “have-nots” as inequitable and has declined to accede.

1. THE CONSTITUTIONAL RECEPTION OF INTERNATIONAL LAW IN INDIA

India is officially classified as a dualist tradition: international and municipal law are distinct systems, and the mere act of ratification does not render a treaty enforceable domestically. The constitutional text is intentionally understated. The State is required to "strive to promote respect for international law and treaty obligations" under Article 51 of the Constitution, a non-justiciable Directive Principle. The operative competence is derived from Article 253, which grants Parliament the authority to enact any law "for the implementation of any treaty, agreement, or convention with any other country." Conversely, the executive function of treaty-making is derived from Article 73.

The classical formulation of dualism was introduced early on. According to the Supreme Court in *In re Berubari Union*, the cession of Indian territory to Pakistan under an intergovernmental agreement could not be effected by executive action alone; rather, it required a constitutional amendment. The court emphasised that treaty commitments could not supersede the constitutional order. The Court refined its stance in *Maganbhai Ishwarbhai Patel v Union of India*, holding that not all treaties require legislation; rather, only those that affect private rights or require a change in domestic law do so. Consequently, a boundary settlement that was effected through executive interpretation could be upheld.

Yet formal dualism has steadily been overlaid by a powerful interpretive monism. The hinge is *Gramophone Co. of India Ltd v Birendra Bahadur Pandey*, where Justice Chinnappa Reddy held that the comity of nations requires customary international law to be treated as part of the law of the land, *provided* it is not inconsistent with an Act of Parliament—an Indian reception of the Blackstonian incorporation doctrine.³ On that foundation, the Court built an expansive practice of using unincorporated treaties to fill gaps and to interpret fundamental rights. In *Vellore Citizens Welfare Forum v Union of India*, it read the precautionary principle and the polluter-pays principle into Article 21, declaring them part of customary international law binding within India.⁴ Most

³ *Gramophone Co. of India Ltd v Birendra Bahadur Pandey*, (1984) 2 SCC 534, [5]. The Court accepted that "rules of international law which are not contrary to municipal law shall be deemed to have been incorporated in the domestic law."

⁴ *Vellore Citizens Welfare Forum v Union of India*, (1996) 5 SCC 647, [10]–[15] (sustainable development, the precautionary principle and the polluter-pays principle treated as customary international law absorbed into domestic environmental jurisprudence).

famously, in *Vishaka v State of Rajasthan*, faced with a legislative vacuum on sexual harassment, the Court drew directly on the Convention on the Elimination of All Forms of Discrimination Against Women to legislate binding guidelines, reasoning that international conventions consistent with fundamental rights “must be read into” them.⁵ Even the doctrine of the basic structure bears this imprint: in *Kesavananda Bharati*, members of the Court invoked Article 51 and the Universal Declaration to interpret the Constitution harmoniously with India’s international commitments.⁶

2. INDIA BEFORE THE WORLD COURT AND THE ARBITRAL ARENA

If the story of limited reception in the constitution is true, then India's cases before foreign courts show the structural boundaries of judgement in a consent-based order. It is not necessary for the International Court of Justice to have power; it depends on agreement, either through a special agreement, a treaty compromissory clause, or a statement under Article 36(2) of its Statute's Optional Clause⁷. India's court case history shows how the need for permission both protects and limits the government.

Right of Passage over Indian Territory was the first big battle. Portugal claimed it had the right to travel through newly independent India to get to its outposts in Dadra and Nagar Haveli. The Court recognised a limited customary right of passage for private individuals, civil officials, and goods based on a consistent and uniform local practice. However, the Court denied any right to move armed forces or police, recognising that custom can form from bilateral practice but must remain limited by the territorial sovereign's security⁸. The result shows the fold early on: India lost on a general principle but won on the issue that was most important to its autonomy.

The constraining power of consent is starkest in *Aerial Incident of 10 August 1999*, where Pakistan sued India over the downing of a naval aircraft. The Court found it had *no* jurisdiction, because

⁵ *Vishaka v State of Rajasthan*, (1997) 6 SCC 241, [7], [14], relying on the Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. See also *NALSA v Union of India*, (2014) 5 SCC 438, [60]–[68] (using international human-rights instruments to recognise transgender identity).

⁶ *Kesavananda Bharati v State of Kerala*, (1973) 4 SCC 225 (per Sikri CJ, reading fundamental rights in the light of the Universal Declaration of Human Rights and art 51).

⁷ Statute of the International Court of Justice (annexed to the UN Charter) art 36(2). India’s current declaration under the Optional Clause, deposited 27 September 1974, contains wide-ranging reservations.

⁸ *Right of Passage over Indian Territory (Portugal v India)* (Merits) [1960] ICJ Rep 6, 40–44.

India's Optional-Clause declaration excluded disputes with Commonwealth states and disputes concerning matters within domestic jurisdiction.⁹ A claim about the use of lethal force—potentially implicating Article 2(4) of the Charter—thus evaporated not on the merits but at the jurisdictional threshold. Here is the lapse in its purest doctrinal form: a substantive prohibition exists, but the machinery to adjudicate it is switched off by reservation.

India's most celebrated victory came in *Jadhav (India v Pakistan)*. Pakistan had sentenced an Indian national, Kulbhushan Jadhav, to death by military court without consular access. Article 36 of the Vienna Convention on Consular Relations was broken when Pakistan failed to tell India about Jadhav's arrest and rights¹⁰. Yet the remedy reveals the fold. The Court did not order Jadhav's release or acquittal, nor did it quash the conviction; it ordered only "effective review and reconsideration" of the sentence and a continued stay of execution—leaving the means of review to Pakistan itself.¹¹ A binding judgment of the principal judicial organ of the United Nations thus terminates in deference to the very state found in breach, and its enforcement depends ultimately on the Security Council under Article 94—where, as Part 5 shows, the veto stands guard.

One more lesson can be learned from the law of the sea. In the "Enrica Lexie" incident, two Indian fishers were killed by Italian soldiers on a ship in India's exclusive economic zone. This was brought to the attention of an Annex VII commission under the UN Convention on the Law of the Sea. The court decided that India and Italy both had the power to rule, and that Italy had broken India's right to free travel under Articles 87 and 90; yet it held, by a narrow majority, that the marines enjoyed functional immunity as state officials, so that India must cease its criminal proceedings, with compensation owed instead.¹² India secured the principle (a violation and compensation) while losing the prosecution—once more, the order folds toward an

⁹ *Aerial Incident of 10 August 1999 (Pakistan v India)* (Jurisdiction) [2000] ICJ Rep 12, [46]. The Court upheld India's "Commonwealth reservation" and declined jurisdiction by 14 votes to 2.

¹⁰ *Jadhav (India v Pakistan)* (Judgment) [2019] ICJ Rep 418, [102], [119]–[124], holding Pakistan in breach of art 36(1)(a), (b) and (c) of the Vienna Convention on Consular Relations (adopted 24 April 1963, entered into force 19 March 1967) 596 UNTS 261.

¹¹ *Jadhav* (n 13) [137]–[148]. The Court left the choice of means of "review and reconsideration" to Pakistan, echoing *Avena and Other Mexican Nationals (Mexico v United States)* [2004] ICJ Rep 12.

¹² *The "Enrica Lexie" Incident (Italy v India)*, PCA Case No 2015-28, Award of 21 May 2020, [1094]–[1098]. The tribunal rejected Italy's reliance on art 97 UNCLOS (no "incident of navigation"), found violations of arts 87(1)(a) and 90, but upheld the marines' immunity by three votes to two.

accommodation that leaves the deepest sovereign interest, the right to try those who kill one's nationals in one's own waters, unvindicated.

It would be misleading, however, to present India only as a litigant pressing or resisting claims. In the *Bay of Bengal Maritime Boundary Arbitration*, Bangladesh invoked Annex VII against India over an equidistance-versus-equity dispute. India accepted the process and complied with an award that gave Bangladesh a substantial share of the disputed continental shelf, including in the “grey area” beyond 200 nautical miles.¹³ That compliance—losing territory yet honouring the result—is itself a datum: where a great regional power treats an adverse award as binding, the order does not fold but holds. The contrast with the investment cases, to which we now turn, is the contrast between a law India can live with and a law it came to resist.

3. THE INVESTMENT-TREATY RECKONING: WHEN PROTECTION FOLDS INTO PUSHBACK

India easily signed more than 70 bilateral investment treaties over the course of forty years, offering foreign investors fair and equal treatment, safety against seizure, and access to investor-state arbitration. The first known investment decision against India was made in 2011 in the case of *White Industries Australia Ltd. v. Republic of India*. The India–Australia treaty was used by an Australian company to get a state coal company to follow through on a business arbitration decision that had been delayed for nine years in the Indian courts. The most important thing is that it brought in a “effective means” standard from the India–Kuwait treaty through the most-favorable country clause. The panel found that the delay in the court case violated that standard.¹⁴ The case showed two things at once: India's slow civil-justice timelines were wrong on a global level, and the MFN rule let a defendant make a better treaty than the one that was actually made.

¹³ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v India)*, PCA, Award of 7 July 2014, [339]–[340], [504]. The tribunal applied the equidistance/relevant-circumstances method and adjusted the line to counter the cut-off effect of the Bengal coast's concavity.

¹⁴ *White Industries Australia Ltd v Republic of India*, UNCITRAL, Final Award of 30 November 2011, [11.2.1]–[11.4.19]. The tribunal used the MFN clause of the India–Australia BIT to import the “effective means of asserting claims and enforcing rights” standard from the India–Kuwait BIT, and awarded approximately AUD 4 million.

Worse came next. In 2012, the Supreme Court said that Vodafone's purchase of Indian telecom assets from outside of India was not taxed. As a result, Parliament changed the Income-tax Act to include deals like these.¹⁵ Later, two courts said that this taxation of the past broke the fair-and-equitable-treatment promise. In the case of *Vodafone International Holdings BV v. India*, the court said that Article 4(1) of the India–Netherlands treaty was broken when responsibility, interest, and fines were added through retroactive change.¹⁶ In *Cairn Energy plc v. India*, the court told India it had to pay about USD 1.2 billion in penalties, which grew to USD 1.7 billion when interest and costs were added in. This was for the same kind of retroactive tax.¹⁷

India's reaction was a national backlash that changed how it handled treaties. It released a new Model BIT in 2015–16 that limited the meaning of investment, got rid of the MFN rule, turned fair and equal treatment into a closed list of actions that are not allowed, and made investors use all local options for five years before going to arbitration.¹⁸ It then gave notice that it was ending most of the deals it had signed, letting about seventy of them expire.¹⁹ In 2021, it got rid of the retrospective tax by offering to return money that had been collected in exchange for cases being dropped. This was a very unusual parliamentary capitulation to pressure from arbitrators.²⁰

The episode is like the folding slip in the world of financial law. Investor protection was meant to keep sovereigns from acting impulsively, but India saw it as an attack on the regulatory and fiscal independence that is at the heart of sovereignty. The system was so unfair to the state that the state pulled out of it. The credibility crisis in investor-state conflict settlement—its perceived

¹⁵ Finance Act 2012 (India), amending the Income-tax Act 1961 with retrospective effect from 1962 to tax indirect transfers of Indian assets, legislatively reversing *Vodafone International Holdings BV v Union of India*, (2012) 6 SCC 613.

¹⁶ *Vodafone International Holdings BV v Republic of India (I)*, PCA Case No 2016-35, Award of 25 September 2020 (breach of the fair and equitable treatment guarantee in art 4(1) of the India–Netherlands BIT).

¹⁷ *Cairn Energy plc and Cairn UK Holdings Ltd v Republic of India*, PCA Case No 2016-7, Award of 21 December 2020, finding a breach of fair and equitable treatment under the India–United Kingdom BIT and awarding approximately USD 1.2 billion plus interest and costs.

¹⁸ Model Text for the Indian Bilateral Investment Treaty (2016), arts 2.4, 3, 15 (exhaustion of local remedies) and the deliberate omission of an MFN clause.

¹⁹ In 2016–17 India issued termination notices to some 58 treaty partners and declined to renew others, with the bulk of its first-generation BITs allowed to expire; new treaties were to follow the 2016 Model.

²⁰ Taxation Laws (Amendment) Act 2021 (India), nullifying tax demands raised on the basis of the 2012 retrospective amendment and providing for refunds conditional on withdrawal of pending litigation and arbitration.

unfairness, its overly broad MFN reasoning, and its chilling effect on public-interest regulation—found a clear national voice here. India did not break the rules; it just pulled out of them, leaving a hole in investor security that it now fills, if at all, on its own terms.

4. THE FOLDING LAPSES: STRUCTURAL FAILURE AT THE APEX OF THE ORDER

The deepest bends are at the very top of the system, in the Charter rule that controls safety and peace. Article 2(4) says that the threat or use of force is illegal; Article 51 allows people to defend themselves "if an armed attack occurs"; and Articles 25–42 give the Security Council the power to make sure that the rules are followed.²¹ The rule against using force is not just common sense; the Court confirmed it in *Military and Paramilitary Activities in and against Nicaragua*, showing that it is a separate part of customary international law that states must follow, even if they disagree with the treaty form.²²

However, Nicaragua is also a great example of the lapse: after losing, the US refused to follow through, pulled out of the Optional Clause, and used its permanent seat to stop the case from being carried out under Article 94. The five permanent members of the Council have the power to reject any decision made by the Council. This means that the law cannot be applied to a regular member or someone working for them.²³ This is the constitutional fold of the whole order: the rule applies to everyone, but it is not enforced in places where power is concentrated.

India's current actions need to be understood in light of this background. They show a country managing the gaps and sometimes making them wider. India has repeatedly not voted for resolutions that condemn Russia's invasion of Ukraine, citing "strategic autonomy" as a reason. At the same time, it has made it clear that the global order is based on the Charter, international

²¹ Charter of the United Nations, arts 2(4), 25, 39, 41, 42 and 51. The prohibition on the use of force is widely regarded as a peremptory norm (*jus cogens*).

²² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)* (Merits) [1986] ICJ Rep 14, [187]–[190]. The customary status of rules can be established through *opinio juris* and practice; cf *North Sea Continental Shelf (Germany v Denmark; Germany v Netherlands)* [1969] ICJ Rep 3, [77].

²³ Charter of the United Nations, art 27(3) (substantive decisions of the Council require the concurring votes of the permanent members); art 94(2) (enforcement of ICJ judgments lies with the Council, and is therefore subject to the veto).

law, and respect for each state's sovereignty and territorial integrity.²⁴ This stance is inconsistent with doctrine because India is citing the territorial-integrity principle, but Russia's annexations go against it. But it's also a fair reading of the order's creases: India doesn't want to risk its reputation by upholding a rule that the Council can't uphold. Instead, it wants to keep its options open with a long-time defence partner.

The flaws are even more clear in Gaza. In *South Africa v. Israel*, the Court thought it was likely that Palestinian rights under the Genocide Convention were in danger. It then ordered Israel to take temporary steps to stop acts of genocide and allow aid to reach the area.²⁵ A few months later, the Court said in its advisory opinion on the *Legal Consequences of Israel's presence in the occupied Palestinian territory* that Israel's presence was illegal and should end. It also said that all states should not recognise or help the illegal situation, which is called a "articulation of obligations erga omnes."²⁶ These decisions are the greatest authority's rule; the fact that they are almost never followed, thanks to the veto, shows the flaw. India's response—supporting a two-state solution while not taking a stand on implementation or being vague about it—is in line with its overall policy of keeping authority within a system whose top is blocked.

Not every new growth is a mistake, though. The Court unanimously agreed in its 2025 advisory opinion on the *Obligations of States in Respect of Climate Change* that states have duties to protect the environment, that the 1.5-degree target is legally binding under the climate treaties, and that states can be held responsible if they don't do anything.²⁷ For India, a growing giant that insists on shared but separate responsibilities, the opinion both backs up the idea that the biggest polluters should pay the most and makes it more legal for all states. It shows the best of the order: making clear obligations that must be met even when regulation is weak and laying down rules that may

²⁴ India abstained on successive UN General Assembly and Security Council resolutions concerning the conflict from 2022 onward, while its Permanent Representative repeatedly affirmed "respect for the sovereignty and territorial integrity of all States" and the primacy of the UN Charter.

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures) (Order of 26 January 2024), invoking art IX of the Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

²⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) (19 July 2024), [267]–[279], invoking the principle that obligations *erga omnes* are owed to the international community as a whole; cf *Barcelona Traction* [1970] ICJ Rep 3, [33].

²⁷ *Obligations of States in respect of Climate Change* (Advisory Opinion) (23 July 2025), affirming obligations under customary international law and the climate treaty regime, and the legal significance of the 1.5 degrees Celsius temperature goal.

become established as custom. In other words, the bends are not fixed lines; the law can still spring back.

5. THE INDUS WATERS TREATY “IN ABEYANCE”: A LACUNA LAID BARE

No recent episode displays the folding lapse with greater clarity than India’s treatment of the Indus Waters Treaty. Brokered by the World Bank in 1960, the Treaty allocated the three eastern rivers to India and the three western rivers largely to Pakistan, with detailed mechanisms—a Permanent Indus Commission, neutral experts, and a Court of Arbitration—for resolving disputes.²⁸ It has survived three wars and is often cited as the most durable water-sharing arrangement in the world. Critically, it contains no exit clause: Article XII(4) provides that the Treaty continues in force until terminated by a duly ratified treaty between the two governments—there is no provision for unilateral suspension or termination.²⁹

Twenty-six civilians were killed in Pahalgam in April 2025. In response, India said it would put the Treaty “in abeyance” until Pakistan could prove it would stop supporting cross-border terrorism. It then flushed the reservoirs and changed the water releases without giving the usual notices³⁰. Pakistan said that any action that interfered with its seas would be seen as an act of war and refused the move.

The legal difficulty is that “abeyance” is not a category known to the law of treaties. The Vienna Convention on the Law of Treaties—which codifies customary rules even as against non-parties such as India and Pakistan—permits suspension or termination only on enumerated grounds.³¹ A party may suspend a treaty for material breach by the other under Article 60, but a terrorist atrocity by non-state actors is not, without more, a breach of the water treaty’s own terms; suspension

²⁸ Indus Waters Treaty 1960 (India–Pakistan, with the International Bank for Reconstruction and Development) (signed 19 September 1960) 419 UNTS 125, arts II–III (allocation of eastern and western rivers) and art IX (dispute settlement through the Permanent Indus Commission, a neutral expert, and a Court of Arbitration).

²⁹ Indus Waters Treaty 1960, art XII(3)–(4) (the Treaty may be modified or terminated only by a duly ratified treaty concluded for that purpose between the two governments).

³⁰ Following the Pahalgam attack of 22 April 2025, the Government of India announced on 23 April 2025 that the Treaty would be held “in abeyance,” citing Pakistan’s support for cross-border terrorism; subsequent operational steps included off-season reservoir flushing at the Salal and Baglihar projects without the notifications the Treaty contemplates.

³¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331. Although neither India nor Pakistan is a party, arts 26, 60, 62 and the residual rules are widely regarded as reflecting customary international law. Article 26 codifies *pacta sunt servanda*; art 27 bars reliance on internal law to excuse non-performance.

would require attributing the attack to Pakistan under the law of state responsibility and characterising it as a breach going to the Treaty's object and purpose.³² A party may also invoke a fundamental change of circumstances under Article 62, but the Court has read that exception narrowly, and the very persistence of Indo-Pakistani hostility since 1960 makes any "change" hard to plead.³³

India's most defensible theory is that of proportionate countermeasures: a lawful, reversible response to Pakistan's internationally wrongful conduct, calibrated to induce compliance and suspended once the wrongful conduct ceases.³⁴ But that way of thinking comes with its own rules: remedies must not put civilians in danger, must be proportional, and must stop when their goal is met. These rules are at odds with language that says "not a drop" will flow. In this way, the episode shows a real gap. The Treaty regime provides no orderly mechanism for a party confronting sustained sub-conventional aggression, and general international law supplies only the contested, easily abused doctrine of countermeasures. Where the specialised regime runs out and the general law is indeterminate, the order does not so much fold as simply lapse—leaving raw power, and the threat of escalation, to fill the void.

5.1 REFORM, THE THIRD-WORLD CRITIQUE, AND THE POLITICS OF SOVEREIGN EQUALITY

India's disagreements with the international order are not the grievances of a spoiler, but rather the reformist criticism of a state that wants the law to be more like the law, more universal, and less centred on the winners of 1945. Third-World Approaches to International Law weigh the discipline's universal claims against its colonial ancestry and enduring inequalities. India's stances are remarkably consistent with that criticism.

³² Vienna Convention on the Law of Treaties, art 60(1)–(3) (material breach entitles the other party to suspend in whole or in part); ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001) arts 1–2 (every internationally wrongful act entails responsibility) and arts 49–54 (countermeasures must be proportionate, reversible where possible, and aimed at inducing compliance).

³³ Vienna Convention on the Law of Treaties, art 62 (*rebus sic stantibus*), construed restrictively in *Gabcikovo–Nagymaros Project (Hungary v Slovakia)* [1997] ICJ Rep 7, [104], where the Court held that changed circumstances will only exceptionally permit termination of a treaty.

³⁴ See ILC Articles on State Responsibility (2001) arts 22, 49–53; *Gabcikovo–Nagymaros* (n 31) [82]–[87] (a countermeasure must be commensurate with the injury suffered and reversible). Framing the abeyance as a countermeasure—rather than a suspension under the law of treaties—offers India its strongest legal footing, but requires attribution and proportionality.

The clearest case is nuclear governance. India refused the Non-Proliferation Treaty and walked out of the Comprehensive Nuclear-Test-Ban Treaty negotiations on the ground that both freeze an inequitable status quo, conferring permanent privilege on five nuclear-weapon states while demanding abstinence from the rest, untethered to any binding, time-bound commitment to disarm.³⁵ The objection is not anti-legal; it is an insistence on sovereign equality—the very principle of Article 2(1) of the Charter—applied without exception. The same logic animates India's decades-long campaign for Security Council reform. Along with its G4 partners, India wants the group to grow to about 26 members, add new permanent seats, including some for regions that aren't well represented, and set rules for the veto. It has said no to any second-class permanent membership but is willing to give up its veto rights for a while.³⁶ The demand shows the problem at its core: a Council stuck in the power structure of 1945 cannot honestly say it can make laws for the 21st century.

6. CONCLUSION: CLOSING THE FOLDS

This study says that international law doesn't really fail by falling apart, but by folding and lapsing, letting power take over and leaving gaps when agreement, regulation, and the design of institutions fail. India is the classic witness because it stands for all sides at the same time. At the country level, it involves international law through a mix that's balanced by interpretation monism, which backs solid rules while keeping state power intact. Courts have discovered that they might succeed on principles but struggle when it comes to finding solutions. It has gone along with some questionable marine decisions but has steered clear of investor-state arbitration.. It works within a Charter framework, but that framework can't be used at the center of total power. At the very top of the list. It has gone beyond the limits of treaty law and the duty of the state in the Indus issue. The folds can't be closed by pressing them together. If anything, system change helps with them. To close the implementation gap, the Security Council should be bigger, more changed, and have a limited voting power. There should be a rational theory of treaty suspension and appropriate responses so that states that are attacked in ways that aren't illegal or susceptible. A new financial

³⁵ India declined to sign the NPT (n 2) and, after participating in the negotiations, declined to sign the Comprehensive Nuclear-Test-Ban Treaty (adopted 10 September 1996, not yet in force), objecting to the absence of a disarmament timetable binding the nuclear-weapon states and to the Treaty's entry-into-force conditions.

³⁶ As a member of the G4 (with Brazil, Germany and Japan), India advocates expanding the Council to around 25–26 seats with additional permanent and non-permanent members, has opposed a discriminatory two-tier permanent membership, and has indicated openness to deferring the exercise of the veto by new permanent members for an initial period of fifteen years.

system that protects investors while also giving regulators more power. A constant legal explanation of erga omnes and peremptory rules in areas like murder, occupation, and climate change that creates responsibilities even though they are not immediately enforced. This doesn't mean that obedience will happen. But the direct use of force is not the best answer when international law isn't perfect and can be changed. India's history as a colonial country, a backer of the Charter, a claimant, a responder, and a reformer makes it clear that the country needs to stay in the current system and demand that it live up to its promise of national equality. The joints are clear. They are going to be sewn together.