

EDITORIAL

The second issue of the thirtieth volume of the *Sri Lanka Journal of International Law* is published at a time when both Sri Lanka and the wider world are experiencing profound legal, political, and institutional transformation. As the country enters a new phase under the administration elected in late 2024, its renewed focus on governance reforms, anti-corruption, and economic stabilization reflects a deep aspiration for accountability and democratic resilience. This period has also witnessed important developments in lawmaking, such as the *Online Safety Act, No. 9 of 2024* and the *Reciprocal Recognition, Registration and Enforcement of Foreign Judgments Act, No. 49 of 2024*, which signal Sri Lanka's efforts to modernize its legal order. Yet, these reforms have simultaneously reignited critical debates on freedom of expression, inclusivity, and equality before the law, reminding us that the process of legal transformation is as much about reaffirming fundamental rights as it is about legislative progress. Within this dynamic national context, the Department of Public and International Law celebrating its fifteenth year since establishment continues to serve as a hub for rigorous inquiry and reflective scholarship.

In the international sphere, the challenges facing the legal order remain equally complex. The erosion of multilateralism, the persistence of conflict, and the rise of technological and environmental crises continue to test the adaptability and legitimacy of international law. Against this backdrop, this volume brings together an array of scholarly contributions that critically engage with these evolving realities. From examinations of customary international law and regional human rights mechanisms to studies on digital finance, intellectual property, cultural restitution, cyber accessibility, and judicial accountability, the authors in this issue illuminate how law functions as both a stabilizing and transformative force. Their analyses not only advance theoretical understanding but also resonate deeply with contemporary struggles for justice, inclusion, and ethical governance. Together, they reaffirm the *SLJIL*'s enduring mission to provide a forum where Sri Lankan, regional, and global perspectives converge to enrich dialogue on law's role in shaping a more just and principled international order.

First Article by Ishan Arachchi "*A Critique of the Modern Interpretation of Customary International Law*", presents a rigorous and thought-provoking analysis of one of the most debated areas in international legal theory. Arguing that contemporary approaches have departed from the objective foundations of *customary international law* (CIL), the author draws a clear distinction between what he terms the traditional and modern schools of interpretation.

First Article by Ishan Arachchi “*A Critique of the Modern Interpretation of Customary International Law*”, presents a rigorous and thought-provoking analysis of one of the most debated areas in international legal theory. Arguing that contemporary approaches have departed from the objective foundations of *customary international law* (CIL), the author draws a clear distinction between what he terms the traditional and modern schools of interpretation. The paper contends that the modern approach by privileging moral and political considerations such as human rights and accountability risks undermining the legal coherence and legitimacy of international adjudication. Through an incisive comparison of methodology and substance, and with illustrations drawn from cases such as *Al Bashir*, *Nicaragua*, and *Germany v Italy*, Arachchi demonstrates how judicial overreach may transform interpretation into construction, thereby distorting the role of state practice and *opinio juris*. The article’s strength lies in its call for intellectual restraint and methodological objectivity in interpreting CIL, reminding readers that the stability of international law ultimately depends on maintaining the delicate balance between law, morality, and power.

Second Article by Niluka Gamlath, “*Examining the Role of the European Regional System in Safeguarding Prisoners’ Right to Health*”, provides a detailed and timely examination of how the European human rights architecture has advanced the protection of one of the most overlooked dimensions of human dignity the right to health of prisoners. Through a doctrinal and critical analysis of the Council of Europe’s institutional mechanisms, including the European Court of Human Rights (ECtHR) and the European Committee for the Prevention of Torture (CPT), the author demonstrates how an integrated regional approach has transformed the principle that “prison health is public health” into a practical and enforceable standard. The paper illuminates how dynamic interpretations of Articles 2 and 3 of the European Convention on Human Rights, combined with preventive monitoring and soft-law instruments such as the European Prison Rules, have contributed to tangible improvements in detention conditions across member states. By identifying best practices and lessons that transcend the European context, Gamlath’s study underscores the capacity of regional human rights systems to inspire global prison reforms grounded in equity, rehabilitation, and respect for human dignity.

Next, Laxmi Sapkota’s article, “*Nepal’s Position on the Geographical Indications Protection Debate of North and South*”, offers an insightful exploration of Nepal’s evolving stance within the complex intellectual property discourse surrounding Geographical Indications (GIs). The study situates Nepal at the intersection of the long-standing North–South divide between the European Union’s *sui generis* model and the United States’

trademark-based approach and critically examines the country's hybrid legal and policy framework.

Through a detailed analysis of Nepal's Collective Mark Directive 2010, National Intellectual Property Policy 2017, and related legislation, Sapkota reveals the contradictions between practice and policy, where the registration of collective marks coexists with aspirations for *sui generis* protection. Rejecting dependency on Western models, the paper advances a decolonial argument for a distinct *Utpati Mool* or *Maulik* legal framework that reflects Nepal's socialist orientation, community ownership values, and rich repository of traditional products. By doing so, Sapkota contributes a timely and original perspective to the broader debate on intellectual property, sovereignty, and postcolonial legal development in South Asia.

Next, Nikhil Dongol's article, "*Critical Analysis of Central Bank Digital Currency (CBDC) under the Fintech Regime in Nepal: A South Asian Context*", provides a pioneering examination of the legal and institutional implications of introducing digital currency within developing economies. The paper situates Nepal's exploration of CBDC within the broader South Asian and global fintech landscape, tracing how digital currencies are reshaping traditional notions of money, sovereignty, and financial regulation. Through a comparative analysis of central bank initiatives across SAARC countries and major jurisdictions such as China, the EU, and the US, Dongol highlights both the promise and the complexity of digitizing legal tender. The article delves into foundational legal questions ranging from monetary and banking law to data protection and anti-money laundering regimes emphasizing the need for a robust legal framework to support CBDC implementation. By advocating a cautious, phased approach that balances innovation with stability, the author underscores CBDC's potential to enhance financial inclusion, modernize payment systems, and reinforce monetary sovereignty in the digital age. This study stands as an essential contribution to contemporary debates on digital transformation, financial governance, and the future of money in South Asia.

Next, Thilini Galappaththige's article, "*A Sub-Regional Human Rights System for South Asia: Possibility or a Pipe Dream?*" presents an ambitious and timely inquiry into the persistent absence of a regional human rights mechanism within the South Asian context. The paper argues that despite sharing deep cultural, historical, and legal affinities, South Asian states have yet to establish a formalized system for human rights protection comparable to the European, Inter-American, or African models. Through an extensive comparative analysis, Galappaththige examines how institutional and normative lessons from other regional systems could inform a uniquely South Asian framework grounded in cooperation, inclusivity, and respect for sovereignty. The study also explores the potential of the South Asian Association for Regional Cooperation (SAARC) as a foundation for such an

initiative, highlighting both its limitations and its unrealized potential to advance a people-centered human rights culture. By situating the discussion within the broader discourse on regionalism, development, and democratization, the article makes a compelling case for transforming South Asia's fragmented rights landscape into a cohesive, regionally anchored mechanism capable of bridging the gap between domestic realities and international human rights obligations.

Next, Arafat Bashar's article, *"Bangladesh's Exercise of Unilateral Withdrawal from Customary International Law: Implications of the Default View for Third World Countries"*, offers an incisive and critical intervention in the debate on the nature and authority of customary international law (CIL). The study explores how the Supreme Court of Bangladesh, in *Government of Bangladesh v. Abdul Quader Molla*, invoked the "default view" of CIL articulated by Bradley and Gulati to assert the state's right to unilaterally withdraw from customary norms. Bashar examines this judicial development against the backdrop of Third World Approaches to International Law (TWAIL), arguing that while the court's reasoning reflects conceptual misinterpretations of both CIL and the default view, it inadvertently opens a path for postcolonial states to challenge Western dominance in the formation of customary norms. The article masterfully juxtaposes the "mandatory" and "default" views of CIL, revealing the tensions between universality and sovereignty, and evaluating their implications for the global South. By situating Bangladesh's jurisprudence within this broader theoretical framework, Bashar presents a thought-provoking case for reimagining international law through a decolonial lens one that reclaims agency for Third World states in shaping and contesting the norms that govern them.

Next, Sk. Iftesham Islam's article, *"Bridging the Digital Divide: Advancing Cyber Accessibility for Persons with Disabilities under the CRPD"*, provides a timely and compelling examination of how international human rights law must evolve to meet the challenges of the digital era. Focusing on the Convention on the Rights of Persons with Disabilities (CRPD), the paper interrogates the adequacy of its provisions in addressing discriminatory algorithmic practices that reinforce exclusion within cyberspace. Islam explores how artificial intelligence and automated systems, though promising innovation, can inadvertently entrench inequality for persons with disabilities through biased data and inaccessible digital infrastructures. The analysis deftly connects legal theory with technological reality demonstrating how the CRPD's principles of accessibility, non-discrimination, and equality can be reinterpreted to confront algorithmic bias and ensure digital inclusion. By advancing the concept of "cyberspace accessibility" as an emerging human right, the article underscores the need to extend existing frameworks toward the ethical governance of technology. It ultimately calls for a reconceptualization of disability rights in the algorithmic age where inclusion

in the virtual realm becomes as essential as equality in the physical one.

Next, Malraj Kiriella's article, *"The Complexities of Cultural Property Restitution: The Case of the Lewke Cannon in Sri Lanka"*, offers a meticulous and historically grounded examination of the legal and ethical dilemmas surrounding the restitution of colonial-era artifacts. Through the case of the Lewke Cannon seized by the Dutch in 1765 and housed in Amsterdam's Rijksmuseum until its recent restitution the paper explores the intricate interplay between Kandyan law, Roman-Dutch law, and evolving international legal frameworks. Kiriella analyses the limitations of existing instruments such as the 1970 UNESCO Convention, the 1995 UNIDROIT Convention, and the 1954 Hague Convention, emphasizing their inability to address pre-convention colonial acquisitions. The study further reveals how ethical considerations, increasingly reflected in modern Dutch restitution policies, have begun to complement and, at times, transcend legal formalism. By adopting a critical lens informed by Third World Approaches to International Law (TWAIL), Kiriella situates Sri Lanka's struggle for cultural restitution within broader decolonial debates, arguing that genuine restitution requires not only legal redress but also moral recognition of historical injustice. The article thus contributes significantly to the discourse on decolonizing international cultural heritage law and advancing equitable frameworks for postcolonial restitution.

Next, Kamal Ahamed's article, *"Ensuring Justice in Contempt Proceedings: A Plea for Remedies against Supreme Court Verdicts in Sri Lanka"*, provides a compelling critique of the procedural lacunae within Sri Lanka's newly enacted Contempt of Court, Tribunal, or Institution Act No. 8 of 2024. Through a doctrinal and comparative approach, the author exposes the critical absence of review mechanisms for contempt convictions issued by the Supreme Court a gap that raises fundamental concerns about fairness, accountability, and the potential for miscarriages of justice. Drawing on comparative jurisprudence from the United Kingdom and India, Ahamed demonstrates how judicial review and internal appeal procedures in those jurisdictions serve as essential safeguards against judicial fallibility. The article's theoretical grounding in Rawls's conception of justice underscores the moral imperative of remedy and review within any constitutional democracy. By proposing

constitutional reforms modelled on India's Article 137 to enable limited review jurisdiction for the Supreme Court, Ahamed presents a reasoned and pragmatic blueprint for strengthening judicial integrity and public trust in Sri Lanka's justice system. The study stands as a timely and courageous contribution to the discourse on judicial accountability in post-reform Sri Lanka.

Finally, the section on *Recent Developments* features two timely contributions that engage directly with Sri Lanka's evolving legal landscape in both public and private law spheres. Ranuli Senaratne's analysis of the *Online Safety Act, No. 9 of 2024* provides a critical overview of one of the most debated legislative enactments in recent times examining the balance between regulating harmful online conduct and safeguarding the constitutionally protected freedom of expression. Her study dissects the Supreme Court's determination on the Act, the petitioners' concerns regarding overbreadth and potential misuse, and the tension between legitimate state interests and democratic freedoms in the digital age. Complementing this, Rose Wijesekera's examination of the *Reciprocal Recognition, Registration and Enforcement of Foreign Judgments Act, No. 49 of 2024* highlights a transformative shift in Sri Lanka's private international law framework. Focusing on the recognition of foreign matrimonial decrees, Wijesekera commends the judiciary's progressive stance in *Champika Harendra Silva v. Registrar General* while also identifying the Act's exclusionary limitations regarding Muslim and Kandyan marriages. Together, these two contributions illustrate the dynamism of Sri Lanka's legal reforms revealing both the promise and the challenges of adapting to modern realities while preserving constitutional values and human rights commitments.