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EDITORIAL

Contested compliance of obligations under international law: A take from *Global Constitutionalism*

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Abstract
Taking *Global Constitutionalism* as an agora, a platform for international interdisciplinary discussions this article asks a question about the state we are in with regard to the international order as an order that is not just a 'rule-based order' but also more substantially, a 'legal order' based on the rule of law. The topic is illustrated with reference to examples of 'contested compliance' i.e. objections to implementing international law and/or international rulings by international actors on behalf of signatories of states parties of a treaty. Three questions guide this discussion. The first is a question of normative change: are we facing a change regarding United Nations member states' respect for and handling of the rule of law, or is a larger change of international law itself imminent? The second is a question about the effects of the shift from 'normal' contestations of norms to 'deep' contestations of the international order itself. And the third is a question about pluralism and diversity: are the UN Charter Order's institutions, conventions and organisations sufficiently equipped to respond to an ever more diverse range of internationally, transnationally, and sub-nationally raised justice-claims? The article elaborates on each of the three themes in light of the current situation of contested compliance with obligations under international law.

Keywords: contested compliance; global constitutionalism; International Criminal Court; norm conflict; norms; Paris Agreement; United Nations Convention of the Law of the Sea

Introduction

In recent years, there have been a proliferation of contestations of the meanings of major international treaties. For example, during the first Trump administration, the United States's announced withdrawal from the Paris Agreement sparked a dispute about the meaning of the agreement. The Paris Agreement includes a provision allowing for

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withdrawal after a 4-year notice period.[1] Other parties to the agreement rejected President Trump's calls to renegotiate the deal, and states and cities within the U.S. developed their own polices to contest the federal government's withdrawal from the treaty (McGrath 2020). When President Biden took office in 2020, he immediately rejoined the treaty (McGrath 2021). However, it remains to be seen at the time of writing this editorial in early January 2025, whether a second Trump administration will remain in the Agreement. Or consider the long-running dispute between China and neighbouring states, such as the Philippines, Taiwan, Indonesia, Malaysia and Vietnam over the South China Sea. China, through an assertion of sovereignty over the Spalty Islands, claims that under international law foreign militaries cannot conduct intelligence gathering activities within its exclusive economic zone (EEZ). However, the U.S., on the other hand, has invoked the United Nations Convention on the Law of the Sea (UNCLOS)[2] to argue that other states have freedom of navigation through EEZs (Center for Preventive Action 2024). In the same vein, Germany took a clear stance on the reach and effect of IL when Secretary of Defence Boris Pistorius decided to send the German navy through the Taiwan Strait for the first time in 22 years in September last year.[3]

Two months later, the International Criminal Court (ICC) issued warrants of arrest for Benjamin Netanyahu and Yoav Gallant: 'Today, on 21 November 2024, Pre-Trial Chamber I of the ICC ('Court'), in its composition for the *Situation in the State of Palestine*, unanimously issued two decisions rejecting challenges by the State of Israel ('Israel') brought under articles 18 and 19 of the Rome Statute (the 'Statute'). It also issued warrants of arrest for Mr Benjamin Netanyahu and Mr Yoav Gallant'.[4] Both individuals were accused of the war crime of starvation as a method of warfare and of crimes against humanity of murder, persecution and other inhumane acts: 'With regard to the crimes, the Chamber found reasonable grounds to believe that Mr Netanyahu, born on 21 October 1949, Prime Minister of Israel at the time of the relevant conduct, and Mr Gallant, born on 8 November 1958, Minister of Defence of Israel at the time of the alleged conduct, *each bear criminal responsibility for the following crimes as co-perpetrators for committing the acts jointly with others: the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution and other inhumane acts*. The Chamber also found reasonable grounds to believe that Mr Netanyahu and Mr Gallant *each bear criminal responsibility as civilian superiors for the war crime of intentionally directing an attack against the civilian population*' (Ibid.; emphasis added by authors).

Under international law, the 125 States Parties to the Rome Statute of the ICC, which entered into force on 1 July 2002[5], are expected to follow their obligation to implement the

[1]For the withdrawal clause according to Article 25, Paris Agreement, see: https://unfccc.int/resource/ccsites/zimbab/conven/text/art25.htm.

[2]For the UN Convention of the Law of the Sea (UNCLOS), see: https://www.unclos.org.

[3]As Pistorius claimed on the occasion: 'Es ist der kürzeste Weg, es ist angesichts der Wetterlage der sicherste Weg, und *es sind internationale Gewässer*, also fahren wir durch'. (Engl.: This is the shortest way and in light of the weather conditions and the fact that *these are international waters*, we therefore take this route'. See: *Der Tagesspiegel* 13 September 2024, translation by author emphasis added. Details: https://www.tagesspiegel.de/politik/es-sind-internationale-gewasser-pistorius-bestatigt-passage-von-taiwanstrasse-durch-deutsche-marine-12367745.html.

[4]For the *ICC Press Release*, see: https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges.

[5]Here, 125 countries are States Parties to the Rome Statute of the International Criminal Court. Out of them 33 are African States, 19 are Asia-Pacific States, 19 are from Eastern Europe, 28 are from Latin American and Caribbean States, and 25 are from Western European and other States, compare: https://asp.icc-cpi.int/states-parties.

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arrest warrant. First reactions by heads of state and government representatives around the world, notwithstanding their membership of the Rome Statute, revealed varying attitudes towards this obligation. Jordan and South Africa praised the ruling and in Europe, the obligation to implement the warrant of arrest was also met with support on behalf of the governments of the Netherlands and Belgium.[6] However, it was challenged by Hungary whose president Victor Orbàn immediately extended an invitation to Mr Netanyahu. The government of France claimed that Netanyahu was immune from the ICC arrest warrant, while prominent international lawyers strongly disputed France's interpretation (Adler 2024). Others such as Germany's Foreign Minister Annalena Baerbock said they were examining what precisely the warrant means for 'implementation in Germany',[7] and were therefore still weighing their options considering their special role both with regard to setting up the ICC taking into account German WWII atrocities and their special relationship with Israel which is guided by fundamental norms of German *Staatsräson* (Engl: reason of state) which implies Germany's unwavering solidarity with the state of Israel.[8]

Just two weeks after the ICC indictment, Amnesty International published a 296-page report alleging that Israel's war in Gaza constituted the crime of genocide under IL. Similarly, a December 2024 report from Medecins Sans Frontieres reported first-hand evidence of conditions confirming the ICJ's report of 'ethnic cleansing and genocide are taking place in Gaza' (Medecins Sans Frontieres 2024). This follows a ruling by the ICJ in February 2024 that it is plausible that Israel's actions in the Gaza Strip could amount to genocide (Guardian International Staff 2024). While Israel has strongly contested the charge of genocide (Ott 2024), such a contestation not just of the interpretation of the war in Gaza, but of the very legitimacy of the international criminal legal system puts the global order at a crossroads. It enforced the objection by President Biden of the United States as a non-signatory of the ICC as a court of international law.[9]

All these contestations point to the more far-reaching question of the future role of the international legal order. How stable is the international legal order and how reliable is the recognition of the rule of law on a global scale? In this editorial, we take these significant and ongoing contestations of the principles and procedures of the international legal order as an invitation to probe the stability of the international legal order as part of the global orders which constitute the context of today's state of global society (Reus-Smit and Zarakol 2023; Hurd 2024; Mitzen 2024). Taking *Global Constitutionalism* as an agora, i.e. a platform for international interdisciplinary discussions (Wiener et al. 2012, 2019), in this editorial, we ask a question about the state we are in with regard to the international order as an order that is not just a 'rule-based order' (Lake, Martin and Risse 2021: 227) but also more substantially, a 'legal order' based on the rule of law (Krieger and Liese 2023; Dugard 2023). The following illustrates the importance of this

[6]For the report compare *i24NEWS*, 2024. Available at https://www.i24news.tv/en/news/middle-east/artc-france-and-the-netherlands-to-enforce-icc-arrest-warrants-restricting-netanyahu-s-travel.

[7]For the report by *Radio France International* (RFI) on 22 November 2024 compare https://www.rfi.fr/en/international/20241122-france-at-crossroads-as-icc-issues-war-crimes-warrants-for-netanyahu.

[8]In the words of Chancellor Olaf Scholz: '(A)t this moment there is only one place for Germany. The place beside Israel. That is why what we mean by saying: Israel's security is German *Staatsräson*' emphasising in the German Bundestag, confirming 'full solidarity with the people of Israel' and emphasising 'that Germany stands unwaveringly on Israel's side'. See: *Pressemitteilung 213*, 14 October 2023, Presse und Informationsamt der Bundesregierung (BPA). Available at https://www.bundesregierung.de/breg-de/themen/bundeskanzler-scholz-telefoniert-mit-ministerpraesident-benjamin-netanjahu-2230312

[9]Notably, while the Clinton administration helped facilitate the Rome Statute, the US Senate never ratified it.

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topic with reference to examples of 'contested compliance', that is, objections to implementing international law and/or international rulings by international actors.

Three questions guide this discussion. The *first* is a question of normative change: are we facing a change regarding UN member states' respect for and handling of the rule of law, or is a larger change of international law itself imminent (Krieger and Liese 2023)? The *second* is a question about the effects of the shift from 'normal' contestations of norms to 'deep' contestations of the international order itself. If normal contestations are required for rule-making, order-making and decision-making in politics and policy on an everyday basis, and in turn deep contestations are disruptive because they target foundational elements of an order and therefore might have a destructive impact on the international order, what are the change-dynamics generated by these distinct types of contestation (Lake, Martin, and Risse 2021; Börzel et al. 2024; Lake and Wiener 2025)? And the *third* is a question about pluralism and diversity: are the UN Charter Order's institutions, conventions and organisations sufficiently equipped to respond to an ever more diverse range of internationally, transnationally and sub-nationally raised justice-claims (Reus-Smit and Zarakol 2023; Gani and Marshall 2022; Tully et al. 2022; Sanahuja, Hernández Nilson, and Burian 2024). In the following, we first elaborate on each of the three themes and then return to the current situation of contested compliance with obligations under IL.

Rule of law: norm change versus system change

Given the absence of a global government, IL remains a 'work in progress' insofar as its effect, stability and power is constituted by every-day use. As the Chayeses have put it with regard to international treaty norms, a 'fundamental norm' is 'a generic term including principles, precepts, standards, rules and the like' (Chayes and Chayes 1993: 185, Fn 31). International Relations (IR) norms scholarship echoes the view that a norm's meaning is generated through practice, specifying that 'meanings-in-use' are layered upon a norm through re/enacting the norm (Wiener 2009, c.f. Milliken 1999; Wilkens and Datchoua-Tirvaudey 2022). As such, norms are defined as carriers of behavioural and/or ethical instructions that are meaningful to certain groups of norm-users. The absence of clear instructions represents an opportunity for contestation, which may expand into conflict as the number of affected stakeholders with a legitimate claim about a norm is likely to expand as is the number of sites where contestations take place. Given the condition of a norm's social construction and embeddedness, contestation is to be expected, especially with regard to fundamental norms in international treaties for treaty making always remains ambiguous so as 'to design the activity to comply with the letter of the obligation, leaving others to argue about the spirit' (Chayes and Chayes 1993: 191). That is, even if the norm does have ethical instructions there is still scope for contestation. Most normative debate is about the scope or applicability of a norm to a particular case, or a difference in the interpretation of the normative meaning. Internationally stipulated treaty norms are thus expected to generate debate about their implementation (Betts and Orchard 2014). However, recent deep contestations of widely accepted norms of global order have introduced a different degree of contestation to the extent that they have been considered a challenge to the resilience of – especially – the liberal international order.

Notably, as international legal scholars have argued, deep contestations may also pave the way towards 'breaking points' that establish novel pathways to solve 'conflicts and challenges that could not be resolved within the structures of the 'old' liberal international

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order. In that sense, they represent breaking points of that order‘ (Krieger 2024: 1; Tams 2021; Hirschl 2008). One could say, following Wittgenstein, that contestation can occur at two levels – contestation over opinions, and at a more fundamental level, contestations over ‘forms of life’. These deeper contestations are about what type of international community one wishes to inhabit. At the extreme, the participants in the contestation may discover that they do not inhabit the same community at all (Havercroft 2023: 102–8; Wittgenstein 2009: §241). Thus, deep contestations would find an arena in the context of ‘mega-political’ cases (Hirschl 2008), which as Heike Krieger suggests, may generate pathways from a ‘hegemonic’ towards a ‘negotiated legal order’ (Krieger 2024: 1). Or potentially a shift from the relatively homogenous liberal legal order of the last 30-years to a heterodox international legal order in which rival centres of power, enforce fundamentally different legal orders within their spheres of influence.

This has raised questions about the robustness of the UNCO and co-evolved liberal political and legal orders (Krieger and Nolte 2019; Krieger and Liese 2023). Among the spectrum of analyses two opposites stand out: IR scholars highlight the potential dangers of populist political mobilisation (Lake, Martin and Risse 2021; Börzel and Zürn 2021), by contrast, international legal scholars note the transformative potential of such deep contestations as enabling a shift from ‘the hegemonic liberal international order towards a negotiated international order (Krieger 2024: 1). As Krieger argues, while addressing transformative change, ‘international law offers a common vocabulary and procedures to mitigate value conflicts in a pluralistic system’ (Krieger 2024: 1) framed by the liberal legal order. This leaves socio-cultural externalities to one side, however.

Contestations and their effect on order: normal versus deep

Contestatory practices are constitutive for global order. The international order is no exception as international relations have been interspersed with contestations of norms, principles and regulations since the UNCO’s inception after World War II. This kind of everyday contestation is conceived as constitutive of and necessary for maintaining a stable international order based on widely acknowledged norms, such as the rule of law which has long been as a widely recognised cornerstone of justice across the world (Art. 1, UN Charter). Together with security, human rights and non-intervention, the rule of law has come to represent a foundational element of the post-WWII global order. More recently, however, several contestations have targeted leading principles of the UNCO. On the one hand, these include heads of state and representatives of government within liberal democratic states. On the other hand, members of the UNCO challenge other members’ norm-following behaviour.

Thus, the recent call to withdraw from the European Convention of Human Rights (ECHR) on behalf of the Conservative Party in the United Kingdom (UK), the repeated refusals of UK Prime Minister Johnson’s administration to act according to the rule of law,[10] ongoing rule of law contestations within the framework of the European Union

[10]A trend which followed with successive Prime Ministers; for example, with the Safety of Rwanda Act 2024 following the UKSC’s decision in *R (on the application of AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42; the 2024 Act provides for the non-application of much of the Human Rights Act 1998 to its provisions (Section 3) as well as providing that the U.K. Government can essentially ignore interim measures of the ECtHR (Section 5).

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on behalf of the Hungarian and Polish governments (Kelemen and Pech 2019), and the recent US Supreme Court ruling that greatly expanded the scope of Presidential immunity Yare examples of contestations of foundational elements of the rule of law. Potentially even more concerning the attack on the US Capitol on behalf of far-right Trump supporters on 6 January 2020, a similar attack by supporters of Jair Bolsonaro 8 January 2023, and the attempted declaration of martial law and subsequent impeachment of South Korean President Yoon, represent a recent trend of leaders in established democracies undermining bedrock democratic principles, such as peaceful transfer of power, and free political participation for opposition parties. Such contestations, it has been argued, have potentially destructive effects for the liberal international order.

Given that the character of these contestations suggests a more disruptive than constitutive change-dynamic and noting especially that these are contestations on behalf of heads of state and government representatives who target foundational elements of an order, they have been defined as 'deep contestations' which occur 'when the fundamental rules of politics, the principles and procedures through which policies get made, are challenged' (Börzel et al. 2024: 6; c.f. Lake and Wiener 2025). Notably, much of this contestation, especially around Israel, is happening not just at the level of state leadership but also within democratic countries through protest, and thus the legitimacy of Israel's actions and other states' support or non-support is experienced as real-time contestation in the streets.[11]

While 'normal' contestations are practiced both in formal (i.e., committees, caucuses, courtrooms, working groups) and in informal gatherings (i.e., social mobilisation, political meetings) and are constitutive for global order, 'deep' contestations are conceived as presenting potential push-back for liberal order. Compared to normal contestations (i.e., deliberating, arguing, interpreting, negotiating), the sites, agents and targets of deep contestation are novel. So far, they remain largely understudied. As such, deep contestations – also depicted 'defiant non-compliance' (Closa and Hernandez 2024: 1; Kelemen and Pech 2019) – have become an almost regular occurrence in the international realm. The scenario has received less systematic attention so far. It therefore calls for more detailed research especially considering the shift from normal to deep contestation, the novel change-dynamics and their heretofore unexplored transformative effects. What is the effect of such deep contestations on the international legal order, and relatedly, the rule of law? Is the legal dimension which has been established through international collaboration following the Nuremberg trials and embedded in the UNCO doomed to fade, only to be replaced by a merely 'rule-based international order' as John Dugard has argued (Dugard 2023)?

Against this background, a series of challenges of international the rule of law norm bundle by government representatives of leading democratic states, such as the United Kingdom, the United States or Germany, to the security norm bundle by Russia and other states, reveals a novel quality of contestation, however. Instead of objecting to a norm's implementation or violation, these contestations target the foundational elements of the liberal international order and therewith the order itself. Compared to necessary

[11] Compare the controversial protests against the Gaza war parties especially fuelling deep divisions with regard to the slogan 'from the river to the sea' which have taken place around the world, and which have generated quite controversial assessments.

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contestations of everyday politics (i.e., deliberating, arguing, interpreting, negotiating), the sites, agents and targets of contestation are novel. For example, international courts have become sites of 'mega-politics' (Krieger 2024), local courts have become sites of 'transnational litigation' (Golnaraghi et al. 2021)[12], national conventions in the global south have become sites of 'constitutional struggle' (Bogdandy et al. 2024), and most recently, 'old democracies' have become sites where founding principles, such as the rule of law, democracy and justice have also become contested, often with the involvement of leading politicians and/or members of government.[13]

Given that, the sites, agents and targets of these contestations are novel, they require more systematic attention. All generate change-dynamics with unknown effects. For example, contested climate justice driven by climate litigation involves transnational interactions between the involved stakeholders and institutions, for example, often litigants from the global south bring companies from the global north before a court in a liberal democracy in the global north (Aykut, Wiener et al. 2023; Kang et al. 2023; Zengerling et al. 2024).[14] Other sites of contestation involve international courts where deep contestations may pave the way towards 'breaking points' that establish novel pathways to solve 'conflicts and challenges that could not be resolved within the structures of the "old" liberal international order. In that sense, they represent breaking points of that order' (Krieger 2024: 1; Tams 2021; Hirschl 2008). Such cases, then, may result in transformative change from 'hegemonic' towards 'negotiated legal order' (Krieger 2024: 1; Krieger and Liese 2023).

Order and recognition: making justice claims

So far, norm conflicts were mostly addressed as single norm cases involving, for example, human rights, torture prohibition, non-intervention, responsibility to protect and their implementation, violation or contestation as well as their emergence, change or disappearance (Klotz 1995; Katzenstein 1996; Finnemore and Sikkink 1998; Risse, Ropp and Sikkink 1999, 2013; Wiener and Puetter 2009; Krook and True 2012). While IR norms research has predominantly studied the effect of contestations *on a norm*, we know relatively little about their effect *on global order*. While IR scholarship's main interest has long focused on single norm cases with reference to norm collision, adaptation, co-optation, diffusion and learning (Finnemore and Sikkink 1998; etc.), scholarship on global order has been addressing distinct types of order, such as multiplex, multi-order or multipolar (Acharya et al. 2023; Flockhart and Korosteleva 2022; Pardesi 2024). This invites future contributions to *Global Constitutionalism* to address this under-researched interrelation between norms and order in particular.

[12]Urgenda Foundation v the Netherlands, Dutch Supreme Court Judgment of 20 December 2019, No. 19/00135, File No. ECLI:NL:HR:2019:2006; Milieudefensie and others v Royal Dutch Shell PLC (Unofficial English version) (n 34) [4.4.39]. Neubauer and others v Germany, German Federal Constitutional Court (BVerfG) Order of the First Senate (24 March 2021) 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, and 1 BvR 78/20.

[13]For example, 'American democracy faces an unprecedented crisis as respect for the rule of law erodes on multiple fronts' (Crane 2024) and the 'UK's longstanding commitment to the Rule of Law is under grave threat', see: Justice. Available at https://justice.org.uk/the-uks-longstanding-commitment-to-the-rule-of-law-is-under-grave-threat-according-tolandmark-report-from-justice/.

[14]Compare for example *Lungowe v Vedanta Resources plc* [2019] UKSC 20.

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As Reus-Smit and Zarakol note: 'The post-1945 international order is in crisis. The rules, norms and institutional practices that evolved after the Second World War to limit conflict and facilitate cooperation are struggling both to meet their original briefs and to adapt to new challenges, from the most fundamental task of preventing destabilising uses of force to addressing global climate change' (Reus-Smit and Zarakol 2023: 1). In their critical assessment of the IR literature, Reus-Smit and Zarakol highlight the problem with conceptualising order and suggest that '(T)he question then is how to conceptualise order and justice together' (Reus-Smit and Zarakol 2023: 6). In addition, in her assessment of the Westphalian narrative that has become a relatively stable and long uncontested myth about the birth of the state-based international order in 1648, Mitzen importantly notes that a historical perspective on 'Westphalia suggests that questions of recognition are inseparable from the question of order' (Mitzen 2024: 185–6).

As this journal has argued from the outset echoing Public Philosophy,[15] contestation enhances a norm's recognition and acknowledgement as long as claims vis-à-vis a norm are made in public and in good faith so as to establish its 'legality' (Brunnee and Toope 2011). Social science approaches share this view of claims-making vis-à-vis a norm in addition to habitual norm-following. Accordingly, norm contestation is viewed as a necessary practice as it facilitates visibility of normative meaning and provides a context in which to engage in constructive 'struggles of recognition' (Tully 1995; Honneth 1995). Importantly, this requires inclusive and reiterated dialogue among all affected stakeholders so as 'to ensure that a new norm of mutual recognition is acceptable by all, it needs to pass through an inclusive dialogue', a process which Owen and Tully have called a 'multilogue' (Owen and Tully 2007: 283). Ideally, therefore, sustainable normativity in IR would benefit from establishing the *quod omnes tangit* maxim (what touches all must be approved by all) as an organising principle. This would imply the normative goal of establishing access to contestation for affected stakeholders (Wiener 2014). As long as contestations are practiced regularly in formal (i.e., committees, caucuses, courtrooms and working groups) or in informal gatherings (i.e., social mobilisation, political parties and advocacy groups), the goal remains a possibility. Safeguarding both conditions is therefore key to the quality of international order in the future.

Back to the beginnings: how much contestation is required, how to generate it and how to tame it?

The German position on the ICC ruling represents a classic case of a norm collision where compliance with one norm implies being in breach with another, a situation which puts political agency upfront (Mende 2024). This particular norm collision has come to the fore by retracing the trajectory of the use of the *Staatsräson* norm in the more recent history of German foreign policy. It shows that it was famously invoked by Chancellor Angela Merkel before the Knesset in 2008.[16] At the time Merkel said: 'this historical German responsibility is part of the matter of state ("Staatsräson") of my country. This means, that for me as German Federal Chancellor Israel's security is never negotiable.

[15]Compare this journal's prior editorials, especially Kumm et al. (2017), Havercroft et al. (2018), and Wiener et al. (2019).

[16]Chancellor Angela Merkel's Speech in front of the Knesset, details printed in Die Welt (2008). Available at https://www.welt.de/politik/article1814071/Das-sagte-Kanzlerin-Angela-Merkel-vor-der-Knesset.html.

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And if this is the case, then *these cannot be empty words* in the moment of truth.'[17] Notably, however, at that occasion the norm was not interpreted to mean that it carried any obligation for military support, such as dispatching German troops to Israel's defence.[18] And today, German government representatives display uncertainty about how to behave with regard to the ICC's most recent ruling. Despite Merkel's appeal to fill the statement with sound meaning, some 15 years on, it is not altogether clear what the norm actually means. In the absence of clear behavioural instructions that are recognisable by a norm's designated followers, a norm remains an empty signifier, leaving room for speculation. This concern is noticeable in former Chancellor Helmut Schmidt's reaction to Merkel's statement, cautioning that this was an 'emotionally comprehensible, yet foolish view which could have serious consequences' (Ibid.).

Notably, norm collisions are shaped by norm agents. Thus, leading authors in the field 'understand norm collisions as the perceived incompatibility between two or more norms. Our overall theoretical starting point is the assumption that norms do not collide by themselves but always require agents that articulate norm collisions in international debate' (Holzscheiter, Gholiagha, and Liese 2022: 26). Therefore, the embedded situation of a norm agent in the increasingly fluid context of entangled local, transnational, regional and global normative orders come to fruition here. It highlights the involved agents' decision-making role, thereby putting contested international rulings and norms in perspective: how much involvement is necessary to facilitate recognition on a global scale?

As we have pointed out in prior editorials of this journal, setting out the paths for access to participation involves responsible academic intervention (Tully et al. 2016). This was a leading motivation for founding this journal as an *agora* for interdisciplinary exchange among scholars from IR, IL and related fields. At the time, we argued that contested cases in IL suggested that we require more systematic interdisciplinary discussion of the role and effect of semi-formal norms in IR. As we noted in 2012, '(W)hile these are certainly not the only cases in the past few years, the judgement in the *Kadi* case and the intervention in Libya strongly suggest that more interdisciplinary exchange and serious engagement across a number of disciplinary boundaries is required to address the coming challenges to fundamental norms that are held as central constitutional principles in most contemporary societies around the globe. Constitutionalism as an idea sits precisely at the intersection of law and politics, and it is for this reason that when issues emerge at a global level in the interstices of law and politics, the idea of global constitutionalism becomes relevant. In order to address such issues, we have launched this new interdisciplinary journal, *Global Constitutionalism*' (Wiener, Lang, Tully, Maduro and Kumm 2012: 2). More than a decade later, and against the background of two ongoing wars on Europe's boundaries contested norms and contested rulings under IL have generated a more pressing topicality about how much contestation is required, how to generate it, and how to tame it.

[17] Translation of German original text: Diese historische Verantwortung Deutschlands ist Teil der Staatsräson meines Landes. Das heißt, die Sicherheit Israels ist für mich als deutsche Bundeskanzlerin niemals verhandelbar. Und wenn das so ist, dann dürfen das in der Stunde der Bewährung keine leeren Worte bleiben. (Ibid., p. 9; emphasis added AW).

[18] See M Kaim, 'Israels Sicherheit als deutsche Staatsräson. Was bedeutet das konkret?'(2015) (3/18) *Aus Politik und Zeitgeschichte.* Available at https://www.bpb.de/shop/zeitschriften/apuz/199894/israels-sicherheit-als-deutsche-staatsraeson/.

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References

Acharya, Amitav, Antoni Estevadeordal, and Louis W. Goodman. 2023. "Multipolar or Multiplex? Interaction Capacity, Global Cooperation and World Order." *International Affairs* 99(6): 2339–2365. https://doi.org/10.1093/ia/iiad242

Adler, Nils. 2024. "Is Netanyahu Immune from ICC Arrest Warrant as France Claims?" *Al Jazeera*, 28 November 2024. Available at https://www.aljazeera.com/news/2024/11/28/is-netanyahu-immune-from-icc-arrest-warrant-as-france-claims

Aykut, Stefan, Antje Wiener, Cathrin Zengerling, and Jill Bähring. 2023. "Climate Litigation as a Social Driver Towards Deep Decarbonisation I: A Framework and a General Assessment." *Carbon and Climate Law Review* 17(3): 181–192.

Betts, Alexander, and Phil Orchard. eds. 2014. *Implementation and World Politics: How International Norms Change Practice*. Oxford: Oxford University Press.

Börzel, Tanja A., Thomas Risse, Stephanie B. Anderson, and Jean A. Garrison. eds. 2024. *Polarization and Deep Contestations: The Liberal Script in the United States*. Oxford: Oxford University Press.

Börzel, Tanja A., and Michael Zürn. 2021. "Contestations of the Liberal International Order: From Liberal Multilateralism to Postnational Liberalism." *International Organization* 75(2): 282–305, doi:10.1017/S0020818320000570

Brunnée, Jutta, and Stephen J. Toope. 2011. *Legitimacy and Legality in International Law: An Interactional Account*. Cambridge: Cambridge University Press.

Center for Preventive Action. 2024. "Territorial Disputes in the South China Sea | Global Conflict Tracker." *Council of Foreign Relations*. September 17, 2024. Available at https://www.cfr.org/global-conflict-tracker/conflict/territorial-disputes-south-china-sea

Chayes, Abram, and Antonia Handler Chayes. 1993. "On Compliance." *International Organization* 47(2): 175–205.

Closa, Carlos, and Gisela Hernández. 2024. "Defining and Operationalising Defiant Non-Compliance in the EU: The Rule of Law Case." *Journal of Common Market Studies* 1–23.

Crane, David M. 2024. "The Erosion of Respect for the Rule of Law in America." *JURIST*, October 29, 2024. Available at https://www.jurist.org/commentary/2024/10/the-erosion-of-respect-for-the-rule-of-law-in-america/

Die Welt. 2008. "Das sagte Kanzlerin Angela Merkel vor der Knesset." February 27, 2008. Available at https://www.welt.de/politik/article1814071/Das-sagte-Kanzlerin-Angela-Merkel-vor-der-Knesset.html.

Dugard, John. 2023. "The Choice before Us: International Law or a 'Rules-Based International Order'?" *Leiden Journal of International Law* 36: 223–232.

Finnemore, Martha, and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 52(4): 887–917.

Flockhart, Trine, and Elena A. Korosteleva. 2022. "War in Ukraine: Putin and the Multi-Order World." *Contemporary Security Policy* 43(3): 466–481.

Gani, Jasmine K., and Jenna Marshall. 2022. "The Impact of Colonialism on Policy and Knowledge Production in International Relations." *International Affairs* 98(1): 5–22.

Golnaraghi, Maryam, Joana Setzer, Nigel Brook, Wynne Lawrence, and Lucia Williams. 2021. *Climate Change Litigation – Insights into the Evolving Global Landscape*. Switzerland: The Geneva Association. Available at https://www.genevaassociation.org/sites/default/files/climate_litigation_04-07-2021.pdf.

Guardian International Staff. 2024. "Israel's War in Gaza Amounts to Genocide, Amnesty International Report Finds | Israel-Gaza War." *The Guardian*, December 5, 2024. Available at https://amp.theguardian.com/world/2024/dec/05/israels-war-in-gaza-amounts-to-genocide-amnesty-international-report-finds.

Havercroft Jonathan, Antje Wiener, Mattias Kumm, and Jeffrey L. Dunoff. 2018. "Donald Trump as Global Constitutional Breaching Experiment." *Global Constitutionalism* 7(1): 1–13.

Havercroft, Jonathan. 2023. *Stanley Cavell's Democratic Perfectionism: Community, Individuality, and Post-truth Politics*. Cambridge: Cambridge University Press.

Hirschl, Ran. 2008. "The Judicialization of Mega-Politics and the Rise of Political Courts." *Annual Review of Political Science* 11: 93–118.

Holzscheiter, Anna, Sassan Gholiagha, and Andrea Liese. 2022. "Advocacy Coalition Constellations and Norm Collisions: Insights from International Drug Control." *Human Trafficking, and Child Labour, Global Society* 36(1): 25–48.

https://doi.org/10.1017/S2045381725000024 Published online by Cambridge University Press

Honneth, Axel. 1995. *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge, MA: MIT Press.
Hurd, Ian. 2024. "Introduction: The Problem with the Problem of Order." *Ethics & International Affairs* 38(2): 137–139, doi: 10.1017/s0892679424000224
i24NEWS. 2024. "France and the Netherlands to Enforce ICC Arrest Warrants, Restricting Netanyahu's Travel." 21 November 2024. Available at https://www.i24news.tv/en/news/middle-east/artc-france-and-the-netherlands-to-enforce-icc-arrest-warrants-restricting-netanyahu-s-travel
International Criminal Court. 21 November 2024 "Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges." Available at https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges.
JUSTICE. n.d. "The UK's Longstanding Commitment to the Rule of Law Is Under Grave Threat, According to Landmark Report from JUSTICE." Available at https://justice.org.uk/the-uks-longstanding-commitment-to-the-rule-of-law-is-under-grave-threat-according-tolandmark-report-from-justice/.
Kaim, Markus. 2015. "Israels Sicherheit als deutsche Staatsräson. Was bedeutet das konkret?" *Aus Politik und Zeitgeschichte* 3(18). Available at https://www.bpb.de/shop/zeitschriften/apuz/199894/israels-sicherheit-als-deutsche-staatsraeson/.
Kang, Susan, Jonathan Havercroft, Jacob Eisler, Antje Wiener, and Jo Shaw. 2023. "Climate Change and the Challenge to Liberalism." *Global Constitutionalism* 12(1): 1–10.
Katzenstein, Peter J. ed. 1996. *The Culture of National Security. Norms and Identity in World Politics*. New York: Columbia University Press.
Kelemen, R. Daniel, and Laurent Pech. 2019. "The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in the Name of Constitutional Identity in Hungary and Poland." *Cambridge Yearbook of European Legal Studies* 21: 59–74.
Klotz, Audie. (1995). *Norms in International Relations: The Struggle against Apartheid*. Ithaca, NY: Cornell University Press.
Krieger, Heike. 2024. "Constructing Narratives of Change – The War against Ukraine as a Transformational Moment for International Law?" *Swiss Review of International and European Law* 34(1): 3–22. Available at https://t.co/dRrus4MSfz
Krieger, Heike, and Andrea Liese eds. 2023. *Tracing Value Change in International Law and Politics: Perspectives from Legal and Political Science*. Oxford: Oxford University Press.
Krieger, Heike, and Georg Nolte. 2019. *International Rule of Law: Rise or Decline?* Oxford: Oxford University Press.
Krook, Mona Lena, and Jacqui True. 2012. "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality." *European Journal of International Relations* 18(1): 103–127.
Kumm, Mattias, Jonathan Havercroft, Jeffrey Dunoff, and Antje Wiener. 2017. "The End of 'the West' and the Future of Global Constitutionalism Editorial." *Global Constitutionalism* 6(1): 1–11.
Lake, David A., and Antje Wiener. 2025 forthcoming. "Deep Contestations of the Liberal International Order. Introduction." In: *Deep Contestations of the Liberal International Order*, edited by Antje Wiener, David A. Lake and Thomas Risse, Oxford: Oxford University Press.
Lake, David A., Lisa L. Martin, and Thomas Risse. eds. 2021. "Challenges to the Liberal International Order: International Organization at 75." Special Issue of *International Organization* 75(2), Cambridge: Cambridge University Press.
McGrath, Matt. 2020. "Climate Change: US Formally Withdraws from Paris Agreement." *BBC News*, November 4, 2020. Available at https://www.bbc.com/news/science-environment-54797743
McGrath, Matt. 2021. "US Rejoins Paris Accord: Biden's First Act Sets Tone for Ambitious Approach." *BBC News*, January 20, 2021. Available at https://www.bbc.com/news/science-environment-55732386.
Médecins Sans Frontieres. 2024. "Gaza: Life in a Death Trap: MSF Report Exposes Israel's Campaign of Total Destruction." December 19, 2024. Available at https://www.msf.org/msf-report-exposes-israel%E2%80%99s-campaign-total-destruction
Mende, Janne. 2024. "Substance- or Legitimacy-Oriented (de)Legitimation of Global Governance Institutions. The Double-Edged Role of Complexity." *Globalizations* 21(7): 1233–1250.
Milliken, Jennifer. 1999. "The Study of Discourse in International Relations: A Critique of Research and Methods." *European Journal of International Relations* 5(2): 225–254.
Mitzen, Jennifer. 2024. "The Politics of Pedagogy: The Problem of Order in the IR Classroom." *Ethics & International Affairs* 38(2): 180–188.

https://doi.org/10.1017/S2045381725000024 Published online by Cambridge University Press

Ott, Haley. 2024. "Amnesty International Accuses Israel of Genocide; Israeli Official Calls Claim 'Entirely False and Based on Lies." *CBS News*, December 5, 2024. Available at https://www.cbsnews.com/news/israel-accused-genocide-gaza-amnesty-international/.

Owen, David, and James Tully. 2007. "Redistribution and Recognition: Two Approaches." In: *Multiculturalism and Political Theory*, edited by Anthony Simon Laden and David Owen, 265–291. Cambridge: Cambridge University Press.

Pardesi, Manjeet S. 2024. "The East Asian Peace and the Emergence of the Indo-Pacific." In: *Reconsidering the East Asian Peace: Confluences, Regional Characteristics and Societal Transformations*, edited by William R. Thompson and Thomas J. Volgy. Abingdon: Taylor & Francis.

Reus-Smit, Christian, and Ayşe Zarakol. 2023. "Polymorphic Justice and the Crisis of International Order." *International Affairs* 99(1): 1–22.

RFI. n.d. "France at Crossroads as ICC Issues War Crimes Warrants for Netanyahu." Available at https://www.rfi.fr/en/international/20241122-france-at-crossroads-as-icc-issues-war-crimes-warrants-for-netanyahu

Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink. eds. 2013. *The Persistent Power of Human Rights*. Cambridge: Cambridge University Press.

Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink. eds. 1999. *The Power of Human Rights. International Norms and Domestic Change*. Cambridge: Cambridge University Press.

Sanahuja, José Antonio, Diego Hernández Nilson, and Camilo Lopez Burian. 2024. "The Far Right, Populism, and the Contestation of Regionalism in South America: Bolsonaro and Milei." *Global Discourse* 14(4): 502–522.

Tams, Christian J. 2021. "Experiments Great and Small: Centenary Reflections on the League of Nations." *German Yearbook of International Law* 62(1): 93–128.

Tully, James, Keith Cherry, Fonna Forman, Jeanne Morefield, Joshua Nichols, Pablo Ouziel, David Owen, and Oliver Schmidtke. 2022. *Democratic Multiplicity Perceiving, Enacting and Integrating Democratic Diversity*. Cambridge: Cambridge University Press.

Tully, James. 1995. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press.

Tully, James, Jeffrey L. Dunoff, Anthony F. Lang, Mattias Kumm, and Antje Wiener. 2016. "Introducing Global Integral Constitutionalism. *Global Constitutionalism* 5(1): 1–15.

von Bogdandy, Armin, 2024. The Emergence of European Society through Public Law: A Hegelian and Anti-Schmittian Approach, *Collected Courses of the Academy of European Law* (Oxford, Oxford Academic, 30 Apr. 2024), https://doi.org/10.1093/oso/9780198909347.001.0001 (accessed 15 Jan. 2025).

Wiener, Antje. 2009. "Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations. *Review of International Studies* 35(1): 175–193.

Wiener, Antje. 2014. *A Theory of Contestation*. Berlin: Springer.

Wiener, Antje, and Uwe Puetter. 2009. "The Quality of Norms Is What Actors Make of It. Critical Constructivist Research on Norms." *Journal of International Law and International Relations* 5(1): 1–16.

Wiener, Antje, Anthony Lang, James Tully, Miguel Poiares Maduro, and Mattias Kumm. 2012. "Global Constitutionalism: Human rights, Democracy and the Rule of Law. *Global Constitutionalism* 1(1): 1–15.

Wiener, Antje, Jeffrey L. Dunoff, Jonathan Havercroft, Mattias Kumm, and Kriszta Kovács. 2019. "Global Constitutionalism as Agora: Interdisciplinary Encounters, Cultural Recognition and Global Diversity." *Global Constitutionalism* 8(1): 1–11.

Wilkens, Jan, and Alvine Datchoua-Tirvaudey. 2022. "Researching Climate Justice: A Decolonial Approach to Global Climate Governance." *International Affairs* 98(1): 125–143.

Wittgenstein, Ludwig. 2009. *Philosophical Investigations*. Hoboken: John Wiley & Sons.

Zengerling, Cathrin, Jill Bähring, Stefan Aykut, and Antje Wiener. 2024. "Climate Litigation as a Social Driver Towards Deep Decarbonisation II: Zooming in on Two Cases." *Carbon & Climate Law Review* 18(1): 3–16.

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