"The Unwillingness to Call This Illegal Is a Terrible Mistake"

Five Questions to Oona A. Hathaway

Oona A. Hathaway & Maxim Bönnemann

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The United States and Israel have launched a large-scale military attack against Iran, with unforeseeable consequences. Yet the war against Iran is only the latest example of a profound transformation of the postwar international legal order. Are we witnessing the end of the system governing the use of force? And should European governments speak out more clearly about violations of international law?

We spoke with Oona A. Hathaway, Professor of International Law at Yale Law School and one of the world's leading scholars on the legal order governing war and the prohibition of the use of force. Hathaway is also President-Elect of the American Society of International Law.

1. Nearly a week ago, the United States and Israel began their war against Iran. The German government, along with several other European governments, has so far been reluctant to characterize the attack as a violation of international law. Is Europe well advised to place less emphasis on international law and instead adopt a more *realpolitik* stance?

The U.S. and Israeli war against Iran is clearly and unequivocally unlawful. Under the United Nations Charter, a use of force by one state against another is lawful only if it is authorized by the UN Security Council or if it is a necessary and proportionate act of self defense. Neither is true here. Given that the use of force is so clearly unlawful, the unwillingness of European states to characterize the attack as a violation of international law is a terrible mistake. If there had been more of a response to Trump's unlawful use of military force in Venezuela, perhaps he would not have launched another unlawful war against Iran. The failure to call the Trump Administration to account also highlights that international law is being treated as a constraint for some but not for all. The result will be a further weakening of the already weak international legal order.

2. You have described the prohibition on the use of force as the bedrock of the postwar international legal order. Is that order now beginning to collapse?

We are perhaps too close to events to know with certainty. But it does seem that we are in the midst of a transformation in the international legal order. The prohibition on the use of force appears to have lost much of its power to constrain at least the most powerful states. It is important to recognize, however, that much of the world outside Europe would say that things are not quite so simple. They would point out that the powerful states have bent and broken the rules for decades. Look at the U.S. war in Iraq in 2003, the decades-long counter-terrorism operations by the U.S. and others throughout the Middle East, Russia's use of force against not just Ukraine but Georgia and Moldova as well, and China's occupation of contested rocks, reefs, and islands in the South China Sea. Meanwhile, most of the world continues to follow the prohibition on the use of force. There are 193 states in the United Nations, and the vast majority have always complied with the prohibition on the use of force in the UN Charter, and they continue to do so today. So it is less clear that the past is as good—or the present as bad—as some might think.

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Anmeldung hier.

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3. U.S. Secretary of Defense Pete Hegseth recently said that "no stupid rules of engagement" apply in the war against Iran, effectively rejecting the very idea of legal constraints. If we look back at history, even before the Kellogg-Briand Pact of 1928, there were legal norms intended to constrain war. Are we moving toward a world in which even the rules of war begin to disappear altogether?

What I believe the Secretary of Defense is referring to are the rules of engagement—or "ROEs"—that are internal rules developed by the military to govern the conduct of the U.S. armed forces in a military operation. I don't know for certain what he means by "stupid" rules of engagement, but presumably he means rules that he thinks excessively constrain the armed forces. When I worked at the U.S. Department of Defense in 2014-2015, I helped review some of the ROEs that were developed for operations then taking place. In my experience, those who were the most committed to the law of armed conflict were those in uniform. They believed in the value and importance of adhering to the law because they believed in the values that the law protects and because they knew that those same rules protect American soldiers at war, and American civilians at home and around the world. I am dismayed that the U.S. Secretary of Defense seems to no longer believe in those principles, but I think his view is not shared by most of those who work in the Department he leads. And they are not shared by the rest of the world, where most people are committed to the principles that the law of armed conflict protects.

4. Let's shift for a moment from the legal dimension to the political and strategic one. Some hope that the airstrikes against Iran could ultimately lead to regime change. Is that a realistic expectation?

I am not an expert on Iran, so I can't claim any specific expertise. I read that, at the moment, Mojtaba Khamenei, the son of Ayatollah Ali Khamenei, has emerged as the likely choice to succeed his father. If that happens, then there will be no real change. What I think we have learned from history is that it is easy to destroy from the air, but it is impossible to build. As long as the United States wants to operate entirely from the air, then, I think we will have little control over what happens in Iran. (I am not advocating for ground troops—that would be a mistake of epic proportions.) The idea that has been recently floated of arming groups in the country is truly misguided, and it has the potential to spark a civil war that would make an already terrible situation far worse. We have discovered again and again—from Cuba to Iraq to Afghanistan to Libya to Syria— that this does not work. I hope that we do not need to learn that lesson yet again. The true tragedy is that the people who will pay the costs of these terrible decisions are not those who make them but the innocent people in Iran who will have to live with the consequences.

5. Looking ahead, is the "great unraveling" you have described still reversible? Or have we already passed a point of no return?

I wrote the article about the "great unraveling" of the postwar legal order for the New York Times after the Trump Administration's unlawful intervention in Venezuela but before the current war in Iran. If things were dangerous then, they are far worse now. They are worse not only because a dozen nations are now caught up in yet another ill-conceived and illegal war in the Middle East, but also because the response of the international community has been so weak. I see few world leaders standing up for the rule of law in the face of blatant lawlessness. That is a great tragedy, and it is that failure that may ultimately spell the end of the postwar legal order.

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Editor's Pick

by MAXIM BÖNNEMANN



What does neighbourhood mean in the age of the climate crisis? What happens when the consequences of an action no longer affect the property next door, but melt a glacier thousands of kilometres away? This question lay at the heart of the case brought by the Peruvian farmer Saúl Luciano Lliuya against the German energy giant RWE, seeking compensation for protective measures against the threat of catastrophic flooding. The anthropologist Noah Walker-Crawford followed the proceedings closely and shows how the concept of *neighbourliness* becomes a focal point for global questions of responsibility and justice — and how these questions are ultimately negotiated in law. With precision and elegance, Walker-Crawford weaves together Luciano Lliuya's story with complex debates on causation, evidence, and the role of law in the climate crisis. The result is a fascinating book that shows how a little-known provision of the German Civil Code came to stand at the centre of one of the most remarkable climate lawsuits of our time.

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The Week on Verfassungsblog

summarised by JANA TRAPP

"The Great Unraveling," as Oona Hathaway has called it, has been very much on our minds this week as well. Only hours after the United States and Israel launched their attacks on **Iran**, MARKO MILANOVIĆ (GER) had already produced an initial international law assessment with remarkable speed. In his view, the attack breached the prohibition on the use of force under Article 2(4) of the UN Charter in a way that could hardly be clearer.

Among the first casualties of the airstrikes was none other **than Iran's Supreme Leader**, Ali Khamenei. SOPHIE DUROY and LUCA TRENTA (ENG) take Khamenei's death as an occasion to reflect on the normalisation of "assassination" as a tool of foreign policy.

The question of what, if anything, remains of **international law** also preoccupied MATTHIAS GOLDMANN (ENG) this week. He contrasts two visions of world order: on the one hand, a politics of naked power, in which governments place their own moral judgments above law and institutions; on the other, a rule-based order grounded in predictability and equality. The latter vision, he argues, can remain stable only if it takes social equality seriously rather than invoking it as empty rhetoric.

A somewhat fragile commitment to international law was also evident in the **Netherlands** this week. The new foreign minister expressed "understanding" for the attacks on Iran and called for a "more realistic"

course. OTTO SPIJKERS (ENG) recalls that Article 90 of the Dutch Constitution obliges the government to promote the international legal order and warns against abandoning this constitutional guiding principle in favour of power-political considerations.

While international rules are eroding, some legislators are at least trying to make their national institutions more resilient. In **Saxony-Anhalt**, the "Parliamentary Reform Act 2026" aims to strengthen the state constitutional court, place the State Centre for Civic Education on a statutory footing, and protect the constituent session of the state parliament against attempts at capture, for instance by the far-right AfD. ROBERT BÖTTNER (GER) views this as an ambitious effort in resilience legislation that builds upon much of what recent debates have yielded, yet remains incomplete in places and even opens new opportunities for obstruction – all under an extremely tight timetable before the September elections.

Similar conflicts over institutional independence are also emerging at the European level: On 5 February, the Court of Justice of the European Union declared the lifting of the immunity of Carles Puigdemont and his fellow members invalid. DAVID PÉREZ DE LAMO (EN) shows how the Court strengthens parliamentary immunity as a personal privilege.

The use of **confidential informants** is currently stirring political controversy. In Bremen, an informant has been exposed who allegedly spent years spying on the group *"Interventionistische Linke"*, a German far-left activist network. PETER MADJAROV and DAVID WERDERMANN (GER) shift the perspective: in light of the case law of the Federal Constitutional Court, the use of the informant was likely unlawful for several reasons.

True to form, the Federal Constitutional Court (FCC) has once again offered plenty of material for constitutional fine-tuning this week. As expected, the Court upheld the extension of Germany's **rent regulation** as constitutional. What makes the decision particularly interesting emerges on closer inspection: TIMO LAVEN (GER) shows how the Court clears up misconceptions surrounding its 2019 ruling, refuses to treat the rent cap as a purely transitional instrument, and in fact expands rather than narrows the scope for rent regulation.

Even before decisions are handed down, the FCC can prompt moments of institutional self-reflection. Last Thursday, the Second Senate heard arguments on whether legislative procedures can be "too fast" or whether the Bundestag is subject to a **constitutional speed limit**. The Senate itself floated this idea in 2023. JOHANNES GALLON (GER) describes a hearing in which the Court visibly struggled with its own, not especially workable standards and searched for a way out of the trap it had set for itself.

True gems can also be found in decisions that at first glance seem rather inconspicuous. A student had challenged the 2025 **pension reform**, arguing that he pays contributions today without being able to reasonably expect equivalent benefits in the future. The Federal Constitutional Court declined to hear the complaint but used the decision to clarify its understanding of the intertemporal protection of freedom developed in its landmark 2021 climate ruling. MATTHIAS GEGENWART (GER) explains why this matters for the relationship between fundamental rights and the welfare state.

Spaces of freedom protected by fundamental rights were also at issue at the Göttingen Regional Court: shortly before the end of the year, ***Sparkasse* Göttingen**, a German savings bank, attempted to close the bank account of *Rote Hilfe e.V.*, a left-wing solidarity organisation that provides legal and financial support to activists facing political prosecution – unsuccessfully, as the court held. SIMON SIMANOVSKI (DE) warns that anti-money-laundering law here disguises political value judgments as economic rationality, thereby constraining spaces safeguarded by fundamental rights.

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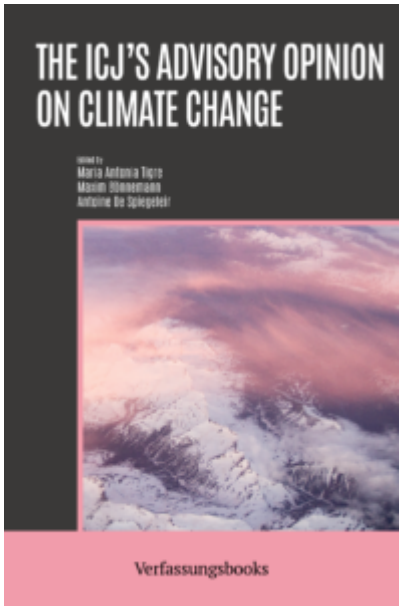

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While German courts are thus reflecting on different dimensions of freedom, the European Union is turning its attention to the architecture of digital platforms. **TikTok** currently finds itself in the spotlight: according to the European Commission's preliminary findings, the platform's design may breach the Digital Services Act. EVA LIEVENS, VITA SHALA, and VALERIE VERDOODT (ENG) explain why this is not merely about regulating content, but about regulating the very logic of social media.

The Digital Services Act is also sparking conflict in **Poland** – this time with constitutional and European implications. President Karol Nawrocki has vetoed the national implementing legislation, warning that it threatens freedom of expression. ZUZANNA NOWICKA and ALEKSANDRA WÓJTOWICZ (ENG) interpret this stance mainly as an import from US politics: a MAGA-style "free speech" narrative that distorts the European regulatory tradition but proves strikingly adaptable to local politics.

How quietly rule-of-law institutions can be hollowed out is currently on display in **Serbia**. There, the government has adopted a package of judicial reforms, the *"Mrdić laws,"* which allow for large-scale transfers of prosecutors working in anti-corruption cases. TEODORA MILJOJKOVIĆ (ENG) shows how the judiciary's formal independence remains intact on paper while its functional capacity is weakened in practice.

As institutions are remodeled, economic policy paradigms are shifting as well. After months of delays, internal friction, and warnings of a "full China-style" model, the European Commission is now preparing its proposal for an **Industrial Accelerator Act**. PIM JANSEN and IOANNIS KAMPOURAKIS (ENG) see in this less a leap toward Chinese-style industrial policy than a gradual but profound move away from the idea that Europe can govern its economic constitution primarily through competition rules.

Turning to economic matters: in the ***Lafarge* case**, France's Court de cassation will soon clarify when companies must bear criminal responsibility for activities connected to the gravest international crimes. In the future, SABEEH KHAYYAT (ENG) argues, the decisive factor may be less a "criminal purpose" than the knowledge that one's business operations are linked to crimes against humanity.

In the **United Kingdom**, a classic fundamental rights issue was on the agenda this week: protest. The High Court of England and Wales declared the government's decision to ban the activist group Palestine Action unlawful. JACOB ROWBOTTOM (ENG) highlights how far-reaching decisions to ban organisations are, as they aim to eliminate them as such and thereby also affect people only loosely connected to them, with correspondingly serious implications for freedom of expression and assembly.

A term that may soon join the archive of "forgotten terms" in discrimination debates: **xenophobia**. Two UN treaty bodies have for the first time issued joint guidelines on combating xenophobia, particularly

against migrants and those perceived as such. MORITZ BAUMGÄRTEL (ENG) welcomes this step but points to a central blind spot: as long as migration control is treated as a legitimate objective of state sovereignty, the very structural xenophobia that the guidelines seek to address will continue to recur.

Meanwhile, questions of (political) loyalty are also making their way into cultural policy. In the wake of the **Berlinale**, Berlin's international film festival, debate has once again flared up over whether public funding should be tied to loyalty pledges. JUSTUS DUHNKRACK (DE) refers to such letters as "yellow funding notices" – and warns that cultural funding can easily slide into a form of pre-emptive ideological vetting.

International and national rules are once again being renegotiated on many fronts this week: sometimes openly disregarded, sometimes deftly reinterpreted, sometimes quietly reinforced through seemingly minor decisions. One thing is certain: there will be no shortage of topics for discussion on Verfassungsblog in the coming weeks. Spring is just around the corner – and with it, a new season of constitutional and international law debates.

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That's it for this week. Take care and all the best!

Yours,

the Verfassungsblog Team

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