International Legal Theory and Constructive Thinking

Introduction to the Symposium

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The international legal order is in turmoil. It is not simply that international law is in a temporary crisis, as it has been at various moments in earlier decades. It is that the current situation of crisis of the international legal order appears to have reached a level of pathology never seen before. The faith in international law is waning. The gravity of the punches thrown at its fundamental tenets, joined by an unprecedented blatant disregard for, if not direct hostility towards, international law, makes one wonder whether the US-backed international legal order will be able to weather the storm, or shall morph into something more magmatic and friable or else.

The blows to international law pile up so fast that it begins to blunt the sense of how damaging they really are. Some scholars argue that the catastrophe is no longer a matter of a potential future; we, international lawyers, are already *in it*. Ukraine, Gaza, Iran, Sudan, and Venezuela have become symbols of the unravelling of the international legal order that only a couple of years ago seemed stable, despite its numerous flaws. When the US President openly claims that the only constraint on his action is his internal morality, and the US Secretary of State calls for the dismantling of several international organizations starting with the International Criminal Court, what was until recently considered unthinkable suddenly enters the realm of the possible.

All these radical challenges feed lingering concerns for the validity, normativity, and authority of international law that have always been integral to the scholarly discourse but normally dealt with through a posture of pragmatism. Now, however, anxiety about the future of international legal order is too overwhelming. Could it be that our intellectual response to the breaking of the liberal international order betrays some deeply ingrained errors and flaws in how we theorize international law? If so, what should be the way forward? Should we prioritize critiquing international law as part of the problem because of its complicity in violence and injustice? Or should we strive to generate a space for constructive thinking about international law, looking for fresh ideas? This symposium takes the latter approach.

Constructive Thinking as an Intellectual Paradigm

In recent years, Professor Monica Hakimi of Columbia University has been a leading voice in tackling the role of theory and philosophy of international law. This stream of thinking aims not only at elucidating the role, function, and authority of international law, but also at bolstering constructive thinking about its proper place in today's world. Her recent piece "Thinking Constructively about International Law" is an insightful analysis that exposes some fundamental conceptual premises of our discipline and challenges them with a cogently structured set of questions: Do these premises still hold? Are we still justified in relying on them? And if not, what should we be doing instead?

On 29 April 2026, the ESIL Interest Group on International Legal Theory and Philosophy organized a symposium, hosted by the University of Groningen, on this thorough, nuanced, and daring paper, as well as on the intellectual tradition in which it is situated. While strongly inspired by the New Haven School of International Law in the person of Michael Reisman (to whom her paper is dedicated), Professor Hakimi advances her own articulated view of what international law ought to look like after the storm it is currently facing. Her vision is nourished by a healthy dose of idealism (and in this respect one can hear the

influence of the old Columbia school of international law) and aims at crafting international law as authority — an enabling device not for States but for the international community in which all subjects and actors are empowered to make the best of international law once it is freed from the restraints of sovereigntism

This featured blog symposium is an outcome of that event. With it, we aim to join Professor Hakimi in trying to see through and beyond the sovereigntist model of international law and imagining alternative frames about the existence, efficacy, and justifiability of international law.

In a series of contributions, we seek to interrogate the theoretical message that the paper communicates and the assumptions it makes along the way, including about the role and function of theoretical, philosophical, and most of all constructive thinking about international law. Indeed, one of the key reasons why the paper at the core of this symposium has attracted so much attention is that it advances several independently valuable reflections about the orientation of international legal theory, its function, and its potentiality.

Going beyond Hobbes? The Specter of Sovereigntism

The most direct objective of the paper is a critique of the sovereigntist image of international law. Professor Hakimi argues that all major schools of thought in contemporary international legal theory — formalist, constructivist, realist, rationalist, and critical — share an underlying commitment to this sovereigntist image. In it, (international) law is conceptualized primarily as a form and institution of normative control, coercion, and hierarchy, and thus the criteria for international law's existence, efficacy, and justifiability are bound to these central ideas. Law exists if it has a constraining power that makes its addressees bound by its commands.

In its most straightforward and crude version, sovereigntism seems neither normatively attractive nor descriptively accurate. But then how and why does it happen that despite often enormous differences in how these intellectual traditions portray international law, they still recuperate the idea of sovereignty as definitive to international law's existence, efficacy, and justifiability, in one way or another? Why is it the case that international legal theory and philosophy still struggle to escape the specter of Thomas Hobbes that keeps hovering over that theoretical landscape? What function does this commitment to sovereigntism perform in our thinking about international law that makes it so difficult to escape?

The Politics of Theory

Apart from offering a comprehensive debunking of sovereigntist assumptions as incorporated in various theories of international law, Hakimi's paper is also a meta-critique of international legal theory. It engages with what might be called "the politics of theory", that is our thinking about what the content of a good theory ought to be to render a meaningful service. Hakimi's paper opens with Kurt Lewin's aphorism that "There is nothing so practical as a good theory", and Professor Hakimi adds "or so insidious as a bad one".

This raises a series of difficult self-reflective questions: What is our project when we theorize international law? Who decides when this project is valuable? What is at stake in this activity? Does something change in the real world if we formulate a better theory of international law and manage to ditch a bad one? How should we understand our scholarly activity when we do theory and philosophy of international law? Should we think that when we fix a theory or develop a better one, we plead for constructive thinking? But if so, what makes this constructive thinking better than its alternatives? It is apt to ask these questions when the world seems to be falling apart due to the proliferation of never-ending wars and appalling crimes, including war crimes and crimes against humanity. It thus seems necessary to develop alternative normative theories of international law, aimed at rescuing the promise of international legality and the authority of international law. For not shying away from this daunting task, we can only be grateful to Professor Hakimi.

Towards an Alternative Path

In her paper, Professor Hakimi offers her own constructive suggestion (albeit yet to be further articulated) about what international law ought to be. At its core is the idea that we should think of international law's authority in terms that break away from the sovereigntist imagery. She invites us to treat authority not as control, paradigmatically exercised by someone normatively superior, but as a social structure which empowers those who use it. It does not come from a single source (like the imaginary Leviathan), but "from everyone who participates in constituting it". The real question, then, should be not about what makes international law efficacious in controlling conduct, nor should it be about how much of "law" it is in the absence of centralized law-making and law-enforcement. Rather, it should be about how the variety of actors, including states, accumulate, allocate, and engage with the normative authority of international law.

The image of international law that the paper briefly sketches is the one in which it creates spaces within which states, people, and other actors allocate authority in their relations together. Seen under this angle, coercion and control become accidental features of the legal order rather than its defining conditions as the sovereigntist theory maintains.

In Professor Hakimi's view, this alternative path is not only a conceptual contribution; it is also a practical invitation to an emancipatory project. The kind of constitutive distributive authority of international law that she suggests does not yet exist and needs to be brought forward, and this is exactly where constructive thinking plays a crucial role.

Overview of the Contributions

These three large themes and groups of questions have broadly informed the directions pursued by participants of the Groningen symposium and of the present blog series.

This blog series opens with Doruk Erhan's careful defence of Hobbes' legacy; he invites us to see it not as "a demon to be exorcised", but as "the ghost of King Hamlet", one that brings a warning and instruction, rather than doom and confusion. Erhan suggests that Hakimi's post-sovereigntist vision of international law sacrifices just a bit too much in favour of the constitutive power of the community. International law must claim that it *governs* conduct and not merely constitutes a normative structure within which actors exercise their authority. The real crisis of international law, according to Erhan, is not that of being deluded by a wrong theory; rather, it is the crisis of depoliticization, which may only end up amplified in a sovereign-less image promoted by Hakimi.

Veronika Bílková's contribution further reinforces this critique of Hakimi's piece. She questions the extent to which the distinction between "good" and "bad" theory is tenable and asks exactly what is "bad" about sovereigntism. If Hakimi's charge is directed against "sovereigntism", which requires law to have a singular and hierarchical "command and control" system, then indeed such a theory would be quite bad. Yet if by "sovereigntism" Hakimi means the recognition of the foundational role of states in international law, it is not altogether clear what's "bad" about it. After all, state-centrism is a matter of both theory and practice of today's international law. Are we therefore justified in abandoning sovereigntism in its entirety?

In her contribution, Gemma Lligadas Gonzalez adds an extra spin to Hakimi's critique of sovereigntism and the image of law as a means of control that comes with it. She pairs Hakimi's analysis with Martti Koskenniemi's theory of hegemonic contestation to argue that any particular normative configuration of international law is an attempt by states to universalize their specific vision of international legality. If so, then Hakimi's offered alternative to the sovereigntist account, one that assumes a plural and participatory structure of authority in international law, explains the hegemonic rivalry better than sovereigntism.

Marcel Brus takes upon the task of historicizing Hakimi's critique of sovereigntist international law by showing how much of the present crisis is reminiscent of the "ugly world" of the Cold War, and how today's anxieties of international lawyers who question their relevance are echoes of that troubled past. Brus's

contribution to this symposium engages with the soul-searching that underlies Hakimi's paper, in particular the unsettling schizophrenia of having to defend international law without defending its complicity with the evils of the world.

Wouter Werner offers an original radical extension of one of the central points of Hakimi's critique of the sovereigntist model, namely, that legal rules are formally binding commands. Instead, he invites us to see them as scripts. In this capacity, "law pre-structures: who acts, who talks, about whom and how". To engage with the authority of international law, then, is not to wrestle for control, but to use imagination and to perform the available scripts, fostering creative authorship.

Conclusion

We hope that this symposium would be an appreciated opportunity for freely expressing ideas and vibrant exchanges (at times with the gloves off), just as the Groningen event was. The conversation must continue towards constructing a fairer (and more effective) international law for the years to come, and we thank Professor Hakimi for clarifying terms and stakes of this conversation.

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