Verfassungsblog
ON MATTERS CONSTITUTIONAL

Structural Rivalry, Hegemonic Contestation, and the Dynamic Resilience of International Law

Gemma Lligadas González

02.09.2026 doi: 10.59704/bff5c33f5c88164d

Monica Hakimi's Thinking Constructively about International Law is an ambitious and intellectually rigorous intervention in contemporary international legal theory. Its central claim is that much of international legal scholarship remains trapped in what she calls a "sovereigntist" theory of law: the assumption that law is valid, effective, and justified only when it resembles the domestic model under the commands of a single sovereign backed by coercive authority. Hakimi argues that this model is fundamentally ill-suited to international law, which has never operated through a single sovereign authority. Yet its profound capacity to shape the global order points to a different kind of authority – one that remains insufficiently theorised.

At a moment when many scholars describe international law as facing an existential crisis, Hakimi's intervention is more timely than ever. There is a widespread sense that the international legal order is undergoing a profound structural rupture — one that may ultimately threaten the survival of the current global order. Much of this anxiety is connected to the conduct of its current hegemon, the United States. Among the historic US strategic patterns of interaction with international law, we can identify instances of more or less instrumental compliance with, strategic resignification of, and selective withdrawal from the international legal system (see, in this regard, Nico Krisch's work).

Yet recent US practice has moved toward a more robust form of withdrawal, more extreme forms of resignification, and has adopted disruptive policies – such as the sanctions against the International Criminal Court and UN Special Rapporteurs – that suggest not merely disengagement, but an active effort to undermine the institutional scaffolding of key legal regimes within the (until now) US-backed liberal international order.

Following Hakimi's call to build theory taking as a starting point the realities of international practice, this new form of hegemonic engagement with international law should also inform our general theory of international law and help us better explain the authority of the system itself.

The Structuralist Account of International Law: An Epistemological Reconfiguration

As Hakimi's piece powerfully illustrates, rationalist accounts of international law are often divided between two poles. On the one hand are realist approaches, which regard international law as largely epiphenomenal and incapable of controlling its addressees in the absence of centralized coercive force, thereby dismissing its normative authority altogether. On the other are theories that explain compliance primarily through states' self-interest in international law as a mechanism for coordination and cooperation. Yet I argue that there is a third rationalist account that partially reconciles realism, rationalism, constructivism, and critical theory: the *structuralist* approach that, in my view, underlies Koskenniemi's theory of hegemonic contestation.

International law participates in the performative capacity of legal systems: legal claims help shape the reality they purport to describe, and whether international rules preserve or transform the global political order depends on their normative underpinnings and on those capable of shaping them. International law's performative capacity thus explains states' competition over its normative substrate in what Koskenniemi describes as a process of hegemonic contestation: the dialogical process through which states seek to

inscribe into the normative fabric of the global order the moral language that best advances their interests. In doing so, they compete to universalize particular interpretations of international legality and, through them, the values from which political legitimacy and international authority derive. The more dominant a state is, the greater its capacity to steer contestation to its advantage — and consequently to benefit from the resulting legal order.

Since the struggle for power is constant, rational states continuously engage in this process of hegemonic contestation in the hope of shaping the normative content of international law to their advantage. What becomes accepted as international law at any given moment therefore reflects the contingent success of particular normative projects, temporarily *stabilizing* the political order around the values they embody. Yet because international law remains permanently open to reinterpretation through its enduring indeterminacy, the contest over legal meaning never truly ends. International law therefore serves not only to facilitate international coordination by providing greater predictability through its *regulatory* function. It also contributes to the *pacification* of the international order by enabling the international community to accept legally entrenched asymmetries of power as participants in the very process of contestation that sustains international law, while providing a stable institutional framework infused with hegemonic interests.

The structuralist account of international law syncretizes key insights from several traditions. It combines realism's focus on structural rivalry and systemic power with rational liberalism's insight that states have strategic reasons to sustain international legal institutions. From this perspective, international law is not merely a framework for cooperation, but a central instrument in the organization and contestation of global power. Its authority derives from its socially constructed character: international law both reflects state interaction and binds the international community to a normative order produced through hegemonic contestation. Since structuralism explains international law within the mutually constitutive relationship between social reality and legal structure, it also accepts the critical insight that this dynamic can reinforce asymmetries of power.

According to Cox, hegemony is a form of order in which power is stabilised and legitimised through the alignment of material capabilities, shared ideas, and institutions. In this configuration, international law is a source of normative power indispensable for hegemony, for it embeds the norms and expectations of states in a rules-based system. President Trump is therefore fundamentally mistaken in assuming that international law is unnecessary – or even detrimental – to the preservation of US hegemony.

Normative Flexibility as a Source of Dynamic Resilience: Structural Rivalry, Hegemonic Contestation and the Future of International Law in Contexts of Crisis

While the US is currently disregarding the importance of the political functions of international law to sustain its hegemonic position, other rational actors, used to operating within a rules-based order, remain aware of the normative power that derives from a favourable legal ecosystem. Weeks before the Trump administration made its hostility toward multilateralism and international legality unmistakably clear at the 80th session of the UN General Assembly, its principal geopolitical rivals presented themselves at the latest Shanghai Cooperation Organization (SCO) summit as defenders of the rules-based order and of international law as a foundational structure of global politics.

Yet, as Koskenniemi reminds us, "it is pointless to ask about the contribution of international law to the global community without clarifying first *what* or *whose* view of international law is meant". These great-power contenders are using international platforms like the SCO to introduce a "subtle rhetorical shift in focusing on the 'rule of international law,' which reinforces sovereignty and consent, rather than the thicker concept of the international rule of law" traditionally advanced by democracies. Their behaviour thus confirms that, unlike the current US administration, they very much understand international law as "a

surface over which political opponents engage in hegemonic practices, seeking to enlist its rules, principles and institutions to their advantage while ensuring that they do not empower their adversaries" (Koskenniemi, at 4).

In a context marked by enduring structural rivalry and growing geopolitical tension, current US hostility toward the liberal legal order is unlikely to bring about the end of international law but may instead accelerate its normative reconfiguration. The hegemon's subversion of the legal system weakens the resilience of existing rules, while the abdication of its privileged influence within processes of hegemonic contestation does not deactivate but rather encourages competitors' efforts to control the dialogical process. This creates space for competing normative projects to gain influence, thereby intensifying rather than halting the contestation that keeps the system alive. The international legal order is therefore likely to endure as a structural framework, though potentially with a different normative core upholding a different hierarchy of global power.

The Ontological Insights of Structuralism: Authority, Existence, Effectiveness and Justifiability of International Law

Hakimi's remedy to the ills that she brilliantly diagnoses in the international legal scholarship indebted to the sovereigntist tradition is to accept that "law often exists in non-obligatory, non-rule-like forms" whose authority comes from "a discursive normative practice" (Hakimi, at 69). However, while most (including this post) would strongly agree that international law is indeed one of the many normative structures populating the global order, not all normative standards carry the qualified authority that has made international law attractive to the multiple actors that, as pointed out by Hakimi herself, have fostered its flourishing in the twenty-first century.

The key to solving our sovereigntist conundrum lies instead in elaborating Hakimi's poignant observation that "[a]uthority and coercion represent different modes of interaction" (Hakimi, at 74). This is true within the domestic sphere as well. Even Hobbesian theories indirectly distinguish them insofar as they acknowledge the social origin of the sovereign authority to rule, which, in turn, legitimates states' coercive capacity. Denying that the first can be transferred without the latter is as much as denying, for instance, the existence of formal international organizations whose foundational delegation of power does not allow for enforcement mechanisms.

International law's connection to sovereign authority (though not necessarily to sovereign coercion) is what distinguishes it from other normative frameworks. This is fully compatible with acknowledging its socially constructed character, for the process of hegemonic contestation described above is itself a discursive normative practice in which "authority constitutes the relations of people who use it" (Hakimi, at 69). Nor does it deny the meaningful participation of non-state actors in its construction. It merely recognizes that the qualified character of international law's authority ultimately depends on the involvement of sovereign entities in its dialogical development. Yet the structuralist approach advanced in this post departs not only from the idea that international rules require the backing of centralized sovereign power, but also from D'Argent's claim that 'international law stems from the convergence of sovereign wills' (https://dare.uva.nl/id/af063e93-0fd7-44ae-9e95-a6751652c195). Instead, structuralism focuses on the legal outcomes of dialogical dissent, which differ from those envisioned by the classic sovereigntist accounts in two important respects.

First, since the social contestation is permanent, the legal consensus can only be temporary. Second, and most importantly, the collective consensus that becomes hegemonic at a particular moment does not necessarily amount to the aggregation of individual sovereign wills, the homogenization of individual interests, or the prevalence of the dominant state's will. The crafting and signification of international rules is not merely a process of universalization, but also one of contestation, in which outcomes depend as much on the resistance, feedback, and pushback from some actors as on the propositions advanced by others.

The resulting consensus, apart from being temporary, is therefore never the neat translation of a single prevailing will, not even that of dominant states.

From this perspective, international law's condition of existence is not the authoritative settlement of 'what is to be done in formally binding commands' (Hakimi, at 10), but the permanent possibility of authoritatively contesting the meaning of rules. Its condition of efficacy is not the capacity to control its subjects, but the capacity to repeatedly stabilize the political order around temporary consensus that continuously emerges and dissolves. Similarly, its condition of justifiability lies not in international law's capacity to overcome the structural dynamics of anarchy, but in its capacity to pacify the asymmetries of power that anarchy imprints upon the global order.

International law is a normative structure qualified by the sovereign origin of its authority that is, nevertheless, socially developed through a dialogical contestation under conditions of structural rivalry and power asymmetries among political actors. Hakimi's work encourages us to "sharpen our analytic apparatus and think more clearly about how international law can and should be reconstituted for a future world order". In my opinion, the observation of the dynamics behind the emergence of this new world order reveals that the survival of international law depends, more than on states' willingness to agree, on their structural need to compete. From this perspective, the international legal system is not contingent upon the centralization of power as contended by sovereigntist theories, and it remains relevant not only in contexts of cooperation, but also under conditions of rivalry and conflict.

ABOUT THE AUTHOR

Gemma Lligadas González

Dr. Gemma Lligadas González is a Postdoctoral Researcher at the Center for Human Rights Erlangen-Nürnberg at the University of Erlangen-Nürnberg.

SUGGESTED CITATION

González, Gemma Lligadas: Structural Rivalry, Hegemonic Contestation, and the Dynamic Resilience of International Law, Verfassungsblog, 02.09.2026, doi: 10.59704/bff5c33f5c88164d.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260903-145131-0.