

THE CHANGING PRACTICES OF INTERNATIONAL LAW

With more than 158 000 treaties and some 125 judicial organizations, international law has become an inescapable factor in world politics since the Second World War. In recent years, however, international law has also been increasingly challenged as states are voicing concerns that it is producing unintended effects and accuse international courts of judicial activism. This book provides an important corrective to existing theories of international law by focusing on how states respond to increased legalization and rely on legal expertise to manoeuvre within and against international law. Through a number of case studies, covering a wide range of topical issues, such as surveillance, environmental regulation, migration and foreign investments, the book argues that the expansion and increased institutionalization of international law itself have created the structural premise for this type of politics of international law. More international law paradoxically increases states' political room of manoeuvre in international society.

TANJA AALBERTS is Professor of Law at the Vrije Universiteit, Amsterdam and Director of the Centre for the Politics of Transnational Law. She has a PhD in International Relations, and her research focuses on the interplay between international law and international politics in practices of governance.

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PREFACE

It is with an equal amount of relief and anxiety that we put these last words to paper before submitting the present manuscript to the publisher: relief because we are past the submission deadline and the arduous process of getting this volume to completion has tested the patience of several contributors as well as our families, and anxiety because even in just the last months of editing, several areas of international law have been tested and challenged in ways that few thought possible. What started out as an attempt to provide a small but important corrective to the dominant liberal paradigm in international law has been overtaken by various political head-on confrontations with international law, from the European Union and multilateral trade treaties to refugees, human rights and the Paris Agreement. Who knows what else might happen in the coming months and years?

Watching these events unfold, we, like many of our colleagues, are struck by an eerie feeling that doing away with the so-called progress narrative in international law is not just a matter of intellectual integrity but a lived reality. At the same time, however, it becomes doubly important to recognize just how fundamentally international law has come to shape almost all aspects of human life. The last fifty years have seen a formidable transformation of international affairs, reshaping what it means to be a sovereign state, empowering individuals and corporations and building a whole new cadre of international institutions. That such profound developments prompt resistance is perhaps not surprising; that scholars and practitioners have so long ignored these dynamics is perhaps more so.

The present volume is a truly collective endeavour. The initial idea emerged on a bench in the garden of Villa Schifanoia at the European University Institute and matured during some long walks around Ann Arbor, Michigan. The overall framework was subsequently developed at an unusually stimulating two-day authors' workshop in Reykjavik, Iceland. We would like to recognize the important contribution of each of the participants there to developing the overall argument and framing of

the volume, including several who did not contribute a chapter to the final volume: Ciaran Burke, Monika Ambrus, Yohan Ariffin, Claudio Brenni, Anna Dolidze, Erlend Leonhardsen, Isobel Roele, Frederik Rosén and Page Wilson, as well as Dadi Stigmarsson and Eirikur Bergmann from Bifrost University, who hosted the workshop. Funding for this workshop was provided by COST Action 1003: ‘International Law between Constitutionalisation and Fragmentation’. For the past four years, this network has served as a sort of extended academic family, and we are deeply indebted to Wouter Werner for his work to create this network and his intellectual and personal generosity to us and others throughout. We would also like to thank Nik Rajkovic for many stimulating interdisciplinary exchanges and his infectious scholarly enthusiasm, even if our collective project with him helped delay the present one.

We are furthermore grateful to Francisca van Schuppen and Sofie Viborg Jensen for their invaluable assistance in preparing the final manuscript. Last, but not least, we would like to thank Finola O’Sullivan and her entire team at Cambridge University Press for their impeccable support.

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