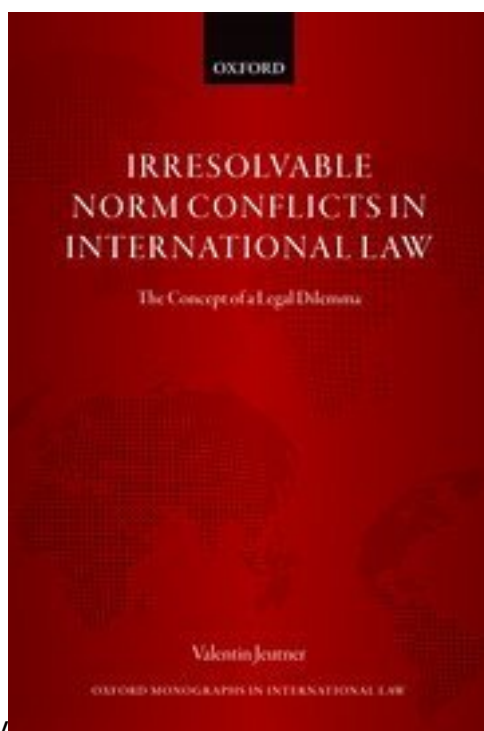


“Irresolvable Norm Conflicts”: An Oxymoron?

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Norm conflicts in international law have received



surprisingly

little attention, given their fundamental relevance for law in general and the present international legal order in particular. Long ago, a few pages in Emer De Vattel's [Le droit des gens](#), published in 1758 (De Vattel 1758: 507-514, and an article by C. Wilfred Jenks titled “The Conflict of Law-Making Treaties”, published in 1953 (Jenks 1953), would have nearly completed the list of references for a discussion of this serious and utterly important problem of norm conflicts. The recently published book by Valentin Jentner named *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma* (Jentner 2017) finally puts an end to this intellectual drought.

This book, however, does not merely continue the discussions of De Vattel, Jenks and a few others who joined them later (Karl 1984; Binder 1985; Czapli#ski & Danilenko 1990; Marceau 2001). Rather, it effectively renews the understanding of, and, most of all, invites a fundamental debate on one of the law's most fundamental roles today and tomorrow. It is, therefore, necessary to state at the outset that this book deserves more than just to be reviewed but must be read instead for the following reasons:

First, the book addresses a fundamental problem of the greatest theoretical as well as practical relevance, without separating the former from the latter. One simply

needs to read the first few pages of the Introduction, featuring, inter alia, examples of norm conflicts in the fields of nuclear weapons, military alliances, and distress at sea. An attentive reader will immediately find – alas – that these problems are not just discussed in academic books but are reported in the media around the world on a daily basis.

These examples of norm conflicts also carry a much broader significance for many more serious problems of global governance caused by the apparent contradictions encountered by legal actors, such as those addressed by the so-called “*trade linkage debate*” containing pairs of various apparently irresolvable “*trade and ...*” problems e.g. “*trade and national security*”, or those enshrined in the Sustainable Development Goals (SDGs), particularly the problem of climate change that threatens the survival of the planet and humanity as a whole.

Thus, it is also no coincidence that, as early as 1995, James N. Rosenau had anticipated that one of the fundamental requirements for successful governance of global affairs in the future will be “to discern *powerful tensions, profound contradictions, and perplexing paradoxes*” (Rosenau 1995: 13). In this regard, it is confirmed by Jeutner that the legal dilemmas encountered in the international legal realm are equally, and increasingly, found at the regional and domestic level (Jeutner 2017: 8). In reality, law today is a multilevel phenomenon, with different vertical layers of legal instruments being increasingly connected. One may think about new technologies that result in the increasing emergence of convergence products, like “*nutriceutics*” or “*cosmeceutics*”. These concepts describe categories of products that are both food and medicines, or both cosmetics and medicines, which, however, from a regulatory perspective are classified as falling within different legal categories. This growing complexity increases the likelihood of norm conflicts, significantly.

In this respect, the relevance of the discussion by Jeutner of norm conflicts is supported by the data collected in my recent monograph *Law in the Time of Oxymora: A Synaesthesia of Language, Logic and Law* (Neuwirth 2018), which contains a collection of hundreds of examples of legal oxymora discussed in cases from different jurisdictions around the world as well as in a growing body of legal literature. Oxymora and paradoxes, as so-called “*essentially oxymoronic concepts*”, denote apparent contradictions between opposite concepts, which often lead to cognitive as well as norm conflicts or legal dilemmas, as Jeutner calls them. Oxymora and related rhetorical figures of speech are thus not only frequently used in law, science and other public discourses., but are even on the rise, as the examples of “*alternative facts*”, “*artificial intelligence*”, “*big (raw) data*”, the “*sharing economy*”, “*synthetic biology*”, or “*sustainable development*” prove.

The most important question that needs to be asked is, therefore, whether the notion of “*irresolvable norm conflicts*” itself constitutes an oxymoron, meaning that such norm conflicts can be neither avoided nor resolved. In this respect, Jeutner correctly identifies the major causes that lead to their occurrence, such as misdeeds from the past “*actor’s prior fault*”, badly and hastily drafted laws, the non-hierarchical nature of international law, and the fragmentation of the present (multilevel) “*international legal order*”. He does not provide us with a solution but he seems to have an implicit

answer to this conundrum, when he expresses his preference for the concept of a “legal dilemma” (because of its transcendental dimension) over that of an “*irresolvable norm conflict*” (Jeutner 2017: 19).

By introducing the concept of a legal dilemma and confirming that such dilemmas exist in contemporary international law, Jeutner nonetheless provides hope in despair that the global community can tackle the problems it is encountering today and will encounter tomorrow. Preceding the reasons for hope is an overview of the limitations of current norm conflict resolution (e.g. *lex specialis*) and accommodation devices (i.e. the ARSIWA, VCLT, and ICCPS), as well as measures of last resort, like the application of residual rules or *non liquet* declarations (Jeutner: 2017: 56-92). The constructive proposal that a “*dilemmatic declaration*” should be issued is the first step, as it raises awareness about the existence of a norm conflict. It also helps to strengthen the political will of the “*legal sovereign*” to amend and improve the laws that gave rise to the norm conflict in the first place.

The critical discussion of the “law of non-contradiction” (or exclusive logic) becomes more and more relevant, since other legal traditions in which bivalent logic is not the only mode of reasoning prove, that logic itself is not a neutral technique. This invites important questions about a greater open-mindedness towards other modes of logic, like multivalent logic. This may suggest a new and alternative way for solving legal dilemmas, as H. Patrick Glenn noted when he wrote the following about “*New Logics*”: “*laws may differ but they do not conflict: the only possible conflict is in the mind of the judge*” (Glenn 2017: 162). Again, it is because of progress in science and technology that former contradictions have become dissolved in new creative inventions or by computing in non-binary or fuzzy terms, which prove again that “*conflict is a category of man’s mind, not in itself an element of reality*” (Negoita 1982: 98). A good example for changes in technology is the so-called “memristor”, a kind of oxymoron or portmanteau coined from memory and resistor. The memristor is regarded as an exceptional invention because it is said to revolutionize how computers will work in the future. The memristor shall, for instance, enable us to build “creative computers”, that is to say “brain-like” or “neural computers” (Gale, de Lacy Costello and Adamatzky 2013), which may provide robots with the human like capacities. Most importantly for the applied logic, memristors have been reported to allow computers to escape the boundaries of binary codes (Neuwirth 2018: 201; Prisco 2015).

Ultimately, this may be read to mean that the legal sovereign must constantly work to adapt the laws to the changing realities. Perhaps the time has also come to change the mode of reasoning by extending even logic to more multivalent modes, as the present realities seem to have outpaced law’s binary logic as Jeutner accurately concludes by writing that “[L]aw blanks out anything that does not fit into law’s binary matrix” (Jeutner 2017: 151).

Besides identifying norm conflicts that contemporary international law is unable to resolve satisfactorily, Jeutner addresses many more. Among these, he manages to identify the character and consequences of legal dilemmas precisely. In particular,

the concept of a legal dilemma serves as a perfect reminder of the limitations of binary thinking and logic in (international) law in solving the most serious problems of the contemporary world. Jeutner therefore rightly advocates the concept of the legal dilemma as the foundation on which a future global legal order should be built. This argument also resonates with the findings from the world of physics resulting from the observation of the laws of nature, where – as Niels Bohr formulated it – an “*ordinary truth is a statement whose opposite is a falsehood*” while a “*profound truth is a statement whose opposite is also a profound truth*” (Wilczek 2008: 11). The scientific study of the human brain confirms, in a similar way, that contradictions in the form of paradoxes “*often represent instances where current knowledge may be deficient, and thus predictions based on such knowledge may be inconsistent with actual events or findings*” (Kapur 2011: 1).

The concept of a legal dilemma, as Jeutner concludes, is thus an extremely important tool that can be used to shift “*the focus from conventional attempts to establish the one right answer at all costs, the one entitlement or right that trumps another, to more productive, concerted efforts to find creative solutions for extremely difficult problems*” (p. 152). Jeutner not only shows us that the notion of irresolvable norm conflicts is not an oxymoron, because all conflicts can be solved, and Valentin Jeutner convincingly shows us the way to solve them!

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