

The Enlightened Uncanny and International Law

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In times in which many consider the international legal order existentially threatened, the topic of ‘Armed Conflict and Climate’ reasonably elicits a sentiment of profound unease. This sentiment arguably arises in three respects: First, in respect of the apparent absurdity of discussing climate protection in the context of armed conflicts, when even the prohibition of the use of force and core obligations of international humanitarian law are not being respected, even overtly flaunted. Second, the unease with regard to the already manifestly unsatisfactory solutions that international law has come to offer in response to the climate crisis alone and the core distributional questions it raises. And third and finally, the unease experienced in light of the realisation that the current flagrant violations of the most fundamental norms of international law in many respects appear to us like a ‘mere’ repetition of horrendous pasts – despite of the discipline’s continued vehement efforts to prevent their reoccurrence. Only the first of these different sources of ‘unease’ relates specifically to the thematic interlinkage of ‘Armed Conflict and Climate’. It however decisively accentuates the other two sources of ‘unease’ which are more generally reflective of international legal scholarship’s current bewilderment, if not dystopian anxiety,¹ with the recent radicality in which the impotence of their normative frameworks has come to light.

These sources of unease, I believe, can be better understood in light of what the philosopher Juliane Rebentisch has recently theorised regarding the feeling of the *uncanny* (*das Unheimliche*).² The concept of the uncanny is primarily associated with the work of Freud and Heidegger. For them, the feeling of the *uncanny* is a sensation akin to, but more moderate than, ‘fear’ (Heidegger’s *Angst*) in relation to the strange and inexplicable repeated occurrence of a phenomenon which is considered improbable and extraordi-

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¹ Marko Milanovic, ‘Dystopian International Law’, *AJIL* 120 (2026), 107-130.

² Juliane Rebentisch, *Das ökologisch Unheimliche – The Ecological Uncanny* (Materialverlag HFBK Hamburg 2025).

nary but which due to its recurrence becomes simultaneously weirdly familiar. A central element of this theorisation of the feeling of the *uncanny* is that it arises as an expression of superstitious attitudes, an expression of a lack of enlightenment.

Rebentisch's core observation in the context of climate change, however, is that today the feeling of the *uncanny* has changed sides: The feeling of the uncanny no longer manifests as an expression of superstitious attitudes, but rather as a by-product of scientific enlightenment. This alters the status of the feeling itself: from a symptom of a certain superstition and backwardness to a symptom of progressive enlightenment. According to Rebentisch, what categorically distinguishes the 'enlightened' uncanniness of the climate crisis from its pre-enlightened manifestations is that we now *know*, based on scientific evidence, that the extreme weather events we are experiencing are ultimately 'effects of human agency and human history, the abysmal nature of which lies in the historically novel combination of a loss of control and predictability'.³ I believe the observations made by Rebentisch in the context of climate change can be abstracted from the specific context of climate change and extended to other fields which have been both subject of pronounced phenomena of *scientisation* as well as affected by the emergence of global risk society.

It seems to me, that the sentiment of *unease* pervading the discipline of international law, particularly in the context of somewhat daring thematic hybrids such as 'Armed Conflict and Climate', can be understood as an analogous manifestation of this enlightened feeling of the uncanny: The discipline's currently acute sentiment of *unease* is nothing else than a feeling of *uncanny* in the face of the discipline's familiar and yet somewhat inexplicable impotence to effectively address the unprecedented yet recurring, legally-assessable yet out-of-control ecological and humanitarian catastrophes.

Rebentisch indicates that one dimension of the uncanny experience – and paradoxically also of the *enlightened uncanny* – is a deep intellectual uncertainty, a felt 'crisis of the epistemic standpoint', which undermines the position of the epistemic subject and leads it to question all certainties.⁴ Nothing else also lies behind the unease pervading the international legal discipline: It is a discipline which is acutely doubting its own relevance, struggling to find ways to reposition itself in the face of events that contradict its core precepts which it has scientifically and normatively reconstructed.

Particularly in the context of climate change Rebentisch observes that in order to overcome the experienced crisis of the epistemic standpoint, the

³ Rebentisch (n. 2), 13.

⁴ Rebentisch (n. 2), 15 et seq.

feeling of the enlightened uncanny (as opposed to its pre-enlightened version) is not, and ought not be, set aside and ignored but is increasingly explored as a force of change serving as a basis for the development of ‘a different form of being-in-the-world’.⁵

Specifically, Rebentisch observes that this embracing of the uncanny has led to a re-discovery of forms of knowledge and beliefs which were disregarded by Western anthropocentric modernity. Forming an alliance with the latest climate science, these disregarded systems of thought come to unsettle the convictions and constructs of Western modernity that have given rise to the feeling of enlightened uncanny.⁶

We observe a similar tendency in public and private international legal scholarship in relation to climate change with increasing attention being devoted to eco-centric approaches and indigenous cosmologies in the face of the ecological uncanny. But the increasing attention to such indigenous knowledge systems in international law today goes far beyond the specific issue of climate change and environmental protection. Not least, the intersection of the law of armed conflict, transitional justice, and environmental protection has proved to be a fruitful ground for these and other explorations of ‘different forms of being-in-the-world’ for international law.

The large majority of international legal scholarship that engages with topics that elicit a particularly strong feeling of ‘enlightened uncanny’, such as ‘Armed Conflict and Climate’, however, does not resort to such pronounced attempts of epistemic re-situation. Instead, they cling to variations of ‘established’ methods despite of others’ – or even secretly their own – sobering recourse to doomsday metaphors in the description of the state of international law. Thus, while the majority of authors are haunted by the enlightened uncanny, they *choose* not to emancipate themselves from the international law of western modernity.

To employ one of these pervasive doomsday metaphors, namely that of the slowly but surely sinking Titanic, most choose not to abandon ship and its materials and resources altogether. Neither do they choose to construct a new ship and its composites by employing radically new materials nor to leave the idea of the ship behind altogether by jumping on the iceberg as it scrapes by. Instead, they cling to the ship that is the current international legal order, either by trying to reinforce the hull with the strongest metal plating found at the core of the ship (i. e. by trying to re-mobilise the most foundational principles of the existing international legal order) or by committing to ensure that at least the rising water levels in the hull of the

⁵ Rebentisch (n. 2), 20 et seq.

⁶ Rebentisch (n. 2), 22 et seqq.

international legal ship are reported so that appropriate measures of rescue might be devised (i. e. the strengthening the procedural reporting and assessment frameworks so characteristic of the contemporary international law of cooperation). If they go as far as envisioning the construction of a new ship, (for instance by envisaging a new collective security framework) they do so with the clear intention of building on the salvageable historic materials of the currently sinking ship of the modern international legal order.

While these reactions to the enlightened uncanny in international legal scholarship are somewhat more timid than those observed by Rebentisch in the context of climate change, it seems to me that it would be overly hasty to conclude that these approaches simply ignore the sentiment of the enlightened uncanny. Instead, they are testimony of a different form of exploration of the feeling of the uncanny. The courage of embracing the uncanny here lies not in developing radically ‘different forms of being-in-the-world’ but in a continued commitment to the structure of the modernist international legal argument:⁷ It is because they still believe in parts of the utopian (or normative) promises of the current international legal order that they refuse to apologetically abandon ship at a time of its flooding by uncanny ‘monsters’.⁸

⁷ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006).

⁸ Anne Peters, International Law and Its Scholarship in the Time of Monsters (6 May 2025). Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2025-05, available at SSRN: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5242721>, last access 30 June 2026.