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International law as an argumentative practice: on Wohlrapp's *The Concept of Argument*

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ABSTRACT

It has become a commonplace to view international law as an argumentative practice. This commonplace, it is argued, clouds strong differences that re-emerge with closer scrutiny. What, specifically, is the place of reason, rhetoric or violence in the practice of arguing? The present article explores the question of what it means to argue. Since this is a grand question, it approaches the topic in conversation with a grand book, Harald Wohlrapp's *The Concept of Argument: A Philosophical Foundation*, recently published in English translation.

KEYWORDS International law; argumentation; interpretative communities; reason; rhetoric; violence; legal validity

I. Introduction

The view of international law as an argumentative practice has become commonplace.¹ While starkly different scholars and practitioners can agree on this view, their differences are likely to re-emerge with regard to their understanding of the nature of argumentation.² The present article therefore explores the question of what it means to argue. Since this is a grand question, it approaches the topic in conversation with a grand book, Harald Wohlrapp's *The Concept of Argument: A Philosophical Foundation*, recently published in English translation.³ Wohlrapp has no less an ambition than to provide new basic concepts for a theory of argument. What is more, the book comes with two particular features that not only break with well-received traditions of argumentation theory but that also render its account particularly intriguing

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¹ In lieu of numerous references in support of this statement, see Martti Koskeniemi, 'Methodology of International Law' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (2007), the very first sentence of which reads plainly 'International law is an argumentative practice'.

² For an elucidating exposition see Ralph Christensen and Michael Sokolowski, 'Die Krise der Kommunikation und die Möglichkeit juristischen Argumentierens' in Kent D Lerch (ed), *Die Sprache des Rechts. Recht verhandeln* (Walter de Gruyter, 2005) 105–154.

³ Published by Springer in 2014, a translation of the original 2008 German version from Königshausen & Neumann.

for debates in international law. First, argumentation theory typically upholds the view that arguing is aimed at gaining assent from interlocutors or audiences.⁴ Wohlrapp suggests, to the contrary, that the practice of argumentation aims at testing new propositions, or theories, with regard to their capacity of providing orientation in the world. Second, argumentation theory typically connects the validity of arguments to those arguments' qualified acceptance by a universal audience.⁵ Wohlrapp conversely aims to decouple the quality of arguments from their persuasive force and, ultimately, from assent, or acceptance. Those are the two key concepts and noteworthy elements of his account: *orientation*, which theory provides and which argumentation examines, and *validity*, which is decoupled from assent. I shall introduce and discuss Wohlrapp's approach in further detail. But first, what is the context within international legal theory that possibly renders the engagement with Wohlrapp's 500 dense pages worth the while?⁶

There is general interest in probing theories of argumentation that arises from the wide-spread view of international law as an argumentative practice. General jurisprudence has struck that link many times.⁷ Some contributions in international law have done so as well.⁸ But they have been rather reticent, and a lot of work still lies ahead. Wohlrapp's treatise provides the opportunity and the background for charting part of the way ahead. It is a book all the more worth exploring if international law – in spite of all its troubles and the violence that has forever come with it – should indeed function as that 'gentle civilizer of nations'.⁹ This is precisely because argumentation theory frequently embraces the ambitious goal of offering an account of

⁴ For a summary account see Josef Kopperschmidt, *Argumentationstheorie* (Junius, 2000), especially at 34. For a specific development of that core proposition see, in particular, Chaïm Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (Notre Dame University Press, 1969) (original: *Traité de l'argumentation: La nouvelle rhétorique* (Presses Universitaires de France, 1958)); for an account attuned to international law, see Iain Scobbie, 'Rhetoric, Persuasion, and Interpretation in International Law' in Andrea Bianchi, Daniel Peat and Matthew Windsor (eds), *Interpretation in International Law* (Oxford University Press, 2015), 61–77.

⁵ Those are the influential streams of thinking respectively connected to Perelman and Olbrechts-Tyteca (n 4) and Jürgen Habermas, *Theory of Communicative Action* (Beacon, 1984) (original: *Theorie des kommunikativen Handelns* (Suhrkamp, 1981)).

⁶ See already Valerio Priuli, 'Die fünf Sezessionen des Kosovo: Eine Argumentationsanalyse des Kosovo-Verfahrens des Internationalen Gerichtshofs', Doctoral Thesis, University of Zürich (2015).

⁷ See, especially, Theodor Viehweg, *Topik und Jurisprudenz* (C.H. Beck, 1953); J Frug, 'Argument as Character' (1988) 40 *Stanford Law Review* 869; Klaus Günther, *Der Sinn für Angemessenheit: Anwendungsdiskurse in Moral und Recht* (Suhrkamp, 1988); Robert Alexy, *A Theory of Legal Argumentation* (Oxford, 2009) (original: *Theorie der juristischen Argumentation. Die Theorie des rationalen Diskurses als Theorie der juristischen Begründung* (Suhrkamp, 2nd edn 1991)); Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press, 1996) (original: *Faktizität und Geltung* (Suhrkamp, 1992)); Perelman and Olbrechts-Tyteca (n 4); Manuel Atienza, *El Derecho Como Argumentación* (Ariel Derecho, 2006); Eveline Feteris, *Fundamentals of Legal Argumentation* (Springer, 1999).

⁸ Lyndel V Prott, 'Argumentation in International Law' (1991) *Argumentation* 299; Jean Salmon, *Droit international et argumentation* (Bruylant, 2014). Of course Martti Koskenniemi's seminal *From Apology to Utopia* (Cambridge, 2005 [1989]) presents itself precisely as a study in the structure of legal argumentation.

⁹ Martti Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge University Press, 2001).

argumentation as the only remaining locus of *reason*. By and large, argumentation theory draws respect for the grand cultural achievement of curbing, if not even replacing, violence through the ‘gentle power of reason’ (Brecht), and thereby civilising the process of living together.¹⁰

Similar in importance to seeing international law as an argumentative practice is the understanding that this practice is constrained by interpretative communities.¹¹ This notion, with its inheritance of rule-scepticism, pervades international legal scholarship. The lasting imprint of critical legal studies is clear to see.¹² No law applies itself. Applying the law requires judgment or choice, not cognition or deduction.¹³ What then constrains a speaker in her claims about international law? What constrains a legal argument or an interpretation? The work of Stanley Fish provides a central point of reference for an answer: interpretative communities stabilise the angles from which the law is seen and, in being seen, made.¹⁴ Other participants in legal discourse set the limits of what can be done with the law. Interpreters are constrained by the need to find acceptance within relevant interpretative communities. This view has purchase, but it also has shortcomings.

Understanding international law as an argumentative practice seems to go together well with locating the constraints of that practice within an interpretative community. But for Fish, the idea of interpretative communities is an afterthought, a corrective to his approach in literature theory where the will of the reader and her interpretative angle produce the text.¹⁵ That afterthought has not eased its way into a compelling theoretical set-up, at least not for a practice that wants to be understood as argumentative. What would induce somebody to accept an argument or what would make an argument valid? According to Fish, it is interlocutors who share a sufficiently similar interpretative angle. That is a premise, not an effect of argumentation. This approach is silent on the mechanisms that might work towards such a premise or that lead an interpreter to adopt a specific angle rather than another.¹⁶ Arguably, a shared interpretative posture is what anchors a

¹⁰ That is how Josef Kopperschmidt opens his introductory *Argumentationstheorie* (n 2).

¹¹ Consider the prominence of the notion in many of the contributions in the recommendable recent volume by Andrea Bianchi, Daniel Peat and Matthew Windsor, *Interpretation in International Law* (Oxford University Press, 2015); as a further example see Jean d’Aspremont, ‘Wording in International Law’ (2012) 25 *Leiden Journal of International Law* 575. I have myself discussed the notion in *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (Oxford University Press, 2012).

¹² David Kennedy, ‘Theses about International Law Discourse’ (1980) 23 *German Yearbook of International Law* 353–391; Koskenniemi (n 6).

¹³ See already Immanuel Kant, *Critique of Pure Reason* (Macmillan, 1929) 177 (A132-3/B171-2) (original: *Kritik der reinen Vernunft* (Hartknoch 1781)); then Hans Kelsen, *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik* (Deuticke, 1934) 95 (in translation: *Pure Theory of Law* (Berkeley, 1967)).

¹⁴ Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literature and Legal Studies* (Duke University Press, 1989) 141–142.

¹⁵ Dennis Patterson, *Law and Truth* (Oxford University Press, 1996) 100.

¹⁶ *Ibid*, at 124.

community. What happens between communities other than competition? Understanding and exploring competition opens up an insightful perspective on the relationship between fragmented interpretative communities within fields of international law. The path that the regime of investment law continues to take, for instance, will be critically shaped by the respective strength of communities with a stronger commercial or public law background. At the same time, that view of legal practice leaves no space for the quality of the arguments that are being used. *Between communities, international law is quiet.*

There are certainly a host of other views that could provide an account of argumentation that makes sense of international law as an argumentative practice. I have opened this contribution with reference to the notion of interpretative communities because it is at present in high demand, because it often goes together with thinking of international law as an argumentative practice in the wake of rule-scepticism, and because it marks one prominent side of a spectrum of possible approaches to argumentation – that side, namely, on which actual success in the form of effective persuasion and actual assent is the criterion that counts.¹⁷ The good argument is an argument that fits nicely with rule-scepticism and with emphatic rejections of normative benchmarks of universal or objectivist aspiration. Every claim in international law must then be hegemonic. It dresses up the particular as the universal and imposes its view.¹⁸ At the other end of that spectrum, you will find approaches that understand argumentation as a decidedly normative enterprise where the practice of argumentation is supposed to ensure the quality of the outcome. Not success as such but the *qualified* assent or consent of interlocutors vouches for the argument's validity. Such is the function of the regulative ideals of a universal audience (Perelman and Olbrechts-Tyteca) or the consensus in an ideal speech situation (Habermas).

In many ways, Wohlrapp's *Concept of Argument* aims at staking middle ground, not as a mere compromise but as a circumspect proposal for a renewed foundation. By his own account, he aims at 'midrange universality' between agreement, which is confined to a narrow community or that extends to the universality of all human beings. He aims at 'midrange certainty', which is satisfied with the absence of objections rather than final proof. And he aims at 'midrange compulsion', which allows the freedom to not accept a thesis 'without being regarded as suborn or irrational per se' (270). Wohlrapp continues on a path that positions truth and success as

¹⁷ The second sentence of Koskeniemi's 'Methodology of International Law' (n 1) thus reads: '[International law] is about persuading target audiences such as courts, colleagues, politicians, and readers of legal texts about the legal correctness – lawfulness, legitimacy, justice, permissibility, validity, etc – of the position one defends'.

¹⁸ Martti Koskeniemi, 'International Law and Hegemony: A Reconfiguration' (2004) 17 *Cambridge Review of International Affairs* 197.

the opposing criteria for assessing an argument. The former camp would hold that arguments can show their truth by demonstrating the impeccability of logical deduction. In (international) legal argument, the right legal argument could accordingly be deduced from the norm material. The fact that this is very hard to maintain in either argumentation theory (other than in formal languages such as maths) or in (international) law has led to either of two consequences: truth has been (re-)located into the process of arguing, or it has been replaced by the criterion of success and the notion of interpretative communities. Wohlrapp offers the notion of argumentative validity within that midst.

I proceed by setting out what Wohlrapp has to say (II) and by then discussing his suggestions with a view to international law as an argumentative practice (III).

II. Wohlrapp's *The Concept of Arguing*

Wohlrapp approaches argumentation theory against the venerable background of Aristotelian foundations – a predictable starting point from which his book continues to unfold a fresh, unorthodox and in many ways unexpected basis for thinking about argumentation. It starts anew, decidedly so. But what is at the beginning? Wohlrapp highlights how Aristotle distinguishes knowledge (*episteme*), which consists of logical deductions from first principles, from mere opinion (*doxa*). Whereas knowledge presents truth (*aletheia*), opinions present probability (*eikos*) in the sense that they seem true, but their truth has yet to be established. If opinions are widespread, they turn into *endoxa*. Such *endoxa*, according to Wohlrapp, form the central focus of argumentation theory. Argumentation is concerned with establishing the validity of theses that do not already form part of knowledge (xxi). Right at the outset and at the basis of his approach, Wohlrapp introduces a novel distinction between probable theses and established knowledge.

'Arguing', Wohlrapp opens the first chapter on knowledge, 'is only possible if in the process not everything is questionable or controversial' (1). With a 'small theory of knowledge' (*ibid*, 1), Wohlrapp provides an avenue for parting *epistemic theory* on what is already known from *thetic theory*, which is the proper domain of argumentation theory. That is the realm where theses have not yet proven themselves, the realm of *endoxa*. Wohlrapp's understanding of theory, and of knowledge, is thoroughly pragmatic, especially in the bend of North American philosophy. Accordingly, theory refers to the 'symbolic representation of the felicity structure of praxis' (9).¹⁹ In other words, it represents what has worked in the past. It has

¹⁹ The work of JL Austin resonates here. It advanced the (in)felicity of a speech act as the decisive criterion. John Langshaw Austin, *How to Do Things with Words* (Oxford University Press, 1979).

successfully provided orientation in the world. ‘[I]n a theorized area of practice, we are “oriented.” Theory is not a representation of reality, but orientation within it. No ontological presuppositions whatsoever are needed for this pragmatic concept of theory’ (18). Epistemic theory refers to orientation that has proved itself in the past. Or with Aristotle: ‘When we know a thing, and have decided about it, there is no further use in arguing about it.’²⁰ In contrast, thetic theory (and the practice of arguing) ventures into a realm where no solid orientation yet exists – the realm between opinion and knowledge, between the arbitrary and the true. ‘Opinion is arbitrary; knowledge is true’ (269). Knowledge is certainly not a given but continuously (re-) enacted. It can lose its status as knowledge and new theses can become knowledge.

People acquire knowledge either through teaching or through research. *Teaching* has nothing to do with argumentation, according to Wohlrapp. Even if a student objects to the knowledge delivered by the teacher, or if the teacher, in good Socratic fashion, engages in a discussion with the student, the situation is not one of argumentation because the knowledge has already proven itself in praxis. Orientation already exists. The student just does not yet have it. It needs to be taught. *Research* is the second mode of acquiring knowledge and sets in when orientation is missing (Chapter 2). Its general aim is to provide orientation, to ‘improve, complete, and correct [knowledge]’ (55). It starts from a situation where orientation is missing but necessary or at least desirable (61). It is in this domain that Wohlrapp locates argumentation. ‘The ultimate goal of argumentation’, he writes, ‘is to assess the “validity” of theses. Theses are primarily understood as “new orientations.”’ (lix, similarly at 87). If orientation is missing, research produces theses that then need to be tested in a critical dialogue – in the sense of the original Greek meaning of dialogue, Wohlrapp reminds us, as ‘thinking something through’ (87). It is noteworthy that arguing, in Wohlrapp’s arrangement, is confined to that realm of testing new theses for orientation. We do not argue about what we already know.

What makes a thesis for new orientation valid? It cannot be the same standard as for epistemic theory – correctness or truth – as the thesis has not yet been tried in practice for its function of providing orientation. The validity of theses, according to Wohlrapp, has two sides, an objective and a subjective one. The objective one, called ‘objection free attainability’, connects to a beginning or a basis in epistemic theory. It is not deduced, but justified by reasons (73–74). Theses and the reasons in their support may be more or less compelling, which is where the second, subjective side comes in: credibility. As Wohlrapp highlights: ‘Objection-free attainability of a thesis is a weak requirement . . . No one is forced to take a thesis that is attainable

²⁰ Aristotle, *Rhetoric* (1975) 1391b; quoted in Wohlrapp at 135, footnote 12.

without any objections or as a practical guide' (88). The theory of knowledge – and a theory of action, which I had to leave aside here – is now followed by a small theory of subjectivity (Chapter 3). It introduces the well-received notion of frame structures in order to draw out the factors that render a thesis credible (the notion and workings of frame structures are then further detailed in Chapter 5). Here as elsewhere Wohlrapp leaves space in his account for subjective predispositions and for the particular.

Knowledge, research and subjectivity provide the way for the exposition of the basic operations, which capture the main, regularly occurring structures of 'thetic speech': asserting, justifying and criticising (Chapter 4). What happens between presenting a thesis and assessing the validity of the conclusion, Wohlrapp proposes, could precisely be called argumentation. An argument has the function of demonstrating the validity or non-validity of the thesis (134). A first part of it, *asserting*, presents a statement that is supposed to function as new orientation. It exceeds already established knowledge (134). It is a notable feature of Wohlrapp's approach – in line with its North American pragmatist inheritance – that such assertions can extend to descriptive just as well as to normative propositions (139). Wohlrapp questions the view, held by Habermas and others, that the validity of normatively and descriptively formulated assertions differs.²¹ Second, *justifying* speech acts support, or even satisfy, assertions. *Critique*, finally, controls whether the justification of assertions holds. Chapter 6, on 'dialogue events', then shows how the argumentative process unfolds. It includes the proposition of a reflexive relationship between conclusions and arguments as well as a detailed, exemplary study of the euthanasia debate.

Chapter 7 zooms in on the notion of validity, the second key concept of Wohlrapp's account, next to orientation. The most remarkable and intriguing proposition here is that Wohlrapp decouples validity from assent or consent, which is so far the well-received standard of argumentation theory by which an argument's validity ought to be judged. Validity needs to be decoupled from assent because the validity of a thesis should not hinge on such arbitrary a thing – socialisation, stubbornness and entrenched identities all speak for disentangling validity from assent (274). Wohlrapp further notes that little would be gained by continuing to link validity to assent. Assent does not offer a reason for accepting a thesis. Would we accept a thesis because many or all others have accepted it? What then does Wohlrapp put in the place of assent to establish validity? The concept of validity, Wohlrapp suggests, 'must be able to capture the notion that people who have been hitherto unwilling to be guided by a thesis would be willing to do so because of an argument' (267–268). Validity thus refers to peoples' reasons for adopting a thesis as providing (new) orientation. It bears brief repetition

²¹ With reference to Habermas (n 5) at 38.

that this has the objective side of objection free attainability and the subjective side of credibility. This thought is now developed further to suggest that the inner side of the concept of validity refers not to assent, but to insight. Such insight may at best be an indicator of validity, but it is not a criterion.

What should be a criterion for argumentative validity? Wohlrapp's answer turns to the state of argumentation in an open forum of arguments (especially at 270 and 303). The answer builds on the objective side of objection free attainability and requires a moment of explanation. An argument is valid if, in an open forum of argument, it no longer faces objections. Such an open forum extends synchronically as well as diachronically. It includes all arguments, brings them together, and shows a state of argumentation – it works as a forum, a marketplace, where arguments unfold without everyone necessarily being present at any point in time. Wohlrapp hastens to clarify that the forum itself cannot act. It requires agents. He thus introduces the 'agents of the open forum'. Such agents do not assume an elated standpoint from which to judge. They integrate any new argument and (re)articulate the state of argumentation. They feed the forum with a thesis on what amounts to a valid argument (289). Such a judgment of validity, finally, supports the credibility of a thesis (290).

Chapter 8 offers a detailed example of argumentation analysis. Chapter 9 projects the book's account onto itself: highlighting the lack of orientation that has arguably plagued argumentation theory and the new orientation that Wohlrapp offers. Chapter 10 closes the book with a discussion of trans-subjectivity, which, once more, firmly places the locus of argumentative validity not in any particular participant's subjectivity but in their critical dialogue and the state of argumentation. Such dialogue must continue, remain open, and engage with the respective other. Otherwise 'pluralism turns into lazy relativism' (419). As such, Wohlrapp notes in closing, argumentation keeps alive a belief in humanity. There is sense in arguing, and arguing recognises the humanity of the other.

III. Orientation for international law?

Since its modern start some 50 years ago, argumentation theory has typically taken legal discourse as its field of reference.²² For many lawyers, however, its studies have often looked too formal. Studies have frequently introduced a stabilising background scheme that structured arguments, but one that was absent from practice and distant from legal experience. Wohlrapp's book is replete with examples. He invigorates his argument with repeated reference to the dispute between Cristóbal Colón and the reluctant funders for his

²² The main renewed impetus came with Stephen Toulmin, *The Uses of Argument* (Cambridge University Press, 1958).

westward voyage towards India, with references to arguments about the heat substance phlogiston, the trial of King Louis XVI and genetic research. The most extensive illustration of his approach revolves around embryos' right to life (Chapter 8, Section 3). The latter example has some legal dimensions to it. But law, let alone international law, is largely absent from the book's pages.

I hope to have offered a sufficiently strong *prima facie* case for reading the book all the same, or at least for reading through my summary presentation in Section II. The main feature that recommends Wohlrapp's account more specifically for a study of legal argumentative practice, and international legal argumentative practice, in particular, I submit, is its conception of validity as a combination of credibility and objection-free attainability in an open forum of argument. Stemming itself against the received mainstream of argumentation theory, it first of all gives space to such subjective leanings – frame structures, socialisation, stubbornness. Wohlrapp has a point when he writes that 'the subjective side does not usually receive proper attention, except in the form of the desired assent' (272). Subjective distortions, as it were, are typically blended out precisely because argumentation theory tends to link the validity of arguments with qualified assent.²³ Perelman and Olbrechts-Tyteca's universal audience is supposed to be stripped from all particularities that might otherwise twist the argument. Likewise, Habermas' discourse principle posits that a normative claim is valid if 'all possibly affected persons could agree as participants in rational discourse'.²⁴ The rational discourse is defined by a set of rules devoid of life.

At the same time, validity is not in the eye of the beholder. It does not depend on assent but on the state of argumentation. According to whom? Here we find a moment of idealisation. But it is consistent with Wohlrapp's sober and thoroughly pragmatic account. The evaluator of the state of argumentation acts as an agent of the open forum. The agent cannot but articulate her assessment of validity as a thesis and subject it to critical dialogue. Actual assessments can and do differ. On the whole, they tend to lag behind the state of argumentation: 'The willingness to open the state of argumentation for new arguments is pitted against our inertia to change' (289). The important point is that assessments of validity focus on the forum of arguments and not on the extent to which a thesis is accepted. Overall, Wohlrapp's notion of validity allows for a plurality of argumentatively valid theses. The belief in humanity that Wohlrapp exposes in closing connects to the collective enterprise of maintaining the open forum of arguments where the 'set of arguments [is] not as something currently available, but . . . something potentially in-the-making' (289).

²³ On the immense difficulty of legal argument in dealing with subjective sides see Duncan Kennedy, 'The Hermeneutic of Suspicion in Contemporary American Legal Thought' (2014) 25 *Law and Critique* 91.

²⁴ Habermas (n 7) at 107 (quoted from English translation).

What might give reason for hesitation to further embrace Wohlrapp's approach is the seemingly narrow conception of argumentation. It is confined to the thetic realm where orientation has not yet been established and new orientation is needed. Wohlrapp is adamant in his rejection of seeing any kind of 'foolish bickering' as argumentation (62). This deliberate limitation has been criticised as 'elitist'.²⁵ Josef Kopperschmidt, whom Wohlrapp criticises for his extensive concept of argument, in turn finds no use in thinking of argumentation 'merely' as testing theses for their function of providing new orientation. Arguing, Kopperschmidt submits, gets off the ground when we are faced with new problems and try to resolve them in light of what we already know.²⁶ Furthermore, he alleges that Wohlrapp does not account for the typical case of argumentation, which is the defense of views that are dearly held – be it in court or in parliament (which provides the other prototypical field of reference for argumentation theory next to the legal discourse).²⁷ The differences when it comes to the nature of arguing seem to be overstated. I do not see Wohlrapp disagreeing with the view according to which knowledge indeed provides the basis on which justifications support a conclusion. Arguing tests whether the justifications hold. Wohlrapp is neither blind to the typical case of defending dearly held positions. From his perspective such defenses would consist of showing the orientation value that a thesis has had not only for the speaker, but also for others.²⁸

The trust that argumentation theory, including Wohlrapp's, has in the gently civilising power of argument, including international legal argument, is questioned, finally, by a fact that Wohlrapp himself sees with a keen eye: 'In public debates, arguments play a smaller role than power relations between the parties involved' (xvi). While Wohlrapp's theory is generally well attuned to the sociological context of arguing, this is a thought that recedes quite far into the background. In the discussion of the concept of validity and its dimension of objection free attainability, it is brushed aside rather quickly (270).²⁹ As a reason for the absence of objections, it is deemed theoretically insignificant (283). Wohlrapp's notion of argumentative validity does not come with the same thick normative aspiration of, say, Habermas' discourse theory. But validity confers a blessing, for Wohlrapp too. It is not clear whether it is just public debates that Wohlrapp holds in low regard because, there, power relations sideline the role of good arguments. Overall, he sees the trust in humanity mobilised in the practice of argumentation. But apart from sharing this trust, it might be wise to continue controlling for the impact of power structures on the state of argumentation. That

²⁵ Michael J Hoppmann, 'Review of Harald Wohlrapp's "Der Begriff des Arguments"' (2012) 26 *Argumentation* 297 at 302.

²⁶ Josef Kopperschmidt, 'Rezension' (2008) 27 *Jahrbuch Rhetorik* 170.

²⁷ *Ibid.*

²⁸ Harald Wohlrapp, 'Replik zur Rezension von Josef Kopperschmidt' (2009) 28 *Jahrbuch Rhetorik* 103 at 106.

²⁹ Apart from that it only briefly resurfaces in the discussion of dialogue events at 262.

is something that the emphasis on competition between interpretative communities can pursue. In the end, both are needed. A state of argumentation always reflects both power relations and normative beliefs. Of course, the two influence each other,³⁰ but that does not mean that they are not distinct. The trick for both argumentation theory and for thinking of international law as an argumentative practice continues to be the upfront study of that close connection and distinction.

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³⁰ That is the customary orientation provided, inter alia, by Michel Foucault, 'Two Lectures' in Colin Gordon (ed), *Power/Knowledge* (Pantheon Books, 1980) 78–108.